

1                   **TITLE XIII—HEALTH**  
2                   **INFORMATION TECHNOLOGY**

3 **SEC. 13001. SHORT TITLE; TABLE OF CONTENTS OF TITLE.**

4           (a) **SHORT TITLE.**—This title (and title IV of division  
5 B) may be cited as the “Health Information Technology  
6 for Economic and Clinical Health Act” or the “HITECH  
7 Act”.

8           (b) **TABLE OF CONTENTS OF TITLE.**—The table of  
9 contents of this title is as follows:

Sec. 13001. Short title; table of contents of title.

          Subtitle A—Promotion of Health Information Technology

          PART 1—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY

Sec. 13101. ONCHIT; standards development and adoption.

          “TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND  
          QUALITY

          “Sec. 3000. Definitions.

          “Subtitle A—Promotion of Health Information Technology

          “Sec. 3001. Office of the National Coordinator for Health Information  
          Technology.

          “Sec. 3002. HIT Policy Committee.

          “Sec. 3003. HIT Standards Committee.

          “Sec. 3004. Process for adoption of endorsed recommendations; adoption  
          of initial set of standards, implementation specifications,  
          and certification criteria.

          “Sec. 3005. Application and use of adopted standards and implementation  
          specifications by Federal agencies.

          “Sec. 3006. Voluntary application and use of adopted standards and im-  
          plementation specifications by private entities.

          “Sec. 3007. Federal health information technology.

          “Sec. 3008. Transitions.

          “Sec. 3009. Miscellaneous provisions.

Sec. 13102. Technical amendment.

          PART 2—APPLICATION AND USE OF ADOPTED HEALTH INFORMATION  
          TECHNOLOGY STANDARDS; REPORTS

## 2

- Sec. 13111. Coordination of Federal activities with adopted standards and implementation specifications.
- Sec. 13112. Application to private entities.
- Sec. 13113. Study and reports.

Subtitle B—Testing of Health Information Technology

- Sec. 13201. National Institute for Standards and Technology testing.
- Sec. 13202. Research and development programs.

Subtitle C—Grants and Loans Funding

- Sec. 13301. Grant, loan, and demonstration programs.

“Subtitle B—Incentives for the Use of Health Information Technology

- “Sec. 3011. Immediate funding to strengthen the health information technology infrastructure.
- “Sec. 3012. Health information technology implementation assistance.
- “Sec. 3013. State grants to promote health information technology.
- “Sec. 3014. Competitive grants to States and Indian tribes for the development of loan programs to facilitate the widespread adoption of certified EHR technology.
- “Sec. 3015. Demonstration program to integrate information technology into clinical education.
- “Sec. 3016. Information technology professionals in health care.
- “Sec. 3017. General grant and loan provisions.
- “Sec. 3018. Authorization for appropriations.

Subtitle D—Privacy

- Sec. 13400. Definitions.

PART 1—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS

- Sec. 13401. Application of security provisions and penalties to business associates of covered entities; annual guidance on security provisions.
- Sec. 13402. Notification in the case of breach.
- Sec. 13403. Education on health information privacy.
- Sec. 13404. Application of privacy provisions and penalties to business associates of covered entities.
- Sec. 13405. Restrictions on certain disclosures and sales of health information; accounting of certain protected health information disclosures; access to certain information in electronic format.
- Sec. 13406. Conditions on certain contacts as part of health care operations.
- Sec. 13407. Temporary breach notification requirement for vendors of personal health records and other non-HIPAA covered entities.
- Sec. 13408. Business associate contracts required for certain entities.
- Sec. 13409. Clarification of application of wrongful disclosures criminal penalties.
- Sec. 13410. Improved enforcement.
- Sec. 13411. Audits.

PART 2—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES;  
EFFECTIVE DATE; REPORTS

- Sec. 13421. Relationship to other laws.
- Sec. 13422. Regulatory references.

Sec. 13423. Effective date.

Sec. 13424. Studies, reports, guidance.

1     **Subtitle A—Promotion of Health**  
2             **Information Technology**

3     **PART 1—IMPROVING HEALTH CARE QUALITY,**  
4             **SAFETY, AND EFFICIENCY**

5     **SEC. 13101. ONCHIT; STANDARDS DEVELOPMENT AND**  
6             **ADOPTION.**

7             The Public Health Service Act (42 U.S.C. 201 et  
8 seq.) is amended by adding at the end the following:

9     **“TITLE XXX—HEALTH INFORMA-**  
10            **TION TECHNOLOGY AND**  
11            **QUALITY**

12     **“SEC. 3000. DEFINITIONS.**

13             “In this title:

14                 “(1) CERTIFIED EHR TECHNOLOGY.—The term  
15             ‘certified EHR technology’ means a qualified elec-  
16             tronic health record that is certified pursuant to sec-  
17             tion 3001(c)(5) as meeting standards adopted under  
18             section 3004 that are applicable to the type of  
19             record involved (as determined by the Secretary,  
20             such as an ambulatory electronic health record for  
21             office-based physicians or an inpatient hospital elec-  
22             tronic health record for hospitals).

23                 “(2) ENTERPRISE INTEGRATION.—The term  
24             ‘enterprise integration’ means the electronic linkage

1 of health care providers, health plans, the govern-  
2 ment, and other interested parties, to enable the  
3 electronic exchange and use of health information  
4 among all the components in the health care infra-  
5 structure in accordance with applicable law, and  
6 such term includes related application protocols and  
7 other related standards.

8 “(3) HEALTH CARE PROVIDER.—The term  
9 ‘health care provider’ includes a hospital, skilled  
10 nursing facility, nursing facility, home health entity  
11 or other long term care facility, health care clinic,  
12 community mental health center (as defined in sec-  
13 tion 1913(b)(1)), renal dialysis facility, blood center,  
14 ambulatory surgical center described in section  
15 1833(i) of the Social Security Act, emergency med-  
16 ical services provider, Federally qualified health cen-  
17 ter, group practice, a pharmacist, a pharmacy, a lab-  
18 oratory, a physician (as defined in section 1861(r) of  
19 the Social Security Act), a practitioner (as described  
20 in section 1842(b)(18)(C) of the Social Security  
21 Act), a provider operated by, or under contract with,  
22 the Indian Health Service or by an Indian tribe (as  
23 defined in the Indian Self-Determination and Edu-  
24 cation Assistance Act), tribal organization, or urban  
25 Indian organization (as defined in section 4 of the

1 Indian Health Care Improvement Act), a rural  
2 health clinic, a covered entity under section 340B,  
3 an ambulatory surgical center described in section  
4 1833(i) of the Social Security Act, a therapist (as  
5 defined in section 1848(k)(3)(B)(iii) of the Social  
6 Security Act), and any other category of health care  
7 facility, entity, practitioner, or clinician determined  
8 appropriate by the Secretary.

9 “(4) HEALTH INFORMATION.—The term ‘health  
10 information’ has the meaning given such term in  
11 section 1171(4) of the Social Security Act.

12 “(5) HEALTH INFORMATION TECHNOLOGY.—  
13 The term ‘health information technology’ means  
14 hardware, software, integrated technologies or re-  
15 lated licenses, intellectual property, upgrades, or  
16 packaged solutions sold as services that are designed  
17 for or support the use by health care entities or pa-  
18 tients for the electronic creation, maintenance, ac-  
19 cess, or exchange of health information

20 “(6) HEALTH PLAN.—The term ‘health plan’  
21 has the meaning given such term in section 1171(5)  
22 of the Social Security Act.

23 “(7) HIT POLICY COMMITTEE.—The term ‘HIT  
24 Policy Committee’ means such Committee estab-  
25 lished under section 3002(a).

1           “(8) HIT STANDARDS COMMITTEE.—The term  
2           ‘HIT Standards Committee’ means such Committee  
3           established under section 3003(a).

4           “(9) INDIVIDUALLY IDENTIFIABLE HEALTH IN-  
5           FORMATION.—The term ‘individually identifiable  
6           health information’ has the meaning given such term  
7           in section 1171(6) of the Social Security Act.

8           “(10) LABORATORY.—The term ‘laboratory’  
9           has the meaning given such term in section 353(a).

10           “(11) NATIONAL COORDINATOR.—The term  
11           ‘National Coordinator’ means the head of the Office  
12           of the National Coordinator for Health Information  
13           Technology established under section 3001(a).

14           “(12) PHARMACIST.—The term ‘pharmacist’  
15           has the meaning given such term in section 804(2)  
16           of the Federal Food, Drug, and Cosmetic Act.

17           “(13) QUALIFIED ELECTRONIC HEALTH  
18           RECORD.—The term ‘qualified electronic health  
19           record’ means an electronic record of health-related  
20           information on an individual that—

21                   “(A) includes patient demographic and  
22                   clinical health information, such as medical his-  
23                   tory and problem lists; and

24                   “(B) has the capacity—

1 “(i) to provide clinical decision sup-  
2 port;

3 “(ii) to support physician order entry;

4 “(iii) to capture and query informa-  
5 tion relevant to health care quality; and

6 “(iv) to exchange electronic health in-  
7 formation with, and integrate such infor-  
8 mation from other sources.

9 “(14) STATE.—The term ‘State’ means each of  
10 the several States, the District of Columbia, Puerto  
11 Rico, the Virgin Islands, Guam, American Samoa,  
12 and the Northern Mariana Islands.

13 **“Subtitle A—Promotion of Health**  
14 **Information Technology**

15 **“SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR**  
16 **HEALTH INFORMATION TECHNOLOGY.**

17 “(a) ESTABLISHMENT.—There is established within  
18 the Department of Health and Human Services an Office  
19 of the National Coordinator for Health Information Tech-  
20 nology (referred to in this section as the ‘Office’). The Of-  
21 fice shall be headed by a National Coordinator who shall  
22 be appointed by the Secretary and shall report directly to  
23 the Secretary.

24 “(b) PURPOSE.—The National Coordinator shall per-  
25 form the duties under subsection (c) in a manner con-

1 sistent with the development of a nationwide health infor-  
2 mation technology infrastructure that allows for the elec-  
3 tronic use and exchange of information and that—

4           “(1) ensures that each patient’s health informa-  
5 tion is secure and protected, in accordance with ap-  
6 plicable law;

7           “(2) improves health care quality, reduces med-  
8 ical errors, reduces health disparities, and advances  
9 the delivery of patient-centered medical care;

10           “(3) reduces health care costs resulting from  
11 inefficiency, medical errors, inappropriate care, du-  
12 plicative care, and incomplete information;

13           “(4) provides appropriate information to help  
14 guide medical decisions at the time and place of  
15 care;

16           “(5) ensures the inclusion of meaningful public  
17 input in such development of such infrastructure;

18           “(6) improves the coordination of care and in-  
19 formation among hospitals, laboratories, physician  
20 offices, and other entities through an effective infra-  
21 structure for the secure and authorized exchange of  
22 health care information;

23           “(7) improves public health activities and facili-  
24 tates the early identification and rapid response to

1 public health threats and emergencies, including bio-  
2 terror events and infectious disease outbreaks;

3 “(8) facilitates health and clinical research and  
4 health care quality;

5 “(9) promotes early detection, prevention, and  
6 management of chronic diseases;

7 “(10) promotes a more effective marketplace,  
8 greater competition, greater systems analysis, in-  
9 creased consumer choice, and improved outcomes in  
10 health care services; and

11 “(11) improves efforts to reduce health dispari-  
12 ties.

13 “(c) DUTIES OF THE NATIONAL COORDINATOR.—

14 “(1) STANDARDS.—The National Coordinator  
15 shall—

16 “(A) review and determine whether to en-  
17 dorse each standard, implementation specifica-  
18 tion, and certification criterion for the elec-  
19 tronic exchange and use of health information  
20 that is recommended by the HIT Standards  
21 Committee under section 3003 for purposes of  
22 adoption under section 3004;

23 “(B) make such determinations under sub-  
24 paragraph (A), and report to the Secretary  
25 such determinations, not later than 45 days

1 after the date the recommendation is received  
2 by the Coordinator; and

3 “(C) review Federal health information  
4 technology investments to ensure that Federal  
5 health information technology programs are  
6 meeting the objectives of the strategic plan pub-  
7 lished under paragraph (3).

8 “(2) HIT POLICY COORDINATION.—

9 “(A) IN GENERAL.—The National Coordi-  
10 nator shall coordinate health information tech-  
11 nology policy and programs of the Department  
12 with those of other relevant executive branch  
13 agencies with a goal of avoiding duplication of  
14 efforts and of helping to ensure that each agen-  
15 cy undertakes health information technology ac-  
16 tivities primarily within the areas of its greatest  
17 expertise and technical capability and in a man-  
18 ner towards a coordinated national goal.

19 “(B) HIT POLICY AND STANDARDS COM-  
20 MITTEES.—The National Coordinator shall be a  
21 leading member in the establishment and oper-  
22 ations of the HIT Policy Committee and the  
23 HIT Standards Committee and shall serve as a  
24 liaison among those two Committees and the  
25 Federal Government.

1           “(3) STRATEGIC PLAN.—

2                   “(A) IN GENERAL.—The National Coordi-  
3 nator shall, in consultation with other appro-  
4 priate Federal agencies (including the National  
5 Institute of Standards and Technology), update  
6 the Federal Health IT Strategic Plan (devel-  
7 oped as of June 3, 2008) to include specific ob-  
8 jectives, milestones, and metrics with respect to  
9 the following:

10                   “(i) The electronic exchange and use  
11 of health information and the enterprise  
12 integration of such information.

13                   “(ii) The utilization of an electronic  
14 health record for each person in the United  
15 States by 2014.

16                   “(iii) The incorporation of privacy and  
17 security protections for the electronic ex-  
18 change of an individual’s individually iden-  
19 tifiable health information.

20                   “(iv) Ensuring security methods to  
21 ensure appropriate authorization and elec-  
22 tronic authentication of health information  
23 and specifying technologies or methodolo-  
24 gies for rendering health information unus-  
25 able, unreadable, or indecipherable.

1           “(v) Specifying a framework for co-  
2           ordination and flow of recommendations  
3           and policies under this subtitle among the  
4           Secretary, the National Coordinator, the  
5           HIT Policy Committee, the HIT Standards  
6           Committee, and other health information  
7           exchanges and other relevant entities.

8           “(vi) Methods to foster the public un-  
9           derstanding of health information tech-  
10          nology.

11          “(vii) Strategies to enhance the use of  
12          health information technology in improving  
13          the quality of health care, reducing medical  
14          errors, reducing health disparities, improv-  
15          ing public health, increasing prevention  
16          and coordination with community re-  
17          sources, and improving the continuity of  
18          care among health care settings.

19          “(viii) Specific plans for ensuring that  
20          populations with unique needs, such as  
21          children, are appropriately addressed in  
22          the technology design, as appropriate,  
23          which may include technology that  
24          automates enrollment and retention for eli-  
25          gible individuals.

1           “(B) COLLABORATION.—The strategic  
2 plan shall be updated through collaboration of  
3 public and private entities.

4           “(C) MEASURABLE OUTCOME GOALS.—  
5 The strategic plan update shall include measur-  
6 able outcome goals.

7           “(D) PUBLICATION.—The National Coor-  
8 dinator shall republish the strategic plan, in-  
9 cluding all updates.

10          “(4) WEBSITE.—The National Coordinator  
11 shall maintain and frequently update an Internet  
12 website on which there is posted information on the  
13 work, schedules, reports, recommendations, and  
14 other information to ensure transparency in pro-  
15 motion of a nationwide health information tech-  
16 nology infrastructure.

17          “(5) CERTIFICATION.—

18           “(A) IN GENERAL.—The National Coordi-  
19 nator, in consultation with the Director of the  
20 National Institute of Standards and Tech-  
21 nology, shall keep or recognize a program or  
22 programs for the voluntary certification of  
23 health information technology as being in com-  
24 pliance with applicable certification criteria  
25 adopted under this subtitle. Such program shall

1 include, as appropriate, testing of the tech-  
2 nology in accordance with section 13201(b) of  
3 the Health Information Technology for Eco-  
4 nomic and Clinical Health Act.

5 “(B) CERTIFICATION CRITERIA DE-  
6 SCRIBED.—In this title, the term ‘certification  
7 criteria’ means, with respect to standards and  
8 implementation specifications for health infor-  
9 mation technology, criteria to establish that the  
10 technology meets such standards and implemen-  
11 tation specifications.

12 “(6) REPORTS AND PUBLICATIONS.—

13 “(A) REPORT ON ADDITIONAL FUNDING  
14 OR AUTHORITY NEEDED.—Not later than 12  
15 months after the date of the enactment of this  
16 title, the National Coordinator shall submit to  
17 the appropriate committees of jurisdiction of  
18 the House of Representatives and the Senate a  
19 report on any additional funding or authority  
20 the Coordinator or the HIT Policy Committee  
21 or HIT Standards Committee requires to evalu-  
22 ate and develop standards, implementation  
23 specifications, and certification criteria, or to  
24 achieve full participation of stakeholders in the  
25 adoption of a nationwide health information

1           technology infrastructure that allows for the  
2           electronic use and exchange of health informa-  
3           tion.

4           “(B) IMPLEMENTATION REPORT.—The  
5           National Coordinator shall prepare a report  
6           that identifies lessons learned from major pub-  
7           lic and private health care systems in their im-  
8           plementation of health information technology,  
9           including information on whether the tech-  
10          nologies and practices developed by such sys-  
11          tems may be applicable to and usable in whole  
12          or in part by other health care providers.

13          “(C) ASSESSMENT OF IMPACT OF HIT ON  
14          COMMUNITIES WITH HEALTH DISPARITIES AND  
15          UNINSURED, UNDERINSURED, AND MEDICALLY  
16          UNDERSERVED AREAS.—The National Coordi-  
17          nator shall assess and publish the impact of  
18          health information technology in communities  
19          with health disparities and in areas with a high  
20          proportion of individuals who are uninsured,  
21          underinsured, and medically underserved indi-  
22          viduals (including urban and rural areas) and  
23          identify practices to increase the adoption of  
24          such technology by health care providers in  
25          such communities, and the use of health infor-

1           mation technology to reduce and better manage  
2           chronic diseases.

3           “(D) EVALUATION OF BENEFITS AND  
4           COSTS OF THE ELECTRONIC USE AND EX-  
5           CHANGE OF HEALTH INFORMATION.—The Na-  
6           tional Coordinator shall evaluate and publish  
7           evidence on the benefits and costs of the elec-  
8           tronic use and exchange of health information  
9           and assess to whom these benefits and costs ac-  
10          crue.

11          “(E) RESOURCE REQUIREMENTS.—The  
12          National Coordinator shall estimate and publish  
13          resources required annually to reach the goal of  
14          utilization of an electronic health record for  
15          each person in the United States by 2014, in-  
16          cluding—

17                 “(i) the required level of Federal  
18                 funding;

19                 “(ii) expectations for regional, State,  
20                 and private investment;

21                 “(iii) the expected contributions by  
22                 volunteers to activities for the utilization of  
23                 such records; and

24                 “(iv) the resources needed to establish  
25                 a health information technology workforce

1           sufficient to support this effort (including  
2           education programs in medical informatics  
3           and health information management).

4           “(7) ASSISTANCE.—The National Coordinator  
5           may provide financial assistance to consumer advoca-  
6           cacy groups and not-for-profit entities that work in  
7           the public interest for purposes of defraying the cost  
8           to such groups and entities to participate under,  
9           whether in whole or in part, the National Tech-  
10          nology Transfer Act of 1995 (15 U.S.C. 272 note).

11          “(8) GOVERNANCE FOR NATIONWIDE HEALTH  
12          INFORMATION NETWORK.—The National Coordi-  
13          nator shall establish a governance mechanism for the  
14          nationwide health information network.

15          “(d) DETAIL OF FEDERAL EMPLOYEES.—

16          “(1) IN GENERAL.—Upon the request of the  
17          National Coordinator, the head of any Federal agen-  
18          cy is authorized to detail, with or without reimburse-  
19          ment from the Office, any of the personnel of such  
20          agency to the Office to assist it in carrying out its  
21          duties under this section.

22          “(2) EFFECT OF DETAIL.—Any detail of per-  
23          sonnel under paragraph (1) shall—

1           “(A) not interrupt or otherwise affect the  
2           civil service status or privileges of the Federal  
3           employee; and

4           “(B) be in addition to any other staff of  
5           the Department employed by the National Co-  
6           ordinator.

7           “(3) ACCEPTANCE OF DETAILEES.—Notwith-  
8           standing any other provision of law, the Office may  
9           accept detailed personnel from other Federal agen-  
10          cies without regard to whether the agency described  
11          under paragraph (1) is reimbursed.

12          “(e) CHIEF PRIVACY OFFICER OF THE OFFICE OF  
13          THE NATIONAL COORDINATOR.—Not later than 12  
14          months after the date of the enactment of this title, the  
15          Secretary shall appoint a Chief Privacy Officer of the Of-  
16          fice of the National Coordinator, whose duty it shall be  
17          to advise the National Coordinator on privacy, security,  
18          and data stewardship of electronic health information and  
19          to coordinate with other Federal agencies (and similar pri-  
20          vacy officers in such agencies), with State and regional  
21          efforts, and with foreign countries with regard to the pri-  
22          vacy, security, and data stewardship of electronic individ-  
23          ually identifiable health information.

1 **“SEC. 3002. HIT POLICY COMMITTEE.**

2 “(a) ESTABLISHMENT.—There is established a HIT  
3 Policy Committee to make policy recommendations to the  
4 National Coordinator relating to the implementation of a  
5 nationwide health information technology infrastructure,  
6 including implementation of the strategic plan described  
7 in section 3001(e)(3).

8 “(b) DUTIES.—

9 “(1) RECOMMENDATIONS ON HEALTH INFOR-  
10 MATION TECHNOLOGY INFRASTRUCTURE.—The HIT  
11 Policy Committee shall recommend a policy frame-  
12 work for the development and adoption of a nation-  
13 wide health information technology infrastructure  
14 that permits the electronic exchange and use of  
15 health information as is consistent with the strategic  
16 plan under section 3001(e)(3) and that includes the  
17 recommendations under paragraph (2). The Com-  
18 mittee shall update such recommendations and make  
19 new recommendations as appropriate.

20 “(2) SPECIFIC AREAS OF STANDARD DEVELOP-  
21 MENT.—

22 “(A) IN GENERAL.—The HIT Policy Com-  
23 mittee shall recommend the areas in which  
24 standards, implementation specifications, and  
25 certification criteria are needed for the elec-  
26 tronic exchange and use of health information

1 for purposes of adoption under section 3004  
2 and shall recommend an order of priority for  
3 the development, harmonization, and recogni-  
4 tion of such standards, specifications, and cer-  
5 tification criteria among the areas so rec-  
6 ommended. Such standards and implementation  
7 specifications shall include named standards,  
8 architectures, and software schemes for the au-  
9 thentication and security of individually identifi-  
10 able health information and other information  
11 as needed to ensure the reproducible develop-  
12 ment of common solutions across disparate en-  
13 tities.

14 “(B) AREAS REQUIRED FOR CONSIDER-  
15 ATION.—For purposes of subparagraph (A), the  
16 HIT Policy Committee shall make recommenda-  
17 tions for at least the following areas:

18 “(i) Technologies that protect the pri-  
19 vacy of health information and promote se-  
20 curity in a qualified electronic health  
21 record, including for the segmentation and  
22 protection from disclosure of specific and  
23 sensitive individually identifiable health in-  
24 formation with the goal of minimizing the  
25 reluctance of patients to seek care (or dis-

1 close information about a condition) be-  
2 cause of privacy concerns, in accordance  
3 with applicable law, and for the use and  
4 disclosure of limited data sets of such in-  
5 formation.

6 “(ii) A nationwide health information  
7 technology infrastructure that allows for  
8 the electronic use and accurate exchange of  
9 health information.

10 “(iii) The utilization of a certified  
11 electronic health record for each person in  
12 the United States by 2014.

13 “(iv) Technologies that as a part of a  
14 qualified electronic health record allow for  
15 an accounting of disclosures made by a  
16 covered entity (as defined for purposes of  
17 regulations promulgated under section  
18 264(e) of the Health Insurance Portability  
19 and Accountability Act of 1996) for pur-  
20 poses of treatment, payment, and health  
21 care operations (as such terms are defined  
22 for purposes of such regulations).

23 “(v) The use of certified electronic  
24 health records to improve the quality of  
25 health care, such as by promoting the co-

1 ordination of health care and improving  
2 continuity of health care among health  
3 care providers, by reducing medical errors,  
4 by improving population health, by reduc-  
5 ing health disparities, by reducing chronic  
6 disease, and by advancing research and  
7 education.

8 “(vi) Technologies that allow individ-  
9 ually identifiable health information to be  
10 rendered unusable, unreadable, or indeci-  
11 pherable to unauthorized individuals when  
12 such information is transmitted in the na-  
13 tionwide health information network or  
14 physically transported outside of the se-  
15 cured, physical perimeter of a health care  
16 provider, health plan, or health care clear-  
17 inghouse.

18 “(vii) The use of electronic systems to  
19 ensure the comprehensive collection of pa-  
20 tient demographic data, including, at a  
21 minimum, race, ethnicity, primary lan-  
22 guage, and gender information.

23 “(viii) Technologies that address the  
24 needs of children and other vulnerable pop-  
25 ulations.

1                   “(C) OTHER AREAS FOR CONSIDER-  
2                   ATION.—In making recommendations under  
3                   subparagraph (A), the HIT Policy Committee  
4                   may consider the following additional areas:

5                   “(i) The appropriate uses of a nation-  
6                   wide health information infrastructure, in-  
7                   cluding for purposes of—

8                   “(I) the collection of quality data  
9                   and public reporting;

10                  “(II) biosurveillance and public  
11                  health;

12                  “(III) medical and clinical re-  
13                  search; and

14                  “(IV) drug safety.

15                  “(ii) Self-service technologies that fa-  
16                  cilitate the use and exchange of patient in-  
17                  formation and reduce wait times.

18                  “(iii) Telemedicine technologies, in  
19                  order to reduce travel requirements for pa-  
20                  tients in remote areas.

21                  “(iv) Technologies that facilitate home  
22                  health care and the monitoring of patients  
23                  recuperating at home.

24                  “(v) Technologies that help reduce  
25                  medical errors.

1                   “(vi) Technologies that facilitate the  
2 continuity of care among health settings.

3                   “(vii) Technologies that meet the  
4 needs of diverse populations.

5                   “(viii) Methods to facilitate secure ac-  
6 cess by an individual to such individual’s  
7 protected health information.

8                   “(ix) Methods, guidelines, and safe-  
9 guards to facilitate secure access to patient  
10 information by a family member, caregiver,  
11 or guardian acting on behalf of a patient  
12 due to age-related and other disability,  
13 cognitive impairment, or dementia.

14                   “(x) Any other technology that the  
15 HIT Policy Committee finds to be among  
16 the technologies with the greatest potential  
17 to improve the quality and efficiency of  
18 health care.

19                   “(3) FORUM.—The HIT Policy Committee shall  
20 serve as a forum for broad stakeholder input with  
21 specific expertise in policies relating to the matters  
22 described in paragraphs (1) and (2).

23                   “(4) CONSISTENCY WITH EVALUATION CON-  
24 DUCTED UNDER MIPPA.—

1           “(A) REQUIREMENT FOR CONSISTENCY.—  
2           The HIT Policy Committee shall ensure that  
3           recommendations made under paragraph  
4           (2)(B)(vi) are consistent with the evaluation  
5           conducted under section 1809(a) of the Social  
6           Security Act.

7           “(B) SCOPE.—Nothing in subparagraph  
8           (A) shall be construed to limit the recommenda-  
9           tions under paragraph (2)(B)(vi) to the ele-  
10          ments described in section 1809(a)(3) of the  
11          Social Security Act.

12          “(C) TIMING.—The requirement under  
13          subparagraph (A) shall be applicable to the ex-  
14          tent that evaluations have been conducted  
15          under section 1809(a) of the Social Security  
16          Act, regardless of whether the report described  
17          in subsection (b) of such section has been sub-  
18          mitted.

19          “(c) MEMBERSHIP AND OPERATIONS.—

20                 “(1) IN GENERAL.—The National Coordinator  
21                 shall take a leading position in the establishment  
22                 and operations of the HIT Policy Committee.

23                 “(2) MEMBERSHIP.—The HIT Policy Com-  
24                 mittee shall be composed of members to be ap-  
25                 pointed as follows:

1           “(A) 3 members shall be appointed by the  
2           Secretary, 1 of whom shall be appointed to rep-  
3           resent the Department of Health and Human  
4           Services and 1 of whom shall be a public health  
5           official.

6           “(B) 1 member shall be appointed by the  
7           majority leader of the Senate.

8           “(C) 1 member shall be appointed by the  
9           minority leader of the Senate.

10          “(D) 1 member shall be appointed by the  
11          Speaker of the House of Representatives.

12          “(E) 1 member shall be appointed by the  
13          minority leader of the House of Representa-  
14          tives.

15          “(F) Such other members as shall be ap-  
16          pointed by the President as representatives of  
17          other relevant Federal agencies.

18          “(G) 13 members shall be appointed by the  
19          Comptroller General of the United States of  
20          whom—

21                 “(i) 3 members shall advocates for pa-  
22                 tients or consumers;

23                 “(ii) 2 members shall represent health  
24                 care providers, one of which shall be a phy-  
25                 sician;

1                   “(iii) 1 member shall be from a labor  
2                   organization representing health care  
3                   workers;

4                   “(iv) 1 member shall have expertise in  
5                   health information privacy and security;

6                   “(v) 1 member shall have expertise in  
7                   improving the health of vulnerable popu-  
8                   lations;

9                   “(vi) 1 member shall be from the re-  
10                  search community;

11                  “(vii) 1 member shall represent health  
12                  plans or other third-party payers;

13                  “(viii) 1 member shall represent infor-  
14                  mation technology vendors;

15                  “(ix) 1 member shall represent pur-  
16                  chasers or employers; and

17                  “(x) 1 member shall have expertise in  
18                  health care quality measurement and re-  
19                  porting.

20                  “(3) PARTICIPATION.—The members of the  
21                  HIT Policy Committee appointed under paragraph  
22                  (2) shall represent a balance among various sectors  
23                  of the health care system so that no single sector  
24                  unduly influences the recommendations of the Policy  
25                  Committee.

1           “(4) TERMS.—

2                   “(A) IN GENERAL.—The terms of the  
3           members of the HIT Policy Committee shall be  
4           for 3 years, except that the Comptroller General  
5           shall designate staggered terms for the mem-  
6           bers first appointed.

