What is the HITECH Act?

The Health Information Technology for Economic and Clinical Health Act (HITECH) is a provision within the American Recovery and Reinvestment Act (ARRA). HITECH looks to involve states in order to greatly expand the use of electronic health records and health information exchange with the long-term goal of improving the quality and coordination of patient care. The act develops a framework for states to administer and fund various financial incentives and education and training opportunities.

What are state roles under HITECH?

Under HITECH, states are expected to be at the forefront in implementing HIE. There are many opportunities for states.

One responsibility is managing state-level implementation. The federal government is providing grants to states or designated entities that submit a plan to promote and implement HIE throughout the state, with the plan needing approval from the Department of Health and Human Services. In general, the plan should increase use of and lower barriers for HIEs; support infrastructure for inter- and intrastate exchange; use electronic health information to promote quality measures; encourage providers to work with Regional Extension Centers; and provide EHR resources to underserved communities. In addition to this, HHS is making funds available to states to set up loan programs for EHR technology purchases and upgrades. HHS expects states to use these funds to make competitive, guaranteed loans to providers so they can buy new equipment and train staff on its use.

A second important role for states under HITECH is to administer the Medicaid payment incentive program. In this program, HHS is making funds available to providers who have a specified percentage of patients enrolled in Medicaid (30 percent for physicians, 10 percent for hospitals.) Eligible providers can receive up to $63,750 over the six-year period laid out in HITECH. States will be in charge of distributing
the payments, and HHS will reimburse states for 90 percent of their costs for administering these payments. To make this happen, states will have designate a centralized HIT authority to coordinate implementation across agencies and stakeholders, including hospitals, physicians, pharmacies, insurers, employers and state and local agencies. States will need to create forums where these stakeholders can communicate with each other and helping to plan the state’s final HIT strategy.

The Office of the National Coordinator for HIT will post the recipients of these grants as they are announced at this website.

What kinds of legislative initiatives have states undertaken around HITECH?

HITECH requires states to have a state-wide leadership structure in place to manage health IT implementation. This entity will coordinate implementation between public programs such as Medicaid and CHIP as well as the private sector, oversee distribution of HITECH funds, and work with various stakeholders to ensure operation of the exchange. So far, at least 21 states have acted legislatively to establish this leadership. For example, Connecticut enacted SB 782 in 2009, which authorized the Legislature in conjunction with Executive branch officials to appoint a single entity to serve as the state’s coordinator for all HIE organization in the state. Another example is SB 196 out of Colorado, which created a health IT advisory committee to study and make recommendations all aspects of HIT and requires the committee to pursue interstate compacts for information exchange with other states in the region.

Other states have passed legislation to develop funding streams for HIT initiatives in order to draw down federal matching funds. In 2008, Vermont levied a 0.199 percent fee on all health insurer claims, with revenue serving as a dedicated revenue source for HIT initiatives. In the 2010 session, Maine is considering a $10,000,000 bond initiative to raise funds for providers to help adopt EHRs. The text of these bills and any related legislation can be found at NCSL’s health IT database, which is available here.

Do states have to change or amend privacy laws to make HIE work?

Other legislative actions have focused on privacy and security issues. Some states have found that their existing privacy laws are not up to date with the digital age and may impede adoption of HIE. Many states have proposed studies to examine the current digital privacy landscape. Currently, 42 states and territories are members of the Health Information Security and Privacy Collaboration (HISPC). Through the collaborative, participating states come together to address the privacy and security concerns of multi-state information exchanges. Recently, the collaborative issued a series of compendiums of state laws that regulate sharing of health records, test results, e-prescribing, and patient access to their own records, identifying barriers to sharing of information and proposing solutions. The reports are available here. Some examples of barriers to health information exchange include dealing with sensitive topics such as HIV, addiction and mental health, where some tests have heightened legal restrictions making sharing of information difficult, especially if tests have to cross state lines. Another example is many states have laws which limit access to test results only to the provider who ordered the test, thereby denying access to the patient and to outside specialists. Some proposed solutions include developing model state legislation and interstate compacts and revisiting hospital licensing laws, which often contain the standards for sharing lab results.
Some states have acted individually to assess their privacy landscape. One example was in 2009, where the California Legislature ordered a statewide evaluation of California privacy laws and how they may conflict with or support federal laws under HIPAA and HITECH. The law requires a final report by April 1, 2010. Also in 2009, Florida enacted a new law that redefines certain health laws. For example, the law allows laboratories to disclose test results to any health care provider who is involved in the care of that patient, even if the provider did not order the test. The law also requires the Agency for Health Care Administration to develop a universal patient authorization form to govern release of patient health information.

