

Overview of Healthcare-Related Provisions in the American Recovery and Reinvestment Act of 2009

On February 17, 2009, President Obama signed into law The American Recovery and Reinvestment Act of 2009 (the "Stimulus Bill"). The Stimulus Bill is intended to aid in the nation's economic recovery and includes a number of significant healthcare-related provisions, such as funding for electronic health records ("EHR") technology, updated requirements for HIPAA Business Associates and HIPAA penalties, subsidies for COBRA premiums for workers who lose their jobs, and increases in the federal Medicaid matching rate.



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EHR Technology

The Stimulus Bill provides \$19 billion to create a national EHR system, \$17 billion of which is for Medicare and Medicaid incentive payments for the use of EHR in exchanging patients' health information. Beginning in 2011, eligible professionals and hospitals demonstrating the adoption of EHR technology will be entitled to receive bonuses of up to \$44,000 and up to \$11 million in Medicare incentives, respectively. Physicians and hospitals that do not begin using EHR technology by 2015 will be subject to Medicare payment penalties.

The Stimulus Bill also creates the Office of the National Coordinator for Health Information Technology, which has available \$2 billion for discretionary grants and loans to accelerate the transition to EHR technology. This Office plans to develop standards and policies for EHR technology by 2010, with a goal of utilization of EHR for each person in the United States by 2014.

HIPAA Provisions

For the first time, Business Associates will be required to comply with all requirements, policies, and safeguards that apply to Covered Entities under the HIPAA Privacy and Security Rules. Covered entities will be required to incorporate such provisions into Business Associates Agreements. A Business Associate that fails to comply with the Privacy and Security Rules will be subject to both civil and criminal penalties.

Covered Entities will be required to notify individuals of privacy or security breaches of unsecured protected health information ("PHI"). Notice will be required in writing no later than 60 calendar days after the date of breach. If the Secretary of Health and Human Services (the "Secretary") does not issue guidance by April 18, 2009, information will be considered unsecured if it is not: (i) secured by a technology standard that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals; and (ii) that is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute. Covered Entities are required to submit an annual report of all breaches of unsecured PHI to the Secretary. If a breach involves more than 500 individuals, the Covered Entity must immediately notify the Secretary and prominent media outlets.

Civil violations of HIPAA will now be subject to the following range of penalties:

(i) \$100 per violation, with an annual cap of \$25,000, if a person does not realize he or she committed a violation; (ii) \$1,000 per violation, with an annual cap of \$100,000, for violations not caused by willful neglect; (iii) \$10,000 per violation, with an annual cap of \$250,000, for violations caused by willful neglect that are not corrected within 30 days; and (iv) \$50,000 per violation, with an annual cap of \$1,500,000, for violations caused by willful neglect that are not corrected within 30 days. The Stimulus Bill authorizes state attorneys general to bring civil actions in federal courts against individuals who violate HIPAA, and criminal penalties of HIPAA have been revised to clarify that they apply to both Covered Entities and to employees and other persons who obtain or disclose PHI without authorization.

COBRA Subsidy

Also included in the Stimulus Bill is a provision granting a 65% federal subsidy for COBRA premiums for up to 9 months for workers who have involuntarily lost their jobs. To be eligible, a worker must have been involuntarily terminated between September 1, 2008, and December 31, 2009; it is unavailable, however, to individuals with an annual income exceeding \$125,000 or to couples with annual income exceeding \$250,000. Workers who failed to initially elect COBRA are given an additional 60 days to elect COBRA and receive the federal subsidy. The subsidy terminates upon offer of any new employer-sponsored health care coverage or Medicare eligibility.

Medicaid

\$87 billion in federal assistance is also included to help states shore up Medicaid programs by increasing the Federal Medical Assistance Percentage by 6.2% for a 27 month period beginning October 1, 2008, through December 31, 2010. States will be able to take advantage of a bonus structure that is designed to decrease a state's financial obligations for Medicaid based on increases in the state's unemployment rate. Each state's disproportionate share hospital ("DSH") allotment will increase by 2.5% for fiscal years 2009 and 2010. After 2010, each state's annual DSH allotment returns to 100% of the annual DSH allotment as determined under current law.

A moratorium on Medicaid regulations for targeted case management, provider taxes, and school-based administration and transportation services is extended through June 30, 2009. A moratorium on the Medicaid regulation for hospital outpatient services is also extended through June 30, 2009. The Stimulus Bill also blocks Medicare payment cuts to teaching hospitals, hospices, and long-term care hospitals.

Although the Stimulus Bill has been and will continue to be, controversial, it certainly will have an immediate impact on hospital operations.

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