



HIMSS Summary of the  
**The American Recovery and Reinvestment Plan of 2009**  
**H.R. \_\_\_\_**  
January 19, 2009

The following is a HIMSS summary of the American Recovery and Reinvestment Plan (economic stimulus legislation) of 2009 derived from the draft text of legislation produced by the House Appropriation, Ways and Means, and Energy and Commerce Committees. Each of the Committees put forth legislation for economic stimulus legislation that correlates with the jurisdiction of their Committee. The House Committees are expected to hold mark-ups of the legislation during the week of January 19, 2009. The House Rules Committee will have the responsibility of developing one final piece of comprehensive legislation, American Recovery and Reinvestment Plan of 2009. Speaker of the House Nancy Pelosi hopes to have final legislation ready for the President's signature by the Presidents' Day Recess the week of February 16, 2009. The legislation authorizes and appropriate more than \$20 billion for health IT throughout the United States.

For more information, contact the [HIMSS Government Relations team](#).

<b>House Appropriations Committee</b>
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On January 15, 2009, Representative Obey (Chairman of the House Appropriations Committee) unveiled an \$825 billion economic stimulus bill that addresses the role of health information technology (IT) and directs funding for health IT through such agencies as the Indian Health Service, Office of the National Coordinator, Health Resources and Services, the Agency for Healthcare Research and Quality, and the Social Security Administration.

Below, please find the sections of the legislation that address health IT:

**Title VIII, Interior and Environment**

**Department of Health and Human Services**

**Indian Health Service, Indian Health Facilities:** This section appropriates \$550 million for priority healthcare facilities construction projects and deferred maintenance, and the purchase of equipments and related services, including, but not limited to health IT.

**Title IX, Labor, Health and Human Services, and Education**

**Subtitle B, Health and Human Services**

**Health Resources and Services:** Directs \$1 billion to be made available for renovation and repair of health centers authorized under section 330 of the Public Health Service Act and for the acquisition by such centers of health IT systems. The timeframe for the award of grants shall not be later than 180 days after the date of enactment of the Act.

**Agency for Healthcare Research and Quality:** Directs \$400 million to be made available for comparative effectiveness research to be allocated at the discretion of the Secretary of HHS. Funds appropriated shall be used to accelerate the development and dissemination of research assessing the comparative effectiveness of healthcare treatments and strategies, including 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:

**Office of the National Coordinator for Health IT:** To carry-out Section 9202 of the Act, directs \$2 billion to for the Office of the National Coordinator for Health IT to be available until expended.

In addition, the Secretary of Health and Human Services (HHS) must transfer \$20 million of the funds to the Director of the National Institute of Standards and Technology in the Department of Commerce for continued work on advancing healthcare information enterprise integration through activities such as technical standards analysis and establishment of conformance testing infrastructure, so long as such activities are coordinated with the Office of the National Coordinator for Health IT. All funds can only be made available upon submission of an annual operating plan by the Secretary of HHS to the Committees on Appropriations of the House of Representatives and the Senate.

### **General Provisions**

#### **Section 9201, Federal Coordinating Council for Comparative Effectiveness**

**Research:** The Federal Coordinating Council for Comparative Effectiveness Research is established to coordinate the conduct or support of comparative effectiveness and related health services research. The Council shall advise the President and Congress on strategies with respect to the infrastructure needs of comparative effectiveness research within the Federal Government, appropriate organizational expenditures for comparative effectiveness research by relevant Federal departments and agencies, and opportunities to assure optimum coordination of comparative effectiveness and related health services research. The Council shall include 15 members, all senior Federal officers or employees. Members include senior officials from such agencies as AHRQ, ONC, NIH, and CMS.

**Section 9202, Investment in Health Information Technology:** The Secretary of HHS shall invest in the infrastructure necessary to allow for and promote the electronic exchange and use of health information for each individual in the U.S. This investment must be consistent with the goals outlined in the Strategic Plan developed by the National Coordinator for Health IT.