7                   “(B) VACANCIES.—Any member appointed  
8           to fill a vacancy in the membership of the HIT  
9           Policy Committee that occurs prior to the expi-  
10          ration of the term for which the member’s pred-  
11          ecessor was appointed shall be appointed only  
12          for the remainder of that term. A member may  
13          serve after the expiration of that member’s  
14          term until a successor has been appointed. A  
15          vacancy in the HIT Policy Committee shall be  
16          filled in the manner in which the original ap-  
17          pointment was made.

18                  “(5) OUTSIDE INVOLVEMENT.—The HIT Policy  
19          Committee shall ensure an opportunity for the par-  
20          ticipation in activities of the Committee of outside  
21          advisors, including individuals with expertise in the  
22          development of policies for the electronic exchange  
23          and use of health information, including in the areas  
24          of health information privacy and security.

1           “(6) QUORUM.—A majority of the member of  
2           the HIT Policy Committee shall constitute a quorum  
3           for purposes of voting, but a lesser number of mem-  
4           bers may meet and hold hearings.

5           “(7) FAILURE OF INITIAL APPOINTMENT.—If,  
6           on the date that is 45 days after the date of enact-  
7           ment of this title, an official authorized under para-  
8           graph (2) to appoint one or more members of the  
9           HIT Policy Committee has not appointed the full  
10          number of members that such paragraph authorizes  
11          such official to appoint, the Secretary is authorized  
12          to appoint such members.

13          “(8) CONSIDERATION.—The National Coordi-  
14          nator shall ensure that the relevant and available  
15          recommendations and comments from the National  
16          Committee on Vital and Health Statistics are con-  
17          sidered in the development of policies.

18          “(d) APPLICATION OF FACCA.—The Federal Advisory  
19          Committee Act (5 U.S.C. App.), other than section 14 of  
20          such Act, shall apply to the HIT Policy Committee.

21          “(e) PUBLICATION.—The Secretary shall provide for  
22          publication in the Federal Register and the posting on the  
23          Internet website of the Office of the National Coordinator  
24          for Health Information Technology of all policy rec-

1 ommendations made by the HIT Policy Committee under  
2 this section.

3 **“SEC. 3003. HIT STANDARDS COMMITTEE.**

4 “(a) ESTABLISHMENT.—There is established a com-  
5 mittee to be known as the HIT Standards Committee to  
6 recommend to the National Coordinator standards, imple-  
7 mentation specifications, and certification criteria for the  
8 electronic exchange and use of health information for pur-  
9 poses of adoption under section 3004, consistent with the  
10 implementation of the strategic plan described in section  
11 3001(c)(3) and beginning with the areas listed in section  
12 3002(b)(2)(B) in accordance with policies developed by  
13 the HIT Policy Committee.

14 “(b) DUTIES.—

15 “(1) STANDARDS DEVELOPMENT.—

16 “(A) IN GENERAL.—The HIT Standards  
17 Committee shall recommend to the National  
18 Coordinator standards, implementation speci-  
19 fications, and certification criteria described in  
20 subsection (a) that have been developed, har-  
21 monized, or recognized by the HIT Standards  
22 Committee. The HIT Standards Committee  
23 shall update such recommendations and make  
24 new recommendations as appropriate, including  
25 in response to a notification sent under section

1           3004(a)(2)(B). Such recommendations shall be  
2           consistent with the latest recommendations  
3           made by the HIT Policy Committee.

4           “(B) HARMONIZATION.—The HIT Stand-  
5           ards Committee recognize harmonized or up-  
6           dated standards from an entity or entities for  
7           the purpose of harmonizing or updating stand-  
8           ards and implementation specifications in order  
9           to achieve uniform and consistent implementa-  
10          tion of the standards and implementation speci-  
11          fications.

12          “(C) PILOT TESTING OF STANDARDS AND  
13          IMPLEMENTATION SPECIFICATIONS.—In the de-  
14          velopment, harmonization, or recognition of  
15          standards and implementation specifications,  
16          the HIT Standards Committee shall, as appro-  
17          priate, provide for the testing of such standards  
18          and specifications by the National Institute for  
19          Standards and Technology under section  
20          13201(a) of the Health Information Technology  
21          for Economic and Clinical Health Act.

22          “(D) CONSISTENCY.—The standards, im-  
23          plementation specifications, and certification  
24          criteria recommended under this subsection  
25          shall be consistent with the standards for infor-

1           mation transactions and data elements adopted  
2           pursuant to section 1173 of the Social Security  
3           Act.

4           “(2) FORUM.—The HIT Standards Committee  
5           shall serve as a forum for the participation of a  
6           broad range of stakeholders to provide input on the  
7           development, harmonization, and recognition of  
8           standards, implementation specifications, and certifi-  
9           cation criteria necessary for the development and  
10          adoption of a nationwide health information tech-  
11          nology infrastructure that allows for the electronic  
12          use and exchange of health information.

13          “(3) SCHEDULE.—Not later than 90 days after  
14          the date of the enactment of this title, the HIT  
15          Standards Committee shall develop a schedule for  
16          the assessment of policy recommendations developed  
17          by the HIT Policy Committee under section 3002.  
18          The HIT Standards Committee shall update such  
19          schedule annually. The Secretary shall publish such  
20          schedule in the Federal Register.

21          “(4) PUBLIC INPUT.—The HIT Standards  
22          Committee shall conduct open public meetings and  
23          develop a process to allow for public comment on the  
24          schedule described in paragraph (3) and rec-  
25          ommendations described in this subsection. Under

1 such process comments shall be submitted in a time-  
2 ly manner after the date of publication of a rec-  
3 ommendation under this subsection.

4 “(5) CONSIDERATION.—The National Coordi-  
5 nator shall ensure that the relevant and available  
6 recommendations and comments from the National  
7 Committee on Vital and Health Statistics are con-  
8 sidered in the development of standards.

9 “(c) MEMBERSHIP AND OPERATIONS.—

10 “(1) IN GENERAL.—The National Coordinator  
11 shall take a leading position in the establishment  
12 and operations of the HIT Standards Committee.

13 “(2) MEMBERSHIP.—The membership of the  
14 HIT Standards Committee shall at least reflect pro-  
15 viders, ancillary healthcare workers, consumers, pur-  
16 chasers, health plans, technology vendors, research-  
17 ers, relevant Federal agencies, and individuals with  
18 technical expertise on health care quality, privacy  
19 and security, and on the electronic exchange and use  
20 of health information.

21 “(3) PARTICIPATION.—The members of the  
22 HIT Standards Committee appointed under this  
23 subsection shall represent a balance among various  
24 sectors of the health care system so that no single

1 sector unduly influences the recommendations of  
2 such Committee.

3 “(4) OUTSIDE INVOLVEMENT.—The HIT Policy  
4 Committee shall ensure an opportunity for the par-  
5 ticipation in activities of the Committee of outside  
6 advisors, including individuals with expertise in the  
7 development of standards for the electronic exchange  
8 and use of health information, including in the areas  
9 of health information privacy and security.

10 “(5) BALANCE AMONG SECTORS.—In developing  
11 the procedures for conducting the activities of the  
12 HIT Standards Committee, the HIT Standards  
13 Committee shall act to ensure a balance among var-  
14 ious sectors of the health care system so that no sin-  
15 gle sector unduly influences the actions of the HIT  
16 Standards Committee.

17 “(6) ASSISTANCE.—For the purposes of car-  
18 rying out this section, the Secretary may provide or  
19 ensure that financial assistance is provided by the  
20 HIT Standards Committee to defray in whole or in  
21 part any membership fees or dues charged by such  
22 Committee to those consumer advocacy groups and  
23 not for profit entities that work in the public inter-  
24 est as a part of their mission.

1           “(d) APPLICATION OF FACCA.—The Federal Advisory  
2 Committee Act (5 U.S.C. App.), other than section 14,  
3 shall apply to the HIT Standards Committee.

4           “(e) PUBLICATION.—The Secretary shall provide for  
5 publication in the Federal Register and the posting on the  
6 Internet website of the Office of the National Coordinator  
7 for Health Information Technology of all recommenda-  
8 tions made by the HIT Standards Committee under this  
9 section.

10 **“SEC. 3004. PROCESS FOR ADOPTION OF ENDORSED REC-**  
11 **COMMENDATIONS; ADOPTION OF INITIAL SET**  
12 **OF STANDARDS, IMPLEMENTATION SPECI-**  
13 **FICATIONS, AND CERTIFICATION CRITERIA.**

14           “(a) PROCESS FOR ADOPTION OF ENDORSED REC-  
15 OMMENDATIONS.—

16           “(1) REVIEW OF ENDORSED STANDARDS, IM-  
17 PLEMENTATION SPECIFICATIONS, AND CERTIFI-  
18 CATION CRITERIA.—Not later than 90 days after the  
19 date of receipt of standards, implementation speci-  
20 fications, or certification criteria endorsed under sec-  
21 tion 3001(c), the Secretary, in consultation with rep-  
22 resentatives of other relevant Federal agencies, shall  
23 jointly review such standards, implementation speci-  
24 fications, or certification criteria and shall determine  
25 whether or not to propose adoption of such stand-

1       ards, implementation specifications, or certification  
2       criteria.

3               “(2) DETERMINATION TO ADOPT STANDARDS,  
4       IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-  
5       CATION CRITERIA.—If the Secretary determines—

6                       “(A) to propose adoption of any grouping  
7       of such standards, implementation specifica-  
8       tions, or certification criteria, the Secretary  
9       shall, by regulation under section 553 of title 5,  
10      United States Code, determine whether or not  
11      to adopt such grouping of standards, implemen-  
12      tation specifications, or certification criteria; or

13                      “(B) not to propose adoption of any group-  
14      ing of standards, implementation specifications,  
15      or certification criteria, the Secretary shall no-  
16      tify the National Coordinator and the HIT  
17      Standards Committee in writing of such deter-  
18      mination and the reasons for not proposing the  
19      adoption of such recommendation.

20               “(3) PUBLICATION.—The Secretary shall pro-  
21      vide for publication in the Federal Register of all de-  
22      terminations made by the Secretary under para-  
23      graph (1).

24               “(b) ADOPTION OF STANDARDS, IMPLEMENTATION  
25      SPECIFICATIONS, AND CERTIFICATION CRITERIA.—

1           “(1) IN GENERAL.—Not later than December  
2           31, 2009, the Secretary shall, through the rule-  
3           making process consistent with subsection (a)(2)(A),  
4           adopt an initial set of standards, implementation  
5           specifications, and certification criteria for the areas  
6           required for consideration under section  
7           3002(b)(2)(B). The rulemaking for the initial set of  
8           standards, implementation specifications, and certifi-  
9           cation criteria may be issued on an interim, final  
10          basis.

11           “(2) APPLICATION OF CURRENT STANDARDS,  
12          IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-  
13          CATION CRITERIA.—The standards, implementation  
14          specifications, and certification criteria adopted be-  
15          fore the date of the enactment of this title through  
16          the process existing through the Office of the Na-  
17          tional Coordinator for Health Information Tech-  
18          nology may be applied towards meeting the require-  
19          ment of paragraph (1).

20           “(3) SUBSEQUENT STANDARDS ACTIVITY.—The  
21          Secretary shall adopt additional standards, imple-  
22          mentation specifications, and certification criteria as  
23          necessary and consistent with the schedule published  
24          under section 3003(b)(2).

1 **“SEC. 3005. APPLICATION AND USE OF ADOPTED STAND-**  
2 **ARDS AND IMPLEMENTATION SPECIFICA-**  
3 **TIONS BY FEDERAL AGENCIES.**

4 “For requirements relating to the application and use  
5 by Federal agencies of the standards and implementation  
6 specifications adopted under section 3004, see section  
7 13111 of the Health Information Technology for Eco-  
8 nomic and Clinical Health Act.

9 **“SEC. 3006. VOLUNTARY APPLICATION AND USE OF ADOPT-**  
10 **ED STANDARDS AND IMPLEMENTATION**  
11 **SPECIFICATIONS BY PRIVATE ENTITIES.**

12 “(a) IN GENERAL.—Except as provided under section  
13 13112 of the HITECH Act, nothing in such Act or in  
14 the amendments made by such Act shall be construed—

15 “(1) to require a private entity to adopt or com-  
16 ply with a standard or implementation specification  
17 adopted under section 3004; or

18 “(2) to provide a Federal agency authority,  
19 other than the authority such agency may have  
20 under other provisions of law, to require a private  
21 entity to comply with such a standard or implemen-  
22 tation specification.

23 “(b) RULE OF CONSTRUCTION.—Nothing in this sub-  
24 title shall be construed to require that a private entity that  
25 enters into a contract with the Federal Government apply  
26 or use the standards and implementation specifications

1 adopted under section 3004 with respect to activities not  
2 related to the contract.

3 **“SEC. 3007. FEDERAL HEALTH INFORMATION TECH-**  
4 **NOLOGY.**

5 “(a) IN GENERAL.—The National Coordinator shall  
6 support the development and routine updating of qualified  
7 electronic health record technology (as defined in section  
8 3000) consistent with subsections (b) and (c) and make  
9 available such qualified electronic health record technology  
10 unless the Secretary determines through an assessment  
11 that the needs and demands of providers are being sub-  
12 stantially and adequately met through the marketplace.

13 “(b) CERTIFICATION.—In making such electronic  
14 health record technology publicly available, the National  
15 Coordinator shall ensure that the qualified electronic  
16 health record technology described in subsection (a) is cer-  
17 tified under the program developed under section  
18 3001(c)(3) to be in compliance with applicable standards  
19 adopted under section 3003(a).

20 “(c) AUTHORIZATION TO CHARGE A NOMINAL  
21 FEE.—The National Coordinator may impose a nominal  
22 fee for the adoption by a health care provider of the health  
23 information technology system developed or approved  
24 under subsection (a) and (b). Such fee shall take into ac-  
25 count the financial circumstances of smaller providers, low

1 income providers, and providers located in rural or other  
2 medically underserved areas.

3 “(d) **RULE OF CONSTRUCTION.**—Nothing in this sec-  
4 tion shall be construed to require that a private or govern-  
5 ment entity adopt or use the technology provided under  
6 this section.

7 **“SEC. 3008. TRANSITIONS.**

8 “(a) **ONCHIT.**—To the extent consistent with sec-  
9 tion 3001, all functions, personnel, assets, liabilities, and  
10 administrative actions applicable to the National Coordi-  
11 nator for Health Information Technology appointed under  
12 Executive Order No. 13335 or the Office of such National  
13 Coordinator on the date before the date of the enactment  
14 of this title shall be transferred to the National Coordi-  
15 nator appointed under section 3001(a) and the Office of  
16 such National Coordinator as of the date of the enactment  
17 of this title.

18 “(b) **NATIONAL EHEALTH COLLABORATIVE.**—Noth-  
19 ing in sections 3002 or 3003 or this subsection shall be  
20 construed as prohibiting the AHIC Successor, Inc. doing  
21 business as the National eHealth Collaborative from modi-  
22 fying its charter, duties, membership, and any other struc-  
23 ture or function required to be consistent with section  
24 3002 and 3003 so as to allow the Secretary to recognize

1 such AHIC Successor, Inc. as the HIT Policy Committee  
2 or the HIT Standards Committee.

3 “(c) CONSISTENCY OF RECOMMENDATIONS.—In car-  
4 rying out section 3003(b)(1)(A), until recommendations  
5 are made by the HIT Policy Committee, recommendations  
6 of the HIT Standards Committee shall be consistent with  
7 the most recent recommendations made by such AHIC  
8 Successor, Inc.

9 **“SEC. 3009. MISCELLANEOUS PROVISIONS.**

10 “(a) RELATION TO HIPAA PRIVACY AND SECURITY  
11 LAW.—

12 “(1) IN GENERAL.—With respect to the relation  
13 of this title to HIPAA privacy and security law:

14 “(A) This title may not be construed as  
15 having any effect on the authorities of the Sec-  
16 retary under HIPAA privacy and security law.

17 “(B) The purposes of this title include en-  
18 suring that the health information technology  
19 standards and implementation specifications  
20 adopted under section 3004 take into account  
21 the requirements of HIPAA privacy and secu-  
22 rity law.

23 “(2) DEFINITION.—For purposes of this sec-  
24 tion, the term ‘HIPAA privacy and security law’  
25 means—

1           “(A) the provisions of part C of title XI of  
2           the Social Security Act, section 264 of the  
3           Health Insurance Portability and Accountability  
4           Act of 1996, and subtitle D of title IV of the  
5           Health Information Technology for Economic  
6           and Clinical Health Act; and

7           “(B) regulations under such provisions.

8           “(b) FLEXIBILITY.—In administering the provisions  
9           of this title, the Secretary shall have flexibility in applying  
10          the definition of health care provider under section  
11          3000(3), including the authority to omit certain entities  
12          listed in such definition when applying such definition  
13          under this title, where appropriate.”.

14   **SEC. 13102. TECHNICAL AMENDMENT.**

15          Section 1171(5) of the Social Security Act (42 U.S.C.  
16          1320d) is amended by striking “or C” and inserting “C,  
17          or D”.

18   **PART 2—APPLICATION AND USE OF ADOPTED**  
19       **HEALTH INFORMATION TECHNOLOGY**  
20       **STANDARDS; REPORTS**

21   **SEC. 13111. COORDINATION OF FEDERAL ACTIVITIES WITH**  
22               **ADOPTED STANDARDS AND IMPLEMENTA-**  
23               **TION SPECIFICATIONS.**

24          (a) SPENDING ON HEALTH INFORMATION TECH-  
25          NOLOGY SYSTEMS.—As each agency (as defined by the Di-

1 rector of the Office of Management and Budget, in con-  
2 sultation with the Secretary of Health and Human Serv-  
3 ices) implements, acquires, or upgrades health information  
4 technology systems used for the direct exchange of individ-  
5 ually identifiable health information between agencies and  
6 with non-Federal entities, it shall utilize, where available,  
7 health information technology systems and products that  
8 meet standards and implementation specifications adopted  
9 under section 3004 of the Public Health Service Act, as  
10 added by section 13101.

11 (b) FEDERAL INFORMATION COLLECTION ACTIVI-  
12 TIES.—With respect to a standard or implementation  
13 specification adopted under section 3004 of the Public  
14 Health Service Act, as added by section 13101, the Presi-  
15 dent shall take measures to ensure that Federal activities  
16 involving the broad collection and submission of health in-  
17 formation are consistent with such standard or implemen-  
18 tation specification, respectively, within three years after  
19 the date of such adoption.

20 (c) APPLICATION OF DEFINITIONS.—The definitions  
21 contained in section 3000 of the Public Health Service  
22 Act, as added by section 13101, shall apply for purposes  
23 of this part.

1 **SEC. 13112. APPLICATION TO PRIVATE ENTITIES.**

2 Each agency (as defined in such Executive Order  
3 issued on August 22, 2006, relating to promoting quality  
4 and efficient health care in Federal government adminis-  
5 tered or sponsored health care programs) shall require in  
6 contracts or agreements with health care providers, health  
7 plans, or health insurance issuers that as each provider,  
8 plan, or issuer implements, acquires, or upgrades health  
9 information technology systems, it shall utilize, where  
10 available, health information technology systems and prod-  
11 ucts that meet standards and implementation specifica-  
12 tions adopted under section 3004 of the Public Health  
13 Service Act, as added by section 13101.

14 **SEC. 13113. STUDY AND REPORTS.**

15 (a) REPORT ON ADOPTION OF NATIONWIDE SYS-  
16 TEM.—Not later than 2 years after the date of the enact-  
17 ment of this Act and annually thereafter, the Secretary  
18 of Health and Human Services shall submit to the appro-  
19 priate committees of jurisdiction of the House of Rep-  
20 resentatives and the Senate a report that—

21 (1) describes the specific actions that have been  
22 taken by the Federal Government and private enti-  
23 ties to facilitate the adoption of a nationwide system  
24 for the electronic use and exchange of health infor-  
25 mation;

1           (2) describes barriers to the adoption of such a  
2 nationwide system; and

3           (3) contains recommendations to achieve full  
4 implementation of such a nationwide system.

5           (b) REIMBURSEMENT INCENTIVE STUDY AND RE-  
6 PORT.—

7           (1) STUDY.—The Secretary of Health and  
8 Human Services shall carry out, or contract with a  
9 private entity to carry out, a study that examines  
10 methods to create efficient reimbursement incentives  
11 for improving health care quality in Federally quali-  
12 fied health centers, rural health clinics, and free  
13 clinics.

14           (2) REPORT.—Not later than 2 years after the  
15 date of the enactment of this Act, the Secretary of  
16 Health and Human Services shall submit to the ap-  
17 propriate committees of jurisdiction of the House of  
18 Representatives and the Senate a report on the  
19 study carried out under paragraph (1).

20           (c) AGING SERVICES TECHNOLOGY STUDY AND RE-  
21 PORT.—

22           (1) IN GENERAL.—The Secretary of Health and  
23 Human Services shall carry out, or contract with a  
24 private entity to carry out, a study of matters relat-  
25 ing to the potential use of new aging services tech-

1 nology to assist seniors, individuals with disabilities,  
2 and their caregivers throughout the aging process.

3 (2) MATTERS TO BE STUDIED.—The study  
4 under paragraph (1) shall include—

5 (A) an evaluation of—

6 (i) methods for identifying current,  
7 emerging, and future health technology  
8 that can be used to meet the needs of sen-  
9 iors and individuals with disabilities and  
10 their caregivers across all aging services  
11 settings, as specified by the Secretary;

12 (ii) methods for fostering scientific in-  
13 novation with respect to aging services  
14 technology within the business and aca-  
15 demic communities; and

16 (iii) developments in aging services  
17 technology in other countries that may be  
18 applied in the United States; and

19 (B) identification of—

20 (i) barriers to innovation in aging  
21 services technology and devising strategies  
22 for removing such barriers; and

23 (ii) barriers to the adoption of aging  
24 services technology by health care pro-

1                   viders and consumers and devising strate-  
2                   gies to removing such barriers.

3                   (3) REPORT.—Not later than 24 months after  
4                   the date of the enactment of this Act, the Secretary  
5                   shall submit to the appropriate committees of juris-  
6                   diction of the House of Representatives and of the  
7                   Senate a report on the study carried out under para-  
8                   graph (1).

9                   (4) DEFINITIONS.—For purposes of this sub-  
10                  section:

11                  (A) AGING SERVICES TECHNOLOGY.—The  
12                  term “aging services technology” means health  
13                  technology that meets the health care needs of  
14                  seniors, individuals with disabilities, and the  
15                  caregivers of such seniors and individuals.

16                  (B) SENIOR.—The term “senior” has such  
17                  meaning as specified by the Secretary.

18                  **Subtitle B—Testing of Health**  
19                  **Information Technology**

20                  **SEC. 13201. NATIONAL INSTITUTE FOR STANDARDS AND**  
21                  **TECHNOLOGY TESTING.**

22                  (a) PILOT TESTING OF STANDARDS AND IMPLEMEN-  
23                  TATION SPECIFICATIONS.—In coordination with the HIT  
24                  Standards Committee established under section 3003 of  
25                  the Public Health Service Act, as added by section 13101,

1 with respect to the development of standards and imple-  
2 mentation specifications under such section, the Director  
3 of the National Institute for Standards and Technology  
4 shall test such standards and implementation specifica-  
5 tions, as appropriate, in order to assure the efficient im-  
6 plementation and use of such standards and implementa-  
7 tion specifications.

8 (b) VOLUNTARY TESTING PROGRAM.—In coordina-  
9 tion with the HIT Standards Committee established under  
10 section 3003 of the Public Health Service Act, as added  
11 by section 13101, with respect to the development of  
12 standards and implementation specifications under such  
13 section, the Director of the National Institute of Stand-  
14 ards and Technology shall support the establishment of  
15 a conformance testing infrastructure, including the devel-  
16 opment of technical test beds. The development of this  
17 conformance testing infrastructure may include a program  
18 to accredit independent, non-Federal laboratories to per-  
19 form testing.

20 **SEC. 13202. RESEARCH AND DEVELOPMENT PROGRAMS.**

21 (a) HEALTH CARE INFORMATION ENTERPRISE INTE-  
22 GRATION RESEARCH CENTERS.—

23 (1) IN GENERAL.—The Director of the National  
24 Institute of Standards and Technology, in consulta-  
25 tion with the Director of the National Science Foun-

1        dation and other appropriate Federal agencies, shall  
2        establish a program of assistance to institutions of  
3        higher education (or consortia thereof which may in-  
4        clude nonprofit entities and Federal Government  
5        laboratories) to establish multidisciplinary Centers  
6        for Health Care Information Enterprise Integration.

7            (2) REVIEW; COMPETITION.—Grants shall be  
8        awarded under this subsection on a merit-reviewed,  
9        competitive basis.

10           (3) PURPOSE.—The purposes of the Centers de-  
11        scribed in paragraph (1) shall be—

12            (A) to generate innovative approaches to  
13        health care information enterprise integration  
14        by conducting cutting-edge, multidisciplinary  
15        research on the systems challenges to health  
16        care delivery; and

17            (B) the development and use of health in-  
18        formation technologies and other complemen-  
19        tary fields.

20           (4) RESEARCH AREAS.—Research areas may in-  
21        clude—

22            (A) interfaces between human information  
23        and communications technology systems;

24            (B) voice-recognition systems;

1 (C) software that improves interoperability  
2 and connectivity among health information sys-  
3 tems;

4 (D) software dependability in systems crit-  
5 ical to health care delivery;

6 (E) measurement of the impact of informa-  
7 tion technologies on the quality and productivity  
8 of health care;

9 (F) health information enterprise manage-  
10 ment;

11 (G) health information technology security  
12 and integrity; and

13 (H) relevant health information technology  
14 to reduce medical errors.

15 (5) APPLICATIONS.—An institution of higher  
16 education (or a consortium thereof) seeking funding  
17 under this subsection shall submit an application to  
18 the Director of the National Institute of Standards  
19 and Technology at such time, in such manner, and  
20 containing such information as the Director may re-  
21 quire. The application shall include, at a minimum,  
22 a description of—

23 (A) the research projects that will be un-  
24 dertaken by the Center established pursuant to

1 assistance under paragraph (1) and the respec-  
2 tive contributions of the participating entities;

3 (B) how the Center will promote active col-  
4 laboration among scientists and engineers from  
5 different disciplines, such as information tech-  
6 nology, biologic sciences, management, social  
7 sciences, and other appropriate disciplines;

8 (C) technology transfer activities to dem-  
9 onstrate and diffuse the research results, tech-  
10 nologies, and knowledge; and

11 (D) how the Center will contribute to the  
12 education and training of researchers and other  
13 professionals in fields relevant to health infor-  
14 mation enterprise integration.

15 (b) NATIONAL INFORMATION TECHNOLOGY RE-  
16 SEARCH AND DEVELOPMENT PROGRAM.—The National  
17 High-Performance Computing Program established by  
18 section 101 of the High-Performance Computing Act of  
19 1991 (15 U.S.C. 5511) shall include Federal research and  
20 development programs related to health information tech-  
21 nology.

1           **Subtitle C—Grants and Loans**  
2                           **Funding**

3   **SEC. 13301. GRANT, LOAN, AND DEMONSTRATION PRO-**  
4                           **GRAMS.**

5           Title XXX of the Public Health Service Act, as added  
6 by section 13101, is amended by adding at the end the  
7 following new subtitle:

8   **“Subtitle B—Incentives for the Use**  
9   **of Health Information Technology**

10 **“SEC. 3011. IMMEDIATE FUNDING TO STRENGTHEN THE**  
11                           **HEALTH INFORMATION TECHNOLOGY INFRA-**  
12                           **STRUCTURE.**

13           “(a) IN GENERAL.—The Secretary shall, using  
14 amounts appropriated under section 3018, invest in the  
15 infrastructure necessary to allow for and promote the elec-  
16 tronic exchange and use of health information for each  
17 individual in the United States consistent with the goals  
18 outlined in the strategic plan developed by the National  
19 Coordinator (and as available) under section 3001. The  
20 Secretary shall invest funds through the different agencies  
21 with expertise in such goals, such as the Office of the Na-  
22 tional Coordinator for Health Information Technology, the  
23 Health Resources and Services Administration, the Agen-  
24 cy for Healthcare Research and Quality, the Centers of  
25 Medicare & Medicaid Services, the Centers for Disease

1 Control and Prevention, and the Indian Health Service to  
2 support the following:

3           “(1) Health information technology architecture  
4 that will support the nationwide electronic exchange  
5 and use of health information in a secure, private,  
6 and accurate manner, including connecting health  
7 information exchanges, and which may include up-  
8 dating and implementing the infrastructure nec-  
9 essary within different agencies of the Department  
10 of Health and Human Services to support the elec-  
11 tronic use and exchange of health information.

12           “(2) Development and adoption of appropriate  
13 certified electronic health records for categories of  
14 health care providers not eligible for support under  
15 title XVIII or XIX of the Social Security Act for the  
16 adoption of such records.

17           “(3) Training on and dissemination of informa-  
18 tion on best practices to integrate health information  
19 technology, including electronic health records, into  
20 a provider’s delivery of care, consistent with best  
21 practices learned from the Health Information Tech-  
22 nology Research Center developed under section  
23 3012(b), including community health centers receiv-  
24 ing assistance under section 330, covered entities  
25 under section 340B, and providers participating in

1 one or more of the programs under titles XVIII,  
2 XIX, and XXI of the Social Security Act (relating  
3 to Medicare, Medicaid, and the State Children’s  
4 Health Insurance Program).

5 “(4) Infrastructure and tools for the promotion  
6 of telemedicine, including coordination among Fed-  
7 eral agencies in the promotion of telemedicine.

8 “(5) Promotion of the interoperability of clinical  
9 data repositories or registries.

10 “(6) Promotion of technologies and best prac-  
11 tices that enhance the protection of health informa-  
12 tion by all holders of individually identifiable health  
13 information.

14 “(7) Improvement and expansion of the use of  
15 health information technology by public health de-  
16 partments.

17 “(b) COORDINATION.—The Secretary shall ensure  
18 funds under this section are used in a coordinated manner  
19 with other health information promotion activities.

20 “(c) ADDITIONAL USE OF FUNDS.—In addition to  
21 using funds as provided in subsection (a), the Secretary  
22 may use amounts appropriated under section 3018 to  
23 carry out health information technology activities that are  
24 provided for under laws in effect on the date of the enact-  
25 ment of this title.



