manatt

manatt | phelps | phillips

From: Manatt, Phelps & Phillips, LLP

Date: February 19, 2009

Subject: Health IT Provisions in Final Federal Stimulus Package

The adoption of health information technology (health IT) is one of the major policy priorities of the recently passed federal stimulus package. The bill appropriates $2 billion in discretionary funding for grants and loans, which are available until expended. The bill also authorizes roughly $20 billion[1] in net Medicare and Medicaid spending to encourage health care provider adoption of electronic health records (EHRs) and health information exchange (HIE). Finally, the bill sets out a new governance framework for the federal government's health IT adoption efforts and strengthens and expands the Health Insurance Portability and Accountability Act (HIPAA). This memo details the health IT funding available under the stimulus package, including who is eligible to receive the funds, what can be funded and at what levels, how the funds may be used, and how/when funds may be made available by the federal government.

Overview

Health IT Infrastructure & New Program Development Funding: The final stimulus package includes $2 billion in appropriated funds to support a series of grants, loans, and technical assistance programs designed to aid providers with the adoption of EHRs and to spur health information exchange at the state, regional and local levels. Included within this $2 billion are authorizations for:

- A Health IT Extension Program, featuring a national Health IT Research Center and Regional Extension Centers to assist providers in adopting, implementing and using EHRs;
- An HIE Grant Program for states or state-designated entities;
- A State-based EHR Adoption Loan Program;
- Grants to state-based and other institutions of higher education for workforce training; and
- Grants to state-based and other institutions of higher education, non-profits and federal government labs for new technology research & development.

These funds will be disbursed by various agencies within the U.S. Department of Health and Human Services (HHS), under the coordination of the Office of the National Coordinator (ONC). Agencies expected to be responsible for disbursing funds are the Health Resources and Services Administration (HRSA), the Agency for Healthcare Research and Quality (AHRQ), the Centers of Medicare & Medicaid Services (CMS), the Centers for Disease Control and Prevention (CDC), the Indian Health Service, and ONC itself.

[1] As estimated by the Congressional Budget Office. Cost Estimate: American Recovery and Investment Act of 2009, HR 1, as reported out of conference. Released February 13, 2009.

HHS and ONC must first determine and coordinate which agencies will have jurisdiction over which funds and for which purposes before spending commitments can be made; moreover, the Secretary must submit within 90 days an annual operating plan that describes how the funds will be spent to advance the Federal Health Information Strategic Plan. Each relevant agency will then be responsible for releasing requests for grant applications and guidance as necessary to publicize the availability of funding to states and other eligible entities. HHS has significant discretion in allocation of the funding to various programs.

Medicare & Medicaid Payment Incentives for Health IT Adoption: The stimulus package also authorizes payments to qualified health care providers under Medicare and Medicaid for the purchase and use of EHRs. Because Medicare and Medicaid are federal entitlement programs, the amount of funding available through these incentive payments is not appropriated by Congress. Rather, spending on these incentive payments, like spending on the programs in general, is determined by how many eligible entities qualify.

The manner in which CMS will implement the incentive payments differs between Medicare and Medicaid. Medicare is administered by the federal government, and payments are made directly to providers. Medicaid, however, is financed jointly by the federal government and the states, and administered by the states. As such, states receive payments from the federal government, which they then transfer to providers through traditional claims/reimbursement mechanisms. States are generally required to match a certain percentage of federal payments in order to be eligible for the federal monies; in this instance, the federal government intends to cover 100 percent of the costs associated with the EHR incentive payments, though payments will still flow through the states. States will incur additional administrative duties and costs in administering the pass-through of the incentive payments to eligible providers. The stimulus package stipulates that the federal government will provide states with 90 percent of the necessary funding for that activity.

