



The HITECH Act:

- ✓ **Making it Simple**
 - ✓ **Making it Meaningful**
 - ✓ **Making it Happen**

September 25, 2009

A publication of
Optimize IT Consulting Associates:

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Overview

The American Recovery and Reinvestment Act of 2009 (ARRA), signed into law on February 17, 2009 by President Barack Obama, was designed to jumpstart our economy, create or salvage millions of jobs, and provide resources to upgrade our national infrastructure.

Overseen by Recovery Accountability and Transparency Board, the ARRA was also designed to root out waste, inefficiency, and unnecessary spending. Sound familiar? In healthcare this is our constant mantra! We have made great strides and will continue to improve the quality and efficiency of our services. Yet, we must remain diligent and understand how to effectively lead our organizations through the changes that have been mandated. Hopefully, you will find this white paper helpful as you begin to evaluate the act.

The recent government initiative has also caused a huge stir in the healthcare industry through the inclusion of the Health Information Technology for Economic and Clinical Health Act (HITECH). Healthcare leaders with due diligence are regrouping to evaluate and understand the impacts of the ACT. Prior to the passing of the HITECH Act, Rick Corn, Sr. VP and CIO of Huntsville Hospital (HH), in Huntsville, Alabama replaced legacy systems with a new extensive infrastructure of next generation technologies. Rick understands the need to engage in the future of knowledge-based decision support systems while promoting best practices at the best cost. The multi-phased integrated projects included extensive clinical systems cutover that was executed flawlessly.

Rick, recognizes that the medical community must begin now in thoughtfully addressing technology deliverables, while the government sorts out all the details from the HITECH Act.

“With the passing of the ARRA we have had to place our information technology plans back into the blender. It is not necessarily easy nor do we want to place software code and other technology deliveries on hold while the government sorts out meaningful use and all of the other infrastructure decisions related to the HITECH Act. While HH continues to move forward with several initiatives there remains a significant amount of confusion in the industry related to meaningful use and “certified IT”. Although meaningful use is a moving target the bar appears to becoming more reasonable. This only supports the need to be thoughtful regarding our decisions. The changing of our IT plans impact significantly our end users, we do not take this

The HITECH Act specifically addresses the need for developing a coordinated and connected network for electronic health records (EHR) in the United States by 2014.

lightly. We are optimistic yet cautious that all of our vendors will be able to deliver “certified” IT to their entire customer base.” Rick Corn, Sr. VP and CIO Huntsville Hospital

The HITECH Act specifically addresses the need for developing a coordinated and connected network for electronic health records (EHR) in the United States by 2014. By focusing on infrastructure, incentives, standards and metrics built within a technology that emphasizes privacy and security, health care delivery can be made more efficient, of higher quality, and much safer.

The Goal of the HITECH Act

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EHR by 2019. In order to accomplish this aggressive move to a computerized system, HITECH will provide *\$19 Billion* for the Department of Health and Human Services and, in turn, to doctors and hospitals who implement *EHR by 2011*.

The increased implementation of Information Technology (IT) within the health care industry is at the very core of this section of the stimulus package. The objectives of the

legislation include a major expansion of the current U.S. healthcare IT infrastructure, the promotion of electronic data exchange, and a substantial increase in EHR adoption.

The stimulus package also promises to *pay* Medicare and Medicaid providers for “meaningful use” of certified healthcare IT beginning in 2011.

The Department of Health and Human Services has begun work on a comprehensive definition for “meaningful use,” improving individual patient care, which includes the following concepts:

- Complete, accurate, and searchable health information, available at the point of diagnosis and care, allowing for more informed decision-making to enhance the quality and reliability of health care delivery.
- More efficient and convenient delivery of care, without having to wait for the exchange of records or paperwork, and without requiring unnecessary or repetitive tests or procedures.
- Earlier diagnosis and characterization of disease, with the potential to thereby improve outcomes and reduce costs.
- Reductions in adverse events through an improved understanding of each patient’s particular medical history, potential for drug-drug interactions, or (eventually) enhanced understanding of a patient's

metabolism or even genetic profile and likelihood of a positive or potentially harmful response to a course of treatment.