Such an investment shall include at least the following:

- 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 with different agencies of HHS to support the electronic use and exchange of health information;
- 2) Integration of health IT, including electronic medical records, into the initial and ongoing training of health professionals and others in the healthcare industry who would be instrumental to improving the quality of healthcare through smooth and accurate electronic use and exchange of health information as determined by the Secretary;
- 3) Training on dissemination of information on best practices to integrate health information technology, including electronic records, into a provider's delivery of care, including community health centers receiving assistance under Section 330 of the Public Health Service Act and providers participating in one or more of the programs under titles XVIII, XIX, and XXI of the Social Security Act (Medicare, Medicaid, and SCHIP);
- 4) Infrastructure and tools for the promotion of telemedicine, including coordination among Federal agencies in the promotion of telemedicine; and,
- 5) Promotion of interoperability of clinical data repositories or registries.

None of the funds appropriated to carry out this section may be used to make significant investments in, or provide significant funds for, the acquisition of hardware or software or for the use of an electronic health or medical record, or significant components thereof, unless such investments or funds are for certified products that would permit the full and accurate electronic exchange and use of health information in a medical record, including standards for security, privacy, and quality improvement functions adopted by the Office of the National Coordinator for Health IT.

The Secretary of HHS shall annually report on the uses of these funds and their impact on the infrastructure for the electronic exchange and use of health information to the following Committees:

- House Energy and Commerce
- House Ways and Means
- House Science and Technology
- House Appropriations

- Senate Finance
- Senate Health, Education, Labor, and Pensions
- Senate Appropriations

**Subtitle D, Related Agencies, Social Security Administration, Limitation on Administrative Expenses:** Directs \$500 million for processing disability and retirement workloads: Provided, that up to \$40 million may be used by the Commissioner of Social Security for health IT research and activities to facilitate the adoption of electronic medical records in disability claims, including transfer of funds to “Supplemental Security Income Program:” to carry out activities under section 1110 of the Social Security Act.

<p><b>House Ways and Means Committee and House Energy and Commerce Committee</b></p>
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On January 16, 2009, Representatives Rangel (Chairman of the House Ways and Means Committee), Representative Stark, and Representative McDermott introduced a portion of the economic stimulus bill, the American Recovery and Reinvestment Plan, that dedicates funding to revenue measures, unemployment, and health. The legislation calls for national leadership and incentives for health IT. Also on the 16<sup>th</sup>, Chairman Dingell of the House Energy and Commerce Committee introduced his Committee’s portion of the economic stimulus bill, which includes the same language for health IT as included in the House Ways and Means Committee’s legislation.

Below, please find a detailed description of Title IV included in both pieces of legislation. The Congressional Budget Office (CBO) estimates that the Medicare and Medicaid incentives included in the legislation will cost approximately \$18 billion.

**Title IV, Health Information Technology**

**Section 4001, short title: Health Information Technology for Economic and Clinical Health Act (HITECH Act)**

**Subtitle A, the Promotion of Health Information Technology**

**Section 3001, Office of the National Coordinator for Health IT:** Establishes the Office of the National Coordinator for Health Information Technology (the “Office”), to be headed by a National Coordinator that is appointed by the Secretary and reports to the Secretary. Duties of the National Coordinator are as follows: 1) review and determine to endorse standards and certification criteria that is recommended by the HIT Standards Committee, 2) coordinate health IT policy and programs of the Department with those of relevant executive branch agencies, 3) serve as the leading member in the establishment and operation of the HIT Policy Committee and HIT Standards Committee and shall serve as the liaison among those two Committees and the Federal Government, 4) update the Federal Health IT Strategic Plan to include specific objectives, milestones, and metrics.

The National Coordinator shall maintain and frequently update an Internet website on which there is posted information on the work, schedules, report, recommendations, and other information to ensure transparency in promotion of a nationwide health IT infrastructure.

The National Coordinator, in consultation with the Director of the National Institute of Standards and Technology (NIST), shall develop a program (either directly or by contract) for voluntary certification of health IT as being in compliance with applicable certification criteria. Certification criteria entails standards and implementation specifications for health IT, criteria to establish that the technology meets such standards and implementation specifications.