The ability of providers to benefit from either proposed incentive payment mechanism is heavily dependent on the creation of HIEs. Under both Medicare and Medicaid incentive regimes, payment is dependent in part on the ability of providers to exchange information across different health care providers. Hence, while the states bear little financing burden in encouraging EHR adoption, it is anticipated that they will bear a heavy burden in ensuring that Medicare and Medicaid providers have the ability to network into HIEs. The first-order financial requirements on states are thus minimal, but the broader ability of *any* provider in a state to earn these incentive payments depends heavily on state action to facilitate health information exchange.

Given how much is left unstated or ambiguous in the stimulus package's statutory language, the federal regulatory process will be of immense importance in determining how these programs will operate, and within what types of parameters. The stimulus package does state, however, that, unlike appropriated funds, which should be available in 2009, the Medicare and Medicaid incentive payments will not be available to providers until 2011.

Federal Policy and Standards Framework: The programs above will be implemented in the context of a new federal health information technology policy and standards framework, which will consist of the following key components:

- *Office of the National Coordinator (ONC) of Health Information Technology, within the Department of Health and Human Services*: The National Coordinator is responsible for a broad range of duties intended to promote the development of a nationwide health IT infrastructure that allows for the electronic

exchange and use of information. Duties include: (i) developing an annual Strategic Plan that reports on specific objectives, milestones and metrics, including the utilization of an electronic health record for each person in the US by 2014; (ii) the oversight and coordination of the HIT Policy and the HIT Standards Committees; (iii) reporting to Congress within 12 months on any additional funding or authority needed to ensure full participation of stakeholders in the national health IT infrastructure; and (iv) establishing a governance mechanism for the nationwide health information network.

- *HIT Policy Committee*: As a Federal Advisory Committee, it is charged with making recommendations to ONC with respect to a policy framework for the development of the nationwide health information infrastructure. Duties include making recommendations in a wide variety of areas, such as technologies that protect privacy of health information, and the steps necessary to ensure utilization of electronic health information to improve the quality of health care. The HIT Policy Committee will also recommend an order of priority for the development, harmonization and recognition of standards, implementation specifications and certification criteria for the electronic exchange and use of health information.

- *HIT Standards Committee*: As a Federal Advisory Committee, it will recommend to ONC standards, implementation specifications, and certification criteria for the electronic exchange and use of health information. While the HIT Policy Committee will set priorities for standards development, the HIT Standards Committee will recommend which standards are to be adopted. The Act does not specify how existing processes relating to standards development and harmonization, through organizations like the Health Information Technology Standards Panel (HITSP), Certification Commission for Healthcare IT (CCHIT) and the National eHealth Collaborative (NeHC), will fit into the new framework, though it does note that NeHC may modify its charter to perform the duties of either the HIT Standards or Policy Committee.

The federal policy framework provides ONC and the Secretary of HHS broad authority to tie federal dollars to specific policies and standards developed to promote the bill's broad policy objective of designing, building, operating and governing a nationwide health information infrastructure. There are many issues left open by the bill, including which standards and technologies will be specified, and the specific governance structure, administrative requirements, and contractual rules that will be developed to oversee the nationwide health information infrastructure.

HIPAA Privacy Protections: The stimulus package also places a focus on privacy, requiring the Secretary of HHS to appoint a new Chief Privacy Officer and expanding current federal privacy and security protections under HIPAA. Many of these changes will have a direct impact on organizations participating in HIE.

- *Extension of HIPAA to Business Associates*: The bill directly regulates business associates for the first time. While not subjecting business associates to all of the obligations of covered entities (such as providing privacy notices), the statute requires business associates to comply with the HIPAA security rule provisions mandating administrative, physical and technical safeguards. It also requires them to adhere to the terms of their business associate agreements, including the restrictions on the use and disclosure of protected health information. Business associates are subject to the same civil and criminal penalties as covered entities for violating these requirements.

- *Security Breach Notification Mandate*: The bill establishes the first national data security breach notification law. It requires covered entities and personal health record vendors to notify affected individuals of a breach involving "unsecured" protected health information. Business associates are required to notify covered entities of such breaches. Unlike many comparable state laws, the bill covers information maintained in any form, not only electronic data.