1 formation technology services, such as the National Insti-  
2 tute of Standards and Technology, in developing and im-  
3 plementing this program.

4 “(b) HEALTH INFORMATION TECHNOLOGY RE-  
5 SEARCH CENTER.—

6 “(1) IN GENERAL.—The Secretary shall create  
7 a Health Information Technology Research Center  
8 (in this section referred to as the ‘Center’) to pro-  
9 vide technical assistance and develop or recognize  
10 best practices to support and accelerate efforts to  
11 adopt, implement, and effectively utilize health infor-  
12 mation technology that allows for the electronic ex-  
13 change and use of information in compliance with  
14 standards, implementation specifications, and certifi-  
15 cation criteria adopted under section 3004.

16 “(2) INPUT.—The Center shall incorporate  
17 input from—

18 “(A) other Federal agencies with dem-  
19 onstrated experience and expertise in informa-  
20 tion technology services such as the National  
21 Institute of Standards and Technology;

22 “(B) users of health information tech-  
23 nology, such as providers and their support and  
24 clerical staff and others involved in the care and  
25 care coordination of patients, from the health

1 care and health information technology indus-  
2 try; and

3 “(C) others as appropriate.

4 “(3) PURPOSES.—The purposes of the Center  
5 are to—

6 “(A) provide a forum for the exchange of  
7 knowledge and experience;

8 “(B) accelerate the transfer of lessons  
9 learned from existing public and private sector  
10 initiatives, including those currently receiving  
11 Federal financial support;

12 “(C) assemble, analyze, and widely dis-  
13 seminate evidence and experience related to the  
14 adoption, implementation, and effective use of  
15 health information technology that allows for  
16 the electronic exchange and use of information  
17 including through the regional centers described  
18 in subsection (c);

19 “(D) provide technical assistance for the  
20 establishment and evaluation of regional and  
21 local health information networks to facilitate  
22 the electronic exchange of information across  
23 health care settings and improve the quality of  
24 health care;

1                   “(E) provide technical assistance for the  
2                   development and dissemination of solutions to  
3                   barriers to the exchange of electronic health in-  
4                   formation; and

5                   “(F) learn about effective strategies to  
6                   adopt and utilize health information technology  
7                   in medically underserved communities.

8                   “(c) HEALTH INFORMATION TECHNOLOGY RE-  
9 REGIONAL EXTENSION CENTERS.—

10                   “(1) IN GENERAL.—The Secretary shall provide  
11                   assistance for the creation and support of regional  
12                   centers (in this subsection referred to as ‘regional  
13                   centers’) to provide technical assistance and dissemi-  
14                   nate best practices and other information learned  
15                   from the Center to support and accelerate efforts to  
16                   adopt, implement, and effectively utilize health infor-  
17                   mation technology that allows for the electronic ex-  
18                   change and use of information in compliance with  
19                   standards, implementation specifications, and certifi-  
20                   cation criteria adopted under section 3004. Activities  
21                   conducted under this subsection shall be consistent  
22                   with the strategic plan developed by the National  
23                   Coordinator, (and, as available) under section 3001.

24                   “(2) AFFILIATION.—Regional centers shall be  
25                   affiliated with any United States-based nonprofit in-

1       stitution or organization, or group thereof, that ap-  
2       plies and is awarded financial assistance under this  
3       section. Individual awards shall be decided on the  
4       basis of merit.

5               “(3) OBJECTIVE.—The objective of the regional  
6       centers is to enhance and promote the adoption of  
7       health information technology through—

8               “(A) assistance with the implementation,  
9       effective use, upgrading, and ongoing mainte-  
10      nance of health information technology, includ-  
11      ing electronic health records, to healthcare pro-  
12      viders nationwide;

13              “(B) broad participation of individuals  
14      from industry, universities, and State govern-  
15      ments;

16              “(C) active dissemination of best practices  
17      and research on the implementation, effective  
18      use, upgrading, and ongoing maintenance of  
19      health information technology, including elec-  
20      tronic health records, to health care providers  
21      in order to improve the quality of healthcare  
22      and protect the privacy and security of health  
23      information;

24              “(D) participation, to the extent prac-  
25      ticable, in health information exchanges;

1           “(E) utilization, when appropriate, of the  
2           expertise and capability that exists in Federal  
3           agencies other than the Department; and

4           “(F) integration of health information  
5           technology, including electronic health records,  
6           into the initial and ongoing training of health  
7           professionals and others in the healthcare in-  
8           dustry that would be instrumental to improving  
9           the quality of healthcare through the smooth  
10          and accurate electronic use and exchange of  
11          health information.

12          “(4) REGIONAL ASSISTANCE.—Each regional  
13          center shall aim to provide assistance and education  
14          to all providers in a region, but shall prioritize any  
15          direct assistance first to the following:

16                 “(A) Public or not-for-profit hospitals or  
17                 critical access hospitals.

18                 “(B) Federally qualified health centers (as  
19                 defined in section 1861(aa)(4) of the Social Se-  
20                 curity Act).

21                 “(C) Entities that are located in rural and  
22                 other areas that serve uninsured, underinsured,  
23                 and medically underserved individuals (regard-  
24                 less of whether such area is urban or rural).

1           “(D) Individual or small group practices  
2           (or a consortium thereof) that are primarily fo-  
3           cused on primary care.

4           “(5) FINANCIAL SUPPORT.—The Secretary may  
5           provide financial support to any regional center cre-  
6           ated under this subsection for a period not to exceed  
7           four years. The Secretary may not provide more  
8           than 50 percent of the capital and annual operating  
9           and maintenance funds required to create and main-  
10          tain such a center, except in an instance of national  
11          economic conditions which would render this cost-  
12          share requirement detrimental to the program and  
13          upon notification to Congress as to the justification  
14          to waive the cost-share requirement.

15          “(6) NOTICE OF PROGRAM DESCRIPTION AND  
16          AVAILABILITY OF FUNDS.—The Secretary shall pub-  
17          lish in the Federal Register, not later than 90 days  
18          after the date of the enactment of this title, a draft  
19          description of the program for establishing regional  
20          centers under this subsection. Such description shall  
21          include the following:

22                  “(A) A detailed explanation of the program  
23                  and the programs goals.

24                  “(B) Procedures to be followed by the ap-  
25                  plicants.

1                   “(C) Criteria for determining qualified ap-  
2                   plicants.

3                   “(D) Maximum support levels expected to  
4                   be available to centers under the program.

5                   “(7) APPLICATION REVIEW.—The Secretary  
6                   shall subject each application under this subsection  
7                   to merit review. In making a decision whether to ap-  
8                   prove such application and provide financial support,  
9                   the Secretary shall consider at a minimum the mer-  
10                  its of the application, including those portions of the  
11                  application regarding—

12                   “(A) the ability of the applicant to provide  
13                   assistance under this subsection and utilization  
14                   of health information technology appropriate to  
15                   the needs of particular categories of health care  
16                   providers;

17                   “(B) the types of service to be provided to  
18                   health care providers;

19                   “(C) geographical diversity and extent of  
20                   service area; and

21                   “(D) the percentage of funding and  
22                   amount of in-kind commitment from other  
23                   sources.

24                   “(8) BIENNIAL EVALUATION.—Each regional  
25                   center which receives financial assistance under this

1 subsection shall be evaluated biennially by an evalua-  
2 tion panel appointed by the Secretary. Each evalua-  
3 tion panel shall be composed of private experts, none  
4 of whom shall be connected with the center involved,  
5 and of Federal officials. Each evaluation panel shall  
6 measure the involved center's performance against  
7 the objective specified in paragraph (3). The Sec-  
8 retary shall not continue to provide funding to a re-  
9 gional center unless its evaluation is overall positive.

10 “(9) CONTINUING SUPPORT.—After the second  
11 year of assistance under this subsection, a regional  
12 center may receive additional support under this  
13 subsection if it has received positive evaluations and  
14 a finding by the Secretary that continuation of Fed-  
15 eral funding to the center was in the best interest  
16 of provision of health information technology exten-  
17 sion services.

18 **“SEC. 3013. STATE GRANTS TO PROMOTE HEALTH INFOR-**  
19 **MATION TECHNOLOGY.**

20 “(a) IN GENERAL.—The Secretary, acting through  
21 the National Coordinator, shall establish a program in ac-  
22 cordance with this section to facilitate and expand the  
23 electronic movement and use of health information among  
24 organizations according to nationally recognized stand-  
25 ards.

1           “(b) PLANNING GRANTS.—The Secretary may award  
2 a grant to a State or qualified State-designated entity (as  
3 described in subsection (f)) that submits an application  
4 to the Secretary at such time, in such manner, and con-  
5 taining such information as the Secretary may specify, for  
6 the purpose of planning activities described in subsection  
7 (d).

8           “(c) IMPLEMENTATION GRANTS.—The Secretary  
9 may award a grant to a State or qualified State designated  
10 entity that—

11           “(1) has submitted, and the Secretary has ap-  
12 proved, a plan described in subsection (e) (regardless  
13 of whether such plan was prepared using amounts  
14 awarded under subsection (b)); and

15           “(2) submits an application at such time, in  
16 such manner, and containing such information as  
17 the Secretary may specify.

18           “(d) USE OF FUNDS.—Amounts received under a  
19 grant under subsection (c) shall be used to conduct activi-  
20 ties to facilitate and expand the electronic movement and  
21 use of health information among organizations according  
22 to nationally recognized standards through activities that  
23 include—

1           “(1) enhancing broad and varied participation  
2           in the authorized and secure nationwide electronic  
3           use and exchange of health information;

4           “(2) identifying State or local resources avail-  
5           able towards a nationwide effort to promote health  
6           information technology;

7           “(3) complementing other Federal grants, pro-  
8           grams, and efforts towards the promotion of health  
9           information technology;

10          “(4) providing technical assistance for the de-  
11          velopment and dissemination of solutions to barriers  
12          to the exchange of electronic health information;

13          “(5) promoting effective strategies to adopt and  
14          utilize health information technology in medically  
15          underserved communities;

16          “(6) assisting patients in utilizing health infor-  
17          mation technology;

18          “(7) encouraging clinicians to work with Health  
19          Information Technology Regional Extension Centers  
20          as described in section 3012, to the extent they are  
21          available and valuable;

22          “(8) supporting public health agencies’ author-  
23          ized use of and access to electronic health informa-  
24          tion;

1           “(9) promoting the use of electronic health  
2 records for quality improvement including through  
3 quality measures reporting; and

4           “(10) such other activities as the Secretary may  
5 specify.

6           “(e) PLAN.—

7           “(1) IN GENERAL.—A plan described in this  
8 subsection is a plan that describes the activities to  
9 be carried out by a State or by the qualified State-  
10 designated entity within such State to facilitate and  
11 expand the electronic movement and use of health  
12 information among organizations according to na-  
13 tionally recognized standards and implementation  
14 specifications.

15           “(2) REQUIRED ELEMENTS.—A plan described  
16 in paragraph (1) shall—

17           “(A) be pursued in the public interest;

18           “(B) be consistent with the strategic plan  
19 developed by the National Coordinator, (and, as  
20 available) under section 3001;

21           “(C) include a description of the ways the  
22 State or qualified State-designated entity will  
23 carry out the activities described in subsection  
24 (b); and

1                   “(D) contain such elements as the Sec-  
2                   retary may require.

3           “(f) QUALIFIED STATE-DESIGNATED ENTITY.—For  
4 purposes of this section, to be a qualified State-designated  
5 entity, with respect to a State, an entity shall—

6                   “(1) be designated by the State as eligible to  
7                   receive awards under this section;

8                   “(2) be a not-for-profit entity with broad stake-  
9                   holder representation on its governing board;

10                   “(3) demonstrate that one of its principal goals  
11                   is to use information technology to improve health  
12                   care quality and efficiency through the authorized  
13                   and secure electronic exchange and use of health in-  
14                   formation;

15                   “(4) adopt nondiscrimination and conflict of in-  
16                   terest policies that demonstrate a commitment to  
17                   open, fair, and nondiscriminatory participation by  
18                   stakeholders; and

19                   “(5) conform to such other requirements as the  
20                   Secretary may establish.

21           “(g) REQUIRED CONSULTATION.—In carrying out  
22 activities described in subsections (b) and (c), a State or  
23 qualified State-designated entity shall consult with and  
24 consider the recommendations of—

1           “(1) health care providers (including providers  
2           that provide services to low income and underserved  
3           populations);

4           “(2) health plans;

5           “(3) patient or consumer organizations that  
6           represent the population to be served;

7           “(4) health information technology vendors;

8           “(5) health care purchasers and employers;

9           “(6) public health agencies;

10          “(7) health professions schools, universities and  
11          colleges;

12          “(8) clinical researchers;

13          “(9) other users of health information tech-  
14          nology such as the support and clerical staff of pro-  
15          viders and others involved in the care and care co-  
16          ordination of patients; and

17          “(10) such other entities, as may be determined  
18          appropriate by the Secretary.

19          “(h) CONTINUOUS IMPROVEMENT.—The Secretary  
20          shall annually evaluate the activities conducted under this  
21          section and shall, in awarding grants under this section,  
22          implement the lessons learned from such evaluation in a  
23          manner so that awards made subsequent to each such  
24          evaluation are made in a manner that, in the determina-  
25          tion of the Secretary, will lead towards the greatest im-

1 improvement in quality of care, decrease in costs, and the  
2 most effective authorized and secure electronic exchange  
3 of health information.

4 “(i) REQUIRED MATCH.—

5 “(1) IN GENERAL.—For a fiscal year (begin-  
6 ning with fiscal year 2011), the Secretary may not  
7 make a grant under this section to a State unless  
8 the State agrees to make available non-Federal con-  
9 tributions (which may include in-kind contributions)  
10 toward the costs of a grant awarded under sub-  
11 section (c) in an amount equal to—

12 “(A) for fiscal year 2011, not less than \$1  
13 for each \$10 of Federal funds provided under  
14 the grant;

15 “(B) for fiscal year 2012, not less than \$1  
16 for each \$7 of Federal funds provided under  
17 the grant; and

18 “(C) for fiscal year 2013 and each subse-  
19 quent fiscal year, not less than \$1 for each \$3  
20 of Federal funds provided under the grant.

21 “(2) AUTHORITY TO REQUIRE STATE MATCH  
22 FOR FISCAL YEARS BEFORE FISCAL YEAR 2011.—For  
23 any fiscal year during the grant program under this  
24 section before fiscal year 2011, the Secretary may  
25 determine the extent to which there shall be required

1 a non-Federal contribution from a State receiving a  
2 grant under this section.

3 **“SEC. 3014. COMPETITIVE GRANTS TO STATES AND INDIAN**  
4 **TRIBES FOR THE DEVELOPMENT OF LOAN**  
5 **PROGRAMS TO FACILITATE THE WIDE-**  
6 **SPREAD ADOPTION OF CERTIFIED EHR TECH-**  
7 **NOLOGY.**

8 “(a) IN GENERAL.—The National Coordinator may  
9 award competitive grants to eligible entities for the estab-  
10 lishment of programs for loans to health care providers  
11 to conduct the activities described in subsection (e).

12 “(b) ELIGIBLE ENTITY DEFINED.—For purposes of  
13 this subsection, the term ‘eligible entity’ means a State  
14 or Indian tribe (as defined in the Indian Self-Determina-  
15 tion and Education Assistance Act) that—

16 “(1) submits to the National Coordinator an  
17 application at such time, in such manner, and con-  
18 taining such information as the National Coordi-  
19 nator may require;

20 “(2) submits to the National Coordinator a  
21 strategic plan in accordance with subsection (d) and  
22 provides to the National Coordinator assurances that  
23 the entity will update such plan annually in accord-  
24 ance with such subsection;

1           “(3) provides assurances to the National Coordi-  
2           nator that the entity will establish a Loan Fund  
3           in accordance with subsection (c);

4           “(4) provides assurances to the National Coordi-  
5           nator that the entity will not provide a loan from  
6           the Loan Fund to a health care provider unless the  
7           provider agrees to—

8                   “(A) submit reports on quality measures  
9                   adopted by the Federal Government (by not  
10                  later than 90 days after the date on which such  
11                  measures are adopted), to—

12                           “(i) the Administrator of the Centers  
13                           for Medicare & Medicaid Services (or his  
14                           or her designee), in the case of an entity  
15                           participating in the Medicare program  
16                           under title XVIII of the Social Security  
17                           Act or the Medicaid program under title  
18                           XIX of such Act; or

19                           “(ii) the Secretary in the case of other  
20                           entities;

21                           “(B) demonstrate to the satisfaction of the  
22                           Secretary (through criteria established by the  
23                           Secretary) that any certified EHR technology  
24                           purchased, improved, or otherwise financially  
25                           supported under a loan under this section is

1           used to exchange health information in a man-  
2           ner that, in accordance with law and standards  
3           (as adopted under section 3004) applicable to  
4           the exchange of information, improves the qual-  
5           ity of health care, such as promoting care co-  
6           ordination; and

7           “(C) comply with such other requirements  
8           as the entity or the Secretary may require;

9           “(D) include a plan on how health care  
10          providers involved intend to maintain and sup-  
11          port the certified EHR technology over time;

12          “(E) include a plan on how the health care  
13          providers involved intend to maintain and sup-  
14          port the certified EHR technology that would  
15          be purchased with such loan, including the type  
16          of resources expected to be involved and any  
17          such other information as the State or Indian  
18          Tribe, respectively, may require; and

19          “(5) agrees to provide matching funds in ac-  
20          cordance with subsection (h).

21          “(c) ESTABLISHMENT OF FUND.—For purposes of  
22          subsection (b)(3), an eligible entity shall establish a cer-  
23          tified EHR technology loan fund (referred to in this sub-  
24          section as a ‘Loan Fund’) and comply with the other re-  
25          quirements contained in this section. A grant to an eligible

1 entity under this section shall be deposited in the Loan  
2 Fund established by the eligible entity. No funds author-  
3 ized by other provisions of this title to be used for other  
4 purposes specified in this title shall be deposited in any  
5 Loan Fund.

6 “(d) STRATEGIC PLAN.—

7 “(1) IN GENERAL.—For purposes of subsection  
8 (b)(2), a strategic plan of an eligible entity under  
9 this subsection shall identify the intended uses of  
10 amounts available to the Loan Fund of such entity.

11 “(2) CONTENTS.—A strategic plan under para-  
12 graph (1), with respect to a Loan Fund of an eligi-  
13 ble entity, shall include for a year the following:

14 “(A) A list of the projects to be assisted  
15 through the Loan Fund during such year.

16 “(B) A description of the criteria and  
17 methods established for the distribution of  
18 funds from the Loan Fund during the year.

19 “(C) A description of the financial status  
20 of the Loan Fund as of the date of submission  
21 of the plan.

22 “(D) The short-term and long-term goals  
23 of the Loan Fund.

24 “(e) USE OF FUNDS.—Amounts deposited in a Loan  
25 Fund, including loan repayments and interest earned on

1 such amounts, shall be used only for awarding loans or  
2 loan guarantees, making reimbursements described in sub-  
3 section (g)(4)(A), or as a source of reserve and security  
4 for leveraged loans, the proceeds of which are deposited  
5 in the Loan Fund established under subsection (c). Loans  
6 under this section may be used by a health care provider  
7 to—

8           “(1) facilitate the purchase of certified EHR  
9           technology;

10           “(2) enhance the utilization of certified EHR  
11           technology (which may include costs associated with  
12           upgrading health information technology so that it  
13           meets criteria necessary to be a certified EHR tech-  
14           nology);

15           “(3) train personnel in the use of such tech-  
16           nology; or

17           “(4) improve the secure electronic exchange of  
18           health information.

19           “(f) TYPES OF ASSISTANCE.—Except as otherwise  
20           limited by applicable State law, amounts deposited into a  
21           Loan Fund under this section may only be used for the  
22           following:

23           “(1) To award loans that comply with the fol-  
24           lowing:

1           “(A) The interest rate for each loan shall  
2 not exceed the market interest rate.

3           “(B) The principal and interest payments  
4 on each loan shall commence not later than 1  
5 year after the date the loan was awarded, and  
6 each loan shall be fully amortized not later than  
7 10 years after the date of the loan.

8           “(C) The Loan Fund shall be credited with  
9 all payments of principal and interest on each  
10 loan awarded from the Loan Fund.

11           “(2) To guarantee, or purchase insurance for,  
12 a local obligation (all of the proceeds of which fi-  
13 nance a project eligible for assistance under this  
14 subsection) if the guarantee or purchase would im-  
15 prove credit market access or reduce the interest  
16 rate applicable to the obligation involved.

17           “(3) As a source of revenue or security for the  
18 payment of principal and interest on revenue or gen-  
19 eral obligation bonds issued by the eligible entity if  
20 the proceeds of the sale of the bonds will be depos-  
21 ited into the Loan Fund.

22           “(4) To earn interest on the amounts deposited  
23 into the Loan Fund.

24           “(5) To make reimbursements described in sub-  
25 section (g)(4)(A).

1       “(g) ADMINISTRATION OF LOAN FUNDS.—

2               “(1) COMBINED FINANCIAL ADMINISTRATION.—

3       An eligible entity may (as a convenience and to  
4       avoid unnecessary administrative costs) combine, in  
5       accordance with applicable State law, the financial  
6       administration of a Loan Fund established under  
7       this subsection with the financial administration of  
8       any other revolving fund established by the entity if  
9       otherwise not prohibited by the law under which the  
10      Loan Fund was established.

11              “(2) COST OF ADMINISTERING FUND.—Each el-

12      igible entity may annually use not to exceed 4 per-  
13      cent of the funds provided to the entity under a  
14      grant under this section to pay the reasonable costs  
15      of the administration of the programs under this  
16      section, including the recovery of reasonable costs  
17      expended to establish a Loan Fund which are in-  
18      curred after the date of the enactment of this title.

19              “(3) GUIDANCE AND REGULATIONS.—The Na-

20      tional Coordinator shall publish guidance and pro-  
21      mulgate regulations as may be necessary to carry  
22      out the provisions of this section, including—

23                      “(A) provisions to ensure that each eligible  
24                      entity commits and expends funds allotted to  
25                      the entity under this section as efficiently as

1 possible in accordance with this title and appli-  
2 cable State laws; and

3 “(B) guidance to prevent waste, fraud, and  
4 abuse.

5 “(4) PRIVATE SECTOR CONTRIBUTIONS.—

6 “(A) IN GENERAL.—A Loan Fund estab-  
7 lished under this section may accept contribu-  
8 tions from private sector entities, except that  
9 such entities may not specify the recipient or  
10 recipients of any loan issued under this sub-  
11 section. An eligible entity may agree to reim-  
12 burse a private sector entity for any contribu-  
13 tion made under this subparagraph, except that  
14 the amount of such reimbursement may not be  
15 greater than the principal amount of the con-  
16 tribution made.

17 “(B) AVAILABILITY OF INFORMATION.—  
18 An eligible entity shall make publicly available  
19 the identity of, and amount contributed by, any  
20 private sector entity under subparagraph (A)  
21 and may issue letters of commendation or make  
22 other awards (that have no financial value) to  
23 any such entity.

24 “(h) MATCHING REQUIREMENTS.—

1           “(1) IN GENERAL.—The National Coordinator  
2           may not make a grant under subsection (a) to an el-  
3           igible entity unless the entity agrees to make avail-  
4           able (directly or through donations from public or  
5           private entities) non-Federal contributions in cash to  
6           the costs of carrying out the activities for which the  
7           grant is awarded in an amount equal to not less  
8           than \$1 for each \$5 of Federal funds provided under  
9           the grant.

10           “(2) DETERMINATION OF AMOUNT OF NON-  
11           FEDERAL CONTRIBUTION.—In determining the  
12           amount of non-Federal contributions that an eligible  
13           entity has provided pursuant to subparagraph (A),  
14           the National Coordinator may not include any  
15           amounts provided to the entity by the Federal Gov-  
16           ernment.

17           “(i) EFFECTIVE DATE.—The Secretary may not  
18           make an award under this section prior to January 1,  
19           2010.

20           **“SEC. 3015. DEMONSTRATION PROGRAM TO INTEGRATE IN-**  
21                           **FORMATION TECHNOLOGY INTO CLINICAL**  
22                           **EDUCATION.**

23           “(a) IN GENERAL.—The Secretary may award grants  
24           under this section to carry out demonstration projects to  
25           develop academic curricula integrating certified EHR

1 technology in the clinical education of health professionals.  
2 Such awards shall be made on a competitive basis and  
3 pursuant to peer review.

4 “(b) ELIGIBILITY.—To be eligible to receive a grant  
5 under subsection (a), an entity shall—

6 “(1) submit to the Secretary an application at  
7 such time, in such manner, and containing such in-  
8 formation as the Secretary may require;

9 “(2) submit to the Secretary a strategic plan  
10 for integrating certified EHR technology in the clin-  
11 ical education of health professionals to reduce med-  
12 ical errors, increase access to prevention, reduce  
13 chronic diseases, and enhance health care quality;

14 “(3) be—

15 “(A) a school of medicine, osteopathic  
16 medicine, dentistry, or pharmacy, a graduate  
17 program in behavioral or mental health, or any  
18 other graduate health professions school;

19 “(B) a graduate school of nursing or phy-  
20 sician assistant studies;

21 “(C) a consortium of two or more schools  
22 described in subparagraph (A) or (B); or

23 “(D) an institution with a graduate med-  
24 ical education program in medicine, osteopathic

1 medicine, dentistry, pharmacy, nursing, or phy-  
2 sician assistance studies;

3 “(4) provide for the collection of data regarding  
4 the effectiveness of the demonstration project to be  
5 funded under the grant in improving the safety of  
6 patients, the efficiency of health care delivery, and  
7 in increasing the likelihood that graduates of the  
8 grantee will adopt and incorporate certified EHR  
9 technology, in the delivery of health care services;  
10 and

11 “(5) provide matching funds in accordance with  
12 subsection (d).

13 “(c) USE OF FUNDS.—

14 “(1) IN GENERAL.—With respect to a grant  
15 under subsection (a), an eligible entity shall—

16 “(A) use grant funds in collaboration with  
17 2 or more disciplines; and

18 “(B) use grant funds to integrate certified  
19 EHR technology into community-based clinical  
20 education.

21 “(2) LIMITATION.—An eligible entity shall not  
22 use amounts received under a grant under sub-  
23 section (a) to purchase hardware, software, or serv-  
24 ices.

1           “(d) FINANCIAL SUPPORT.—The Secretary may not  
2 provide more than 50 percent of the costs of any activity  
3 for which assistance is provided under subsection (a), ex-  
4 cept in an instance of national economic conditions which  
5 would render the cost-share requirement under this sub-  
6 section detrimental to the program and upon notification  
7 to Congress as to the justification to waive the cost-share  
8 requirement.

9           “(e) EVALUATION.—The Secretary shall take such  
10 action as may be necessary to evaluate the projects funded  
11 under this section and publish, make available, and dis-  
12 seminate the results of such evaluations on as wide a basis  
13 as is practicable.

14           “(f) REPORTS.—Not later than 1 year after the date  
15 of enactment of this title, and annually thereafter, the Sec-  
16 retary shall submit to the Committee on Health, Edu-  
17 cation, Labor, and Pensions and the Committee on Fi-  
18 nance of the Senate, and the Committee on Energy and  
19 Commerce of the House of Representatives a report  
20 that—

21                   “(1) describes the specific projects established  
22                   under this section; and

23                   “(2) contains recommendations for Congress  
24                   based on the evaluation conducted under subsection  
25                   (e).

1 **“SEC. 3016. INFORMATION TECHNOLOGY PROFESSIONALS**  
2 **IN HEALTH CARE.**

3 “(a) IN GENERAL.—The Secretary, in consultation  
4 with the Director of the National Science Foundation,  
5 shall provide assistance to institutions of higher education  
6 (or consortia thereof) to establish or expand medical  
7 health informatics education programs, including certifi-  
8 cation, undergraduate, and masters degree programs, for  
9 both health care and information technology students to  
10 ensure the rapid and effective utilization and development  
11 of health information technologies (in the United States  
12 health care infrastructure).

13 “(b) ACTIVITIES.—Activities for which assistance  
14 may be provided under subsection (a) may include the fol-  
15 lowing:

16 “(1) Developing and revising curricula in med-  
17 ical health informatics and related disciplines.

18 “(2) Recruiting and retaining students to the  
19 program involved.

20 “(3) Acquiring equipment necessary for student  
21 instruction in these programs, including the installa-  
22 tion of testbed networks for student use.

23 “(4) Establishing or enhancing bridge programs  
24 in the health informatics fields between community  
25 colleges and universities.

1           “(c) PRIORITY.—In providing assistance under sub-  
2 section (a), the Secretary shall give preference to the fol-  
3 lowing:

4                   “(1) Existing education and training programs.

5                   “(2) Programs designed to be completed in less  
6 than six months.

7 **“SEC. 3017. GENERAL GRANT AND LOAN PROVISIONS.**

8           “(a) REPORTS.—The Secretary may require that an  
9 entity receiving assistance under this subtitle shall submit  
10 to the Secretary, not later than the date that is 1 year  
11 after the date of receipt of such assistance, a report that  
12 includes—

13                   “(1) an analysis of the effectiveness of the ac-  
14 tivities for which the entity receives such assistance,  
15 as compared to the goals for such activities; and

16                   “(2) an analysis of the impact of the project on  
17 health care quality and safety.

18           “(b) REQUIREMENT TO IMPROVE QUALITY OF CARE  
19 AND DECREASE IN COSTS.—The National Coordinator  
20 shall annually evaluate the activities conducted under this  
21 subtitle and shall, in awarding grants, implement the les-  
22 sons learned from such evaluation in a manner so that  
23 awards made subsequent to each such evaluation are made  
24 in a manner that, in the determination of the National

1 Coordinator, will result in the greatest improvement in the  
2 quality and efficiency of health care.

3 **“SEC. 3018. AUTHORIZATION FOR APPROPRIATIONS.**

4 “For the purposes of carrying out this subtitle, there  
5 is authorized to be appropriated such sums as may be nec-  
6 essary for each of the fiscal years 2009 through 2013.”.

7 **Subtitle D—Privacy**

8 **SEC. 13400. DEFINITIONS.**

9 In this subtitle, except as specified otherwise:

10 (1) BREACH.—

11 (A) IN GENERAL.—The term “breach”  
12 means the unauthorized acquisition, access, use,  
13 or disclosure of protected health information  
14 which compromises the security or privacy of  
15 such information, except where an unauthorized  
16 person to whom such information is disclosed  
17 would not reasonably have been able to retain  
18 such information.