Among many reports that the National Coordinator will be responsible for producing, the National Coordinator must assess and publish the impact of health IT in communities with health disparities and in areas with a high proportion of individuals who are uninsured, underinsured, and medically underserved individuals and identify practices to increase the adoption of such technology by healthcare providers in such communities.

In regards to a nationwide health information network (NHIN), the National Coordinator must also establish a governance mechanism for the NHIN.

No later than 12 months after the date of the enactment of this title, the Secretary shall appoint a Chief Privacy Officer of the Office of the National Coordinator, whose duty it shall be to advise the National Coordinator on privacy, security, and data stewardship of electronic health information and to coordinate with other Federal agencies, with State and regional efforts, and with foreign countries with regard to the privacy, security, and data stewardship of electronic individually identifiable health information .

**Section 3002, HIT Policy Committee:** Establishes a HIT Policy Committee to make recommendations to the National Coordinator relating to the implementation of a nationwide health information technology infrastructure, including implementations of the strategic plan. The HIT Policy Committee shall recommend a policy framework for the development and adoption of a nationwide health information technology infrastructure. The Committee shall also recommend the areas in which standards, implementation specifications, and certification criteria are needed for the electronic exchange and use of health information and recommend an order of priority for the development, harmonization, and recognition of such standards, specifications, and certification criteria among the areas so recommended.

Membership of the HIT Policy Committee shall at least reflect providers, ancillary healthcare workers, consumers, purchasers, health plans, technology vendors, researchers, relevant federal agencies, and individuals with technological

expertise on healthcare quality, privacy and security, and on the electronic exchange and use of health information. The Committee shall serve as a Federal Advisory Committee.

**Section 3003, HIT Standards Committee:** Establishes a HIT Standards Committee to recommend to the National Coordinator standards, implementation specifications, and certification criteria for the electronic exchange and use of health information. The HIT Standards Committee shall recommend to the National Coordinator standards, implementation specifications, and certification criteria that have been developed, harmonized, or recognized by the HIT Standards Committee. The standards shall be consistent with the latest recommendations made by the HIT Policy Committee. In the development, harmonization, or recognition of standards and implementation specifications, the HIT Standards Committee shall, as appropriate, provide for the testing of such standards and specifications by NIST.

No later than 90 days after enactment of this act, the HIT Standards Committee shall develop a schedule for the assessment of policy recommendations developed by the HIT Policy Committee.

Membership of the HIT Standards Committee shall at least reflect providers, ancillary healthcare workers, consumers, purchasers, health plans, technology vendors, researchers, relevant federal agencies, and individuals with technical expertise on healthcare quality, privacy and security, and on the electronic exchange and use of health information. The National Coordinator shall ensure that relevant recommendations and comment from the National Committee on Vital Health Statistics (NCVHS) are considered in the development of standards. The Standards Committee serves as a Federal Advisory Committee.

**Section 3004, Process for Adoption of Endorsed Recommendations; Adoption of Initial Set of Standards, Implementation Specifications, and Certification Criteria:** Requires the Secretary of HHS to review standards, implementation specifications, and certification criteria no later than 90 days after endorsement by the National Coordinator. The Secretary shall provide for publication in the *Federal Register*. No later than December 31, 2009, the Secretary shall adopt through the rule-making process, an initial set of standards, implementation specifications, and certification criteria.

**Section 3005, Application and Use of Adopted Standards and Implementation Specifications by Federal Agencies:** Requires the applications and use by Federal agencies of the standards and implementation.

**Section 3006, Voluntary Application and Use of Adopted Standards and Implementation Specifications by Private Entities:** With exception of Section 4112, any standard or implementation specification adopted under Section 3004 shall be voluntary with respect to private entities.

**Section 3007, Federal Health Information Technology:** The National Coordinator shall support the development, routine updating and provision of qualified EHR technology ( an electronic record of 1) health related information on an individual that includes patient demographics and clinical health information, such as medical history and problem lists, 2) has the capacity to provide clinical decision support, support physician order entry, capture and query information relevant to healthcare quality, and to exchange electronic health information with, and integrate such information from other sources.), unless the Secretary determines that the needs and demands of providers are being substantially and adequately met through the marketplace.

