

# [COMMITTEE PRINT]

JANUARY 16, 2009

1 **SEC. \_\_\_\_ . [TABLE OF TITLES IN COMMITTEE PRINT].**

2

TITLE III—HEALTH INSURANCE ASSISTANCE FOR THE UNEM-  
EMPLOYED

TITLE IV—HEALTH INFORMATION TECHNOLOGY

TITLE V—MEDICAID PROVISIONS

3 **TITLE III—HEALTH INSURANCE**  
4 **ASSISTANCE FOR THE UNEM-**  
5 **EMPLOYED**

6 **SEC. 3001. SHORT TITLE AND TABLE OF CONTENTS OF**  
7 **TITLE.**

8 (a) **SHORT TITLE OF TITLE.**—This title may be cited  
9 as the “Health Insurance Assistance for the Unemployed  
10 Act of 2009”.

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

Sec. 3001. Short title and table of contents of title.

Sec. 3002. Premium assistance for COBRA benefits and extension of COBRA  
benefits for older or long-term employees.

Sec. 3003. Temporary optional Medicaid coverage for the unemployed.

1 **SEC. 3002. PREMIUM ASSISTANCE FOR COBRA BENEFITS**  
2 **AND EXTENSION OF COBRA BENEFITS FOR**  
3 **OLDER OR LONG-TERM EMPLOYEES.**

4 (a) PREMIUM ASSISTANCE FOR COBRA CONTINU-  
5 ATION COVERAGE FOR INDIVIDUALS AND THEIR FAMI-  
6 LIES.—

7 (1) PROVISION OF PREMIUM ASSISTANCE.—

8 (A) REDUCTION OF PREMIUMS PAY-  
9 ABLE.—In the case of any premium for a pe-  
10 riod of coverage beginning on or after the date  
11 of the enactment of this Act for COBRA con-  
12 tinuation coverage with respect to any assist-  
13 ance eligible individual, such individual shall be  
14 treated for purposes of any COBRA continu-  
15 ation provision as having paid the amount of  
16 such premium if such individual pays 35 per-  
17 cent of the amount of such premium (as deter-  
18 mined without regard to this subsection).

19 (B) PREMIUM REIMBURSEMENT.—For pro-  
20 visions providing the balance of such premium,  
21 see section 6431 of the Internal Revenue Code  
22 of 1986, as added by paragraph (12).

23 (2) LIMITATION OF PERIOD OF PREMIUM AS-  
24 SISTANCE.—

25 (A) IN GENERAL.—Paragraph (1)(A) shall  
26 not apply with respect to any assistance eligible

1 individual for months of coverage beginning on  
2 or after the earlier of—

3 (i) the first date that such individual  
4 is eligible for coverage under any other  
5 group health plan (other than coverage  
6 consisting of only dental, vision, coun-  
7 seling, or referral services (or a combina-  
8 tion thereof), coverage under a health re-  
9 imbursement arrangement or a health  
10 flexible spending arrangement, or coverage  
11 of treatment that is furnished in an on-site  
12 medical facility maintained by the em-  
13 ployer and that consists primarily of first-  
14 aid services, prevention and wellness care,  
15 or similar care (or a combination thereof))  
16 or is eligible for benefits under title XVIII  
17 of the Social Security Act.

18 (ii) the earliest of—

19 (I) the date which is 12 months  
20 after the first day of first month that  
21 paragraph (1)(A) applies with respect  
22 to such individual,

23 (II) the date following the expira-  
24 tion of the maximum period of con-  
25 tinuation coverage required under the

1 applicable COBRA continuation cov-  
2 erage provision, or

3 (III) the date following the expi-  
4 ration of the period of continuation  
5 coverage allowed under paragraph  
6 (4)(B)(ii).

7 (B) TIMING OF ELIGIBILITY FOR ADDI-  
8 TIONAL COVERAGE.—For purposes of subpara-  
9 graph (A)(i), an individual shall not be treated  
10 as eligible for coverage under a group health  
11 plan before the first date on which such indi-  
12 vidual could be covered under such plan.

13 (C) NOTIFICATION REQUIREMENT.—An  
14 assistance eligible individual shall notify in writ-  
15 ing the group health plan with respect to which  
16 paragraph (1)(A) applies if such paragraph  
17 ceases to apply by reason of subparagraph  
18 (A)(i). Such notice shall be provided to the  
19 group health plan in such time and manner as  
20 may be specified by the Secretary of Labor.

21 (3) ASSISTANCE ELIGIBLE INDIVIDUAL.—For  
22 purposes of this section, the term “assistance eligible  
23 individual” means any qualified beneficiary if—

24 (A) at any time during the period that be-  
25 gins with September 1, 2008, and ends with

1 December 31, 2009, such qualified beneficiary  
2 is eligible for COBRA continuation coverage,

3 (B) such qualified beneficiary elects such  
4 coverage, and

5 (C) the qualifying event with respect to the  
6 COBRA continuation coverage consists of the  
7 involuntary termination of the covered employ-  
8 ee's employment and occurred during such pe-  
9 riod.

10 (4) EXTENSION OF ELECTION PERIOD AND EF-  
11 FECT ON COVERAGE.—

12 (A) IN GENERAL.—Notwithstanding sec-  
13 tion 605(a) of the Employee Retirement Income  
14 Security Act of 1974, section 4980B(f)(5)(A) of  
15 the Internal Revenue Code of 1986, section  
16 2205(a) of the Public Health Service Act, and  
17 section 8905a(c)(2) of title 5, United States  
18 Code, in the case of an individual who is a  
19 qualified beneficiary described in paragraph  
20 (3)(A) as of the date of the enactment of this  
21 Act and has not made the election referred to  
22 in paragraph (3)(B) as of such date, such indi-  
23 vidual may elect the COBRA continuation cov-  
24 erage under the COBRA continuation coverage  
25 provisions containing such sections during the

1           60-day period commencing with the date on  
2           which the notification required under paragraph  
3           (7)(C) is provided to such individual.

4           (B) COMMENCEMENT OF COVERAGE; NO  
5           REACH-BACK.—Any COBRA continuation cov-  
6           erage elected by a qualified beneficiary during  
7           an extended election period under subparagraph  
8           (A)—

9                   (i) shall commence on the date of the  
10                   enactment of this Act, and

11                   (ii) shall not extend beyond the period  
12                   of COBRA continuation coverage that  
13                   would have been required under the appli-  
14                   cable COBRA continuation coverage provi-  
15                   sion if the coverage had been elected as re-  
16                   quired under such provision.

17           (C) PREEXISTING CONDITIONS.—With re-  
18           spect to a qualified beneficiary who elects  
19           COBRA continuation coverage pursuant to sub-  
20           paragraph (A), the period—

21                   (i) beginning on the date of the quali-  
22                   fying event, and

23                   (ii) ending with the day before the  
24                   date of the enactment of this Act,

1 shall be disregarded for purposes of deter-  
2 mining the 63-day periods referred to in section  
3 701)(2) of the Employee Retirement Income  
4 Security Act of 1974, section 9801(c)(2) of the  
5 Internal Revenue Code of 1986, and section  
6 2701(c)(2) of the Public Health Service Act.

7 (5) EXPEDITED REVIEW OF DENIALS OF PRE-  
8 MIUM ASSISTANCE.—In any case in which an indi-  
9 vidual requests treatment as an assistance eligible  
10 individual and is denied such treatment by the group  
11 health plan by reason of such individual's ineligi-  
12 bility for COBRA continuation coverage, the Sec-  
13 retary of Labor (or the Secretary of Health and  
14 Human services in connection with COBRA continu-  
15 ation coverage which is provided other than pursu-  
16 ant to part 6 of subtitle B of title I of the Employee  
17 Retirement Income Security Act of 1974), in con-  
18 sultation with the Secretary of the Treasury, shall  
19 provide for expedited review of such denial. An indi-  
20 vidual shall be entitled to such review upon applica-  
21 tion to such Secretary in such form and manner as  
22 shall be provided by such Secretary. Such Secretary  
23 shall make a determination regarding such individ-  
24 ual's eligibility within 10 business days after receipt

1 of such individual's application for review under this  
2 paragraph.

3 (6) DISREGARD OF SUBSIDIES FOR PURPOSES  
4 OF FEDERAL AND STATE PROGRAMS.—Notwith-  
5 standing any other provision of law, any premium  
6 reduction with respect to an assistance eligible indi-  
7 vidual under this subsection shall not be considered  
8 income or resources in determining eligibility for, or  
9 the amount of assistance or benefits provided under,  
10 any other public benefit provided under Federal law  
11 or the law of any State or political subdivision there-  
12 of.

13 (7) NOTICES TO INDIVIDUALS.—

14 (A) GENERAL NOTICE.—

15 (i) IN GENERAL.—In the case of no-  
16 tices provided under section 606(4) of the  
17 Employee Retirement Income Security Act  
18 of 1974 (29 U.S.C. 1166(4)), section  
19 4980B(f)(6)(D) of the Internal Revenue  
20 Code of 1986, section 2206(4) of the Pub-  
21 lic Health Service Act (42 U.S.C. 300bb-  
22 6(4)), or section 8905a(f)(2)(A) of title 5,  
23 United States Code, with respect to indi-  
24 viduals who, during the period described in  
25 paragraph (3)(A), become entitled to elect



1 COBRA continuation coverage, such no-  
2 tices shall include an additional notifica-  
3 tion to the recipient of the availability of  
4 premium reduction with respect to such  
5 coverage under this subsection.

6 (ii) ALTERNATIVE NOTICE.—In the  
7 case of COBRA continuation coverage to  
8 which the notice provision under such sec-  
9 tions does not apply, the Secretary of  
10 Labor, in consultation with the Secretary  
11 of the Treasury and the Secretary of  
12 Health and Human Services, shall, in co-  
13 ordination with administrators of the  
14 group health plans (or other entities) that  
15 provide or administer the COBRA continu-  
16 ation coverage involved, provide rules re-  
17 quiring the provision of such notice.

18 (iii) FORM.—The requirement of the  
19 additional notification under this subpara-  
20 graph may be met by amendment of exist-  
21 ing notice forms or by inclusion of a sepa-  
22 rate document with the notice otherwise  
23 required.

1 (B) SPECIFIC REQUIREMENTS.—Each ad-  
2 ditional notification under subparagraph (A)  
3 shall include—

4 (i) the forms necessary for estab-  
5 lishing eligibility for premium reduction  
6 under this subsection,

7 (ii) the name, address, and telephone  
8 number necessary to contact the plan ad-  
9 ministrator and any other person main-  
10 taining relevant information in connection  
11 with such premium reduction,

12 (iii) a description of the extended elec-  
13 tion period provided for in paragraph  
14 (4)(A),

15 (iv) a description of the obligation of  
16 the qualified beneficiary under paragraph  
17 (2)(C) to notify the plan providing continu-  
18 ation coverage of eligibility for subsequent  
19 coverage under another group health plan  
20 or eligibility for benefits under title XVIII  
21 of the Social Security Act and the penalty  
22 provided for failure to so notify the plan,  
23 and

24 (v) a description, displayed in a  
25 prominent manner, of the qualified bene-

1           ficiary's right to a reduced premium and  
2           any conditions on entitlement to the re-  
3           duced premium.

4           (C) NOTICE RELATING TO RETROACTIVE  
5           COVERAGE.—In the case of an individual de-  
6           scribed in paragraph (3)(A) who has elected  
7           COBRA continuation coverage as of the date of  
8           enactment of this Act or an individual described  
9           in paragraph (4)(A), the administrator of the  
10          group health plan (or other entity) involved  
11          shall provide (within 60 days after the date of  
12          enactment of this Act) for the additional notifi-  
13          cation required to be provided under subpara-  
14          graph (A).

15          (D) MODEL NOTICES.—Not later than 30  
16          days after the date of enactment of this Act,  
17          the Secretary of the Labor, in consultation with  
18          the Secretary of the Treasury and the Secretary  
19          of Health and Human Services, shall prescribe  
20          models for the additional notification required  
21          under this paragraph.

22          (8) SAFEGUARDS.—The Secretary of the Treas-  
23          ury shall provide such rules, procedures, regulations,  
24          and other guidance as may be necessary and appro-

1        appropriate to prevent fraud and abuse under this sub-  
2        section.

3            (9) OUTREACH.—The Secretary of Labor, in  
4        consultation with the Secretary of the Treasury and  
5        the Secretary of Health and Human Services, shall  
6        provide outreach consisting of public education and  
7        enrollment assistance relating to premium reduction  
8        provided under this subsection. Such outreach shall  
9        target employers, group health plan administrators,  
10       public assistance programs, States, insurers, and  
11       other entities as determined appropriate by such  
12       Secretaries. Such outreach shall include an initial  
13       focus on those individuals electing continuation cov-  
14       erage who are referred to in paragraph (7)(C). In-  
15       formation on such premium reduction, including en-  
16       rollment, shall also be made available on website of  
17       the Departments of Labor, Treasury, and Health  
18       and Human Services.

19            (10) DEFINITIONS.—For purposes of this sub-  
20        section—

21            (A) ADMINISTRATOR.—The term “admin-  
22        istrator” has the meaning given such term in  
23        section 3(16) of the Employee Retirement In-  
24        come Security Act of 1974

1 (B) COBRA CONTINUATION COVERAGE.—

2 The term “COBRA continuation coverage”  
3 means continuation coverage provided pursuant  
4 to part 6 of subtitle B of title I of the Em-  
5 ployee Retirement Income Security Act of 1974  
6 (other than under section 609), title XXII of  
7 the Public Health Service Act, section 4980B of  
8 the Internal Revenue Code of 1986 (other than  
9 subsection (f)(1) of such section insofar as it  
10 relates to pediatric vaccines), or section 8905a  
11 of title 5, United States Code, or under a State  
12 program that provides continuation coverage  
13 comparable to such continuation coverage. Such  
14 term does not include coverage under a health  
15 flexible spending arrangement.

16 (C) COBRA CONTINUATION PROVISION.—

17 The term “COBRA continuation provision”  
18 means the provisions of law described in sub-  
19 paragraph (B).

20 (D) COVERED EMPLOYEE.—The term  
21 “covered employee” has the meaning given such  
22 term in section 607(2) of the Employee Retirement  
23 Income Security Act of 1974.

24 (E) QUALIFIED BENEFICIARY.—The term  
25 “qualified beneficiary” has the meaning given

1 such term in section 607(3) of the Employee  
2 Retirement Income Security Act of 1974.

3 (F) GROUP HEALTH PLAN.—The term  
4 “group health plan” has the meaning given  
5 such term in section 607(1) of the Employee  
6 Retirement Income Security Act of 1974.

7 (G) STATE.—The term “State” includes  
8 the District of Columbia, the Commonwealth of  
9 Puerto Rico, the Virgin Islands, Guam, Amer-  
10 ican Samoa, and the Commonwealth of the  
11 Northern Mariana Islands.

12 (11) REPORTS.—

13 (A) INTERIM REPORT.—The Secretary of  
14 the Treasury shall submit an interim report to  
15 the Committee on Education and Labor, the  
16 Committee on Ways and Means, and the Com-  
17 mittee on Energy and Commerce of the House  
18 of Representatives and the Committee on  
19 Health, Education, Labor, and Pensions and  
20 the Committee on Finance of the Senate re-  
21 garding the premium reduction provided under  
22 this subsection that includes—

23 (i) the number of individuals provided  
24 such assistance as of the date of the re-  
25 port; and

1 (ii) the total amount of expenditures  
2 incurred (with administrative expenditures  
3 noted separately) in connection with such  
4 assistance as of the date of the report.

5 (B) FINAL REPORT.—As soon as prac-  
6 ticable after the last period of COBRA continu-  
7 ation coverage for which premium reduction is  
8 provided under this section, the Secretary of the  
9 Treasury shall submit a final report to each  
10 Committee referred to in subparagraph (A) that  
11 includes—

12 (i) the number of individuals provided  
13 premium reduction under this section;

14 (ii) the average dollar amount  
15 (monthly and annually) of premium reduc-  
16 tions provided to such individuals; and

17 (iii) the total amount of expenditures  
18 incurred (with administrative expenditures  
19 noted separately) in connection with pre-  
20 mium reduction under this section.

21 (12) COBRA PREMIUM ASSISTANCE.—

22 (A) IN GENERAL.—Subchapter B of chap-  
23 ter 65 of the Internal Revenue Code of 1986 is  
24 amended by adding at the end the following  
25 new section:

1 **“SEC. 6431. COBRA PREMIUM ASSISTANCE.**

2 “(a) IN GENERAL.—The entity to whom premiums  
3 are payable under COBRA continuation coverage shall be  
4 reimbursed for the amount of premiums not paid by plan  
5 beneficiaries by reason of section 3002(a) of the Health  
6 Insurance Assistance for the Unemployed Act of 2009.  
7 Such amount shall be treated as a credit against the re-  
8 quirement of such entity to make deposits of payroll taxes.  
9 To the extent that such amount exceeds the amount of  
10 such taxes, the Secretary shall pay to such entity the  
11 amount of such excess. No payment may be made under  
12 this subsection to an entity with respect to any assistance  
13 eligible individual until after such entity has received the  
14 reduced premium from such individual required under sec-  
15 tion 3002(a)(1)(A) of such Act.

16 “(b) PAYROLL TAXES.—For purposes of this section,  
17 the term ‘payroll taxes’ means—

18 “(1) amounts required to be deducted and with-  
19 held for the payroll period under section 3401 (relat-  
20 ing to wage withholding),

21 “(2) amounts required to be deducted for the  
22 payroll period under section 3102 (relating to FICA  
23 employee taxes), and

24 “(3) amounts of the taxes imposed for the pay-  
25 roll period under section 3111 (relating to FICA em-  
26 ployer taxes).



1       “(c) TREATMENT OF CREDIT.—Except as otherwise  
2 provided by the Secretary, the credit described in sub-  
3 section (a) shall be applied as though the employer had  
4 paid to the Secretary, on the day that the qualified bene-  
5 ficiary’s premium payment is received, an amount equal  
6 to such credit.

7       “(d) TREATMENT OF PAYMENT.—For purposes of  
8 section 1324(b)(2) of title 31, United States Code, any  
9 payment under this subsection shall be treated in the same  
10 manner as a refund of the credit under section 35.

11       “(e) REPORTING.—

12               “(1) IN GENERAL.—Each entity entitled to re-  
13 imbursement under subsection (a) for any period  
14 shall submit such reports as the Secretary may re-  
15 quire, including—

16                       “(A) an attestation of involuntary termi-  
17 nation of employment for each covered em-  
18 ployee on the basis of whose termination entitle-  
19 ment to reimbursement is claimed under sub-  
20 section (a), and

21                       “(B) a report of the amount of payroll  
22 taxes offset under subsection (a) for the report-  
23 ing period and the estimated offsets of such  
24 taxes for the subsequent reporting period in

1 connection with reimbursements under sub-  
2 section (a).

3 “(2) TIMING OF REPORTS RELATING TO  
4 AMOUNT OF PAYROLL TAXES.— Reports required  
5 under paragraph (1)(B) shall be submitted at the  
6 same time as deposits of taxes imposed by chapters  
7 21, 22, and 24 or at such time as is specified by the  
8 Secretary.

9 “(f) REGULATIONS.—The Secretary may issue such  
10 regulations or other guidance as may be necessary or ap-  
11 propriate to carry out this section, including the require-  
12 ment to report information or the establishment of other  
13 methods for verifying the correct amounts of payments  
14 and credits under this section.”.

15 (B) SOCIAL SECURITY TRUST FUNDS HELD  
16 HARMLESS.—In determining any amount trans-  
17 ferred or appropriated to any fund under the  
18 Social Security Act, section 6431 of the Inter-  
19 nal Revenue Code of 1986 shall not be taken  
20 into account.

21 (C) CLERICAL AMENDMENT.—The table of  
22 sections for subchapter B of chapter 65 of the  
23 Internal Revenue Code of 1986 is amended by  
24 adding at the end the following new item:

“Sec. 6431. COBRA premium assistance.”.

1 (D) EFFECTIVE DATE.—The amendments  
2 made by this paragraph shall apply to pre-  
3 miums to which subsection (a)(1)(A) applies.

4 (13) PENALTY FOR FAILURE TO NOTIFY  
5 HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR  
6 PREMIUM ASSISTANCE.—

7 (A) IN GENERAL.—Part I of subchapter B  
8 of chapter 68 of the Internal Revenue Code of  
9 1986 is amended by adding at the end the fol-  
10 lowing new section:

11 **“SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH**  
12 **PLAN OF CESSATION OF ELIGIBILITY FOR**  
13 **COBRA PREMIUM ASSISTANCE.**

14 “(a) IN GENERAL.—Any person required to notify a  
15 group health plan under section 3002(a)(2)(C)) of the  
16 Health Insurance Assistance for the Unemployed Act of  
17 2009 who fails to make such a notification at such time  
18 and in such manner as the Secretary of Labor may require  
19 shall pay a penalty of 110 percent of the premium reduc-  
20 tion provided under such section after termination of eligi-  
21 bility under such subsection.

22 “(b) REASONABLE CAUSE EXCEPTION.—No penalty  
23 shall be imposed under subsection (a) with respect to any  
24 failure if it is shown that such failure is due to reasonable  
25 cause and not to willful neglect.”.

1 (B) CLERICAL AMENDMENT.—The table of  
2 sections of part I of subchapter B of chapter 68  
3 of such Code is amended by adding at the end  
4 the following new item:

“Sec. 6720C. Penalty for failure to notify health plan of cessation of eligibility  
for COBRA premium assistance.”.

5 (C) EFFECTIVE DATE.—The amendments  
6 made by this paragraph shall apply to failures  
7 occurring after the date of the enactment of  
8 this Act.

9 (14) COORDINATION WITH HCTC.—

10 (A) IN GENERAL.—Subsection (g) of sec-  
11 tion 35 of the Internal Revenue Code of 1986  
12 is amended by redesignating paragraph (9) as  
13 paragraph (10) and inserting after paragraph  
14 (8) the following new paragraph:

15 “(9) COBRA PREMIUM ASSISTANCE.—In the  
16 case of an assistance eligible individual who receives  
17 premium reduction for COBRA continuation cov-  
18 erage under section 3002(a) of the Health Insurance  
19 Assistance for the Unemployed Act of 2009 for any  
20 month during the taxable year, such individual shall  
21 not be treated as an eligible individual, a certified  
22 individual, or a qualifying family member for pur-  
23 poses of this section or section 7527 with respect to  
24 such month.”.

1 (B) EFFECTIVE DATE.—The amendment  
2 made by subparagraph (A) shall apply to tax-  
3 able years ending after the date of the enact-  
4 ment of this Act.

5 (15) EXCLUSION OF COBRA PREMIUM ASSIST-  
6 ANCE FROM GROSS INCOME.—

7 (A) IN GENERAL.—Part III of subchapter  
8 B of chapter 1 of the Internal Revenue Code of  
9 1986 is amended by inserting after section  
10 139B the following new section:

11 **“SEC. 139C. COBRA PREMIUM ASSISTANCE.**

12 “In the case of an assistance eligible individual (as  
13 defined in section 3002 of the Health Insurance Assist-  
14 ance for the Unemployed Act of 2009), gross income does  
15 not include any premium reduction provided under sub-  
16 section (a) of such section.”.

17 (B) CLERICAL AMENDMENT.—The table of  
18 sections for part III of subchapter B of chapter  
19 1 of such Code is amended by inserting after  
20 the item relating to section 139B the following  
21 new item:

“Sec. 139C. COBRA premium assistance.”.

22 (C) EFFECTIVE DATE.—The amendments  
23 made by this paragraph shall apply to taxable  
24 years ending after the date of the enactment of  
25 this Act.

1 (b) EXTENSION OF COBRA BENEFITS FOR OLDER  
2 OR LONG-TERM EMPLOYEES.—

3 (1) ERISA AMENDMENT.—Section 602(2)(A)  
4 of the Employee Retirement Income Security Act of  
5 1974 is amended by adding at the end the following  
6 new clauses:

7 “(x) SPECIAL RULE FOR OLDER OR  
8 LONG-TERM EMPLOYEES GENERALLY.—In  
9 the case of a qualifying event described in  
10 section 603(2) with respect to a covered  
11 employee who (as of such qualifying event)  
12 has attained age 55 or has completed 10  
13 or more years of service with the entity  
14 that is the employer at the time of the  
15 qualifying event, clauses (i) and (ii) shall  
16 not apply.

17 “(xi) YEAR OF SERVICE.— For pur-  
18 poses of this subparagraph, the term ‘year  
19 of service’ shall have the meaning provided  
20 in section 202(a)(3).”.

21 (2) IRC AMENDMENT.—Clause (i) of section  
22 4980B(f)(2)(B) of the Internal Revenue Code of  
23 1986 is amended by adding at the end the following  
24 new subclauses:

1                   “(X) SPECIAL RULE FOR OLDER  
2                   OR LONG-TERM EMPLOYEES GEN-  
3                   ERALLY.—In the case of a qualifying  
4                   event described in paragraph (3)(B)  
5                   with respect to a covered employee  
6                   who (as of such qualifying event) has  
7                   attained age 55 or has completed 10  
8                   or more years of service with the enti-  
9                   ty that is the employer at the time of  
10                  the qualifying event, subclauses (I)  
11                  and (II) shall not apply.

12                  “(XI) YEAR OF SERVICE.— For  
13                  purposes of this clause, the term ‘year  
14                  of service’ shall have the meaning pro-  
15                  vided in section 202(a)(3) of the Em-  
16                  ployee Retirement Income Security  
17                  Act of 1974.”.

