



Legislative Fiscal Bureau

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January 14, 2010

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Health Services: Governor's Section 13.10 Requests for the Use of Federal Stimulus Funding for Planning and Implementing a Statewide Health Information Exchange (HIE) -- Agenda Item VIII

REQUEST

The Governor requests that the Joint Committee on Finance approve the allocation and expenditure of \$1,300,800 in 2009-10 and \$3,676,300 in 2010-11, from moneys received under the federal American Recovery and Reinvestment Act of 2009 (ARRA), to plan and implement a statewide health information exchange (HIE).

This represents the first two years of funding of a four-year cooperative agreement with the Office of the National Coordinator for Health Information Technology (ONC) in the U.S. Department of Health and Human Services. The Department of Health Services (DHS) will seek expenditure approval for funds beyond the 2009-11 biennium as those funds are released by the ONC.

BACKGROUND

Chapter 153 of the statutes and related rules (HS 120), specify DHS responsibilities relating to health care information, including the collection and dissemination of health care information, health care data reports submitted to the Governor and Legislature, and patient confidentiality requirements. The statutes permit DHS to charge assessments to health providers up to \$75 per year to fund DHS activities related to health care information. Currently, 4.0 FTE eHealth program staff positions at DHS are funded with a combination of health care provider assessment revenue and general purpose revenue (GPR) allocated for general DHS program operations.

The eHealth Care Quality and Patient Safety Board. In 2005, the Governor issued Executive Order #129, which created the eHealth Care Quality and Patient Safety Board ("the eHealth Board"), and established the Board's organizational structure, responsibilities, and goals. These responsibilities included identifying existing health information technology (HIT) resources, identifying technology options, ensuring privacy and security, facilitating statewide adoption of electronic health record standards, and creating organizational and governance structures for a statewide HIT infrastructure. The eHealth Board includes five workgroups: patient care, information exchange, consumer interests, governance, and financing.

Executive Order #129 charged the Board with developing a state eHealth action plan to outline legislative and regulatory actions, encourage coordinated efforts in the private health care sector, promote public and private partnerships for the development of a statewide electronic health information infrastructure, and maximize federal financial participation. The Board prepared and released the five-year action plan in December, 2006.

The WIRED for Health Board. On December 1, 2009, Executive Order #303 created the Wisconsin Relay of Electronic Data (WIRED) for Health Board to replace the eHealth Board established under Executive Order #129. The executive order directs the Board to develop statewide HIE capacity and resolve issues related to HIE governance, finance, infrastructure, operations, and legal framework. The role and responsibilities of this Board align with the requirements of the federal funding, and the structure outlined in the administration's application for funding.

The Board is also directed to develop, no later than June 1, 2010, strategic and operational plans for statewide HIE, that will accomplish the following:

- Provide for oversight and accountability of HIE to protect the public interest, and develop processes to ensure HIE among providers complies with relevant laws and policies;
- Identify, secure, and provide for the management of financial resources needed to fund HIE, including public and private financing;
- Provide for secure, reliable statewide HIE technical infrastructure and services that utilize existing public and private health information technology assets;
- Provide for business and technical operations activities needed to support providers' adoption and meaningful use of electronic health records;
- Provide for the operation of a statewide HIE, and enable the efficient, appropriate, and secure flow of information; and
- Create a common set of rules to enable inter-organizational and interstate HIE.

The Board will have up to 15 members, to be appointed by the Governor for an initial term of two years. The Board must include representatives of the following groups: (a) a commercial health insurer or health plan; (b) a patient or consumer advocacy organization; (c) hospitals or integrated delivery networks, representing both urban and rural hospitals or networks; (d) physicians, preferably one from large group practice and one from solo or small group practice; (e) the business community; (f) pharmacies; (g) laboratories; (h) higher education, from a health-services discipline; and (i) health information or quality organizations. The Board must also include the representatives of the state public health program, the state medical assistance program, and the state chief information officer.

Finally, the executive order specifies that the Board will exist until a qualified, not-for-profit corporation is designated by the Governor, or created and designated in statute specifically for the purpose of governing the implementation and operation of statewide HIE services. This transition process to a not-for-profit entity is described in the ARRA application materials submitted to the ONC, as described below.

ANALYSIS

The ARRA included several provisions related to the promotion and funding of HIT. Collectively, these provisions are referred to as the Health Information Technology for Economic and Clinical Health (HITECH) Act. The funding provided covers a broad range of activities and recipients, including Medicare and Medicaid incentives for providers to use electronic health records, funding for regional HIT extension centers, and funding for training and development of HIT workforce.

In this request, the administration seeks the authority to expend funding provided through the state HIE cooperative agreement (Section 3013 of the ARRA). This agreement provides planning and implementation grants to states or state-designated entities (SDEs) for HIE-related activities. A total of \$564 million will be distributed for these grants, with awards ranging from \$4 million to \$40 million over a four-year project period. Wisconsin applied for \$9,441,000 in federal funding over the four-year project period, and is requesting expenditure authority from the Committee of \$4,976,300 over the 2009-11 biennium.

The administration submitted the grant application to the ONC in October, 2009, and initially expected to receive notification of approval in December, 2009, and begin the project on January 15, 2010. However, to date, the ONC has not notified the administration of approval of this funding.

