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FINANCIAL CARROTS AND STICKS (AND OTHER BOTTOM LINE MATTERS) IN RECENT LEGISLATION

Presented to

**Healthcare Financial Management Association
Quarterly Regulatory Update**

April 30, 2009

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RECENT LEGISLATION AFFECTING HOSPITAL FINANCES

➤ Stimulus

- HITECH Act (“Carrots and Sticks”)
- HIT Grants
- Medicaid FMAP Increases
- COBRA
- Miscellaneous Medicare, Medicaid and Other Spending Provisions

➤ SCHIP Reauthorization



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HITECH Act – Background and Overview

- The HITECH (Health Information Technology for Economic and Clinical Health) Act is included in the American Recovery and Reinvestment Act, i.e., the Stimulus.
- HITECH Act offers significant financial incentives for hospitals and professionals for the implementation of HIT and electronic health records. Estimated spending of between \$34-\$36 billion over the next several years.
- Two incentive programs – Medicare and Medicaid. Providers and professionals must choose their incentive program – cannot do both – although not all providers/professionals will be eligible for both.



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HITECH Act – Medicare Incentive Payments for Hospitals – § 4102

➤ Hospital Eligibility and Criteria

- Starting in FY 2011, incentive payments are available for “eligible hospitals” that are “meaningful EHR users.”
 - ✓ An eligible hospital is a “subsection (d)” hospital (i.e., an acute-care IPPS hospital).
 - ✓ A “meaningful EHR user” is one that demonstrates:
 - ◆ use of “certified” EHR technology in a “meaningful manner.”
 - ◆ technology provides for the electronic exchange of information to improve quality and coordination of healthcare.
 - ◆ technology used to submit information on clinical quality measures.
- Statute gives CMS options for verifying “meaningful use” including attestation, surveys, coding, or “other means.”

HITECH Act – Medicare Incentive Payments for Hospitals

- Hospital Eligibility and Criteria (cont.)
 - Federal standards for “certification” of EHR technology are expected to be released at the end of 2009. At a minimum, certified EHRs must be capable of:
 - ✓ providing clinical decision support
 - ✓ supporting physician order entry
 - ✓ capturing and querying information relevant to health care quality
 - ✓ exchanging electronic health information from other sources
 - Wait to invest until “meaningful use” and “certified EHR technology” defined?

HITECH Act – Medicare Incentive Payments for Hospitals

➤ Calculation of Incentive Amount

$(\$2,000,000 + \text{Discharge Amount})(\text{Medicare Share}) (\text{Transition Percentage})$

➤ **Discharge amount:** The discharge amount is \$200 per discharge beginning with the 1,150th discharge through the 23,000th discharge. Discharge of any patient, not just Medicare/Medicaid.

➤ **Medicare Share:**

$$\frac{\text{Inpatient Medicare Part A + Part C Days}}{\text{Total Inpatient Days}} \times \frac{\text{Total Charges Less Charity}}{\text{Total Charges}}$$



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HITECH Act – Medicare Incentive Payments for Hospitals

➤ Medicare Share – Issues to Consider

- High Charity Care and High Medicare hospitals favored.
- Only Inpatient Days considered.
- Charity Care is defined “as such term is used for hospital cost reporting” – presumably Worksheet S-10, which includes inpatient and outpatient uncompensated care, but applied to inpatient days, so might be interpreted not to include outpatient. If no data on charity care, CMS can use “data on uncompensated care” and reduce for bad debt. If no data, assumption for charity care percentage is 1.
- If no data on Medicare Part C days, assumption is 0. (Hospitals need to submit “no-pay” bills for Medicare Advantage.)

$(\$2,000,000 + \text{Discharge Amount})(\text{Medicare Share})(\text{Transition Percentage})$

HITECH Act – Medicare Incentive Payments for Hospitals

- **Transition percentage:** For 2011, 2012 and 2013, transition percentage in first year is 100% and decreases by 25% over four years. In 2014 and 2015, reduction in transition period and percentages.