18                  (3) PHSA AMENDMENT.—Section 2202(2)(A)  
19                  of the Public Health Service Act is amended by add-  
20                  ing at the end the following new clauses:

21                  “(viii) SPECIAL RULE FOR OLDER OR  
22                  LONG-TERM EMPLOYEES GENERALLY.—In  
23                  the case of a qualifying event described in  
24                  section 2203(2) with respect to a covered  
25                  employee who (as of such qualifying event)

1           has attained age 55 or has completed 10  
2           or more years of service with the entity  
3           that is the employer at the time of the  
4           qualifying event, clauses (i) and (ii) shall  
5           not apply.

6                   “(ix) YEAR OF SERVICE.— For pur-  
7                   poses of this subparagraph, the term ‘year  
8                   of service’ shall have the meaning provided  
9                   in section 202(a)(3) of the Employee Re-  
10                  tirement Income Security Act of 1974.”.

11                   (4) EFFECTIVE DATE OF AMENDMENTS.—The  
12                  amendments made by this subsection shall apply to  
13                  periods of coverage which would (without regard to  
14                  the amendments made by this section) end on or  
15                  after the date of the enactment of this Act.

16 **SEC. 3003. TEMPORARY OPTIONAL MEDICAID COVERAGE**  
17 **FOR THE UNEMPLOYED.**

18                   (a) IN GENERAL.—Section 1902 of the Social Secu-  
19                  rity Act (42 U.S.C. 1396b) is amended—

20                   (1) in subsection (a)(10)(A)(ii)—

21                   (A) by striking “or” at the end of sub-  
22                   clause (XVIII);

23                   (B) by adding “or” at the end of subclause  
24                   (XIX); and



1 (C) by adding at the end the following new  
2 subclause

3 “(XX) who are described in sub-  
4 section (dd)(1) (relating to certain un-  
5 employed individuals and their fami-  
6 lies);”; and

7 (2) by adding at the end the following new sub-  
8 section:

9 “(dd)(1) Individuals described in this paragraph  
10 are—

11 “(A) individuals who—

12 “(i) are within one or more of the categories de-  
13 scribed in paragraph (2), as elected under the State  
14 plan; and

15 “(ii) meet the applicable requirements of para-  
16 graph (3); and

17 “(B) individuals who—

18 “(i) are the spouse, or dependent child under  
19 19 years of age, of an individual described in sub-  
20 paragraph (A); and

21 “(ii) meet the requirement of paragraph (3)(B).

22 “(2) The categories of individuals described in this  
23 paragraph are each of the following:

24 “(A) Individuals who are receiving unemploy-  
25 ment compensation benefits.

1           “(B) Individuals who were receiving, but have  
2 exhausted, unemployment compensation benefits on  
3 or after July 1, 2008.

4           “(C) Individuals who are involuntarily unem-  
5 ployed and were involuntarily separated from em-  
6 ployment on or after September 1, 2008, and before  
7 January 1, 2011, whose family gross income does  
8 not exceed a percentage specified by the State (not  
9 to exceed 200 percent) of the income official poverty  
10 line (as defined by the Office of Management and  
11 Budget, and revised annually in accordance with sec-  
12 tion 673(2) of the Omnibus Budget Reconciliation  
13 Act of 1981) applicable to a family of the size in-  
14 volved, and who, but for subsection  
15 (a)(10)(A)(ii)(XX), are not eligible for medical as-  
16 sistance under this title or health assistance under  
17 title XXI.

18           “(D) Individuals who are involuntarily unem-  
19 ployed and were involuntarily separated from em-  
20 ployment on or after September 1, 2008, and before  
21 January 1, 2011, who are members of households  
22 participating in the supplemental nutrition assist-  
23 ance program established under the Food and Nutri-  
24 tion Act of 2008 (7 U.S.C. 2011 et seq), and who,  
25 but for subsection (a)(10)(A)(ii)(XX), are not eligi-

1 ble for medical assistance under this title or health  
2 assistance under title XXI.

3 A State plan may elect one or more of the categories de-  
4 scribed in this paragraph but may not elect the category  
5 described in subparagraph (B) unless the State plan also  
6 elects the category described in subparagraph (A).

7 “(3) The requirements of this paragraph with respect  
8 to an individual are the following:

9 “(A) In the case of individuals within a cat-  
10 egory described in subparagraph (A) or (B) of para-  
11 graph (2), the individual was involuntarily separated  
12 from employment on or after September 1, 2008,  
13 and before January 1, 2011, or meets such com-  
14 parable requirement as the Secretary specifies  
15 through rule, guidance, or otherwise in the case of  
16 an individual who was an independent contractor.

17 “(B) The individual is not otherwise covered  
18 under creditable coverage, as defined in section  
19 2701(e) of the Public Health Service Act (42 U.S.C.  
20 300gg(e)), but applied without regard to paragraph  
21 (1)(F) of such section and without regard to cov-  
22 erage provided by reason of the application of sub-  
23 section (a)(10)(A)(ii)(XX).

24 “(4)(A) No income or resources test shall be applied  
25 with respect to any category of individuals described in

1 subparagraph (A), (B), or (D) of paragraph (2) who are  
2 eligible for medical assistance only by reason of the appli-  
3 cation of subsection (a)(10)(A)(ii)(XX).

4 “(B) Nothing in this subsection shall be construed  
5 to prevent a State from imposing a resource test for the  
6 category of individuals described in paragraph (2)(C)).

7 “(C) In the case of individuals provided medical as-  
8 sistance by reason of the application of subsection  
9 (a)(10)(A)(ii)(XX), the requirements of subsections  
10 (i)(22) and (x) shall not apply.”.

11 (b) 100 PERCENT FEDERAL MATCHING RATE.—

12 (1) FMAP FOR TIME-LIMITED PERIOD.—The  
13 third sentence of section 1905(b) of such Act (42  
14 U.S.C. 1396d(b)) is amended by inserting before the  
15 period at the end the following: “and for items and  
16 services furnished on or after the date of enactment  
17 of this Act and before January 1, 2011, to individ-  
18 uals who are eligible for medical assistance only by  
19 reason of the application of section  
20 1902(a)(10)(A)(ii)(XX)”.

21 (2) CERTAIN ENROLLMENT-RELATED ADMINIS-  
22 TRATIVE COSTS.—Notwithstanding any other provi-  
23 sion of law, for purposes of applying section 1903(a)  
24 of the Social Security Act (42 U.S.C. 1396b(a)),  
25 with respect to expenditures incurred on or after the

1 date of the enactment of this Act and before Janu-  
2 ary 1, 2011, for costs of administration (including  
3 outreach and the modification and operation of eligi-  
4 bility information systems) attributable to eligibility  
5 determination and enrollment of individuals who are  
6 eligible for medical assistance only by reason of the  
7 application of section 1902(a)(10)(A)(ii)(XX) of  
8 such Act, as added by subsection (a)(1), the Federal  
9 matching percentage shall be 100 percent instead of  
10 the matching percentage otherwise applicable.

11 (c) CONFORMING AMENDMENTS.—(1) Section  
12 1903(f)(4) of such Act (42 U.S.C. 1396c(f)(4)) is amend-  
13 ed by inserting “1902(a)(10)(A)(ii)(XX), or” after  
14 “1902(a)(10)(A)(ii)(XIX),”.

15 (2) Section 1905(a) of such Act (42 U.S.C.  
16 1396d(a)) is amended, in the matter preceding paragraph  
17 (1)—

18 (A) by striking “or” at the end of clause (xii);

19 (B) by adding “or” at the end of clause (xiii);

20 and

21 (C) by inserting after clause (xiii) the following

22 new clause:

23 “(xiv) individuals described in section  
24 1902(dd)(1),”.

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

3 **SEC. 4001. SHORT TITLE; TABLE OF CONTENTS OF TITLE.**

4 (a) **SHORT TITLE.**—This title may be cited as the  
5 “Health Information Technology for Economic and Clin-  
6 ical Health Act” or the “HITECH Act”.

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

Sec. 4001. Short title; table of contents of title.

Subtitle A—Promotion of Health Information Technology

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

Sec. 4101. 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. Relation to HIPAA privacy and security law.

“Sec. 3010. Authorization for appropriations.

Sec. 4102. Technical amendment.

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

Sec. 4111. Coordination of Federal activities with adopted standards and imple-  
mentation specifications.

Sec. 4112. Application to private entities.

Sec. 4113. Study and reports.

Subtitle B—Testing of Health Information Technology

- Sec. 4201. National Institute for Standards and Technology testing.
- Sec. 4202. Research and development programs.

Subtitle C—Incentives for the Use of Health Information Technology

PART I—GRANTS AND LOANS FUNDING

- Sec. 4301. 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 on health care.
- “Sec. 3017. General grant and loan provisions.
- “Sec. 3018. Authorization for appropriations.

PART II—MEDICARE PROGRAM

- Sec. 4311. Incentives for eligible professionals.
- Sec. 4312. Incentives for hospitals.
- Sec. 4313. Treatment of payments and savings; implementation funding.
- Sec. 4314. Study on application of HIT payment incentives for providers not receiving other incentive payments.

PART III—MEDICAID FUNDING

- Sec. 4321. Medicaid provider HIT adoption and operation payments; implementation funding.

Subtitle D—Privacy

- Sec. 4400. Definitions.

PART I—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS

- Sec. 4401. Application of security provisions and penalties to business associates of covered entities; annual guidance on security provisions.
- Sec. 4402. Notification in the case of breach.
- Sec. 4403. Education on Health Information Privacy.
- Sec. 4404. Application of privacy provisions and penalties to business associates of covered entities.
- Sec. 4405. Restrictions on certain disclosures and sales of health information; accounting of certain protected health information disclosures; access to certain information in electronic format.
- Sec. 4406. Conditions on certain contacts as part of health care operations.
- Sec. 4407. Temporary breach notification requirement for vendors of personal health records and other non-HIPAA covered entities.
- Sec. 4408. Business associate contracts required for certain entities.

Sec. 4409. Clarification of application of wrongful disclosures criminal penalties.

Sec. 4410. Improved enforcement.

Sec. 4411. Audits.

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

Sec. 4421. Relationship to other laws.

Sec. 4422. Regulatory references.

Sec. 4423. Effective date.

Sec. 4424. Studies, reports, guidance.

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

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

5     **SEC. 4101. ONCHIT; STANDARDS DEVELOPMENT AND ADOPTI-**  
6                     **ON.**

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



1 office-based physicians or an inpatient hospital elec-  
2 tronic health record for hospitals).

3 “(2) ENTERPRISE INTEGRATION.—The term  
4 ‘enterprise integration’ means the electronic linkage  
5 of health care providers, health plans, the govern-  
6 ment, and other interested parties, to enable the  
7 electronic exchange and use of health information  
8 among all the components in the health care infra-  
9 structure in accordance with applicable law, and  
10 such term includes related application protocols and  
11 other related standards.

12 “(3) HEALTH CARE PROVIDER.—The term  
13 ‘health care provider’ means a hospital, skilled nurs-  
14 ing facility, nursing facility, home health entity or  
15 other long term care facility, health care clinic, Fed-  
16 erally qualified health center, group practice (as de-  
17 fined in section 1877(h)(4) of the Social Security  
18 Act), a pharmacist, a pharmacy, a laboratory, a phy-  
19 sician (as defined in section 1861(r) of the Social  
20 Security Act), a practitioner (as described in section  
21 1842(b)(18)(C) of the Social Security Act), a pro-  
22 vider operated by, or under contract with, the Indian  
23 Health Service or by an Indian tribe (as defined in  
24 the Indian Self-Determination and Education Assist-  
25 ance Act), tribal organization, or urban Indian orga-

1 nization (as defined in section 4 of the Indian  
2 Health Care Improvement Act), a rural health clinic,  
3 a covered entity under section 340B, and any other  
4 category of facility or clinician determined appro-  
5 priate by the Secretary.

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

9 “(5) HEALTH INFORMATION TECHNOLOGY.—  
10 The term ‘health information technology’ means  
11 hardware, software, integrated technologies and re-  
12 lated licenses, intellectual property, upgrades, and  
13 packaged solutions sold as services that are specifi-  
14 cally designed for use by health care entities for the  
15 electronic creation, maintenance, or exchange of  
16 health information.

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

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

23 “(8) HIT STANDARDS COMMITTEE.—The term  
24 ‘HIT Standards Committee’ means such Committee  
25 established under section 3003(a).

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

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

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

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

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

18                 “(A) includes patient demographic and  
19                 clinical health information, such as medical his-  
20                 tory and problem lists; and

21                 “(B) has the capacity—

22                         “(i) to provide clinical decision sup-  
23                         port;

24                         “(ii) to support physician order entry;

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

3 “(iv) to exchange electronic health in-  
4 formation with, and integrate such infor-  
5 mation from other sources.

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

## 10 **“Subtitle A—Promotion of Health** 11 **Information Technology**

### 12 **“SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR** 13 **HEALTH INFORMATION TECHNOLOGY.**

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

21 “(b) PURPOSE.—The National Coordinator shall per-  
22 form the duties under subsection (c) in a manner con-  
23 sistent with the development of a nationwide health infor-  
24 mation technology infrastructure that allows for the elec-  
25 tronic use and exchange of information and that—

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

4           “(2) improves health care quality, reduces med-  
5           ical errors, and advances the delivery of patient-cen-  
6           tered medical care;

7           “(3) reduces health care costs resulting from  
8           inefficiency, medical errors, inappropriate care, du-  
9           plicative care, and incomplete information;

10          “(4) provides appropriate information to help  
11          guide medical decisions at the time and place of  
12          care;

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

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

20          “(7) improves public health activities and facili-  
21          tates the early identification and rapid response to  
22          public health threats and emergencies, including bio-  
23          terror events and infectious disease outbreaks;

24          “(8) facilitates health and clinical research and  
25          health care quality;

1           “(9) promotes prevention of chronic diseases;

2           “(10) promotes a more effective marketplace,  
3 greater competition, greater systems analysis, in-  
4 creased consumer choice, and improved outcomes in  
5 health care services; and

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

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

9           “(1) STANDARDS.—The National Coordinator  
10 shall review and determine whether to endorse each  
11 standard, implementation specification, and certifi-  
12 cation criterion for the electronic exchange and use  
13 of health information that is recommended by the  
14 HIT Standards Committee under section 3003 for  
15 purposes of adoption under section 3004. The Coor-  
16 dinator shall make such determination, and report to  
17 the Secretary such determination, not later than 45  
18 days after the date the recommendation is received  
19 by the Coordinator.

20           “(2) HIT POLICY COORDINATION.—

21           “(A) IN GENERAL.—The National Coordi-  
22 nator shall coordinate health information tech-  
23 nology policy and programs of the Department  
24 with those of other relevant executive branch  
25 agencies with a goal of avoiding duplication of

1           efforts and of helping to ensure that each agen-  
2           cy undertakes health information technology ac-  
3           tivities primarily within the areas of its greatest  
4           expertise and technical capability and in a man-  
5           ner towards a coordinated national goal.

6           “(B) HIT POLICY AND STANDARDS COM-  
7           MITTEES.—The National Coordinator shall be a  
8           leading member in the establishment and oper-  
9           ations of the HIT Policy Committee and the  
10          HIT Standards Committee and shall serve as a  
11          liaison among those two Committees and the  
12          Federal Government.

13          “(3) STRATEGIC PLAN.—

14          “(A) IN GENERAL.—The National Coordi-  
15          nator shall, in consultation with other appro-  
16          priate Federal agencies (including the National  
17          Institute of Standards and Technology), update  
18          the Federal Health IT Strategic Plan (devel-  
19          oped as of June 3, 2008) to include specific ob-  
20          jectives, milestones, and metrics with respect to  
21          the following:

22                  “(i) The electronic exchange and use  
23                  of health information and the enterprise  
24                  integration of such information.

1                   “(ii) The utilization of an electronic  
2 health record for each person in the United  
3 States by 2014.

4                   “(iii) The incorporation of privacy and  
5 security protections for the electronic ex-  
6 change of an individual’s individually iden-  
7 tifiable health information.

8                   “(iv) Ensuring security methods to  
9 ensure appropriate authorization and elec-  
10 tronic authentication of health information  
11 and specifying technologies or methodolo-  
12 gies for rendering health information unus-  
13 able, unreadable, or indecipherable.

14                   “(v) Specifying a framework for co-  
15 ordination and flow of recommendations  
16 and policies under this subtitle among the  
17 Secretary, the National Coordinator, the  
18 HIT Policy Committee, the HIT Standards  
19 Committee, and other health information  
20 exchanges and other relevant entities.

21                   “(vi) Methods to foster the public un-  
22 derstanding of health information tech-  
23 nology.

24                   “(vii) Strategies to enhance the use of  
25 health information technology in improving



1           the quality of health care, reducing medical  
2           errors, reducing health disparities, improv-  
3           ing public health, and improving the con-  
4           tinuity of care among health care settings.

5           “(B) COLLABORATION.—The strategic  
6           plan shall be updated through collaboration of  
7           public and private entities.

8           “(C) MEASURABLE OUTCOME GOALS.—  
9           The strategic plan update shall include measur-  
10          able outcome goals.

11          “(D) PUBLICATION.—The National Coor-  
12          dinator shall republish the strategic plan, in-  
13          cluding all updates.

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

21          “(5) CERTIFICATION.—

22                 “(A) IN GENERAL.—The National Coordi-  
23                 nator, in consultation with the Director of the  
24                 National Institute of Standards and Tech-  
25                 nology, shall develop a program (either directly

1 or by contract) for the voluntary certification of  
2 health information technology as being in com-  
3 pliance with applicable certification criteria  
4 adopted under this subtitle. Such program shall  
5 include testing of the technology in accordance  
6 with section 4201(b) of the HITECH Act.

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

14 “(6) REPORTS AND PUBLICATIONS.—

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

1           achieve full participation of stakeholders in the  
2           adoption of a nationwide health information  
3           technology infrastructure that allows for the  
4           electronic use and exchange of health informa-  
5           tion.

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

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

1           such technology by health care providers in  
2           such communities.

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 the required level of Federal funding,  
17          expectations for regional, State, and private in-  
18          vestment, and the expected contributions by vol-  
19          unteers to activities for the utilization of such  
20          records.

21          “(7) ASSISTANCE.—The National Coordinator  
22          may provide financial assistance to consumer advo-  
23          cacy groups and not-for-profit entities that work in  
24          the public interest for purposes of defraying the cost  
25          to such groups and entities to participate under,

1       whether in whole or in part, the National Tech-  
2       nology Transfer Act of 1995 (15 U.S.C. 272 note).

3           “(8) GOVERNANCE FOR NATIONWIDE HEALTH  
4       INFORMATION NETWORK.—The National Coordi-  
5       nator shall establish a governance mechanism for the  
6       nationwide health information network.

7           “(d) DETAIL OF FEDERAL EMPLOYEES.—

8           “(1) IN GENERAL.—Upon the request of the  
9       National Coordinator, the head of any Federal agen-  
10      cy is authorized to detail, with or without reimburse-  
11      ment from the Office, any of the personnel of such  
12      agency to the Office to assist it in carrying out its  
13      duties under this section.

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

16           “(A) not interrupt or otherwise affect the  
17      civil service status or privileges of the Federal  
18      employee; and

19           “(B) be in addition to any other staff of  
20      the Department employed by the National Co-  
21      ordinator.

22          “(3) ACCEPTANCE OF DETAILEES.—Notwith-  
23      standing any other provision of law, the Office may  
24      accept detailed personnel from other Federal agen-

1           cies without regard to whether the agency described  
2           under paragraph (1) is reimbursed.

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

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

16           “(a) ESTABLISHMENT.—There is established a HIT  
17 Policy Committee to make policy recommendations to the  
18 National Coordinator relating to the implementation of a  
19 nationwide health information technology infrastructure,  
20 including implementation of the strategic plan described  
21 in section 3001(c)(3).

22           “(b) DUTIES.—

23                   “(1) RECOMMENDATIONS ON HEALTH INFOR-  
24 MATION TECHNOLOGY INFRASTRUCTURE.—The HIT  
25 Policy Committee shall recommend a policy frame-

1 work for the development and adoption of a nation-  
2 wide health information technology infrastructure  
3 that permits the electronic exchange and use of  
4 health information as is consistent with the strategic  
5 plan under section 3001(e)(3) and that includes the  
6 recommendations under paragraph (2). The Com-  
7 mittee shall update such recommendations and make  
8 new recommendations as appropriate.

9 “(2) SPECIFIC AREAS OF STANDARD DEVELOP-  
10 MENT.—

11 “(A) IN GENERAL.—The HIT Policy Com-  
12 mittee shall recommend the areas in which  
13 standards, implementation specifications, and  
14 certification criteria are needed for the elec-  
15 tronic exchange and use of health information  
16 for purposes of adoption under section 3004  
17 and shall recommend an order of priority for  
18 the development, harmonization, and recogni-  
19 tion of such standards, specifications, and cer-  
20 tification criteria among the areas so rec-  
21 ommended. Such standards and implementation  
22 specifications shall include named standards,  
23 architectures, and software schemes for the au-  
24 thentication and security of individually identifi-  
25 able health information and other information

1 as needed to ensure the reproducible develop-  
2 ment of common solutions across disparate en-  
3 tities.

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

8 “(i) Technologies that protect the pri-  
9 vacy of health information and promote se-  
10 curity in a qualified electronic health  
11 record, including for the segmentation and  
12 protection from disclosure of specific and  
13 sensitive individually identifiable health in-  
14 formation with the goal of minimizing the  
15 reluctance of patients to seek care (or dis-  
16 close information about a condition) be-  
17 cause of privacy concerns, in accordance  
18 with applicable law, and for the use and  
19 disclosure of limited data sets of such in-  
20 formation.

21 “(ii) A nationwide health information  
22 technology infrastructure that allows for  
23 the electronic use and accurate exchange of  
24 health information.



1           “(iii) The utilization of a certified  
2           electronic health record for each person in  
3           the United States by 2014.

4           “(iv) Technologies that as a part of a  
5           qualified electronic health record allow for  
6           an accounting of disclosures made by a  
7           covered entity (as defined for purposes of  
8           regulations promulgated under section  
9           264(e) of the Health Insurance Portability  
10          and Accountability Act of 1996) for pur-  
11          poses of treatment, payment, and health  
12          care operations (as such terms are defined  
13          for purposes of such regulations).

14          “(v) The use of certified electronic  
15          health records to improve the quality of  
16          health care, such as by promoting the co-  
17          ordination of health care and improving  
18          continuity of health care among health  
19          care providers, by reducing medical errors,  
20          by improving population health, and by ad-  
21          vancing research and education.

22          “(C) OTHER AREAS FOR CONSIDER-  
23          ATION.—In making recommendations under  
24          subparagraph (A), the HIT Policy Committee  
25          may consider the following additional areas:

1                   “(i) The appropriate uses of a nation-  
2 wide health information infrastructure, in-  
3 cluding for purposes of—

4                   “(I) the collection of quality data  
5 and public reporting;

6                   “(II) biosurveillance and public  
7 health;

8                   “(III) medical and clinical re-  
9 search; and

10                   “(IV) drug safety.

11                   “(ii) Self-service technologies that fa-  
12 cilitate the use and exchange of patient in-  
13 formation and reduce wait times.

14                   “(iii) Telemedicine technologies, in  
15 order to reduce travel requirements for pa-  
16 tients in remote areas.

17                   “(iv) Technologies that facilitate home  
18 health care and the monitoring of patients  
19 recuperating at home.

20                   “(v) Technologies that help reduce  
21 medical errors.

22                   “(vi) Technologies that facilitate the  
23 continuity of care among health settings.

24                   “(vii) Technologies that meet the  
25 needs of diverse populations.

1                   “(viii) Any other technology that the  
2                   HIT Policy Committee finds to be among  
3                   the technologies with the greatest potential  
4                   to improve the quality and efficiency of  
5                   health care.

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

10                  “(c) MEMBERSHIP AND OPERATIONS.—

11                  “(1) IN GENERAL.—The National Coordinator  
12                  shall provide leadership in the establishment and op-  
13                  erations of the HIT Policy Committee.

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

22                  “(3) CONSIDERATION.—The National Coordi-  
23                  nator shall ensure that the relevant recommenda-  
24                  tions and comments from the National Committee

1 on Vital and Health Statistics are considered in the  
2 development of policies.

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

6 “(e) PUBLICATION.—The Secretary shall provide for  
7 publication in the Federal Register and the posting on the  
8 Internet website of the Office of the National Coordinator  
9 for Health Information Technology of all policy rec-  
10 ommendations made by the HIT Policy Committee under  
11 this section.

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

13 “(a) ESTABLISHMENT.—There is established a com-  
14 mittee to be known as the HIT Standards Committee to  
15 recommend to the National Coordinator standards, imple-  
16 mentation specifications, and certification criteria for the  
17 electronic exchange and use of health information for pur-  
18 poses of adoption under section 3004, consistent with the  
19 implementation of the strategic plan described in section  
20 3001(c)(3) and beginning with the areas listed in section  
21 3002(b)(2)(B) in accordance with policies developed by  
22 the HIT Policy Committee.

23 “(b) DUTIES.—

24 “(1) STANDARD DEVELOPMENT.—

1           “(A) IN GENERAL.—The HIT Standards  
2           Committee shall recommend to the National  
3           Coordinator standards, implementation speci-  
4           fications, and certification criteria described in  
5           subsection (a) that have been developed, har-  
6           monized, or recognized by the HIT Standards  
7           Committee. The HIT Standards Committee  
8           shall update such recommendations and make  
9           new recommendations as appropriate, including  
10          in response to a notification sent under section  
11          3004(b)(2). Such recommendations shall be  
12          consistent with the latest recommendations  
13          made by the HIT Policy Committee.