The qualified EHR must be certified under the program developed in Section 3001. The National Coordinator may impose a nominal fee for the adoption by a healthcare provider of the health IT system developed or approved. The fee shall take into account financial circumstances of smaller providers, low-income providers, and providers located in rural or other medically underserved areas. Nothing shall be construed to require that a private or government entity adopt or use the technology provided under this section.

**Section 3008, Transitions:** All functions, personnel, assets, liabilities, and administrative efforts applicable to the National Coordinator appointed under Executive Order 13335 are transferred to the National Coordinator appointed under Section 3001 as of date of enactment of this act. Concerning AHIC, all functions, personnel, assets, and liabilities applicable to the AHIC Successor, Inc, doing business as the National eHealth Collaborative, as of day of enactment of this title shall be transferred to the HIT Policy Committee or HIT Standards Committee, as appropriate. Recommendations of the two Committees shall be consistent with the most recent recommendations of the AHIC Successor, Inc. Nothing shall be construed as to prohibit the AHIC Successor, Inc. doing business as the National eHealth Collaborative from modifying in a manner so that the Secretary can choose to recognize such Community as the HIT Policy Committee or HIT Standards Committee.

**Section 3009, Relation to HIPAA Privacy and Security Law:** Nothing in this section shall be construed to have an effect on the authorities of the Secretary under HIPAA privacy and security law. Health IT standards and implementation specifications adopted under Section 3004 must take into account the requirements of HIPAA privacy and security law.

**Section 3010, Authorization for Appropriations:** The National Coordinator for Health IT is authorized and appropriated \$250 million to carry out this subtitle for FY09.

## **Part II- Application and use of Adopted Health Information Technology Standards, Reports.**

**Section 4111, Coordination of Federal Activities with Adopted Standards and Implementation Specifications:** Each agency, defined in Executive Order issued on August 22, 2006, relating to promoting quality and efficient healthcare in the federal government or federally sponsored healthcare programs, shall implement, acquire, or upgrade health IT systems, where available, that meets standards and implementations specifications adopter under Section 3004. In addition, the President shall take measures to ensure that Federal activities involving the broad collection and submission of health information are consistent with such standard or implementation specification.

**Section 4112, Application to Private Entities:** Each agency, as defined in the August 22, 2006 Executive Order, shall require in contracts or agreements with healthcare providers, health plans, or health insurance issuers that as each provider, plan, or issuer implements, acquires, or upgrades health IT systems, it shall utilize, where available, health IT systems and products that meet standards and implementation specifications, adopted under Section 3004.

**Section 4113, Study and Report:** No later than two years after the date of enactment of the Act, the Secretary of HHS shall submit to the House Appropriations Committees of jurisdiction a report on the actions taken by the Federal Government and private entities to facilitate the adoption of a nationwide system. The Secretary shall also carry out a report that examines methods to create efficient reimbursement incentives for improving healthcare quality in federally qualified health centers, rural health clinics, and free clinics. The Secretary should carry out a report to study the matters relation to the potential use of new aging services technologies.

#### **Subtitle B- Testing of Health Information Technology**

**Section 4201, National Institute for Standards and Technology Testing:** In coordination with the HIT Standards Committee, the Director of NIST shall test such standards and implementation specifications, as appropriated. In coordination with the HIT Standards Committee, the Director of NIST shall support the establishment of a conformance testing infrastructure, including the development of technical test beds. This may include a program to accredit independent, non-federal laboratories to perform testing.

**Section 4202, Research and Development Programs:** Establishes Healthcare Information Enterprise Integration Research Centers, by the Directors of NIST and the National Science Foundation (NSF) and other appropriate federal agencies. The purposes of the Centers shall be to generate innovative approaches to healthcare enterprise, through research and the development and use of health IT and other complementary fields.

In addition, the National High-Performance Computing Program is established to coordinate Federal research and development programs related to the development and deployment of health IT.