Project Overview. The ARRA requires that the funds be used to facilitate and expand the electronic movement of health information through the following activities:

1. Enhancing participation in authorized and secure nationwide exchange of health information;

2. Identifying state and local resources available to promote HIT, and complementing other federal efforts;
3. Providing technical assistance to encourage the exchange of electronic health information;
4. Promoting the adoption and use of HIT in medically underserved communities;
5. Assisting patients with the utilization of HIT;
6. Encouraging providers to work with HIT regional extension centers (established through other provisions of the HITECH Act);
7. Supporting the use of HIT by public health agencies;
8. Promoting the use of EHRs for quality improvement; and
9. Other activities specified by the Secretary of the U.S. Department of Health and Human Services.

Wisconsin's application for funding to the federal government outlines a statewide HIE planning and implementation project in which the initial planning would be conducted by the WIRED for Health Board. The Board would be responsible for developing strategic and operational plans (through a contract with a consultant group) for the subsequent implementation phase of statewide HIE. The process by which the Board will develop these plans would consist of a review of the scope of the project, meetings of designated Board committees, a documentation of expectations for each project domain, creation of the plan, solicitation of stakeholder feedback, and submittal for final federal approval. This aspect of the project plan is anticipated to be conducted over the first six to eight months of the project following initial transmittal of the ARRA funds from the ONC.

The ONC requires that the strategic plan developed by recipients of the ARRA funding address these five HIE issue domains: (a) governance, including a description of a multi-stakeholder governance model, identification of a state government HIT coordinator, and issues of accountability and transparency; (b) finance, focusing on long-term sustainability of statewide HIE; (c) technical infrastructure, focusing on interoperability and scope of HIE services; (d) business and technical operations, which would include a specific implementation plan; and (e) legal and policy concerns, focusing on privacy and security issues, state and federal laws, additional policies and procedures, and agreements between participating groups.

Any plan developed by the WIRED for Health Board requires final approval of the ONC. If the ONC approves the plan, it is anticipated that the responsibilities for future HIE administration

and operation would be transferred to a not-for-profit SDE, with limited state role in the implementation phase of the plans. The SDE would be responsible for contracting with vendors to construct and implement the HIE system described in the strategic and operational plans. However, the exact role and responsibilities of the SDE would depend on the provisions of the final strategic and operational plans approved by the ONC.

Budget Overview. ARRA funds would be used to support state personnel salary and fringe benefits, travel costs, supplies and services, subcontracts, and other costs. Table 1 provides a summary of federal funding to be allocated for each of these activities in state fiscal year (SFY) 2009-10 and 2010-11.

TABLE 1
Summary of Requested Funding, by State Fiscal Year

| | <u>2009-10</u> | <u>2010-11</u> |
|------------------------------------|-----------------|-----------------|
| Personnel and Fringe Benefits, DHS | \$266,951 | \$467,972 |
| Travel | 26,195 | 19,703 |
| Supplies | 22,391 | 15,421 |
| Contractual | 950,489 | 3,118,522 |
| Other | <u>34,726</u> | <u>54,624</u> |
| Total | \$1,300,752 | \$3,676,242 |

The main recipient of the contracts with the state in the first year of the project would be Deloitte Consulting, which would receive \$800,000 in federal funds in 2009-10 for activities related to the development of the strategic and operation plans for statewide HIE produced by the WIRED for Health Board. These activities would represent the main planning for future HIE implementation, and would occur over calendar year 2010. The remaining contractual costs in 2009-10 would fund the following activities: (a) \$8,383 to begin the creation of the SDE; (b) \$37,856 for external legal services; (c) \$23,750 for required project evaluation services; (d) \$80,500 for a communications, marketing and education consultant.

In subsequent years, as the project moves towards the HIE implementation phase, the main recipient of the ARRA funding would be the SDE. In 2010-11, the grant application anticipates that the SDE would receive \$2,606,916 in ARRA funding, and would assume responsibility for the various additional subcontracts (legal, program evaluation, and communications) during the second year of the project. This allocation to the SDE is part of the “Contractual” costs line in Table 1. Although the federal grant application required a budget estimate for the SDE, the ongoing budget for this initiative would depend upon the final strategic and operational plans.

As a requirement to receive this federal funding, states must provide matching funds over the course of the four-year agreement. This match requirement may be provided through cash or in-kind contributions, and increases in each year of the agreement as follows: (a) no state matching

requirement until October 1, 2010; (b) beginning October 1, 2010, \$1 of state match for every \$10 of federal funds; (c) beginning October 1, 2011, \$1 of state match for every \$7 of federal funds; and (d) beginning October 1, 2012, \$1 of state match for every \$3 of federal funds. As the state plans to comply with this matching requirement with existing PR and GPR funds expended in the DHS eHealth program, and through in-kind contributions by state and private partners, the Committee is not required to approve any additional state funding for this match. Table 2 provides a summary of requested federal funds and matching funds for SFY 2009-10 and 2010-11, as proposed in the project budget submitted to ONC.

TABLE 2

**State and Federal Allocation of Proposed Budgeted Costs
By State Fiscal Year**

| <u>Source</u> | <u>2009-10</u> | <u>2010-11</u> |
|-------------------------|----------------|----------------|
| FED (requested amounts) | \$1,300,752 | \$3,676,242 |
| State | | |
| Matching Funds, Cash | 44,118 | 226,697 |
| Matching Funds, In-Kind | <u>1,264</u> | <u>150,868</u> |
| Total | \$1,346,134 | \$4,053,800 |

ALTERNATIVES

1. Approve the expenditure of \$1,300,800 in 2009-10 and \$3,676,300 in 2010-11, from moneys received under the federal American Recovery and Reinvestment Act of 2009 (ARRA), to support planning and implementation of a statewide health information exchange.
2. Deny the request.

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