ARRA Opportunities and Omissions: New Legislation Seeks to Jumpstart Health IT, but Issues Remain

by **Don Asmonga**, MBA

AHIMA has worked with Congress for several years on passing health IT legislation that would help reduce medical errors, improve healthcare quality, increase administrative efficiencies, and provide a secure and private environment for the electronic exchange of health information. With the president's signing of the American Recovery and Reinvestment Act of 2009 (ARRA) on February 17, the US took a major step forward on a number of these goals.

ARRA includes many important health IT initiatives, but AHIMA believes that several matters need additional attention and others still need to be addressed.

Investing in Health IT, Permanently Establishing ONC

ARRA broadly aims to preserve and create jobs and promote economic recovery. Health IT is a core focus of the legislation. The bill provides $19 billion for health IT: $17 billion for Medicare and Medicaid incentives, and $2 billion for the Office of the National Coordinator for Health Information Technology (ONC).

ARRA includes the statutory authorization of ONC, which was created in 2004 via an executive order from President Bush. The statutory authorization makes ONC a permanent office under the Department of Health and Human Services (HHS). Its charge is to help develop a national health IT infrastructure.

The $2 billion provided to ONC dwarfs the $60 million plus it has received in HHS annual appropriations over the past several years. The funding is allotted to several purposes.

First, $20 million will be provided to the National Institute of Standards and Technology for advancing healthcare information enterprise integration through technical standards analysis and establishment of conformance testing infrastructure; that is, the testing of standards. These activities will be coordinated with ONC.

Second, $300 million will be directed to support regional or subnational efforts toward health information exchange.

The remaining funds will go to the immediate implementation assistance to support:

- Health IT architecture
- Development and adoption of certified electronic health records (EHRs) for categories of healthcare providers not eligible for support under title XVIII or XIX of the Social Security Administration for the adoption of such records
- Training on best practices to integrate health IT
- Infrastructure and tools for the promotion of telemedicine
- Promotion of the interoperability of clinical data repositories or registries
- Promotion of technologies and best practices
- Improvement and expansion of the use of health IT by public health departments

For additional information on ONC's responsibilities and requirements, review AHIMA's analysis of ARRA at www.ahima.org/dc.

Medicare and Medicaid Incentives

The $17 billion for Medicare and Medicaid incentives will be meted out through a carrot and stick approach.

The incentives are provided for "meaningful" users of EHRs. A meaningful user includes providers who:

- Use electronic prescribing
- Exchange information through standards-based technology
- Report clinical quality measures using certified EHR technology

Further detail will come in the final regulations. The HHS secretary may devise more stringent measures to improve EHR use over time.

An eligible professional can receive $44,000 in incentives over five years beginning in 2011. Eligible professionals who do not become meaningful EHR users will be penalized through reduced Medicare reimbursements. For 2015, providers will receive 99 percent of full Medicare reimbursement; 98 percent for 2016; and 97 percent for 2017 and beyond.

The HHS secretary can decrease payments an additional percentage point if meaningful users are less than 75 percent compliant for 2018 and beyond. The payment rate cannot drop below 95 percent of the fee schedule. The law does allow the secretary to establish hardship exceptions.

Expanding the HIM Work Force

Education was one of AHIMA's primary focus areas in ARRA discussions with congressional staff. While education and training initiatives are sprinkled throughout this legislation, the health IT provisions include much of the education and training programs. One of those provisions specifically draws from the 10,000 Trained by 2010 Act as introduced by Representative David Wu (D-OR) and supported by AHIMA and the American Medical Informatics Association.

Section 3016 of ARRA, titled "Information Technology Professionals in Healthcare," directs the secretary of HHS and the director of the National Science Foundation to provide assistance to institutions of higher education to expand or establish medical health informatics education programs, including certification, undergraduate, and masters' degree programs for both healthcare and information technology students. Funds provided under this section can be used for:

- Developing and revising curricula
- Recruiting and retaining students
- Acquiring necessary equipment for student instruction, including installation of testbed networks
- Establishing or enhancing bridge programs in health informatics programs between community colleges and universities

Existing education and training programs designed to be completed in less than six months will be given priority.