14          “(B) PILOT TESTING OF STANDARDS AND  
15          IMPLEMENTATION SPECIFICATIONS.—In the de-  
16          velopment, harmonization, or recognition of  
17          standards and implementation specifications,  
18          the HIT Standards Committee shall, as appro-  
19          priate, provide for the testing of such standards  
20          and specifications by the National Institute for  
21          Standards and Technology under section 4201  
22          of the HITECH Act.

23          “(C) CONSISTENCY.—The standards, im-  
24          plementation specifications, and certification  
25          criteria recommended under this subsection

1           shall be consistent with the standards for infor-  
2           mation transactions and data elements adopted  
3           pursuant to section 1173 of the Social Security  
4           Act.

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

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

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

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

5       “(c) MEMBERSHIP AND OPERATIONS.—

6               “(1) IN GENERAL.—The National Coordinator  
7       shall provide leadership in the establishment and op-  
8       erations of the HIT Standards Committee.

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

17               “(3) CONSIDERATION.—The National Coordi-  
18       nator shall ensure that the relevant recommenda-  
19       tions and comments from the National Committee  
20       on Vital and Health Statistics are considered in the  
21       development of standards.

22               “(4) ASSISTANCE.—For the purposes of car-  
23       rying out this section, the Secretary may provide or  
24       ensure that financial assistance is provided by the  
25       HIT Standards Committee to defray in whole or in

1 part any membership fees or dues charged by such  
2 Committee to those consumer advocacy groups and  
3 not for profit entities that work in the public inter-  
4 est as a part of their mission.

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

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

14 **“SEC. 3004. PROCESS FOR ADOPTION OF ENDORSED REC-**  
15 **COMMENDATIONS; ADOPTION OF INITIAL SET**  
16 **OF STANDARDS, IMPLEMENTATION SPECI-**  
17 **FICATIONS, AND CERTIFICATION CRITERIA.**

18 “(a) PROCESS FOR ADOPTION OF ENDORSED REC-  
19 OMMENDATIONS.—

20 “(1) REVIEW OF ENDORSED STANDARDS, IM-  
21 PLEMENTATION SPECIFICATIONS, AND CERTIFI-  
22 CATION CRITERIA.—Not later than 90 days after the  
23 date of receipt of standards, implementation speci-  
24 fications, or certification criteria endorsed under sec-  
25 tion 3001(c), the Secretary, in consultation with rep-



1        representatives of other relevant Federal agencies, shall  
2        jointly review such standards, implementation speci-  
3        fications, or certification criteria and shall determine  
4        whether or not to propose adoption of such stand-  
5        ards, implementation specifications, or certification  
6        criteria.

7            “(2) DETERMINATION TO ADOPT STANDARDS,  
8        IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-  
9        CATION CRITERIA.—If the Secretary determines—

10            “(A) to propose adoption of any grouping  
11            of such standards, implementation specifica-  
12            tions, or certification criteria, the Secretary  
13            shall, by regulation, determine whether or not  
14            to adopt such grouping of standards, implemen-  
15            tation specifications, or certification criteria; or

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

23            “(3) PUBLICATION.—The Secretary shall pro-  
24        vide for publication in the Federal Register of all de-

1 terminations made by the Secretary under para-  
2 graph (1).

3 “(b) ADOPTION OF INITIAL SET OF STANDARDS, IM-  
4 PLEMENTATION SPECIFICATIONS, AND CERTIFICATION  
5 CRITERIA.—

6 “(1) IN GENERAL.—Not later than December  
7 31, 2009, the Secretary shall, through the rule-  
8 making process described in section 3003, adopt an  
9 initial set of standards, implementation specifica-  
10 tions, and certification criteria for the areas required  
11 for consideration under section 3002(b)(2)(B).

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

21 **“SEC. 3005. APPLICATION AND USE OF ADOPTED STAND-**  
22 **ARDS AND IMPLEMENTATION SPECIFICA-**  
23 **TIONS BY FEDERAL AGENCIES.**

24 “For requirements relating to the application and use  
25 by Federal agencies of the standards and implementation

1 specifications adopted under section 3004, see section  
2 4111 of the HITECH Act.

3 **“SEC. 3006. VOLUNTARY APPLICATION AND USE OF ADOPT-**  
4 **ED STANDARDS AND IMPLEMENTATION**  
5 **SPECIFICATIONS BY PRIVATE ENTITIES.**

6 “(a) IN GENERAL.—Except as provided under section  
7 4112 of the HITECH Act, any standard or implementa-  
8 tion specification adopted under section 3004 shall be vol-  
9 untary with respect to private entities.

10 “(b) RULE OF CONSTRUCTION.—Nothing in this sub-  
11 title shall be construed to require that a private entity that  
12 enters into a contract with the Federal Government apply  
13 or use the standards and implementation specifications  
14 adopted under section 3004 with respect to activities not  
15 related to the contract.

16 **“SEC. 3007. FEDERAL HEALTH INFORMATION TECH-**  
17 **NOLOGY.**

18 “(a) IN GENERAL.—The National Coordinator shall  
19 support the development, routine updating and provision  
20 of qualified EHR technology (as defined in section 3000)  
21 consistent with subsections (b) and (c) unless the Sec-  
22 retary determines that the needs and demands of pro-  
23 viders are being substantially and adequately met through  
24 the marketplace.

1           “(b) CERTIFICATION.—In making such EHR tech-  
2 nology publicly available, the National Coordinator shall  
3 ensure that the qualified EHR technology described in  
4 subsection (a) is certified under the program developed  
5 under section 3001(c)(3) to be in compliance with applica-  
6 ble standards adopted under section 3003(a).

7           “(c) AUTHORIZATION TO CHARGE A NOMINAL  
8 FEE.—The National Coordinator may impose a nominal  
9 fee for the adoption by a health care provider of the health  
10 information technology system developed or approved  
11 under subsection (a) and (b). Such fee shall take into ac-  
12 count the financial circumstances of smaller providers, low  
13 income providers, and providers located in rural or other  
14 medically underserved areas.

15           “(d) RULE OF CONSTRUCTION.—Nothing in this sec-  
16 tion shall be construed to require that a private or govern-  
17 ment entity adopt or use the technology provided under  
18 this section.

19   **“SEC. 3008. TRANSITIONS.**

20           “(a) ONCHIT.—To the extent consistent with sec-  
21 tion 3001, all functions, personnel, assets, liabilities, and  
22 administrative actions applicable to the National Coordi-  
23 nator for Health Information Technology appointed under  
24 Executive Order 13335 or the Office of such National Co-  
25 ordinator on the date before the date of the enactment

1 of this title shall be transferred to the National Coordi-  
2 nator appointed under section 3001(a) and the Office of  
3 such National Coordinator as of the date of the enactment  
4 of this title.

5 “(b) AHIC.—

6 “(1) To the extent consistent with sections  
7 3002 and 3003, all functions, personnel, assets, and  
8 liabilities applicable to the AHIC Successor, Inc.  
9 doing business as the National eHealth Collaborative  
10 as of the day before the date of the enactment of  
11 this title shall be transferred to the HIT Policy  
12 Committee or the HIT Standards Committee, estab-  
13 lished under section 3002(a) or 3003(a), as appro-  
14 priate, as of the date of the enactment of this title.

15 “(2) In carrying out section 3003(b)(1)(A),  
16 until recommendations are made by the HIT Policy  
17 Committee, recommendations of the HIT Standards  
18 Committee shall be consistent with the most recent  
19 recommendations made by such AHIC Successor,  
20 Inc.

21 “(c) RULES OF CONSTRUCTION.—

22 “(1) ONCHIT.—Nothing in section 3001 or  
23 subsection (a) shall be construed as requiring the  
24 creation of a new entity to the extent that the Office  
25 of the National Coordinator for Health Information

1 Technology established pursuant to Executive Order  
2 13335 is consistent with the provisions of section  
3 3001.

4 “(2) AHIC.—Nothing in sections 3002 or 3003  
5 or subsection (b) shall be construed as prohibiting  
6 the AHIC Successor, Inc. doing business as the Na-  
7 tional eHealth Collaborative from modifying its char-  
8 ter, duties, membership, and any other structure or  
9 function required to be consistent with section 3002  
10 and 3003 in a manner that would permit the Sec-  
11 retary to choose to recognize such Community as the  
12 HIT Policy Committee or the HIT Standards Com-  
13 mittee.

14 **“SEC. 3009. RELATION TO HIPAA PRIVACY AND SECURITY**  
15 **LAW.**

16 “(a) IN GENERAL.—With respect to the relation of  
17 this title to HIPAA privacy and security law:

18 “(1) This title may not be construed as having  
19 any effect on the authorities of the Secretary under  
20 HIPAA privacy and security law.

21 “(2) The purposes of this title include ensuring  
22 that the health information technology standards  
23 and implementation specifications adopted under  
24 section 3004 take into account the requirements of  
25 HIPAA privacy and security law.

1 “(b) DEFINITION.—For purposes of this section, the  
2 term ‘HIPAA privacy and security law’ means—

3 “(1) the provisions of part C of title XI of the  
4 Social Security Act, section 264 of the Health Insur-  
5 ance Portability and Accountability Act of 1996, and  
6 subtitle D of title IV of the HITECH Act; and

7 “(2) regulations under such provisions.

8 **“SEC. 3010. AUTHORIZATION FOR APPROPRIATIONS.**

9 “There is authorized to be appropriated to the Office  
10 of the National Coordinator for Health Information Tech-  
11 nology to carry out this subtitle \$250,000,000 for fiscal  
12 year 2009.”.

13 **SEC. 4102. TECHNICAL AMENDMENT.**

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

17 **PART II—APPLICATION AND USE OF ADOPTED**

18 **HEALTH INFORMATION TECHNOLOGY**

19 **STANDARDS; REPORTS**

20 **SEC. 4111. COORDINATION OF FEDERAL ACTIVITIES WITH**

21 **ADOPTED STANDARDS AND IMPLEMENTA-**

22 **TION SPECIFICATIONS.**

23 (a) SPENDING ON HEALTH INFORMATION TECH-  
24 NOLOGY SYSTEMS.—As each agency (as defined in the Ex-  
25 ecutive Order issued on August 22, 2006, relating to pro-

1 moting quality and efficient health care in Federal govern-  
2 ment administered or sponsored health care programs) im-  
3 plements, acquires, or upgrades health information tech-  
4 nology systems used for the direct exchange of individually  
5 identifiable health information between agencies and with  
6 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(b) of the Public Health Service Act,  
10 as added by section 4101.

11 (b) FEDERAL INFORMATION COLLECTION ACTIVI-  
12 TIES.—With respect to a standard or implementation  
13 specification adopted under section 3004(b) of the Public  
14 Health Service Act, as added by section 4101, 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 4101, shall apply for purposes  
23 of this part.



1 **SEC. 4112. 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(b) of the Public Health  
13 Service Act, as added by section 4101.

14 **SEC. 4113. 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. 4201. 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 4101,

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 4101, with respect to the development of stand-  
12 ards and implementation specifications under such sec-  
13 tion, the Director of the National Institute of Standards  
14 and Technology shall support the establishment of a con-  
15 formance testing infrastructure, including the develop-  
16 ment of technical test beds. The development of this con-  
17 formance testing infrastructure may include a program to  
18 accredit independent, non-Federal laboratories to perform  
19 testing.

20 **SEC. 4202. 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 coordinate Federal research  
20 and development programs related to the development and  
21 deployment of health information technology, including ac-  
22 tivities related to—

23 (1) computer infrastructure;

24 (2) data security;



- 1           (3) development of large-scale, distributed, reli-  
2           able computing systems;
- 3           (4) wired, wireless, and hybrid high-speed net-  
4           working;
- 5           (5) development of software and software-inten-  
6           sive systems;
- 7           (6) human-computer interaction and informa-  
8           tion management technologies; and
- 9           (7) the social and economic implications of in-  
10          formation technology.

11       **Subtitle C—Incentives for the Use**  
12       **of Health Information Technology**

13           **PART I—GRANTS AND LOANS FUNDING**

14       **SEC. 4301. GRANT, LOAN, AND DEMONSTRATION PRO-**  
15       **GRAMS.**

16           Title XXX of the Public Health Service Act, as added  
17       by section 4101, is amended by adding at the end the fol-  
18       lowing new subtitle:

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

21       **“SEC. 3011. IMMEDIATE FUNDING TO STRENGTHEN THE**  
22           **HEALTH INFORMATION TECHNOLOGY INFRA-**  
23           **STRUCTURE.**

24           “(a) IN GENERAL.—The Secretary of Health and  
25       Human Services shall, using amounts appropriated under

1 section 3018, invest in the infrastructure necessary to  
2 allow for and promote the electronic exchange and use of  
3 health information for each individual in the United States  
4 consistent with the goals outlined in the strategic plan de-  
5 veloped by the National Coordinator (and as available)  
6 under section 3001. To the greatest extent practicable, the  
7 Secretary shall ensure that any funds so appropriated  
8 shall be used for the acquisition of health information  
9 technology that meets standards and certification criteria  
10 adopted before the date of the enactment of this title until  
11 such date as the standards are adopted under section  
12 3004. The Secretary shall invest funds through the dif-  
13 ferent agencies with expertise in such goals, such as the  
14 Office of the National Coordinator for Health Information  
15 Technology, the Health Resources and Services Adminis-  
16 tration, the Agency for Healthcare Research and Quality,  
17 the Centers of Medicare & Medicaid Services, the Centers  
18 for Disease Control and Prevention, and the Indian  
19 Health Service to support the following:

20           “(1) Health information technology architecture  
21           that will support the nationwide electronic exchange  
22           and use of health information in a secure, private,  
23           and accurate manner, including connecting health  
24           information exchanges, and which may include up-  
25           dating and implementing the infrastructure nec-

1        essary within different agencies of the Department  
2        of Health and Human Services to support the elec-  
3        tronic use and exchange of health information.

4               “(2) Development and adoption of appropriate  
5        certified electronic health records for categories of  
6        providers not eligible for support under title XVIII  
7        or XIX of the Social Security Act for the adoption  
8        of such records.

9               “(3) Training on and dissemination of informa-  
10       tion on best practices to integrate health information  
11       technology, including electronic health records, into  
12       a provider’s delivery of care, consistent with best  
13       practices learned from the Health Information Tech-  
14       nology Research Center developed under section 302,  
15       including community health centers receiving assist-  
16       ance under section 330 of the Public Health Service  
17       Act, covered entities under section 340B of such  
18       Act, and providers participating in one or more of  
19       the programs under titles XVIII, XIX, and XXI of  
20       the Social Security Act (relating to Medicare, Med-  
21       icaid, and the State Children’s Health Insurance  
22       Program).

23               “(4) Infrastructure and tools for the promotion  
24       of telemedicine, including coordination among Fed-  
25       eral agencies in the promotion of telemedicine.



1 information, the Secretary, acting through the Office of  
2 the National Coordinator, shall establish a health informa-  
3 tion technology extension program to provide health infor-  
4 mation technology assistance services to be carried out  
5 through the Department of Health and Human Services.  
6 The National Coordinator shall consult with other Federal  
7 agencies with demonstrated experience and expertise in in-  
8 formation technology services, such as the National Insti-  
9 tute of Standards and Technology, in developing and im-  
10 plementing this program.

11 “(b) HEALTH INFORMATION TECHNOLOGY RE-  
12 SEARCH CENTER.—

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

23 “(2) INPUT.—The Center shall incorporate  
24 input from—

1           “(A) other Federal agencies with dem-  
2           onstrated experience and expertise in informa-  
3           tion technology services such as the National  
4           Institute of Standards and Technology;

5           “(B) users of health information tech-  
6           nology, such as providers and their support and  
7           clerical staff and others involved in the care and  
8           care coordination of patients, from the health  
9           care and health information technology indus-  
10          try; and

11          “(C) others as appropriate.

12          “(3) PURPOSES.—The purposes of the Center  
13          are to—

14                 “(A) provide a forum for the exchange of  
15                 knowledge and experience;

16                 “(B) accelerate the transfer of lessons  
17                 learned from existing public and private sector  
18                 initiatives, including those currently receiving  
19                 Federal financial support;

20                 “(C) assemble, analyze, and widely dis-  
21                 seminate evidence and experience related to the  
22                 adoption, implementation, and effective use of  
23                 health information technology that allows for  
24                 the electronic exchange and use of information

1 including through the regional centers described  
2 in subsection (c);

3 “(D) provide technical assistance for the  
4 establishment and evaluation of regional and  
5 local health information networks to facilitate  
6 the electronic exchange of information across  
7 health care settings and improve the quality of  
8 health care;

9 “(E) provide technical assistance for the  
10 development and dissemination of solutions to  
11 barriers to the exchange of electronic health in-  
12 formation; and

13 “(F) learn about effective strategies to  
14 adopt and utilize health information technology  
15 in medically underserved communities.

16 “(c) HEALTH INFORMATION TECHNOLOGY RE-  
17 GIONAL EXTENSION CENTERS.—

18 “(1) IN GENERAL.—The Secretary shall provide  
19 assistance for the creation and support of regional  
20 centers (in this subsection referred to as ‘regional  
21 centers’) to provide technical assistance and dissemi-  
22 nate best practices and other information learned  
23 from the Center to support and accelerate efforts to  
24 adopt, implement, and effectively utilize health infor-  
25 mation technology that allows for the electronic ex-

1 change and use of information in compliance with  
2 standards, implementation specifications, and certifi-  
3 cation criteria adopted under section 3004. Activities  
4 conducted under this subsection shall be consistent  
5 with the strategic plan developed by the National  
6 Coordinator, (and, as available) under section 3001.

7 “(2) AFFILIATION.—Regional centers shall be  
8 affiliated with any US-based nonprofit institution or  
9 organization, or group thereof, that applies and is  
10 awarded financial assistance under this section. Indi-  
11 vidual awards shall be decided on the basis of merit.

12 “(3) OBJECTIVE.—The objective of the regional  
13 centers is to enhance and promote the adoption of  
14 health information technology through—

15 “(A) assistance with the implementation,  
16 effective use, upgrading, and ongoing mainte-  
17 nance of health information technology, includ-  
18 ing electronic health records, to healthcare pro-  
19 viders nationwide;

20 “(B) broad participation of individuals  
21 from industry, universities, and State govern-  
22 ments;

23 “(C) active dissemination of best practices  
24 and research on the implementation, effective  
25 use, upgrading, and ongoing maintenance of



1 health information technology, including elec-  
2 tronic health records, to health care providers  
3 in order to improve the quality of healthcare  
4 and protect the privacy and security of health  
5 information;

6 “(D) participation, to the extent prac-  
7 ticable, in health information exchanges; and

8 “(E) utilization, when appropriate, of the  
9 expertise and capability that exists in federal  
10 agencies other than the Department; and

11 “(F) integration of health information  
12 technology, including electronic health records,  
13 into the initial and ongoing training of health  
14 professionals and others in the healthcare in-  
15 dustry that would be instrumental to improving  
16 the quality of healthcare through the smooth  
17 and accurate electronic use and exchange of  
18 health information.

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

23 “(A) Public or not-for-profit hospitals or  
24 critical access hospitals.

1           “(B) Federally qualified health centers (as  
2           defined in section 1861(aa)(4) of the Social Se-  
3           curity Act).

4           “(C) Entities that are located in rural and  
5           other areas that serve uninsured, underinsured,  
6           and medically underserved individuals (regard-  
7           less of whether such area is urban or rural).

8           “(D) Individual or small group practices  
9           (or a consortium thereof) that are primarily fo-  
10          cused on primary care.

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

22          “(6) NOTICE OF PROGRAM DESCRIPTION AND  
23          AVAILABILITY OF FUNDS.—The Secretary shall pub-  
24          lish in the Federal Register, not later than 90 days  
25          after the date of the enactment of this Act, a draft

1 description of the program for establishing regional  
2 centers under this subsection. Such description shall  
3 include the following:

4 “(A) A detailed explanation of the program  
5 and the programs goals.

6 “(B) Procedures to be followed by the ap-  
7 plicants.

8 “(C) Criteria for determining qualified ap-  
9 plicants.

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

12 “(7) APPLICATION REVIEW.—The Secretary  
13 shall subject each application under this subsection  
14 to merit review. In making a decision whether to ap-  
15 prove such application and provide financial support,  
16 the Secretary shall consider at a minimum the mer-  
17 its of the application, including those portions of the  
18 application regarding—

19 “(A) the ability of the applicant to provide  
20 assistance under this subsection and utilization  
21 of health information technology appropriate to  
22 the needs of particular categories of health care  
23 providers;

24 “(B) the types of service to be provided to  
25 health care providers;

1           “(C) geographical diversity and extent of  
2           service area; and

3           “(D) the percentage of funding and  
4           amount of in-kind commitment from other  
5           sources.

6           “(8) BIENNIAL EVALUATION.—Each regional  
7           center which receives financial assistance under this  
8           subsection shall be evaluated biennially by an evalua-  
9           tion panel appointed by the Secretary. Each evalua-  
10          tion panel shall be composed of private experts, none  
11          of whom shall be connected with the center involved,  
12          and of Federal officials. Each evaluation panel shall  
13          measure the involved center’s performance against  
14          the objective specified in paragraph (3). The Sec-  
15          retary shall not continue to provide funding to a re-  
16          gional center unless its evaluation is overall positive.

17          “(9) CONTINUING SUPPORT.—After the second  
18          year of assistance under this subsection a regional  
19          center may receive additional support under this  
20          subsection if it has received positive evaluations and  
21          a finding by the Secretary that continuation of Fed-  
22          eral funding to the center was in the best interest  
23          of provision of health information technology exten-  
24          sion services.

1 **“SEC. 3013. STATE GRANTS TO PROMOTE HEALTH INFOR-**  
2 **MATION TECHNOLOGY.**

3 “(a) IN GENERAL.—The Secretary, acting through  
4 the National Coordinator, shall establish a program in ac-  
5 cordance with this section to facilitate and expand the  
6 electronic movement and use of health information among  
7 organizations according to nationally recognized stand-  
8 ards.

9 “(b) PLANNING GRANTS.—The Secretary may award  
10 a grant to a State or qualified State-designated entity (as  
11 described in subsection (d)) that submits an application  
12 to the Secretary at such time, in such manner, and con-  
13 taining such information as the Secretary may specify, for  
14 the purpose of planning activities described in subsection  
15 (b).

16 “(c) IMPLEMENTATION GRANTS.—The Secretary  
17 may award a grant to a State or qualified State designated  
18 entity that—

19 “(1) has submitted, and the Secretary has ap-  
20 proved, a plan described in subsection (c) (regardless  
21 of whether such plan was prepared using amounts  
22 awarded under paragraph (1)); and

23 “(2) submits an application at such time, in  
24 such manner, and containing such information as  
25 the Secretary may specify.

1       “(d) USE OF FUNDS.—Amounts received under a  
2 grant under subsection (a)(3) shall be used to conduct ac-  
3 tivities to facilitate and expand the electronic movement  
4 and use of health information among organizations ac-  
5 cording to nationally recognized standards through activi-  
6 ties that include—

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

10          “(2) identifying State or local resources avail-  
11 able towards a nationwide effort to promote health  
12 information technology;

13          “(3) complementing other Federal grants, pro-  
14 grams, and efforts towards the promotion of health  
15 information technology;

16          “(4) providing technical assistance for the de-  
17 velopment and dissemination of solutions to barriers  
18 to the exchange of electronic health information;

19          “(5) promoting effective strategies to adopt and  
20 utilize health information technology in medically  
21 underserved communities;

22          “(6) assisting patients in utilizing health infor-  
23 mation technology;

24          “(7) encouraging clinicians to work with Health  
25 Information Technology Regional Extension Centers

1 as described in section 3012, to the extent they are  
2 available and valuable;

3 “(8) supporting public health agencies’ author-  
4 ized use of and access to electronic health informa-  
5 tion;

6 “(9) promoting the use of electronic health  
7 records for quality improvement including through  
8 quality measures reporting; and

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

11 “(e) PLAN.—

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

20 “(2) REQUIRED ELEMENTS.—A plan described  
21 in paragraph (1) shall—

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

23 “(B) be consistent with the strategic plan  
24 developed by the National Coordinator, (and, as  
25 available) under section 3001;

1           “(C) include a description of the ways the  
2           State or qualified State-designated entity will  
3           carry out the activities described in subsection  
4           (b); and

5           “(D) contain such elements as the Sec-  
6           retary may require.

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

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

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

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

19           “(4) adopt nondiscrimination and conflict of in-  
20           terest policies that demonstrate a commitment to  
21           open, fair, and nondiscriminatory participation by  
22           stakeholders; and

23           “(5) conform to such other requirements as the  
24           Secretary may establish.



1       “(g) REQUIRED CONSULTATION.—In carrying out  
2 activities described in subsections (a)(2) and (a)(3), a  
3 State or qualified State-designated entity shall consult  
4 with and consider the recommendations of—

5           “(1) health care providers (including providers  
6 that provide services to low income and underserved  
7 populations);

8           “(2) health plans;

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

11          “(4) health information technology vendors;

12          “(5) health care purchasers and employers;

13          “(6) public health agencies;

14          “(7) health professions schools, universities and  
15 colleges;

16          “(8) clinical researchers;

17          “(9) other users of health information tech-  
18 nology such as the support and clerical staff of pro-  
19 viders and others involved in the care and care co-  
20 ordination of patients; and

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

23       “(h) CONTINUOUS IMPROVEMENT.—The Secretary  
24 shall annually evaluate the activities conducted under this  
25 section and shall, in awarding grants under this section,

1 implement the lessons learned from such evaluation in a  
2 manner so that awards made subsequent to each such  
3 evaluation are made in a manner that, in the determina-  
4 tion of the Secretary, will lead towards the greatest im-  
5 provement in quality of care, decrease in costs, and the  
6 most effective authorized and secure electronic exchange  
7 of health information.