- *New Restrictions on the Use and Disclosure of Protected Health Information*: The bill restricts certain currently permissible uses and disclosures of protected health information. A covered entity is prohibited from receiving or paying remuneration for the disclosure of protected health information, except for disclosures for limited purposes such as treatment, research and fraud prevention. HHS is delegated responsibility for evaluating whether remuneration for these permitted disclosures should be capped at the cost of the disclosure. In addition, covered entities are prohibited from using protected health information to make communications to individuals about the covered entity's products or services if another party is paying for the communication, except in limited circumstances. For example, a pharmacy could not send out information about a new drug to its customers if a pharmaceutical company paid the pharmacy for the mailing.

- *Additional Patient Rights*: Covered entities must honor an individual's request not to share information with the individual's health plan for payment or health care operations if the individual is paying the full cost of the service to which the information relates. Currently, covered entities must process such requests but are not obligated to grant them. One year after the bill's enactment, covered entities maintaining electronic health records are required to give individuals copies of their records in electronic form. Covered entities maintaining electronic health records are obligated, at an individual's request, to provide an accounting of all disclosures of the individual's protected health information made for treatment, payment and health care operations during the prior three years. Disclosures for such purposes are exempt from HIPAA's current accounting requirement. Further, fundraising communications must notify individuals that they have a right to opt out of any future fundraising solicitations

- *Increased HIPAA Enforcement*: The bill establishes a tiered system of civil penalties based on the nature of the improper conduct. The maximum penalty is $500,000 per violation up to $1.5 million per year for each type of violation. The current maximum civil penalty is $100/$25,000. HHS is required to impose civil penalties on a covered entity that engages in "willful neglect." State Attorneys General are granted authority to enforce HIPAA. HHS is directed to evaluate how to enable affected individuals to share in penalties collected for violating HIPAA. The Act clarifies that criminal penalties may be imposed on any individual or organization, not only on covered entities.

Health IT Funding Details

Congress identified specific priority areas in which funds are to be spent and on which states and other entities, including health care providers, interested in drawing down stimulus monies should begin focusing their attention. The key health IT programs created by the stimulus package fall into the following areas: (i) HIE; (ii) EHR adoption; (iii) workforce training; and (iv) new technology research and development. They are detailed below

HIE Planning and Development

As noted above, embedded in the requirements for EHR adoption funding are provisions that require providers to exchange health information as a condition of receiving grants, loans or Medicare/Medicaid EHR incentive payments, thus tying the means (EHRs) to the ends (HIE).

Many states and communities across the country have begun to build health information exchange infrastructures that will allow health care providers to access patients' health information from a variety of sources. Such infrastructure requires hardware, software, and related services to identify patients, authenticate providers, manage patient consent, and implement appropriate access controls on patient records. In support of these efforts, the legislation authorizes ONC to award grants to states and qualified state-designated entities to develop and implement programs for HIE.

- *Who Qualifies*. Recognizing that many states have relied on public-private, multi-stakeholder partnerships to facilitate the development of health information exchange infrastructure, the stimulus package allows both states and qualified state-designated entities to apply for HIE funds. To be considered a state-designated entity, an organization must have the blessing of the state in which they reside, be not-for-profit, and be devoted to improving health care quality and efficiency through HIE, among other requirements set out in the statute.

- *What Gets Funded*. States and state-designated entities will be eligible for two types of grants – planning grants and implementation grants. Planning grants are designed to jump-start HIE planning where actual implementation has yet to begin. Implementation grants, on the other hand, will go to entities that have detailed plans in place on which they can begin executing or in which HIE activities are well underway. While the stimulus package gives HHS a significant amount of discretion in determining which entities are eligible for planning versus implementation grants, a state or state-designated entity hoping to receive implementation grants should likely have in place a governance structure, well-defined clinical use cases and technical architecture, and policies designed to protect the privacy and security of patient information as it flows through an HIE.

