



How does the stimulus package affect medical group practices?

President Obama signed the American Recovery and Reinvestment Act of 2009 into law on February 17. Popularly known as the stimulus package, it provides \$787 billion in new spending and tax cuts. Many provisions affect health care. Physicians, hospitals and others treating Medicare and Medicaid patients will be eligible for billions of dollars in incentive payments to adopt health information technology (HIT).

Details will have to be defined through federal regulation, but here's the bottom line for physicians in medical group practices qualifying for the Medicare electronic health record (EHR) incentive: each qualifying physician in your medical group can be reimbursed up to \$44,000 for adopting a certified EHR.

How will my practice receive the EHR stimulus funding?

The government has not finalized the timing and distribution method for the incentive payments. As details of the program are released, MGMA will communicate them to members through MGMA Washington Connexion and this FAQ service.

Can you explain what the additional \$2 billion in funding will be used for?

The majority of the HIT funding in the legislation is reserved for incentive payments – \$2 billion will be available to the secretary of the Department of Health and Human Services (HHS) for distribution through the Office of the National Coordinator for Health IT (ONCHIT). A portion of this \$2 billion will go to grant programs to help organizations offset purchase costs. The details of those grant programs are not yet in place, but these funds could be used to assist primary care practices, those delivering care in rural or high Medicaid environments or those seeking to establish a patient-centered medical home model.

The government will also spend these funds on:

- Projects related to standards evaluation and development
- Infrastructure for health information exchange
- Grants to states to further EHR adoption
- Improving telemedicine delivery
- Establishment of regional health IT resource centers

What are the Medicaid EHR incentives in the stimulus package?

The stimulus package also includes incentives for Medicaid providers to adopt EHRs. This incentive program differs considerably from the one developed for Medicare physicians. The Medicaid incentive program *reimburses providers to obtain* the technology. The HHS secretary will determine payment timing and application processes.

The government will calculate the average allowable costs for adopting, implementing, upgrading and maintaining certified EHR systems. The maximum incentive amount is \$25,000 the first year – providers are eligible for 85 percent (\$21,500). The maximum payment for ongoing costs not associated with the purchase or implementation of the EHR may not exceed \$10,000 per year; you cannot make the purchase over a period of five years. Providers will be eligible for a maximum of 85 percent of the \$10,000 – or \$8,500 a year). The aggregate allowable costs, after the 85 percent adjustment, may not exceed \$63,750 in total payments.

Departing from the Medicare incentive model, Medicaid payments *will not be reduced* if a provider does not adopt qualified EHR technology.

Who is eligible for Medicaid incentives?

Eligible professionals include:

- Non-hospital based professionals who have at least 30 percent patient volume attributable to Medicaid patients. These include physicians, dentists, certified nurse midwives, nurse practitioners and physician assistants (leading applicable clinics)
- Non-hospital based pediatricians who have at least 20 percent of their patient volume attributable to Medicaid patients
- Providers practicing predominantly in a federally qualified health center or rural health clinic that has at least 30 percent of patient volume attributable to individuals who:
 - Receive Medicaid assistance
 - Receive SCHIP assistance
 - Receive uncompensated care by the provider or reduced charges on a sliding scale based on their ability to pay

What is the states' role in the Medicaid incentive payment process?

States are authorized to make payments to Medicaid providers totaling no more than 85 percent of net average allowable costs for certified EHR technology. This incorporates support services such as maintenance and training necessary for adopting and operating of the technology. The Medicaid provider is responsible for paying the remaining 15 percent of the net allowable cost. The government will also determine payments for eligible hospitals by the same algorithm as the Medicare incentive.

Our practice meets the thresholds to qualify for both the Medicare and Medicaid EHR incentives. Can we receive both?

No. The HHS secretary will ensure coordination of Medicare and Medicaid incentive payments to providers to ensure no duplicate funding.

Does the stimulus package require my practice to have a certified EHR?

Yes, your EHR must be certified, but the government leaves the specifics as yet undetermined. It is likely that the Certification Commission for Health Information Technology (CCHIT) will be deemed the certifying body for the incentive program. When the CCHIT EHR certification began in 2006, that certification was valid for three years. For 2007 and beyond, the certification is only valid for two years; certification criteria have become more stringent each year. CCHIT certified 89 products in 2006; 55 in 2007; and only 22 so far for 2008 criteria. Depending on EHR criteria to be defined by HHS, you may unfortunately have a product that was previously certified but does not qualify for the incentive.

What should I do?

If you are a current EHR user, discuss this issue with your vendor. Determine whether its product will be certified or recertified and add a stipulation to your contract that the vendor must meet the appropriate level of certification. If you are a prospective purchaser, put this issue at the top of your list of questions. Stipulate appropriate certification in your negotiations.

If my practice meets the definition of meaningful EHR user now, can we receive incentive payments immediately?

No, practices must wait until 2011 to apply for incentive payments. However, practices can earn incentives from the Centers for Medicare & Medicaid Services now for using e-prescribing, as well as bonuses under the Medicare Physician Quality Reporting Initiative.

I'm with a hospital system. What EHR incentives are in the stimulus package for us?

The base amount for hospitals is \$2 million, with additional funding based on a complex formula. Incentives start in 2011 and decline after 2013. There are no incentive payments for hospitals adopting EHR after 2015. Payments will be made over four years. Certain acute-care and children's hospitals are eligible for Medicaid incentives. Incentives vary by hospital based on total discharges, Medicare population (Parts A and C) and level of charity care.