Start	2011	2012	2013	2014	2015	2016	2017
Start in 2011	100%	75%	50%	25%	0%	0%	0%
Start in 2012		100%	75%	50%	25%	0%	0%
Start in 2013			100%	75%	50%	25%	0%
Start in 2014				75%	50%	25%	0%
Start in 2015					50%	25%	0%

$(\$2,000,000 + \text{Discharge Amount})(\text{Medicare Share})(\text{Transition Percentage})$

Medicare Incentive - Example

➤ Hospital with:

- 10,000 Medicare Part A & C Inpatient Days
- 80,000 Total Days
- 10,000 Discharges
- \$150 Million in Total Charges and \$30 Million of this amount is Charity
- Calculation For FY 2011:

$$\$2,000,000 + ((10,000 - 1149) \times 200) \times \text{Medicare Share} \times 100\%$$

$$\$3,770,200 \times \text{Medicare Share} \times 100\%$$

$$\$3,770,200 \times \frac{10,000}{80,000 \times \frac{120,000,000}{150,000,000}} \times 100\%$$

$$\$3,770,200 \times \frac{10,000}{64,000}$$

$$\$3,770,200 \times .1563 = \$589,282 \text{ in FY 2011 (Decreases by 25\% over next 3 years)}$$

$$(\$2,000,000 + \text{Discharge Amount})(\text{Medicare Share})(\text{Transition Percentage})$$

HITECH Act – Medicare Penalties for Hospitals

➤ Penalties

- Beginning FY 2015, hospitals that are not meaningful EHR users will receive a reduction to 75% of their market basket update.
 - FY 2015 – 33 1/3% decrease
 - FY 2016 – 66 2/3% decrease
 - FY 2017 and thereafter – 100% decrease

	2015	2016	2017	2018
Start in 2016	33 1/3%	0%	0%	0%
Start in 2017	33 1/3%	66 2/3%	0%	0%
Start in 2018	33 1/3%	66 2/3%	100%	0%

HITECH Act – Medicare Penalties for Hospitals

- 100% reduction applied to 75% of market basket update in FY 2017 and every year thereafter.
- A hospital can return to a normal update when use of EHR is demonstrated. Exceptions for significant hardship, such as hospitals in areas without sufficient internet access.
- Comparable incentives and penalties apply to hospitals under common governance with a Medicare Advantage organization.

HITECH Act – Incentives/Penalties for Critical Access Hospitals

➤ Critical Access Hospitals - Carrot

- Incentive payments for critical access hospitals is calculated like the payment for IPPS hospitals, but CAHs receive a 20% add-on to the Medicare share (not to exceed 100%).
- EHR technology is depreciated in one year.
- Payment made through “prompt interim payment”.
- No payments after 2015.
- **And the Stick**
- Payments reduced to 100.66% of cost in FY 2015; to 100.33% in FY 2016 and to 100% in FY 2017 and forward.

HITECH Act – Medicare Incentives for Professionals – § 4101

- Professionals defined as physicians, dentists, podiatrists, optometrists and chiropractors. Also applies to professionals who are “affiliated with” Medicare-Advantage HMOs.
- Cannot be hospital-based, defined as an individual who provides “substantially all” services in a hospital setting. Will be determined by site of service, not employment or billing arrangements.
- “Meaningful use” generally same as for hospitals, but includes e-prescribing.

HITECH Act – Medicare Incentives for Professionals

- Medicare Incentives for Professionals
 - Incentive payment is 75% of allowed charges, subject to cap.

	2011	2012	2013	2014	2015	2016	Total
Start in 2011	18,000	12,000	8,000	4,000	2,000	0	44,000
Start in 2012		18,000	12,000	8,000	4,000	2,000	44,000
Start in 2013			18,000	12,000	8,000	4,000	39,000
Start in 2014				12,000	8,000	4,000	24,000
Start in 2015					0	0	0

HITECH Act – Medicare Penalties for Professionals

- Penalties begin in 2015 for professionals who are not “meaningful users.” Reduction to Fee Schedule:
 - FY 2015 – 1%
 - FY 2016 – 2%
 - FY 2017 – and subsequent years – 3%
- CMS must make higher adjustment for 2018 and later years, up to 5%, if percentage of “meaningful users” is less than 75%.
- Hardship exceptions.

HITECH Act – Medicaid Incentives – § 4201

➤ Eligibility and Criteria

▪ Eligible Entities and Professionals:

- ✓ Children's Hospitals
- ✓ Acute care hospitals with at least 10% Medicaid patients.
- ✓ Physicians, dentists and certain non-physician professionals (nurse-midwives, NPs and PAs) who are not hospital based and whose practice is at least 30% Medicaid (for pediatricians – 20% Medicaid patients).
- ✓ Same professionals who practice in Federally qualified health centers or rural health clinic and 30% of practice attributable to “needy individuals” (includes Medicaid, SCHIP, and uncompensated or sliding scale care).