- *Level of Funding*. The stimulus package is silent on the overall amount of funding that will be devoted to the HIE grant program. It is anticipated that the majority of the grants will be implementation grants, to entities that have already made their own investments and are "shovel ready," or able to put any funding they receive to immediate use. States *may*, in Fiscal Years 2009 and 2010, and *will*, in Fiscal Years 2011 and beyond, be required to contribute matching funds as a condition of receipt of funding under this program. States have some leeway, however, in determining how they choose to match the federal contribution. The stimulus package simply specifies "non-federal" contributions, and specifically allows for in-kind contributions. Beginning in 2011, states or state-designated entities

must provide $1 for every $10 in federal funds received. In 2012, the match rate decreases to $1 for every $7 in federal funds received. And in 2013, it decreases further to $1 for every $3 in federal funds

- *Use of Funds.* The activities to which states or state-designated entities must devote this funding include enhancing broad and varied participation in nationwide HIE; identifying state or local resources available towards a nationwide effort to promote health IT; complementing other federal grants, programs, and efforts towards the promotion of health IT; providing technical assistance for the development and dissemination of solutions to barriers to the exchange of electronic health information; promoting effective strategies to adopt and utilize health IT in medically underserved communities; assisting patients in utilizing health IT; encouraging clinicians to work with Health Information Technology Regional Extension Centers; supporting public health agencies' access to electronic health information; and promoting the use of EHRs for quality improvement including through quality reporting, among other activities. In carrying out these activities, states and state-designated entities must consult with a host of stakeholders throughout the health care industry, including providers, health plans, patient representatives, health IT vendors, and others.

- *When & How Will Funds Be Awarded.* The stimulus package itself does not include details about the grant application process in which ONC will engage to disburse these funds, leaving ONC to advise applicants on the contents of their applications when it releases its request for grant applications. As passed, the stimulus package requires only that states or state-designated entities submit plans that will be pursued in the public interest; be consistent with the strategic plan developed by ONC; and include a description of the ways the state or qualified state-designated entity will carry out the activities, among other potential elements.

Funding for EHR Adoption Assistance
Recognizing that the value of HIE is only as high as the number of users exchanging information through the network, the stimulus package encourages EHR adoption through a series of loan, grant and Medicare/ Medicaid payment incentive programs, which are described below.

State EHR Adoption Loan Program
The stimulus package authorizes ONC to award competitive grants to states to develop EHR adoption loan programs for health care providers.

- *Who Qualifies.* States or Indian tribes may provide loans to health care providers that agree to submit federally-specified quality measurement reports to CMS, use the EHR to exchange health information, and submit a plan for maintaining the EHR over time.

- *Level of Funding.* The stimulus package is silent on the overall amount of funding that will be devoted to the loan program and does not specify a maximum grant amount. States must provide a cash match equal to $1 in state funds for every $5 in federal funds. States may couple their grants with private sector contributions in an attempt to increase the amount of loan funding they can offer providers.

- *Use of Funds.* Providers may use loans to purchase or enhance use of a certified EHR, train personnel to use the EHR, and exchange health information.

- *When & How Will Funds Be Awarded.* The stimulus package does not include details about the grant application process in which ONC will engage, stating only that the program may begin no sooner than January 1, 2010.

Health Information Technology Extension Program
The stimulus package recognizes that adoption of EHR technologies represents one of the more difficult challenges confronting the objective of digitizing the clinical workflow. Hence, the package instructs the Secretary of HHS, through ONC, to establish within HHS the Health Information Technology Research Center (HITRC), and to establish Health Information Technology Regional Extension Centers to provide technical assistance and disseminate best practices. Specifically, the Regional Extension Centers are charged with providing technical and change management assistance to health care providers struggling with implementing and adopting EHR technology. They are to provide such assistance to all providers in a region, but must prioritize assistance to public or not-for-profit and critical access hospitals, FQHCs, rural or other providers that serve uninsured, underinsured or medically underserved patients, and individual or small group practices. Indeed, they are likely to be extremely important to small and rural health care providers, who often require more assistance than providers in large practices to successfully implement and use EHR systems

- *What Gets Funded.* Regional Extension Centers will be organizations affiliated with non-profit institutions that successfully bid for the recognition and support of HHS. The Extension Centers are primarily charged with focusing on the least-advantaged providers struggling with implementation and adoption: public and critical access hospitals, FQHCs, rural providers, and physician practices focused on primary care.

