



Health IT Policy and the 111th Congress 2009 Year in Review

In 2009, during the First Session of the 111th Congress, more progress was made to advance the transformation of patient-centric healthcare using information technology (IT) than in any previous year. Through passage of the American Recovery and Reinvestment Act of 2009 (ARRA), Congress took significant steps in establishing leadership for national health IT initiatives and providing funding to bolster the electronic exchange of health information. This “Year in Review” aims to outline major milestones for 2009 that pertain to health IT policy. In addition, this report highlights corresponding HIMSS public policy and advocacy activities during the year.

Overview

In 2009, Democrats controlled the 111th Congress, holding a majority in both the U.S. House of Representatives and the U.S. Senate. This Democratic control proved pivotal to President Barack Obama’s effort to pass landmark stimulus legislation to jumpstart the nation’s economy. On February 17, 2009, President Obama enacted the ARRA that not only made investments in education and transportation, but also healthcare. Specifically, the ARRA included more than \$30 billion for health IT and worked to build a solid IT infrastructure for the healthcare sector. President Obama referred to this investment in health IT as the foundation for healthcare reform. After passage of the ARRA, healthcare reform became the number one legislative priority for both the Administration and Congress. Healthcare reform proposals and legislation aimed to increase coverage, quality, and access to healthcare, and leverage health IT in many of the activities. Throughout the year, HIMSS worked to educate Congressional leaders on our membership’s policy priorities and provide legislative resources to HIMSS members.

Milestones

In 2009, we can identify seven major milestones concerning health IT in the 111th Congress:

1. Reauthorization of the State Children’s Health Insurance Program
2. Passage of the ARRA
3. Passage of the Omnibus Appropriations Act of 2009
4. Healthcare Reform Deliberations
5. Passage of the Fiscal Year 2010 Budget Resolution
6. Passage of the Omnibus Appropriations Act of 2010
7. Introduction of Health IT Legislation

A detailed description of the milestones and HIMSS’ corresponding activities is as follows:

- 1. Reauthorization of the State Children's Health Insurance Program:** In January, Congress passed H.R. 2, the State Children's Health Insurance Program (SCHIP) Reauthorization Act of 2009. The legislation expands SCHIP for four and a half years, funds the program through an increase in tobacco taxes, and extends SCHIP eligibility to those living at up to 300 percent above the poverty level. The legislation establishes a grant program totaling \$20 million for states and child health providers to conduct demonstration projects that, among many things, will promote the use of health IT determined by the Secretary of HHS; and \$5 million for the development of model electronic health record formats for children enrolled in Medicaid's SCHIP program. Upon enactment, President Obama referred to the legislation as the first step toward universal healthcare coverage.

HIMSS Activities: HIMSS provided updates on the background and status of H.R. 2 and its relevance to HIMSS members.

- 2. Passage of the ARRA:** On February 17, 2009, President Barack Obama signed into law the [American Recovery and Reinvestment Act of 2009, H.R. 1](#). The Act aims to stimulate the economy through investments in infrastructure, unemployment benefits, transportation, education, and healthcare. Among many things, the legislation codifies the Office of the National Coordinator for Health IT (ONC) and establishes two federal advisory committees (HIT Standards and HIT Policy Committees) to make recommendations to the National Coordinator relating to the implementation of a nationwide health IT infrastructure, establishment of standards, implementation specifications, and certification criteria for the electronic exchange and use of health information. The legislation also includes more than \$30 billion to aid in the development of a robust IT infrastructure for healthcare and to assist providers and other entities adopt and use health IT. The legislation authorizes and appropriates \$2 billion for the Office of the National Coordinator to carry-out its day-to-day activities and provide for grants as established through ARRA in order to assist providers in the adoption and utilization of health IT, to improve and establish education and training initiatives, and to foster health information exchange.

HIMSS Activities: HIMSS was actively engaged in sharing its [2008 Call for Action](#) recommendations with key stakeholders involved in Congressional deliberations surrounding economic stimulus legislation. HIMSS engaged in meetings with Congressional Offices, providing first hand knowledge and expertise on health IT policy, and also contributed to the dialogue through letters to key Congressional leadership that preside over powerful House and Senate Committees. Many of HIMSS' recommendations for economic stimulus legislation were captured in the ARRA, such as the need for strong federal leadership for health IT and leveraging federal health programs to drive the use of health IT among providers.