The HIM profession can benefit from this section in a number of ways, including assistance for the development of accredited programs, certificate programs, faculty retention, student recruitment, and more.

ARRA requires ONC to report on the resources required for health IT promotion. Obviously, a well-educated and qualified work force is an important requirement, including education programs in medical informatics and HIM.

Further education-aiding language includes:

- A demonstration program to integrate IT into clinical education in graduate health professions schools.
- The Broadband Opportunities Grant Program, which provides broadband training, access, awareness, and training to schools, libraries, medical and healthcare providers, community colleges, and other institutions of higher education. ARRA allocates $4.7 billion overall for no less than one grant per state.
- $500 million in funding for the Health Resources Services Administration to address health professions work force shortages through scholarships, loan repayment, and grants to training programs for equipment.

More Work Needed

It would seem that ARRA solves our health IT challenges. However, four primary areas in health data and health IT require further attention. AHIMA members and staff discussed these issues with congressional staff during AHIMA's Hill Day in March.

Improved Quality of Health Data—Terminologies and Classifications

AHIMA is calling for Congress to approve and support a public-private national authority to be responsible for ensuring:

- Robust and up-to-date terminologies and classifications
- Standard guidelines for developing terminologies and classifications in EHRs and personal health records
- Effective, responsible participation in international terminology and classification standard setting

AHIMA recommends that Congress initiate a feasibility study for such a public-private national authority. The entity must have a relationship with the Health IT Policy Committee recently approved under HHS by Congress.

Through this organization, the US can formally adopt and implement SNOMED CT as the standard clinical reference terminology for the US to facilitate health information exchange. The National Library of Medicine should also develop and make available robust maps from SNOMED CT to ICD-10-CM/PCS to maximize the value of the clinical data and the benefits of electronic health record systems once ICD-10 code sets, rules, and guidelines are implemented.

AHIMA also calls for federally sponsored research to demonstrate SNOMED CT use cases and means in which implementation of SNOMED CT can be accelerated.

Health Information Exchange

AHIMA's HIE focus remains on the need for timely updating of HIPAA to allow for periodic upgrading of standards. The process for upgrading HIPAA-related standards can take up to seven years. This process has delayed the US's ability to upgrade its current HIPAA administrative transactions until 2012, the first time it has done so in nine years.

Congress should take up language similar to that introduced by the previous Congress in the Promoting Health Information Technology Act of 2008 and the Critical Access to Health Information Technology Act of 2007 (HR 6179 and S 628). This language would allow the healthcare industry to upgrade its electronic standards as needed, similar to other US industries.

It is also imperative to reduce barriers to the exchange of health information across state lines. Congress should consider preemptive laws to overcome these obstacles or support state efforts to harmonize laws associated with health information exchange.

HIM Work Force

The need to reauthorize Title VII of the Public Health Service Act is long overdue. Reauthorizing these programs would:

- Enable a greater focus on the health professions and various education and training grants
- Provide funding and programs under the Health Resources Services Administration, specifically for allied health education
- Provide funding for the development and use of EHR education laboratories

In addition, AHIMA is advocating for Congress to authorize the Department of Labor to incorporate appropriate identification of HIM professionals so that the industry has the ability to identify shortages.

Currently the Department of Labor categorizes HIM professionals under the "Management" category, which misrepresents the roles and activities in the profession.

Confidentiality, Privacy, and Security

ARRA addresses a number of privacy and security issues that arose since the enactment of the HIPAA privacy and security rules. There are additional issues creating confusing circumstances, and AHIMA believes that Congress should:

- Address discrepancies (legal or technical) that may arise from ARRA that could impede the nation's goals for achieving a standard EHR and HIE or result in gaps in appropriate privacy protections with key stakeholders

- Develop legislation to ensure uniform, consistent, nationwide privacy laws and regulations to eliminate disparate laws that can result in errors, confusion, significant administrative costs or inappropriately lessen the privacy protections surrounding personal health information

For more information on ARRA's privacy and security issues, see the feature story "Recovery and Privacy".

As ARRA is implemented and ONC and other bodies move forward with their health IT initiatives, AHIMA will continue to make its positions known and advocate on behalf of HIM professionals. AHIMA's analysis of the law is available online at www.ahima.org/dc.

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