19 (B) EXCEPTIONS.—The term “breach”  
20 does not include—

21 (i) any unintentional acquisition, ac-  
22 cess, or use of protected health information  
23 by an employee or individual acting under  
24 the authority of a covered entity or busi-  
25 ness associate if—

1 (I) such acquisition, access, or  
2 use was made in good faith and with-  
3 in the course and scope of the employ-  
4 ment or other professional relation-  
5 ship of such employee or individual,  
6 respectively, with the covered entity or  
7 business associate; and

8 (II) such information is not fur-  
9 ther acquired, accessed, used, or dis-  
10 closed by any person; or

11 (ii) any inadvertent disclosure from an  
12 individual who is otherwise authorized to  
13 access protected health information at a  
14 facility operated by a covered entity or  
15 business associate to another similarly sit-  
16 uated individual at same facility; and

17 (iii) any such information received as  
18 a result of such disclosure is not further  
19 acquired, accessed, used, or disclosed with-  
20 out authorization by any person.

21 (2) BUSINESS ASSOCIATE.—The term “business  
22 associate” has the meaning given such term in sec-  
23 tion 160.103 of title 45, Code of Federal Regula-  
24 tions.

1           (3) COVERED ENTITY.—The term “covered en-  
2           tity” has the meaning given such term in section  
3           160.103 of title 45, Code of Federal Regulations.

4           (4) DISCLOSE.—The terms “disclose” and “dis-  
5           closure” have the meaning given the term “disclo-  
6           sure” in section 160.103 of title 45, Code of Federal  
7           Regulations.

8           (5) ELECTRONIC HEALTH RECORD.—The term  
9           “electronic health record” means an electronic  
10          record of health-related information on an individual  
11          that is created, gathered, managed, and consulted by  
12          authorized health care clinicians and staff.

13          (6) HEALTH CARE OPERATIONS.—The term  
14          “health care operation” has the meaning given such  
15          term in section 164.501 of title 45, Code of Federal  
16          Regulations.

17          (7) HEALTH CARE PROVIDER.—The term  
18          “health care provider” has the meaning given such  
19          term in section 160.103 of title 45, Code of Federal  
20          Regulations.

21          (8) HEALTH PLAN.—The term “health plan”  
22          has the meaning given such term in section 160.103  
23          of title 45, Code of Federal Regulations.

24          (9) NATIONAL COORDINATOR.—The term “Na-  
25          tional Coordinator” means the head of the Office of

1 the National Coordinator for Health Information  
2 Technology established under section 3001(a) of the  
3 Public Health Service Act, as added by section  
4 13101.

5 (10) PAYMENT.—The term “payment” has the  
6 meaning given such term in section 164.501 of title  
7 45, Code of Federal Regulations.

8 (11) PERSONAL HEALTH RECORD.—The term  
9 “personal health record” means an electronic record  
10 of PHR identifiable health information (as defined  
11 in section 13407(f)(2)) on an individual that can be  
12 drawn from multiple sources and that is managed,  
13 shared, and controlled by or primarily for the indi-  
14 vidual.

15 (12) PROTECTED HEALTH INFORMATION.—The  
16 term “protected health information” has the mean-  
17 ing given such term in section 160.103 of title 45,  
18 Code of Federal Regulations.

19 (13) SECRETARY.—The term “Secretary”  
20 means the Secretary of Health and Human Services.

21 (14) SECURITY.—The term “security” has the  
22 meaning given such term in section 164.304 of title  
23 45, Code of Federal Regulations.

24 (15) STATE.—The term “State” means each of  
25 the several States, the District of Columbia, Puerto

1 Rico, the Virgin Islands, Guam, American Samoa,  
2 and the Northern Mariana Islands.

3 (16) TREATMENT.—The term “treatment” has  
4 the meaning given such term in section 164.501 of  
5 title 45, Code of Federal Regulations.

6 (17) USE.—The term “use” has the meaning  
7 given such term in section 160.103 of title 45, Code  
8 of Federal Regulations.

9 (18) VENDOR OF PERSONAL HEALTH  
10 RECORDS.—The term “vendor of personal health  
11 records” means an entity, other than a covered enti-  
12 ty (as defined in paragraph (3)), that offers or  
13 maintains a personal health record.

14 **PART 1—IMPROVED PRIVACY PROVISIONS AND**  
15 **SECURITY PROVISIONS**

16 **SEC. 13401. APPLICATION OF SECURITY PROVISIONS AND**  
17 **PENALTIES TO BUSINESS ASSOCIATES OF**  
18 **COVERED ENTITIES; ANNUAL GUIDANCE ON**  
19 **SECURITY PROVISIONS.**

20 (a) APPLICATION OF SECURITY PROVISIONS.—Sec-  
21 tions 164.308, 164.310, 164.312, and 164.316 of title 45,  
22 Code of Federal Regulations, shall apply to a business as-  
23 sociate of a covered entity in the same manner that such  
24 sections apply to the covered entity. The additional re-  
25 quirements of this title that relate to security and that

1 are made applicable with respect to covered entities shall  
2 also be applicable to such a business associate and shall  
3 be incorporated into the business associate agreement be-  
4 tween the business associate and the covered entity.

5 (b) APPLICATION OF CIVIL AND CRIMINAL PEN-  
6 ALTIES.—In the case of a business associate that violates  
7 any security provision specified in subsection (a), sections  
8 1176 and 1177 of the Social Security Act (42 U.S.C.  
9 1320d–5, 1320d–6) shall apply to the business associate  
10 with respect to such violation in the same manner such  
11 sections apply to a covered entity that violates such secu-  
12 rity provision.

13 (c) ANNUAL GUIDANCE.—For the first year begin-  
14 ning after the date of the enactment of this Act and annu-  
15 ally thereafter, the Secretary of Health and Human Serv-  
16 ices shall, after consultation with stakeholders, annually  
17 issue guidance on the most effective and appropriate tech-  
18 nical safeguards for use in carrying out the sections re-  
19 ferred to in subsection (a) and the security standards in  
20 subpart C of part 164 of title 45, Code of Federal Regula-  
21 tions, including the use of standards developed under sec-  
22 tion 3002(b)(2)(B)(vi) of the Public Health Service Act,  
23 as added by section 13101 of this Act, as such provisions  
24 are in effect as of the date before the enactment of this  
25 Act.

1 **SEC. 13402. NOTIFICATION IN THE CASE OF BREACH.**

2 (a) IN GENERAL.—A covered entity that accesses,  
3 maintains, retains, modifies, records, stores, destroys, or  
4 otherwise holds, uses, or discloses unsecured protected  
5 health information (as defined in subsection (h)(1)) shall,  
6 in the case of a breach of such information that is discov-  
7 ered by the covered entity, notify each individual whose  
8 unsecured protected health information has been, or is  
9 reasonably believed by the covered entity to have been,  
10 accessed, acquired, or disclosed as a result of such breach.

11 (b) NOTIFICATION OF COVERED ENTITY BY BUSI-  
12 NESS ASSOCIATE.—A business associate of a covered enti-  
13 ty that accesses, maintains, retains, modifies, records,  
14 stores, destroys, or otherwise holds, uses, or discloses un-  
15 secured protected health information shall, following the  
16 discovery of a breach of such information, notify the cov-  
17 ered entity of such breach. Such notice shall include the  
18 identification of each individual whose unsecured protected  
19 health information has been, or is reasonably believed by  
20 the business associate to have been, accessed, acquired,  
21 or disclosed during such breach.

22 (c) BREACHES TREATED AS DISCOVERED.—For pur-  
23 poses of this section, a breach shall be treated as discov-  
24 ered by a covered entity or by a business associate as of  
25 the first day on which such breach is known to such entity  
26 or associate, respectively, (including any person, other

1 than the individual committing the breach, that is an em-  
2 ployee, officer, or other agent of such entity or associate,  
3 respectively) or should reasonably have been known to  
4 such entity or associate (or person) to have occurred.

5 (d) TIMELINESS OF NOTIFICATION.—

6 (1) IN GENERAL.—Subject to subsection (g), all  
7 notifications required under this section shall be  
8 made without unreasonable delay and in no case  
9 later than 60 calendar days after the discovery of a  
10 breach by the covered entity involved (or business  
11 associate involved in the case of a notification re-  
12 quired under subsection (b)).

13 (2) BURDEN OF PROOF.—The covered entity in-  
14 volved (or business associate involved in the case of  
15 a notification required under subsection (b)), shall  
16 have the burden of demonstrating that all notifica-  
17 tions were made as required under this part, includ-  
18 ing evidence demonstrating the necessity of any  
19 delay.

20 (e) METHODS OF NOTICE.—

21 (1) INDIVIDUAL NOTICE.—Notice required  
22 under this section to be provided to an individual,  
23 with respect to a breach, shall be provided promptly  
24 and in the following form:

1           (A) Written notification by first-class mail  
2           to the individual (or the next of kin of the indi-  
3           vidual if the individual is deceased) at the last  
4           known address of the individual or the next of  
5           kin, respectively, or, if specified as a preference  
6           by the individual, by electronic mail. The notifi-  
7           cation may be provided in one or more mailings  
8           as information is available.

9           (B) In the case in which there is insuffi-  
10          cient, or out-of-date contact information (in-  
11          cluding a phone number, email address, or any  
12          other form of appropriate communication) that  
13          precludes direct written (or, if specified by the  
14          individual under subparagraph (A), electronic)  
15          notification to the individual, a substitute form  
16          of notice shall be provided, including, in the  
17          case that there are 10 or more individuals for  
18          which there is insufficient or out-of-date contact  
19          information, a conspicuous posting for a period  
20          determined by the Secretary on the home page  
21          of the Web site of the covered entity involved or  
22          notice in major print or broadcast media, in-  
23          cluding major media in geographic areas where  
24          the individuals affected by the breach likely re-  
25          side. Such a notice in media or web posting will

1 include a toll-free phone number where an indi-  
2 vidual can learn whether or not the individual's  
3 unsecured protected health information is pos-  
4 sibly included in the breach.

5 (C) In any case deemed by the covered en-  
6 tity involved to require urgency because of pos-  
7 sible imminent misuse of unsecured protected  
8 health information, the covered entity, in addi-  
9 tion to notice provided under subparagraph (A),  
10 may provide information to individuals by tele-  
11 phone or other means, as appropriate.

12 (2) MEDIA NOTICE.—Notice shall be provided  
13 to prominent media outlets serving a State or juris-  
14 diction, following the discovery of a breach described  
15 in subsection (a), if the unsecured protected health  
16 information of more than 500 residents of such  
17 State or jurisdiction is, or is reasonably believed to  
18 have been, accessed, acquired, or disclosed during  
19 such breach.

20 (3) NOTICE TO SECRETARY.—Notice shall be  
21 provided to the Secretary by covered entities of un-  
22 secured protected health information that has been  
23 acquired or disclosed in a breach. If the breach was  
24 with respect to 500 or more individuals than such  
25 notice must be provided immediately. If the breach

1 was with respect to less than 500 individuals, the  
2 covered entity may maintain a log of any such  
3 breach occurring and annually submit such a log to  
4 the Secretary documenting such breaches occurring  
5 during the year involved.

6 (4) POSTING ON HHS PUBLIC WEBSITE.—The  
7 Secretary shall make available to the public on the  
8 Internet website of the Department of Health and  
9 Human Services a list that identifies each covered  
10 entity involved in a breach described in subsection  
11 (a) in which the unsecured protected health informa-  
12 tion of more than 500 individuals is acquired or dis-  
13 closed.

14 (f) CONTENT OF NOTIFICATION.—Regardless of the  
15 method by which notice is provided to individuals under  
16 this section, notice of a breach shall include, to the extent  
17 possible, the following:

18 (1) A brief description of what happened, in-  
19 cluding the date of the breach and the date of the  
20 discovery of the breach, if known.

21 (2) A description of the types of unsecured pro-  
22 tected health information that were involved in the  
23 breach (such as full name, Social Security number,  
24 date of birth, home address, account number, or dis-  
25 ability code).

1           (3) The steps individuals should take to protect  
2 themselves from potential harm resulting from the  
3 breach.

4           (4) A brief description of what the covered enti-  
5 ty involved is doing to investigate the breach, to  
6 mitigate losses, and to protect against any further  
7 breaches.

8           (5) Contact procedures for individuals to ask  
9 questions or learn additional information, which  
10 shall include a toll-free telephone number, an e-mail  
11 address, Web site, or postal address.

12       (g) DELAY OF NOTIFICATION AUTHORIZED FOR LAW  
13 ENFORCEMENT PURPOSES.—If a law enforcement official  
14 determines that a notification, notice, or posting required  
15 under this section would impede a criminal investigation  
16 or cause damage to national security, such notification,  
17 notice, or posting shall be delayed in the same manner  
18 as provided under section 164.528(a)(2) of title 45, Code  
19 of Federal Regulations, in the case of a disclosure covered  
20 under such section.

21       (h) UNSECURED PROTECTED HEALTH INFORMA-  
22 TION.—

23           (1) DEFINITION.—

24           (A) IN GENERAL.—Subject to subpara-  
25 graph (B), for purposes of this section, the

1 term “unsecured protected health information”  
2 means protected health information that is not  
3 secured through the use of a technology or  
4 methodology specified by the Secretary in the  
5 guidance issued under paragraph (2).

6 (B) EXCEPTION IN CASE TIMELY GUID-  
7 ANCE NOT ISSUED.—In the case that the Sec-  
8 retary does not issue guidance under paragraph  
9 (2) by the date specified in such paragraph, for  
10 purposes of this section, the term “unsecured  
11 protected health information” shall mean pro-  
12 tected health information that is not secured by  
13 a technology standard that renders protected  
14 health information unusable, unreadable, or in-  
15 decipherable to unauthorized individuals and is  
16 developed or endorsed by a standards devel-  
17 oping organization that is accredited by the  
18 American National Standards Institute.

19 (2) GUIDANCE.—For purposes of paragraph (1)  
20 and section 13407(f)(3), not later than the date that  
21 is 60 days after the date of the enactment of this  
22 Act, the Secretary shall, after consultation with  
23 stakeholders, issue (and annually update) guidance  
24 specifying the technologies and methodologies that  
25 render protected health information unusable,

1 unreadable, or indecipherable to unauthorized indi-  
2 viduals, including the use of standards developed  
3 under section 3002(b)(2)(B)(vi) of the Public Health  
4 Service Act, as added by section 13101 of this Act.

5 (i) REPORT TO CONGRESS ON BREACHES.—

6 (1) IN GENERAL.—Not later than 12 months  
7 after the date of the enactment of this Act and an-  
8 nually thereafter, the Secretary shall prepare and  
9 submit to the Committee on Finance and the Com-  
10 mittee on Health, Education, Labor, and Pensions  
11 of the Senate and the Committee on Ways and  
12 Means and the Committee on Energy and Commerce  
13 of the House of Representatives a report containing  
14 the information described in paragraph (2) regard-  
15 ing breaches for which notice was provided to the  
16 Secretary under subsection (e)(3).

17 (2) INFORMATION.—The information described  
18 in this paragraph regarding breaches specified in  
19 paragraph (1) shall include—

20 (A) the number and nature of such  
21 breaches; and

22 (B) actions taken in response to such  
23 breaches.

24 (j) REGULATIONS; EFFECTIVE DATE.—To carry out  
25 this section, the Secretary of Health and Human Services

1 shall promulgate interim final regulations by not later  
2 than the date that is 180 days after the date of the enact-  
3 ment of this title. The provisions of this section shall apply  
4 to breaches that are discovered on or after the date that  
5 is 30 days after the date of publication of such interim  
6 final regulations.

7 **SEC. 13403. EDUCATION ON HEALTH INFORMATION PRI-**  
8 **VACY.**

9 (a) **REGIONAL OFFICE PRIVACY ADVISORS.**—Not  
10 later than 6 months after the date of the enactment of  
11 this Act, the Secretary shall designate an individual in  
12 each regional office of the Department of Health and  
13 Human Services to offer guidance and education to cov-  
14 ered entities, business associates, and individuals on their  
15 rights and responsibilities related to Federal privacy and  
16 security requirements for protected health information.

17 (b) **EDUCATION INITIATIVE ON USES OF HEALTH IN-**  
18 **FORMATION.**—Not later than 12 months after the date of  
19 the enactment of this Act, the Office for Civil Rights with-  
20 in the Department of Health and Human Services shall  
21 develop and maintain a multi-faceted national education  
22 initiative to enhance public transparency regarding the  
23 uses of protected health information, including programs  
24 to educate individuals about the potential uses of their  
25 protected health information, the effects of such uses, and

1 the rights of individuals with respect to such uses. Such  
2 programs shall be conducted in a variety of languages and  
3 present information in a clear and understandable man-  
4 ner.

5 **SEC. 13404. APPLICATION OF PRIVACY PROVISIONS AND**  
6 **PENALTIES TO BUSINESS ASSOCIATES OF**  
7 **COVERED ENTITIES.**

8 (a) APPLICATION OF CONTRACT REQUIREMENTS.—  
9 In the case of a business associate of a covered entity that  
10 obtains or creates protected health information pursuant  
11 to a written contract (or other written arrangement) de-  
12 scribed in section 164.502(e)(2) of title 45, Code of Fed-  
13 eral Regulations, with such covered entity, the business  
14 associate may use and disclose such protected health infor-  
15 mation only if such use or disclosure, respectively, is in  
16 compliance with each applicable requirement of section  
17 164.504(e) of such title. The additional requirements of  
18 this subtitle that relate to privacy and that are made ap-  
19 plicable with respect to covered entities shall also be appli-  
20 cable to such a business associate and shall be incor-  
21 porated into the business associate agreement between the  
22 business associate and the covered entity.

23 (b) APPLICATION OF KNOWLEDGE ELEMENTS ASSO-  
24 CIATED WITH CONTRACTS.—Section 164.504(e)(1)(ii) of  
25 title 45, Code of Federal Regulations, shall apply to a

1 business associate described in subsection (a), with respect  
2 to compliance with such subsection, in the same manner  
3 that such section applies to a covered entity, with respect  
4 to compliance with the standards in sections 164.502(e)  
5 and 164.504(e) of such title, except that in applying such  
6 section 164.504(e)(1)(ii) each reference to the business as-  
7 sociate, with respect to a contract, shall be treated as a  
8 reference to the covered entity involved in such contract.

9 (c) APPLICATION OF CIVIL AND CRIMINAL PEN-  
10 ALTIES.—In the case of a business associate that violates  
11 any provision of subsection (a) or (b), the provisions of  
12 sections 1176 and 1177 of the Social Security Act (42  
13 U.S.C. 1320d–5, 1320d–6) shall apply to the business as-  
14 sociate with respect to such violation in the same manner  
15 as such provisions apply to a person who violates a provi-  
16 sion of part C of title XI of such Act.

17 **SEC. 13405. RESTRICTIONS ON CERTAIN DISCLOSURES AND**  
18 **SALES OF HEALTH INFORMATION; ACCOUNT-**  
19 **ING OF CERTAIN PROTECTED HEALTH IN-**  
20 **FORMATION DISCLOSURES; ACCESS TO CER-**  
21 **TAIN INFORMATION IN ELECTRONIC FOR-**  
22 **MAT.**

23 (a) REQUESTED RESTRICTIONS ON CERTAIN DIS-  
24 CLOSURES OF HEALTH INFORMATION.—In the case that  
25 an individual requests under paragraph (a)(1)(i)(A) of

1 section 164.522 of title 45, Code of Federal Regulations,  
2 that a covered entity restrict the disclosure of the pro-  
3 tected health information of the individual, notwith-  
4 standing paragraph (a)(1)(ii) of such section, the covered  
5 entity must comply with the requested restriction if—

6 (1) except as otherwise required by law, the dis-  
7 closure is to a health plan for purposes of carrying  
8 out payment or health care operations (and is not  
9 for purposes of carrying out treatment); and

10 (2) the protected health information pertains  
11 solely to a health care item or service for which the  
12 health care provider involved has been paid out of  
13 pocket in full.

14 (b) DISCLOSURES REQUIRED TO BE LIMITED TO  
15 THE LIMITED DATA SET OR THE MINIMUM NEC-  
16 ESSARY.—

17 (1) IN GENERAL.—

18 (A) IN GENERAL.—Subject to subpara-  
19 graph (B), a covered entity shall be treated as  
20 being in compliance with section 164.502(b)(1)  
21 of title 45, Code of Federal Regulations, with  
22 respect to the use, disclosure, or request of pro-  
23 tected health information described in such sec-  
24 tion, only if the covered entity limits such pro-  
25 tected health information, to the extent prac-

1            ticable, to the limited data set (as defined in  
2            section 164.514(e)(2) of such title) or, if needed  
3            by such entity, to the minimum necessary to ac-  
4            complish the intended purpose of such use, dis-  
5            closure, or request, respectively.

6            (B) GUIDANCE.—Not later than 18  
7            months after the date of the enactment of this  
8            section, the Secretary shall issue guidance on  
9            what constitutes “minimum necessary” for pur-  
10          poses of subpart E of part 164 of title 45, Code  
11          of Federal Regulation. In issuing such guidance  
12          the Secretary shall take into consideration the  
13          guidance under section 13424(c) and the infor-  
14          mation necessary to improve patient outcomes  
15          and to detect, prevent, and manage chronic dis-  
16          ease.

17          (C) SUNSET.—Subparagraph (A) shall not  
18          apply on and after the effective date on which  
19          the Secretary issues the guidance under sub-  
20          paragraph (B).

21          (2) DETERMINATION OF MINIMUM NEC-  
22          ESSARY.—For purposes of paragraph (1), in the  
23          case of the disclosure of protected health informa-  
24          tion, the covered entity or business associate dis-  
25          closing such information shall determine what con-

1       stitutes the minimum necessary to accomplish the  
2       intended purpose of such disclosure.

3           (3) APPLICATION OF EXCEPTIONS.—The excep-  
4       tions described in section 164.502(b)(2) of title 45,  
5       Code of Federal Regulations, shall apply to the re-  
6       quirement under paragraph (1) as of the effective  
7       date described in section 13423 in the same manner  
8       that such exceptions apply to section 164.502(b)(1)  
9       of such title before such date.

10          (4) RULE OF CONSTRUCTION.—Nothing in this  
11       subsection shall be construed as affecting the use,  
12       disclosure, or request of protected health information  
13       that has been de-identified.

14          (c) ACCOUNTING OF CERTAIN PROTECTED HEALTH  
15       INFORMATION DISCLOSURES REQUIRED IF COVERED EN-  
16       TITY USES ELECTRONIC HEALTH RECORD.—

17           “(1) IN GENERAL.—In applying section  
18       164.528 of title 45, Code of Federal Regulations, in  
19       the case that a covered entity uses or maintains an  
20       electronic health record with respect to protected  
21       health information—

22           “(A) the exception under paragraph  
23       (a)(1)(i) of such section shall not apply to dis-  
24       closures through an electronic health record  
25       made by such entity of such information; and

1           “(B) an individual shall have a right to re-  
2           ceive an accounting of disclosures described in  
3           such paragraph of such information made by  
4           such covered entity during only the three years  
5           prior to the date on which the accounting is re-  
6           quested.

7           “(2) REGULATIONS.—The Secretary shall pro-  
8           mulgate regulations on what information shall be  
9           collected about each disclosure referred to in para-  
10          graph (1), not later than 6 months after the date on  
11          which the Secretary adopts standards on accounting  
12          for disclosure described in the section  
13          3002(b)(2)(B)(iv) of the Public Health Service Act,  
14          as added by section 13101. Such regulations shall  
15          only require such information to be collected through  
16          an electronic health record in a manner that takes  
17          into account the interests of the individuals in learn-  
18          ing the circumstances under which their protected  
19          health information is being disclosed and takes into  
20          account the administrative burden of accounting for  
21          such disclosures.

22          “(3) PROCESS.—In response to an request from  
23          an individual for an accounting, a covered entity  
24          shall elect to provide either an—

1           “(A) accounting, as specified under para-  
2 graph (1), for disclosures of protected health in-  
3 formation that are made by such covered entity  
4 and by a business associate acting on behalf of  
5 the covered entity; or

6           “(B) accounting, as specified under para-  
7 graph (1), for disclosures that are made by  
8 such covered entity and provide a list of all  
9 business associates acting on behalf of the cov-  
10 ered entity, including contact information for  
11 such associates (such as mailing address,  
12 phone, and email address).

13       A business associate included on a list under sub-  
14 paragraph (B) shall provide an accounting of disclo-  
15 sures (as required under paragraph (1) for a covered  
16 entity) made by the business associate upon a re-  
17 quest made by an individual directly to the business  
18 associate for such an accounting.

19           “(4) EFFECTIVE DATE.—

20           “(A) CURRENT USERS OF ELECTRONIC  
21 RECORDS.—In the case of a covered entity inso-  
22 far as it acquired an electronic health record as  
23 of January 1, 2009, paragraph (1) shall apply  
24 to disclosures, with respect to protected health

1 information, made by the covered entity from  
2 such a record on and after January 1, 2014.

3 “(B) OTHERS.—In the case of a covered  
4 entity insofar as it acquires an electronic health  
5 record after January 1, 2009, paragraph (1)  
6 shall apply to disclosures, with respect to pro-  
7 tected health information, made by the covered  
8 entity from such record on and after the later  
9 of the following:

10 “(i) January 1, 2011; or

11 “(ii) the date that it acquires an elec-  
12 tronic health record.

13 “(C) LATER DATE.—The Secretary may  
14 set an effective date that is later than the date  
15 specified under subparagraph (A) or (B) if the  
16 Secretary determines that such later date is  
17 necessary, but in no case may the date specified  
18 under—

19 “(i) subparagraph (A) be later than  
20 2016; or

21 “(ii) subparagraph (B) be later than  
22 2013.”

23 (d) PROHIBITION ON SALE OF ELECTRONIC HEALTH  
24 RECORDS OR PROTECTED HEALTH INFORMATION.—

1           (1) IN GENERAL.—Except as provided in para-  
2           graph (2), a covered entity or business associate  
3           shall not directly or indirectly receive remuneration  
4           in exchange for any protected health information of  
5           an individual unless the covered entity obtained from  
6           the individual, in accordance with section 164.508 of  
7           title 45, Code of Federal Regulations, a valid au-  
8           thorization that includes, in accordance with such  
9           section, a specification of whether the protected  
10          health information can be further exchanged for re-  
11          muneration by the entity receiving protected health  
12          information of that individual.

13          (2) EXCEPTIONS.—Paragraph (1) shall not  
14          apply in the following cases:

15                (A) The purpose of the exchange is for  
16                public health activities (as described in section  
17                164.512(b) of title 45, Code of Federal Regula-  
18                tions).

19                (B) The purpose of the exchange is for re-  
20                search (as described in sections 164.501 and  
21                164.512(i) of title 45, Code of Federal Regula-  
22                tions) and the price charged reflects the costs  
23                of preparation and transmittal of the data for  
24                such purpose.

1           (C) The purpose of the exchange is for the  
2           treatment of the individual, subject to any regu-  
3           lation that the Secretary may promulgate to  
4           prevent protected health information from inap-  
5           propriate access, use, or disclosure.

6           (D) The purpose of the exchange is the  
7           health care operation specifically described in  
8           subparagraph (iv) of paragraph (6) of the defi-  
9           nition of healthcare operations in section  
10          164.501 of title 45, Code of Federal Regula-  
11          tions.

12          (E) The purpose of the exchange is for re-  
13          muneration that is provided by a covered entity  
14          to a business associate for activities involving  
15          the exchange of protected health information  
16          that the business associate undertakes on behalf  
17          of and at the specific request of the covered en-  
18          tity pursuant to a business associate agreement.

19          (F) The purpose of the exchange is to pro-  
20          vide an individual with a copy of the individ-  
21          ual's protected health information pursuant to  
22          section 164.524 of title 45, Code of Federal  
23          Regulations.

24          (G) The purpose of the exchange is other-  
25          wise determined by the Secretary in regulations

1 to be similarly necessary and appropriate as the  
2 exceptions provided in subparagraphs (A)  
3 through (F).

4 (3) REGULATIONS.—Not later than 18 months  
5 after the date of enactment of this title, the Sec-  
6 retary shall promulgate regulations to carry out this  
7 subsection. In promulgating such regulations, the  
8 Secretary—

9 (A) shall evaluate the impact of restricting  
10 the exception described in paragraph (2)(A) to  
11 require that the price charged for the purposes  
12 described in such paragraph reflects the costs  
13 of the preparation and transmittal of the data  
14 for such purpose, on research or public health  
15 activities, including those conducted by or for  
16 the use of the Food and Drug Administration;  
17 and

18 (B) may further restrict the exception de-  
19 scribed in paragraph (2)(A) to require that the  
20 price charged for the purposes described in  
21 such paragraph reflects the costs of the prepa-  
22 ration and transmittal of the data for such pur-  
23 pose, if the Secretary finds that such further  
24 restriction will not impede such research or  
25 public health activities.

1           (4) EFFECTIVE DATE.—Paragraph (1) shall  
2           apply to exchanges occurring on or after the date  
3           that is 6 months after the date of the promulgation  
4           of final regulations implementing this subsection.

5           (e) ACCESS TO CERTAIN INFORMATION IN ELEC-  
6           TRONIC FORMAT.—In applying section 164.524 of title  
7           45, Code of Federal Regulations, in the case that a cov-  
8           ered entity uses or maintains an electronic health record  
9           with respect to protected health information of an indi-  
10          vidual—

11           (1) the individual shall have a right to obtain  
12           from such covered entity a copy of such information  
13           in an electronic format and, if the individual choos-  
14           es, to direct the covered entity to transmit such copy  
15           directly to an entity or person designated by the in-  
16           dividual, provided that any such choice is clear, con-  
17           spicuous, and specific; and

18           (2) notwithstanding paragraph (c)(4) of such  
19           section, any fee that the covered entity may impose  
20           for providing such individual with a copy of such in-  
21           formation (or a summary or explanation of such in-  
22           formation) if such copy (or summary or explanation)  
23           is in an electronic form shall not be greater than the  
24           entity's labor costs in responding to the request for  
25           the copy (or summary or explanation).