8 “(i) REQUIRED MATCH.—

9 “(1) IN GENERAL.—For a fiscal year (begin-  
10 ning with fiscal year 2011), the Secretary may not  
11 make a grant under subsection (a) to a State unless  
12 the State agrees to make available non-Federal con-  
13 tributions (which may include in-kind contributions)  
14 toward the costs of a grant awarded under sub-  
15 section (a)(3) in an amount equal to—

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

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

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

1           “(2) AUTHORITY TO REQUIRE STATE MATCH  
2           FOR FISCAL YEARS BEFORE FISCAL YEAR 2011.—For  
3           any fiscal year during the grant program under this  
4           section before fiscal year 2011, the Secretary may  
5           determine the extent to which there shall be required  
6           a non-Federal contribution from a State receiving a  
7           grant under this section.

8           **“SEC. 3014. COMPETITIVE GRANTS TO STATES AND INDIAN**  
9                           **TRIBES FOR THE DEVELOPMENT OF LOAN**  
10                          **PROGRAMS TO FACILITATE THE WIDE-**  
11                          **SPREAD ADOPTION OF CERTIFIED EHR TECH-**  
12                          **NOLOGY.**

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

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

21                   “(1) submits to the National Coordinator an  
22                   application at such time, in such manner, and con-  
23                   taining such information as the National Coordi-  
24                   nator may require;

1           “(2) submits to the National Coordinator a  
2           strategic plan in accordance with subsection (d) and  
3           provides to the National Coordinator assurances that  
4           the entity will update such plan annually in accord-  
5           ance with such subsection;

6           “(3) provides assurances to the National Coor-  
7           dinator that the entity will establish a Loan Fund  
8           in accordance with subsection (c);

9           “(4) provides assurances to the National Coor-  
10          dinator that the entity will not provide a loan from  
11          the Loan Fund to a health care provider unless the  
12          provider agrees to—

13                 “(A) submit reports on quality measures  
14                 adopted by the Federal Government (by not  
15                 later than 90 days after the date on which such  
16                 measures are adopted), to—

17                         “(i) the Director of the Centers for  
18                         Medicare & Medicaid Services (or his or  
19                         her designee), in the case of an entity par-  
20                         ticipating in the Medicare program under  
21                         title XVIII of the Social Security Act or  
22                         the Medicaid program under title XIX of  
23                         such Act; or

24                         “(ii) the Secretary in the case of other  
25                         entities;

1           “(B) demonstrate to the satisfaction of the  
2           Secretary (through criteria established by the  
3           Secretary) that any certified EHR technology  
4           purchased, improved, or otherwise financially  
5           supported under a loan under this section is  
6           used to exchange health information in a man-  
7           ner that, in accordance with law and standards  
8           (as adopted under section 3005) applicable to  
9           the exchange of information, improves the qual-  
10          ity of health care, such as promoting care co-  
11          ordination; and

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

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

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

24           “(5) agrees to provide matching funds in ac-  
25          cordance with subsection (i).

1           “(c) ESTABLISHMENT OF FUND.—For purposes of  
2 subsection (b)(3), an eligible entity shall establish a cer-  
3 tified EHR technology loan fund (referred to in this sub-  
4 section as a ‘Loan Fund’) and comply with the other re-  
5 quirements contained in this section. A grant to an eligible  
6 entity under this section shall be deposited in the Loan  
7 Fund established by the eligible entity. No funds author-  
8 ized by other provisions of this title to be used for other  
9 purposes specified in this title shall be deposited in any  
10 Loan Fund.

11           “(d) STRATEGIC PLAN.—

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

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

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

21                         “(B) A description of the criteria and  
22 methods established for the distribution of  
23 funds from the Loan Fund during the year.

1           “(C) A description of the financial status  
2           of the Loan Fund as of the date of submission  
3           of the plan.

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

6           “(e) USE OF FUNDS.—Amounts deposited in a Loan  
7 Fund, including loan repayments and interest earned on  
8 such amounts, shall be used only for awarding loans or  
9 loan guarantees, making reimbursements described in sub-  
10 section (g)(4)(A), or as a source of reserve and security  
11 for leveraged loans, the proceeds of which are deposited  
12 in the Loan Fund established under subsection (a). Loans  
13 under this section may be used by a health care provider  
14 to—

15           “(1) facilitate the purchase of certified EHR  
16 technology;

17           “(2) enhance the utilization of certified EHR  
18 technology;

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

21           “(4) improve the secure electronic exchange of  
22 health information.

23           “(f) TYPES OF ASSISTANCE.—Except as otherwise  
24 limited by applicable State law, amounts deposited into a

1 Loan Fund under this subsection may only be used for  
2 the following:

3           “(1) To award loans that comply with the fol-  
4           lowing:

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

7                   “(B) The principal and interest payments  
8                   on each loan shall commence not later than 1  
9                   year after the date the loan was awarded, and  
10                  each loan shall be fully amortized not later than  
11                  10 years after the date of the loan.

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

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

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



1           “(4) To earn interest on the amounts deposited  
2 into the Loan Fund.

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

5           “(g) ADMINISTRATION OF LOAN FUNDS.—

6           “(1) COMBINED FINANCIAL ADMINISTRATION.—

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

15           “(2) COST OF ADMINISTERING FUND.—Each el-  
16 igible entity may annually use not to exceed 4 per-  
17 cent of the funds provided to the entity under a  
18 grant under this subsection to pay the reasonable  
19 costs of the administration of the programs under  
20 this section, including the recovery of reasonable  
21 costs expended to establish a Loan Fund which are  
22 incurred after the date of the enactment of this title.

23           “(3) GUIDANCE AND REGULATIONS.—The Na-  
24 tional Coordinator shall publish guidance and pro-

1 mulgate regulations as may be necessary to carry  
2 out the provisions of this section, including—

3 “(A) provisions to ensure that each eligible  
4 entity commits and expends funds allotted to  
5 the entity under this subsection as efficiently as  
6 possible in accordance with this title and appli-  
7 cable State laws; and

8 “(B) guidance to prevent waste, fraud, and  
9 abuse.

10 “(4) PRIVATE SECTOR CONTRIBUTIONS.—

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

22 “(B) AVAILABILITY OF INFORMATION.—  
23 An eligible entity shall make publicly available  
24 the identity of, and amount contributed by, any  
25 private sector entity under subparagraph (A)

1           and may issue letters of commendation or make  
2           other awards (that have no financial value) to  
3           any such entity.

4           “(h) MATCHING REQUIREMENTS.—

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

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

21          “(i) EFFECTIVE DATE.—The Secretary may not  
22          make an award under this section prior to January 1,  
23          2010.

1 **“SEC. 3015. DEMONSTRATION PROGRAM TO INTEGRATE IN-**  
2 **FORMATION TECHNOLOGY INTO CLINICAL**  
3 **EDUCATION.**

4 “(a) IN GENERAL.—The Secretary may award grants  
5 under this section to carry out demonstration projects to  
6 develop academic curricula integrating certified EHR  
7 technology in the clinical education of health professionals.  
8 Such awards shall be made on a competitive basis and  
9 pursuant to peer review.

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

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

15 “(2) submit to the Secretary a strategic plan  
16 for integrating certified EHR technology in the clin-  
17 ical education of health professionals to reduce med-  
18 ical errors and enhance health care quality;

19 “(3) be—

20 “(A) a school of medicine, osteopathic  
21 medicine, dentistry, or pharmacy, a graduate  
22 program in behavioral or mental health, or any  
23 other graduate health professions school;

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

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

3           “(D) an institution with a graduate med-  
4 ical education program in medicine, osteopathic  
5 medicine, dentistry, pharmacy, nursing, or phy-  
6 sician assistance studies.

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

15           “(5) provide matching funds in accordance with  
16 subsection (d).

17           “(c) USE OF FUNDS.—

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

20           “(A) use grant funds in collaboration with  
21 2 or more disciplines; and

22           “(B) use grant funds to integrate certified  
23 EHR technology into community-based clinical  
24 education.

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

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

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

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

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

3           “(2) contains recommendations for Congress  
4           based on the evaluation conducted under subsection  
5           (e).

6   **“SEC. 3016. INFORMATION TECHNOLOGY PROFESSIONALS**  
7                           **ON HEALTH CARE.**

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

18          “(b) ACTIVITIES.—Activities for which assistance  
19          may be provided under subsection (a) may include the fol-  
20          lowing:

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

23                 “(2) Recruiting and retaining students to the  
24                 program involved.

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

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

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

10           “(1) Existing education and training programs.

11           “(2) Programs designed to be completed in less  
12           than six months.

13           “(d) FINANCIAL SUPPORT.—The Secretary may not  
14           provide more than 50 percent of the costs of any activity  
15           for which assistance is provided under subsection (a), ex-  
16           cept in an instance of national economic conditions which  
17           would render the cost-share requirement under this sub-  
18           section detrimental to the program and upon notification  
19           to Congress as to the justification to waive the cost-share  
20           requirement.

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

22           “(a) REPORTS.—The Secretary may require that an  
23           entity receiving assistance under this title shall submit to  
24           the Secretary, not later than the date that is 1 year after



1 the date of receipt of such assistance, a report that in-  
2 cludes—

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

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

8           “(b) REQUIREMENT TO IMPROVE QUALITY OF CARE  
9           AND DECREASE IN COSTS.—The National Coordinator  
10          shall annually evaluate the activities conducted under this  
11          title and shall, in awarding grants, implement the lessons  
12          learned from such evaluation in a manner so that awards  
13          made subsequent to each such evaluation are made in a  
14          manner that, in the determination of the National Coordi-  
15          nator, will result in the greatest improvement in the qual-  
16          ity and efficiency of health care.

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

18          “For the purposes of carrying out this subtitle, there  
19          is authorized to be appropriated such sums as may be nec-  
20          essary for each of the fiscal years 2009 through 2013.  
21          Amounts so appropriated shall remain available until ex-  
22          pended.”.

1                   **PART II—MEDICARE PROGRAM**

2   **SEC. 4311. INCENTIVES FOR ELIGIBLE PROFESSIONALS.**

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

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

8           “(1) INCENTIVE PAYMENTS.—

9                   “(A) IN GENERAL.—Subject to the suc-  
10   ceeding subparagraphs of this paragraph, with  
11   respect to covered professional services fur-  
12   nished by an eligible professional during a pay-  
13   ment year (as defined in subparagraph (E)), if  
14   the eligible professional is a meaningful EHR  
15   user (as determined under paragraph (2)) for  
16   the reporting period with respect to such year,  
17   in addition to the amount otherwise paid under  
18   this part, there also shall be paid to the eligible  
19   professional (or to an employer or facility in the  
20   cases described in clause (A) of section  
21   1842(b)(6)), from the Federal Supplementary  
22   Medical Insurance Trust Fund established  
23   under section 1841 an amount equal to 75 per-  
24   cent of the Secretary’s estimate (based on  
25   claims submitted not later than 2 months after  
26   the end of the payment year) of the allowed

1 charges under this part for all such covered  
2 professional services furnished by the eligible  
3 professional during such year.

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 clause  
14 (iii), the applicable amount specified in this  
15 subparagraph for an eligible professional is  
16 as follows:

17 “(I) For the first payment year  
18 for such professional, \$15,000.

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

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

23 “(IV) For the fourth payment  
24 year for such professional, \$4,000.

1                   “(V) For the fifth payment year  
2                   for such professional, \$2,000.

3                   “(VI) For any succeeding pay-  
4                   ment year for such professional, \$0.

5                   “(iii) PHASE DOWN FOR ELIGIBLE  
6                   PROFESSIONALS FIRST ADOPTING EHR  
7                   AFTER 2013.—If the first payment year for  
8                   an eligible professional is after 2013, then  
9                   the amount specified in this subparagraph  
10                  for a payment year for such professional is  
11                  the same as the amount specified in clause  
12                  (ii) for such payment year for an eligible  
13                  professional whose first payment year is  
14                  2013. If the first payment year for an eli-  
15                  gible professional is after 2015 then the  
16                  applicable amount specified in this sub-  
17                  paragraph for such professional for such  
18                  year and any subsequent year shall be \$0.

19                  “(C) NON-APPLICATION TO HOSPITAL-  
20                  BASED ELIGIBLE PROFESSIONALS.—

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

1                   “(ii) HOSPITAL-BASED ELIGIBLE PRO-  
2                   FESSIONAL.—For purposes of clause (i),  
3                   the term ‘hospital-based eligible profes-  
4                   sional’ means, with respect to covered pro-  
5                   fessional services furnished by an eligible  
6                   professional during the reporting period for  
7                   a payment year, an eligible professional,  
8                   such as a pathologist, anesthesiologist, or  
9                   emergency physician, who furnishes sub-  
10                  stantially all of such services in a hospital  
11                  setting (whether inpatient or outpatient)  
12                  and through the use of the facilities and  
13                  equipment, including computer equipment,  
14                  of the hospital.

15                  “(D) PAYMENT.—

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

21                   “(ii) COORDINATION OF APPLICATION  
22                   OF LIMITATION FOR PROFESSIONALS IN  
23                   DIFFERENT PRACTICES.—In the case of an  
24                   eligible professional furnishing covered pro-  
25                   fessional services in more than one practice

1 (as specified by the Secretary), the Sec-  
2 retary shall establish rules to coordinate  
3 the incentive payments, including the ap-  
4 plication of the limitation on amounts of  
5 such incentive payments under this para-  
6 graph, among such practices.

7 “(iii) COORDINATION WITH MED-  
8 ICAID.—The Secretary shall seek, to the  
9 maximum extent practicable, to avoid du-  
10 plicative requirements from Federal and  
11 State Governments to demonstrate mean-  
12 ingful use of certified EHR technology  
13 under this title and title XIX. In doing so,  
14 the Secretary may deem satisfaction of  
15 State requirements for such meaningful  
16 use for a payment year under title XIX to  
17 be sufficient to qualify as meaningful use  
18 under this subsection and subsection (a)(7)  
19 and vice versa. The Secretary may also ad-  
20 just the reporting periods under such title  
21 and such subsections in order to carry out  
22 this clause.

23 “(E) PAYMENT YEAR DEFINED.—

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

4           “(ii) FIRST, SECOND, ETC. PAYMENT  
5           YEAR.—The term ‘first payment year’  
6           means, with respect to covered professional  
7           services furnished by an eligible profes-  
8           sional, the first year for which an incentive  
9           payment is made for such services under  
10          this subsection. The terms ‘second pay-  
11          ment year’, ‘third payment year’, ‘fourth  
12          payment year’, and ‘fifth payment year’  
13          mean, with respect to covered professional  
14          services furnished by such eligible profes-  
15          sional, each successive year immediately  
16          following the first payment year for such  
17          professional.

18          “(2) MEANINGFUL EHR USER.—

19               “(A) IN GENERAL.—For purposes of para-  
20               graph (1), an eligible professional shall be  
21               treated as a meaningful EHR user for a report-  
22               ing period for a payment year (or, for purposes  
23               of subsection (a)(7), for a reporting period  
24               under such subsection for a year) if each of the  
25               following requirements is met:

1                   “(i) MEANINGFUL USE OF CERTIFIED  
2                   EHR TECHNOLOGY.—The eligible profes-  
3                   sional demonstrates to the satisfaction of  
4                   the Secretary, in accordance with subpara-  
5                   graph (C)(i), that during such period the  
6                   professional is using certified EHR tech-  
7                   nology in a meaningful manner, which  
8                   shall include the use of electronic pre-  
9                   scribing as determined to be appropriate  
10                  by the Secretary.

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

22                  “(iii) REPORTING ON MEASURES  
23                  USING EHR.—Subject to subparagraph  
24                  (B)(ii) and using such certified EHR tech-  
25                  nology, the eligible professional submits in-



1           formation for such period, in a form and  
2           manner specified by the Secretary, on such  
3           clinical quality measures and such other  
4           measures as selected by the Secretary  
5           under subparagraph (B)(i).

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

16                   “(B) REPORTING ON MEASURES.—

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

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

1                   “(II) Prior to any measure being  
2                   selected under this subparagraph, the  
3                   Secretary shall publish in the Federal  
4                   Register such measure and provide for  
5                   a period of public comment on such  
6                   measure.

7                   “(III) The Secretary shall, to the  
8                   extent practicable, select the same  
9                   measures for purposes of subpara-  
10                  graph (A)(iii) as are selected for qual-  
11                  ity purposes under title XIX.

12                  “(ii) LIMITATION.—The Secretary  
13                  may not require the electronic reporting of  
14                  information on clinical quality measures  
15                  under subparagraph (A)(iii) unless the  
16                  Secretary has the capacity to accept the in-  
17                  formation electronically, which may be on  
18                  a pilot basis.

19                  “(iii) COORDINATION OF REPORTING  
20                  OF INFORMATION.—In selecting such  
21                  measures, and in establishing the form and  
22                  manner for reporting measures under sub-  
23                  paragraph (A)(iii), the Secretary shall seek  
24                  to avoid redundant or duplicative reporting

1 otherwise required, including reporting  
2 under subsection (k)(2)(C).

3 “(C) DEMONSTRATION OF MEANINGFUL  
4 USE OF CERTIFIED EHR TECHNOLOGY AND IN-  
5 FORMATION EXCHANGE.—

6 “(i) IN GENERAL.—A professional  
7 may satisfy the demonstration requirement  
8 of clauses (i) and (ii) of subparagraph (A)  
9 through means specified by the Secretary,  
10 which may include—

11 “(I) an attestation;

12 “(II) the submission of claims  
13 with appropriate coding (such as a  
14 code indicating that a patient encoun-  
15 ter was documented using certified  
16 EHR technology);

17 “(III) a survey response;

18 “(IV) reporting under subpara-  
19 graph (A)(iii); and

20 “(V) other means specified by the  
21 Secretary.

22 “(ii) USE OF PART D DATA.—Not-  
23 withstanding sections 1860D–15(d)(2)(B)  
24 and 1860D–15(f)(2), the Secretary may  
25 use data regarding drug claims submitted

1           for purposes of section 1860D–15 that are  
2           necessary for purposes of subparagraph  
3           (A).

4           “(3) APPLICATION.—

5           “(A) PHYSICIAN REPORTING SYSTEM  
6           RULES.—Paragraphs (5), (6), and (8) of sub-  
7           section (k) shall apply for purposes of this sub-  
8           section in the same manner as they apply for  
9           purposes of such subsection.

10          “(B) COORDINATION WITH OTHER PAY-  
11          MENTS.—The provisions of this subsection shall  
12          not be taken into account in applying the provi-  
13          sions of subsection (m) of this section and of  
14          section 1833(m) and any payment under such  
15          provisions shall not be taken into account in  
16          computing allowable charges under this sub-  
17          section.

18          “(C) LIMITATIONS ON REVIEW.—There  
19          shall be no administrative or judicial review  
20          under section 1869, section 1878, or otherwise  
21          of the determination of any incentive payment  
22          under this subsection and the payment adjust-  
23          ment under subsection (a)(7), including the de-  
24          termination of a meaningful EHR user under  
25          paragraph (2), a limitation under paragraph

1 (1)(B), and the exception under subsection  
2 (a)(7)(B).

3 “(D) POSTING ON WEBSITE.—The Sec-  
4 retary shall post on the Internet website of the  
5 Centers for Medicare & Medicaid Services, in an  
6 easily understandable format, a list of the  
7 names, business addresses, and business phone  
8 numbers of the eligible professionals who are  
9 meaningful EHR users and, as determined ap-  
10 propriate by the Secretary, of group practices  
11 receiving incentive payments under paragraph  
12 (1).

13 “(4) CERTIFIED EHR TECHNOLOGY DEFINED.—  
14 For purposes of this section, the term ‘certified  
15 EHR technology’ means a qualified electronic health  
16 record (as defined in 3000(13) of the Public Health  
17 Service Act) that is certified pursuant to section  
18 3001(c)(5) of such Act as meeting standards adopt-  
19 ed under section 3004 of such Act that are applica-  
20 ble to the type of record involved (as determined by  
21 the Secretary, such as an ambulatory electronic  
22 health record for office-based physicians or an inpa-  
23 tient hospital electronic health record for hospitals).

24 “(5) DEFINITIONS.—For purposes of this sub-  
25 section:

1           “(A) COVERED PROFESSIONAL SERV-  
2           ICES.—The term ‘covered professional services’  
3           has the meaning given such term in subsection  
4           (k)(3).

5           “(B) ELIGIBLE PROFESSIONAL.—The term  
6           ‘eligible professional’ means a physician, as de-  
7           fined in section 1861(r).

8           “(C) REPORTING PERIOD.—The term ‘re-  
9           porting period’ means any period (or periods),  
10          with respect to a payment year, as specified by  
11          the Secretary.”.

12          (b) INCENTIVE PAYMENT ADJUSTMENT.—Section  
13          1848(a) of the Social Security Act (42 U.S.C. 1395w-  
14          4(a)) is amended by adding at the end the following new  
15          paragraph:

16                 “(7) INCENTIVES FOR MEANINGFUL USE OF  
17                 CERTIFIED EHR TECHNOLOGY.—

18                         “(A) ADJUSTMENT.—

19                                 “(i) IN GENERAL.—Subject to sub-  
20                                 paragraphs (B) and (D), with respect to  
21                                 covered professional services furnished by  
22                                 an eligible professional during 2016 or any  
23                                 subsequent payment year, if the eligible  
24                                 professional is not a meaningful EHR user  
25                                 (as determined under subsection (o)(2)) for

1 a reporting period for the year, the fee  
2 schedule amount for such services fur-  
3 nished by such professional during the year  
4 (including the fee schedule amount for pur-  
5 poses of determining a payment based on  
6 such amount) shall be equal to the applica-  
7 ble percent of the fee schedule amount that  
8 would otherwise apply to such services  
9 under this subsection (determined after ap-  
10 plication of paragraph (3) but without re-  
11 gard to this paragraph).

12 “(ii) APPLICABLE PERCENT.—Subject  
13 to clause (iii), for purposes of clause (i),  
14 the term ‘applicable percent’ means—

15 “(I) for 2016, 99 percent;

16 “(II) for 2017, 98 percent; and

17 “(III) for 2018 and each subse-  
18 quent year, 97 percent.

19 “(iii) AUTHORITY TO DECREASE AP-  
20 PPLICABLE PERCENTAGE FOR 2019 AND  
21 SUBSEQUENT YEARS.—For 2019 and each  
22 subsequent year, if the Secretary finds that  
23 the proportion of eligible professionals who  
24 are meaningful EHR users (as determined  
25 under subsection (o)(2)) is less than 75

1           percent, the applicable percent shall be de-  
2           creased by 1 percentage point from the ap-  
3           plicable percent in the preceding year, but  
4           in no case shall the applicable percent be  
5           less than 95 percent.

6           “(B) SIGNIFICANT HARDSHIP EXCEP-  
7           TION.—The Secretary may, on a case-by-case  
8           basis, exempt an eligible professional from the  
9           application of the payment adjustment under  
10          subparagraph (A) if the Secretary determines,  
11          subject to annual renewal, that compliance with  
12          the requirement for being a meaningful EHR  
13          user would result in a significant hardship, such  
14          as in the case of an eligible professional who  
15          practices in a rural area without sufficient  
16          Internet access. In no case may an eligible pro-  
17          fessional be granted an exemption under this  
18          subparagraph for more than 5 years.

19          “(C) APPLICATION OF PHYSICIAN REPORT-  
20          ING SYSTEM RULES.—Paragraphs (5), (6), and  
21          (8) of subsection (k) shall apply for purposes of  
22          this paragraph in the same manner as they  
23          apply for purposes of such subsection.

24          “(D) NON-APPLICATION TO HOSPITAL-  
25          BASED ELIGIBLE PROFESSIONALS.—No pay-



1           ment adjustment may be made under subpara-  
2           graph (A) in the case of hospital-based eligible  
3           professionals (as defined in subsection  
4           (o)(1)(C)(ii)).

5           “(E) DEFINITIONS.—For purposes of this  
6           paragraph:

7                   “(i) COVERED PROFESSIONAL SERV-  
8                   ICES.—The term ‘covered professional  
9                   services’ has the meaning given such term  
10                  in subsection (k)(3).

11                  “(ii) ELIGIBLE PROFESSIONAL.—The  
12                  term ‘eligible professional’ means a physi-  
13                  cian, as defined in section 1861(r).

14                  “(iii) REPORTING PERIOD.—The term  
15                  ‘reporting period’ means, with respect to a  
16                  year, a period specified by the Secretary.”.

17           (c) APPLICATION TO CERTAIN HMO-AFFILIATED  
18           ELIGIBLE PROFESSIONALS.—Section 1853 of the Social  
19           Security Act (42 U.S.C. 1395w–23) is amended by adding  
20           at the end the following new subsection:

21                   “(l) APPLICATION OF ELIGIBLE PROFESSIONAL IN-  
22                   CENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOP-  
23                   TION AND MEANINGFUL USE OF CERTIFIED EHR TECH-  
24                   NOLOGY.—

1           “(1) IN GENERAL.—Subject to paragraphs (3)  
2           and (4), in the case of a qualifying MA organization,  
3           the provisions of sections 1848(o) and 1848(a)(7)  
4           shall apply with respect to eligible professionals de-  
5           scribed in paragraph (2) of the organization who the  
6           organization attests under paragraph (6) to be  
7           meaningful EHR users in a similar manner as they  
8           apply to eligible professionals under such sections.  
9           Incentive payments under paragraph (3) shall be  
10          made to and payment adjustments under paragraph  
11          (4) shall apply to such qualifying organizations.