- *Level of Funding.* HHS will provide up to 50 percent of the capital and annual operating budgets for two years for organizations that win recognition, with the option of providing additional funding for subsequent years, at the Secretary's discretion. Other funding sources are not specified – hence, foundations, non-profit organizations, as well as state governments are likely eligible to provide the necessary match.

- *Use of Funds.* The funding will support the Centers as research and consulting organizations that assist with implementation, adoption and maintenance of EHRs; facilitate health information exchange; adhere to evolving standards; and develop curricula for health care education.

- *When & How Will Funds Be Awarded.* The Secretary is authorized to allocate funds beginning in Fiscal Year 2009, through 2011. Financial support will be provided directly to the Regional Extension Centers.

Medicare Incentive Payments to Hospitals
Roughly 90 percent of the nation's hospitals are at some stage of the EHR development-and-deployment lifecycle. Nevertheless, most of those health systems are in early-stage development, and very few would qualify for the Medicare. The proposed incentive payments under Medicare are structured to not only hasten

development of EHRs in the hospital setting, but also to accelerate HIE development at the state and regional level.

- *Who Qualifies*. Hospitals will qualify only after they have gone into production mode with their EHRs, and can show that:

  - The hospital is a "meaningful user" of certified EHR technologies.
  - The technology connects to HIEs.
  - The hospital is reporting on clinical quality metrics as specified by the Secretary.

- *What Gets Funded.* The criteria suggest much will be determined by the development of the regulatory guidelines in implementing the law. "Meaningful use" remains unclear in the stimulus package – and as many hospitals have experienced, clinician adoption of the tools portend an even greater challenge than technical implementation. Similarly, the definition of an HIE and "certified" EHRs will emerge only through the regulatory process.

- *Level of Funding*. The outlines of the potential payments to hospitals can be roughly determined through the language in the stimulus package. There are three components to the payment calculation:

  - A base payment of $2M per hospital;
  - A per discharge add-on payment of $200 (for discharges from 1,150 to 23,000);
  - A compound, adjustment variable comprised of Medicare inpatient days, total inpatient days, and an adjustment for charity and uncompensated care.

- *Use of Funds*. Hospitals will have to demonstrate the use of EHRs in clinical care and the ability to integrate to regional HIEs, according to national standards of data exchange. There is no statutory requirement that such funds be accounted for after receipt.

- *How & When Will Funds Be Awarded*. The legislation does not specify, but one can expect the payments to flow on the basis of existing Medicare payment mechanics – through carriers and contracts that administer payments at the local level. The Secretary has discretion to offer an alternative payment flow, but it is reasonable to expect at this point that the incentive payments will flow through the traditional payment mechanisms, with private contractors administering the claims and payment processes.

  - Such payments, however, are likely to be made annually and possibly as part of the hospital cost report submission process. The exact amount of a specific incentive payment depends on annual metrics – discharges, charity care, and inpatient days – that are subject to some audit procedures. The legislation itself specifies that payments can be made on an annual basis or as a periodic payment based on hospital-reported metrics.

  - Payments start in 2011, and hospitals have until the end of 2015 to begin receiving funds; hospitals that do not demonstrate their use of the EHR until 2016 or after will receive no

incentive payments. Hospitals, however, do enjoy a rolling five-year window in which to collect payments, provided they demonstrate compliance before 2015.