In an effort to help educate HIMSS members on the policy and industry ramifications of the ARRA, HIMSS established a [website](#) entirely for materials

and resources concerning the ARRA. Today, the site includes information concerning the latest developments on health IT regulations established in the ARRA. HIMSS continues to provide educational opportunities at its Annual Conferences and Exhibitions, regional conferences, and webinars.

- 3. Passage of the Omnibus Appropriations Act of 2009:** In March, Congress passed the Omnibus Appropriations Act of 2009, H.R. 1105. Because Congress had not completed work on nine appropriations bills for 2009, this legislation includes funding for a collection of federal programs, including healthcare, education, and the environment. The Omnibus Appropriations Act of 2009 makes available \$61,231,000 for the Office of the National Coordinator for Health IT (ONC) to apply to such areas as grants, contracts, and cooperative agreements for the development and advancement of interoperable health IT.

HIMSS Activities: Throughout March 2009, HIMSS provided members updates on the background and status of H.R. 1105. After passage of the legislation, Congress immediately began addressing the budget for fiscal year 2010.

- 4. Healthcare Reform Deliberations:** After passage of the ARRA, Congress hit the ground running to develop healthcare reform legislation. Throughout the year, Democrats were continually challenged in meeting their goals to pass healthcare reform legislation, with the first goal being passage by the August Recess and then hopes to pass legislation by the end of the year. After numerous policy proposals, Committee hearings, and Party negotiations, Democratic leadership in both [houses passed healthcare reform legislation](#), but did not succeed in passing a final bill.

In November 2009, the House passed H.R. 3962, the Affordable Health Care for America Act, on a slim margin of 220 – 215. Among many things, the legislation would establish a public health insurance option and a national health insurance exchange through which low-income individuals and small businesses could purchase healthcare coverage. On Christmas Eve, the Senate passed H.R. 3590, the Patient Protection and Affordable Health Care Act, on a vote of 60-39. Unlike the House bill, the Senate bill does not include a public health insurance option and would establish state-based health insurance exchanges. While both pieces of legislation include provisions that aim to leverage health IT to improve cost, quality, and access to healthcare, the bills do not include identical health IT related provisions. For example, unlike the House bill, the Senate bill directs the Secretary to establish standards to enable the electronic exchange of health information among long-term care facilities. And unlike the Senate bill, the House bill addresses such areas as opportunities for health IT among Indian organizations and the establishment of an Assistant Secretary for Health Information. A provision included in both bills is the requirement for the Secretary of the Department of Health and Human Services (HHS) to adopt standards to determine an individual's eligibility and fiduciary responsibility in regard to insurance coverage. Upon the beginning of January 2010, Democratic leadership continued to develop and pass a final healthcare reform bill.

HIMSS Activities: Since 2008, HIMSS has been actively engaged in addressing health IT's role in healthcare reform. After release of the [2008 Call for Action](#) report and enactment of the ARRA, HIMSS formed the Healthcare Reform Committee, chaired by Board Vice Chair Liz Johnson, to examine health IT's role in healthcare reform and provide recommendations for leveraging health IT in transforming healthcare. The Committee aimed to address current policy proposals and build upon HIMSS' 2008 recommendations for healthcare reform. From February – April, and in the months going forward, HIMSS engaged in informational meetings with Congress and the Administration concerning the role for health IT in healthcare reform. In November 2009, HIMSS sent a [letter](#) to Congressional Leaders that detailed additional opportunities for health IT in healthcare reform. Also in 2009, HIMSS launched the [Healthcare Reform Website](#), which includes analyses and legislative text of healthcare reform legislation. And, in an effort to keep HIMSS members updated on healthcare reform deliberations in Washington, DC, HIMSS began publishing a weekly [Healthcare Reform Updates](#).

In the months ahead, HIMSS will continue to share information and knowledge with the Administration and Congress concerning healthcare reform, and provide an opportunity for members to engage in the dialogue.

- 5. Passage of the Fiscal Year 2010 Budget Resolution:** In April 2009, Congress passed the [FY10 Budget Resolution](#), budget guidance for the appropriations process that totals nearly \$3.4 trillion and includes a deficit-neutral reserve fund for healthcare reform. The deficit neutral reserve fund for healthcare reform is intended to prevent healthcare reform initiatives from adversely impacting the federal deficit or potential future budget surpluses.

HIMSS Activities: Throughout April 2009, HIMSS closely tracked this activity and provided member updates on the background and status of the Congressional Budget Resolution for FY10.