12           “(2) ELIGIBLE PROFESSIONAL DESCRIBED.—  
13          With respect to a qualifying MA organization, an eli-  
14          gible professional described in this paragraph is an  
15          eligible professional (as defined for purposes of sec-  
16          tion 1848(o)) who—

17                   “(A)(i) is employed by the organization, or

18                   “(ii)(I) is employed by, or is a partner of,  
19                   an entity that through contract with the organi-  
20                   zation furnishes at least 80 percent of the enti-  
21                   ty’s patient care services to enrollees of such or-  
22                   ganization; and

23                   “(II) furnishes at least 75 percent of the  
24                   professional services of the eligible professional  
25                   to enrollees of the organization; and

1           “(B) furnishes, on average, at least 20  
2           hours per week of patient care services.

3           “(3) ELIGIBLE PROFESSIONAL INCENTIVE PAY-  
4           MENTS.—

5           “(A) IN GENERAL.—In applying section  
6           1848(o) under paragraph (1), instead of the ad-  
7           ditional payment amount under section  
8           1848(o)(1)(A) and subject to subparagraph  
9           (B), the Secretary may substitute an amount  
10          determined by the Secretary to the extent fea-  
11          sible and practical to be similar to the esti-  
12          mated amount in the aggregate that would be  
13          payable if payment for services furnished by  
14          such professionals was payable under part B in-  
15          stead of this part.

16          “(B) AVOIDING DUPLICATION OF PAY-  
17          MENTS.—

18          “(i) IN GENERAL.—If an individual is  
19          an eligible professional described in para-  
20          graph (2) and also is eligible for the max-  
21          imum incentive payment under section  
22          1848(o)(1)(A) for the same payment pe-  
23          riod, the payment incentive shall be made  
24          only under such section and not under this  
25          subsection.

1           “(ii) METHODS.—In the case of an in-  
2           dividual who is an eligible professional de-  
3           scribed in paragraph (2) and also is eligi-  
4           ble for an incentive payment under section  
5           1848(o)(1)(A) but is not described in  
6           clause (i) for the same payment period, the  
7           Secretary shall develop a process—

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 are meaningful EHR users with respect  
10 to a year, the Secretary shall apply the payment  
11 adjustment under this paragraph based on the  
12 proportion of such eligible professionals that are  
13 not meaningful EHR users for such year.

14 “(5) QUALIFYING MA ORGANIZATION DE-  
15 FINED.—In this subsection and subsection (m), the  
16 term ‘qualifying MA organization’ means a Medicare  
17 Advantage organization that is organized as a health  
18 maintenance organization (as defined in section  
19 2791(b)(3) of the Public Health Service Act).

20 “(6) MEANINGFUL EHR USER ATTESTATION.—  
21 For purposes of this subsection and subsection (m),  
22 a qualifying MA organization shall submit an attes-  
23 tation, in a form and manner specified by the Sec-  
24 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)(3)) 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       (d) CONFORMING AMENDMENTS.—Section 1853 of  
14       the Social Security Act (42 U.S.C. 1395w–23) is amend-  
15       ed—

16              (1) in subsection (a)(1)(A), by striking “and  
17              (i)” and inserting “(i), and (l)”;

18              (2) in subsection (c)—

19                      (A) in paragraph (1)(D)(i), by striking  
20                      “section 1886(h)” and inserting “sections  
21                      1848(o) and 1886(h)”;

22                      (B) in paragraph (6)(A), by inserting after  
23                      “under part B,” the following: “excluding ex-  
24                      penditures attributable to subsections (a)(7)  
25                      and (o) of section 1848,”; and

1           (3) in subsection (f), by inserting “and for pay-  
2           ments under subsection (l)” after “with the organi-  
3           zation”.

4           (e) CONFORMING AMENDMENTS TO E-PRE-  
5           SCRIBING.—

6           (1) Section 1848(a)(5)(A) of the Social Security  
7           Act (42 U.S.C. 1395w–4(a)(5)(A)) is amended—

8                   (A) in clause (i), by striking “or any sub-  
9                   sequent year” and inserting “, 2013, 2014, or  
10                  2015”; and

11                  (B) in clause (ii), by striking “and each  
12                  subsequent year” and inserting “and 2015”.

13           (2) Section 1848(m)(2) of such Act (42 U.S.C.  
14           1395w–4(m)(2)) is amended—

15                   (A) in subparagraph (A), by striking “For  
16                   2009” and inserting “Subject to subparagraph  
17                   (D), for 2009”; and

18                   (B) by adding at the end the following new  
19                   subparagraph:

20                           “(D) LIMITATION WITH RESPECT TO EHR  
21                           INCENTIVE PAYMENTS.—The provisions of this  
22                           paragraph shall not apply to an eligible profes-  
23                           sional (or, in the case of a group practice under  
24                           paragraph (3)(C), to the group practice) if, for  
25                           the reporting period the eligible professional (or



1 group practice) receives an incentive payment  
2 under subsection (o)(1)(A) with respect to a  
3 certified EHR technology (as defined in sub-  
4 section (o)(6)(A)) that has the capability of  
5 electronic prescribing.”.

6 **SEC. 4312. INCENTIVES FOR HOSPITALS.**

7 (a) INCENTIVE PAYMENT.—Section 1886 of the So-  
8 cial Security Act (42 U.S.C. 1395ww) is amended by add-  
9 ing at the end the following new subsection:

10 “(n) INCENTIVES FOR ADOPTION AND MEANINGFUL  
11 USE OF CERTIFIED EHR TECHNOLOGY.—

12 “(1) IN GENERAL.—Subject to the succeeding  
13 provisions of this subsection, with respect to inpa-  
14 tient hospital services furnished by an eligible hos-  
15 pital during a payment year (as defined in para-  
16 graph (2)(G)), if the eligible hospital is a meaningful  
17 EHR user (as determined under paragraph (3)) for  
18 the reporting period with respect to such year, in ad-  
19 dition to the amount otherwise paid under this sec-  
20 tion, there also shall be paid to the eligible hospital,  
21 from the Federal Hospital Insurance Trust Fund es-  
22 tablished under section 1817, an amount equal to  
23 the applicable amount specified in paragraph (2)(A)  
24 for the hospital for such payment year.

25 “(2) PAYMENT AMOUNT.—

1           “(A) IN GENERAL.—Subject to the suc-  
2           ceeding subparagraphs of this paragraph, the  
3           applicable amount specified in this subpara-  
4           graph for an eligible hospital for a payment  
5           year is equal to the product of the following:

6                   “(i) INITIAL AMOUNT.—The sum of—

7                           “(I) the base amount specified in  
8                           subparagraph (B); plus

9                           “(II) the discharge related  
10                          amount specified in subparagraph (C)  
11                          for a 12-month period selected by the  
12                          Secretary with respect to such pay-  
13                          ment year.

14                   “(ii) MEDICARE SHARE.—The Medi-  
15                   care share as specified in subparagraph  
16                   (D) for the hospital for a period selected  
17                   by the Secretary with respect to such pay-  
18                   ment year.

19                   “(iii) TRANSITION FACTOR.—The  
20                   transition factor specified in subparagraph  
21                   (E) for the hospital for the payment year.

22                   “(B) BASE AMOUNT.—The base amount  
23                   specified in this subparagraph is \$2,000,000.

24                   “(C) DISCHARGE RELATED AMOUNT.—The  
25                   discharge related amount specified in this sub-

1 paragraph for a 12-month period selected by  
2 the Secretary shall be determined as the sum of  
3 the amount, based upon total discharges (re-  
4 gardless of any source of payment) for the pe-  
5 riod, for each discharge up to the 23,000th dis-  
6 charge as follows:

7 “(i) For the 1,150th through the  
8 9,200nd discharge, \$200.

9 “(ii) For the 9,201st through the  
10 13,800th discharge, 50 percent of the  
11 amount specified in clause (i).

12 “(iii) For the 13,801st through the  
13 23,000th discharge, 30 percent of the  
14 amount specified in clause (i).

15 “(D) MEDICARE SHARE.—The Medicare  
16 share specified under this subparagraph for a  
17 hospital for a period selected by the Secretary  
18 for a payment year is equal to the fraction—

19 “(i) the numerator of which is the  
20 sum (for such period and with respect to  
21 the hospital) of—

22 “(I) the number of inpatient-bed-  
23 days (as established by the Secretary)  
24 which are attributable to individuals

1 with respect to whom payment may be  
2 made under part A; and

3 “(II) the number of inpatient-  
4 bed-days (as so established) which are  
5 attributable to individuals who are en-  
6 rolled with a Medicare Advantage or-  
7 ganization under part C; and

8 “(ii) the denominator of which is the  
9 product of—

10 “(I) the total number of inpa-  
11 tient-bed-days with respect to the hos-  
12 pital during such period; and

13 “(II) the total amount of the hos-  
14 pital’s charges during such period, not  
15 including any charges that are attrib-  
16 utable to charity care (as such term is  
17 used for purposes of hospital cost re-  
18 porting under this title), divided by  
19 the total amount of the hospital’s  
20 charges during such period.

21 Insofar as the Secretary determines that data  
22 are not available on charity care necessary to  
23 calculate the portion of the formula specified in  
24 clause (ii)(II), the Secretary shall use data on  
25 uncompensated care and may adjust such data

1 so as to be an appropriate proxy for charity  
2 care including a downward adjustment to elimi-  
3 nate bad debt data from uncompensated care  
4 data. In the absence of the data necessary, with  
5 respect to a hospital, for the Secretary to com-  
6 pute the amount described in clause (ii)(II), the  
7 amount under such clause shall be deemed to  
8 be 1. In the absence of data, with respect to a  
9 hospital, necessary to compute the amount de-  
10 scribed in clause (i)(II), the amount under such  
11 clause shall be deemed to be 0.

12 “(E) TRANSITION FACTOR SPECIFIED.—

13 “(i) IN GENERAL.—Subject to clause  
14 (ii), the transition factor specified in this  
15 subparagraph for an eligible hospital for a  
16 payment year is as follows:

17 “(I) For the first payment year  
18 for such hospital, 1.

19 “(II) For the second payment  
20 year for such hospital,  $\frac{3}{4}$ .

21 “(III) For the third payment  
22 year for such hospital,  $\frac{1}{2}$ .

23 “(IV) For the fourth payment  
24 year for such hospital,  $\frac{1}{4}$ .

1                   “(V) For any succeeding pay-  
2                   ment year for such hospital, 0.

3                   “(ii) PHASE DOWN FOR ELIGIBLE  
4                   HOSPITALS FIRST ADOPTING EHR AFTER  
5                   2013.—If the first payment year for an eli-  
6                   gible hospital is after 2013, then the tran-  
7                   sition factor specified in this subparagraph  
8                   for a payment year for such hospital is the  
9                   same as the amount specified in clause (i)  
10                  for such payment year for an eligible hos-  
11                  pital for which the first payment year is  
12                  2013. If the first payment year for an eli-  
13                  gible hospital is after 2015 then the transi-  
14                  tion factor specified in this subparagraph  
15                  for such hospital and for such year and  
16                  any subsequent year shall be 0.

17                  “(F) FORM OF PAYMENT.—The payment  
18                  under this subsection for a payment year may  
19                  be in the form of a single consolidated payment  
20                  or in the form of such periodic installments as  
21                  the Secretary may specify.

22                  “(G) PAYMENT YEAR DEFINED.—

23                  “(i) IN GENERAL.—For purposes of  
24                  this subsection, the term ‘payment year’

1 means a fiscal year beginning with fiscal  
2 year 2011.

3 “(ii) FIRST, SECOND, ETC. PAYMENT  
4 YEAR.—The term ‘first payment year’  
5 means, with respect to inpatient hospital  
6 services furnished by an eligible hospital,  
7 the first fiscal year for which an incentive  
8 payment is made for such services under  
9 this subsection. The terms ‘second pay-  
10 ment year’, ‘third payment year’, and  
11 ‘fourth payment year’ mean, with respect  
12 to an eligible hospital, each successive year  
13 immediately following the first payment  
14 year for that hospital.

15 “(3) MEANINGFUL EHR USER.—

16 “(A) IN GENERAL.—For purposes of para-  
17 graph (1), an eligible hospital shall be treated  
18 as a meaningful EHR user for a reporting pe-  
19 riod for a payment year (or, for purposes of  
20 subsection (b)(3)(B)(ix), for a reporting period  
21 under such subsection for a fiscal year) if the  
22 following requirements are met:

23 “(i) MEANINGFUL USE OF CERTIFIED  
24 EHR TECHNOLOGY.—The eligible hospital  
25 demonstrates to the satisfaction of the Sec-

1           retary, in accordance with subparagraph  
2           (C)(i), that during such period the hospital  
3           is using certified EHR technology in a  
4           meaningful manner.

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

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



1           The Secretary shall seek to improve the use of  
2           electronic health records and health care quality  
3           over time by requiring more stringent measures  
4           of meaningful use selected under this para-  
5           graph.

6           “(B) REPORTING ON MEASURES.—

7                   “(i) SELECTION.—The Secretary may  
8                   select measures for purposes of subpara-  
9                   graph (A)(iii) but only consistent with the  
10                  following:

11                           “(I) The Secretary shall provide  
12                           preference to clinical quality measures  
13                           that have been selected for purposes  
14                           of applying subsection (b)(3)(B)(viii)  
15                           or that have been endorsed by the en-  
16                           tity with a contract with the Secretary  
17                           under section 1890(a).

18                           “(II) Prior to any measure (other  
19                           than a clinical quality measure that  
20                           has been selected for purposes of ap-  
21                           plying subsection (b)(3)(B)(viii))  
22                           being selected under this subpara-  
23                           graph, the Secretary shall publish in  
24                           the Federal Register such measure

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

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

10                   “(iii) COORDINATION OF REPORTING  
11                   OF INFORMATION.—In selecting such  
12                   measures, and in establishing the form and  
13                   manner for reporting measures under sub-  
14                   paragraph (A)(iii), the Secretary shall seek  
15                   to avoid redundant or duplicative reporting  
16                   with reporting otherwise required, includ-  
17                   ing reporting under subsection  
18                   (b)(3)(B)(viii).

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

22                   “(i) IN GENERAL.—A hospital may  
23                   satisfy the demonstration requirement of  
24                   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 inpatient care  
7 was documented using certified EHR  
8 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 “(4) APPLICATION.—

22 “(A) LIMITATIONS ON REVIEW.—There  
23 shall be no administrative or judicial review  
24 under section 1869, section 1878, or otherwise  
25 of the determination of any incentive payment

1 under this subsection and the payment adjust-  
2 ment under subsection (b)(3)(B)(ix), including  
3 the determination of a meaningful EHR user  
4 under paragraph (3), determination of meas-  
5 ures applicable to services furnished by eligible  
6 hospitals under this subsection, and the excep-  
7 tion under subsection (b)(3)(B)(ix)(II).

8 “(B) POSTING ON WEBSITE.—The Sec-  
9 retary shall post on the Internet website of the  
10 Centers for Medicare & Medicaid Services, in an  
11 easily understandable format, a list of the  
12 names of the eligible hospitals that are mean-  
13 ingful EHR users under this subsection or sub-  
14 section (b)(3)(B)(ix) and other relevant data as  
15 determined appropriate by the Secretary. The  
16 Secretary shall ensure that a hospital has the  
17 opportunity to review the other relevant data  
18 that are to be made public with respect to the  
19 hospital prior to such data being made public.

20 “(5) CERTIFIED EHR TECHNOLOGY DEFINED.—  
21 The term ‘certified EHR technology’ has the mean-  
22 ing given such term in section 1848(o)(4).

23 “(6) DEFINITIONS.—For purposes of this sub-  
24 section:

1           “(A) ELIGIBLE HOSPITAL.—The term ‘eli-  
2           gible hospital’ means a subsection (d) hospital.

3           “(B) REPORTING PERIOD.—The term ‘re-  
4           porting period’ means any period (or periods),  
5           with respect to a payment year, as specified by  
6           the Secretary.”.

7           (b) INCENTIVE MARKET BASKET ADJUSTMENT.—  
8           Section 1886(b)(3)(B) of the Social Security Act (42  
9           U.S.C. 1395ww(b)(3)(B)) is amended—

10           (1) in clause (viii)(I), by inserting “(or, begin-  
11           ning with fiscal year 2016, by one-quarter)” after  
12           “2.0 percentage points”; and

13           (2) by adding at the end the following new  
14           clause:

15           “(ix)(I) For purposes of clause (i) for fiscal year  
16           2016 and each subsequent fiscal year, in the case of an  
17           eligible hospital (as defined in subsection (n)(6)(A)) that  
18           is not a meaningful EHR user (as defined in subsection  
19           (n)(3)) for the reporting period for such fiscal year, three-  
20           quarters of the applicable percentage increase otherwise  
21           applicable under clause (i) for such fiscal year shall be  
22           reduced by  $33\frac{1}{3}$  percent for fiscal year 2016,  $66\frac{2}{3}$  per-  
23           cent for fiscal year 2017, and 100 percent for fiscal year  
24           2018 and each subsequent fiscal year. Such reduction  
25           shall apply only with respect to the fiscal year involved

1 and the Secretary shall not take into account such reduc-  
2 tion in computing the applicable percentage increase under  
3 clause (i) for a subsequent fiscal year.

4 “(II) The Secretary may, on a case-by-case basis, ex-  
5 empt a subsection (d) hospital from the application of sub-  
6 clause (I) with respect to a fiscal year if the Secretary  
7 determines, subject to annual renewal, that requiring such  
8 hospital to be a meaningful EHR user during such fiscal  
9 year would result in a significant hardship, such as in the  
10 case of a hospital in a rural area without sufficient Inter-  
11 net access. In no case may a hospital be granted an ex-  
12 emption under this subclause for more than 5 years.

13 “(III) For fiscal year 2016 and each subsequent fis-  
14 cal year, a State in which hospitals are paid for services  
15 under section 1814(b)(3) shall adjust the payments to  
16 each subsection (d) hospital in the State that is not a  
17 meaningful EHR user (as defined in subsection (n)(3))  
18 in a manner that is designed to result in an aggregate  
19 reduction in payments to hospitals in the State that is  
20 equivalent to the aggregate reduction that would have oc-  
21 curred if payments had been reduced to each subsection  
22 (d) hospital in the State in a manner comparable to the  
23 reduction under the previous provisions of this clause. The  
24 State shall report to the Secretary the methodology it will

1 use to make the payment adjustment under the previous  
2 sentence.

3 “(IV) For purposes of this clause, the term ‘reporting  
4 period’ means, with respect to a fiscal year, any period  
5 (or periods), with respect to the fiscal year, as specified  
6 by the Secretary.”.

7 (c) APPLICATION TO CERTAIN HMO-AFFILIATED  
8 ELIGIBLE HOSPITALS.—Section 1853 of the Social Secu-  
9 rity Act (42 U.S.C. 1395w-23), as amended by section  
10 \_\_311(c), is further amended by adding at the end the  
11 following new subsection:

12 “(m) APPLICATION OF ELIGIBLE HOSPITAL INCEN-  
13 TIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION  
14 AND MEANINGFUL USE OF CERTIFIED EHR TECH-  
15 NOLOGY.—

16 “(1) APPLICATION.—Subject to paragraphs (3)  
17 and (4), in the case of a qualifying MA organization,  
18 the provisions of sections 1886(n) and  
19 1886(b)(3)(B)(ix) shall apply with respect to eligible  
20 hospitals described in paragraph (2) of the organiza-  
21 tion which the organization attests under subsection  
22 (l)(6) to be meaningful EHR users in a similar man-  
23 ner as they apply to eligible hospitals under such  
24 sections. Incentive payments under paragraph (3)  
25 shall be made to and payment adjustments under

1 paragraph (4) shall apply to such qualifying organi-  
2 zations.

3 “(2) ELIGIBLE HOSPITAL DESCRIBED.—With  
4 respect to a qualifying MA organization, an eligible  
5 hospital described in this paragraph is an eligible  
6 hospital that is under common corporate governance  
7 with such organization and serves individuals en-  
8 rolled under an MA plan offered by such organiza-  
9 tion.

10 “(3) ELIGIBLE HOSPITAL INCENTIVE PAY-  
11 MENTS.—

12 “(A) IN GENERAL.—In applying section  
13 1886(n)(2) under paragraph (1), instead of the  
14 additional payment amount under section  
15 1886(n)(2), there shall be substituted an  
16 amount determined by the Secretary to be simi-  
17 lar to the estimated amount in the aggregate  
18 that would be payable if payment for services  
19 furnished by such hospitals was payable under  
20 part A instead of this part. In implementing the  
21 previous sentence, the Secretary—

22 “(i) shall, insofar as data to deter-  
23 mine the discharge related amount under  
24 section 1886(n)(2)(C) for an eligible hos-  
25 pital are not available to the Secretary, use



1 such alternative data and methodology to  
2 estimate such discharge related amount as  
3 the Secretary determines appropriate; and  
4 “(ii) shall, insofar as data to deter-  
5 mine the medicare share described in sec-  
6 tion 1886(n)(2)(D) for an eligible hospital  
7 are not available to the Secretary, use such  
8 alternative data and methodology to esti-  
9 mate such share, which data and method-  
10 ology may include use of the inpatient bed  
11 days (or discharges) with respect to an eli-  
12 gible hospital during the appropriate pe-  
13 riod which are attributable to both individ-  
14 uals for whom payment may be made  
15 under part A or individuals enrolled in an  
16 MA plan under a Medicare Advantage or-  
17 ganization under this part as a proportion  
18 of the total number of patient-bed-days (or  
19 discharges) with respect to such hospital  
20 during such period.

21 “(B) AVOIDING DUPLICATION OF PAY-  
22 MENTS.—

23 “(i) IN GENERAL.—In the case of a  
24 hospital that for a payment year is an eli-  
25 gible hospital described in paragraph (2),

1 is an eligible hospital under section  
2 1886(n), and for which at least one-third  
3 of their discharges (or bed-days) of Medi-  
4 care patients for the year are covered  
5 under part A, payment for the payment  
6 year shall be made only under section  
7 1886(n) and not under this subsection.

8 “(ii) METHODS.—In the case of a  
9 hospital that is an eligible hospital de-  
10 scribed in paragraph (2) and also is eligi-  
11 ble for an incentive payment under section  
12 1886(n) but is not described in clause (i)  
13 for the same payment period, the Secretary  
14 shall develop a process—

15 “(I) to ensure that duplicate pay-  
16 ments are not made with respect to  
17 an eligible hospital both under this  
18 subsection and under section 1886(n);  
19 and

20 “(II) to collect data from Medi-  
21 care Advantage organizations to en-  
22 sure against such duplicate payments.

23 “(4) PAYMENT ADJUSTMENT.—

24 “(A) Subject to paragraph (3), in the case  
25 of a qualifying MA organization (as defined in

1 section 1853(l)(5)), if, according to the attesta-  
2 tion of the organization submitted under sub-  
3 section (l)(6) for an applicable period, one or  
4 more eligible hospitals (as defined in section  
5 1886(n)(6)(A)) that are under common cor-  
6 porate governance with such organization and  
7 that serve individuals enrolled under a plan of-  
8 fered by such organization are not meaningful  
9 EHR users (as defined in section 1886(n)(3))  
10 with respect to a period, the payment amount  
11 payable under this section for such organization  
12 for such period shall be the percent specified in  
13 subparagraph (B) for such period of the pay-  
14 ment amount otherwise provided under this sec-  
15 tion for such period.

16 “(B) SPECIFIED PERCENT.—The percent  
17 specified under this subparagraph for a year is  
18 100 percent minus a number of percentage  
19 points equal to the product of—

20 “(i) the number of the percentage  
21 point reduction effected under section  
22 1886(b)(3)(B)(ix)(I) for the period; and

23 “(ii) the Medicare hospital expendi-  
24 ture proportion specified in subparagraph  
25 (C) for the year.

1           “(C) MEDICARE HOSPITAL EXPENDITURE  
2           PROPORTION.—The Medicare hospital expendi-  
3           ture proportion under this subparagraph for a  
4           year is the Secretary’s estimate of the propor-  
5           tion, of the expenditures under parts A and B  
6           that are not attributable to this part, that are  
7           attributable to expenditures for inpatient hos-  
8           pital services.

9           “(D) APPLICATION OF PAYMENT ADJUST-  
10          MENT.—In the case that a qualifying MA orga-  
11          nization attests that not all eligible hospitals  
12          are meaningful EHR users with respect to an  
13          applicable period, the Secretary shall apply the  
14          payment adjustment under this paragraph  
15          based on a methodology specified by the Sec-  
16          retary, taking into account the proportion of  
17          such eligible hospitals, or discharges from such  
18          hospitals, that are not meaningful EHR users  
19          for such period.”.

20          (d) CONFORMING AMENDMENTS.—

21                 (1) Section 1814(b) of the Social Security Act  
22                 (42 U.S.C. 1395f(b)) is amended—

23                         (A) in paragraph (3), in the matter pre-  
24                         ceding subparagraph (A), by inserting “, sub-

1           ject to section 1886(d)(3)(B)(ix)(III),” after  
2           “then”; and

3           (B) by adding at the end the following:  
4           “For purposes of applying paragraph (3), there  
5           shall be taken into account incentive payments,  
6           and payment adjustments under subsection  
7           (b)(3)(B)(ix) or (n) of section 1886.”.

8           (2) Section 1851(i)(1) of the Social Security  
9           Act (42 U.S.C. 1395w–21(i)(1)) is amended by  
10          striking “and 1886(h)(3)(D)” and inserting  
11          “1886(h)(3)(D), and 1853(m)”.