- *Treatment of Critical Access Hospitals under Medicare.* For qualifying critical access hospitals, the Secretary is charged with a slightly different calculation in determining the EHR payments. First, such hospitals can apply for a cost-based reimbursement for EHR technology, capped at 101 percent of reasonable costs; in calculating such costs, the Secretary cannot take depreciation into account. Moreover, in calculating the Medicare share portion of the incentive formula, the Secretary is instructed to add 20 percentage points to the share, provided that it the Medicare share calculation does not exceed 100 percent. Finally, instead of an annual or periodic payment, critical access hospitals are entitled to a prompt payment from CMS, rather than the annual or periodic payments in place for other hospitals.

- *Market-Basket Adjustments.* Beginning in 2016, hospitals that fail to demonstrate meaningful EHR use will see a significant reduction in their annual market-basket update. One-quarter of the market basket update would be at risk for non-compliant hospitals; in 2017, one half of the market basket update would be at risk, and by 2018, the 75 percent of the market basket update would be at risk.

Medicare Incentive Payments to Private Practice Physicians
The last decade has witnessed a rush of investment from hospitals in developing and deploying their own EHRs, but activity and adoption by independent physicians has been notably slower, characterized by much greater skepticism and cost constraints. The stimulus package seems to address at least the latter dynamic with direct payments to physicians over five years.

- ***Who Qualifies.*** Under the stimulus package, independent physicians will have the ability to collect HIT incentive payments beginning in 2011; the incentives give way to disincentives beginning in 2016, as independent physicians will see reductions in their Medicare payments if they have not met the Secretary's requirements; there are no payments for physicians who start to apply for incentives after 2014. Certain hospital-based physicians are ineligible; hospital-based professionals such as pathologists, anesthesiologists, and emergency room physicians are specifically mentioned as being ineligible.

- ***What Gets Funded.*** Physicians must be "meaningful" users of certified EHR products that connect to local or regional HIEs. While the "meaningful user"[2] test remains relatively undefined, the legislation specifically requires that the use of e-prescribing will be one criterion. The legislation does not specify a specific volume or percentage of prescriptions for e-prescribing use to be deemed "meaningful."

- ***Level of Funding.*** The level of incentive payments varies, in part, by the year of initial use. If a physician's first year of incentive payment eligibility is 2011 or 2012, the incentive can total $18,000; payments decrease to $12,000 in the second year, $8,000 in the third, $4,000 in the fourth, and $2,000 in the fifth, for a total of $44,000. A physician who does not begin receiving payments until 2013

[2] The stimulus package currently indicates that meaningful use of an EHR will entail electronic prescribing, health information exchange, and quality reporting.

will receive $15,000 in the first year and is eligible for $39,000 over four years; beginning in 2014, a physician will be able to collect $35,000 over three years. Physicians practicing medicine in designated health professional shortage areas will receive a 10 percent increase to all payments upon demonstrating meaningful EHR use.

- *Use of Funds***.** As with the hospital incentives, definitional issues – such as "meaningful use," "HIE," and "eligible health professionals" await regulatory resolution. It becomes even more ambiguous when one considers physician practices owned or managed by hospitals or health systems. It is unclear, for example, from the statutory language how a faculty practice – managed, but not owned, by an academic medical center – would be treated for eligibility for the physician incentives, and whether the payments would flow through the management entity (the hospital) or directly to the faculty practice.

- *How and When Funds Will Be Awarded***.** No details exist in the package to suggest that funding mechanisms and payment flows will exist outside current Medicare Part B payment mechanisms. Physician incentive payments – as with hospitals – depend on annual measures (amount of total Part B charges) that have to be submitted to HHS within two months of the end of the reporting year.

Medicaid Incentive Payments
The stimulus package provides a dramatic and explicit boost to state funding efforts for health IT under Medicaid. The language carves out differing Medicaid incentives for different types of providers, though the explicit focus of the legislation is on providers treating a heavy Medicaid case load.