- Increased efficiencies related to administrative tasks, allowing for more interaction with and transfer of information to patients, caregivers, and clinical care coordinators and monitoring of patient care.

"We have the tools to begin a major transformation in American health care made possible through the creation of a secure, interoperable nationwide health information system...it provides the best opportunity for each patient to receive optimal care."

David Blumenthal, M.D., M.P.P.
National Coordinator for Health Information Technology

For a more complete picture please visit the "Meaningful Use" page on the Department of Health and Human Services website at

<http://healthit.hhs.gov/portal/server.pt?open=512&objID=1325&parentname=CommunityPage&parentid=1&mode=2>.

We would recommend you download the *Meaningful Use Matrix (7/16/2009)* from the list at the bottom of the site by right-clicking on the title and choose "Save Link As."

Oversight

Oversight for HITECH will reside within the U.S. Department of Health and Human Services (HHS) through a coordinated effort by the HHS Secretary and the new Office of the National Coordinator.

HHS will also establish additional provisions for Health IT including:

- A Policy Committee
- A Standards Committee
- Certification Criteria for Electronic Information Exchange

While anyone can review the progress of the stimulus package through www.recovery.gov, health care professionals should depend on IT specialists within their industry for a more comprehensive understanding of this major overhaul in resources and procedures.

What does HITECH mean for Today's Healthcare Industry?

The Health Information Technology for Economic and Clinical Health Act, also known as the HITECH Act, has opened the door for sweeping changes in the Public Health Services Act with regard to the integration of information technology in delivering healthcare services.

A new office is now established in the Department of Health and Human Services called the Office of the National Coordinator for Healthcare Technology (ONCHIT). The National Coordinator is charged with the development of a nationwide health information technology infrastructure that allows for the electronic use and exchange of information in the delivery of medical services.

A New Section to Title XXX of the Public Health Service Act

In the HITECH Act, a new section to Title XXX of the Public Health Service Act has been added. The addition, Section 3011, incorporates the initiatives desired for the electronic exchange of health information (ARRA, p. 132):

Healthcare organizations need to immediately complete a comprehensive Risk Assessment, SWOT analysis, and must build a resource pool of innovative strategic specialists that will serve as trusted advisors. These trusted advisors, the best and brightest, should have credibility and in-depth experience.

- 1) “Health information technology architecture that will support the nationwide electronic exchange and use of health information in a secure, private, and accurate manner, including connecting health information exchanges, and which may include updating and implementing the infrastructure necessary within different agencies of the Department of Health and Human Services to support the electronic use and exchange of health information.
- 2) “Development and adoption of appropriate certified electronic health records for categories of health care providers not eligible for support under title XVIII or XIX of the Social Security Act for the adoption of such records.
- 3) “Training on and dissemination of information on best practices to integrate health information technology, including H. R. 1—133 electronic health records, into a provider’s delivery of care, consistent with best practices learned from the Health Information Technology Research Center developed under section 3012(b), including community health centers receiving assistance under section 330, covered entities under section 340B, and providers participating in one or more of the programs under titles XVIII, XIX, and XXI of the Social Security Act (relating to Medicare, Medicaid, and the State Children’s Health Insurance Program).
- 4) “Infrastructure and tools for the promotion of telemedicine, including coordination among Federal agencies in the promotion of telemedicine.
- 5) “Promotion of the interoperability of clinical data repositories or registries.

- 6) "Promotion of technologies and best practices that enhance the protection of health information by all holders of individually identifiable health information.
- 7) "Improvement and expansion of the use of health information technology by public health departments.

The goal of this portion of the HITECH Act is to provide a governance mechanism for the nationwide health information network. Two Committees are also established to assist the National Coordinator in carrying out the office's mission – *The HIT Policy Committee and the HIT Standards Committee*.