The HITECH Act also makes changes to the Health Insurance Portability and Accountability Act in relation to digital records. The new rules allow state attorneys general the authority to enforce HIPAA. Specifically, the law allows AGs can bring about civil lawsuits in federal court on behalf of state residents who may be adversely affected by HIPAA violations. HITECH also established a federal breach notification law, requiring patients to be notified of any breaches in their personal health information. Some states already have their own breach notification laws, which may require a second look to see if they comply with the federal rules.

**What is ‘meaningful use’?**

In order to qualify for federal incentive payments, healthcare providers must show “meaningful use” of electronic health records. Right before the end of 2009, HHS released its proposed rule defining meaningful use, describing what is expected of health care providers in terms of upgrading and implementing their HIT systems in order to qualify for federal incentive grants under the HITECH Act. Under the proposed rule, meaningful use would evolve over three stages. The first would involve electronically capturing and coding health data. The second would use HIT to facilitate quality improvement. The third stage would involve further use of HIT for quality improvement and to provide patients with access to self-management tools. The rule focuses on defining rules for stage 1, with rules for stages 2 and 3 coming at a later date.

Among the criteria used to define meaningful use in Stage 1 are:

- Provide access to comprehensive patient health data for patient’s healthcare team;
- Use evidence-based order sets and computerized provider order entry (CPOE);
- Apply clinical decision support at the point of care;
- Generate lists of patients who need care and use them to reach out to those patients.
- Report information for quality improvement and public reporting;
- Implement drug-drug, drug-allergy, drug-formulary checks;
- Generate and transmit permissible prescriptions electronically;
- Record the following demographics: preferred language, insurance type, gender, race and ethnicity, and date of birth;
- Provide Patients with electronic copy of their health information upon request.

In the first year of payment, providers must meet these defined goals for a period of at least 90 consecutive days. The first year of payment was originally slated to be fiscal year 2011, but may change in response to public comments. In subsequent years, providers are expected to have these requirements in place year round. These rules will determine whether providers receive Medicaid and Medicare subsidies for their implementation of EHR’s. Beginning in 2011, these providers are eligible to receive up to $44,000 over five years under Medicare and up to $66,000 over five years through Medicaid. A provider is eligible under Medicare or Medicaid if they meet certain patient volume thresholds.
HHS also issued a second IFR that sets initial standards, implementation criteria and certification criteria for EHR technology. The intent of these criteria is to standardize how health data will be exchanged among different organizations. These criteria will also help providers ensure that their use of electronic health records measures up to the meaningful use requirements. Among the criteria for a complete EHR:

• Use Computerized Provider Order Entry (CPOE), which allow providers to store information such as medications, test results and provider referrals;
• Implement drug-drug, drug-allergy, drug-formulary checks;
• Generate and transmit permissible prescriptions electronically;
• Record demographics;
• Record and chart changes in vital signs;
• Report quality measures to CMS or the States;
• Send electronic patient reminders;
• Check insurance eligibility and submit claims electronically;

Where can I learn more about HITECH?

The Office of the National Coordinator for Health Information technology within the Department of Health and Human Services has regular updates about HITECH, new rules, and funding (http://healthit.hhs.gov/portal/server.pt?open=512&objID=1200&mode=2).

The National Conference of State Legislatures’ Health Information Technology Champions (HITCh) project has various resources for legislators and legislative staff on health information technology in general. These resources are available at http://www.ncsl.org/Default.aspx?TabID=160&tabs=832,97,326#326.

The State Alliance for E-Health of the National Governors Association also has a number of useful resources for states on HITECH and other aspects of state HIT (http://www.nga.org/portal/site/nga/menuitem.1f41d49be2d3d33eacdbbeeb501010a0/?vgnextoid=5066b5bd2b991110VgnVCM1000001a01010aRCRD).

NCSL Contact: Donna Folkemer
Group Director
National Conference of State Legislatures
(202) 624-8171
donna.folkemer@ncsl.org