- 6. Passage of the FY2010 Omnibus Appropriations Bill:** In December 2009, Congress passed the Fiscal Year 2010 Omnibus Appropriations bill. The legislation includes 6 of the 12 annual appropriations bills and totals over \$1 trillion. Included in the bill is \$61,342,000 for the Office of the National Coordinator (ONC).

HIMSS Activities: Throughout December 2009, HIMSS closely tracked this activity and provided member updates concerning the legislation.

- 7. Introduction of Health IT Legislation:** Throughout 2009, Congress introduced more than a [dozen pieces of health IT related legislation](#). This level of activity represents the bi-partisan appreciation and interest in the promise that health IT holds in transforming healthcare in the U.S. A listing of noteworthy legislation is as follows:

- a. S. 179, the Health Information Technology Act of 2009. Introduced on January 8, 2009 by Senator Debbie Stabenow (D-MI), this legislation would establish a grant program to improve quality in healthcare and patient safety. The legislation currently resides within the Senate Finance Committee.
- b. S. 890, the Health IT Public Utility Act of 2009. Introduced by Senator Jay Rockefeller (D-WV) on April 23, 2009, this legislation aims to increase nationwide adoption of electronic health records, particularly among small, rural providers. The legislation would build upon the use of “open source” electronic health records by the Department of Veterans Affairs as well as the “open source exchange model,” which was recently expanded among federal agencies through the Nationwide Health Information Network-Connect initiative. The Legislation currently resides within the Senate Health, Education, Labor, and Pensions (HELP) Committee. Representative Marcia Fudge (D-OH) introduced companion legislation in the House on July 8, 2009; H.R. 3124 currently resides within the House Energy and Commerce, the House Veterans Affairs, and the Natural Resources Committees.
- c. H.R. 2068, the Medicare Telehealth Enhancement Act of 2009. Introduced by Representative Mike Thompson (D-CA) on April 23, 2009, the legislation aims to improve the provision of telehealth services under the Medicare Program and provide grants for the development of telehealth networks. Among many things, the legislation would require reimbursement for telehealth services regardless of geographic area and for use of telecommunications systems in home health visits. The legislation currently resides within the House Energy and Commerce and the Ways and Means Committees.
- d. H.R. 3014, the Small Business Health Information Technology Financing Act. Introduced by Representative Kathy Dahlkemper (D-PA) on June 24, 2009, the legislation would create a new loan program within the Small Business Administration (SBA) to enhance the agency’s existing array of business loan programs. Specifically, the program would guarantee loans of up to \$350,000 for small business health professionals and \$2,000,000 for group practices. The House passed this legislation in November 2009, and also included the language in H.R. 3854, the Small Business Financing and Investment Act of 2009, which also passed the House in November. Companion legislation to H.R. 3014, S. 2765, was introduced by Senator John Kerry (D-MA). S. 2765 currently resides within the Senate Small Business and Entrepreneurship Committee.
- e. H.R. 3987, the Expanding Access to Health Information Technology Act. Introduced on November 3, 2009 by Representative Roy Blunt (R-MO), this legislation would amend the Social Security Act (SSA) to establish safe harbors to exclude health IT from the civil and criminal penalties associated with the Anti-kickback law. The legislation would also amend the SSA in relation to the Stark law by establishing a new exception for health IT. The legislation defines health IT as: hardware, software, license,

right, intellectual property, equipment, or other IT (including new versions, upgrades, and connectivity) designed or provided primarily for the electronic creation, maintenance, or exchange of health information to better coordinate care or improve healthcare quality, efficiency, or research. Amendments to the SSA would take effect 120 days after enactment of the law. The legislation currently resides within the House Energy and Commerce and Ways and Means Committees.

- f. H.R. 4216, the Personal Health Records Act of 2009. Introduced by Representative Patrick Kennedy on December 7, 2009, the legislation would expand the definition of a meaningful EHR user under ARRA, adding the requirement for eligible providers to demonstrate the use of personal health records (PHRs). The legislation currently resides within the House Energy and Commerce and Ways and Means Committees.

HIMSS Comments

HIMSS will continue to conduct educational efforts concerning health IT policy in the Second Session of the 111th Congress (2010). HIMSS members are encouraged to access the [Legislative Action Center](#) and the [Healthcare Reform](#) and the [Meaningful Use, Certification Standards and Criteria, and HHS Certification Process](#) Websites for additional policy resources. For more information on content included in this document and on HIMSS advocacy and public policy activities, please contact the HIMSS Government Relations Team at advocacy@himss.org.