Key Provisions from the American Recovery and Reinvestment Act of 2009

- **Office of the National Coordinator for Health Information Technology (ONC) Codification and Expansion**

  o HITECH codifies ONC's leadership role and directs ONC to continue maintaining the Federal Health IT Strategic Plan, provides reports and analyses on health IT, and advances the nationwide health information network.

- **National Health IT Policy and Standards**

  o HIT Policy Committee is a newly created Federal Advisory Committee which will make recommendations to the ONC for the prioritization and harmonization of standards, implementation specifications, and certification criteria needed for health IT use.

  o HIT Standards Committee will recommend standards, implementation specifications, and certification criteria for the electronic exchange and use of health information to the ONC. The ONC will review and determine whether to endorse each standard, implementation specification, and certification criterion recommended by the HIT Standards Committee.

  o Allows the possibility for the HHS Secretary to recognize the National eHealth Collaborative as the HIT Policy Committee or the HIT Standards Committee.

  o Allows the National Institute of Standards and Technology (NIST) an active role in the health IT standards process to (1) test standards, (2) create a conformance testing infrastructure, and (3) establish "Health Care Information Enterprise Integration Research" Centers.

- **Health IT Privacy Leadership**

  o Allows HHS Secretary to appoint a Chief Privacy Officer who will advise ONC on privacy, security, and data stewardship of electronic health information and coordinate with privacy officers in other federal agencies, state and regional efforts, and foreign countries.

  o Directs the HIT Policy Committee to make specific recommendations to ONC for technologies that protect the privacy of health information and promote security in a qualified EHR, including the segmentation and protection from disclosure of specific and sensitive individually identifiable health information with the goal of minimizing the reluctance of patients to seek care (or disclose information about a condition) because of privacy concerns.

  o After adopting standards in 2009, HITECH allows ONC to make available an EHR "at a nominal fee" if HHS determines that the marketplace isn't substantially and adequately meeting providers' needs.

- **Support for Health IT Adoption**

  o HHS will establish a "Health Information Technology Extension Program" to provide technical assistance to help health care providers adopt, implement, and use certified EHR technology effectively.

  o Creates a "Health Information Technology Research Center" that provides technical assistance and develops or identifies best practices to support and accelerate efforts to adopt, implement, and utilize health IT.

  o The research and findings from the Health IT Research Centers will be distributed to "Health IT Regional Extension Centers," who will focus its educational and technical assistance efforts on (1) public and non-profit hospitals, (2) federally-qualified health centers, and (3) rural or medically underserved areas.

- **State Grants to Promote Health Information Technology (Required)**

  - ONC will create a program to offer planning and implementation grants to states or "qualified" state-designated non-profit, multi-stakeholder partnerships to "conduct activities to facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards." The Secretary will have a pool of $300 million to award. HHS will have the discretion to levy a matching funds requirement during the first two years of implementation before requiring states or qualified entities to provide matching funds by year three to receive a grant.

- **Competitive Grants to States/Tribes to Develop EHR Loan Programs (Optional)**

  - Allows ONC the option of creating a competitive program that awards grants on a matching basis to eligible states and tribes to create EHR loan programs. The money would be loaned to health care providers to purchase and enhance certified technology, train personnel, and improve the secure exchange of health information, with the first loan not awarded until January 1, 2010.

- **Support the Development of Health Care IT Professionals (Required)**

  - Directs HHS Secretary, in consultation with the National Science Foundation Director, to provide matching grants to institutions of higher education to establish or expand medical health informatics education programs, including certification, undergraduate, and masters degree program, with the funds supporting up to 50 percent of a recipient's total costs.

- **Demonstration Program to Integrate IT into Clinical Education (Optional)**

  - Allows HHS Secretary the option of awarding matching grants to academic institutions to develop curricula that integrate certified EHR technology in the clinical education of health professionals, supporting up to 50 percent of a recipient's total costs.

- **Medicare Incentives and Medicaid Support for Certified EHRs**

  - **Medicare incentive payments** for both practitioners and hospitals will continue for several years but phased out over time. Physicians who report using an EHR capable of e-prescribing will no longer be eligible for the e-prescribing bonuses established by the Medicare Improvements for Patients and Providers Act (MIPPA). A table showing the scale for incentives and payment reductions for each healthcare practitioner is provided below.

Year	Maximum Benefit per Provider	Total Payment Reduction For Not Using Certified EHR
2011	$15,000	0% reduction
2012	$12,000	0% reduction
2013	$8,000	0% reduction
2014	$4,000	0% reduction
2015	$2,000	0% reduction
2016	0	1% reduction
2017	0	2% reduction
2018	0	3% reduction

  - For hospitals, the Act establishes a complex formula for calculating hospital incentives for certified EHR based on $2 million plus a sizeable per-discharge amount, using a pro-rated amount contingent on Medicare utilization and payments phased out over a four year period.

- o **Medicaid programs** will support the costs for acquiring, implementing and supporting certified EHRs for certain Medicaid providers who meet the following eligibility requirements:

    - Eligible professionals (including physicians, nurse mid-wives, and nurse practitioners) who are not hospital-based and have at least 30 percent of their patient volume attributable to individuals who receive medical assistance. To receive Medicaid funding, professionals must waive payment under Medicare for EHR adoption and support;

    - Children's hospitals;

    - Other acute care hospitals that have at least 10 percent patient volume attributable to individuals who receive medical assistance; and federally-qualified health centers or rural health clinics that have at least 30 percent of their patient volumes attributable to individuals who receive medical assistance.

- **Privacy and Security of Personal Health Information**

    - o Expands current federal privacy and security protections for health information by: (1) extending the reach of HIPAA to a broader range of organizations handling such information; (2) mandating notification to individuals and government agencies in the event of security breaches; (3) expanding individual rights currently afforded under HIPAA; and (4) toughening HIPAA's civil penalties.

        - Business associates will be subject to HIPAA security provisions and to sanctions for violation of business associate requirements.

        - Federal law now requires consumer notification of data breaches involving "unsecured" PHI. Both Covered Entities and business associates must comply.

        - Vendors of personal health records and their service providers made subject to the same security breach notification requirement.

        - Individuals may require Covered Entities not to disclose certain self pay services to health plans.

        - The limited data set becomes a default minimum necessary standard.

        - Covered Entities using electronic health records ("EHR") are required to provide accounting of disclosures of protected health information for treatment, payment and health care operations.

        - Health Information Exchanges are brought specifically within Business Associate requirements.

        - Restrictions on the remuneration for "sale" of Electronic Health Records or Personal Health Information.

        - Covered Entities with Electronic Health Records must provide an individual's information in electronic form and transmit it to third parties, on the individual's request.

        - The HIPAA Health Care Operations exception for "marketing" communications is narrowed significantly, if direct or indirect remuneration is received.

        - Individuals have the right to opt-out of receipt of Covered Entity's fund raising communications.

        - The Act provides for "Improved Enforcement."