### **Subtitle C- Incentives for the Use of Health Information Technology**

#### **Section 3011, Immediate Funding to Strengthen the Health Information Technology Infrastructure**

Such funds as necessary should be appropriate to invest in the infrastructure necessary to allow for and promote the electronic exchange and use of health information for each individual in the U.S. consistent with the goals outlined in the strategic plan. Any funds allocated shall be for the acquisition of health IT that meets standards and certification criteria adopted before the date of enactment of this title. The Secretary shall invest funds through the ONC, HRSA, AHRQ, CMS, CDC, and HIS, to support such initiatives as:

- A health information technology architecture;
- Development of certified EHRs;
- Training and dissemination of information on best practices to integrate health IT;
- Tools to promote telemedicine; and,
- Provide \$300 million to support regional or sub-national efforts towards HIE.

#### **Section 3012, Health Information Technology Implementation Assistance:**

Directs the Secretary, through the ONC, to establish a health IT extension program to provide health IT assistance services to be carried out through HHS. The Secretary shall also create a Health IT Research Center to provide technical assistance and develop or recognize best practices to support and accelerate efforts to adopt, implement, and effectively utilize health IT that allows for the electronic exchange and use of information.

The Secretary shall also provide assistance for the creation and support of regional centers to provide technical assistance and disseminate best practices from the Center. Regional centers shall be affiliated with any US-based nonprofit institution or organization, or group thereof, that applies and is awarded financial assistance under this section. Each regional center shall aim to provide assistance and education to all providers in a region. The Secretary may provide financial support to any regional center, but may not exceed more than 50 percent of the capital and annual operating and maintenance funds.

**Section 3013, State Grants to Promote Health Information Technology:** The Secretary, acting through the National Coordinator, shall establish a program to facilitate and expand electronic movement and use of health information among organization according to nationally recognized standards. The Secretary may award a grant to a State or qualified State-designated entity. Beginning with

FY11, the Secretary may not make a grant to a state unless that State agrees to make available non-federal contributions toward the costs of a grant:

- 1) FY11, not less than \$1 for each \$10 of federal funds provided under the grant;
- 2) FY12, not less than \$1 for each \$7 of federal funds provided under the grant, and
- 3) FY13 and each subsequent fiscal year, not less than \$1 for each \$3 of federal funds provided under the grant.

For fiscal years before FY11, the Secretary may determine the extent to which there shall be required a non-federal contribution from a state receiving a grant under this section.

**Section 3014, Competitive Grants to States and Indian Tribes for the Development of Loan Programs to Facilitate the Widespread Adoption of Certified EHR Technology:** The National Coordinator may award competitive grants to eligible entities for the establishment of programs for loans to healthcare providers. Funding must be allocated for certified EHR technology. An eligible entity shall establish a certified EHR technology loan fund and specify the intent to use funds.

**Section 3015, Demonstration Program to Integrate Information Technology into Clinical Education:** The Secretary may award grants to carry out demonstration projects to develop academic curricula integrating certified EHR technology in the clinical education of health professionals. Grants shall be made on a competitive basis. The Secretary may not provide more than 50 percent of the costs of any activity in this section, except in an instance of national economic conditions which would render the cost-share requirement.

**Section 3016, Information Technology Professionals on Health Care:** The Secretary, in consultation with the Director of the NSF, shall provide assistance to institutions of higher education to establish or expand medical health informatics education programs, including certification, undergraduate, and masters degree programs, for both healthcare and IT students to ensure the rapid and effective utilization and development of health IT.

**Section 3017, General Grant and Loan Provisions:** The Secretary may require that an entity receiving assistance under this title shall submit to the Secretary, not later than one year after the date of receipt of assistance, a report on impact of the project.

**Section 3018, Authorization of Appropriations:** There be authorized to carry-out this subtitle, such sums as may be necessary for FY 2009 – FY13.

## **Part II- Medicare Programs**

**Section 4311, Incentives for Eligible Professionals:** Payments shall be made to an eligible professional (physician) during a payment year if the eligible

professional is a meaningful EHR (the professional is using certified EHR technology in a meaningful manner, which shall include the use of ePrescribing as determined appropriate by the Secretary) user for the reporting period.