The relationship between medical practices and hospitals is one of the more difficult areas of law. The government has yet to determine the specifics on if and how hospitals can assist medical practices.

What about penalties for hospitals?

Starting in 2015, eligible hospitals that are not meaningful EHR users will face a "market basket" reduction under Medicare:

- 33.33 percent for 2015
- 66.66 percent for 2016
- 100 percent for 2017 and each subsequent year

The HHS secretary may exempt eligible hospitals from payment penalties on a case-by-case basis if the requirement would result in significant hardship (for example, rural area with insufficient Internet access). The exemption cannot exceed five years.

Can hospitals use stimulus funding to donate EHRs to medical practices?

There is nothing in the legislation that prohibits a hospital from donating qualifying EHRs to practices under the relaxation of the Stark and anti-kickback laws. Hospitals may also apply for grants and/or loans that become available as the secretary of HHS allocates the \$2 billion and uses that money to further EHR adoption in community practices.

What are the key privacy provisions in the stimulus package?

The economic stimulus package made numerous changes to the Health Insurance Portability and Accountability Act (HIPAA) privacy and security rules, affecting electronic (and in some cases) paper records containing patient-identifiable health information (PHI). Practices are required to:

- Account for certain protected health information disclosures if the covered entity uses EHR. Practices using an EHR are required to track all disclosures for treatment, payment and health care operations. Patients would have the ability to request disclosures for up to three previous years
- Notify (within 60 days) each patient (or next of kin) whose PHI has been disclosed due to a breach. Practices must notify patients by letter, and, if more than 500 patients are involved, notify local media and HHS (for Web posting)
- Restrict disclosure of PHI to a health plan for purposes other than treatment, if requested by a patient, who paid out-of-pocket in full for health care services or items provided by a given provider
- Use de-identified patient data or disclose only the minimum data possible to carry out administrative transactions
- Apply HIPAA requirements and penalties to business associates and others and apply certain provisions (such as breach notification and business associate contracts) to vendors of personal health records and health information exchanges

- Provide patients with a copy of their EHR record on a CD, Web site or other electronic medium. Practices would be able to charge the labor cost involved in carrying out the request
- Stop using identifiable patient data for some health care operations (to be determined)

Details of these new provisions will be determined through the federal regulatory process.

How will enforcement and penalties change?

State attorneys general will be handling enforcement, and civil penalties have increased through four tiers, according to the severity of the violation:

- **Tier 1:** Violation where the person did not (and by exercising reasonable diligence would not have known) that he/she violated the provision. Penalties include \$100 for each violation, to a maximum of \$25,000/year.
- **Tier 2:** Violation due to reasonable cause and not willful neglect. Penalties include \$1,000 for each violation to a maximum of \$100,000/year.
- **Tier 3:** Violation due to willful neglect and the issue is corrected. Penalties include \$10,000 for each violation to a maximum of \$250,000/year.
- **Tier 4:** Violation due to willful neglect and the issue is not corrected. Penalties include \$50,000 for each violation to a maximum of \$1,500,000/year.

What are the deadlines for compliance?

- **Breach notification:** The government will publish an interim final regulation no later than July 2009. The regulation applies to breaches that are discovered on or after the date that is 30 days after the date of publication of the interim final regulation.
- **Accounting for disclosures:** For practices that have an EHR as of January 2009, the compliance date is Jan. 1, 2014. For practices that acquire an EHR after Jan. 1, 2009, the compliance date would be whichever is later: Jan. 1, 2011, or the date that the practice acquired the EHR. The HHS secretary may set an effective date later than those above.
- **Enforcement:** The HHS secretary is to publish enforcement regulations no later than July 2010, with penalties to be imposed on or after Jan. 1, 2011.

Does the stimulus package allow whistleblowers to collect some of the enforcement penalties?

Yes. The stimulus package stipulates that civil penalties collected should be used to fund the Office for Civil Rights (the HIPAA privacy enforcement agency) and by January 2012, the HHS

secretary must establish a method by which individuals (whistleblowers) would receive a percentage of the penalties collected

What are the COBRA provisions in the stimulus package?

Eligible individuals pay only 35 percent of COBRA (Consolidated Omnibus Budget Reconciliation Act) premium for health insurance coverage. Premium reduction applies to coverage beginning on or after Feb. 17, 2009, and lasts for up to nine months, with income limits. Eligible individuals include the employee or any member of the employee's family who:

- Is eligible for COBRA continuation coverage between Sept. 1, 2008 and Dec. 31, 2009
- Elects COBRA
- Is eligible for COBRA as a result of the employee's involuntary termination between Sept. 1, 2008 and Dec. 31, 2009

Individuals are not eligible if other group health coverage is available (such as a spouse's plan) or the individual is eligible for Medicare. If the individual did not elect COBRA when it was first offered, the new election period begins Feb. 17, 2009, and lasts 60 days.

What should I be doing?

As a provider:

- Ask patients for insurance information when scheduling appointments
- Check patient insurance cards and information at every visit
- Question patients regarding employment status and changes in that status

As an employer:

- Notify terminated employees who meet definition of "assistance eligible employee" of the new benefit
- Check the Department of Labor model notices
- Keep records to receive your tax credit to cover 65 percent of COBRA cost