

PROPOSED INCENTIVES FOR BEHAVIORAL HEALTH PROVIDERS TO ADOPT ELECTRONIC HEALTH RECORDS

With the intention of improving care for individuals receiving substance use disorder treatment and mental health care by better coordinating care, Senators Rob Portman (R-OH) and Sheldon Whitehouse (D-RI) introduced the Improving Access to Behavioral Health Information Technology Act ("Act"), a bipartisan bill designed to grant incentives to behavioral health organizations to adopt electronic health records ("EHRs"). Companion legislation has been introduced in the House by Congresswomen Doris Matsui (D-CA) and Lynn Jenkins (R-KS).

The incentives would not come from Meaningful Use, a federal program initiated in 2011 that already offers incentives to certain providers for adopting and using EHRs. Rather, the Act would authorize the Centers for Medicare & Medicaid Services Innovation Center ("CMMI") to design and implement a program for such incentive payments to behavioral health care providers. The CMMI was established under the Affordable Care Act and tests new services and payment models that maintain or enhance quality of federal health care programs, such as Medicare, Medicaid and the Children's Health Insurance Program ("CHIP"), while reducing costs.

Many behavioral health providers, including substance use and mental health professionals and treatment facilities, are not necessarily eligible for the Meaningful Use program, meaning they have not received financial incentives to adopt EHRs. According to the 2015 [Update to Congress on the Adoption of Health Information Technology](#), only 11 percent of behavioral health providers shared information electronically, which is less than half of the frequency other providers, such as ambulatory care providers and hospitals, shared information electronically. The behavioral health community has identified the cost of EHRs, poor integration between primary and behavioral health providers and privacy and security issues as barriers to the adoption of EHRs.

The presence of a mental disorder can mean that a patient is at risk for having a chronic condition. A chronic condition can mean there is risk of a patient having a mental disorder, which can result in not only increased cost of care but a decrease in length and quality of life according to a Robert Wood Johnson Foundation [study](#). This shows that patients do not often fall squarely in either "medical" or "behavioral" care and instead require treatment from both behavioral health professionals and medical providers. As health care providers focus on treating the whole patient and avoiding information silos, sharing data electronically could help reduce impediments to caring for the patient as a "whole person," where behavioral and mental care is merged with physical medical care. An EHR that facilitates the flow of information between both types of care could reduce costs and improve care.

The CMMI program has not yet been developed, but certain laws currently dictate how behavioral health providers may share information. Understanding the regulations and designing the EHR to promote the safe and secure exchange of health information to integrate primary care and behavioral health care is crucial. This includes:

- The Health Insurance Portability and Accountability Act of 1996 ("HIPAA");
- The Health Information Technology for Economic and Clinical Health Act ("HITECH");
- Confidentiality of Substance Use Disorder Patient Records at Title 42 of the Code of Federal Regulations, Part 2 ("Part 2"); and
- State privacy and confidentiality laws.

More details about privacy laws governing behavioral health and primary care integration are available [here](#).

Hall Render will monitor this and other behavioral health bills and continue to provide updates. For more information about and integrating behavioral health and primary care and behavioral health legal issues generally contact:

- [Charise R. Frazier](#) at (317) 977-1461 or cfrazier@hallrender.com; or
- [Patricia E. Connelly](#) at (317) 429-3654 or pconnelly@hallrender.com; or

- Your regular Hall Render attorney.