

## Appendix B

# Recovery Act Reviews

Pursuant to the American Recovery and Reinvestment Act of 2009 (Recovery Act), the Office of Inspector General (OIG) received funding for discretionary oversight of programs and operations of the Department of Health and Human Services (HHS) that received supplemental funding through the Recovery Act. The funds have been used primarily to conduct financial oversight activities to ensure that HHS agencies and grantees used the funds they received for the intended purposes and in accordance with established requirements. Recovery Act funding resulted in a significant increase in the number of grants and contracts awarded by HHS. The reviews that follow represent OIG's continuing oversight of HHS agencies' use of Recovery Act funds.

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Acronyms and Abbreviations for Selected Terms:

CMS—Centers for Medicare & Medicaid Services

EHR—electronic health record

## Medicare and Medicaid

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### Adoption of Electronic Health Records

An EHR is an electronic record of health-related information for an individual that is generated by health care providers. It may include a patient's health history, along with other items.

#### ➤ **Medicare incentive payments for adopting electronic health records**

We will review Medicare incentive payments to eligible health care professionals and hospitals for adopting EHRs and the Centers for Medicare & Medicaid Services (CMS) safeguards to prevent erroneous incentive payments. We will review Medicare incentive payment data from 2011 to identify payments to providers that should not have received incentive payments (e.g., those not meeting selected meaningful use criteria). We will also assess CMS's plans to oversee incentive payments for the duration of the program and corrective actions taken regarding erroneous incentive payments. Medicare incentive payments are authorized over a 5-year period to physicians and hospitals that demonstrate meaningful use of certified EHR technology. (Recovery Act, §§ 4101 and 4102.) Incentive payments were scheduled to begin in 2011 and continue through 2016, with payment reductions to health care professionals who fail to become meaningful users of EHRs beginning in 2015. (§ 4101(b).) As of August 2014, Medicare EHR incentive payments totaled more than \$16 billion. (OAS; W-00-14-31352; expected issue date: FY 2015; Recovery Act)

➤ **Medicaid incentive payments for adopting electronic health records**

We will review Medicaid incentive payments to Medicaid providers and hospitals for adopting electronic health records (EHRs) and CMS safeguards to prevent erroneous incentive payments. We will determine whether incentive payments to Medicaid providers to purchase, implement, and operate EHR technology were claimed in accordance with Medicaid requirements; assess CMS's actions to remedy erroneous incentive payments and its plans for securing the payments for the duration of the incentive program; and determine whether payments to States for related administrative expenses were appropriate. The law authorizes 100 percent Federal financial participation for allowable expenses for eligible Medicaid providers to purchase, implement, and operate certified EHR technology. (Recovery Act § 4201.) The section also provides a 90-percent Federal match for State administrative expenses for the adoption of certified EHR technology by Medicaid providers. As of August 2014, Medicaid EHR incentive payments totaled more than \$8 billion. Incentive payments will continue through 2021. (OAS; W-00-13-31351; W-00-14-31351; various reviews; expected issue date: FY 2015; Recovery Act)

## Systems and Information Security

➤ **Security of certified electronic health record technology under meaningful use**

We will perform audits of various covered entities receiving EHR incentive payments from CMS and their business associates, such as EHR cloud service providers, to determine whether they adequately protect electronic health information created or maintained by certified EHR technology. A core meaningful-use objective for eligible providers and hospitals is to protect electronic health information created or maintained by certified EHR technology by implementing appropriate technical capabilities. To meet and measure this objective, eligible hospitals, including critical access hospitals, must conduct a security risk analysis of certified EHR technology as defined in Federal regulations and use the capabilities and standards of Certified Electronic Health Record Technology. (45 CFR § 164.308(a)(1) and 45 CFR §§ 170.314(d)(1) – (d)(9).) Furthermore, business associates that transmit, process, and store EHRs for Medicare and Medicaid providers are playing a larger role in the protection of electronic health information. Therefore, audits of cloud service providers and other downstream service providers are necessary to ensure compliance with regulatory requirements and contractual agreements. (OAS; W-00-14-42020; W-00-15-42020; various reviews; expected issue date: FY 2015; Recovery Act)

## Cross-Cutting Enforcement Activities

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OIG conducts criminal investigations of referrals of grant and contract fraud in the misuse of Recovery Act funds and with regard to reprisals against whistleblowers.

### Fraud and Whistleblower Reprisals

➤ **Integrity of Recovery Act expenditures**

We will continue to evaluate credible allegations of improper expenditures of Recovery Act funds to identify cases in which criminal investigations should be opened and enforcement actions pursued. Recovery Act funding resulted in a significant increase in the number of grants and contracts

awarded by HHS. The Recovery Act requires transparency and accountability in the awarding and spending of funds. (OI; various investigations; Recovery Act)

➤ **Enforcement of whistleblower protections**

We will continue to evaluate credible allegations of reprisals against whistleblowers by entities or individuals receiving Recovery Act funds to identify cases in which criminal investigations should be opened and antireprisal enforcement actions pursued. The Recovery Act extends whistleblower protection to employees who reasonably believe they are being retaliated against for reporting misuse of Recovery Act funds received by their non-Federal employers. (Recovery Act, § 1553.) (OI; various investigations; Recovery Act)