12          (3) Section 1853 of the Social Security Act (42  
13          U.S.C. 1395w–23), as amended by section  
14          4311(d)(1), is amended—

15               (A) in subsection (c)—

16                   (i) in paragraph (1)(D)(i), by striking  
17                   “1848(o)” and inserting “, 1848(o), and  
18                   1886(n)”; and

19                   (ii) in paragraph (6)(A), by inserting  
20                   “and subsections (b)(3)(B)(ix) and (n) of  
21                   section 1886” after “section 1848”; and

22               (B) in subsection (f), by inserting “and  
23               subsection (m)” after “under subsection (l)”.

1 **SEC. 4313. TREATMENT OF PAYMENTS AND SAVINGS; IM-**  
2 **PLEMENTATION FUNDING.**

3 (a) PREMIUM HOLD HARMLESS.—

4 (1) IN GENERAL.—Section 1839(a)(1) of the  
5 Social Security Act (42 U.S.C. 1395r(a)(1)) is  
6 amended by adding at the end the following: “In ap-  
7 plying this paragraph there shall not be taken into  
8 account additional payments under section 1848(o)  
9 and section 1853(l)(3) and the Government con-  
10 tribution under section 1844(a)(3).”.

11 (2) PAYMENT.—Section 1844(a) of such Act  
12 (42 U.S.C. 1395w(a)) is amended—

13 (A) in paragraph (2), by striking the pe-  
14 riod at the end and inserting “; plus”; and

15 (B) by adding at the end the following new  
16 paragraph:

17 “(3) a Government contribution equal to the  
18 amount of payment incentives payable under sec-  
19 tions 1848(o) and 1853(l)(3).”.

20 (b) MEDICARE IMPROVEMENT FUND.—Section 1898  
21 of the Social Security Act (42 U.S.C. 1395iii), as added  
22 by section 7002(a) of the Supplemental Appropriations  
23 Act, 2008 (Public Law 110–252) and as amended by sec-  
24 tion 188(a)(2) of the Medicare Improvements for Patients  
25 and Providers Act of 2008 (Public Law 110–275; 122

1 Stat. 2589) and by section 6 of the QI Program Supple-  
2 mental Funding Act of 2008, is amended—

3 (1) in subsection (a)—

4 (A) by inserting “medicare” before “fee-  
5 for-service”; and

6 (B) by inserting before the period at the  
7 end the following: “including, but not limited  
8 to, an increase in the conversion factor under  
9 section 1848(d) to address, in whole or in part,  
10 any projected shortfall in the conversion factor  
11 for 2014 relative to the conversion factor for  
12 2008 and adjustments to payments for items  
13 and services furnished by providers of services  
14 and suppliers under such original medicare fee-  
15 for-service program”; and

16 (2) in subsection (b)—

17 (A) in paragraph (1), by striking “during  
18 fiscal year 2014,” and all that follows and in-  
19 serting the following: “during—

20 “(A) fiscal year 2014, \$22,290,000,000;  
21 and

22 “(B) fiscal year 2020 and each subsequent  
23 fiscal year, the Secretary’s estimate, as of July  
24 1 of the fiscal year, of the aggregate reduction  
25 in expenditures under this title during the pre-

1           ceding fiscal year directly resulting from the re-  
2           duction in payment amounts under sections  
3           1848(a)(7), 1853(l)(4), 1853(m)(4), and  
4           1886(b)(3)(B)(ix).”; and

5           (B) by adding at the end the following new  
6           paragraph:

7           “(4) NO EFFECT ON PAYMENTS IN SUBSE-  
8           QUENT YEARS.—In the case that expenditures from  
9           the Fund are applied to, or otherwise affect, a pay-  
10          ment rate for an item or service under this title for  
11          a year, the payment rate for such item or service  
12          shall be computed for a subsequent year as if such  
13          application or effect had never occurred.”.

14          (c) IMPLEMENTATION FUNDING.—In addition to  
15          funds otherwise available, out of any funds in the Treas-  
16          ury not otherwise appropriated, there are appropriated to  
17          the Secretary of Health and Human Services for the Cen-  
18          ter for Medicare & Medicaid Services Program Manage-  
19          ment Account, \$60,000,000 for each of fiscal years 2009  
20          through 2015 and \$30,000,000 for each succeeding fiscal  
21          year through fiscal year 2019, which shall be available for  
22          purposes of carrying out the provisions of (and amend-  
23          ments made by) this part. Amounts appropriated under  
24          this subsection for a fiscal year shall be available until ex-  
25          pended.



1 **SEC. 4314. STUDY ON APPLICATION OF HIT PAYMENT IN-**  
2 **CENTIVES FOR PROVIDERS NOT RECEIVING**  
3 **OTHER INCENTIVE PAYMENTS.**

4 (a) STUDY.—

5 (1) IN GENERAL.—The Secretary of Health and  
6 Human Services shall conduct a study to determine  
7 the extent to which and manner in which payment  
8 incentives (such as under title XVIII or XIX of the  
9 Social Security Act) and other funding for purposes  
10 of implementing and using qualified health informa-  
11 tion technology should be made available to health  
12 care providers who are receiving minimal or no pay-  
13 ment incentives or other funding under this Act,  
14 under title XVIII or XIX of the Social Security Act,  
15 or otherwise, for such purposes.

16 (2) DETAILS OF STUDY.—Such study shall in-  
17 clude an examination of—

18 (A) the adoption rates of qualified health  
19 information technology by such health care pro-  
20 viders;

21 (B) the clinical utility of such technology  
22 by such health care providers;

23 (C) whether the services furnished by such  
24 health care providers are appropriate for or  
25 would benefit from the use of such technology;

1 (D) the extent to which such health care  
2 providers work in settings that might otherwise  
3 receive an incentive payment or other funding  
4 under this Act, title XVIII or XIX of the Social  
5 Security Act, or otherwise;

6 (E) the potential costs and the potential  
7 benefits of making payment incentives and  
8 other funding available to such health care pro-  
9 viders; and

10 (F) any other issues the Secretary deems  
11 to be appropriate.

12 (b) REPORT.—Not later than June 30, 2010, the  
13 Secretary shall submit to Congress a report on the find-  
14 ings and conclusions of the study conducted under sub-  
15 section (a).

### 16 **PART III—MEDICAID FUNDING**

#### 17 **SEC. 4321. MEDICAID PROVIDER HIT ADOPTION AND OPER-** 18 **ATION PAYMENTS; IMPLEMENTATION FUND-** 19 **ING.**

20 (a) IN GENERAL.—Section 1903 of the Social Secu-  
21 rity Act (42 U.S.C. 1396b) is amended—

22 (1) in subsection (a)(3)—

23 (A) by striking “and” at the end of sub-  
24 paragraph (D);

1 (B) by striking “plus” at the end of sub-  
2 paragraph (E) and inserting “and”; and

3 (C) by adding at the end the following new  
4 subparagraph:

5 “(F)(i) 100 percent of so much of the  
6 sums expended during such quarter as are at-  
7 tributable to payments for certified EHR tech-  
8 nology (and support services including mainte-  
9 nance and training that is for, or is necessary  
10 for the adoption and operation of, such tech-  
11 nology) by Medicaid providers described in sub-  
12 section (t)(1); and

13 “(ii) 90 percent of so much of the sums ex-  
14 pended during such quarter as are attributable  
15 to payments for reasonable administrative ex-  
16 penses related to the administration of pay-  
17 ments described in clause (i) if the State meets  
18 the condition described in subsection (t)(9);  
19 plus”; and

20 (2) by inserting after subsection (s) the fol-  
21 lowing new subsection:

22 “(t)(1) For purposes of subsection (a)(3)(F), the pay-  
23 ments for certified EHR technology (and support services  
24 including maintenance that is for, or is necessary for the  
25 operation of, such technology) by Medicaid providers de-

1 scribed in this paragraph are payments made by the State  
2 in accordance with this subsection of 85 percent of the  
3 net allowable costs of Medicaid providers (as defined in  
4 paragraph (2)) for such technology (and support services).

5 “(2) In this subsection and subsection (a)(3)(F), the  
6 term ‘Medicaid provider’ means—

7 “(A) an eligible professional (as defined in  
8 paragraph (3)(B)) who is not hospital-based and has  
9 at least 30 percent of the professional’s patient vol-  
10 ume (as estimated in accordance with standards es-  
11 tablished by the Secretary) attributable to individ-  
12 uals who are receiving medical assistance under this  
13 title; and

14 “(B)(i) a children’s hospital, (ii) an acute-care  
15 hospital that is not described in clause (i) and that  
16 has at least 10 percent of the hospital’s patient vol-  
17 ume (as estimated in accordance with standards es-  
18 tablished by the Secretary) attributable to individ-  
19 uals who are receiving medical assistance under this  
20 title, or (iii) a Federally-qualified health center or  
21 rural health clinic that has at least 30 percent of the  
22 center’s or clinic’s patient volume (as estimated in  
23 accordance with standards established by the Sec-  
24 retary) attributable to individuals who are receiving  
25 medical assistance under this title.

1 A professional shall not qualify as a Medicaid provider  
2 under this subsection unless the professional has waived,  
3 in a manner specified by the Secretary, any right to pay-  
4 ment under section 1848(o) with respect to the adoption  
5 or support of certified EHR technology by the profes-  
6 sional. In applying clauses (ii) and (iii) of subparagraph  
7 (B), the standards established by the Secretary for patient  
8 volume shall include individuals enrolled in a Medicaid  
9 managed care plan (under section 1903(m) or section  
10 1932).

11 “(3) In this subsection and subsection (a)(3)(F):

12 “(A) The term ‘certified EHR technology’  
13 means a qualified electronic health record (as de-  
14 fined in 3000(13) of the Public Health Service Act)  
15 that is certified pursuant to section 3001(c)(5) of  
16 such Act as meeting standards adopted under sec-  
17 tion 3004 of such Act that are applicable to the type  
18 of record involved (as determined by the Secretary,  
19 such as an ambulatory electronic health record for  
20 office-based physicians or an inpatient hospital elec-  
21 tronic health record for hospitals).

22 “(B) The term ‘eligible professional’ means a  
23 physician as defined in paragraphs (1) and (2) of  
24 section 1861(r), and includes a nurse mid-wife and  
25 a nurse practitioner.

1           “(C) The term ‘hospital-based’ means, with re-  
2           spect to an eligible professional, a professional (such  
3           as a pathologist, anesthesiologist, or emergency phy-  
4           sician) who furnishes substantially all of the individ-  
5           ual’s professional services in a hospital setting  
6           (whether inpatient or outpatient) and through the  
7           use of the facilities and equipment, including com-  
8           puter equipment, of the hospital.

9           “(4)(A) The term ‘allowable costs’ means, with re-  
10          spect to certified EHR technology of a Medicaid provider,  
11          costs of such technology (and support services including  
12          maintenance and training that is for, or is necessary for  
13          the adoption and operation of, such technology) as deter-  
14          mined by the Secretary to be reasonable.

15          “(B) The term ‘net allowable costs’ means allowable  
16          costs reduced by any payment that is made to the provider  
17          involved from any other source that is directly attributable  
18          to payment for certified EHR technology or services de-  
19          scribed in subparagraph (A).

20          “(C) In no case shall—

21                 “(i) the aggregate allowable costs under this  
22                 subsection (covering one or more years) with respect  
23                 to a Medicaid provider described in paragraph  
24                 (2)(A) for purchase and initial implementation of  
25                 certified EHR technology (and services described in

1       subparagraph (A)) exceed \$25,000 or include costs  
2       over a period of longer than 5 years;

3           “(ii) for costs not described in clause (i) relat-  
4       ing to the operation, maintenance, or use of certified  
5       EHR technology, the annual allowable costs under  
6       this subsection with respect to such a Medicaid pro-  
7       vider for costs not described in clause (i) for any  
8       year exceed \$10,000;

9           “(iii) payment described in paragraph (1) for  
10       costs described in clause (ii) be made with respect  
11       to such a Medicaid provider over a period of more  
12       than 5 years;

13           “(iv) the aggregate allowable costs under this  
14       subsection with respect to such a Medicaid provider  
15       for all costs exceed \$75,000; or

16           “(v) the allowable costs, whether for purchase  
17       and initial implementation, maintenance, or other-  
18       wise, for a Medicaid provider described in paragraph  
19       (2)(B) exceed such aggregate or annual limitation as  
20       the Secretary shall establish, based on an amount  
21       determined by the Secretary as being adequate to  
22       adopt and maintain certified EHR technology, con-  
23       sistent with paragraph (6).

1       “(5) Payments described in paragraph (1) are not in  
2 accordance with this subsection unless the following re-  
3 quirements are met:

4           “(A) The State provides assurances satisfactory  
5 to the Secretary that amounts received under sub-  
6 section (a)(3)(F) with respect to costs of a Medicaid  
7 provider are paid directly to such provider without  
8 any deduction or rebate.

9           “(B) Such Medicaid provider is responsible for  
10 payment of the costs described in such paragraph  
11 that are not provided under this title.

12           “(C) With respect to payments to such Med-  
13 icaid provider for costs other than costs related to  
14 the initial adoption of certified EHR technology, the  
15 Medicaid provider demonstrates meaningful use of  
16 certified EHR technology through a means that is  
17 approved by the State and acceptable to the Sec-  
18 retary, and that may be based upon the methodolo-  
19 gies applied under section 1848(o) or 1886(n).

20           “(D) To the extent specified by the Secretary,  
21 the certified EHR technology is compatible with  
22 State or Federal administrative management sys-  
23 tems.



1           “(6)(A) In no case shall the payments described in  
2 paragraph (1), with respect to a hospital, exceed in the  
3 aggregate the product of—

4           “(i) the overall hospital HIT amount for the  
5 hospital computed under subparagraph (B); and

6           “(ii) the Medicaid share for such hospital com-  
7 puted under subparagraph (C).

8           “(B) For purposes of this paragraph, the overall hos-  
9 pital HIT amount, with respect to a hospital, is the sum  
10 of the applicable amounts specified in section  
11 1886(n)(2)(A) for such hospital for the first 4 payment  
12 years (as estimated by the Secretary) determined as if the  
13 Medicare share specified in clause (ii) of such section were  
14 1. The Secretary shall publish in the Federal Register the  
15 overall hospital HIT amount for each hospital eligible for  
16 payments under this subsection. In computing amounts  
17 under clause (ii) for payment years after the first payment  
18 year, the Secretary shall assume that in subsequent pay-  
19 ment years discharges increase at an annual rate of 2 per-  
20 cent per year.

21           “(C) The Medicaid share computed under this sub-  
22 paragraph, for a hospital for a period specified by the Sec-  
23 retary, shall be calculated in the same manner as the  
24 Medicare share under section 1886(n)(2)(D) for such a  
25 hospital and period, except that there shall be substituted

1 for the numerator under clause (i) of such section the  
2 amount that is equal to the number of inpatient-bed-days  
3 (as established by the Secretary) which are attributable  
4 to individuals who are receiving medical assistance under  
5 this title and who are not described in section  
6 1886(n)(2)(D)(i). In computing inpatient-bed-days under  
7 the previous sentence, the Secretary shall take into ac-  
8 count inpatient-bed-days attributable to inpatient-bed-  
9 days that are paid for individuals enrolled in a Medicaid  
10 managed care plan (under section 1903(m) or section  
11 1932).

12 “(7) With respect to health care providers other than  
13 hospitals, the Secretary shall ensure coordination of the  
14 different programs for payment of such health care pro-  
15 viders for adoption or use of health information technology  
16 (including certified EHR technology), as well as payments  
17 for such health care providers provided under this title or  
18 title XVIII, to assure no duplication of funding.

19 “(8) In carrying out paragraph (5)(C), the State and  
20 Secretary shall seek, to the maximum extent practicable,  
21 to avoid duplicative requirements from Federal and State  
22 Governments to demonstrate meaningful use of certified  
23 EHR technology under this title and title XVIII. In doing  
24 so, the Secretary may deem satisfaction of requirements  
25 for such meaningful use for a payment year under title

1 XVIII to be sufficient to qualify as meaningful use under  
2 this subsection. The Secretary may also specify the report-  
3 ing periods under this subsection in order to carry out this  
4 paragraph.

5 “(9) In order to be provided Federal financial partici-  
6 pation under subsection (a)(3)(F)(ii), a State must dem-  
7 onstrate to the satisfaction of the Secretary, that the  
8 State—

9 “(A) is using the funds provided for the pur-  
10 poses of administering payments under this sub-  
11 section, including tracking of meaningful use by  
12 Medicaid providers;

13 “(B) conducting adequate oversight of the pro-  
14 gram under this subsection, including routine track-  
15 ing of meaningful use attestations and reporting  
16 mechanisms; and

17 “(C) be pursuing initiatives to encourage the  
18 adoption of certified EHR technology to promote  
19 health care quality and the exchange of health care  
20 information under this title, subject to applicable  
21 laws and regulations governing such exchange.

22 “(10) The Secretary shall periodically submit reports  
23 to the Committee on Energy and Commerce of the House  
24 of Representatives and the Committee on Finance of the

1 Senate on status, progress, and oversight of payments  
2 under paragraph (1).”.

3 (b) IMPLEMENTATION FUNDING.—In addition to  
4 funds otherwise available, out of any funds in the Treas-  
5 ury not otherwise appropriated, there are appropriated to  
6 the Secretary of Health and Human Services for the Cen-  
7 ter for Medicare & Medicaid Services Program Manage-  
8 ment Account, \$40,000,000 for each of fiscal years 2009  
9 through 2015 and \$20,000,000 for each succeeding fiscal  
10 year through fiscal year 2019, which shall be available for  
11 purposes of carrying out the provisions of (and the amend-  
12 ments made by) this part. Amounts appropriated under  
13 this subsection for a fiscal year shall be available until ex-  
14 pended.

## 15 **Subtitle D—Privacy**

### 16 **SEC. 4400. DEFINITIONS.**

17 In this subtitle, except as specified otherwise:

18 (1) BREACH.—The term “breach” means the  
19 unauthorized acquisition, access, use, or disclosure  
20 of protected health information which compromises  
21 the security, privacy, or integrity of protected health  
22 information maintained by or on behalf of a person.  
23 Such term does not include any unintentional acqui-  
24 sition, access, use, or disclosure of such information  
25 by an employee or agent of the covered entity or

1 business associate involved if such acquisition, ac-  
2 cess, use, or disclosure, respectively, was made in  
3 good faith and within the course and scope of the  
4 employment or other contractual relationship of such  
5 employee or agent, respectively, with the covered en-  
6 tity or business associate and if such information is  
7 not further acquired, accessed, used, or disclosed by  
8 such employee or agent.

9 (2) BUSINESS ASSOCIATE.—The term “business  
10 associate” has the meaning given such term in sec-  
11 tion 160.103 of title 45, Code of Federal Regula-  
12 tions.

13 (3) COVERED ENTITY.—The term “covered en-  
14 tity” has the meaning given such term in section  
15 160.103 of title 45, Code of Federal Regulations.

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

20 (5) ELECTRONIC HEALTH RECORD.—The term  
21 “electronic health record” means an electronic  
22 record of health-related information on an individual  
23 that is created, gathered, managed, and consulted by  
24 authorized health care clinicians and staff.

1           (6) HEALTH CARE OPERATIONS.—The term  
2           “health care operation” has the meaning given such  
3           term in section 164.501 of title 45, Code of Federal  
4           Regulations.

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

9           (8) HEALTH PLAN.—The term “health plan”  
10          has the meaning given such term in section 1171(5)  
11          of the Social Security Act.

12          (9) NATIONAL COORDINATOR.—The term “Na-  
13          tional Coordinator” means the head of the Office of  
14          the National Coordinator for Health Information  
15          Technology established under section 3001(a) of the  
16          Public Health Service Act, as added by section  
17          4101.

18          (10) PAYMENT.—The term “payment” has the  
19          meaning given such term in section 164.501 of title  
20          45, Code of Federal Regulations.

21          (11) PERSONAL HEALTH RECORD.—The term  
22          “personal health record” means an electronic record  
23          of individually identifiable health information on an  
24          individual that can be drawn from multiple sources

1 and that is managed, shared, and controlled by or  
2 for the individual.

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

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

9 (14) SECURITY.—The term “security” has the  
10 meaning given such term in section 164.304 of title  
11 45, Code of Federal Regulations.

12 (15) STATE.—The term “State” means each of  
13 the several States, the District of Columbia, Puerto  
14 Rico, the Virgin Islands, Guam, American Samoa,  
15 and the Northern Mariana Islands.

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

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

22 (18) VENDOR OF PERSONAL HEALTH  
23 RECORDS.—The term “vendor of personal health  
24 records” means an entity, other than a covered enti-

1 ty (as defined in paragraph (3)), that offers or  
2 maintains a personal health record.

3 **PART I—IMPROVED PRIVACY PROVISIONS AND**  
4 **SECURITY PROVISIONS**

5 **SEC. 4401. APPLICATION OF SECURITY PROVISIONS AND**  
6 **PENALTIES TO BUSINESS ASSOCIATES OF**  
7 **COVERED ENTITIES; ANNUAL GUIDANCE ON**  
8 **SECURITY PROVISIONS.**

9 (a) APPLICATION OF SECURITY PROVISIONS.—Sec-  
10 tions 164.308, 164.310, 164.312, and 164.316 of title 45,  
11 Code of Federal Regulations, shall apply to a business as-  
12 sociate of a covered entity in the same manner that such  
13 sections apply to the covered entity. The additional re-  
14 quirements of this title that relate to security and that  
15 are made applicable with respect to covered entities shall  
16 also be applicable to such a business associate and shall  
17 be incorporated into the business associate agreement be-  
18 tween the business associate and the covered entity.

19 (b) APPLICATION OF CIVIL AND CRIMINAL PEN-  
20 ALTIES.—In the case of a business associate that violates  
21 any security provision specified in subsection (a), sections  
22 1176 and 1177 of the Social Security Act (42 U.S.C.  
23 1320d-5, 1320d-6) shall apply to the business associate  
24 with respect to such violation in the same manner such



1 sections apply to a covered entity that violates such secu-  
2 rity provision.

3 (c) ANNUAL GUIDANCE.—For the first year begin-  
4 ning after the date of the enactment of this Act and annu-  
5 ally thereafter, the Secretary of Health and Human Serv-  
6 ices shall, in consultation with industry stakeholders, an-  
7 nually issue guidance on the most effective and appro-  
8 priate technical safeguards for use in carrying out the sec-  
9 tions referred to in subsection (a) and the security stand-  
10 ards in subpart C of part 164 of title 45, Code of Federal  
11 Regulations, as such provisions are in effect as of the date  
12 before the enactment of this Act.

13 **SEC. 4402. NOTIFICATION IN THE CASE OF BREACH.**

14 (a) IN GENERAL.—A covered entity that accesses,  
15 maintains, retains, modifies, records, stores, destroys, or  
16 otherwise holds, uses, or discloses unsecured protected  
17 health information (as defined in subsection (h)(1)) shall,  
18 in the case of a breach of such information that is discov-  
19 ered by the covered entity, notify each individual whose  
20 unsecured protected health information has been, or is  
21 reasonably believed by the covered entity to have been,  
22 accessed, acquired, or disclosed as a result of such breach.

23 (b) NOTIFICATION OF COVERED ENTITY BY BUSI-  
24 NESS ASSOCIATE.—A business associate of a covered enti-  
25 ty that accesses, maintains, retains, modifies, records,

1 stores, destroys, or otherwise holds, uses, or discloses un-  
2 secured protected health information shall, following the  
3 discovery of a breach of such information, notify the cov-  
4 ered entity of such breach. Such notice shall include the  
5 identification of each individual whose unsecured protected  
6 health information has been, or is reasonably believed by  
7 the business associate to have been, accessed, acquired,  
8 or disclosed during such breach.

9 (c) BREACHES TREATED AS DISCOVERED.—For pur-  
10 poses of this section, a breach shall be treated as discov-  
11 ered by a covered entity or by a business associate as of  
12 the first day on which such breach is known to such entity  
13 or associate, respectively, (including any person, other  
14 than the individual committing the breach, that is an em-  
15 ployee, officer, or other agent of such entity or associate,  
16 respectively) or should reasonably have been known to  
17 such entity or associate (or person) to have occurred.

18 (d) TIMELINESS OF NOTIFICATION.—

19 (1) IN GENERAL.—Subject to subsection (g), all  
20 notifications required under this section shall be  
21 made without unreasonable delay and in no case  
22 later than 60 calendar days after the discovery of a  
23 breach by the covered entity involved (or business  
24 associate involved in the case of a notification re-  
25 quired under subsection (b)).

1           (2) BURDEN OF PROOF.—The covered entity in-  
2           volved (or business associate involved in the case of  
3           a notification required under subsection (b)), shall  
4           have the burden of demonstrating that all notifica-  
5           tions were made as required under this part, includ-  
6           ing evidence demonstrating the necessity of any  
7           delay.

8           (e) METHODS OF NOTICE.—

9           (1) INDIVIDUAL NOTICE.—Notice required  
10          under this section to be provided to an individual,  
11          with respect to a breach, shall be provided promptly  
12          and in the following form:

13                 (A) Written notification by first-class mail  
14                 to the individual (or the next of kin of the indi-  
15                 vidual if the individual is deceased) at the last  
16                 known address of the individual or the next of  
17                 kin, respectively, or, if specified as a preference  
18                 by the individual, by electronic mail. The notifi-  
19                 cation may be provided in one or more mailings  
20                 as information is available.

