

## FAQ: AMERICAN RECOVERY AND REINVESTMENT ACT AND THE HITECH ACT

### How does the \$19 billion that's allocated to Health IT break down in ARRA?

There is \$2.1 billion that will be available to the Secretary of Health & Human Services for distribution through the Office of the National Coordinator for Health IT (ONCHIT). These funds will be spent on projects related to standards evaluation and development, infrastructure for health information exchange (HIE), grants to states for the purpose of furthering EHR adoption, improvements in telemedicine delivery, and the establishment of Regional Health IT Resource Centers. There is an additional \$17 billion to be applied to longer term utilization incentive bonuses for providers meeting certain criteria.

### What are the different incentive options?

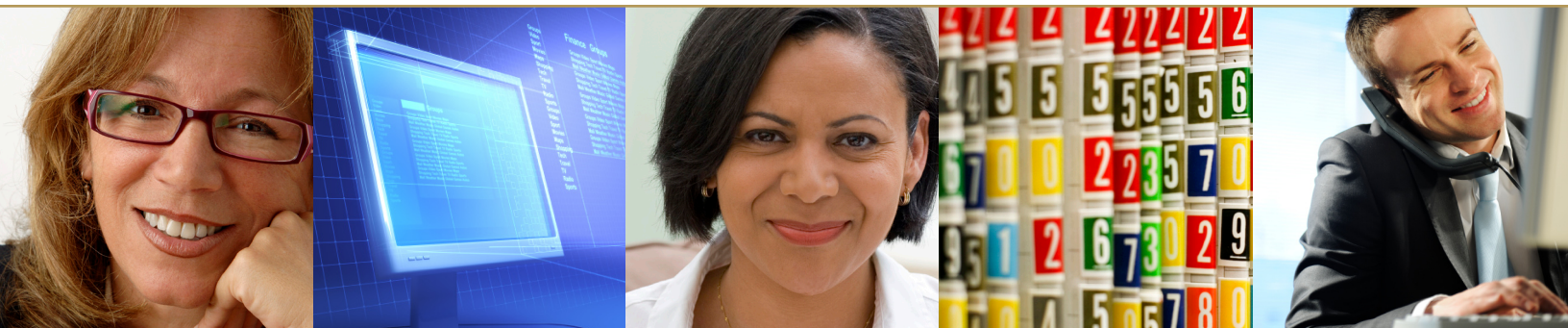
There are two incentive payment programs outlined under the HITECH Act – one through Medicare and another from Medicaid. Providers can only submit for payment of an incentive bonus from one of the programs so will need to analyze their organization's public payer mix to determine where they stand to benefit most. Both require that a provider prove "meaningful use" of an EHR product to qualify for the incentives, as well.

### How does the bill define adequate EMR utilization? What does "meaningful use" actually mean?

#### "Meaningful Use" is defined in three ways in the Bill:

- Use of a certified product complete with e-Prescribing capability as determined appropriate by the Secretary of HHS
- The EHR technology is connected for the electronic exchange of PHI
- Complies with submission of reports on clinical quality measures
- All further details about what type of reporting will need to be submitted, what level of connectivity will be required and the final criteria for standards will be determined by the Secretary of Health & Human Services before the utilization incentives begin.

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**What are the bonus payments that will be available to physicians under Medicare?**

Under Medicare, physicians will be eligible for the following as soon as they can demonstrate “meaningful use” (beginning in 2011): **Amount They’ll Receive Each Year**

Year they first file	2011	2012	2013	2014	2015	2016	TOTAL
2011	\$18000	\$12000	\$8000	\$4000	\$2000	\$0	\$44000
2012	\$0	\$18000	\$12000	\$8000	\$4000	\$2000	\$44000
2013	\$0	\$0	\$15000	\$12000	\$8000	\$4000	\$39000
2014	\$0	\$0	\$0	\$12000	\$8000	\$4000	\$24000
2015 or Later	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**As a physician, what if I don’t demonstrate use of an EHR after the incentives are in place?**

Beginning in 2015, physicians not demonstrating meaningful use will have their Medicare fee schedule reduced.

