



## Bill Summary

# AMERICAN RECOVERY AND REINVESTMENT BILL OF 2009 (ARRA) Energy & Commerce Provisions on Broadband, Energy, and Health Care

On January 22, 2009, the Energy and Commerce Committee approved the portion of the economic recovery package that is in the jurisdiction of the Committee. The following are detailed summaries on the broadband, energy, and health care provisions.

### Provisions on Broadband

**Broadband Infrastructure.** The broadband package authorizes the National Telecommunications Information Administration (NTIA), a part of the Commerce Department, to distribute \$2.825 billion for wireless and wireline broadband through a grant program.

The proposal aims to be technologically neutral, allowing participation by terrestrial wireless, satellite and wireline providers, subject to aggressive performance requirements and other pro-consumer policy considerations. The provisions allow any "eligible entity," to apply for a grant, including service providers, infrastructure companies or a state or unit of local government.

Approximately \$1 billion would go to the deployment of wireless service — 25% to wireless voice service in unserved areas and 75% to "advanced wireless broadband" in underserved areas.

Approximately \$1.825 billion would go to the deployment of broadband via fiber or other wires — 25% to "basic broadband" in unserved areas and 75% to "advanced broadband" in underserved areas.

**States Will Play a Role in the Program.** Each state planning to participate is required to submit to NTIA a report indicating its geographic regions that are priority areas for broadband deployment.

**Specific Criteria.** In order to receive a grant, applicants must meet criteria enforced by the NTIA, which include minimum speeds and buildout requirements. NTIA must also consider other policy-related objectives, including the impact of the proposed service on public safety, health care delivery systems, education, and computer literacy.

In addition, grant recipients will be required to adhere to open access principles that will maximize the public benefits flowing from the public's investment in broadband infrastructure.

## **Provisions on Energy**

The energy package will accelerate deployment of smart grid technology, provide energy efficiency funds for the nation's schools and hospitals, offer support for the nation's governors and mayors to tackle their energy challenges, and establish a new loan guarantee program to keep renewable energy on track during the economic crisis. The provisions in the bill ensure that existing programs can be scaled up so that funds are invested promptly and effectively.

**Reliable, Efficient Electric Grid:** The legislation will jumpstart smart grid demonstration projects in geographically diverse cities, suburbs, and rural areas. Federal matching grants for smart grid technology will increase from 20% to 50%. Grantees will be required to utilize open internet-based protocols and standards when available and lessons learned during demonstration projects will be available to help others to deploy smart grid infrastructure.

**Renewable Energy Loan Guarantees:** The legislation creates a temporary loan guarantee authority to provide loan guarantees for commercial renewable energy systems and electric power transmission systems that begin construction by September 30, 2011. The Appropriations bill is making available \$8 billion for use by this program. Up to \$500 million can be used for the development of leading edge biofuels that have been demonstrated and have commercial promise.

**Home Weatherization:** Increases the threshold for household eligibility for the Weatherization Assistance Program from 150% to 200% of the federal poverty income levels, and increases the per-home maximum assistance from \$2,500 to \$5,000. Allows the Secretary to encourage states to pursue separate elements of weatherizing eligible homes, such as attic insulation. The Appropriations bill is providing a landmark \$6.2 billion for this program.

**Study of Electric Transmission Congestion:** Requires the Secretary to include an analysis of the transmission issues facing renewable energy in the pending study of electric transmission congestion due to be issued August 2009.

**Encourages Governors to Promote Energy Efficiency:** Conditions the award of State Energy Program funding from the Economic Recovery Act upon a notification to the Secretary of Energy by the governor that the governor will seek to adopt certain utility regulatory policies to encourage utility-sponsored gains in energy efficiency and updated energy-efficient building codes.

**Energy Sustainability and Efficiency Grants and Loans for Institutions:** In order to allow our colleges and hospitals to become more energy efficient, the legislation waives certain caps on grants and loans so that larger energy efficiency projects will be adequately supported. The legislation ensures that these institutions continue to have an investment in the project by requiring that no more than 80% of a project's cost be provided as a grant.

## **Provisions on Medicaid and the Unemployed and Health Information Technology**

### **COBRA/Medicaid Options for the Uninsured Unemployed**

The bill contains two provisions intended to provide health insurance coverage to individuals who lose their jobs and are uninsured. The first provides temporary subsidies for COBRA premiums to enable people who have been involuntarily terminated from their jobs to maintain the coverage they had through work. Recognizing that not all workers are eligible for COBRA, the proposal also creates a temporary option for states to extend healthcare to displaced workers through their Medicaid programs.