- *Who Qualifies, How Is Qualification Determined, and How Much Can Be Paid.* The "Medicaid share" calculation is identical to the one for Medicare, with Medicaid inpatient days substituting for Medicare inpatient days. Independent physicians will confront a choice when applying for Medicaid reimbursement for EHR purchase and implementation. A physician must waive one's right to apply for Medicare EHR incentive payments in applying for Medicaid EHR reimbursement. This is significant, as the potential Medicaid EHR incentive payment is significantly greater than the corresponding Medicare incentive; over five years, a physician could earn up to $23,000 more in EHR incentive payments under Medicaid. Third party entities that sponsor and encourage EHR adoption can also qualify for funding through the Medicaid incentive payment structures. Such entities are likely to serve as de facto purchasing and implementation agents; Medicaid incentive payments for physicians who participate in such arrangement would flow to the third party. It appears a third party must demonstrate that 95 percent of the funding is purchase, operate, and maintain the EHR for independent physicians, and is allowed to keep 5 percent of the funding to cover any overhead it incurs in doing so. The Secretary will determine how the "average" and "net" allowable costs for an EHR purchase will be calculated, with a limit of $25,000 for purchase and $10,000 for annual maintenance of an EHR by a physician, against which Medicaid will pay 85 percent. For hospitals eligible for Medicaid incentive payments, payments will be determined by the same calculation as the Medicare payment algorithm, though payments will be fully weighted for the first four payment years, rather than follow the descending weights in use for Medicare incentive payments, and will use the Medicaid patient load instead of the Medicare patient load.
-

Eligible Provider	**Percent Match/ Limit**	**Medicaid Share**	**Limit Amount**
Independent physician	85% net average allowable costs	>30%	$25,000 for purchase $10,000 for operations/maintenance
Pediatrician	85% net average allowable costs	>20%	$16,667 for purchase, $6,667 for operations/maintenance
Dentist	85% net average allowable costs	>30%	$25,000 for purchase $10,000 for operations/maintenance
Nurse mid-wife	85% net average allowable costs	>30%	$25,000 for purchase $10,000 for operations/maintenance
Nurse practitioner	85% net average allowable costs	>30%	$25,000 for purchase $10,000 for operations/maintenance
Acute care hospital		>10%	Limited to amount calculated under Medicare, by Medicaid share
Children's hospital	85%	N/A	Limited to amount calculated under Medicare, by Medicaid share
FQHC-based practicing physician	85% net average allowable costs	>30% of patient population are "needy individuals"	By determination of the Secretary

- ***How Is the Funding Mechanism Implemented.*** The language is silent on the creation of new payment mechanisms. It is anticipated that providers will submit claim forms for health IT incentive payments per the same Medicaid administrative mechanisms as they do today. To facilitate the determination and administration of these Medicaid payments, the package also provides for a 90 percent match to assist States in carrying out the mandate.

- ***Linking the Safety Net with HIE: The Role of States.*** The explicit focus on health care providers with heavy Medicaid case loads, and the requirement that EHRs link to HIEs, draws a direct link between safety net providers and the development of health information exchange. The states, as the presumed administrators of the Medicaid incentive payments, thus inherit a large role in determining the exact parameters of how HIE will serve the needs of safety net providers and the patients they serve – in fact, the role of HIE in serving these stakeholders assumes great importance under the stimulus package.

Workforce Training
The stimulus package provides for the establishment of training programs to "ensure the rapid and effective utilization and development of health information technologies within the United States' health care infrastructure." The package authorizes HHS to create two grant programs for this purpose, both of which are discussed below.

Grants to Colleges and Other Institutions of Higher Education to Expand Medical Health Informatics Programs
In consultation with the Director of the National Science Foundation (NSF), the Secretary is authorized to award matching grants to institutions of higher education to establish or expand medical health informatics education programs.

- *Who Qualifies.* Institutions of higher education may qualify for funding under this program, though the stimulus package does not reference specific types.

- *What Gets Funded/Use of Funds.* Certification, undergraduate, or master's degree programs for both health care and information technology students may be developed with funding under this program. Grant funding may be used to develop and revise curricula in medical health informatics and related disciplines; recruit and retain students; acquire equipment necessary for student instruction in these programs; and establish or enhance bridge programs in the health informatics fields between community colleges and universities.