Certified EHR technology means a qualified EHR that is certified to meeting standards pursuant to this Act and includes patient demographic and clinical health information, such as medical history and problem lists, and has the capacity to provide clinical decision support, to support physician order entry, to capture and query information relevant to healthcare quality, and to exchange electronic health information with, and integrate such information from other sources.

Payment is to be made from the Federal Supplementary Medical Insurance Trust Fund as an amount equal to 75% of the Secretary's estimate of the allowed charges under this part for all such covered professional services furnished by the eligible professional during such year. Payment schedule is as follows:

- 1) First payment year for such professional is \$15,000
- 2) For second payment year for such professional is \$12,000
- 3) For the third payment year for such professional is \$8,000
- 4) For the fourth payment year for such professional is \$4,000
- 5) For the fifth payment year for such professional \$2,000
- 6) For any succeeding payment year for such professional is \$0

None of these incentives shall be made to a hospital-based eligible professional.

The Secretary shall establish rules to coordinate payments when an eligible professional practices in more than one facility. A meaningful EHR user is defined as: an eligible professional that demonstrates – to the satisfaction of the Secretary – the use of a certified EHR technology in a meaningful manner that shall include the use of electronic prescribing as determined to be appropriate by the Secretary. The eligible professional must also demonstrate that the charted EHR is connected in a manner that provides the electronic exchange of health information to improve the quality of healthcare, such as promoting care coordination. The eligible professional is also required to report on clinical quality measures as specified by the Secretary. The Secretary shall post on the Internet website of CMS, in an easily understandable format, a list of the eligible professionals who are meaningful EHR users.

For 2019 and each subsequent year, if the Secretary finds the proportion of eligible professionals who are meaningful EHR users is less than 75 %, the applicable reimbursement percent shall be decreased by one percentage point from the applicable percent in the preceding year. In no case shall the decrease in reimbursement reach less than 95%.

This section shall apply to an eligible professional of a Medicare Advantage Organization (organized as a health maintenance organization) that is a meaningful EHR user. Such an eligible professional is employed by the

organization or is a partner of an entity through contract with the organization. The Secretary can establish a payment amount for such an eligible professional.

Certified EHR technology is a qualified EHR that is certified pursuant to Section 3001 that is in accordance with standards of Section 3004.

**Section 4313, Incentives for Hospitals:** Incentive payments shall be made to eligible hospitals if the hospital is a meaningful EHR user. The applicable amount for an eligible hospital is based on a base amount, the discharge specifications for a 12 month period, Medicare Share, and Transition Factor. The formula for the applicable amount can be found starting on page 239 of the legislation. Under this section, the eligible hospital must report clinical quality measures and other such measures as specified by the Secretary. In the case of a qualifying Medicare Advantage Organization, the provisions shall apply with respect to eligible hospitals of the organization which the organization attests to be a meaningful EHR user. The Secretary shall determine the Medicare reimbursement amount for eligible hospitals of Medicare Advantage Organizations.

### **Part III- Medicaid Funding**

#### **Section 4321, Medicaid Provider HIT Adoption and Operation Payments, Implementation Funding**

Medicaid providers, physicians and hospitals are to receive incentive payments through the increase in reimbursement payments for the meaningful use of certified EHR technology. Allowable costs should not exceed \$25,000 or include costs over a period of longer than five years. Costs related to the operations, maintenance, or use of a certified EHR technology, shall not exceed \$10,000. Payment can be made to a Medicaid provider over five years. The aggregate allowable costs with respect to a Medicaid provider shall not exceed \$75,000. The meaningful use of certified EHR technology must be agreed upon by the State and the Secretary and compatible with the state or federal administrative management system.

### **Subtitle D- Privacy**

#### **Section 4400, Definitions**

#### **Part 1- Improved Privacy Provisions and Security Provisions**

**Section 4401, Application of Security Provisions and Penalties to Business Associates of Covered Entities; Annual Guidance on Security Provisions:** The requirements that related to security and that are made applicable with respect to covered entities shall also be applicable to business associated and shall be incorporated into the business associate agreements between the business associate and the covered entity. The application of civil and criminal penalties as they relate to a business associate under HIPAA shall apply in the same manner to covered entities that violate such security provision.