1 **SEC. 13406. CONDITIONS ON CERTAIN CONTACTS AS PART**  
2 **OF HEALTH CARE OPERATIONS.**

3 (a) **MARKETING.**—

4 (1) **IN GENERAL.**—A communication by a cov-  
5 ered entity or business associate that is about a  
6 product or service and that encourages recipients of  
7 the communication to purchase or use the product  
8 or service shall not be considered a health care oper-  
9 ation for purposes of subpart E of part 164 of title  
10 45, Code of Federal Regulations, unless the commu-  
11 nication is made as described in subparagraph (i),  
12 (ii), or (iii) of paragraph (1) of the definition of  
13 marketing in section 164.501 of such title.

14 (2) **PAYMENT FOR CERTAIN COMMUNICA-**  
15 **TIONS.**—A communication by a covered entity or  
16 business associate that is described in subparagraph  
17 (i), (ii), or (iii) of paragraph (1) of the definition of  
18 marketing in section 164.501 of title 45, Code of  
19 Federal Regulations, shall not be considered a health  
20 care operation for purposes of subpart E of part 164  
21 of title 45, Code of Federal Regulations if the cov-  
22 ered entity receives or has received direct or indirect  
23 payment in exchange for making such communica-  
24 tion, except where—

25 (A)(i) such communication describes only a  
26 drug or biologic that is currently being pre-

1           scribed for the recipient of the communication;  
2           and

3           (ii) any payment received by such covered  
4           entity in exchange for making a communication  
5           described in clause (i) is reasonable in amount;

6           (B) each of the following conditions  
7           apply—

8           (i) the communication is made by the  
9           covered entity; and

10          (ii) the covered entity making such  
11          communication obtains from the recipient  
12          of the communication, in accordance with  
13          section 164.508 of title 45, Code of Fed-  
14          eral Regulations, a valid authorization (as  
15          described in paragraph (b) of such section)  
16          with respect to such communication; or

17          (C) each of the following conditions  
18          apply—

19          (i) the communication is made by a  
20          business associate on behalf of the covered  
21          entity; and

22          (ii) the communication is consistent  
23          with the written contract (or other written  
24          arrangement described in section

1                   164.502(e)(2) of such title) between such  
2                   business associate and covered entity.

3                   (3) REASONABLE IN AMOUNT DEFINED.—For  
4                   purposes of paragraph (2), the term “reasonable in  
5                   amount” shall have the meaning given such term by  
6                   the Secretary by regulation.

7                   (4) DIRECT OR INDIRECT PAYMENT.—For pur-  
8                   poses of paragraph (2), the term “direct or indirect  
9                   payment” shall not include any payment for treat-  
10                  ment (as defined in section 164.501 of title 45, Code  
11                  of Federal Regulations) of an individual.

12                 (b) OPPORTUNITY TO OPT OUT OF FUNDRAISING.—  
13                 The Secretary shall by rule provide that any written fund-  
14                 raising communication that is a healthcare operation as  
15                 defined under section 164.501 of title 45, Code of Federal  
16                 Regulations, shall, in a clear and conspicuous manner,  
17                 provide an opportunity for the recipient of the communica-  
18                 tions to elect not to receive any further such communica-  
19                 tion. When an individual elects not to receive any further  
20                 such communication, such election shall be treated as a  
21                 revocation of authorization under section 164.508 of title  
22                 45, Code of Federal Regulations.

23                 (c) EFFECTIVE DATE.—This section shall apply to  
24                 written communications occurring on or after the effective  
25                 date specified under section 13423.

1 **SEC. 13407. TEMPORARY BREACH NOTIFICATION REQUIRE-**  
2 **MENT FOR VENDORS OF PERSONAL HEALTH**  
3 **RECORDS AND OTHER NON-HIPAA COVERED**  
4 **ENTITIES.**

5 (a) IN GENERAL.—In accordance with subsection (c),  
6 each vendor of personal health records, following the dis-  
7 covery of a breach of security of unsecured PHR identifi-  
8 able health information that is in a personal health record  
9 maintained or offered by such vendor, and each entity de-  
10 scribed in clause (ii), (iii), or (iv) of section  
11 13424(b)(1)(A), following the discovery of a breach of se-  
12 curity of such information that is obtained through a prod-  
13 uct or service provided by such entity, shall—

14 (1) notify each individual who is a citizen or  
15 resident of the United States whose unsecured PHR  
16 identifiable health information was acquired by an  
17 unauthorized person as a result of such a breach of  
18 security; and

19 (2) notify the Federal Trade Commission.

20 (b) NOTIFICATION BY THIRD PARTY SERVICE PRO-  
21 VIDERS.—A third party service provider that provides  
22 services to a vendor of personal health records or to an  
23 entity described in clause (ii), (iii), or (iv) of section  
24 13424(b)(1)(A) in connection with the offering or mainte-  
25 nance of a personal health record or a related product or  
26 service and that accesses, maintains, retains, modifies,

1 records, stores, destroys, or otherwise holds, uses, or dis-  
2 closes unsecured PHR identifiable health information in  
3 such a record as a result of such services shall, following  
4 the discovery of a breach of security of such information,  
5 notify such vendor or entity, respectively, of such breach.  
6 Such notice shall include the identification of each indi-  
7 vidual whose unsecured PHR identifiable health informa-  
8 tion has been, or is reasonably believed to have been,  
9 accessed, acquired, or disclosed during such breach.

10 (c) APPLICATION OF REQUIREMENTS FOR TIMELI-  
11 NESS, METHOD, AND CONTENT OF NOTIFICATIONS.—  
12 Subsections (c), (d), (e), and (f) of section 13402 shall  
13 apply to a notification required under subsection (a) and  
14 a vendor of personal health records, an entity described  
15 in subsection (a) and a third party service provider de-  
16 scribed in subsection (b), with respect to a breach of secu-  
17 rity under subsection (a) of unsecured PHR identifiable  
18 health information in such records maintained or offered  
19 by such vendor, in a manner specified by the Federal  
20 Trade Commission.

21 (d) NOTIFICATION OF THE SECRETARY.—Upon re-  
22 ceipt of a notification of a breach of security under sub-  
23 section (a)(2), the Federal Trade Commission shall notify  
24 the Secretary of such breach.

1 (e) ENFORCEMENT.—A violation of subsection (a) or  
2 (b) shall be treated as an unfair and deceptive act or prac-  
3 tice in violation of a regulation under section 18(a)(1)(B)  
4 of the Federal Trade Commission Act (15 U.S.C.  
5 57a(a)(1)(B)) regarding unfair or deceptive acts or prac-  
6 tices.

7 (f) DEFINITIONS.—For purposes of this section:

8 (1) BREACH OF SECURITY.—The term “breach  
9 of security” means, with respect to unsecured PHR  
10 identifiable health information of an individual in a  
11 personal health record, acquisition of such informa-  
12 tion without the authorization of the individual.

13 (2) PHR IDENTIFIABLE HEALTH INFORMA-  
14 TION.—The term “PHR identifiable health informa-  
15 tion” means individually identifiable health informa-  
16 tion, as defined in section 1171(6) of the Social Se-  
17 curity Act (42 U.S.C. 1320d(6)), and includes, with  
18 respect to an individual, information—

19 (A) that is provided by or on behalf of the  
20 individual; and

21 (B) that identifies the individual or with  
22 respect to which there is a reasonable basis to  
23 believe that the information can be used to  
24 identify the individual.

1           (3) UNSECURED PHR IDENTIFIABLE HEALTH  
2 INFORMATION.—

3           (A) IN GENERAL.—Subject to subpara-  
4 graph (B), the term “unsecured PHR identifi-  
5 able health information” means PHR identifi-  
6 able health information that is not protected  
7 through the use of a technology or methodology  
8 specified by the Secretary in the guidance  
9 issued under section 13402(h)(2).

10           (B) EXCEPTION IN CASE TIMELY GUID-  
11 ANCE NOT ISSUED.—In the case that the Sec-  
12 retary does not issue guidance under section  
13 13402(h)(2) by the date specified in such sec-  
14 tion, for purposes of this section, the term “un-  
15 secured PHR identifiable health information”  
16 shall mean PHR identifiable health information  
17 that is not secured by a technology standard  
18 that renders protected health information unus-  
19 able, unreadable, or indecipherable to unauthor-  
20 ized individuals and that is developed or en-  
21 dored by a standards developing organization  
22 that is accredited by the American National  
23 Standards Institute.

24           (g) REGULATIONS; EFFECTIVE DATE; SUNSET.—

1           (1) REGULATIONS; EFFECTIVE DATE.—To  
2 carry out this section, the Federal Trade Commis-  
3 sion shall promulgate interim final regulations by  
4 not later than the date that is 180 days after the  
5 date of the enactment of this section. The provisions  
6 of this section shall apply to breaches of security  
7 that are discovered on or after the date that is 30  
8 days after the date of publication of such interim  
9 final regulations.

10           (2) SUNSET.—If Congress enacts new legisla-  
11 tion establishing requirements for notification in the  
12 case of a breach of security, that apply to entities  
13 that are not covered entities or business associates,  
14 the provisions of this section shall not apply to  
15 breaches of security discovered on or after the effec-  
16 tive date of regulations implementing such legisla-  
17 tion.

18 **SEC. 13408. BUSINESS ASSOCIATE CONTRACTS REQUIRED**  
19 **FOR CERTAIN ENTITIES.**

20           Each organization, with respect to a covered entity,  
21 that provides data transmission of protected health infor-  
22 mation to such entity (or its business associate) and that  
23 requires access on a routine basis to such protected health  
24 information, such as a Health Information Exchange Or-  
25 ganization, Regional Health Information Organization, E-

1 prescribing Gateway, or each vendor that contracts with  
2 a covered entity to allow that covered entity to offer a per-  
3 sonal health record to patients as part of its electronic  
4 health record, is required to enter into a written contract  
5 (or other written arrangement) described in section  
6 164.502(e)(2) of title 45, Code of Federal Regulations and  
7 a written contract (or other arrangement) described in  
8 section 164.308(b) of such title, with such entity and shall  
9 be treated as a business associate of the covered entity  
10 for purposes of the provisions of this subtitle and subparts  
11 C and E of part 164 of title 45, Code of Federal Regula-  
12 tions, as such provisions are in effect as of the date of  
13 enactment of this title.

14 **SEC. 13409. CLARIFICATION OF APPLICATION OF WRONG-**  
15 **FUL DISCLOSURES CRIMINAL PENALTIES.**

16 Section 1177(a) of the Social Security Act (42 U.S.C.  
17 1320d-6(a)) is amended by adding at the end the fol-  
18 lowing new sentence: “For purposes of the previous sen-  
19 tence, a person (including an employee or other individual)  
20 shall be considered to have obtained or disclosed individ-  
21 ually identifiable health information in violation of this  
22 part if the information is maintained by a covered entity  
23 (as defined in the HIPAA privacy regulation described in  
24 section 1180(b)(3)) and the individual obtained or dis-  
25 closed such information without authorization.”.

1 **SEC. 13410. IMPROVED ENFORCEMENT.**

2 (a) IN GENERAL.—

3 (1) NONCOMPLIANCE DUE TO WILLFUL NE-  
4 GLECT.—Section 1176 of the Social Security Act  
5 (42 U.S.C. 1320d-5) is amended—

6 (A) in subsection (b)(1), by striking “the  
7 act constitutes an offense punishable under sec-  
8 tion 1177” and inserting “a penalty has been  
9 imposed under section 1177 with respect to  
10 such act”; and

11 (B) by adding at the end the following new  
12 subsection:

13 “(c) NONCOMPLIANCE DUE TO WILLFUL NE-  
14 GLECT.—

15 “(1) IN GENERAL.—A violation of a provision  
16 of this part due to willful neglect is a violation for  
17 which the Secretary is required to impose a penalty  
18 under subsection (a)(1).

19 “(2) REQUIRED INVESTIGATION.—For purposes  
20 of paragraph (1), the Secretary shall formally inves-  
21 tigate any complaint of a violation of a provision of  
22 this part if a preliminary investigation of the facts  
23 of the complaint indicate such a possible violation  
24 due to willful neglect.”.

25 (2) ENFORCEMENT UNDER SOCIAL SECURITY  
26 ACT.—Any violation by a covered entity under thus

1 subtitle is subject to enforcement and penalties  
2 under section 1176 and 1177 of the Social Security  
3 Act.

4 (b) EFFECTIVE DATE; REGULATIONS.—

5 (1) The amendments made by subsection (a)  
6 shall apply to penalties imposed on or after the date  
7 that is 24 months after the date of the enactment  
8 of this title.

9 (2) Not later than 18 months after the date of  
10 the enactment of this title, the Secretary of Health  
11 and Human Services shall promulgate regulations to  
12 implement such amendments.

13 (c) DISTRIBUTION OF CERTAIN CIVIL MONETARY  
14 PENALTIES COLLECTED.—

15 (1) IN GENERAL.—Subject to the regulation  
16 promulgated pursuant to paragraph (3), any civil  
17 monetary penalty or monetary settlement collected  
18 with respect to an offense punishable under this sub-  
19 title or section 1176 of the Social Security Act (42  
20 U.S.C. 1320d–5) insofar as such section relates to  
21 privacy or security shall be transferred to the Office  
22 for Civil Rights of the Department of Health and  
23 Human Services to be used for purposes of enforcing  
24 the provisions of this subtitle and subparts C and E  
25 of part 164 of title 45, Code of Federal Regulations,

1 as such provisions are in effect as of the date of en-  
2 actment of this Act.

3 (2) GAO REPORT.—Not later than 18 months  
4 after the date of the enactment of this title, the  
5 Comptroller General shall submit to the Secretary a  
6 report including recommendations for a methodology  
7 under which an individual who is harmed by an act  
8 that constitutes an offense referred to in paragraph  
9 (1) may receive a percentage of any civil monetary  
10 penalty or monetary settlement collected with re-  
11 spect to such offense.

12 (3) ESTABLISHMENT OF METHODOLOGY TO  
13 DISTRIBUTE PERCENTAGE OF CMPS COLLECTED TO  
14 HARMED INDIVIDUALS.—Not later than 3 years  
15 after the date of the enactment of this title, the Sec-  
16 retary shall establish by regulation and based on the  
17 recommendations submitted under paragraph (2), a  
18 methodology under which an individual who is  
19 harmed by an act that constitutes an offense re-  
20 ferred to in paragraph (1) may receive a percentage  
21 of any civil monetary penalty or monetary settlement  
22 collected with respect to such offense.

23 (4) APPLICATION OF METHODOLOGY.—The  
24 methodology under paragraph (3) shall be applied  
25 with respect to civil monetary penalties or monetary

1 settlements imposed on or after the effective date of  
2 the regulation.

3 (d) TIERED INCREASE IN AMOUNT OF CIVIL MONE-  
4 TARY PENALTIES.—

5 (1) IN GENERAL.—Section 1176(a)(1) of the  
6 Social Security Act (42 U.S.C. 1320d–5(a)(1)) is  
7 amended by striking “who violates a provision of  
8 this part a penalty of not more than” and all that  
9 follows and inserting the following: “who violates a  
10 provision of this part—

11 “(A) in the case of a violation of such pro-  
12 vision in which it is established that the person  
13 did not know (and by exercising reasonable dili-  
14 gence would not have known) that such person  
15 violated such provision, a penalty for each such  
16 violation of an amount that is at least the  
17 amount described in paragraph (3)(A) but not  
18 to exceed the amount described in paragraph  
19 (3)(D);

20 “(B) in the case of a violation of such pro-  
21 vision in which it is established that the viola-  
22 tion was due to reasonable cause and not to  
23 willful neglect, a penalty for each such violation  
24 of an amount that is at least the amount de-

1           scribed in paragraph (3)(B) but not to exceed  
2           the amount described in paragraph (3)(D); and

3           “(C) in the case of a violation of such pro-  
4           vision in which it is established that the viola-  
5           tion was due to willful neglect—

6                   “(i) if the violation is corrected as de-  
7                   scribed in subsection (b)(3)(A), a penalty  
8                   in an amount that is at least the amount  
9                   described in paragraph (3)(C) but not to  
10                  exceed the amount described in paragraph  
11                  (3)(D); and

12                   “(ii) if the violation is not corrected  
13                   as described in such subsection, a penalty  
14                   in an amount that is at least the amount  
15                   described in paragraph (3)(D).

16           In determining the amount of a penalty under  
17           this section for a violation, the Secretary shall  
18           base such determination on the nature and ex-  
19           tent of the violation and the nature and extent  
20           of the harm resulting from such violation.”.

21           (2) TIERS OF PENALTIES DESCRIBED.—Section  
22           1176(a) of such Act (42 U.S.C. 1320d–5(a)) is fur-  
23           ther amended by adding at the end the following  
24           new paragraph:

1           “(3) TIERS OF PENALTIES DESCRIBED.—For  
2 purposes of paragraph (1), with respect to a viola-  
3 tion by a person of a provision of this part—

4           “(A) the amount described in this subpara-  
5 graph is \$100 for each such violation, except  
6 that the total amount imposed on the person  
7 for all such violations of an identical require-  
8 ment or prohibition during a calendar year may  
9 not exceed \$25,000;

10           “(B) the amount described in this subpara-  
11 graph is \$1,000 for each such violation, except  
12 that the total amount imposed on the person  
13 for all such violations of an identical require-  
14 ment or prohibition during a calendar year may  
15 not exceed \$100,000;

16           “(C) the amount described in this subpara-  
17 graph is \$10,000 for each such violation, except  
18 that the total amount imposed on the person  
19 for all such violations of an identical require-  
20 ment or prohibition during a calendar year may  
21 not exceed \$250,000; and

22           “(D) the amount described in this sub-  
23 paragraph is \$50,000 for each such violation,  
24 except that the total amount imposed on the  
25 person for all such violations of an identical re-

1           requirement or prohibition during a calendar year  
2           may not exceed \$1,500,000.”.

3           (3) CONFORMING AMENDMENTS.—Section  
4           1176(b) of such Act (42 U.S.C. 1320d–5(b)) is  
5           amended—

6                   (A) by striking paragraph (2) and redesignig-  
7                   nating paragraphs (3) and (4) as paragraphs  
8                   (2) and (3), respectively; and

9                   (B) in paragraph (2), as so redesignated—

10                           (i) in subparagraph (A), by striking  
11                           “in subparagraph (B), a penalty may not  
12                           be imposed under subsection (a) if” and all  
13                           that follows through “the failure to comply  
14                           is corrected” and inserting “in subpara-  
15                           graph (B) or subsection (a)(1)(C), a pen-  
16                           alty may not be imposed under subsection  
17                           (a) if the failure to comply is corrected”;  
18                           and

19                           (ii) in subparagraph (B), by striking  
20                           “(A)(ii)” and inserting “(A)” each place it  
21                           appears.

22           (4) EFFECTIVE DATE.—The amendments made  
23           by this subsection shall apply to violations occurring  
24           after the date of the enactment of this title.

1 (e) ENFORCEMENT THROUGH STATE ATTORNEYS

2 GENERAL.—

3 (1) IN GENERAL.—Section 1176 of the Social  
4 Security Act (42 U.S.C. 1320d–5) is amended by  
5 adding at the end the following new subsection:

6 “(d) ENFORCEMENT BY STATE ATTORNEYS GEN-  
7 ERAL.—

8 “(1) CIVIL ACTION.—Except as provided in  
9 subsection (b), in any case in which the attorney  
10 general of a State has reason to believe that an in-  
11 terest of one or more of the residents of that State  
12 has been or is threatened or adversely affected by  
13 any person who violates a provision of this part, the  
14 attorney general of the State, as *parens patriae*, may  
15 bring a civil action on behalf of such residents of the  
16 State in a district court of the United States of ap-  
17 propriate jurisdiction—

18 “(A) to enjoin further such violation by the  
19 defendant; or

20 “(B) to obtain damages on behalf of such  
21 residents of the State, in an amount equal to  
22 the amount determined under paragraph (2).

23 “(2) STATUTORY DAMAGES.—

24 “(A) IN GENERAL.—For purposes of para-  
25 graph (1)(B), the amount determined under

1           this paragraph is the amount calculated by mul-  
2           tiplied the number of violations by up to \$100.  
3           For purposes of the preceding sentence, in the  
4           case of a continuing violation, the number of  
5           violations shall be determined consistent with  
6           the HIPAA privacy regulations (as defined in  
7           section 1180(b)(3)) for violations of subsection  
8           (a).

9           “(B) LIMITATION.—The total amount of  
10          damages imposed on the person for all viola-  
11          tions of an identical requirement or prohibition  
12          during a calendar year may not exceed \$25,000.

13          “(C) REDUCTION OF DAMAGES.—In as-  
14          sessing damages under subparagraph (A), the  
15          court may consider the factors the Secretary  
16          may consider in determining the amount of a  
17          civil money penalty under subsection (a) under  
18          the HIPAA privacy regulations.

19          “(3) ATTORNEY FEES.—In the case of any suc-  
20          cessful action under paragraph (1), the court, in its  
21          discretion, may award the costs of the action and  
22          reasonable attorney fees to the State.

23          “(4) NOTICE TO SECRETARY.—The State shall  
24          serve prior written notice of any action under para-  
25          graph (1) upon the Secretary and provide the Sec-

1       retary with a copy of its complaint, except in any  
2       case in which such prior notice is not feasible, in  
3       which case the State shall serve such notice imme-  
4       diately upon instituting such action. The Secretary  
5       shall have the right—

6               “(A) to intervene in the action;

7               “(B) upon so intervening, to be heard on  
8       all matters arising therein; and

9               “(C) to file petitions for appeal.

10       “(5) CONSTRUCTION.—For purposes of bring-  
11       ing any civil action under paragraph (1), nothing in  
12       this section shall be construed to prevent an attor-  
13       ney general of a State from exercising the powers  
14       conferred on the attorney general by the laws of that  
15       State.

16       “(6) VENUE; SERVICE OF PROCESS.—

17               “(A) VENUE.—Any action brought under  
18       paragraph (1) may be brought in the district  
19       court of the United States that meets applicable  
20       requirements relating to venue under section  
21       1391 of title 28, United States Code.

22               “(B) SERVICE OF PROCESS.—In an action  
23       brought under paragraph (1), process may be  
24       served in any district in which the defendant—

25               “(i) is an inhabitant; or

1                   “(ii) maintains a physical place of  
2                   business.

3                   “(7) LIMITATION ON STATE ACTION WHILE  
4                   FEDERAL ACTION IS PENDING.—If the Secretary has  
5                   instituted an action against a person under sub-  
6                   section (a) with respect to a specific violation of this  
7                   part, no State attorney general may bring an action  
8                   under this subsection against the person with re-  
9                   spect to such violation during the pendency of that  
10                  action.

11                  “(8) APPLICATION OF CMP STATUTE OF LIM-  
12                  TATION.—A civil action may not be instituted with  
13                  respect to a violation of this part unless an action  
14                  to impose a civil money penalty may be instituted  
15                  under subsection (a) with respect to such violation  
16                  consistent with the second sentence of section  
17                  1128A(c)(1).”.

18                  (2) CONFORMING AMENDMENTS.—Subsection  
19                  (b) of such section, as amended by subsection (d)(3),  
20                  is amended—

21                         (A) in paragraph (1), by striking “A pen-  
22                         alty may not be imposed under subsection (a)”  
23                         and inserting “No penalty may be imposed  
24                         under subsection (a) and no damages obtained  
25                         under subsection (d)”;

1 (B) in paragraph (2)(A)—

2 (i) after “subsection (a)(1)(C),” by  
3 striking “a penalty may not be imposed  
4 under subsection (a)” and inserting “no  
5 penalty may be imposed under subsection  
6 (a) and no damages obtained under sub-  
7 section (d)”;

8 (ii) in clause (ii), by inserting “or  
9 damages” after “the penalty”;

10 (C) in paragraph (2)(B)(i), by striking  
11 “The period” and inserting “With respect to  
12 the imposition of a penalty by the Secretary  
13 under subsection (a), the period”;

14 (D) in paragraph (3), by inserting “and  
15 any damages under subsection (d)” after “any  
16 penalty under subsection (a)”.

17 (3) EFFECTIVE DATE.—The amendments made  
18 by this subsection shall apply to violations occurring  
19 after the date of the enactment of this Act.

20 (f) ALLOWING CONTINUED USE OF CORRECTIVE AC-  
21 TION.—Such section is further amended by adding at the  
22 end the following new subsection:

23 “(e) ALLOWING CONTINUED USE OF CORRECTIVE  
24 ACTION.—Nothing in this section shall be construed as  
25 preventing the Office for Civil Rights of the Department

1 of Health and Human Services from continuing, in its dis-  
2 cretion, to use corrective action without a penalty in cases  
3 where the person did not know (and by exercising reason-  
4 able diligence would not have known) of the violation in-  
5 volved.”.

6 **SEC. 13411. AUDITS.**

7 The Secretary shall provide for periodic audits to en-  
8 sure that covered entities and business associates that are  
9 subject to the requirements of this subtitle and subparts  
10 C and E of part 164 of title 45, Code of Federal Regula-  
11 tions, as such provisions are in effect as of the date of  
12 enactment of this Act, comply with such requirements.

13 **PART 2—RELATIONSHIP TO OTHER LAWS; REGU-**  
14 **LATORY REFERENCES; EFFECTIVE DATE; RE-**  
15 **PORTS**

16 **SEC. 13421. RELATIONSHIP TO OTHER LAWS.**

17 (a) APPLICATION OF HIPAA STATE PREEMPTION.—  
18 Section 1178 of the Social Security Act (42 U.S.C.  
19 1320d–7) shall apply to a provision or requirement under  
20 this subtitle in the same manner that such section applies  
21 to a provision or requirement under part C of title XI of  
22 such Act or a standard or implementation specification  
23 adopted or established under sections 1172 through 1174  
24 of such Act.

1 (b) HEALTH INSURANCE PORTABILITY AND AC-  
2 COUNTABILITY ACT.—The standards governing the pri-  
3 vacy and security of individually identifiable health infor-  
4 mation promulgated by the Secretary under sections  
5 262(a) and 264 of the Health Insurance Portability and  
6 Accountability Act of 1996 shall remain in effect to the  
7 extent that they are consistent with this subtitle. The Sec-  
8 retary shall by rule amend such Federal regulations as re-  
9 quired to make such regulations consistent with this sub-  
10 title.

11 (c) CONSTRUCTION.—Nothing in this subtitle shall  
12 constitute a waiver of any privilege otherwise applicable  
13 to an individual with respect to the protected health infor-  
14 mation of such individual.

15 **SEC. 13422. REGULATORY REFERENCES.**

16 Each reference in this subtitle to a provision of the  
17 Code of Federal Regulations refers to such provision as  
18 in effect on the date of the enactment of this title (or to  
19 the most recent update of such provision).

20 **SEC. 13423. EFFECTIVE DATE.**

21 Except as otherwise specifically provided, the provi-  
22 sions of part I shall take effect on the date that is 12  
23 months after the date of the enactment of this title.

24 **SEC. 13424. STUDIES, REPORTS, GUIDANCE.**

25 (a) REPORT ON COMPLIANCE.—

1           (1) IN GENERAL.—For the first year beginning  
2           after the date of the enactment of this Act and an-  
3           nually thereafter, the Secretary shall prepare and  
4           submit to the Committee on Health, Education,  
5           Labor, and Pensions of the Senate and the Com-  
6           mittee on Ways and Means and the Committee on  
7           Energy and Commerce of the House of Representa-  
8           tives a report concerning complaints of alleged viola-  
9           tions of law, including the provisions of this subtitle  
10          as well as the provisions of subparts C and E of part  
11          164 of title 45, Code of Federal Regulations, (as  
12          such provisions are in effect as of the date of enact-  
13          ment of this Act) relating to privacy and security of  
14          health information that are received by the Secretary  
15          during the year for which the report is being pre-  
16          pared. Each such report shall include, with respect  
17          to such complaints received during the year—

18                   (A) the number of such complaints;

19                   (B) the number of such complaints re-  
20                   solved informally, a summary of the types of  
21                   such complaints so resolved, and the number of  
22                   covered entities that received technical assist-  
23                   ance from the Secretary during such year in  
24                   order to achieve compliance with such provi-

1           sions and the types of such technical assistance  
2           provided;

3           (C) the number of such complaints that  
4           have resulted in the imposition of civil monetary  
5           penalties or have been resolved through mone-  
6           etary settlements, including the nature of the  
7           complaints involved and the amount paid in  
8           each penalty or settlement;

9           (D) the number of compliance reviews con-  
10          ducted and the outcome of each such review;

11          (E) the number of subpoenas or inquiries  
12          issued;

13          (F) the Secretary's plan for improving  
14          compliance with and enforcement of such provi-  
15          sions for the following year; and

16          (G) the number of audits performed and a  
17          summary of audit findings pursuant to section  
18          13411.

19          (2) AVAILABILITY TO PUBLIC.—Each report  
20          under paragraph (1) shall be made available to the  
21          public on the Internet website of the Department of  
22          Health and Human Services.

23          (b) STUDY AND REPORT ON APPLICATION OF PRI-  
24          VACY AND SECURITY REQUIREMENTS TO NON-HIPAA  
25          COVERED ENTITIES.—



1 through the websites of covered entities  
2 that offer individuals personal health  
3 records;

4 (iv) entities that are not covered enti-  
5 ties and that access information in a per-  
6 sonal health record or send information to  
7 a personal health record; and

8 (v) third party service providers used  
9 by a vendor or entity described in clause  
10 (i), (ii), (iii), or (iv) to assist in providing  
11 personal health record products or services;

12 (B) a determination of which Federal gov-  
13 ernment agency is best equipped to enforce  
14 such requirements recommended to be applied  
15 to such vendors, entities, and service providers  
16 under subparagraph (A); and

17 (C) a timeframe for implementing regula-  
18 tions based on such findings.

19 (2) REPORT.—The Secretary shall submit to  
20 the Committee on Finance, the Committee on  
21 Health, Education, Labor, and Pensions, and the  
22 Committee on Commerce of the Senate and the  
23 Committee on Ways and Means and the Committee  
24 on Energy and Commerce of the House of Rep-  
25 resentatives a report on the findings of the study

1 under paragraph (1) and shall include in such report  
2 recommendations on the privacy and security re-  
3 quirements described in such paragraph.

4 (c) GUIDANCE ON IMPLEMENTATION SPECIFICATION  
5 TO DE-IDENTIFY PROTECTED HEALTH INFORMATION.—  
6 Not later than 12 months after the date of the enactment  
7 of this title, the Secretary shall, in consultation with stake-  
8 holders, issue guidance on how best to implement the re-  
9 quirements for the de-identification of protected health in-  
10 formation under section 164.514(b) of title 45, Code of  
11 Federal Regulations.