According to the HITECH Act, the policy committee is tasked with providing policy recommendations to the National Coordinator "relating to the implementation of a nationwide health information technology infrastructure, including implementation of the strategic plan..." (ARRA, p. 120)

The *Standards Committee* is to recommend the "appropriate standards, implementation specifications, and certification criteria for the electronic exchange and use of health information." (ARRA, p. 124)

The use of current and developing technologies in the healthcare industry offers significant benefit to providers, which includes:

- A potential reduction in travel to patients in remote areas.
- Increased ability to assist home health care and even monitor patients recuperating at home.
- A reduction in the number of medical record errors.
- Maintenance of a better continuity of care among health providers by the availability of EHR.
- Multilingual options in record keeping to meet the needs of diverse populations.
- Provision for greater security features and more secure access in order to protect an individual's health information.
- Providing greater support in electronic records management with regard to support of the Health Insurance Portability and Accountability Act (HIPAA).

Obviously, healthcare technology will continue to evolve; thus, the role of the Office of the National Coordinator will include an ongoing assessment of newer and better IT options for EHR.

Preparing for the Future in Information Technology

Providers will find information technology playing a much greater role than ever before. Records management will only be one area affected by the changes that will need to be made.

Healthcare organizations need to immediately complete a comprehensive SWOT assessment and must build a resource pool of innovative strategic specialists that will serve as trusted advisors in the selection, implementation, and user acceptance. These trusted advisors, the best and brightest, should have credibility and in-depth experience that can bring out the best in staff.

Specialists in IT strategies, design, and implementation can be of immediate assistance as these new initiatives become the standard.

What are the provisions found in the stimulus package?

The changes brought about by the HITECH Act will require major modifications in the administration and practices for hospitals and physicians. Implementation comes with a hefty price tag.

As an incentive, the Act offers funding for the purpose of strengthening the information technology infrastructure. Most facilities will be facing an upgrade in equipment, software, architecture, and IT training to meet the anticipated standards for EHR in the future.

A lot of numbers have been thrown around concerning the funding portion of this Act. The following is a general overview for the health portion of the stimulus package.

The Health Information Technology for Economic and Clinical Health Act includes two different sections for funding.

Department of Health and Human Services and the Office of the National Coordinator for Health IT

This section provides \$2 billion, which is immediately available to the Department of Health and Human Services (HHS) and the new Office of the National Coordinator for Health IT (ONCHIT), along with other sub-agencies. Of this amount, \$300 million is earmarked to establish and support the infrastructure of local and regional electronic health information exchanges.

In addition to the costs of establishing and supporting this new sub-agency, these funds are also going to be available for:

- HIT infrastructure grants
- Other Grants & Loans
 - Planning Grants
 - Implementation Grants
 - Loan Programs

Incentives for Physicians and Hospitals

The other section reserves \$17.2 billion for incentive payments to physicians and hospitals who integrate the use of EHR in their healthcare administration.

One of the main goals of HITECH is the establishment of a community of information – a health information exchange (HIE).

Many in the healthcare industry do not understand how these funds are distributed, assuming they are given funding to adopt EHR or receive reimbursement for prior implementation. Both of those assumptions are somewhat incorrect.

One of the main goals of HITECH is the establishment of a community of information – a health information exchange (HIE). Some physicians or hospitals have adopted EHR but

maintain a self-contained system, sometimes called an “information silo.” The key to HITECH is the word “connected.” The work of the Office of the National Coordinator focuses on establishing meaningful HIE’s, critical to the deployment of EHR initiatives by healthcare providers.

Most of the funding, then, will provide incentives for physicians and hospitals that meet specific criteria with respect to a connected EHR system.

These financial incentives are specifically targeting those who see large volumes of Medicaid patients and those that accept Medicare. In fact, funding will be distributed through those two channels.

