

Building Your Health IT Business



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HIT Opportunities from Stimulus Monies

- American Recovery and Reinvestment Act of 2009
 - Provides \$2 billion in funds to the Office of National Coordinator for Health Information Technology (NCHIT)
 - Designed to create the architecture to support a nationwide electronic exchange of health information
 - Medicare and Medicaid Incentive Payments of \$17.2 billion through 2019
 - Creates incentive payments for professionals and hospitals qualifying as "meaningful EHR users"
 - Requires:
 - use of "certified" EHR technology
 - ability to electronically exchange information to improve quality and
 - must participate in quality reporting using certified HER technology.

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Opportunity and Stimulus The Carrot

- Programs include:
 - Grants to states to facilitate expanded use of HIT
 - Grants to states to develop loan programs for providers to acquire and implement HIT
 - Grants for demonstration projects to integrate EHR into clinical education programs
 - Grants to universities to establish multidisciplinary Centers for Health Care Information Enterprise Integration in order to:
 - Research system challenges to healthcare delivery and develop health information technologies
 - Assistance to universities for medical health informatics education programs


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Opportunity and Stimulus The Carrot

- Anticipated cost to implement
 - Independent studies from Harvard, RAND, and the Commonwealth Fund estimate between \$75 billion to \$100 billion
 - Expert Panel published in the Annals of Internal Medicine estimate a national health information network would cost \$156 billion over 5 years with annual operating cost of \$48 billion
 - PWC estimates a 3 physician practice will have to spend between \$173,000 and \$296,000 to implement and EHR system


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Opportunity and Stimulus The Carrot

- February 12 and March 15, 2010, HHS awarded and \$386 million and \$162 million, respectively to help states facilitate health information exchanges (HIEs) and advance health information technology (health IT)
 - The Maryland Department of Health and Mental Hygiene was granted \$9,313,924
 - Government of the District of Columbia was granted \$5,189,709
 - Virginia Department of Health \$11,613,537


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Opportunity and Stimulus The Carrot

- February 12, 2010, HHS announces \$375 million in grants to 32 non-profit organizations to support the development of regional extension centers (RECs) to aid health professionals as they work to implement and use HIT
 - Including at least \$18 million to Maryland and DC entities
 - Expect additional HIE and REC awards in the next two years


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Opportunity and Stimulus The Carrot

- April 2, 2010, HHS awarded \$144 million in grants to Academia and Research Institutions
 - \$84 million to 16 universities and junior colleges support training and development of 50,000+ health IT professionals
 - \$60 million to 4 advanced research institutions to focus on solving current and future challenges that represent barriers to adoption and meaningful use of health IT.
 - \$26 million granted to entities in Virginia and Maryland


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Stimulus Expectations The Stick

- The Health Information Technology for Economic and Clinical Health Act (HITECH)
 - Requires notification of privacy breaches
 - Unauthorized acquisition, access, use or disclosure of PHI which compromises the security or privacy of such information
 - Applies HIPAA Security Rules provisions to BAs
 - Administrative, physical and technical safeguards


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Stimulus Expectations The Stick

- Civil and criminal penalties for violating Security Standards
 - Up to \$250,000 and 10 years in prison
- Breach Notices
 - Individuals: by First Class Mail
 - Media Notices where more than 500 residents impacted in state or jurisdiction
 - HHS Secretary for more than 500 individuals
 - HHS website if involves more than 500 individuals
 - PHR Vendors: FTC must be notified


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Stimulus Expectations The Stick

- HITECH
 - Accounting provisions for EHR
 - CE must provide accounting of disclosures for 3 year period
 - New systems will need to include technology to account for these disclosures
 - Old systems will need to be updated
 - Access to EHR in electronic format
 - Access must be consistent with HIPAA Security Rule


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What will the Provider Ask? EHR Contracting 101

- **Payment of Fees**
 - Implementation costs
 - Upfront or tied to milestones
- **Deployment Schedule**
 - Typically takes several months
 - Define to avoid unrealistic expectations
- **Data Conversion for existing paper records**
 - Define what data/records need conversion
 - Cost for the conversion
 - Hardware or software requirements
 - Timeline


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What will the Provider Ask? EHR Contracting 101

- **Representations and Warranties**
 - Software
 - Is "Certified" within meaning of HITECH
 - Is HIPAA compliant
 - Will perform in accordance with specifications
 - For SaaS, has secure servers and encryption of stored data
- **Hardware**
 - Detail hardware and operating system necessary to run EHR software


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What will the Provider Ask? EHR Contracting 101

- Maintenance
 - Define obligations for ongoing technical support
 - What happens to source code when maintenance ceases
 - For SaaS:
 - What is the level of uptime and support
 - Right to access data if subscription terminates
 - Manner and frequency of data back-up


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What will the Provider Ask? EHR Contracting 101

- Indemnification
 - Claims/losses arising out of breaches of agreement
 - Claims/losses arising out of vendor's breach of BAA or vendor obligations under HIPAA
 - Providers likely to require HIPAA indemnifications be in addition to typical caps on liability.


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What will the Provider Ask? EHR Contracting 101

- Information Storage
 - Compliance with HIPAA requirements for:
 - Data encryption technology
 - Firewall protection from malware and viruses
 - Physical safeguards for server's data center
 - Disaster Recovery Plan

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The Carrot and the Stick

- With over \$2 billion in ARRA funds available there is ample opportunities to build your IT business
 - The way has not yet been paved
 - Much ingenuity yet to be forged
- But with government dollars comes government regulation
 - Need to be prepared to comply with HITECH
 - Additional regulations

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