12 (d) GAO REPORT ON TREATMENT DISCLOSURES.—  
13 Not later than one year after the date of the enactment  
14 of this title, the Comptroller General of the United States  
15 shall submit to the Committee on Health, Education,  
16 Labor, and Pensions of the Senate and the Committee on  
17 Ways and Means and the Committee on Energy and Com-  
18 merce of the House of Representatives a report on the  
19 best practices related to the disclosure among health care  
20 providers of protected health information of an individual  
21 for purposes of treatment of such individual. Such report  
22 shall include an examination of the best practices imple-  
23 mented by States and by other entities, such as health  
24 information exchanges and regional health information or-  
25 ganizations, an examination of the extent to which such

1 best practices are successful with respect to the quality  
2 of the resulting health care provided to the individual and  
3 with respect to the ability of the health care provider to  
4 manage such best practices, and an examination of the  
5 use of electronic informed consent for disclosing protected  
6 health information for treatment, payment, and health  
7 care operations.

8 (e) REPORT REQUIRED.—Not later than 5 years  
9 after the date of enactment of this section, the Govern-  
10 ment Accountability Office shall submit to Congress and  
11 the Secretary of Health and Human Services a report on  
12 the impact of any of the provisions of this Act on health  
13 insurance premiums, overall health care costs, adoption of  
14 electronic health records by providers, and reduction in  
15 medical errors and other quality improvements.

16 (f) STUDY.—The Secretary shall study the definition  
17 of “psychotherapy notes” in section 164.501 of title 45,  
18 Code of Federal Regulations, with regard to including test  
19 data that is related to direct responses, scores, items,  
20 forms, protocols, manuals, or other materials that are part  
21 of a mental health evaluation, as determined by the mental  
22 health professional providing treatment or evaluation in  
23 such definitions and may, based on such study, issue regu-  
24 lations to revise such definition.

1 **TITLE IV—MEDICARE AND MED-**  
 2 **ICAID HEALTH INFORMATION**  
 3 **TECHNOLOGY; MISCELLA-**  
 4 **NEOUS MEDICARE PROVI-**  
 5 **SIONS**

6 **SEC. 4001. TABLE OF CONTENTS OF TITLE.**

7 The table of contents of this title is as follows:

TITLE IV—MEDICARE AND MEDICAID HEALTH INFORMATION  
 TECHNOLOGY; MISCELLANEOUS MEDICARE PROVISIONS

Sec. 4001. Table of contents of title.

Subtitle A—Medicare Incentives

Sec. 4101. Incentives for eligible professionals.

Sec. 4102. Incentives for hospitals.

Sec. 4103. Treatment of payments and savings; implementation funding.

Sec. 4104. Studies and reports on health information technology.

Subtitle B—Medicaid Incentives

Sec. 4201. Medicaid provider HIT adoption and operation payments; implemen-  
 tation funding.

Subtitle C—Miscellaneous Medicare Provisions

Sec. 4301. Moratoria on certain Medicare regulations.

Sec. 4302. Long-term care hospital technical corrections.

8 **Subtitle A—Medicare Incentives**

9 **SEC. 4101. INCENTIVES FOR ELIGIBLE PROFESSIONALS.**

10 (a) INCENTIVE PAYMENTS.—Section 1848 of the So-  
 11 cial Security Act (42 U.S.C. 1395w–4) is amended by add-  
 12 ing at the end the following new subsection:

13 “(o) INCENTIVES FOR ADOPTION AND MEANINGFUL  
 14 USE OF CERTIFIED EHR TECHNOLOGY.—

15 “(1) INCENTIVE PAYMENTS.—

16 “(A) IN GENERAL.—

1           “(i) IN GENERAL.—Subject to the  
2           succeeding subparagraphs of this para-  
3           graph, with respect to covered professional  
4           services furnished by an eligible profes-  
5           sional during a payment year (as defined  
6           in subparagraph (E)), if the eligible profes-  
7           sional is a meaningful EHR user (as deter-  
8           mined under paragraph (2)) for the EHR  
9           reporting period with respect to such year,  
10          in addition to the amount otherwise paid  
11          under this part, there also shall be paid to  
12          the eligible professional (or to an employer  
13          or facility in the cases described in clause  
14          (A) of section 1842(b)(6)), from the Fed-  
15          eral Supplementary Medical Insurance  
16          Trust Fund established under section 1841  
17          an amount equal to 75 percent of the Sec-  
18          retary’s estimate (based on claims sub-  
19          mitted not later than 2 months after the  
20          end of the payment year) of the allowed  
21          charges under this part for all such cov-  
22          ered professional services furnished by the  
23          eligible professional during such year.

24           “(ii) NO INCENTIVE PAYMENTS WITH  
25          RESPECT TO YEARS AFTER 2016.—No in-

1           centive payments may be made under this  
2           subsection with respect to a year after  
3           2016.

4           “(B) LIMITATIONS ON AMOUNTS OF IN-  
5           CENTIVE PAYMENTS.—

6                   “(i) IN GENERAL.—In no case shall  
7           the amount of the incentive payment pro-  
8           vided under this paragraph for an eligible  
9           professional for a payment year exceed the  
10          applicable amount specified under this sub-  
11          paragraph with respect to such eligible  
12          professional and such year.

13                   “(ii) AMOUNT.—Subject to clauses  
14          (iii) through (v), the applicable amount  
15          specified in this subparagraph for an eligi-  
16          ble professional is as follows:

17                           “(I) For the first payment year  
18           for such professional, \$15,000 (or, if  
19           the first payment year for such eligi-  
20           ble professional is 2011 or 2012,  
21           \$18,000).

22                           “(II) For the second payment  
23           year for such professional, \$12,000.

24                           “(III) For the third payment  
25           year for such professional, \$8,000.



1 for such professional under subclauses (I)  
2 through (V) of clause (ii) shall be in-  
3 creased by 10 percent. In implementing  
4 the preceding sentence, the Secretary may,  
5 as determined appropriate, apply provi-  
6 sions of subsections (m) and (u) of section  
7 1833 in a similar manner as such provi-  
8 sions apply under such subsection.

9 “(v) NO INCENTIVE PAYMENT IF  
10 FIRST ADOPTING AFTER 2014.—If the first  
11 payment year for an eligible professional is  
12 after 2014 then the applicable amount  
13 specified in this subparagraph for such  
14 professional for such year and any subse-  
15 quent year shall be \$0.

16 “(C) NON-APPLICATION TO HOSPITAL-  
17 BASED ELIGIBLE PROFESSIONALS.—

18 “(i) IN GENERAL.—No incentive pay-  
19 ment may be made under this paragraph  
20 in the case of a hospital-based eligible pro-  
21 fessional.

22 “(ii) HOSPITAL-BASED ELIGIBLE PRO-  
23 FESSIONAL.—For purposes of clause (i),  
24 the term ‘hospital-based eligible profes-  
25 sional’ means, with respect to covered pro-

1 professional services furnished by an eligible  
2 professional during the EHR reporting pe-  
3 riod for a payment year, an eligible profes-  
4 sional, such as a pathologist, anesthesiol-  
5 ogist, or emergency physician, who fur-  
6 nishes substantially all of such services in  
7 a hospital setting (whether inpatient or  
8 outpatient) and through the use of the fa-  
9 cilities and equipment, including qualified  
10 electronic health records, of the hospital.  
11 The determination of whether an eligible  
12 professional is a hospital-based eligible pro-  
13 fessional shall be made on the basis of the  
14 site of service (as defined by the Secretary)  
15 and without regard to any employment or  
16 billing arrangement between the eligible  
17 professional and any other provider.

18 “(D) PAYMENT.—

19 “(i) FORM OF PAYMENT.—The pay-  
20 ment under this paragraph may be in the  
21 form of a single consolidated payment or  
22 in the form of such periodic installments  
23 as the Secretary may specify.

24 “(ii) COORDINATION OF APPLICATION  
25 OF LIMITATION FOR PROFESSIONALS IN

1 DIFFERENT PRACTICES.—In the case of an  
2 eligible professional furnishing covered pro-  
3 fessional services in more than one practice  
4 (as specified by the Secretary), the Sec-  
5 retary shall establish rules to coordinate  
6 the incentive payments, including the ap-  
7 plication of the limitation on amounts of  
8 such incentive payments under this para-  
9 graph, among such practices.

10 “(iii) COORDINATION WITH MED-  
11 ICAID.—The Secretary shall seek, to the  
12 maximum extent practicable, to avoid du-  
13 plicative requirements from Federal and  
14 State governments to demonstrate mean-  
15 ingful use of certified EHR technology  
16 under this title and title XIX. The Sec-  
17 retary may also adjust the reporting peri-  
18 ods under such title and such subsections  
19 in order to carry out this clause.

20 “(E) PAYMENT YEAR DEFINED.—

21 “(i) IN GENERAL.—For purposes of  
22 this subsection, the term ‘payment year’  
23 means a year beginning with 2011.

24 “(ii) FIRST, SECOND, ETC. PAYMENT  
25 YEAR.—The term ‘first payment year’

1 means, with respect to covered professional  
2 services furnished by an eligible profes-  
3 sional, the first year for which an incentive  
4 payment is made for such services under  
5 this subsection. The terms ‘second pay-  
6 ment year’, ‘third payment year’, ‘fourth  
7 payment year’, and ‘fifth payment year’  
8 mean, with respect to covered professional  
9 services furnished by such eligible profes-  
10 sional, each successive year immediately  
11 following the first payment year for such  
12 professional.

13 “(2) MEANINGFUL EHR USER.—

14 “(A) IN GENERAL.—For purposes of para-  
15 graph (1), an eligible professional shall be  
16 treated as a meaningful EHR user for an EHR  
17 reporting period for a payment year (or, for  
18 purposes of subsection (a)(7), for an EHR re-  
19 porting period under such subsection for a  
20 year) if each of the following requirements is  
21 met:

22 “(i) MEANINGFUL USE OF CERTIFIED  
23 EHR TECHNOLOGY.—The eligible profes-  
24 sional demonstrates to the satisfaction of  
25 the Secretary, in accordance with subpara-

1 graph (C)(i), that during such period the  
2 professional is using certified EHR tech-  
3 nology in a meaningful manner, which  
4 shall include the use of electronic pre-  
5 scribing as determined to be appropriate  
6 by the Secretary.

7 “(ii) INFORMATION EXCHANGE.—The  
8 eligible professional demonstrates to the  
9 satisfaction of the Secretary, in accordance  
10 with subparagraph (C)(i), that during such  
11 period such certified EHR technology is  
12 connected in a manner that provides, in  
13 accordance with law and standards appli-  
14 cable to the exchange of information, for  
15 the electronic exchange of health informa-  
16 tion to improve the quality of health care,  
17 such as promoting care coordination.

18 “(iii) REPORTING ON MEASURES  
19 USING EHR.—Subject to subparagraph  
20 (B)(ii) and using such certified EHR tech-  
21 nology, the eligible professional submits in-  
22 formation for such period, in a form and  
23 manner specified by the Secretary, on such  
24 clinical quality measures and such other

1           measures as selected by the Secretary  
2           under subparagraph (B)(i).

3           The Secretary may provide for the use of alter-  
4           native means for meeting the requirements of  
5           clauses (i), (ii), and (iii) in the case of an eligi-  
6           ble professional furnishing covered professional  
7           services in a group practice (as defined by the  
8           Secretary). The Secretary shall seek to improve  
9           the use of electronic health records and health  
10          care quality over time by requiring more strin-  
11          gent measures of meaningful use selected under  
12          this paragraph.

13           “(B) REPORTING ON MEASURES.—

14           “(i) SELECTION.—The Secretary shall  
15           select measures for purposes of subpara-  
16           graph (A)(iii) but only consistent with the  
17           following:

18           “(I) The Secretary shall provide  
19           preference to clinical quality measures  
20           that have been endorsed by the entity  
21           with a contract with the Secretary  
22           under section 1890(a).

23           “(II) Prior to any measure being  
24           selected under this subparagraph, the  
25           Secretary shall publish in the Federal

1 Register such measure and provide for  
2 a period of public comment on such  
3 measure.

4 “(ii) LIMITATION.—The Secretary  
5 may not require the electronic reporting of  
6 information on clinical quality measures  
7 under subparagraph (A)(iii) unless the  
8 Secretary has the capacity to accept the in-  
9 formation electronically, which may be on  
10 a pilot basis.

11 “(iii) COORDINATION OF REPORTING  
12 OF INFORMATION.—In selecting such  
13 measures, and in establishing the form and  
14 manner for reporting measures under sub-  
15 paragraph (A)(iii), the Secretary shall seek  
16 to avoid redundant or duplicative reporting  
17 otherwise required, including reporting  
18 under subsection (k)(2)(C).

19 “(C) DEMONSTRATION OF MEANINGFUL  
20 USE OF CERTIFIED EHR TECHNOLOGY AND IN-  
21 FORMATION EXCHANGE.—

22 “(i) IN GENERAL.—A professional  
23 may satisfy the demonstration requirement  
24 of clauses (i) and (ii) of subparagraph (A)

1 through means specified by the Secretary,  
2 which may include—

3 “(I) an attestation;

4 “(II) the submission of claims  
5 with appropriate coding (such as a  
6 code indicating that a patient encoun-  
7 ter was documented using certified  
8 EHR technology);

9 “(III) a survey response;

10 “(IV) reporting under subpara-  
11 graph (A)(iii); and

12 “(V) other means specified by the  
13 Secretary.

14 “(ii) USE OF PART D DATA.—Not-  
15 withstanding sections 1860D–15(d)(2)(B)  
16 and 1860D–15(f)(2), the Secretary may  
17 use data regarding drug claims submitted  
18 for purposes of section 1860D–15 that are  
19 necessary for purposes of subparagraph  
20 (A).

21 “(3) APPLICATION.—

22 “(A) PHYSICIAN REPORTING SYSTEM  
23 RULES.—Paragraphs (5), (6), and (8) of sub-  
24 section (k) shall apply for purposes of this sub-

1 section in the same manner as they apply for  
2 purposes of such subsection.

3 “(B) COORDINATION WITH OTHER PAY-  
4 MENTS.—The provisions of this subsection shall  
5 not be taken into account in applying the provi-  
6 sions of subsection (m) of this section and of  
7 section 1833(m) and any payment under such  
8 provisions shall not be taken into account in  
9 computing allowable charges under this sub-  
10 section.

11 “(C) LIMITATIONS ON REVIEW.—There  
12 shall be no administrative or judicial review  
13 under section 1869, section 1878, or otherwise,  
14 of—

15 “(i) the methodology and standards  
16 for determining payment amounts under  
17 this subsection and payment adjustments  
18 under subsection (a)(7)(A), including the  
19 limitation under paragraph (1)(B) and co-  
20 ordination under clauses (ii) and (iii) of  
21 paragraph (1)(D);

22 “(ii) the methodology and standards  
23 for determining a meaningful EHR user  
24 under paragraph (2), including selection of  
25 measures under paragraph (2)(B), speci-

1           fication of the means of demonstrating  
2           meaningful EHR use under paragraph  
3           (2)(C), and the hardship exception under  
4           subsection (a)(7)(B);

5           “(iii) the methodology and standards  
6           for determining a hospital-based eligible  
7           professional under paragraph (1)(C); and

8           “(iv) the specification of reporting pe-  
9           riods under paragraph (5) and the selec-  
10          tion of the form of payment under para-  
11          graph (1)(D)(i).

12          “(D) POSTING ON WEBSITE.—The Sec-  
13          retary shall post on the Internet website of the  
14          Centers for Medicare & Medicaid Services, in an  
15          easily understandable format, a list of the  
16          names, business addresses, and business phone  
17          numbers of the eligible professionals who are  
18          meaningful EHR users and, as determined ap-  
19          propriate by the Secretary, of group practices  
20          receiving incentive payments under paragraph  
21          (1).

22          “(4) CERTIFIED EHR TECHNOLOGY DEFINED.—  
23          For purposes of this section, the term ‘certified  
24          EHR technology’ means a qualified electronic health  
25          record (as defined in section 3000(13) of the Public

1 Health Service Act) that is certified pursuant to sec-  
2 tion 3001(e)(5) of such Act as meeting standards  
3 adopted under section 3004 of such Act that are ap-  
4 plicable to the type of record involved (as determined  
5 by the Secretary, such as an ambulatory electronic  
6 health record for office-based physicians or an inpa-  
7 tient hospital electronic health record for hospitals).

8 “(5) DEFINITIONS.—For purposes of this sub-  
9 section:

10 “(A) COVERED PROFESSIONAL SERV-  
11 ICES.—The term ‘covered professional services’  
12 has the meaning given such term in subsection  
13 (k)(3).

14 “(B) EHR REPORTING PERIOD.—The  
15 term ‘EHR reporting period’ means, with re-  
16 spect to a payment year, any period (or peri-  
17 ods) as specified by the Secretary.

18 “(C) ELIGIBLE PROFESSIONAL.—The term  
19 ‘eligible professional’ means a physician, as de-  
20 fined in section 1861(r).”.

21 (b) INCENTIVE PAYMENT ADJUSTMENT.—Section  
22 1848(a) of the Social Security Act (42 U.S.C. 1395w-  
23 4(a)) is amended by adding at the end the following new  
24 paragraph:

1           “(7) INCENTIVES FOR MEANINGFUL USE OF  
2           CERTIFIED EHR TECHNOLOGY.—

3           “(A) ADJUSTMENT.—

4                   “(i) IN GENERAL.—Subject to sub-  
5           paragraphs (B) and (D), with respect to  
6           covered professional services furnished by  
7           an eligible professional during 2015 or any  
8           subsequent payment year, if the eligible  
9           professional is not a meaningful EHR user  
10          (as determined under subsection (o)(2)) for  
11          an EHR reporting period for the year, the  
12          fee schedule amount for such services fur-  
13          nished by such professional during the year  
14          (including the fee schedule amount for pur-  
15          poses of determining a payment based on  
16          such amount) shall be equal to the applica-  
17          ble percent of the fee schedule amount that  
18          would otherwise apply to such services  
19          under this subsection (determined after ap-  
20          plication of paragraph (3) but without re-  
21          gard to this paragraph).

22                   “(ii) APPLICABLE PERCENT.—Subject  
23          to clause (iii), for purposes of clause (i),  
24          the term ‘applicable percent’ means—

1                   “(I) for 2015, 99 percent (or, in  
2                   the case of an eligible professional  
3                   who was subject to the application of  
4                   the payment adjustment under section  
5                   1848(a)(5) for 2014, 98 percent);

6                   “(II) for 2016, 98 percent; and

7                   “(III) for 2017 and each subse-  
8                   quent year, 97 percent.

9                   “(iii) AUTHORITY TO DECREASE AP-  
10                  PLICABLE PERCENTAGE FOR 2018 AND  
11                  SUBSEQUENT YEARS.—For 2018 and each  
12                  subsequent year, if the Secretary finds that  
13                  the proportion of eligible professionals who  
14                  are meaningful EHR users (as determined  
15                  under subsection (o)(2)) is less than 75  
16                  percent, the applicable percent shall be de-  
17                  creased by 1 percentage point from the ap-  
18                  plicable percent in the preceding year, but  
19                  in no case shall the applicable percent be  
20                  less than 95 percent.

21                  “(B) SIGNIFICANT HARDSHIP EXCEP-  
22                  TION.—The Secretary may, on a case-by-case  
23                  basis, exempt an eligible professional from the  
24                  application of the payment adjustment under  
25                  subparagraph (A) if the Secretary determines,

1 subject to annual renewal, that compliance with  
2 the requirement for being a meaningful EHR  
3 user would result in a significant hardship, such  
4 as in the case of an eligible professional who  
5 practices in a rural area without sufficient  
6 Internet access. In no case may an eligible pro-  
7 fessional be granted an exemption under this  
8 subparagraph for more than 5 years.

9 “(C) APPLICATION OF PHYSICIAN REPORT-  
10 ING SYSTEM RULES.—Paragraphs (5), (6), and  
11 (8) of subsection (k) shall apply for purposes of  
12 this paragraph in the same manner as they  
13 apply for purposes of such subsection.

14 “(D) NON-APPLICATION TO HOSPITAL-  
15 BASED ELIGIBLE PROFESSIONALS.—No pay-  
16 ment adjustment may be made under subpara-  
17 graph (A) in the case of hospital-based eligible  
18 professionals (as defined in subsection  
19 (o)(1)(C)(ii)).

20 “(E) DEFINITIONS.—For purposes of this  
21 paragraph:

22 “(i) COVERED PROFESSIONAL SERV-  
23 ICES.—The term ‘covered professional  
24 services’ has the meaning given such term  
25 in subsection (k)(3).

1                   “(ii) EHR REPORTING PERIOD.—The  
2                   term ‘EHR reporting period’ means, with  
3                   respect to a year, a period (or periods)  
4                   specified by the Secretary.

5                   “(iii) ELIGIBLE PROFESSIONAL.—The  
6                   term ‘eligible professional’ means a physi-  
7                   cian, as defined in section 1861(r).”.

8                   (c) APPLICATION TO CERTAIN MA-AFFILIATED ELI-  
9                   GIBLE PROFESSIONALS.—Section 1853 of the Social Secu-  
10                  rity Act (42 U.S.C. 1395w–23) is amended by adding at  
11                  the end the following new subsection:

12                  “(l) APPLICATION OF ELIGIBLE PROFESSIONAL IN-  
13                  CENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOP-  
14                  TION AND MEANINGFUL USE OF CERTIFIED EHR TECH-  
15                  NOLOGY.—

16                  “(1) IN GENERAL.—Subject to paragraphs (3)  
17                  and (4), in the case of a qualifying MA organization,  
18                  the provisions of sections 1848(o) and 1848(a)(7)  
19                  shall apply with respect to eligible professionals de-  
20                  scribed in paragraph (2) of the organization who the  
21                  organization attests under paragraph (6) to be  
22                  meaningful EHR users in a similar manner as they  
23                  apply to eligible professionals under such sections.  
24                  Incentive payments under paragraph (3) shall be

1       made to and payment adjustments under paragraph  
2       (4) shall apply to such qualifying organizations.

3           “(2) ELIGIBLE PROFESSIONAL DESCRIBED.—

4       With respect to a qualifying MA organization, an eli-  
5       gible professional described in this paragraph is an  
6       eligible professional (as defined for purposes of sec-  
7       tion 1848(o)) who—

8           “(A)(i) is employed by the organization; or

9           “(ii)(I) is employed by, or is a partner of,  
10       an entity that through contract with the organi-  
11       zation furnishes at least 80 percent of the enti-  
12       ty’s Medicare patient care services to enrollees  
13       of such organization; and

14          “(II) furnishes at least 80 percent of the  
15       professional services of the eligible professional  
16       covered under this title to enrollees of the orga-  
17       nization; and

18          “(B) furnishes, on average, at least 20  
19       hours per week of patient care services.

20          “(3) ELIGIBLE PROFESSIONAL INCENTIVE PAY-  
21       MENTS.—

22          “(A) IN GENERAL.—In applying section  
23       1848(o) under paragraph (1), instead of the ad-  
24       ditional payment amount under section  
25       1848(o)(1)(A) and subject to subparagraph

1 (B), the Secretary may substitute an amount  
2 determined by the Secretary to the extent fea-  
3 sible and practical to be similar to the esti-  
4 mated amount in the aggregate that would be  
5 payable if payment for services furnished by  
6 such professionals was payable under part B in-  
7 stead of this part.

8 “(B) AVOIDING DUPLICATION OF PAY-  
9 MENTS.—

10 “(i) IN GENERAL.—In the case of an  
11 eligible professional described in paragraph  
12 (2)—

13 “(I) that is eligible for the max-  
14 imum incentive payment under section  
15 1848(o)(1)(A) for the same payment  
16 period, the payment incentive shall be  
17 made only under such section and not  
18 under this subsection; and

19 “(II) that is eligible for less than  
20 such maximum incentive payment for  
21 the same payment period, the pay-  
22 ment incentive shall be made only  
23 under this subsection and not under  
24 section 1848(o)(1)(A).

1                   “(ii) METHODS.—In the case of an el-  
2                   igible professional described in paragraph  
3                   (2) who is eligible for an incentive payment  
4                   under section 1848(o)(1)(A) but is not de-  
5                   scribed in clause (i) for the same payment  
6                   period, the Secretary shall develop a proc-  
7                   ess—

8                   “(I) to ensure that duplicate pay-  
9                   ments are not made with respect to  
10                  an eligible professional both under  
11                  this subsection and under section  
12                  1848(o)(1)(A); and

13                  “(II) to collect data from Medi-  
14                  care Advantage organizations to en-  
15                  sure against such duplicate payments.

16                  “(C) FIXED SCHEDULE FOR APPLICATION  
17                  OF LIMITATION ON INCENTIVE PAYMENTS FOR  
18                  ALL ELIGIBLE PROFESSIONALS.—In applying  
19                  section 1848(o)(1)(B)(ii) under subparagraph  
20                  (A), in accordance with rules specified by the  
21                  Secretary, a qualifying MA organization shall  
22                  specify a year (not earlier than 2011) that shall  
23                  be treated as the first payment year for all eli-  
24                  gible professionals with respect to such organi-  
25                  zation.

1           “(4) PAYMENT ADJUSTMENT.—

2                   “(A) IN GENERAL.—In applying section  
3           1848(a)(7) under paragraph (1), instead of the  
4           payment adjustment being an applicable per-  
5           cent of the fee schedule amount for a year  
6           under such section, subject to subparagraph  
7           (D), the payment adjustment under paragraph  
8           (1) shall be equal to the percent specified in  
9           subparagraph (B) for such year of the payment  
10          amount otherwise provided under this section  
11          for such year.

12                   “(B) SPECIFIED PERCENT.—The percent  
13          specified under this subparagraph for a year is  
14          100 percent minus a number of percentage  
15          points equal to the product of—

16                   “(i) the number of percentage points  
17                  by which the applicable percent (under sec-  
18                  tion 1848(a)(7)(A)(ii)) for the year is less  
19                  than 100 percent; and

20                   “(ii) the Medicare physician expendi-  
21                  ture proportion specified in subparagraph  
22                  (C) for the year.

23                   “(C) MEDICARE PHYSICIAN EXPENDITURE  
24          PROPORTION.—The Medicare physician expend-  
25          iture proportion under this subparagraph for a

1 year is the Secretary's estimate of the propor-  
2 tion, of the expenditures under parts A and B  
3 that are not attributable to this part, that are  
4 attributable to expenditures for physicians'  
5 services.

6 “(D) APPLICATION OF PAYMENT ADJUST-  
7 MENT.—In the case that a qualifying MA orga-  
8 nization attests that not all eligible profes-  
9 sionals of the organization are meaningful EHR  
10 users with respect to a year, the Secretary shall  
11 apply the payment adjustment under this para-  
12 graph based on the proportion of all such eligi-  
13 ble professionals of the organization that are  
14 not meaningful EHR users for such year.

15 “(5) QUALIFYING MA ORGANIZATION DE-  
16 FINED.—In this subsection and subsection (m), the  
17 term ‘qualifying MA organization’ means a Medicare  
18 Advantage organization that is organized as a health  
19 maintenance organization (as defined in section  
20 2791(b)(3) of the Public Health Service Act).

21 “(6) MEANINGFUL EHR USER ATTESTATION.—  
22 For purposes of this subsection and subsection (m),  
23 a qualifying MA organization shall submit an attes-  
24 tation, in a form and manner specified by the Sec-  
25 retary which may include the submission of such at-

1       testation as part of submission of the initial bid  
2       under section 1854(a)(1)(A)(iv), identifying—

3               “(A) whether each eligible professional de-  
4               scribed in paragraph (2), with respect to such  
5               organization is a meaningful EHR user (as de-  
6               fined in section 1848(o)(2)) for a year specified  
7               by the Secretary; and

8               “(B) whether each eligible hospital de-  
9               scribed in subsection (m)(1), with respect to  
10              such organization, is a meaningful EHR user  
11              (as defined in section 1886(n)(3)) for an appli-  
12              cable period specified by the Secretary.

13              “(7) POSTING ON WEBSITE.—The Secretary  
14              shall post on the Internet website of the Centers for  
15              Medicare & Medicaid Services, in an easily under-  
16              standable format, a list of the names, business ad-  
17              dresses, and business phone numbers of—

18                      “(A) each qualifying MA organization re-  
19                      ceiving an incentive payment under this sub-  
20                      section for eligible professionals of the organiza-  
21                      tion; and

22                      “(B) the eligible professionals of such or-  
23                      ganization for which such incentive payment is  
24                      based.

1           “(8) LIMITATION ON REVIEW.—There shall be  
2 no administrative or judicial review under section  
3 1869, section 1878, or otherwise, of—

4           “(A) the methodology and standards for  
5 determining payment amounts and payment ad-  
6 justments under this subsection, including  
7 avoiding duplication of payments under para-  
8 graph (3)(B) and the specification of rules for  
9 the fixed schedule for application of limitation  
10 on incentive payments for all eligible profes-  
11 sionals under paragraph (3)(C);

12           “(B) the methodology and standards for  
13 determining eligible professionals under para-  
14 graph (2); and

15           “(C) the methodology and standards for  
16 determining a meaningful EHR user under sec-  
17 tion 1848(o)(2), including specification of the  
18 means of demonstrating meaningful EHR use  
19 under section 1848(o)(3)(C) and selection of  
20 measures under section 1848(o)(3)(B).”.

21           (d) STUDY AND REPORT RELATING TO MA ORGANI-  
22 ZATIONS.—

23           (1) STUDY.—The Secretary of Health and  
24 Human Services shall conduct a study on the extent  
25 to which and manner in which payment incentives

1 and adjustments (such as under sections 1848(o)  
2 and 1848(a)(7) of the Social Security Act) could be  
3 made available to professionals, as defined in  
4 1861(r), who are not eligible for HIT incentive pay-  
5 ments under section 1848(o) and receive payments  
6 for Medicare patient services nearly-exclusively  
7 through contractual arrangements with one or more  
8 Medicare Advantage organizations, or an inter-  
9 mediary organization or organizations with contracts  
10 with Medicare Advantage organizations. Such study  
11 shall assess approaches for measuring meaningful  
12 use of qualified EHR technology among such profes-  
13 sionals and mechanisms for delivering incentives and  
14 adjustments to those professionals, including  
15 through incentive payments and adjustments  
16 through Medicare Advantage organizations or inter-  
17 mediary organizations.