21                 (B) In the case in which there is insuffi-  
22                 cient, or out-of-date contact information (in-  
23                 cluding a phone number, email address, or any  
24                 other form of appropriate communication) that  
25                 precludes direct written (or, if specified by the

1 individual under subparagraph (A), electronic)  
2 notification to the individual, a substitute form  
3 of notice shall be provided, including, in the  
4 case that there are 10 or more individuals for  
5 which there is insufficient or out-of-date contact  
6 information, a conspicuous posting for a period  
7 determined by the Secretary on the home page  
8 of the Web site of the covered entity involved or  
9 notice in major print or broadcast media, in-  
10 cluding major media in geographic areas where  
11 the individuals affected by the breach likely re-  
12 side. Such a notice in media or web posting will  
13 include a toll-free phone number where an indi-  
14 vidual can learn whether or not the individual's  
15 unsecured protected health information is pos-  
16 sibly included in the breach.

17 (C) In any case deemed by the covered en-  
18 tity involved to require urgency because of pos-  
19 sible imminent misuse of unsecured protected  
20 health information, the covered entity, in addi-  
21 tion to notice provided under subparagraph (A),  
22 may provide information to individuals by tele-  
23 phone or other means, as appropriate.

24 (2) MEDIA NOTICE.—Notice shall be provided  
25 to prominent media outlets serving a State or juris-

1       diction, following the discovery of a breach described  
2       in subsection (a), if the unsecured protected health  
3       information of more than 500 residents of such  
4       State or jurisdiction is, or is reasonably believed to  
5       have been, accessed, acquired, or disclosed during  
6       such breach.

7           (3) NOTICE TO SECRETARY.—Notice shall be  
8       provided to the Secretary by covered entities of un-  
9       secured protected health information that has been  
10      acquired or disclosed in a breach. If the breach was  
11      with respect to 500 or more individuals than such  
12      notice must be provided immediately. If the breach  
13      was with respect to less than 500 individuals, the  
14      covered entity involved may maintain a log of any  
15      such breach occurring and annually submit such a  
16      log to the Secretary documenting such breaches  
17      occurring during the year involved.

18           (4) POSTING ON HHS PUBLIC WEBSITE.—The  
19      Secretary shall make available to the public on the  
20      Internet website of the Department of Health and  
21      Human Services a list that identifies each covered  
22      entity involved in a breach described in subsection  
23      (a) in which the unsecured protected health informa-  
24      tion of more than 500 individuals is acquired or dis-  
25      closed.

1 (f) CONTENT OF NOTIFICATION.—Regardless of the  
2 method by which notice is provided to individuals under  
3 this section, notice of a breach shall include, to the extent  
4 possible, the following:

5 (1) A brief description of what happened, in-  
6 cluding the date of the breach and the date of the  
7 discovery of the breach, if known.

8 (2) A description of the types of unsecured pro-  
9 tected health information that were involved in the  
10 breach (such as full name, Social Security number,  
11 date of birth, home address, account number, or dis-  
12 ability code).

13 (3) The steps individuals should take to protect  
14 themselves from potential harm resulting from the  
15 breach.

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

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

24 (g) DELAY OF NOTIFICATION AUTHORIZED FOR LAW  
25 ENFORCEMENT PURPOSES.—If a law enforcement official

1 determines that a notification, notice, or posting required  
2 under this section would impede a criminal investigation  
3 or cause damage to national security, such notification,  
4 notice, or posting shall be delayed in the same manner  
5 as provided under section 164.528(a)(2) of title 45, Code  
6 of Federal Regulations, in the case of a disclosure covered  
7 under such section.

8 (h) UNSECURED PROTECTED HEALTH INFORMA-  
9 TION.—

10 (1) DEFINITION.—

11 (A) IN GENERAL.—Subject to subpara-  
12 graph (B), for purposes of this section, the  
13 term “unsecured protected health information”  
14 means protected health information that is not  
15 secured through the use of a technology or  
16 methodology specified by the Secretary in the  
17 guidance issued under paragraph (2).

18 (B) EXCEPTION IN CASE TIMELY GUID-  
19 ANCE NOT ISSUED.—In the case that the Sec-  
20 retary does not issue guidance under paragraph  
21 (2) by the date specified in such paragraph, for  
22 purposes of this section, the term “unsecured  
23 protected health information” shall mean pro-  
24 tected health information that is not secured by  
25 a technology standard that renders protected

1 health information unusable, unreadable, or in-  
2 decipherable to unauthorized individuals and is  
3 developed or endorsed by a standards devel-  
4 oping organization that is accredited by the  
5 American National Standards Institute.

6 (2) GUIDANCE.—For purposes of paragraph (1)  
7 and section 407(f)(3), not later than the date that  
8 is 60 days after the date of the enactment of this  
9 Act, the Secretary shall, after consultation with  
10 stakeholders, issue (and annually update) guidance  
11 specifying the technologies and methodologies that  
12 render protected health information unusable,  
13 unreadable, or indecipherable to unauthorized indi-  
14 viduals.

15 (i) REPORT TO CONGRESS ON BREACHES.—

16 (1) IN GENERAL.—Not later than 12 months  
17 after the date of the enactment of this Act and an-  
18 nually thereafter, the Secretary shall prepare and  
19 submit to the Committee on Finance and the Com-  
20 mittee on Health, Education, Labor, and Pensions  
21 of the Senate and the Committee on Ways and  
22 Means and the Committee on Energy and Commerce  
23 of the House of Representatives a report containing  
24 the information described in paragraph (2) regard-





1 rights and responsibilities related to Federal privacy and  
2 security requirements for protected health information.

3 (b) EDUCATION INITIATIVE ON USES OF HEALTH IN-  
4 FORMATION.—Not later than 12 months after the date of  
5 the enactment of this Act, the Office for Civil Rights with-  
6 in the Department of Health and Human Services shall  
7 develop and maintain a multi-faceted national education  
8 initiative to enhance public transparency regarding the  
9 uses of protected health information, including programs  
10 to educate individuals about the potential uses of their  
11 protected health information, the effects of such uses, and  
12 the rights of individuals with respect to such uses. Such  
13 programs shall be conducted in a variety of languages and  
14 present information in a clear and understandable man-  
15 ner.

16 **SEC. 4404. APPLICATION OF PRIVACY PROVISIONS AND**  
17 **PENALTIES TO BUSINESS ASSOCIATES OF**  
18 **COVERED ENTITIES.**

19 (a) APPLICATION OF CONTRACT REQUIREMENTS.—  
20 In the case of a business associate of a covered entity that  
21 obtains or creates protected health information pursuant  
22 to a written contract (or other written arrangement) de-  
23 scribed in section 164.502(e)(2) of title 45, Code of Fed-  
24 eral Regulations, with such covered entity, the business  
25 associate may use and disclose such protected health infor-

1 mation only if such use or disclosure, respectively, is in  
2 compliance with each applicable requirement of section  
3 164.504(e) of such title. The additional requirements of  
4 this subtitle that relate to privacy and that are made ap-  
5 plicable with respect to covered entities shall also be appli-  
6 cable to such a business associate and shall be incor-  
7 porated into the business associate agreement between the  
8 business associate and the covered entity.

9 (b) APPLICATION OF KNOWLEDGE ELEMENTS ASSO-  
10 CIATED WITH CONTRACTS.—Section 164.504(e)(1)(ii) of  
11 title 45, Code of Federal Regulations, shall apply to a  
12 business associate described in subsection (a), with respect  
13 to compliance with such subsection, in the same manner  
14 that such section applies to a covered entity, with respect  
15 to compliance with the standards in sections 164.502(e)  
16 and 164.504(e) of such title, except that in applying such  
17 section 164.504(e)(1)(ii) each reference to the business as-  
18 sociate, with respect to a contract, shall be treated as a  
19 reference to the covered entity involved in such contract.

20 (c) APPLICATION OF CIVIL AND CRIMINAL PEN-  
21 ALTIES.—In the case of a business associate that violates  
22 any provision of subsection (a) or (b), the provisions of  
23 sections 1176 and 1177 of the Social Security Act (42  
24 U.S.C. 1320d-5, 1320d-6) shall apply to the business as-  
25 sociate with respect to such violation in the same manner

1 as such provisions apply to a person who violates a provi-  
2 sion of part C of title XI of such Act.

3 **SEC. 4405. RESTRICTIONS ON CERTAIN DISCLOSURES AND**  
4 **SALES OF HEALTH INFORMATION; ACCOUNT-**  
5 **ING OF CERTAIN PROTECTED HEALTH IN-**  
6 **FORMATION DISCLOSURES; ACCESS TO CER-**  
7 **TAIN INFORMATION IN ELECTRONIC FOR-**  
8 **MAT.**

9 (a) REQUESTED RESTRICTIONS ON CERTAIN DIS-  
10 CLOSURES OF HEALTH INFORMATION.—In the case that  
11 an individual requests under paragraph (a)(1)(i)(A) of  
12 section 164.522 of title 45, Code of Federal Regulations,  
13 that a covered entity restrict the disclosure of the pro-  
14 tected health information of the individual, notwith-  
15 standing paragraph (a)(1)(ii) of such section, the covered  
16 entity must comply with the requested restriction if—

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

21 (2) the protected health information pertains  
22 solely to a health care item or service for which the  
23 health care provider involved has been paid out of  
24 pocket in full.

1 (b) DISCLOSURES REQUIRED TO BE LIMITED TO  
2 THE LIMITED DATA SET OR THE MINIMUM NEC-  
3 ESSARY.—

4 (1) IN GENERAL.—

5 (A) IN GENERAL.—Subject to subpara-  
6 graph (B), a covered entity shall be treated as  
7 being in compliance with section 164.502(b)(1)  
8 of title 45, Code of Federal Regulations, with  
9 respect to the use, disclosure, or request of pro-  
10 tected health information described in such sec-  
11 tion, only if the covered entity limits such pro-  
12 tected health information, to the extent prac-  
13 ticable, to the limited data set (as defined in  
14 section 164.514(e)(2) of such title) or, if needed  
15 by such entity, to the minimum necessary to ac-  
16 complish the intended purpose of such use, dis-  
17 closure, or request, respectively.

18 (B) GUIDANCE.—Not later than 18  
19 months after the date of the enactment of this  
20 section, the Secretary shall issue guidance on  
21 what constitutes “minimum necessary” for pur-  
22 poses of subpart E of part 164 of title 45, Code  
23 of Federal Regulation. In issuing such guidance  
24 the Secretary shall take into consideration the  
25 guidance under section 4424(c).

1 (C) SUNSET.—Subparagraph (A) shall not  
2 apply on and after the effective date on which  
3 the Secretary issues the guidance under sub-  
4 paragraph (B).

5 (2) DETERMINATION OF MINIMUM NEC-  
6 ESSARY.—For purposes of paragraph (1), in the  
7 case of the disclosure of protected health informa-  
8 tion, the covered entity or business associate dis-  
9 closing such information shall determine what con-  
10 stitutes the minimum necessary to accomplish the  
11 intended purpose of such disclosure.

12 (3) APPLICATION OF EXCEPTIONS.—The excep-  
13 tions described in section 164.502(b)(2) of title 45,  
14 Code of Federal Regulations, shall apply to the re-  
15 quirement under paragraph (1) as of the effective  
16 date described in section 4423 in the same manner  
17 that such exceptions apply to section 164.502(b)(1)  
18 of such title before such date.

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

23 (c) ACCOUNTING OF CERTAIN PROTECTED HEALTH  
24 INFORMATION DISCLOSURES REQUIRED IF COVERED EN-  
25 TITY USES ELECTRONIC HEALTH RECORD.—

1           (1) IN GENERAL.—In applying section 164.528  
2 of title 45, Code of Federal Regulations, in the case  
3 that a covered entity uses or maintains an electronic  
4 health record with respect to protected health infor-  
5 mation—

6           (A) the exception under paragraph  
7 (a)(1)(i) of such section shall not apply to dis-  
8 closures through an electronic health record  
9 made by such entity of such information; and

10           (B) an individual shall have a right to re-  
11 ceive an accounting of disclosures described in  
12 such paragraph of such information made by  
13 such covered entity during only the three years  
14 prior to the date on which the accounting is re-  
15 quested.

16           (2) REGULATIONS.—The Secretary shall pro-  
17 mulgate regulations on what information shall be  
18 collected about each disclosure referred to in para-  
19 graph (1)(A) not later than 18 months after the  
20 date on which the Secretary adopts standards on ac-  
21 counting for disclosure described in the section  
22 3002(b)(2)(B)(iv) of the Public Health Service Act,  
23 as added by section 4101. Such regulations shall  
24 only require such information to be collected through  
25 an electronic health record in a manner that takes

1 into account the interests of individuals in learning  
2 the circumstances under which their protected health  
3 information is being disclosed and takes into account  
4 the administrative burden of accounting for such  
5 disclosures.

6 (3) CONSTRUCTION.—Nothing in this sub-  
7 section shall be construed as requiring a covered en-  
8 tity to account for disclosures of protected health in-  
9 formation that are not made by such covered entity  
10 or by a business associate acting on behalf of the  
11 covered entity.

12 (4) EFFECTIVE DATE.—

13 (A) CURRENT USERS OF ELECTRONIC  
14 RECORDS.—In the case of a covered entity inso-  
15 far as it acquired an electronic health record as  
16 of January 1, 2009, paragraph (1) shall apply  
17 to disclosures, with respect to protected health  
18 information, made by the covered entity from  
19 such a record on and after January 1, 2014.

20 (B) OTHERS.—In the case of a covered en-  
21 tity insofar as it acquires an electronic health  
22 record after January 1, 2009, paragraph (1)  
23 shall apply to disclosures, with respect to pro-  
24 tected health information, made by the covered



1           entity from such record on and after the later  
2           of the following:

3                   (i) January 1, 2011; or

4                   (ii) the date that it acquires an elec-  
5           tronic health record.

6           (d) REVIEW OF HEALTH CARE OPERATIONS.—Not  
7 later than 18 months after the date of the enactment of  
8 this title, the Secretary shall promulgate regulations to  
9 eliminate from the definition of health care operations  
10 under section 164.501 of title 45, Code of Federal Regula-  
11 tions, those activities that can reasonably and efficiently  
12 be conducted through the use of information that is de-  
13 identified (in accordance with the requirements of section  
14 164.514(b) of such title) or that should require a valid  
15 authorization for use or disclosure. In promulgating such  
16 regulations, the Secretary may choose to narrow or clarify  
17 activities that the Secretary chooses to retain in the defini-  
18 tion of health care operations and the Secretary shall take  
19 into account the report under section 424(d). In such reg-  
20 ulations the Secretary shall specify the date on which such  
21 regulations shall apply to disclosures made by a covered  
22 entity, but in no case would such date be sooner than the  
23 date that is 24 months after the date of the enactment  
24 of this section.

1 (e) PROHIBITION ON SALE OF ELECTRONIC HEALTH  
2 RECORDS OR PROTECTED HEALTH INFORMATION OB-  
3 TAINED FROM ELECTRONIC HEALTH RECORDS.—

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

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

18 (A) The purpose of the exchange is for re-  
19 search or public health activities (as described  
20 in sections 164.501, 164.512(i), and 164.512(b)  
21 of title 45, Code of Federal Regulations) and  
22 the price charged reflects the costs of prepara-  
23 tion and transmittal of the data for such pur-  
24 pose.

1 (B) The purpose of the exchange is for the  
2 treatment of the individual and the price  
3 charges reflects not more than the costs of  
4 preparation and transmittal of the data for  
5 such purpose.

6 (C) 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 health care operations in section  
10 164.501 of title 45, Code of Federal Regula-  
11 tions.

12 (D) The purpose of the exchange is for re-  
13 munerated 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 (E) 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 (F) 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 (E).

4 (3) REGULATIONS.—The Secretary shall pro-  
5 mulgate regulations to carry out paragraph (this  
6 subsection, including exceptions described in para-  
7 graph (2), not later than 18 months after the date  
8 of the enactment of this title.

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

13 (f) ACCESS TO CERTAIN INFORMATION IN ELEC-  
14 TRONIC FORMAT.—In applying section 164.524 of title  
15 45, Code of Federal Regulations, in the case that a cov-  
16 ered entity uses or maintains an electronic health record  
17 with respect to protected health information of an indi-  
18 vidual—

19 (1) the individual shall have a right to obtain  
20 from such covered entity a copy of such information  
21 in an electronic format; and

22 (2) notwithstanding paragraph (c)(4) of such  
23 section, any fee that the covered entity may impose  
24 for providing such individual with a copy of such in-  
25 formation (or a summary or explanation of such in-

1 formation) if such copy (or summary or explanation)  
2 is in an electronic form shall not be greater than the  
3 entity's labor costs in responding to the request for  
4 the copy (or summary or explanation).

5 **SEC. 4406. CONDITIONS ON CERTAIN CONTACTS AS PART**  
6 **OF HEALTH CARE OPERATIONS.**

7 (a) **MARKETING.**—

8 (1) **IN GENERAL.**—A communication by a cov-  
9 ered entity or business associate that is about a  
10 product or service and that encourages recipients of  
11 the communication to purchase or use the product  
12 or service shall not be considered a health care oper-  
13 ation for purposes of subpart E of part 164 of title  
14 45, Code of Federal Regulations, unless the commu-  
15 nication is made as described in subparagraph (i),  
16 (ii), or (iii) of paragraph (1) of the definition of  
17 marketing in section 164.501 of such title.

18 (2) **PAYMENT FOR CERTAIN COMMUNICA-**  
19 **TIONS.**—A covered entity or business associate may  
20 not receive direct or indirect payment in exchange  
21 for making any communication described in sub-  
22 paragraph (i), (ii), or (iii) of paragraph (1) of the  
23 definition of marketing in section 164.501 of title  
24 45, Code of Federal Regulations, except—

1 (A) a business associate of a covered entity  
2 may receive payment from the covered entity  
3 for making any such communication on behalf  
4 of the covered entity that is consistent with the  
5 written contract (or other written arrangement)  
6 described in section 164.502(e)(2) of such title  
7 between such business associate and covered en-  
8 tity; and

9 (B) a covered entity may receive payment  
10 in exchange for making any such communica-  
11 tion if the entity obtains from the recipient of  
12 the communication, in accordance with section  
13 164.508 of title 45, Code of Federal Regula-  
14 tions, a valid authorization (as described in  
15 paragraph (b) of such section) with respect to  
16 such communication.

17 (b) FUNDRAISING.—Fundraising for the benefit of a  
18 covered entity shall not be considered a health care oper-  
19 ation for purposes of section 164.501 of title 45, Code of  
20 Federal Regulations.

21 (c) EFFECTIVE DATE.—This section shall apply to  
22 contracting occurring on or after the effective date speci-  
23 fied under section 4423.

1 **SEC. 4407. 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) or (iii) of section 4424(b)(1)(A), fol-  
11 lowing the discovery of a breach of security of such infor-  
12 mation that is obtained through a product or service pro-  
13 vided 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) or (iii) of section  
24 4424(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 402 shall apply  
13 to a notification required under subsection (a) and a ven-  
14 dor of personal health records, an entity described in sub-  
15 section (a) and a third party service provider described  
16 in subsection (b), with respect to a breach of security  
17 under subsection (a) of unsecured PHR identifiable health  
18 information in such records maintained or offered by such  
19 vendor, in a manner specified by the Federal Trade Com-  
20 mission.

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 4402(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 4402(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 Secretary of Health and  
3 Human Services shall promulgate interim final regu-  
4 lations by not later than the date that is 180 days  
5 after the date of the enactment of this section. The  
6 provisions of this section shall apply to breaches of  
7 security that are discovered on or after the date that  
8 is 30 days after the date of publication of such in-  
9 terim final regulations.

10           (2) SUNSET.—The provisions of this section  
11 shall not apply to breaches of security occurring on  
12 or after the earlier of the following the dates:

13           (A) The date on which a standard relating  
14 to requirements for entities that are not covered  
15 entities that includes requirements relating to  
16 breach notification has been promulgated by the  
17 Secretary.

18           (B) The date on which a standard relating  
19 to requirements for entities that are not covered  
20 entities that includes requirements relating to  
21 breach notification has been promulgated by the  
22 Federal Trade Commission and has taken ef-  
23 fect.

1 **SEC. 4408. BUSINESS ASSOCIATE CONTRACTS REQUIRED**  
2 **FOR CERTAIN ENTITIES.**

3 Each organization, with respect to a covered entity,  
4 that provides data transmission of protected health infor-  
5 mation to such entity (or its business associate) and that  
6 requires access on a routine basis to such protected health  
7 information, such as a Health Information Exchange Or-  
8 ganization, Regional Health Information Organization, E-  
9 prescribing Gateway, or each vendor that contracts with  
10 a covered entity to allow that covered entity to offer a per-  
11 sonal health record to patients as part of its electronic  
12 health record, is required to enter into a written contract  
13 (or other written arrangement) described in section  
14 164.502(e)(2) of title 45, Code of Federal Regulations and  
15 a written contract (or other arrangement) described in  
16 section 164.308(b) of such title, with such entity and shall  
17 be treated as a business associate of the covered entity  
18 for purposes of the provisions of this subtitle and subparts  
19 C and E of part 164 of title 45, Code of Federal Regula-  
20 tions, as such provisions are in effect as of the date of  
21 enactment of this title.

22 **SEC. 4409. CLARIFICATION OF APPLICATION OF WRONGFUL**  
23 **DISCLOSURES CRIMINAL PENALTIES.**

24 Section 1177(a) of the Social Security Act (42 U.S.C.  
25 1320d-6(a)) is amended by adding at the end the fol-  
26 lowing new sentence: “For purposes of the previous sen-

1 tence, a person (including an employee or other individual)  
2 shall be considered to have obtained or disclosed individ-  
3 ually identifiable health information in violation of this  
4 part if the information is maintained by a covered entity  
5 (as defined in the HIPAA privacy regulation described in  
6 section 1180(b)(3)) and the individual obtained or dis-  
7 closed such information without authorization.”.

8 **SEC. 4410. IMPROVED ENFORCEMENT.**

9 (a) IN GENERAL.—Section 1176 of the Social Secu-  
10 rity Act (42 U.S.C. 1320d-5) is amended—

11 (1) in subsection (b)(1), by striking “the act  
12 constitutes an offense punishable under section  
13 1177” and inserting “a penalty has been imposed  
14 under section 1177 with respect to such act”; and

15 (2) by adding at the end the following new sub-  
16 section:

17 “(c) NONCOMPLIANCE DUE TO WILLFUL NE-  
18 GLECT.—

19 “(1) IN GENERAL.—A violation of a provision  
20 of this part due to willful neglect is a violation for  
21 which the Secretary is required to impose a penalty  
22 under subsection (a)(1).

23 “(2) REQUIRED INVESTIGATION.—For purposes  
24 of paragraph (1), the Secretary shall formally inves-  
25 tigate any complaint of a violation of a provision of

1 this part if a preliminary investigation of the facts  
2 of the complaint indicate such a possible violation  
3 due to willful neglect.”.

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 of 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 “(c) 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           tipling 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 (c)”;

1 (B) in paragraph (2)(A)—

2 (i) in the matter before clause (i), 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 (c)”;

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 (c)” 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 “(d) ALLOWING CONTINUED USE OF CORRECTIVE  
24 ACTION.—Nothing in this section shall be construed as  
25 preventing the Office of 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. 4411. 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 II—RELATIONSHIP TO OTHER LAWS; REGU-**  
14 **LATORY REFERENCES; EFFECTIVE DATE; RE-**  
15 **PORTS**

16 **SEC. 4421. 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 **SEC. 4422. REGULATORY REFERENCES.**

12 Each reference in this subtitle to a provision of the  
13 Code of Federal Regulations refers to such provision as  
14 in effect on the date of the enactment of this title (or to  
15 the most recent update of such provision).

16 **SEC. 4423. EFFECTIVE DATE.**

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

20 **SEC. 4424. STUDIES, REPORTS, GUIDANCE.**

21 (a) REPORT ON COMPLIANCE.—

22 (1) IN GENERAL.—For the first year beginning  
23 after the date of the enactment of this Act and an-  
24 nually thereafter, the Secretary shall prepare and  
25 submit to the Committee on Health, Education,

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

14 (A) the number of such complaints;

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

23 (C) the number of such complaints that  
24 have resulted in the imposition of civil monetary  
25 penalties or have been resolved through mone-

1            tary settlements, including the nature of the  
2            complaints involved and the amount paid in  
3            each penalty or settlement;

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

6            (E) the number of subpoenas or inquiries  
7            issued;

8            (F) the Secretary's plan for improving  
9            compliance with and enforcement of such provi-  
10           sions for the following year; and

11           (G) the number of audits performed and a  
12           summary of audit findings pursuant to section  
13           4411.

14           (2) AVAILABILITY TO PUBLIC.—Each report  
15           under paragraph (1) shall be made available to the  
16           public on the Internet website of the Department of  
17           Health and Human Services.