Both physicians and hospitals, in this regard, must qualify for incentive payments based on three criteria:

- 1) Use of an EHR product that meets HHS standards with the capability of administering electronic prescriptions.
- 2) Connectivity to other providers to share a patient’s health history in a secure electronic environment.
- 3) Capability to provide regular reports on the use of technology to the HHS.

Participation in this HIT initiative is perplexing, to say the least. For example, hospitals are eligible for incentives with the following conditions:

- Incentive payments under Medicare Part A are distributed over a four year period to meaningful users of Health Information Technology (HIT).
- Medicare incentives per hospital per year are adjusted down after the first year.
- A qualified electronic health record must have the capability for clinical decision support, computerized physician order entry, a capture and query interface relevant to health care quality information, as well as the exchange of electronic health information.

- Meaningful use of certified EHR technology will become more stringent over time and will change, depending on HHS decisions and regulations.

Incentives for physicians also have conditions.

- They are eligible to receive up to \$44,000, which is spread over a five-year period through Medicare Part B.
- Funding will begin in 2011 if the physician adopts HIT and has become, by definition, a meaningful user.
- Physicians also need to be aware that there will be penalties for those who fail to adopt HIT by the year 2016.

The HITECH Act also has provided a total of \$1.1 billion for comparative effectiveness research in healthcare, including \$300 million for the Agency for Healthcare Research and Quality, \$400 million for the National Institutes of Health, and an additional \$400 million to be allocated at the discretion of HHS.

HHS is directed by the Act to use its funds to “accelerate the development and dissemination of research assessing the comparative effectiveness of health care treatments and strategies, through efforts that:

- 1) “conduct, support, or synthesize research that compares the clinical outcomes, effectiveness, and appropriateness of items, services, and procedures that are used to prevent, diagnose, or treat diseases, disorders, and other health conditions; and
- 2) “encourage the development and use of clinical registries, clinical data networks, and other forms of electronic health data that can be used to generate or obtain outcomes data...” (ARRA, p. 63)

Privacy Protection

The unauthorized acquisition, access, use, or disclosure of protected health information records is a serious risk today. The proposed nationalized exchange for health care information will, by necessity, demand a much higher degree of security. New initiatives for protection not only will conform electronic records to the current standards of privacy as required by law, but offer the opportunity and incentive to maximize security procedures, practices, and technologies necessary for the future.

This increased level of protection is critical for the successful realization of an electronic health information highway. The HITECH Act addresses this area in detail, especially with respect to the following issues:

- Business Associates: HIPAA security standards and the civil and criminal penalties for violating those standards now apply.

- Notification of a breach regarding unsecured protected health information (PHI) must take place within a specific time period by specific methods. In some breach cases, notice must be provided to “prominent media outlets.”
- No disclosure of PHI by any Business Associate unless disclosure permitted by a specific agreement.

Patient Privacy Rights

Patient Privacy Rights are also outlined, specifically concerning EHR:

- Patients are to receive electronic copy of their PHI, if maintained in an electronic health record.
- Patients may request that specific PHI should not be disclosed to a health plan if the patient paid for specific out-of-pocket expenses.
- Patients are to receive an accounting of PHI disclosures (up to three years prior to the date requested).
- The sale of PHI is prohibited by a covered entity or business associate without patient authorization (except in certain specified circumstances).
- Breach notification requirements of personal health records (PHR) are maintained for vendors and third-party entities who offer products or services through a PHR vendor website (e.g., Google, Microsoft).
- Improved enforcement and increased penalties are being incorporated in all security standards.
- Office of Civil Rights in HHS will provide investigations and penalties for criminal HIPAA violations if the Justice Department has not already prosecuted.
- Patients need to know that the HITECH Act does not provide for any private right of action with regard to any breach in security of their PHI.

The HITECH Act is a \$634 billion “down payment” for health reform.