18 (2) REPORT.—Not later than 120 days after  
19 the date of the enactment of this Act, the Secretary  
20 of Health and Human Services shall submit to Con-  
21 gress a report on the findings and the conclusions of  
22 the study conducted under paragraph (1), together  
23 with recommendations for such legislation and ad-  
24 ministrative action as the Secretary determines ap-  
25 propriate.

1 (e) CONFORMING AMENDMENTS.—Section 1853 of  
2 the Social Security Act (42 U.S.C. 1395w–23) is amend-  
3 ed—

4 (1) in subsection (a)(1)(A), by striking “and  
5 (i)” and inserting “(i), and (l)”;

6 (2) in subsection (c)—

7 (A) in paragraph (1)(D)(i), by striking  
8 “section 1886(h)” and inserting “sections  
9 1848(o) and 1886(h)”;

10 (B) in paragraph (6)(A), by inserting after  
11 “under part B,” the following: “excluding ex-  
12 penditures attributable to subsections (a)(7)  
13 and (o) of section 1848,”; and

14 (3) in subsection (f), by inserting “and for pay-  
15 ments under subsection (l)” after “with the organi-  
16 zation”.

17 (f) CONFORMING AMENDMENTS TO E-PRE-  
18 SCRIBING.—

19 (1) Section 1848(a)(5)(A) of the Social Security  
20 Act (42 U.S.C. 1395w–4(a)(5)(A)) is amended—

21 (A) in clause (i), by striking “or any sub-  
22 sequent year” and inserting “, 2013 or 2014”;  
23 and

24 (B) in clause (ii), by striking “and each  
25 subsequent year”.

1           (2) Section 1848(m)(2) of such Act (42 U.S.C.  
2 1395w-4(m)(2)) is amended—

3           (A) in subparagraph (A), by striking “For  
4 2009” and inserting “Subject to subparagraph  
5 (D), for 2009”; and

6           (B) by adding at the end the following new  
7 subparagraph:

8           “(D) LIMITATION WITH RESPECT TO EHR  
9 INCENTIVE PAYMENTS.—The provisions of this  
10 paragraph shall not apply to an eligible profes-  
11 sional (or, in the case of a group practice under  
12 paragraph (3)(C), to the group practice) if, for  
13 the EHR reporting period the eligible profes-  
14 sional (or group practice) receives an incentive  
15 payment under subsection (o)(1)(A) with re-  
16 spect to a certified EHR technology (as defined  
17 in subsection (o)(4)) that has the capability of  
18 electronic prescribing.”.

19 **SEC. 4102. INCENTIVES FOR HOSPITALS.**

20           (a) INCENTIVE PAYMENT.—

21           (1) IN GENERAL.—Section 1886 of the Social  
22 Security Act (42 U.S.C. 1395ww) is amended by  
23 adding at the end the following new subsection:

24           “(n) INCENTIVES FOR ADOPTION AND MEANINGFUL  
25 USE OF CERTIFIED EHR TECHNOLOGY.—

1           “(1) IN GENERAL.—Subject to the succeeding  
2 provisions of this subsection, with respect to inpa-  
3 tient hospital services furnished by an eligible hos-  
4 pital during a payment year (as defined in para-  
5 graph (2)(G)), if the eligible hospital is a meaningful  
6 EHR user (as determined under paragraph (3)) for  
7 the EHR reporting period with respect to such year,  
8 in addition to the amount otherwise paid under this  
9 section, there also shall be paid to the eligible hos-  
10 pital, from the Federal Hospital Insurance Trust  
11 Fund established under section 1817, an amount  
12 equal to the applicable amount specified in para-  
13 graph (2)(A) for the hospital for such payment year.

14           “(2) PAYMENT AMOUNT.—

15           “(A) IN GENERAL.—Subject to the suc-  
16 ceeding subparagraphs of this paragraph, the  
17 applicable amount specified in this subpara-  
18 graph for an eligible hospital for a payment  
19 year is equal to the product of the following:

20           “(i) INITIAL AMOUNT.—The sum of—

21                   “(I) the base amount specified in  
22 subparagraph (B); plus

23                   “(II) the discharge related  
24 amount specified in subparagraph (C)  
25 for a 12-month period selected by the

1 Secretary with respect to such pay-  
2 ment year.

3 “(ii) MEDICARE SHARE.—The Medi-  
4 care share as specified in subparagraph  
5 (D) for the eligible hospital for a period se-  
6 lected by the Secretary with respect to  
7 such payment year.

8 “(iii) TRANSITION FACTOR.—The  
9 transition factor specified in subparagraph  
10 (E) for the eligible hospital for the pay-  
11 ment year.

12 “(B) BASE AMOUNT.—The base amount  
13 specified in this subparagraph is \$2,000,000.

14 “(C) DISCHARGE RELATED AMOUNT.—The  
15 discharge related amount specified in this sub-  
16 paragraph for a 12-month period selected by  
17 the Secretary shall be determined as the sum of  
18 the amount, estimated based upon total dis-  
19 charges for the eligible hospital (regardless of  
20 any source of payment) for the period, for each  
21 discharge up to the 23,000th discharge as fol-  
22 lows:

23 “(i) For the first through 1,149th dis-  
24 charge, \$0.

1                   “(ii) For the 1,150th through the  
2                   23,000th discharge, \$200.

3                   “(iii) For any discharge greater than  
4                   the 23,000th, \$0.

5                   “(D) MEDICARE SHARE.—The Medicare  
6                   share specified under this subparagraph for an  
7                   eligible hospital for a period selected by the  
8                   Secretary for a payment year is equal to the  
9                   fraction—

10                   “(i) the numerator of which is the  
11                   sum (for such period and with respect to  
12                   the eligible hospital) of—

13                   “(I) the estimated number of in-  
14                   patient-bed-days (as established by  
15                   the Secretary) which are attributable  
16                   to individuals with respect to whom  
17                   payment may be made under part A;  
18                   and

19                   “(II) the estimated number of in-  
20                   patient-bed-days (as so established)  
21                   which are attributable to individuals  
22                   who are enrolled with a Medicare Ad-  
23                   vantage organization under part C;  
24                   and

1                   “(ii) the denominator of which is the  
2                   product of—

3                   “(I) the estimated total number  
4                   of inpatient-bed-days with respect to  
5                   the eligible hospital during such pe-  
6                   riod; and

7                   “(II) the estimated total amount  
8                   of the eligible hospital’s charges dur-  
9                   ing such period, not including any  
10                  charges that are attributable to char-  
11                  ity care (as such term is used for pur-  
12                  poses of hospital cost reporting under  
13                  this title), divided by the estimated  
14                  total amount of the hospital’s charges  
15                  during such period.

16                  Insofar as the Secretary determines that data  
17                  are not available on charity care necessary to  
18                  calculate the portion of the formula specified in  
19                  clause (ii)(II), the Secretary shall use data on  
20                  uncompensated care and may adjust such data  
21                  so as to be an appropriate proxy for charity  
22                  care including a downward adjustment to elimi-  
23                  nate bad debt data from uncompensated care  
24                  data. In the absence of the data necessary, with  
25                  respect to a hospital, for the Secretary to com-

1           pute the amount described in clause (ii)(II), the  
2           amount under such clause shall be deemed to  
3           be 1. In the absence of data, with respect to a  
4           hospital, necessary to compute the amount de-  
5           scribed in clause (i)(II), the amount under such  
6           clause shall be deemed to be 0.

7           “(E) TRANSITION FACTOR SPECIFIED.—

8           “(i) IN GENERAL.—Subject to clause  
9           (ii), the transition factor specified in this  
10          subparagraph for an eligible hospital for a  
11          payment year is as follows:

12           “(I) For the first payment year  
13           for such hospital, 1.

14           “(II) For the second payment  
15           year for such hospital,  $\frac{3}{4}$ .

16           “(III) For the third payment  
17           year for such hospital,  $\frac{1}{2}$ .

18           “(IV) For the fourth payment  
19           year for such hospital,  $\frac{1}{4}$ .

20           “(V) For any succeeding pay-  
21           ment year for such hospital, 0.

22           “(ii) PHASE DOWN FOR ELIGIBLE  
23           HOSPITALS FIRST ADOPTING EHR AFTER  
24           2013.—If the first payment year for an eli-  
25           gible hospital is after 2013, then the tran-

1           sition factor specified in this subparagraph  
2           for a payment year for such hospital is the  
3           same as the amount specified in clause (i)  
4           for such payment year for an eligible hos-  
5           pital for which the first payment year is  
6           2013. If the first payment year for an eli-  
7           gible hospital is after 2015 then the transi-  
8           tion factor specified in this subparagraph  
9           for such hospital and for such year and  
10          any subsequent year shall be 0.

11           “(F) FORM OF PAYMENT.—The payment  
12          under this subsection for a payment year may  
13          be in the form of a single consolidated payment  
14          or in the form of such periodic installments as  
15          the Secretary may specify.

16           “(G) PAYMENT YEAR DEFINED.—

17           “(i) IN GENERAL.—For purposes of  
18          this subsection, the term ‘payment year’  
19          means a fiscal year beginning with fiscal  
20          year 2011.

21           “(ii) FIRST, SECOND, ETC. PAYMENT  
22          YEAR.—The term ‘first payment year’  
23          means, with respect to inpatient hospital  
24          services furnished by an eligible hospital,  
25          the first fiscal year for which an incentive

1 payment is made for such services under  
2 this subsection. The terms ‘second pay-  
3 ment year’, ‘third payment year’, and  
4 ‘fourth payment year’ mean, with respect  
5 to an eligible hospital, each successive year  
6 immediately following the first payment  
7 year for that hospital.

8 “(3) MEANINGFUL EHR USER.—

9 “(A) IN GENERAL.—For purposes of para-  
10 graph (1), an eligible hospital shall be treated  
11 as a meaningful EHR user for an EHR report-  
12 ing period for a payment year (or, for purposes  
13 of subsection (b)(3)(B)(ix), for an EHR report-  
14 ing period under such subsection for a fiscal  
15 year) if each of the following requirements are  
16 met:

17 “(i) MEANINGFUL USE OF CERTIFIED  
18 EHR TECHNOLOGY.—The eligible hospital  
19 demonstrates to the satisfaction of the Sec-  
20 retary, in accordance with subparagraph  
21 (C)(i), that during such period the hospital  
22 is using certified EHR technology in a  
23 meaningful manner.

24 “(ii) INFORMATION EXCHANGE.—The  
25 eligible hospital demonstrates to the satis-

1           faction of the Secretary, in accordance  
2           with subparagraph (C)(i), that during such  
3           period such certified EHR technology is  
4           connected in a manner that provides, in  
5           accordance with law and standards appli-  
6           cable to the exchange of information, for  
7           the electronic exchange of health informa-  
8           tion to improve the quality of health care,  
9           such as promoting care coordination.

10           “(iii) REPORTING ON MEASURES  
11           USING EHR.—Subject to subparagraph  
12           (B)(ii) and using such certified EHR tech-  
13           nology, the eligible hospital submits infor-  
14           mation for such period, in a form and  
15           manner specified by the Secretary, on such  
16           clinical quality measures and such other  
17           measures as selected by the Secretary  
18           under subparagraph (B)(i).

19           The Secretary shall seek to improve the use of  
20           electronic health records and health care quality  
21           over time by requiring more stringent measures  
22           of meaningful use selected under this para-  
23           graph.

24           “(B) REPORTING ON MEASURES.—

1                   “(i) SELECTION.—The Secretary shall  
2 select measures for purposes of subpara-  
3 graph (A)(iii) but only consistent with the  
4 following:

5                   “(I) The Secretary shall provide  
6 preference to clinical quality measures  
7 that have been selected for purposes  
8 of applying subsection (b)(3)(B)(viii)  
9 or that have been endorsed by the en-  
10 tity with a contract with the Secretary  
11 under section 1890(a).

12                   “(II) Prior to any measure (other  
13 than a clinical quality measure that  
14 has been selected for purposes of ap-  
15 plying subsection (b)(3)(B)(viii))  
16 being selected under this subpara-  
17 graph, the Secretary shall publish in  
18 the Federal Register such measure  
19 and provide for a period of public  
20 comment on such measure.

21                   “(ii) LIMITATIONS.—The Secretary  
22 may not require the electronic reporting of  
23 information on clinical quality measures  
24 under subparagraph (A)(iii) unless the  
25 Secretary has the capacity to accept the in-

1 formation electronically, which may be on  
2 a pilot basis.

3 “(iii) COORDINATION OF REPORTING  
4 OF INFORMATION.—In selecting such  
5 measures, and in establishing the form and  
6 manner for reporting measures under sub-  
7 paragraph (A)(iii), the Secretary shall seek  
8 to avoid redundant or duplicative reporting  
9 with reporting otherwise required, includ-  
10 ing reporting under subsection  
11 (b)(3)(B)(viii).

12 “(C) DEMONSTRATION OF MEANINGFUL  
13 USE OF CERTIFIED EHR TECHNOLOGY AND IN-  
14 FORMATION EXCHANGE.—

15 “(i) IN GENERAL.—An eligible hos-  
16 pital may satisfy the demonstration re-  
17 quirement of clauses (i) and (ii) of sub-  
18 paragraph (A) through means specified by  
19 the Secretary, which may include—

20 “(I) an attestation;

21 “(II) the submission of claims  
22 with appropriate coding (such as a  
23 code indicating that inpatient care  
24 was documented using certified EHR  
25 technology);

1 “(III) a survey response;

2 “(IV) reporting under subpara-  
3 graph (A)(iii); and

4 “(V) other means specified by the  
5 Secretary.

6 “(ii) USE OF PART D DATA.—Not-  
7 withstanding sections 1860D–15(d)(2)(B)  
8 and 1860D–15(f)(2), the Secretary may  
9 use data regarding drug claims submitted  
10 for purposes of section 1860D–15 that are  
11 necessary for purposes of subparagraph  
12 (A).

13 “(4) APPLICATION.—

14 “(A) LIMITATIONS ON REVIEW.—There  
15 shall be no administrative or judicial review  
16 under section 1869, section 1878, or otherwise,  
17 of—

18 “(i) the methodology and standards  
19 for determining payment amounts under  
20 this subsection and payment adjustments  
21 under subsection (b)(3)(B)(ix), including  
22 selection of periods under paragraph (2)  
23 for determining, and making estimates or  
24 using proxies of, discharges under para-  
25 graph (2)(C) and inpatient-bed-days, hos-

1           pital charges, charity charges, and Medi-  
2           care share under paragraph (2)(D);

3           “(ii) the methodology and standards  
4           for determining a meaningful EHR user  
5           under paragraph (3), including selection of  
6           measures under paragraph (3)(B), speci-  
7           fication of the means of demonstrating  
8           meaningful EHR use under paragraph  
9           (3)(C), and the hardship exception under  
10          subsection (b)(3)(B)(ix)(II); and

11          “(iii) the specification of EHR report-  
12          ing periods under paragraph (6)(B) and  
13          the selection of the form of payment under  
14          paragraph (2)(F).

15          “(B) POSTING ON WEBSITE.—The Sec-  
16          retary shall post on the Internet website of the  
17          Centers for Medicare & Medicaid Services, in an  
18          easily understandable format, a list of the  
19          names of the eligible hospitals that are mean-  
20          ingful EHR users under this subsection or sub-  
21          section (b)(3)(B)(ix) (and a list of the names of  
22          critical access hospitals to which paragraph (3)  
23          or (4) of section 1814(l) applies), and other rel-  
24          evant data as determined appropriate by the  
25          Secretary. The Secretary shall ensure that an

1 eligible hospital (or critical access hospital) has  
2 the opportunity to review the other relevant  
3 data that are to be made public with respect to  
4 the hospital (or critical access hospital) prior to  
5 such data being made public.

6 “(5) CERTIFIED EHR TECHNOLOGY DEFINED.—  
7 The term ‘certified EHR technology’ has the mean-  
8 ing given such term in section 1848(o)(4).

9 “(6) DEFINITIONS.—For purposes of this sub-  
10 section:

11 “(A) EHR REPORTING PERIOD.—The term  
12 ‘EHR reporting period’ means, with respect to  
13 a payment year, any period (or periods) as  
14 specified by the Secretary.

15 “(B) ELIGIBLE HOSPITAL.—The term ‘eli-  
16 gible hospital’ means a subsection (d) hos-  
17 pital.”.

18 (2) CRITICAL ACCESS HOSPITALS.—Section  
19 1814(l) of the Social Security Act (42 U.S.C.  
20 1395f(1)) is amended—

21 (A) in paragraph (1), by striking “para-  
22 graph (2)” and inserting “the subsequent para-  
23 graphs of this subsection”; and

24 (B) by adding at the end the following new  
25 paragraph:

1       “(3)(A) The following rules shall apply in deter-  
2 mining payment and reasonable costs under paragraph (1)  
3 for costs described in subparagraph (C) for a critical ac-  
4 cess hospital that would be a meaningful EHR user (as  
5 would be determined under paragraph (3) of section  
6 1886(n)) for an EHR reporting period for a cost reporting  
7 period beginning during a payment year if such critical  
8 access hospital was treated as an eligible hospital under  
9 such section:

10           “(i) The Secretary shall compute reasonable  
11 costs by expensing such costs in a single payment  
12 year and not depreciating such costs over a period  
13 of years (and shall include as costs with respect to  
14 cost reporting periods beginning during a payment  
15 year costs from previous cost reporting periods to  
16 the extent they have not been fully depreciated as of  
17 the period involved).

18           “(ii) There shall be substituted for the Medi-  
19 care share that would otherwise be applied under  
20 paragraph (1) a percent (not to exceed 100 percent)  
21 equal to the sum of—

22           “(I) the Medicare share (as would be speci-  
23 fied under paragraph (2)(D) of section  
24 1886(n)) for such critical access hospital if such

1 critical access hospital was treated as an eligible  
2 hospital under such section; and

3 “(II) 20 percentage points.

4 “(B) The payment under this paragraph with respect  
5 to a critical access hospital shall be paid through a prompt  
6 interim payment (subject to reconciliation) after submis-  
7 sion and review of such information (as specified by the  
8 Secretary) necessary to make such payment, including in-  
9 formation necessary to apply this paragraph. In no case  
10 may payment under this paragraph be made with respect  
11 to a cost reporting period beginning during a payment  
12 year after 2015 and in no case may a critical access hos-  
13 pital receive payment under this paragraph with respect  
14 to more than 4 consecutive payment years.

15 “(C) The costs described in this subparagraph are  
16 costs for the purchase of certified EHR technology to  
17 which purchase depreciation (excluding interest) would  
18 apply if payment was made under paragraph (1) and not  
19 under this paragraph.

20 “(D) For purposes of this paragraph, paragraph (4),  
21 and paragraph (5), the terms ‘certified EHR technology’,  
22 ‘eligible hospital’, ‘EHR reporting period’, and ‘payment  
23 year’ have the meanings given such terms in sections  
24 1886(n).”.

25 (b) INCENTIVE MARKET BASKET ADJUSTMENT.—

1           (1) IN GENERAL.—Section 1886(b)(3)(B) of  
2 the Social Security Act (42 U.S.C.  
3 1395ww(b)(3)(B)) is amended—

4           (A) in clause (viii)(I), by inserting “(or,  
5 beginning with fiscal year 2015, by one-quarter)  
6 ter)” after “2.0 percentage points”; and

7           (B) by adding at the end the following new  
8 clause:

9           “(ix)(I) For purposes of clause (i) for fiscal year  
10 2015 and each subsequent fiscal year, in the case of an  
11 eligible hospital (as defined in subsection (n)(6)(A)) that  
12 is not a meaningful EHR user (as defined in subsection  
13 (n)(3)) for an EHR reporting period for such fiscal year,  
14 three-quarters of the applicable percentage increase other-  
15 wise applicable under clause (i) for such fiscal year shall  
16 be reduced by  $33\frac{1}{3}$  percent for fiscal year 2015,  $66\frac{2}{3}$  per-  
17 cent for fiscal year 2016, and 100 percent for fiscal year  
18 2017 and each subsequent fiscal year. Such reduction  
19 shall apply only with respect to the fiscal year involved  
20 and the Secretary shall not take into account such reduc-  
21 tion in computing the applicable percentage increase under  
22 clause (i) for a subsequent fiscal year.

23           “(II) The Secretary may, on a case-by-case basis, ex-  
24 empt a subsection (d) hospital from the application of sub-  
25 clause (I) with respect to a fiscal year if the Secretary

1 determines, subject to annual renewal, that requiring such  
2 hospital to be a meaningful EHR user during such fiscal  
3 year would result in a significant hardship, such as in the  
4 case of a hospital in a rural area without sufficient Inter-  
5 net access. In no case may a hospital be granted an ex-  
6 emption under this subclause for more than 5 years.

7 “(III) For fiscal year 2015 and each subsequent fis-  
8 cal year, a State in which hospitals are paid for services  
9 under section 1814(b)(3) shall adjust the payments to  
10 each subsection (d) hospital in the State that is not a  
11 meaningful EHR user (as defined in subsection (n)(3))  
12 in a manner that is designed to result in an aggregate  
13 reduction in payments to hospitals in the State that is  
14 equivalent to the aggregate reduction that would have oc-  
15 curred if payments had been reduced to each subsection  
16 (d) hospital in the State in a manner comparable to the  
17 reduction under the previous provisions of this clause. The  
18 State shall report to the Secretary the methodology it will  
19 use to make the payment adjustment under the previous  
20 sentence.

21 “(IV) For purposes of this clause, the term ‘EHR  
22 reporting period’ means, with respect to a fiscal year, any  
23 period (or periods) as specified by the Secretary.”.

24 (2) CRITICAL ACCESS HOSPITALS.—Section  
25 1814(l) of the Social Security Act (42 U.S.C.

1 1395f(1)), as amended by subsection (a)(2), is fur-  
2 ther amended by adding at the end the following  
3 new paragraphs:

4 “(4)(A) Subject to subparagraph (C), for cost report-  
5 ing periods beginning in fiscal year 2015 or a subsequent  
6 fiscal year, in the case of a critical access hospital that  
7 is not a meaningful EHR user (as would be determined  
8 under paragraph (3) of section 1886(n) if such critical ac-  
9 cess hospital was treated as an eligible hospital under such  
10 section) for an EHR reporting period with respect to such  
11 fiscal year, paragraph (1) shall be applied by substituting  
12 the applicable percent under subparagraph (B) for the  
13 percent described in such paragraph (1).

14 “(B) The percent described in this subparagraph is—

15 “(i) for fiscal year 2015, 100.66 percent;

16 “(ii) for fiscal year 2016, 100.33 percent; and

17 “(iii) for fiscal year 2017 and each subsequent  
18 fiscal year, 100 percent.

19 “(C) The provisions of subclause (II) of section  
20 1886(b)(3)(B)(ix) shall apply with respect to subpara-  
21 graph (A) for a critical access hospital with respect to a  
22 cost reporting period beginning in a fiscal year in the same  
23 manner as such subclause applies with respect to sub-  
24 clause (I) of such section for a subsection (d) hospital with  
25 respect to such fiscal year.

1 “(5) There shall be no administrative or judicial re-  
2 view under section 1869, section 1878, or otherwise, of—

3 “(A) the methodology and standards for deter-  
4 mining the amount of payment and reasonable cost  
5 under paragraph (3) and payment adjustments  
6 under paragraph (4), including selection of periods  
7 under section 1886(n)(2) for determining, and mak-  
8 ing estimates or using proxies of, inpatient-bed-days,  
9 hospital charges, charity charges, and Medicare  
10 share under subparagraph (D) of section  
11 1886(n)(2);

12 “(B) the methodology and standards for deter-  
13 mining a meaningful EHR user under section  
14 1886(n)(3) as would apply if the hospital was treat-  
15 ed as an eligible hospital under section 1886(n), and  
16 the hardship exception under paragraph (4)(C);

17 “(C) the specification of EHR reporting periods  
18 under section 1886(n)(6)(B) as applied under para-  
19 graphs (3) and (4); and

20 “(D) the identification of costs for purposes of  
21 paragraph (3)(C).”.

22 (c) APPLICATION TO CERTAIN MA-AFFILIATED ELI-  
23 GIBLE HOSPITALS.—Section 1853 of the Social Security  
24 Act (42 U.S.C. 1395w-23), as amended by section

1 4101(c), is further amended by adding at the end the fol-  
2 lowing new subsection:

3 “(m) APPLICATION OF ELIGIBLE HOSPITAL INCEN-  
4 TIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION  
5 AND MEANINGFUL USE OF CERTIFIED EHR TECH-  
6 NOLOGY.—

7 “(1) APPLICATION.—Subject to paragraphs (3)  
8 and (4), in the case of a qualifying MA organization,  
9 the provisions of sections 1886(n) and  
10 1886(b)(3)(B)(ix) shall apply with respect to eligible  
11 hospitals described in paragraph (2) of the organiza-  
12 tion which the organization attests under subsection  
13 (l)(6) to be meaningful EHR users in a similar man-  
14 ner as they apply to eligible hospitals under such  
15 sections. Incentive payments under paragraph (3)  
16 shall be made to and payment adjustments under  
17 paragraph (4) shall apply to such qualifying organi-  
18 zations.

19 “(2) ELIGIBLE HOSPITAL DESCRIBED.—With  
20 respect to a qualifying MA organization, an eligible  
21 hospital described in this paragraph is an eligible  
22 hospital (as defined in section 1886(n)(6)(A)) that is  
23 under common corporate governance with such orga-  
24 nization and serves individuals enrolled under an  
25 MA plan offered by such organization.

1           “(3) ELIGIBLE HOSPITAL INCENTIVE PAY-  
2           MENTS.—

3           “(A) IN GENERAL.—In applying section  
4           1886(n)(2) under paragraph (1), instead of the  
5           additional payment amount under section  
6           1886(n)(2), there shall be substituted an  
7           amount determined by the Secretary to be simi-  
8           lar to the estimated amount in the aggregate  
9           that would be payable if payment for services  
10          furnished by such hospitals was payable under  
11          part A instead of this part. In implementing the  
12          previous sentence, the Secretary—

13                 “(i) shall, insofar as data to deter-  
14                 mine the discharge related amount under  
15                 section 1886(n)(2)(C) for an eligible hos-  
16                 pital are not available to the Secretary, use  
17                 such alternative data and methodology to  
18                 estimate such discharge related amount as  
19                 the Secretary determines appropriate; and

20                 “(ii) shall, insofar as data to deter-  
21                 mine the medicare share described in sec-  
22                 tion 1886(n)(2)(D) for an eligible hospital  
23                 are not available to the Secretary, use such  
24                 alternative data and methodology to esti-  
25                 mate such share, which data and method-

1           ology may include use of the inpatient-bed-  
2           days (or discharges) with respect to an eli-  
3           gible hospital during the appropriate pe-  
4           riod which are attributable to both individ-  
5           uals for whom payment may be made  
6           under part A or individuals enrolled in an  
7           MA plan under a Medicare Advantage or-  
8           ganization under this part as a proportion  
9           of the estimated total number of patient-  
10          bed-days (or discharges) with respect to  
11          such hospital during such period.

12           “(B) AVOIDING DUPLICATION OF PAY-  
13          MENTS.—

14                   “(i) IN GENERAL.—In the case of a  
15                   hospital that for a payment year is an eli-  
16                   gible hospital described in paragraph (2)  
17                   and for which at least one-third of their  
18                   discharges (or bed-days) of Medicare pa-  
19                   tients for the year are covered under part  
20                   A, payment for the payment year shall be  
21                   made only under section 1886(n) and not  
22                   under this subsection.

23                   “(ii) METHODS.—In the case of a  
24                   hospital that is an eligible hospital de-  
25                   scribed in paragraph (2) and also is eligi-

1                   ble for an incentive payment under section  
2                   1886(n) but is not described in clause (i)  
3                   for the same payment period, the Secretary  
4                   shall develop a process—

5                   “(I) to ensure that duplicate pay-  
6                   ments are not made with respect to  
7                   an eligible hospital both under this  
8                   subsection and under section 1886(n);  
9                   and

10                  “(II) to collect data from Medi-  
11                  care Advantage organizations to en-  
12                  sure against such duplicate payments.

13                  “(4) PAYMENT ADJUSTMENT.—

14                  “(A) Subject to paragraph (3), in the case  
15                  of a qualifying MA organization (as defined in  
16                  section 1853(l)(5)), if, according to the attesta-  
17                  tion of the organization submitted under sub-  
18                  section (l)(6) for an applicable period, one or  
19                  more eligible hospitals (as defined in section  
20                  1886(n)(6)(A)) that are under common cor-  
21                  porate governance with such organization and  
22                  that serve individuals enrolled under a plan of-  
23                  fered by such organization are not meaningful  
24                  EHR users (as defined in section 1886(n)(3))  
25                  with respect to a period, the payment amount

1 payable under this section for such organization  
2 for such period shall be the percent specified in  
3 subparagraph (B) for such period of the pay-  
4 ment amount otherwise provided under this sec-  
5 tion for such period.

6 “(B) SPECIFIED PERCENT.—The percent  
7 specified under this subparagraph for a year is  
8 100 percent minus a number of percentage  
9 points equal to the product of—

10 “(i) the number of the percentage  
11 point reduction effected under section  
12 1886(b)(3)(B)(ix)(I) for the period; and

13 “(ii) the Medicare hospital expendi-  
14 ture proportion specified in subparagraph  
15 (C) for the year.

16 “(C) MEDICARE HOSPITAL EXPENDITURE  
17 PROPORTION.—The Medicare hospital expendi-  
18 ture proportion under this subparagraph for a  
19 year is the Secretary’s estimate of the propor-  
20 tion, of the expenditures under parts A and B  
21 that are not attributable to this part, that are  
22 attributable to expenditures for inpatient hos-  
23 pital services.

24 “(D) APPLICATION OF PAYMENT ADJUST-  
25 MENT.—In the case that a qualifying MA orga-

1           nization attests that not all eligible hospitals  
2           are meaningful EHR users with respect to an  
3           applicable period, the Secretary shall apply the  
4           payment adjustment under this paragraph  
5           based on a methodology specified by the Sec-  
6           retary, taking into account the proportion of  
7           such eligible hospitals, or discharges from such  
8           hospitals, that are not meaningful EHR users  
9           for such period.

