

# Hectic Year on the Hill: The Healthcare Legislative Actions and Achievements of 2009

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By Don Asmonga, MBA

In order to understand what Congress accomplished in 2009, one needs to examine the 2008 election results. The results favored the Democrats as they gained the presidency, a super majority (60 votes) in the Senate, and an increase in their majority in the House. This advantage gave the Democrats control over the legislative agenda in the 111th Congress.

Why are these Democratic advances so critical? In the Senate, activity proceeds on “unanimous consent,” meaning that legislation can be considered only when 60 votes are achieved. In the 111th Congress, the Democrats were able to achieve the 60-vote threshold, enabling them to move forward on items like healthcare reform.

The Senate was evenly divided during the 110th Congress, with 49 Democrats, 49 Republicans, and two Independents who sat with the Democrats, effectively giving the Democrats a two-vote majority. The Democrats gained eight seats in the 2008 elections, providing them with a 57–41 majority. They also retained the two Independents, increasing their majority to 59–41, one vote shy of the critical super majority that would provide them the ability to break filibusters.

On April 30, 2009, Senator Arlen Specter of Pennsylvania switched parties, giving Senate Democrats a super majority. Additionally, with the Democrats holding the White House, Vice President Joseph Biden could break any Senate ties.

The super majority lasted for nearly nine months and was halted when Massachusetts elected Republican Scott Brown to replace the late Senator Edward M. Kennedy (D-MA).

The House is not so complicated. In the 110th Congress, the Democrats held a majority of 31 votes-233 to 202. With the 2008 elections, the Democrats gained 24 seats. This 79-seat advantage is substantial and enables the Democrats to essentially do what they want in the House.

The last time there was such a large advantage was during the 103rd Congress (1993–1995) when the Democrats held a 258–176 advantage under the leadership of Rep. Thomas P. “Tip” O’Neill, Jr., speaker of the House.

## The Democratic Healthcare Agenda

This majority cleared obstacles for the Democrats. Long-favored items like healthcare reform and climate change were on a short list of initiatives.

In addition, the country was in the midst of a recession, which was compounded by the troubles facing financial institutions and employers like the Big Three automakers. These issues prompted the development of an economic stimulus bill, financial reform, and other economically focused legislation.

The year began and ended with a focus on major legislation that would impact HIM and health IT issues long sought by AHIMA. The American Recovery and Reinvestment Act of 2009 (ARRA), containing the Health Information Technology for Economic and Clinical Health (HITECH) Act, was the first major legislation to be enacted in 2009.

The year closed with Senate passage of the Patient Protection and Affordable Care Act (HR 3590) on Christmas Eve. The House passed its version of healthcare reform (HR 3962) on November 7, 2009.

Additional legislation considered and passed in 2009 included:

- HR 3763, which was passed by the House and would exclude small practices, including healthcare practices, with 20 people or fewer from the requirements of the Red Flags Rule. AHIMA opposes this legislation.
- Small Business Healthcare Information Technology Financing Act (HR 3014), which was passed by the House. AHIMA supports this legislation.
- Small Business Financing and Investment Act (HR 3854), which was passed by the House. AHIMA supports this legislation.

For more on this legislation or any other legislation where AHIMA has an interest, visit the Action Center of the Advocacy Assistant at [www.ahima.org/DC](http://www.ahima.org/DC).

## **Stimulus: ARRA and HITECH**

AHIMA was involved in the development of many of the health IT provisions included in ARRA and HITECH. As this legislation was being developed, AHIMA focused on two primary areas: workforce and regional extension centers.

AHIMA's workforce effort helped include legislative language from the 10,000 Trained by 2010 Act (HR 461) as introduced by Representative David Wu (D-OR). AHIMA and the American Medical Informatics Association worked with Wu for several years on this legislation.

HITECH also required that the national coordinator for health information technology report on the "resources needed to establish a health information technology workforce sufficient to support this effort (including education programs in medical informatics and health information management)."

The regional extension center effort arose out of AHIMA's support for legislation introduced by Senator Sheldon Whitehouse (D-RI). ARRA created the regional extension centers to provide technical assistance and disseminate best practices and other information learned from the National HIT Resource Center to accelerate efforts to adopt and implement health IT.

The centers will be affiliated with any US-based, nonprofit institution or organization that applies and is awarded financial assistance. The objective is to promote the adoption of health IT and provide health IT education to regional healthcare providers, placing a strong local focus on training and education. Who better to be involved with such objectives at the local level than HIM professionals?

AHIMA also supported the effort to statutorily create the Office of the National Coordinator for Health Information Technology (ONC) within the Department of Health and Human Services (HHS).

ARRA also brought us a range of other issues and benefits including:

- \$2 billion for ONC to carry out its duties under HITECH
- A health IT Medicare and Medicaid incentive plan that would require "meaningful use" of electronic health records and health IT
- An incentive plan for hospitals that requires hospitals to show that they are "meaningful users"
- The new position of chief privacy officer within ONC
- A \$2.5-billion broadband expansion program under the Department of Agriculture and a \$4.7-billion broadband appropriation program under the National Telecommunications and Information Administration
- \$85 million for health IT activities at the Indian Health Service
- Health Resources and Services Administration funding that included \$500 million for grants to health centers, \$1.5 billion for health IT centers, and \$500 million to address health professions workforce shortages
- Creation of the Health IT Policy Committee and Health IT Standards Committee to coordinate a range of activities with ONC
- Establishment of the Health IT Resource Center to provide technical assistance and develop or recognize best practices to support and accelerate efforts to adopt, implement, and effectively use health IT
- State grants to promote health IT
- New privacy and security requirements, including breach notification provisions, extension of the HIPAA privacy and security rules to business associates, HHS regional privacy officers and an education initiative, expanded accounting of disclosure requirements, protections for personal health records, and more

One AHIMA issue that was not addressed was streamlining the HIPAA standards development, updating, and adoption process. The healthcare reform bill emerged as the perfect vehicle for this issue.

Both House (HR 3962) and Senate (HR 3590) bills address this issue, with some minor differences. As the healthcare reform debate continues to unfold, AHIMA is asking the primary House and Senate legislators to ensure that the final bill includes the Senate administrative simplification language. This language does a better job of streamlining the process and establishing operating rules for the HIPAA transaction standards.

## Healthcare Fatigue in 2010?

With so much Congressional focus on healthcare, it is likely that there will be some healthcare fatigue in 2010. It is doubtful that any major healthcare reform legislation will navigate its way through Congress this year. This will not prohibit AHIMA from continuing to press for what it feels Congress needs to address.

Workforce and terminologies and classifications are certainly still on the table. AHIMA may also need to address potential fixes to problematic elements in ARRA or healthcare reform.

What 2010 will bring is somewhat uncertain, but AHIMA will be working with Congress to ensure they understand the important matters facing HIM professionals.

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