Reductions will be:

- For 2015, down to 99 percent of the regular fee schedule
- For 2016, down to 98 percent
- For 2017 and each subsequent year, down to 97 percent

If the Secretary finds that less than 75% of eligible healthcare professionals are utilizing EHR beginning in 2018, the Secretary can further reduce the fee schedule to 96% and then 95% in subsequent years but not further.

**What are the privacy and security changes in the bill?**

There are significant changes to HIPAA. Business Associates are now subject to most of the same rules as covered entities.

The Act requires the Secretary, HHS, to provide for periodic audits to ensure that covered entities and business associates that are subject to the requirements of HIPAA and the Act comply with such requirements

**What are the enforcement changes in the bill?**

*Fines have been dramatically increased for ‘Willful neglect’ of the HIPAA rules.*

- **Tier A** (if the offender did not know, and by exercising reasonable diligence would not have known, that he or she violated the law): \$100 for each violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed \$25,000.
- **Tier B** (if the violation was due to reasonable cause and not willful neglect): \$1,000 for each violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed \$100,000.
- **Tier C** (if the violation was due to willful neglect but was corrected): \$10,000 for each violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed \$250,000.
- **Tier D** (if the violation was due to willful neglect and was not corrected): \$50,000 for each violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed \$1,500,000.

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### What are the enforcement changes in the bill?

There has been some debate about whether individuals who are not themselves covered entities can be convicted of criminal violations of HIPAA. The Act settles the debate by providing that, for purposes of the criminal provisions, a person (including an employee or other individual) will be considered to have obtained or disclosed individually identifiable health information in violation of HIPAA if the information is maintained by a covered entity, and the individual obtained or disclosed such information without authorization. Presumably, "authorization" means any proper authority, not necessarily a formal authorization from the individual.

### What other changes do I need in my practice?

Individually directed privacy restrictions - The Act imposes a new requirement on covered entities to comply with requests from individuals to restrict the disclosure of their protected health information that relates to treatment, payment and health care operations. Currently under HIPAA, providers have the discretion to not agree to comply with such a request (but are bound by them if they do agree). Under the new provisions of the Act, compliance is mandatory (unless otherwise required by law) if:

- The restriction relates to disclosure to a health plan for purposes of carrying out payment or health care operations;
- The restriction does not relate to disclosure to a health plan for the purpose of carrying out treatment; and
- The protected health information pertains solely to a health care item or service for which the health care provider involved has already been paid out of pocket in full.

By making restrictions on disclosure of information mandatory, this provision will add to the administrative burdens of covered entities with integrated records used for treatment and billing purposes. Health care providers likely will have to section off health information sent to payors from the complete medical record available for treatment purposes.

### Privacy and security breach notices to individuals

Almost all states have passed laws requiring businesses to notify consumers of breaches of the security of their personal information in electronic databases. HIPAA, however, has no strict notification requirement. The Act changes this by requiring covered entities to notify individuals whose unsecured protected health information has been or is reasonably believed to have been accessed, acquired or disclosed as a result of a privacy or security breach. If the breach is discovered by a business associate, rather than a covered entity, then the business associate is required to notify the covered entity of the breach, including the identification of each individual who has been or is reasonably believed to have been affected by the breach.

### Expanded accountings of disclosures

The Act expands the HIPAA right of individuals to receive an accounting of disclosures. Under current HIPAA regulations, covered entities are required to provide an accounting of certain disclosures of health information to individuals who request it. The accounting, however, need not include disclosures for treatment, payment or health care operations, which account for the great majority of uses and disclosures.

Under the Act, if a covered entity uses or maintains an EHR, then individuals will have a new right to receive an accounting of disclosures for treatment, payment and health care operations of their protected health information made from the EHR during the three-year period prior to the request.