- The act sets aside \$634 billion over the next 10 years in a “health care reserve fund” to finance fundamental reform...but additional funding will be needed.
- It funds half by new revenue and half by “savings proposals that promote efficiency and accountability, align incentives toward quality, and encourage shared responsibility.
- This will also involve cuts in Medicare spending:
The budget includes a number of policies that reduce Medicare spending by establishing competitive bidding for Medicare Advantage, reducing home health payments, reducing reimbursements for Medicaid prescription drugs, bundling Medicare payments for hospital and post-acute care, and providing incentives to improve quality.

Summary information provided at the Health Care Technology Network of Greater Washington held March 20, 2009. Presented by David C. Main, Partner, Pillsbury Winthrop Shaw Pittman LLP.

Other IT Stimulus Funding

- \$ 1.5 billion for renovation and repair of community health-centers and for the acquisition of health IT systems
- \$500 million in grant funds for services provided by community health centers
- \$85 million for health IT within Indian Service facilities
- \$4.7 billion for the National Telecommunications and Information Administration's Broadband

A Recommended Action Plan for the Health Care Industry

Are you among the healthcare providers across America who have read the HITECH Act and are puzzled and already have too many IT projects on the schedule?

Are you asking yourself "What do we do next?"

For hospitals and physicians ready to move forward, a specialized healthcare consultant, familiar with information technology and organizational development, can be invaluable in providing the knowledge and guidance needed to successfully navigate the maze of minutia in the HITECH Act. Business associates must initiate an approach that addresses certain critical facets of HITECH Act with regard to fiscal management, information technology, and clinical practices.

Healthcare leaders are not to be lax and take an unsystematic approach to the implementation of the technologies outlined in the definition of meaningful use. Healthcare providers will be further disillusioned and hindered in their work without the effective planning, analysis, implementation, and evaluation of these technologies. There is no guaranteed ROI.

Perform a Comprehensive Organizational Assessment

Preparing for participation in the HITECH Act is a complex process and will need to be orchestrated with a comprehensive organizational assessment and counsel from the appropriate experts.

Please consider these recommendations as you complete your planning and evaluation of next steps for your organization.

Organizational Assessment

- 1) Complete a Risk Assessment, as well as a Competitive and SWOT Analysis
 - a. Evaluate vendors, technology provider software and your technical platforms with regard to the standards, implementations specifications, and certification requirements of the HITECH Act.
 - b. Determine best-case, worst-case and what-if scenarios.
 - c. Evaluate all your technology vendors based on the standards of the Certification Commission for Healthcare Information Technology with regard to:
 - i. Clinical Decision Support
 - ii. Interoperability
 - iii. Quality
 - iv. Security, and Others

Note: This certification has been accelerated to be completed in the 2009-2010 timeframe rather than 2011.

- 2) Make sure you understand the key milestones and language within the HITECH Act.
- 3) Develop a staff, strategic partner, client communication and education plan.
- 4) Determine the direct and indirect levels of engagement by staff and vendors in committees and professional organizations.
- 5) Develop a comprehensive plan to receive stimulus dollars and avoid any penalties.
- 6) Appraise your vendors and service providers to determine that they are established as an industry standard “best practice”.
- 7) Complete a comprehensive evaluation regarding all committees that develop, approve or serve as a clearing house for healthcare information technology standards.
- 8) Build a resource pool of innovative industry specialists in change management, workflow/process improvement, and implementation strategies.
- 9) Assign a person who will be accountable to spearhead ongoing strategic evaluation and response to the HITECH and healthcare reform initiatives.
- 10) Evaluate the impact on the HITECH stimulus bill in context of the ongoing healthcare reform discussions and initiatives.

Summary

Healthcare executives have an opportunity to participate in shaping the incorporation of a strong IT infrastructure for healthcare delivery that will shape new areas of healthcare improvements well into the future. The HITECH Act can be used to forge and capitalize opportunities to educate, communicate, craft, and provide leadership in both government and the private sector as further definition of the bill's implications materialize.

This work should not be left to chance; a critical aspect to ensure that your organization is ready to meet the demands laid out in the HITECH act is communication, readiness assessment, and an effective plan of action.

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