For the first year beginning after enactment of this Act and annually thereafter, the Secretary of HHS shall issue guidance on the most effective and appropriate technical safeguards to be in agreement with HIPAA.

**Section 4402, Notification in the Case of Breach:** A covered entity that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured PHI shall in the case of a breach of such information that is discovered by the covered entity, notify each individual whose unsecured PHI has been, or is reasonable by the covered entity to have been, accessed, acquired, or disclosed as a result of the breach. Same requirements are instructed for business associates. A breach shall be treated as discovered by a covered entity or by a business associate as of the first day on which such breach is known to such entity or associate, respectively, or should have been known to such entity or associate to have occurred.

All notifications of a breach shall be made without unreasonable delay and in no case no later than 60 days after the discovery. Methods of notice may take the following:

- 1) Written notification by first class mail;
- 2) Posting on an internet site;
- 3) Telephone; and,
- 4) Prominent medical outlets if the breach is 500 residents of more.

The Secretary of HHS must be notified of breaches, on an annual basis or immediately if the breach involved 500 or more individuals. In addition, via an HHS website, the Secretary shall make available a list that identifies each covered entity involved with a breach that includes more than 500 individuals' PHI that was acquired or disclosed. The Secretary of HHS shall promulgate interim final regulations by no later than the date that is 180 days after enactment of this title.

**Section 4403, Education on Health Information Privacy:** Not later than six months after the date of the enactment of this Act, the Secretary shall designate an individual in each regional office of HHS to offer guidance and education to covered entities, business associates, and individuals on their rights and responsibilities related to Federal privacy and security requirements for PHI.

No later than 12 months after the date of enactment of this act, the Office for Civil Rights within HHS shall develop and maintain a multi-faced national education initiative to enhance public transparency regarding the uses of PHI, including programs to education individuals about potential uses of their PHI.

**Section 4404, Application of Privacy Provisions and Penalties to Business Associates of Covered Entities:** In the case of a business associate of a covered entity that obtains or creates PHI pursuant to a written contract with a covered entity, the business associate may use and disclose such PHI only if such use or disclosure is in compliance with HIPAA. Knowledge elements associated with

HIPAA shall also apply to business associates in the same manner as they do covered entities. Civil and criminal penalties, in the manner that they related to covered entities under HIPAA, shall also apply to business associates.

**Section 4405, Restrictions on Certain Disclosures and Sales of Health Information, Accounting of Certain PHI Disclosures, Access to Certain Information in Electronic Format:** A covered entity shall not disclose PHI if 1) the disclosure to a health plan is for payment or healthcare operations and is not for treatment, and 2) when a healthcare provider has been paid out-of-pocket for a service that pertains to the PHI.

In respect to HIPAA, the covered entity shall be treated in compliance if the covered entity limits the PHI for use, disclosure, or request to a limited data set or the minimum necessary to accomplish the intended purpose of such use, disclosure, or request. No later than 18 months after the date of the enactment of this section, the Secretary shall issue guidance on what constitutes minimum necessary.

As a covered entity uses or maintains an EHR with respect to PHI, an individual has a right to receive an accounting of disclosures only in the three years prior to the date on which the accounting is requested. The Secretary shall promulgate regulations on what information shall be collected about each disclosure no later than 18 months after the Secretary adopts standards on accounting for disclosures under this Act. Regulations shall only pertain to such information collected through an EHR. This requirement shall apply to disclosures with respect to PHI made by the covered entity from such a record on or after January 1, 2014.

No later than 18 months after the date of the enactment of this title, the Secretary shall promulgate regulations to eliminate from the definition of healthcare operations under HIPAA, those activities that can reasonably and efficiently be conducted through the use of information that is de-identified or that should require a valid authorization for use or disclosure.

A covered entity or business associate shall not directly or indirectly receive remuneration in exchange for any PHI of an individual unless the covered entity obtained from the individuals, in accordance with HIPAA, a valid authorization. An exception pertains to research or public health activities and the price charged reflects the cost of preparation and transmittal of the data for such purpose. The Secretary shall promulgate regulations to carryout this requirement no later than 18 months after enactment of the Act.