10           “(5) POSTING ON WEBSITE.—The Secretary  
11           shall post on the Internet website of the Centers for  
12           Medicare & Medicaid Services, in an easily under-  
13           standable format—

14                   “(A) a list of the names, business address-  
15                   es, and business phone numbers of each quali-  
16                   fying MA organization receiving an incentive  
17                   payment under this subsection for eligible hos-  
18                   pitals described in paragraph (2); and

19                   “(B) a list of the names of the eligible hos-  
20                   pitals for which such incentive payment is  
21                   based.

22           “(6) LIMITATIONS ON REVIEW.—There shall be  
23           no administrative or judicial review under section  
24           1869, section 1878, or otherwise, of—

1           “(A) the methodology and standards for  
2           determining payment amounts and payment ad-  
3           justments under this subsection, including  
4           avoiding duplication of payments under para-  
5           graph (3)(B);

6           “(B) the methodology and standards for  
7           determining eligible hospitals under paragraph  
8           (2); and

9           “(C) the methodology and standards for  
10          determining a meaningful EHR user under sec-  
11          tion 1886(n)(3), including specification of the  
12          means of demonstrating meaningful EHR use  
13          under subparagraph (C) of such section and se-  
14          lection of measures under subparagraph (B) of  
15          such section.”.

16          (d) CONFORMING AMENDMENTS.—

17                 (1) Section 1814(b) of the Social Security Act  
18                 (42 U.S.C. 1395f(b)) is amended—

19                         (A) in paragraph (3), in the matter pre-  
20                         ceding subparagraph (A), by inserting “, sub-  
21                         ject to section 1886(d)(3)(B)(ix)(III),” after  
22                         “then”; and

23                         (B) by adding at the end the following:  
24                         “For purposes of applying paragraph (3), there  
25                         shall be taken into account incentive payments,

1 and payment adjustments under subsection  
2 (b)(3)(B)(ix) or (n) of section 1886.”.

3 (2) Section 1851(i)(1) of the Social Security  
4 Act (42 U.S.C. 1395w-21(i)(1)) is amended by  
5 striking “and 1886(h)(3)(D)” and inserting  
6 “1886(h)(3)(D), and 1853(m)”.

7 (3) Section 1853 of the Social Security Act (42  
8 U.S.C. 1395w-23), as amended by section 4101(d),  
9 is amended—

10 (A) in subsection (c)—

11 (i) in paragraph (1)(D)(i), by striking  
12 “1848(o)” and inserting “, 1848(o), and  
13 1886(n)”;

14 (ii) in paragraph (6)(A), by inserting  
15 “and subsections (b)(3)(B)(ix) and (n) of  
16 section 1886” after “section 1848”; and

17 (B) in subsection (f), by inserting “and  
18 subsection (m)” after “under subsection (l)”.

19 **SEC. 4103. TREATMENT OF PAYMENTS AND SAVINGS; IM-**  
20 **PLEMENTATION FUNDING.**

21 (a) PREMIUM HOLD HARMLESS.—

22 (1) IN GENERAL.—Section 1839(a)(1) of the  
23 Social Security Act (42 U.S.C. 1395r(a)(1)) is  
24 amended by adding at the end the following: “In ap-  
25 plying this paragraph there shall not be taken into

1 account additional payments under section 1848(o)  
2 and section 1853(l)(3) and the Government con-  
3 tribution under section 1844(a)(3).”.

4 (2) PAYMENT.—Section 1844(a) of such Act  
5 (42 U.S.C. 1395w(a)) is amended—

6 (A) in paragraph (2), by striking the pe-  
7 riod at the end and inserting “; plus”; and

8 (B) by adding at the end the following new  
9 paragraph:

10 “(3) a Government contribution equal to the  
11 amount of payment incentives payable under sec-  
12 tions 1848(o) and 1853(l)(3).”.

13 (b) MEDICARE IMPROVEMENT FUND.—Section 1898  
14 of the Social Security Act (42 U.S.C. 1395iii), as added  
15 by section 7002(a) of the Supplemental Appropriations  
16 Act, 2008 (Public Law 110–252) and as amended by sec-  
17 tion 188(a)(2) of the Medicare Improvements for Patients  
18 and Providers Act of 2008 (Public Law 110–275; 122  
19 Stat. 2589) and by section 6 of the QI Program Supple-  
20 mental Funding Act of 2008, is amended—

21 (1) in subsection (a)—

22 (A) by inserting “medicare” before “fee-  
23 for-service”; and

24 (B) by inserting before the period at the  
25 end the following: “including, but not limited

1 to, an increase in the conversion factor under  
2 section 1848(d) to address, in whole or in part,  
3 any projected shortfall in the conversion factor  
4 for 2014 relative to the conversion factor for  
5 2008 and adjustments to payments for items  
6 and services furnished by providers of services  
7 and suppliers under such original medicare fee-  
8 for-service program”; and  
9 (2) in subsection (b)—

10 (A) in paragraph (1), by striking “during  
11 fiscal year 2014,” and all that follows and in-  
12 serting the following: “during—

13 “(A) fiscal year 2014, \$22,290,000,000;  
14 and

15 “(B) fiscal year 2020 and each subsequent  
16 fiscal year, the Secretary’s estimate, as of July  
17 1 of the fiscal year, of the aggregate reduction  
18 in expenditures under this title during the pre-  
19 ceding fiscal year directly resulting from the re-  
20 duction in payment amounts under sections  
21 1848(a)(7), 1853(l)(4), 1853(m)(4), and  
22 1886(b)(3)(B)(ix).”; and

23 (B) by adding at the end the following new  
24 paragraph:



1           (A) IN GENERAL.—The Secretary of  
2           Health and Human Services shall conduct a  
3           study to determine the extent to which and  
4           manner in which payment incentives (such as  
5           under title XVIII or XIX of the Social Security  
6           Act) and other funding for purposes of imple-  
7           menting and using certified EHR technology  
8           (as defined in section 1848(o)(4) of the Social  
9           Security Act, as added by section 4101(a))  
10          should be made available to health care pro-  
11          viders who are receiving minimal or no payment  
12          incentives or other funding under this Act,  
13          under title XIII of division A, under title XVIII  
14          or XIX of such Act, or otherwise, for such pur-  
15          poses.

16          (B) DETAILS OF STUDY.—Such study shall  
17          include an examination of—

18                 (i) the adoption rates of certified  
19                 EHR technology by such health care pro-  
20                 viders;

21                 (ii) the clinical utility of such tech-  
22                 nology by such health care providers;

23                 (iii) whether the services furnished by  
24                 such health care providers are appropriate

1 for or would benefit from the use of such  
2 technology;

3 (iv) the extent to which such health  
4 care providers work in settings that might  
5 otherwise receive an incentive payment or  
6 other funding under this Act, under title  
7 XIII of division A, under title XVIII or  
8 XIX of the Social Security Act, or other-  
9 wise;

10 (v) the potential costs and the poten-  
11 tial benefits of making payment incentives  
12 and other funding available to such health  
13 care providers; and

14 (vi) any other issues the Secretary  
15 deems to be appropriate.

16 (2) REPORT.—Not later than June 30, 2010,  
17 the Secretary shall submit to Congress a report on  
18 the findings and conclusions of the study conducted  
19 under paragraph (1).

20 (b) STUDY AND REPORT ON AVAILABILITY OF OPEN  
21 SOURCE HEALTH INFORMATION TECHNOLOGY SYS-  
22 TEMS.—

23 (1) STUDY.—

24 (A) IN GENERAL.—The Secretary of  
25 Health and Human Services shall, in consulta-

1           tion with the Under Secretary for Health of the  
2           Veterans Health Administration, the Director  
3           of the Indian Health Service, the Secretary of  
4           Defense, the Director of the Agency for  
5           Healthcare Research and Quality, the Adminis-  
6           trator of the Health Resources and Services Ad-  
7           ministration, and the Chairman of the Federal  
8           Communications Commission, conduct a study  
9           on—

10                   (i) the current availability of open  
11                   source health information technology sys-  
12                   tems to Federal safety net providers (in-  
13                   cluding small, rural providers);

14                   (ii) the total cost of ownership of such  
15                   systems in comparison to the cost of pro-  
16                   prietary commercial products available;

17                   (iii) the ability of such systems to re-  
18                   spond to the needs of, and be applied to,  
19                   various populations (including children and  
20                   disabled individuals); and

21                   (iv) the capacity of such systems to  
22                   facilitate interoperability.

23           (B) CONSIDERATIONS.—In conducting the  
24           study under subparagraph (A), the Secretary of  
25           Health and Human Services shall take into ac-

1 count the circumstances of smaller health care  
2 providers, health care providers located in rural  
3 or other medically underserved areas, and safe-  
4 ty net providers that deliver a significant level  
5 of health care to uninsured individuals, Med-  
6 icaid beneficiaries, SCHIP beneficiaries, and  
7 other vulnerable individuals.

8 (2) REPORT.—Not later than October 1, 2010,  
9 the Secretary of Health and Human Services shall  
10 submit to Congress a report on the findings and the  
11 conclusions of the study conducted under paragraph  
12 (1), together with recommendations for such legisla-  
13 tion and administrative action as the Secretary de-  
14 termines appropriate.

## 15 **Subtitle B—Medicaid Incentives**

### 16 **SEC. 4201. MEDICAID PROVIDER HIT ADOPTION AND OPER-** 17 **ATION PAYMENTS; IMPLEMENTATION FUND-** 18 **ING.**

19 (a) IN GENERAL.—Section 1903 of the Social Secu-  
20 rity Act (42 U.S.C. 1396b) is amended—

21 (1) in subsection (a)(3)—

22 (A) by striking “and” at the end of sub-  
23 paragraph (D);

24 (B) by striking “plus” at the end of sub-  
25 paragraph (E) and inserting “and”; and

1 (C) by adding at the end the following new  
2 subparagraph:

3 “(F)(i) 100 percent of so much of the  
4 sums expended during such quarter as are at-  
5 tributable to payments to Medicaid providers  
6 described in subsection (t)(1) to encourage the  
7 adoption and use of certified EHR technology;  
8 and

9 “(ii) 90 percent of so much of the sums ex-  
10 pended during such quarter as are attributable  
11 to payments for reasonable administrative ex-  
12 penses related to the administration of pay-  
13 ments described in clause (i) if the State meets  
14 the condition described in subsection (t)(9);  
15 plus”; and

16 (2) by inserting after subsection (s) the fol-  
17 lowing new subsection:

18 “(t)(1) For purposes of subsection (a)(3)(F), the pay-  
19 ments described in this paragraph to encourage the adop-  
20 tion and use of certified EHR technology are payments  
21 made by the State in accordance with this subsection —

22 “(A) to Medicaid providers described in para-  
23 graph (2)(A) not in excess of 85 percent of net aver-  
24 age allowable costs (as defined in paragraph (3)(E))  
25 for certified EHR technology (and support services

1 including maintenance and training that is for, or is  
2 necessary for the adoption and operation of, such  
3 technology) with respect to such providers; and

4 “(B) to Medicaid providers described in para-  
5 graph (2)(B) not in excess of the maximum amount  
6 permitted under paragraph (5) for the provider in-  
7 volved.

8 “(2) In this subsection and subsection (a)(3)(F), the  
9 term ‘Medicaid provider’ means—

10 “(A) an eligible professional (as defined in  
11 paragraph (3)(B))—

12 “(i) who is not hospital-based and has at  
13 least 30 percent of the professional’s patient  
14 volume (as estimated in accordance with a  
15 methodology established by the Secretary) at-  
16 tributable to individuals who are receiving med-  
17 ical assistance under this title;

18 “(ii) who is not described in clause (i), who  
19 is a pediatrician, who is not hospital-based, and  
20 who has at least 20 percent of the profes-  
21 sional’s patient volume (as estimated in accord-  
22 ance with a methodology established by the Sec-  
23 retary) attributable to individuals who are re-  
24 ceiving medical assistance under this title; and

1           “(iii) who practices predominantly in a  
2           Federally qualified health center or rural health  
3           clinic and has at least 30 percent of the profes-  
4           sional’s patient volume (as estimated in accord-  
5           ance with a methodology established by the Sec-  
6           retary) attributable to needy individuals (as de-  
7           fined in paragraph (3)(F)); and  
8           “(B)(i) a children’s hospital, or  
9           “(ii) an acute-care hospital that is not described  
10          in clause (i) and that has at least 10 percent of the  
11          hospital’s patient volume (as estimated in accord-  
12          ance with a methodology established by the Sec-  
13          retary) attributable to individuals who are receiving  
14          medical assistance under this title.

15 An eligible professional shall not qualify as a Medicaid  
16 provider under this subsection unless any right to payment  
17 under sections 1848(o) and 1853(l) with respect to the  
18 eligible professional has been waived in a manner specified  
19 by the Secretary. For purposes of calculating patient vol-  
20 ume under subparagraph (A)(iii), insofar as it is related  
21 to uncompensated care, the Secretary may require the ad-  
22 justment of such uncompensated care data so that it  
23 would be an appropriate proxy for charity care, including  
24 a downward adjustment to eliminate bad debt data from  
25 uncompensated care. In applying subparagraphs (A) and

1 (B)(ii), the methodology established by the Secretary for  
2 patient volume shall include individuals enrolled in a Med-  
3 icaid managed care plan (under section 1903(m) or sec-  
4 tion 1932).

5 “(3) In this subsection and subsection (a)(3)(F):

6 “(A) The term ‘certified EHR technology’  
7 means a qualified electronic health record (as de-  
8 fined in 3000(13) of the Public Health Service Act)  
9 that is certified pursuant to section 3001(c)(5) of  
10 such Act as meeting standards adopted under sec-  
11 tion 3004 of such Act that are applicable to the type  
12 of record involved (as determined by the Secretary,  
13 such as an ambulatory electronic health record for  
14 office-based physicians or an inpatient hospital elec-  
15 tronic health record for hospitals).

16 “(B) The term ‘eligible professional’ means a—

17 “(i) physician;

18 “(ii) dentist;

19 “(iii) certified nurse mid-wife;

20 “(iv) nurse practitioner; and

21 “(v) physician assistant insofar as the as-  
22 sistant is practicing in a rural health clinic that  
23 is led by a physician assistant or is practicing  
24 in a Federally qualified health center that is so  
25 led.

1           “(C) The term ‘average allowable costs’ means,  
2           with respect to certified EHR technology of Med-  
3           icaid providers described in paragraph (2)(A) for—

4                   “(i) the first year of payment with respect  
5                   to such a provider, the average costs for the  
6                   purchase and initial implementation or upgrade  
7                   of such technology (and support services includ-  
8                   ing training that is for, or is necessary for the  
9                   adoption and initial operation of, such tech-  
10                  nology) for such providers, as determined by  
11                  the Secretary based upon studies conducted  
12                  under paragraph (4)(C); and

13                   “(ii) a subsequent year of payment with  
14                   respect to such a provider, the average costs  
15                   not described in clause (i) relating to the oper-  
16                   ation, maintenance, and use of such technology  
17                   for such providers, as determined by the Sec-  
18                   retary based upon studies conducted under  
19                   paragraph (4)(C).

20           “(D) The term ‘hospital-based’ means, with re-  
21           spect to an eligible professional, a professional (such  
22           as a pathologist, anesthesiologist, or emergency phy-  
23           sician) who furnishes substantially all of the individ-  
24           ual’s professional services in a hospital setting  
25           (whether inpatient or outpatient) and through the

1 use of the facilities and equipment, including quali-  
2 fied electronic health records, of the hospital. The  
3 determination of whether an eligible professional is  
4 a hospital-based eligible professional shall be made  
5 on the basis of the site of service (as defined by the  
6 Secretary) and without regard to any employment or  
7 billing arrangement between the eligible professional  
8 and any other provider.

9 “(E) The term ‘net average allowable costs’  
10 means, with respect to a Medicaid provider described  
11 in paragraph (2)(A), average allowable costs reduced  
12 by any payment that is made to such Medicaid pro-  
13 vider from any other source (other than under this  
14 subsection or by a State or local government) that  
15 is directly attributable to payment for certified EHR  
16 technology or support services described in subpara-  
17 graph (C).

18 “(F) The term ‘needy individual’ means, with  
19 respect to a Medicaid provider, an individual—

20 “(i) who is receiving assistance under this  
21 title;

22 “(ii) who is receiving assistance under title  
23 XXI;

24 “(iii) who is furnished uncompensated care  
25 by the provider; or

1                   “(iv) for whom charges are reduced by the  
2                   provider on a sliding scale basis based on an in-  
3                   dividual’s ability to pay.

4           “(4)(A) With respect to a Medicaid provider de-  
5           scribed in paragraph (2)(A), subject to subparagraph (B),  
6           in no case shall—

7                   “(i) the net average allowable costs under  
8                   this subsection for the first year of payment  
9                   (which may not be later than 2016), which is  
10                  intended to cover the costs described in para-  
11                  graph (3)(C)(i), exceed \$25,000 (or such lesser  
12                  amount as the Secretary determines based on  
13                  studies conducted under subparagraph (C));

14                  “(ii) the net average allowable costs under  
15                  this subsection for a subsequent year of pay-  
16                  ment, which is intended to cover costs described  
17                  in paragraph (3)(C)(ii), exceed \$10,000; and

18                  “(iii) payments be made for costs described  
19                  in clause (ii) after 2021 or over a period of  
20                  longer than 5 years.

21           “(B) In the case of Medicaid provider described in  
22           paragraph (2)(A)(ii), the dollar amounts specified in sub-  
23           paragraph (A) shall be  $\frac{2}{3}$  of the dollar amounts otherwise  
24           specified.

1           “(C) For the purposes of determining average allow-  
2 able costs under this subsection, the Secretary shall study  
3 the average costs to Medicaid providers described in para-  
4 graph (2)(A) of purchase and initial implementation and  
5 upgrade of certified EHR technology described in para-  
6 graph (3)(C)(i) and the average costs to such providers  
7 of operations, maintenance, and use of such technology de-  
8 scribed in paragraph (3)(C)(ii). In determining such costs  
9 for such providers, the Secretary may utilize studies of  
10 such amounts submitted by States.

11           “(5)(A) In no case shall the payments described in  
12 paragraph (1)(B) with respect to a Medicaid provider de-  
13 scribed in paragraph (2)(B) exceed—

14                   “(i) in the aggregate the product of—

15                           “(I) the overall hospital EHR amount  
16                           for the provider computed under subpara-  
17                           graph (B); and

18                           “(II) the Medicaid share for such pro-  
19                           vider computed under subparagraph (C);

20                   “(ii) in any year 50 percent of the product de-  
21                   scribed in clause (i); and

22                   “(iii) in any 2-year period 90 percent of such  
23                   product.

24           “(B) For purposes of this paragraph, the overall hos-  
25           pital EHR amount, with respect to a Medicaid provider,

1 is the sum of the applicable amounts specified in section  
2 1886(n)(2)(A) for such provider for the first 4 payment  
3 years (as estimated by the Secretary) determined as if the  
4 Medicare share specified in clause (ii) of such section were  
5 1. The Secretary shall establish, in consultation with the  
6 State, the overall hospital EHR amount for each such  
7 Medicaid provider eligible for payments under paragraph  
8 (1)(B). For purposes of this subparagraph in computing  
9 the amounts under section 1886(n)(2)(C) for payment  
10 years after the first payment year, the Secretary shall as-  
11 sume that in subsequent payment years discharges in-  
12 crease at the average annual rate of growth of the most  
13 recent 3 years for which discharge data are available per  
14 year.

15 “(C) The Medicaid share computed under this sub-  
16 paragraph, for a Medicaid provider for a period specified  
17 by the Secretary, shall be calculated in the same manner  
18 as the Medicare share under section 1886(n)(2)(D) for  
19 such a hospital and period, except that there shall be sub-  
20 stituted for the numerator under clause (i) of such section  
21 the amount that is equal to the number of inpatient-bed-  
22 days (as established by the Secretary) which are attrib-  
23 utable to individuals who are receiving medical assistance  
24 under this title and who are not described in section  
25 1886(n)(2)(D)(i). In computing inpatient-bed-days under

1 the previous sentence, the Secretary shall take into ac-  
2 count inpatient-bed-days attributable to inpatient-bed-  
3 days that are paid for individuals enrolled in a Medicaid  
4 managed care plan (under section 1903(m) or section  
5 1932).

6 “(D) In no case may the payments described in para-  
7 graph (1)(B) with respect to a Medicaid provider de-  
8 scribed in paragraph (2)(B) be paid—

9 “(i) for any year beginning after 2016 unless  
10 the provider has been provided payment under para-  
11 graph (1)(B) for the previous year; and

12 “(ii) over a period of more than 6 years of pay-  
13 ment.

14 “(6) Payments described in paragraph (1) are not in  
15 accordance with this subsection unless the following re-  
16 quirements are met:

17 “(A)(i) The State provides assurances satisfac-  
18 tory to the Secretary that amounts received under  
19 subsection (a)(3)(F) with respect to payments to a  
20 Medicaid provider are paid, subject to clause (ii), di-  
21 rectly to such provider (or to an employer or facility  
22 to which such provider has assigned payments) with-  
23 out any deduction or rebate.

24 “(ii) Amounts described in clause (i) may also  
25 be paid to an entity promoting the adoption of cer-

1       tified EHR technology, as designated by the State,  
2       if participation in such a payment arrangement is  
3       voluntary for the eligible professional involved and if  
4       such entity does not retain more than 5 percent of  
5       such payments for costs not related to certified  
6       EHR technology (and support services including  
7       maintenance and training) that is for, or is nec-  
8       essary for the operation of, such technology.

9               “(B) A Medicaid provider described in para-  
10       graph (2)(A) is responsible for payment of the re-  
11       maining 15 percent of the net average allowable  
12       cost.

13               “(C)(i) Subject to clause (ii), with respect to  
14       payments to a Medicaid provider—

15                       “(I) for the first year of payment to the  
16       Medicaid provider under this subsection, the  
17       Medicaid provider demonstrates that it is en-  
18       gaged in efforts to adopt, implement, or up-  
19       grade certified EHR technology; and

20                       “(II) for a year of payment, other than the  
21       first year of payment to the Medicaid provider  
22       under this subsection, the Medicaid provider  
23       demonstrates meaningful use of certified EHR  
24       technology through a means that is approved by  
25       the State and acceptable to the Secretary, and

1           that may be based upon the methodologies ap-  
2           plied under section 1848(o) or 1886(n).

3           “(ii) In the case of a Medicaid provider who has  
4           completed adopting, implementing, or upgrading  
5           such technology prior to the first year of payment to  
6           the Medicaid provider under this subsection, clause  
7           (i)(I) shall not apply and clause (i)(II) shall apply  
8           to each year of payment to the Medicaid provider  
9           under this subsection, including the first year of  
10          payment.

11          “(D) To the extent specified by the Secretary,  
12          the certified EHR technology is compatible with  
13          State or Federal administrative management sys-  
14          tems.

15 For purposes of subparagraph (B), a Medicaid provider  
16 described in paragraph (2)(A) may accept payments for  
17 the costs described in such subparagraph from a State or  
18 local government. For purposes of subparagraph (C), in  
19 establishing the means described in such subparagraph,  
20 which may include clinical quality reporting to the State,  
21 the State shall ensure that populations with unique needs,  
22 such as children, are appropriately addressed.

23          “(7) With respect to Medicaid providers described in  
24 paragraph (2)(A), the Secretary shall ensure coordination  
25 of payment with respect to such providers under sections

1 1848(o) and 1853(l) and under this subsection to assure  
2 no duplication of funding. Such coordination shall include,  
3 to the extent practicable, a data matching process between  
4 State Medicaid agencies and the Centers for Medicare &  
5 Medicaid Services using national provider identifiers. For  
6 such purposes, the Secretary may require the submission  
7 of such data relating to payments to such Medicaid pro-  
8 viders as the Secretary may specify.

9 “(8) In carrying out paragraph (6)(C), the State and  
10 Secretary shall seek, to the maximum extent practicable,  
11 to avoid duplicative requirements from Federal and State  
12 governments to demonstrate meaningful use of certified  
13 EHR technology under this title and title XVIII. In doing  
14 so, the Secretary may deem satisfaction of requirements  
15 for such meaningful use for a payment year under title  
16 XVIII to be sufficient to qualify as meaningful use under  
17 this subsection. The Secretary may also specify the report-  
18 ing periods under this subsection in order to carry out this  
19 paragraph.

20 “(9) In order to be provided Federal financial partici-  
21 pation under subsection (a)(3)(F)(ii), a State must dem-  
22 onstrate to the satisfaction of the Secretary, that the  
23 State—

24 “(A) is using the funds provided for the pur-  
25 poses of administering payments under this sub-

1 section, including tracking of meaningful use by  
2 Medicaid providers;

3 “(B) is conducting adequate oversight of the  
4 program under this subsection, including routine  
5 tracking of meaningful use attestations and report-  
6 ing mechanisms; and

7 “(C) is pursuing initiatives to encourage the  
8 adoption of certified EHR technology to promote  
9 health care quality and the exchange of health care  
10 information under this title, subject to applicable  
11 laws and regulations governing such exchange.

12 “(10) The Secretary shall periodically submit reports  
13 to the Committee on Energy and Commerce of the House  
14 of Representatives and the Committee on Finance of the  
15 Senate on status, progress, and oversight of payments de-  
16 scribed in paragraph (1), including steps taken to carry  
17 out paragraph (7). Such reports shall also describe the  
18 extent of adoption of certified EHR technology among  
19 Medicaid providers resulting from the provisions of this  
20 subsection and any improvements in health outcomes, clin-  
21 ical quality, or efficiency resulting from such adoption.”.

22 (b) IMPLEMENTATION FUNDING.—In addition to  
23 funds otherwise available, out of any funds in the Treas-  
24 ury not otherwise appropriated, there are appropriated to  
25 the Secretary of Health and Human Services for the Cen-

1 ters for Medicare & Medicaid Services Program Manage-  
2 ment Account, \$40,000,000 for each of fiscal years 2009  
3 through 2015 and \$20,000,000 for fiscal year 2016, which  
4 shall be available for purposes of carrying out the provi-  
5 sions of (and the amendments made by) this section.  
6 Amounts appropriated under this subsection for a fiscal  
7 year shall be available until expended.

8 **Subtitle C—Miscellaneous**  
9 **Medicare Provisions**

10 **SEC. 4301. MORATORIA ON CERTAIN MEDICARE REGULA-**  
11 **TIONS.**

12 (a) DELAY IN PHASE OUT OF MEDICARE HOSPICE  
13 BUDGET NEUTRALITY ADJUSTMENT FACTOR DURING  
14 FISCAL YEAR 2009.—Notwithstanding any other provi-  
15 sion of law, including the final rule published on August  
16 8, 2008, 73 Federal Register 46464 et seq., relating to  
17 Medicare Program; Hospice Wage Index for Fiscal Year  
18 2009, the Secretary of Health and Human Services shall  
19 not phase out or eliminate the budget neutrality adjust-  
20 ment factor in the Medicare hospice wage index before Oc-  
21 tober 1, 2009, and the Secretary shall recompute and  
22 apply the final Medicare hospice wage index for fiscal year  
23 2009 as if there had been no reduction in the budget neu-  
24 trality adjustment factor.

1 (b) NON-APPLICATION OF PHASED-OUT INDIRECT  
2 MEDICAL EDUCATION (IME) ADJUSTMENT FACTOR FOR  
3 FISCAL YEAR 2009.—

4 (1) IN GENERAL.—Section 412.322 of title 42,  
5 Code of Federal Regulations, shall be applied with-  
6 out regard to paragraph (c) of such section, and the  
7 Secretary of Health and Human Services shall re-  
8 compute payments for discharges occurring on or  
9 after October 1, 2008, as if such paragraph had  
10 never been in effect.

11 (2) NO EFFECT ON SUBSEQUENT YEARS.—  
12 Nothing in paragraph (1) shall be construed as hav-  
13 ing any effect on the application of paragraph (d) of  
14 section 412.322 of title 42, Code of Federal Regula-  
15 tions.

16 (c) FUNDING FOR IMPLEMENTATION.—In addition to  
17 funds otherwise available, for purposes of implementing  
18 the provisions of subsections (a) and (b), including costs  
19 incurred in reprocessing claims in carrying out such provi-  
20 sions, the Secretary of Health and Human Services shall  
21 provide for the transfer from the Federal Hospital Insur-  
22 ance Trust Fund established under section 1817 of the  
23 Social Security Act (42 U.S.C. 1395i) to the Centers for  
24 Medicare & Medicaid Services Program Management Ac-  
25 count of \$2,000,000 for fiscal year 2009.

1 **SEC. 4302. LONG-TERM CARE HOSPITAL TECHNICAL COR-**  
2 **RECTIONS.**

3 (a) PAYMENT.—Subsection (c) of section 114 of the  
4 Medicare, Medicaid, and SCHIP Extension Act of 2007  
5 (Public Law 110–173) is amended—

6 (1) in paragraph (1)—

7 (A) by amending the heading to read as  
8 follows: “DELAY IN APPLICATION OF 25 PER-  
9 CENT PATIENT THRESHOLD PAYMENT ADJUST-  
10 MENT”;

11 (B) by striking “the date of the enactment  
12 of this Act” and inserting “July 1, 2007,”; and

13 (C) in subparagraph (A), by inserting “or  
14 to a long-term care hospital, or satellite facility,  
15 that as of December 29, 2007, was co-located  
16 with an entity that is a provider-based, off-cam-  
17 pus location of a subsection (d) hospital which  
18 did not provide services payable under section  
19 1886(d) of the Social Security Act at the off-  
20 campus location” after “freestanding long-term  
21 care hospitals”; and

22 (2) in paragraph (2)—

23 (A) in subparagraph (B)(ii), by inserting  
24 “or that is described in section 412.22(h)(3)(i)  
25 of such title” before the period; and

1           (B) in subparagraph (C), by striking “the  
2           date of the enactment of this Act” and insert-  
3           ing “October 1, 2007 (or July 1, 2007, in the  
4           case of a satellite facility described in section  
5           412.22(h)(3)(i) of title 42, Code of Federal  
6           Regulations)”.

7           (b) MORATORIUM.—Subsection (d)(3)(A) of such sec-  
8           tion is amended by striking “if the hospital or facility”  
9           and inserting “if the hospital or facility obtained a certifi-  
10          cate of need for an increase in beds that is in a State  
11          for which such certificate of need is required and that was  
12          issued on or after April 1, 2005, and before December  
13          29, 2007, or if the hospital or facility”.

14          (c) EFFECTIVE DATE.—The amendments made by  
15          this section shall be effective and apply as if included in  
16          the enactment of the Medicare, Medicaid, and SCHIP Ex-  
17          tension Act of 2007 (Public Law 110–173).