

The Stimulus Bill: What's in it For You?

Upon hearing of the massive spending projected in the recently-enacted federal stimulus bill, the first question most people asked themselves was, "How much?!" For many, the natural follow-up to that question was, "So what's in it for me?" In the case of physicians and other health care professionals the answer, perhaps surprisingly, is "plenty."

The stimulus bill, formally entitled The American Recovery and Reinvestment Act of 2009¹ (the "Act") is, by design, broad in its scope, reaching nearly every aspect of American life. Given the President's penchant for the topic, it should be no surprise that the Act includes numerous provisions relating to health care. Among those provisions are incentives for the adoption and use of electronic health records (EHR) technology by Medicare and Medicaid professionals.

Under the Act, eligible professionals can apply for Medicare incentive payments for the purchase of EHR technology between the years 2011 and 2016. Eligible professionals include (1) doctors of medicine or osteopathy, (2) doctors of dental surgery or dental medicine, (3) doctors of podiatric medicine, (4) doctors of optometry, and (5) chiropractors. However, because the Act separately provides similar incentives to hospitals, so as to avoid duplicative payments, hospital-based eligible professionals will generally not be eligible to receive incentive payments.

The Act provides for incentive payments to be paid to eligible professionals who are meaningful users of EHR. A meaningful user (1) demonstrates use of certified EHR technology in a meaningful way, including use of electronic prescribing, (2) demonstrates that the use of certified EHR technology is connected in a manner that provides for the electronic exchange of health information to improve the quality of healthcare, such as promoting coordination, and (3) submits information on clinical quality measures and such other measures as selected by the Secretary of Health and Human Services. Assistance will be provided to eligible professionals located in rural or other medically underserved areas to successfully choose, implement and use certified EHR technology.

If the non-specific language of the Act leaves you shrugging your shoulders, you're not alone. Although the Act defines "meaningful user" it fails to provide much guidance as to what constitutes meaningful use apart from the reference to electronic prescribing. By all indications, the Act's authors were largely clueless in this regard as well, as the impetus is placed entirely on the Secretary to define what constitutes meaningful use as the Act is implemented.

¹ For the full text of the Act, see http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1enr.pdf.

Eligible professionals who meet the standards set by the Secretary will be paid an amount equal to 75% of the Secretary's estimate of the allowed charges of the eligible professional for all covered professional services furnished by the eligible professional during the payment year. Obviously, this amount would be in addition to all other amounts paid to the eligible professional under the Social Security Act. The maximum incentive payment an eligible professional may receive each year under the Act is dependent on the year in which that professional applied to receive payment, but in any case may not exceed \$18,000 per payment year. An exception is made for rural providers who will be eligible to receive a 10% increase in the payment amount that would otherwise apply.

Alas, for every carrot there must be a stick, and the Act is no exception. Eligible professionals who have not become meaningful users of certified EHR technology by 2015 will only receive a percentage of the fee schedule amount for covered professional services that would otherwise apply for the services provided during that and subsequent payment years. The percentage of payment received by any eligible professional may not fall below 95% of the full amount that would otherwise apply. Mercifully, the Act provides the Secretary with the authority to grant hardship exceptions for eligible professionals if the requirement for being a meaningful HER user would result in significant hardship.

The Act also provides for Medicaid incentive payments for eligible professionals who invest in certified EHR technology. For Medicaid purposes, eligible professionals includes physicians, dentists certified nurse midwives, nurse practitioners and physician assistants (PAs) in PA-led rural health clinics or federally qualified health centers. However, in order to receive Medicaid incentives the Act requires that these professionals waive their right to payment under sections of the Act relating to Medicare professional incentives and Medicare Advantage organizations.

Medicaid incentive payments for eligible professionals are based on the difference between average allowable costs and any payments an eligible professional received from sources other than federal, state and local governments. Average allowable costs are the average first-year costs for purchase and initial implementation or upgrade of EHR technology and a subsequent year of payment related to the operation, maintenance and use of EHR technology. First year costs, which must be incurred prior to 2016, may not exceed \$25,000, and subsequent costs may not exceed \$10,000 per year.

In addition to the Medicare and Medicaid incentives outlined above, the Act also makes sweeping changes to the HIPAA Privacy and Security Rules, including heightened enforcement provisions, stiffer penalties for violations, and extended security provisions to business associates. In a future Legal Rx column, we will discuss in detail how these new HIPAA provisions will be implemented and what they will mean to providers.

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