HITECH Act – Medicaid Incentives

- Hospital Incentive – Medicaid incentive payments for hospitals calculated in same way as Medicare, but use Medicaid Share (Medicaid but not Medicare days) rather than Medicare Share in calculation. Aggregate payment cannot be more than 50% in any one year or 90% in any two-year period. States can spread payments over 3 to 6 years, but no payments for hospitals that begin after 2016.
- Professional Incentive – Medicaid incentives for professionals may be up to \$21,250 in federal dollars for purchase of EHR technology (first year must be before 2016) and up to \$8,500 annually, for five years, for operation, maintenance and use of EHR technology (no payments after 2021). Maximum: \$63,750. If qualify as a pediatrician with 20% Medicaid volume, only get 2/3 of this amount.

Additional HIT Funding Opportunities – Grants

- The Stimulus also provides grants for HIT funding:
 - HHS grants for planning and implementation (§ 3013).
 - Grants to states to provide loans to health care providers (§ 3014).

HIT Grants to Providers – § 3013

- HHS grants to “facilitate and expand the electronic movement and use of health information among organizations.”
- Eligibility:
 - Not-for-profit entities (including hospitals, especially safety-net providers).
 - Designated by the state as eligible to receive awards.
 - Broad stakeholder representation on its governing board.
 - Demonstrate goal to use HIT to improve healthcare quality & efficiency.
 - Adopt nondiscrimination and conflict of interest policies.
- The State must make a grant of at least \$1 for each:
 - \$10 of federal funds in 2011
 - \$7 of federal funds in 2012
 - \$3 of federal funds in 2013 and subsequent years



HIT Grants to States for Loans to Providers – § 3014

- HHS grants to States for EHR technology loan programs to providers to:
 - Facilitate the purchase of certified EHR technology.
 - Enhance EHR technology utilization.
 - Train personnel.
 - Improve the security of the electronic exchange.
- The state must contribute \$1 for every \$5 of federal funds.
- Grants awarded no earlier than January 1, 2010.

FMAP Increases (§ 5001)

- FMAP increases of 6.2% with an additional increase for states with higher than average increases in unemployment. Does not apply to Medicaid DSH or SCHIP.
- Requirements:
 - No increased restrictions on eligibility standards or methodologies from July 1, 2008.
 - State must make prompt payments to hospitals.
 - States cannot create reserve with these funds.

Other Medicaid Provisions - § 5003

- DSH Allotments increased (2.5% ↑ in 2009; another 2.5% ↑ in 2010).
 - Details at: <http://transparency.cit.nih.gov/RecoveryGrants/grant.cfm?grant=DSH>
- Moratoria extended on Medicaid regulations until 6/30/09.
 - Provider tax regulations
 - School-based administration and transportation
- HHS may not take action on regulation defining hospital outpatient services.
- Sense of Congress that certain regulations should not be published as final
 - Cost limits on certain providers (5/27/07 Fed. Reg.)
 - GME payments (5/23/07 Fed. Reg.)
 - Rehabilitative Services (8/13/07 Fed. Reg.)

Other Medicare Provisions - § 4301

- 50% reduction to capital IME for FY09 reversed. 100% elimination for FY10 still in place.
- Delay in phase-out of Medicare Hospice Budget Neutrality Factor.



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COBRA Assistance

- Eligible individuals pay 35% of COBRA premiums for up to 9 months.
- Eligible individuals are those terminated between 9/1/08 and 12/31/09. Income Limit - \$125,000 for individuals; \$250,000 if married. If terminated between 9/1/08 and 2/16/09 and didn't elect COBRA, have second chance.
- Assistance began 2/17/09.
- Other 65% paid through a payroll tax credit on IRS Form 941.



Other Provisions in Stimulus

- HHS.gov/Recovery
- \$1.1 billion for comparative effectiveness research
 - More info at: <http://www.hhs.gov/recovery/programs/cer/index.html>
- Additional \$10.4 billion to NIH over 2 years
 - More info at:
http://www.nih.gov/about/director/02252009statement_arra.htm
- \$1.0 billion for Prevention and Wellness Fund

SCHIP Reauthorization

- Signed 2/4/09.
- Increase of \$73.9 billion over 10 years, financed through tobacco taxes.
- CBO estimates additional 6.5 million children covered through 2013.
- President Obama directed HHS to withdraw limits on ability of states to provide coverage to children in families > 250% of federal poverty level.

SCHIP – Potential Effect on Medicare DSH

- States may elect to make children eligible for Medicaid. Matching available at enhanced SCHIP percentage.
- If children are Medicaid-eligible, inpatient days are included in Medicare DSH percentage.

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