- *Level of Funding.* Matching grants may fund up to 50 percent of a recipient institution's total costs. However, grantees may request a higher federal proportion of funding on the grounds that national economic conditions are such that they "would render the cost-share requirement detrimental to the program."

- *When & How Funds Will Be Awarded.* It is unclear from the stimulus package when HHS/NSF will release an initial request for grant proposals. HHS will give priority to existing education and training programs and to programs designed to be completed in less than six months.

Grants to Integrate EHRs into Medical School Curricula
To ensure that our nation's physicians and other medical professionals are introduced to EHRs at an early stage of their career, HHS is authorized to award matching grants to medical schools and other academic institutions to carry out demonstration projects to develop curricula that integrate certified EHR technology into their clinical education.

- *Who Qualifies*: Eligible institutions include:
  - Schools of medicine, osteopathic medicine, dentistry, or pharmacy, a graduate program in behavioral or mental health, or any other graduate health professions school;
  - Graduate schools of nursing or physician assistant studies;
  - A consortium of two or more schools; or
  - Institutions with a graduate medical education program in medicine, osteopathic medicine, dentistry, pharmacy, nursing, or physician assistance studies.

- *What Gets Funded/Use of Funds.* Integration of EHRs into the recipient's clinical education program(s). Grant funds may not be used to purchase hardware, software, or technology services.

- *Level of Funding.* As with the Medical Health Informatics Grant Program, matching grants may fund up to 50 percent of a recipient's total costs. However, grantees may request a higher federal proportion of funding on the grounds that national economic conditions are such that they "would render the cost-share requirement detrimental to the program."

- *When & How Funds Will Be Awarded.* While it is unclear from the stimulus package when HHS will begin disbursing these funds, applicants must submit a strategic plan for integrating certified EHR technology in clinical education as a means by which to reduce medical errors and enhance health care quality. Applicants must also have the capacity to collect data on the effectiveness of the demonstration project in improving patient safety, increasing the efficiency of care delivery, and in increasing the likelihood that graduates will adopt and incorporate EHRs in their clinical practice.

New Technology Research & Development

The stimulus package encourages the development of new health information technologies by establishing new Health Care Information Enterprise Integration Research Centers.

Health Care Information Enterprise Integration Research Centers

The Director of the National Institute of Standards and Technology, in consultation with the Director of the NSF and other appropriate federal agencies is authorized to award grants to establish multi-disciplinary Centers for Health Care Information Enterprise Integration.

- *Who Qualifies.* Institutions of higher education (or consortia thereof which may include nonprofit entities and Federal Government laboratories).

- *What Gets Funded/Use of Funds.* Establishment of Centers for Health Care Information Enterprise Integration, which are tasked with generating innovative approaches to health care information enterprise integration by conducting "cutting-edge" research on the systems challenges to health care delivery and with developing health information technologies.

- Areas of research may include: interfaces between human information and communications technology systems, voice-recognition systems, software that improves interoperability and connectivity among health information systems, software dependability in systems critical to care delivery, health information enterprise management, health information technology security and integrity, and measurement of the impact of information technologies on the quality and productivity of health care.

- *Level of Funding.* The stimulus package sets aside $20 million to NIST for continued work on advancing health care information enterprise integration through activities such as technical standards analysis and establishment of conformance testing infrastructure. There is no mention of a match requirement.

- *When & How Funds Will Be Awarded.* While it is unclear from the stimulus package when NIST/NSF will begin disbursing these funds, applicants must submit an application to NIST detailing the following:

    - The research projects that will be undertaken by the Center and the respective contributions of the participating entities;
    - How the Center will promote active collaboration among scientists and engineers from different disciplines, such as information technology, biologic sciences, management, social sciences, and other appropriate disciplines;
    - Technology transfer activities to demonstrate and distribute the research results, technologies, and knowledge; and
    - How the Center will contribute to the education and training of researchers and other professionals in fields relevant to health information enterprise integration.