

Double-Edged Sword

When It Comes to ARRA, the Devil is in the Details

Has the worst of times for the U.S. economy produced the best of times for health IT? The American Recovery and Reinvestment Act of 2009 (ARRA) authorizes more than \$19 billion for health IT. Several billions more should flow to information infrastructure through funding designated for Medicaid, health benefits for unemployed workers, NIH research, community health centers and comparative effectiveness studies. After years of negligible federal funding, what luck!

If this windfall seems too good to be true, it probably is. Elation will yield to disappointment as attention shifts from passage of the law to the reality of implementation. The law is unquestionably an overdue step in the right direction, but the devil in some of its ultimate details could be scary. (For what it's worth, the House and Senate approved their respective bills on Friday the 13th and funded HIT under Title XIII!)

With early awareness of the law's flaws, industry leaders must make sure that health IT's contributions to the future of healthcare are not diminished by dysfunctional politics. In particular, a realistic awareness of the looming difficulties should lead sooner rather than later to technical corrections and amendments that remove roadblocks before they get in the way of the law's laudable intent. The health IT component of the economic stimulus package will produce some unpleasant surprises if implementation follows the letter of the original law.

HASTE MAKES WASTE

The ARRA was put together in a hurry. It is not the result of thoughtful deliberation. Very different House and Senate versions of the recovery plan were reconciled into a single bill over the 2009 President's Day weekend. Many last-minute deals were made to resolve multi-billion dollar discrepancies in authorizations for key sections of the law, including health IT. For example, \$80 billion was tentatively designated for health IT a week before the conference bill passed both chambers—almost enough money to cover the estimated costs of bringing medical informatics into the 21st century.

Removal of \$60+ billion of proposed health IT funding in the final days is not the only disappointment that healthcare providers will find in ARRA. Congressional staff members worked around the clock over the three-day weekend to put conference committee members' summaries of verbal agreements into the final 407-page law. Members of Congress

then voted on the bill before any of them could have possibly had the time to read it. Consequently, the resulting law signed by the President has many surprising provisions, such as requiring that physicians who accept ARRA funds must make their telephone numbers and e-mail addresses available to the public. This condition, along with privacy and security requirements and exclusion of hospital-based physicians, will surely reduce the law's impact. Many providers will not be willing to take the funds with unacceptable strings attached.

ARRA's biggest surprises—and ultimately its biggest problems—are yet to be determined. Congress delegated extensive power to the administration by authorizing the Secretary of Health and Human Services (HHS) to promulgate regulations for disbursing health IT appropriations. The final rules for disbursement will emerge from intensely political procedures that will not necessarily reflect congressional intent. The process will be like the party game where a message is whispered from one player to another. The version that emerges at the end of the line (the regulations) bears little resemblance to the original (the law).

For example, stimulus funds can only be awarded to “meaningful” users of “certified” information technology. Congress provided general guidelines to define “meaningful” and “certified,” but the final definitions may be so restrictive or onerous that providers will be unable or unwilling to take the money when it becomes available. Given the vagaries of

the process for promulgating regulations, no hospital or physician can be sure that health IT platforms installed in 2009 and 2010 will qualify for the first round of funding in 2011.

EXPECT DELAYS

Whether the regulations will be finalized by 2011 is yet another question. Legal challenges and bureaucratic procedures can almost certainly be expected to delay implementation of ARRA's Title XIII. Legislative deadlines for putting regulations into effect are missed much more often than not in politically gridlocked Washington. Even if a provider were willing to bet that today's investment in health IT will ultimately meet the criteria of "meaningful" and "certified," chances are a lot less than 100 percent that the funds will be disbursed according to the ARRA timetable. Lenders will charge a premium for this uncertainty—if they are making loans.

Implementation could be prolonged even more than usual by the staggering sum (\$2 billion) that the stimulus law authorizes the HHS Secretary to spend on conducting studies, creating regula-

tory bodies and even developing health IT systems. The temptation to spend all this money will be irresistible, but HHS does not have the capacity to do it. Given the delay in appointing a Secretary and forming a senior staff, HHS will be very late in getting started. Obviously, a two-year process is not going to be finished in 2011 if it isn't fully operational until 2010—a real possibility.

PREPARING FOR THE REAL WAR

The stimulus law is a major victory for health IT, but winning a battle is not the same as winning a war. Implementing ARRA is going to be an uphill fight. The bigger and more immediate challenge is the growing federal war on costs of healthcare. The same Congress that authorized nearly \$20 billion for health IT starting in two years is proposing to reduce Medicare and Medicaid payments by several times that amount, starting next year. What the left hand is giving, the right hand is taking away... and more.

Hospitals and physicians are under intense and unprecedented pressure to immediately cut costs and improve qual-

ity. Providers cannot afford inaction while waiting for stimulus funds in the future. Health IT leaders are needed more than ever to promote performance improve-

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ment and clinical transformation—the activities that will decide whether their organizations are still in business when Title XIII dollars are available. In the process of implementing new and better ways of doing business, health IT leaders need to show how digital transformation is an essential key to success. The paper trail simply cannot take healthcare where it must now go. **JHIM**

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