In the case that a covered entity uses or maintains an EHR with respect to PHI, the individual has a right to obtain from the covered entity a copy of such information in an electronic format. The fee provided by the covered entity to obtain this information may not be greater than the covered entity's labor costs in responding to the request.

**Section 4406, Conditions on Certain Contact as Part of Healthcare**

**Operations:** A communications by a covered entity or business associate that is about a product or serves that encourages recipients of the communication to purchase or use the product or service shall not be considered a healthcare operation. A covered entity or business associate may not receive direct or indirect payment in exchange for making any such communication, unless 1) the payment is from the covered entity to the business associate to carry out such activities as consistent with written contract and 2) if the covered entity obtains a valid authorization.

Fundraising shall not be considered a healthcare operation.

**Section 4407: Temporary Breach Notification Requirement for Vendors of PHRs and other non-HIPAA Covered Entities:**

A breach of personal health information through a PHR maintained or offered by an entity, the entity shall notify the individual who is a U.S. citizen and notify the Federal Trade Commission (FTC) and a third-party service provider that provides services to a vendor of PHRs or to an entity that offers or maintains the PHR or related product or service. Notification of breach shall be treated in the same manner as required for covered entities in the breach of PHI. The FTC shall notify the Secretary of such breach.

**Section 4408, Business Associate Contracts Required for Certain Entities:**

Each organization, with respect to a covered entity, that provides data transmission of PHI to such entity and that requires access on a routine basis to such PHI, such as a HIE Organization, RHIO, ePrescribing Gateway, or each vendor that contracts with a covered entity to allow that covered entity to offer a PHR to patients as part of its electronic health record is required to enter into a written contract with such entity and be treated as a business associate of the covered entity.

**Section 4409, Clarification of Application of Wrongful Disclosures Criminal Penalties:**

A person is in violation of obtaining or disclosing individually identifiable health information that is maintained by a covered entity if the individual was not authorized to do so.

**Section 4410, Improved Enforcement:**

No later than 18 months after the date of enactment of this title, the Secretary of HHS shall promulgate regulations to impose penalties that apply to willful neglect of PHI. Any civil or monetary settlement collected with respect to an offense punishable as it related to privacy and security shall be transferred to the Office of Civil Rights of HHS. No later than three years after the date of the enactment of this title, the Secretary shall establish by regulation and based on recommendations a methodology under which an individual who is harmed by an act that constitutes an offense may receive a percentage of civil monetary penalty or monetary settlement collected

with respect to the offense. The legislations set forth monetary penalties for the unauthorized access, use, and disclosure of PHI, ranging from \$100 to \$1.5 million.

In any case in which the attorney general of a State has reason to believe that an interest of one or more residents of that State has been or is threatened or adversely affected by any person who violate a provision in this part, the attorney general of the State, as parens patriae, may bring a civil action on behalf of such residents of the State in a district court of the U.S. of appropriate jurisdiction.

**Section 4411, Audits:** The Secretary shall provide for periodic audits to ensure that covered entities and business associates that are subject to the requirements in this subtitle and subparts comply with such requirements.

**Part II- Relationship to Other Laws, Regulatory References, Effective Date, and Reports:** HIPAA standards and regulations shall remain. Except as otherwise provided, the provisions of Part I shall take effect on the date that is 12 months after the date of the enactment of this title. The Secretary shall submit to appropriate Committees reports concerning complaints of alleged violations of law each year. No later than one year after enactment, the GAO shall submit to appropriate Committees a report on the best practices related to the disclosure among healthcare providers of PHI of an individuals for purposes of treatment of such individual.

### **HIMSS Comments**

HIMSS Government Relations will continue to provide HIMSS members with the most up-to-date information concerning the inclusion of health IT in economic stimulus legislation. A copy of a letter from HIMSS' President and CEO to Congressional leaders concerning HIMSS' recommendations for health IT in economic stimulus legislation can be accessed at: [Letter to Chairman Baucus and Ranking Member Grassley, Senate Finance Committee](#). For more information, contact the [HIMSS Government Relations team](#).