**COBRA Premium Assistance.** To be eligible for COBRA a worker must have worked for an employer with 20 or more employees, have been enrolled in the employer's health plan, and have lost his/her health coverage due to termination of employment for reasons other than gross misconduct. Under COBRA, workers must pay 100% of the premium plus 2% in administrative costs. The bill would provide a 65% subsidy for COBRA continuation premiums for up to 12 months for workers who have been involuntarily terminated (and their families). To qualify for COBRA premium assistance, a worker must be involuntarily terminated between September 1, 2008, and December 31, 2009. The subsidy would terminate upon offer of any new employer-sponsored coverage.

In addition to this short-term subsidy, the bill would also provide that those COBRA-eligible workers who are 55 and older, or who have worked for an employer for 10 or more years, would be able to retain COBRA coverage, at their own expense, until they become Medicare eligible at age 65 or secure coverage through a subsequent employer.

**Medicaid Option.** The bill would give State Medicaid programs a temporary option of covering one or more of the following groups of unemployed individuals without health insurance (and their uninsured spouses and dependents): (1) individuals receiving unemployment benefits and individuals who have exhausted unemployment benefits; (2) individuals who are receiving food stamps and are not otherwise eligible for Medicaid; and (3) individuals in families with gross incomes below 200% of the poverty level. To qualify, individuals would have to be receiving or have exhausted unemployment benefits during the period September 1, 2008, through December 31, 2010, or be involuntarily separated from employment during this period. The federal government would assume 100% of the costs of benefits and administration for individuals enrolled under this option through December 31, 2010.

### **State Medicaid Fiscal Relief**

**Temporary Medicaid FMAP Increase.** The bill would provide, on a temporary basis, additional federal matching funds to help states maintain their Medicaid programs in the face of recession-driven revenue declines and caseload increases. Three types of temporary assistance would apply during the period October 1, 2008, through

December 31, 2010. First, states that would otherwise experience a drop in their federal medical assistance percentages (FMAPs) under the normal FMAP formula would be held harmless against any decline. Second, all states would receive an increase in their FMAP by 4.9 percentage points. Finally, states with large increases in unemployment would receive an additional increase in their FMAP directly related to the increase in their unemployment rates. This high unemployment percentage point adjustment would automatically adjust upward to reflect increases in state unemployment rates if the recession worsens. The territories would have the option of a 20% increase in their cap or a 4.9 percentage point increase in their FMAP plus a 10% increase in their cap. Title IV-E foster care and adoption assistance would also receive the 4.9 percentage point increase. The additional federal assistance would apply to the costs of Medicaid benefits but not to the costs of Medicaid disproportionate share payments, administration, or CHIP. In addition, DSH allotments were increased by 2.5 percent in FY 2009 and 2.5 percent in FY 2010.

**Moratorium on Medicaid Regulations.** Current law imposes a moratorium on six Medicaid regulations relating to cost limits on public providers, graduate medical education (GME) payments, provider taxes, rehabilitative services, targeted case management services, and school administration and transportation services. The bill would extend the current law moratorium on these six regulations, which expires on March 31, 2009, through June 30, 2009. The bill would also expand this moratorium to include a seventh Medicaid regulation relating to outpatient hospital services.

**Temporary Extension of Work Transition Coverage.** Under current law, individuals who leave welfare to go to work receive up to one year of Medicaid coverage so long as they continue working. This current transitional medical assistance (TMA) expires on June 30, 2009. The bill would extend the current law provision through December 31, 2010. In addition, the bill would give states the option of simplifying TMA eligibility determinations to reduce administrative burden and turnover.

**State Option to Cover Family Planning Services.** Under current law, the Secretary has the authority under section 1115 of the Social Security Act to grant waivers to states to allow them to cover family planning services and supplies to low-income women who are not otherwise eligible for Medicaid. The bill would give states the option to provide such coverage without obtaining a waiver. States could continue to use the existing waiver authority if they preferred.

