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BRIEFLY NOTED

What's in the stimulus for Rhode Island health care?

The prospect of hundreds of millions of new federal dollars sloshing around in the Ocean State this year and next inspires both hope and foreboding. Websites are proliferating locally and nationally to help individuals, families, homeowners, businesses and governments figure out how they can take advantage of the combination of new federal spending (\$543 billion, \$1.1 billion of which is said to be heading for Rhode Island) and tax relief (\$244 billion), for a total of \$787 billion to reinvigorate the economy.

The largest single chunk of the \$787 billion is the \$87 billion slated to help states close their budget gaps by increasing the federal share of the state/federal Medicaid match by 6.2%. In Rhode Island, that means the federal government will cover over 58.7% of the state's Medicaid program, up from 52.5%. The federal price

tag for that increase to Rhode Island will be approximately \$450 million.

For a while it looked as though Rhode Island might have outsmarted itself by getting an unprecedented "global waiver" from Washington last year in order to perform a radical restructuring of Rhode Island Medicaid. The state's waiver application, which was submitted last August and approved in December, included a cap on Medicaid spending in the Ocean State at about \$12 billion over five years. That cap could have blocked Rhode Island's access to the extra stimulus money for Medicaid. However, Rhode Island's Congressional Delegation appear to have saved the state from that potential catastrophe.

In addition to massive investments for infrastructure (including the infrastructure of health care), the stimulus bill (officially known as the American Recovery and

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The 2009 state legislative session

A preliminary overview

For better or worse, economic slowdowns tend to depress legislative activity at the Rhode Island State House. The more the economy slows and the more daunting the State's own fiscal problems become, the more legislators' thinking is dominated by a limited number of immediate problems, – problems that this year have no easy or painless solutions. The state's crushing budget problems limit possibilities and make the state's future uncertain. As a result, legislators introduce and pass fewer bills.

Which is not to say that Rhode Island's 113 legislators have been idle or unproductive during the early weeks of the current session, which opened January 6, 2009. As of March 15, some 1738 pieces of legislation had been filed (an average of 15 bills per legislator); and although the official

deadline for submitting legislation was mid-February, bills continue to appear, and the count can ultimately top 2000. However, even that substantial number would represent about a 25% drop compared with 2008, when over 2600 bills were introduced, including dozens in the final days of the session.

RIMS' 2009 legislative agenda

As always, therefore, the Medical Society's Public Laws Committee, chaired by Michael E. Migliori, MD, has its hands full. The RIMS Committee is monitoring or has developed positions and priorities on about 65 bills so far this session, including several of RIMS' own legislative initiatives, which were developed last fall in consultation with representatives of the medical specialty societies.

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Reinvestment Act of 2009, or ARRA), also enables congressional Democrats to put national health care reform on a fast track and even to claim (as Senate Finance Committee Chair Max Baucus, D-Montana told the Congressional Quarterly in March) that health care reform “will not add to the deficit. It will be paid for.”

The ARRA stimulus package includes \$17.2 billion to provide incentives to health care providers to adopt and use health information technology (HIT). Another \$1.1 billion is provided for Comparative Effectiveness Research (CER). Lawmakers are counting on HIT and CER to save money in the long run.

\$10 billion of additional funding goes to the National Institutes of Health, which is undoubtedly good news for researchers at the Alpert Medical School of Brown University. \$2 billion is slated for the Office of the National Coordinator for Health Information Technology.

Health information technology and the HITECH Act

The federal stimulus may provide Rhode Island with a significant opportunity to consummate its position as a national leader in the adoption and use of health information technology and health information exchange. One major component of the vast ARRA is the Health Information Technology for Economic and Clinical Health (HITECH) Act, which authorizes some \$36 billion over six years for investment in the nation’s health information infrastructure, including the \$17.2 billion (already mentioned above) earmarked to provide adoption incentives for health professionals and institutions.

Rhode Island is already well positioned as a national leader in the use of electronic medical records and in electronic prescribing, and this should work to the state’s advantage in competing for federal implementation grants. No state can lay a more persuasive claim to having developed a statewide plan for health

information exchange than Rhode Island. (Visit www.currentcareri.com for an overview of the pilot program currently being implemented in the Warwick area.) It will be incumbent upon Rhode Island and other states to develop a functioning infrastructure for Health Information Exchange so that physicians, hospitals and others have an opportunity to earn substantial incentive payments from Medicare and Medicaid. Again, no state is closer having such a functioning, statewide infrastructure than Rhode Island.

Specifically, Medicare incentive payments will flow from CMS (the Centers for Medicare and Medicaid Services, formerly HCFA) through the Medicare contractors (i.e., National Heritage Insurance Company of Hingham, MA, which will be the Part A and B Medicare contractor for Rhode Island starting May 1, 2009) to hospitals, physicians and dentists who make “meaningful use” of electronic health records. Physicians may receive up to \$44,000 in Medicare incentive payments over five years. However, HITECH includes a stick as well as a carrot: physician payments will be reduced by up to \$35,000 per physician if electronic health records are not implemented by 2013 or 2014.

In addition, Medicaid incentive payments will flow from CMS and the states to hospitals, physicians, dentists, nurse practitioners, and Federally Qualified Health Centers that make “meaningful use” of electronic health records. Physicians may receive up to \$75,000 in Medicaid incentive payments over five years.

The definition of “meaningful use” includes: using certified (presumably by CCHIT) technology; e-prescribing; having the electronic record connected to an infrastructure that permits information exchange; submitting certain clinical quality data electronically to Medicare. However, the “meaningful use” definition remains quite ambiguous; for example, the volume of e-prescribing required is unclear, as is the definition of “health information exchange.”

In addition, the Office of the National Coordinator of Health Information Technology (a.k.a. ONC, which is part of HHS) will provide planning grants, implementation grants and loan funds to states and state-designated entities to pass through to health care providers.

Finally, the Department of Health and Human Services and the National Science Foundation will provide educational and research grants to medical schools and graduate schools to promote electronic health records in medical school curricula and medical health informatics education and technology development in graduate schools.

The stated goal of the HITECH Act is that every person in the United States will have an electronic health record by 2014.

Increased privacy protections

HITECH also tightens the privacy and security provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). For example, it extends HIPAA requirements to business associates, including health IT vendors. HITECH also establishes the first national data security breach notification law, which requires providers, health plans and other HIPAA covered entities, as well as health IT vendors, to notify patients, government agencies and the media of un-authorized release of protected health information. (HIPAA currently requires only that covered entities mitigate the damage of improper disclosures.)

HITECH also provides for increased enforcement of HIPAA with greater civil penalties for violations.

It will be necessary for Rhode Island to analyze the Rhode Island Health Information Exchange Act of 2008 in light of the security and privacy provisions of HITECH. ❖