**Medicaid Protections for American Indians.** The bill includes three provisions designed to improve Medicaid and CHIP coverage for Indians. The bill would prohibit state Medicaid programs from imposing cost-sharing requirements on Medicaid-eligible American Indians when the beneficiary is receiving services from an Indian health care provider or from a Contract Health Services (CHS) provider. The bill would also ensure that certain tribal, religious, spiritual, or cultural property would not be counted as a resource (asset) of an individual Indian for purposes determining Medicaid eligibility or estate recovery. Finally, the bill would require states to consult on an ongoing basis with Indian Health Programs and Urban Indian Organizations on matters relating to Medicaid and CHIP.

## **Health Information Technology for Economic and Clinical Health Act or HITECH Act**

Health information technology helps save lives and lower costs. This bill accomplishes four major goals that advance the use of health information technology (Health IT), such as electronic health records by:

- Requiring the government to take a leadership role to develop standards by 2010 that allow for the nationwide electronic exchange and use of health information to improve quality and coordination of care.
- Investing \$20 billion in health information technology infrastructure and Medicare and Medicaid incentives to encourage doctors and hospitals to use HIT to electronically exchange patients' health information.
- Saving the government \$10 billion and generating additional savings throughout the health sector, through improvements in quality of care and care coordination and reductions in medical errors and duplicative care.
- Strengthening Federal privacy and security law to protect identifiable health information from misuse as the health care sector increases use of Health IT.

As a result of this legislation, the Congressional Budget Office estimates that approximately 90% of doctors and 70% of hospitals will be using comprehensive electronic health records within the next decade.

**Federal Leadership for the Nationwide Exchange of Health Information.** The legislation codifies the Office of the National Coordinator for Health Information Technology (ONCHIT) within the Department of Health and Human Services. This office is responsible for creating a nationwide health information technology infrastructure aimed at improving health care quality and care coordination.

The legislation establishes a transparent and open process for the development of standards that will allow for the nationwide electronic exchange of information between doctors, hospitals, patients, health plans, the government, and others by the end of 2009. It establishes a voluntary certification process for health information technology products. The National Institute of Standards and Technology will provide for the testing of such products to determine if they meet the national standards that allow for the secure electronic exchange and use of health information.

After standards are adopted in 2009, the National Coordinator shall make available at a nominal fee an electronic health record, unless the Secretary determines that the needs and demands of providers are being substantially and adequately met by the marketplace. Nothing in the legislation requires that entities adopt or use the technology made available through this provision.

**Funding for Infrastructure and Adoption of Health Information Technology.** This legislation provides immediate funding for health information technology infrastructure, training,

dissemination of best practices, telemedicine, inclusion of health information technology in clinical education, and state grants to promote health information technology. In addition, the legislation provides significant financial incentives through the Medicare and Medicaid programs to encourage doctors and hospitals to adopt and use certified electronic health records. Physicians will be eligible for \$40,000 to \$65,000 for showing that they are meaningfully using health information technology, such as through the reporting of quality measures. Hospitals will be eligible for several million dollars in the Medicaid and Medicare programs to similarly use health information technology.

Federally qualified health centers, rural health clinics, children's hospitals and others will be eligible for funding through the Medicaid program.

Incentive payments for both physicians and hospitals continue for several years but are phased out over time. Eventually, Medicare payments are reduced for physicians and hospitals that do not use a certified electronic health records that allow them to electronically communicate with others.

The legislation also provides additional funds to states for low-interest loans to help providers finance health information technology and grants to regional health information exchanges to unite local providers. Grants are also offered for the development and adoption of electronic health records for providers other than physicians and hospitals.

**Privacy and Security of Personal Health Information.** This health information technology legislation improves and expands current federal privacy and security protections for health information. As health care providers move to exchanging large amounts of health information electronically, it is important to ensure that such information remains private and secure. The bill accomplishes this by:

- Establishing a Federal breach notification requirement for health information that is not encrypted or otherwise made indecipherable. It requires that an individual be notified if there is an unauthorized disclosure or use of their health information.
- Ensuring that new entities that were not contemplated when the Federal privacy rules were written, as well as those entities that do work on behalf of providers and insurers, are subject to the same privacy and security rules as providers and health insurers.
- Providing transparency to patients by allowing them to request an audit trail showing all disclosures of their health information made through an electronic record.
- Shutting down the secondary market that has emerged around the sale and mining of patient health information by generally prohibiting the sale of an individual's health information without their authorization.
- Requiring that providers attain authorization from a patient in order to use their health information for marketing and fundraising activities. Strengthening enforcement of federal privacy and security laws by increasing penalties for violations and providing greater resources for enforcement and oversight activities.