18           (b) STUDY AND REPORT ON APPLICATION OF PRI-  
19           VACY AND SECURITY REQUIREMENTS TO NON-HIPAA  
20           COVERED ENTITIES.—

21           (1) STUDY.—Not later than one year after the  
22           date of the enactment of this title, the Secretary, in  
23           consultation with the Federal Trade Commission,  
24           shall conduct a study, and submit a report under  
25           paragraph (2), on privacy and security requirements

1 for entities that are not covered entities or business  
2 associates as of the date of the enactment of this  
3 title, including—

4 (A) requirements relating to security, pri-  
5 vacy, and notification in the case of a breach of  
6 security or privacy (including the applicability  
7 of an exemption to notification in the case of  
8 individually identifiable health information that  
9 has been rendered unusable, unreadable, or in-  
10 decipherable through technologies or methodolo-  
11 gies recognized by appropriate professional or-  
12 ganization or standard setting bodies to provide  
13 effective security for the information) that  
14 should be applied to—

15 (i) vendors of personal health records;

16 (ii) entities that offer products or  
17 services through the website of a vendor of  
18 personal health records;

19 (iii) entities that are not covered enti-  
20 ties and that offer products or services  
21 through the websites of covered entities  
22 that offer individuals personal health  
23 records;

24 (iv) entities that are not covered enti-  
25 ties and that access information in a per-

1                   sonal health record or send information to  
2                   a personal health record; and

3                   (v) third party service providers used  
4                   by a vendor or entity described in clause  
5                   (i), (ii), (iii), or (iv) to assist in providing  
6                   personal health record products or services;

7                   (B) a determination of which Federal gov-  
8                   ernment agency is best equipped to enforce  
9                   such requirements recommended to be applied  
10                  to such vendors, entities, and service providers  
11                  under subparagraph (A); and

12                  (C) a timeframe for implementing regula-  
13                  tions based on such findings.

14                  (2) REPORT.—The Secretary shall submit to  
15                  the Committee on Finance, the Committee on  
16                  Health, Education, Labor, and Pensions, and the  
17                  Committee on Commerce of the Senate and the  
18                  Committee on Ways and Means and the Committee  
19                  on Energy and Commerce of the House of Rep-  
20                  resentatives a report on the findings of the study  
21                  under paragraph (1) and shall include in such report  
22                  recommendations on the privacy and security re-  
23                  quirements described in such paragraph.

24                  (c) GUIDANCE ON IMPLEMENTATION SPECIFICATION  
25                  TO DE-IDENTIFY PROTECTED HEALTH INFORMATION.—

1 Not later than 12 months after the date of the enactment  
2 of this title, the Secretary shall, in consultation with stake-  
3 holders, issue guidance on how best to implement the re-  
4 quirements for the de-identification of protected health in-  
5 formation under section 164.514(b) of title 45, Code of  
6 Federal Regulations.

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

1 health information for treatment, payment, and health  
2 care operations.

3 **TITLE V—MEDICAID**  
4 **PROVISIONS**

5 **SEC. 5000. TABLE OF CONTENTS OF TITLE.**

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

- Sec. 5000. Table of contents of title.
- Sec. 5001. Temporary increase of Medicaid FMAP.
- Sec. 5002. Moratoria on certain regulations.
- Sec. 5003. Transitional Medicaid assistance (TMA).
- Sec. 5004. State eligibility option for family planning services.
- Sec. 5005. Protections for Indians under Medicaid and CHIP.
- Sec. 5006. Consultation on Medicaid and CHIP.

7 **SEC. 5001. TEMPORARY INCREASE OF MEDICAID FMAP.**

8 (a) PERMITTING MAINTENANCE OF FMAP.—Subject  
9 to subsections (e), (f), and (g), if the FMAP determined  
10 without regard to this section for a State for—

11 (1) fiscal year 2009 is less than the FMAP as  
12 so determined for fiscal year 2008, the FMAP for  
13 the State for fiscal year 2008 shall be substituted  
14 for the State's FMAP for fiscal year 2009, before  
15 the application of this section;

16 (2) fiscal year 2010 is less than the FMAP as  
17 so determined for fiscal year 2008 or fiscal year  
18 2009 (after the application of paragraph (1)), the  
19 greater of such FMAP for the State for fiscal year  
20 2008 or fiscal year 2009 shall be substituted for the  
21 State's FMAP for fiscal year 2010, before the appli-  
22 cation of this section; and



1           (3) fiscal year 2011 is less than the FMAP as  
2           so determined for fiscal year 2008, fiscal year 2009  
3           (after the application of paragraph (1)), or fiscal  
4           year 2010 (after the application of paragraph (2)),  
5           the greatest of such FMAP for the State for fiscal  
6           year 2008, fiscal year 2009, or fiscal year 2010 shall  
7           be substituted for the State's FMAP for fiscal year  
8           2011, before the application of this section, but only  
9           for the first calendar quarter in fiscal year 2011.

10          (b) GENERAL 4.9 PERCENTAGE POINT INCREASE.—

11           (1) IN GENERAL.—Subject to subsections (e),  
12           (f), and (g) and paragraph (2), for each State for  
13           calendar quarters during the recession adjustment  
14           period (as defined in subsection (h)(2)), the FMAP  
15           (after the application of subsection (a)) shall be in-  
16           creased (without regard to any limitation otherwise  
17           specified in section 1905(b) of the Social Security  
18           Act) by 4.9 percentage points.

19           (2) SPECIAL ELECTION FOR TERRITORIES.—In  
20           the case of a State that is not one of the 50 States  
21           or the District of Columbia, paragraph (1) shall only  
22           apply if the State makes a one-time election, in a  
23           form and manner specified by the Secretary and for  
24           the entire recession adjustment period, to apply the  
25           increase in FMAP under paragraph (1) and a 10

1       percent increase under subsection (d) instead of ap-  
2       plying a 20 percent increase under subsection (d).

3       (c) ADDITIONAL ADJUSTMENT TO REFLECT IN-  
4       CREASE IN UNEMPLOYMENT.—

5           (1) IN GENERAL.—Subject to subsections (e),  
6       (f), and (g), in the case of a State that is a high  
7       unemployment State (as defined in paragraph (2))  
8       for a calendar quarter during the recession adjust-  
9       ment period, the FMAP (taking into account the ap-  
10      plication of subsections (a) and (b)) for such quarter  
11      shall be further increased by the high unemployment  
12      percentage point adjustment specified in paragraph  
13      (3) for the State for the quarter.

14          (2) HIGH UNEMPLOYMENT STATE.—

15           (A) IN GENERAL.—In this subsection, sub-  
16      ject to subparagraph (B), the term “high unem-  
17      ployment State” means, with respect to a cal-  
18      endar quarter in the recession adjustment pe-  
19      riod, a State that is 1 of the 50 States or the  
20      District of Columbia and for which the State  
21      unemployment increase percentage (as com-  
22      puted under paragraph (5)) for the quarter is  
23      not less than 1.5 percentage points.

24           (B) MAINTENANCE OF STATUS.—If a  
25      State is a high unemployment State for a cal-

1           endar quarter, it shall remain a high unemploy-  
2           ment State for each subsequent calendar quar-  
3           ter ending before July 1, 2010.

4           (3) HIGH UNEMPLOYMENT PERCENTAGE POINT  
5           ADJUSTMENT.—

6           (A) IN GENERAL.—The high unemploy-  
7           ment percentage point adjustment specified in  
8           this paragraph for a high unemployment State  
9           for a quarter is equal to the product of—

10           (i) the SMAP for such State and  
11           quarter (determined after the application  
12           of subsection (a) and before the application  
13           of subsection (b)); and

14           (ii) subject to subparagraph (B), the  
15           State unemployment reduction factor spec-  
16           ified in paragraph (4) for the State and  
17           quarter.

18           (B) MAINTENANCE OF ADJUSTMENT  
19           LEVEL FOR CERTAIN QUARTERS.—In no case  
20           shall the State unemployment reduction factor  
21           applied under subparagraph (A)(ii) for a State  
22           for a quarter (beginning on or after January 1,  
23           2009, and ending before July 1, 2010) be less  
24           than the State unemployment reduction factor  
25           applied to the State for the previous quarter

1 (taking into account the application of this sub-  
2 paragraph).

3 (4) STATE UNEMPLOYMENT REDUCTION FAC-  
4 TOR.—In the case of a high unemployment State for  
5 which the State unemployment increase percentage  
6 (as computed under paragraph (5)) with respect to  
7 a calendar quarter is—

8 (A) not less than 1.5, but is less than 2.5,  
9 percentage points, the State unemployment re-  
10 duction factor for the State and quarter is 6  
11 percent;

12 (B) not less than 2.5, but is less than 3.5,  
13 percentage points, the State unemployment re-  
14 duction factor for the State and quarter is 12  
15 percent; or

16 (C) not less than 3.5 percentage points,  
17 the State unemployment reduction factor for  
18 the State and quarter is 14 percent.

19 (5) COMPUTATION OF STATE UNEMPLOYMENT  
20 INCREASE PERCENTAGE.—

21 (A) IN GENERAL.—In this subsection, the  
22 “State unemployment increase percentage” for  
23 a State for a calendar quarter is equal to the  
24 number of percentage points (if any) by  
25 which—

1 (i) the average monthly unemployment  
2 rate for the State for months in the most  
3 recent previous 3-consecutive-month period  
4 for which data are available, subject to  
5 subparagraph (C); exceeds

6 (ii) the lowest average monthly unem-  
7 ployment rate for the State for any 3-con-  
8 secutive-month period preceding the period  
9 described in clause (i) and beginning on or  
10 after January 1, 2006.

11 (B) AVERAGE MONTHLY UNEMPLOYMENT  
12 RATE DEFINED.—In this paragraph, the term  
13 “average monthly unemployment rate” means  
14 the average of the monthly number unemployed,  
15 divided by the average of the monthly civilian  
16 labor force, seasonally adjusted, as determined  
17 based on the most recent monthly publications  
18 of the Bureau of Labor Statistics of the De-  
19 partment of Labor.

20 (C) SPECIAL RULE.—With respect to—

21 (i) the first 2 calendar quarters of the  
22 recession adjustment period, the most re-  
23 cent previous 3-consecutive-month period  
24 described in subparagraph (A)(i) shall be

1           the 3-consecutive-month period beginning  
2           with October 2008; and

3                   (ii) the last 2 calendar quarters of the  
4           recession adjustment period, the most re-  
5           cent previous 3-consecutive-month period  
6           described in such subparagraph shall be  
7           the 3-consecutive-month period beginning  
8           with December 2009.

9           (d) INCREASE IN CAP ON MEDICAID PAYMENTS TO  
10   TERRITORIES.—Subject to subsections (f) and (g) , with  
11   respect to entire fiscal years occurring during the reces-  
12   sion adjustment period and with respect to fiscal years  
13   only a portion of which occurs during such period (and  
14   in proportion to the portion of the fiscal year that occurs  
15   during such period), the amounts otherwise determined for  
16   Puerto Rico, the Virgin Islands, Guam, the Northern Mar-  
17   iana Islands, and American Samoa under subsections (f)  
18   and (g) of section 1108 of the Social Security Act (42  
19   U.S.C. 1308) shall each be increased by 20 percent (or,  
20   in the case of an election under subsection (b)(2), 10 per-  
21   cent).

22           (e) SCOPE OF APPLICATION.—The increases in the  
23   FMAP for a State under this section shall apply for pur-  
24   poses of title XIX of the Social Security Act and—

1           (1) the increases applied under subsections (a),  
2           (b), and (c) shall not apply with respect—

3                   (A) to payments under parts A, B, and D  
4                   of title IV or title XXI of such Act (42 U.S.C.  
5                   601 et seq. and 1397aa et seq.);

6                   (B) to payments under title XIX of such  
7                   Act that are based on the enhanced FMAP de-  
8                   scribed in section 2105(b) of such Act (42  
9                   U.S.C. 1397ee(b)); and

10                   (C) to payments for disproportionate share  
11                   hospital (DSH) payment adjustments under  
12                   section 1923 of such Act (42 U.S.C. 1396r-4);  
13                   and

14           (2) the increase provided under subsection (c)  
15           shall not apply with respect to payments under part  
16           E of title IV of such Act.

17           (f) STATE INELIGIBILITY AND LIMITATION.—

18                   (1) IN GENERAL.—Subject to paragraphs (2)  
19                   and (3), a State is not eligible for an increase in its  
20                   FMAP under subsection (a), (b), or (c), or an in-  
21                   crease in a cap amount under subsection (d), if eligi-  
22                   bility standards, methodologies, or procedures under  
23                   its State plan under title XIX of the Social Security  
24                   Act (including any waiver under such title or under  
25                   section 1115 of such Act (42 U.S.C. 1315)) are

1 more restrictive than the eligibility standards, meth-  
2 odologies, or procedures, respectively, under such  
3 plan (or waiver) as in effect on July 1, 2008.

4 (2) STATE REINSTATEMENT OF ELIGIBILITY  
5 PERMITTED.—Subject to paragraph (3), a State that  
6 has restricted eligibility standards, methodologies, or  
7 procedures under its State plan under title XIX of  
8 the Social Security Act (including any waiver under  
9 such title or under section 1115 of such Act (42  
10 U.S.C. 1315)) after July 1, 2008, is no longer ineli-  
11 gible under paragraph (1) beginning with the first  
12 calendar quarter in which the State has reinstated  
13 eligibility standards, methodologies, or procedures  
14 that are no more restrictive than the eligibility  
15 standards, methodologies, or procedures, respec-  
16 tively, under such plan (or waiver) as in effect on  
17 July 1, 2008.

18 (3) SPECIAL RULES.—A State shall not be in-  
19 eligible under paragraph (1)—

20 (A) before July 1, 2009, on the basis of a  
21 restriction that was applied after July 1, 2008,  
22 and before the date of the enactment of this  
23 Act; or

24 (B) on the basis of a restriction that was  
25 effective under State law as of July 1, 2008,



1           and would have been in effect as of such date,  
2           but for a delay (of not longer than 1 calendar  
3           quarter) in the approval of a request for a new  
4           waiver under section 1115 of such Act with re-  
5           spect to such restriction.

6           (4) STATE'S APPLICATION TOWARD RAINY DAY  
7           FUND.—A State is not eligible for an increase in its  
8           FMAP under subsection (b) or (c), or an increase in  
9           a cap amount under subsection (d), if any amounts  
10          attributable (directly or indirectly) to such increase  
11          are deposited or credited into any reserve or rainy  
12          day fund of the State.

13          (5) RULE OF CONSTRUCTION.—Nothing in  
14          paragraph (1) or (2) shall be construed as affecting  
15          a State's flexibility with respect to benefits offered  
16          under the State Medicaid program under title XIX  
17          of the Social Security Act (42 U.S.C. 1396 et seq.)  
18          (including any waiver under such title or under sec-  
19          tion 1115 of such Act (42 U.S.C. 1315)).

20          (6) NO WAIVER AUTHORITY.—The Secretary  
21          may not waive the application of this subsection or  
22          subsection (g) under section 1115 of the Social Se-  
23          curity Act or otherwise.

24          (g) REQUIREMENT FOR CERTAIN STATES.—In the  
25          case of a State that requires political subdivisions within

1 the State to contribute toward the non-Federal share of  
2 expenditures under the State Medicaid plan required  
3 under section 1902(a)(2) of the Social Security Act (42  
4 U.S.C. 1396a(a)(2)), the State is not eligible for an in-  
5 crease in its FMAP under subsection (a), (b), or (c), or  
6 an increase in a cap amount under subsection (d), if it  
7 requires that such political subdivisions pay a greater per-  
8 centage of the non-Federal share of such expenditures for  
9 quarters during the recession adjustment period, than the  
10 percentage that would have been required by the State  
11 under such plan on September 30, 2008, prior to applica-  
12 tion of this section.

13 (h) DEFINITIONS.—In this section, except as other-  
14 wise provided:

15 (1) FMAP.—The term “FMAP” means the  
16 Federal medical assistance percentage, as defined in  
17 section 1905(b) of the Social Security Act (42  
18 U.S.C. 1396d(b)), as determined without regard to  
19 this section except as otherwise specified.

20 (2) RECESSION ADJUSTMENT PERIOD.—The  
21 term “recession adjustment period” means the pe-  
22 riod beginning on October 1, 2008, and ending on  
23 December 31, 2010.

24 (3) SECRETARY.—The term “Secretary” means  
25 the Secretary of Health and Human Services.

1           (4) SMAP.—The term “SMAP” means, for a  
2           State, 100 percent minus the Federal medical assist-  
3           ance percentage..

4           (5) STATE.—The term “State” has the mean-  
5           ing given such term in section 1101(a)(1) of the So-  
6           cial Security Act (42 U.S.C. 1301(a)(1)) for pur-  
7           poses of title XIX of the Social Security Act (42  
8           U.S.C. 1396 et seq.).

9           (i) SUNSET.—This section shall not apply to items  
10          and services furnished after the end of the recession ad-  
11          justment period.

12   **SEC. 5002. MORATORIA ON CERTAIN REGULATIONS.**

13          (a) EXTENSION OF MORATORIA ON CERTAIN MED-  
14          ICAID REGULATIONS.—The following sections are each  
15          amended by striking “April 1, 2009” and inserting “July  
16          1, 2009”:

17               (1) Section 7002(a)(1) of the U.S. Troop Read-  
18          iness, Veterans’ Care, Katrina Recovery, and Iraq  
19          Accountability Appropriations Act, 2007 (Public  
20          Law 110–28), as amended by section 7001(a)(1) of  
21          the Supplemental Appropriations Act, 2008 (Public  
22          Law 110–252).

23               (2) Section 206 of the Medicare, Medicaid, and  
24          SCHIP Extension Act of 2007 (Public Law 110-  
25          173), as amended by section 7001(a)(2) of the Sup-

1       plemental Appropriations Act, 2008 (Public Law  
2       110–252).

3               (3) Section 7001(a)(3)(A) of the Supplemental  
4       Appropriations Act, 2008 (Public Law 110–252).

5       (b) **ADDITIONAL MEDICAID MORATORIUM.**—Not-  
6       withstanding any other provision of law, with respect to  
7       expenditures for services furnished during the period be-  
8       ginning on December 8, 2008 and ending on June 30,  
9       2009, the Secretary of Health and Human Services shall  
10      not take any action (through promulgation of regulation,  
11      issuance of regulatory guidance, use of Federal payment  
12      audit procedures, or other administrative action, policy, or  
13      practice, including a Medical Assistance Manual trans-  
14      mittal or letter to State Medicaid directors) to implement  
15      the final regulation relating to clarification of the defini-  
16      tion of outpatient hospital facility services under the Med-  
17      icaid program published on November 7, 2008 (73 Federal  
18      Register 66187).

19      **SEC. 5003. TRANSITIONAL MEDICAID ASSISTANCE (TMA).**

20      (a) **18-MONTH EXTENSION.**—

21               (1) **IN GENERAL.**—Sections 1902(e)(1)(B) and  
22      1925(f) of the Social Security Act (42 U.S.C.  
23      1396a(e)(1)(B), 1396r–6(f)) are each amended by  
24      striking “September 30, 2003” and inserting “De-  
25      cember 31, 2010”.

1           (2) EFFECTIVE DATE.—The amendments made  
2           by this subsection shall take effect on July 1, 2009.

3           (b) STATE OPTION OF INITIAL 12-MONTH ELIGI-  
4 BILITY.—Section 1925 of the Social Security Act (42  
5 U.S.C. 1396r–6) is amended—

6           (1) in subsection (a)(1), by inserting “but sub-  
7           ject to paragraph (5)” after “Notwithstanding any  
8           other provision of this title”;

9           (2) by adding at the end of subsection (a) the  
10          following:

11           “(5) OPTION OF 12-MONTH INITIAL ELIGIBILITY  
12          PERIOD.—A State may elect to treat any reference  
13          in this subsection to a 6-month period (or 6 months)  
14          as a reference to a 12-month period (or 12 months).  
15          In the case of such an election, subsection (b) shall  
16          not apply.”; and

17           (3) in subsection (b)(1), by inserting “but sub-  
18          ject to subsection (a)(5)” after “Notwithstanding  
19          any other provision of this title”.

20          (c) REMOVAL OF REQUIREMENT FOR PREVIOUS RE-  
21 CEIPT OF MEDICAL ASSISTANCE.—Section 1925(a)(1) of  
22 such Act (42 U.S.C. 1396r–6(a)(1)), as amended by sub-  
23 section (b)(1), is further amended—

24           (1) by inserting “subparagraph (B) and” before  
25          “paragraph (5)”;

1           (2) by redesignating the matter after “RE-  
2           QUIREMENT.—” as a subparagraph (A) with the  
3           heading “IN GENERAL.—” and with the same inden-  
4           tation as subparagraph (B) (as added by paragraph  
5           (3)); and

6           (3) by adding at the end the following:

7                   “(B) STATE OPTION TO WAIVE REQUIRE-  
8                   MENT FOR 3 MONTHS BEFORE RECEIPT OF  
9                   MEDICAL ASSISTANCE.—A State may, at its op-  
10                  tion, elect also to apply subparagraph (A) in  
11                  the case of a family that was receiving such aid  
12                  for fewer than three months or that had applied  
13                  for and was eligible for such aid for fewer than  
14                  3 months during the 6 immediately preceding  
15                  months described in such subparagraph.”.

16          (d) CMS REPORT ON ENROLLMENT AND PARTICIPA-  
17          TION RATES UNDER TMA.—Section 1925 of such Act (42  
18          U.S.C. 1396r-6), as amended by this section, is further  
19          amended by adding at the end the following new sub-  
20          section:

21                   “(g) COLLECTION AND REPORTING OF PARTICIPA-  
22                   TION INFORMATION.—

23                   “(1) COLLECTION OF INFORMATION FROM  
24                   STATES.—Each State shall collect and submit to the  
25                   Secretary (and make publicly available), in a format

1 specified by the Secretary, information on average  
2 monthly enrollment and average monthly participa-  
3 tion rates for adults and children under this section  
4 and of the number and percentage of children who  
5 become ineligible for medical assistance under this  
6 section whose medical assistance is continued under  
7 another eligibility category or who are enrolled under  
8 the State's child health plan under title XXI. Such  
9 information shall be submitted at the same time and  
10 frequency in which other enrollment information  
11 under this title is submitted to the Secretary.

12 “(2) ANNUAL REPORTS TO CONGRESS.—Using  
13 the information submitted under paragraph (1), the  
14 Secretary shall submit to Congress annual reports  
15 concerning enrollment and participation rates de-  
16 scribed in such paragraph.”

17 (e) EFFECTIVE DATE.—The amendments made by  
18 subsections (b) through (d) shall take effect on July 1,  
19 2009.

20 **SEC. 5004. STATE ELIGIBILITY OPTION FOR FAMILY PLAN-**  
21 **NING SERVICES.**

22 (a) COVERAGE AS OPTIONAL CATEGORICALLY  
23 NEEDY GROUP.—

24 (1) IN GENERAL.—Section 1902(a)(10)(A)(ii)  
25 of the Social Security Act (42 U.S.C.

1       1396a(a)(10)(A)(ii)), as amended by section 3003(a)  
2       of the Health Insurance Assistance for the Unem-  
3       employed Act of 2009, is amended—

4               (A) in subclause (XIX), by striking “or” at  
5       the end;

6               (B) in subclause (XX), by adding “or” at  
7       the end; and

8               (C) by adding at the end the following new  
9       subclause:

10       “(XXI) who are described in subsection (ee)  
11       (relating to individuals who meet certain income  
12       standards);”.

13       (2) GROUP DESCRIBED.—Section 1902 of such  
14       Act (42 U.S.C. 1396a), as amended by section  
15       3003(a) of the Health Insurance Assistance for the  
16       Unemployed Act of 2009, is amended by adding at  
17       the end the following new subsection:

18       “(ee)(1) Individuals described in this subsection are  
19       individuals—

20               “(A) whose income does not exceed an in-  
21       come eligibility level established by the State  
22       that does not exceed the highest income eligi-  
23       bility level established under the State plan  
24       under this title (or under its State child health  
25       plan under title XXI) for pregnant women; and



1 “(B) who are not pregnant.

2 “(2) At the option of a State, individuals de-  
3 scribed in this subsection may include individuals  
4 who, had individuals applied on or before January 1,  
5 2007, would have been made eligible pursuant to the  
6 standards and processes imposed by that State for  
7 benefits described in clause (XV) of the matter fol-  
8 lowing subparagraph (G) of section subsection  
9 (a)(10) pursuant to a waiver granted under section  
10 1115.

11 “(3) At the option of a State, for purposes of  
12 subsection (a)(17)(B), in determining eligibility for  
13 services under this subsection, the State may con-  
14 sider only the income of the applicant or recipient.”.

15 (3) LIMITATION ON BENEFITS.—Section  
16 1902(a)(10) of the Social Security Act (42 U.S.C.  
17 1396a(a)(10)) is amended in the matter following  
18 subparagraph (G)—

19 (A) by striking “and (XIV)” and inserting  
20 “(XIV)”; and

21 (B) by inserting “, and (XV) the medical  
22 assistance made available to an individual de-  
23 scribed in subsection (ee) shall be limited to  
24 family planning services and supplies described  
25 in section 1905(a)(4)(C) including medical di-



1 ical assistance available to an individual described in sec-  
2 tion 1902(ee) (relating to individuals who meet certain in-  
3 come eligibility standard) during a presumptive eligibility  
4 period. In the case of an individual described in section  
5 1902(ee), such medical assistance shall be limited to fam-  
6 ily planning services and supplies described in  
7 1905(a)(4)(C) and, at the State’s option, medical diag-  
8 nosis and treatment services that are provided in conjunc-  
9 tion with a family planning service in a family planning  
10 setting.

11 “(b) DEFINITIONS.—For purposes of this section:

12 “(1) PRESUMPTIVE ELIGIBILITY PERIOD.—The  
13 term ‘presumptive eligibility period’ means, with re-  
14 spect to an individual described in subsection (a),  
15 the period that—

16 “(A) begins with the date on which a  
17 qualified entity determines, on the basis of pre-  
18 liminary information, that the individual is de-  
19 scribed in section 1902(ee); and

20 “(B) ends with (and includes) the earlier  
21 of—

22 “(i) the day on which a determination  
23 is made with respect to the eligibility of  
24 such individual for services under the State  
25 plan; or

1           “(ii) in the case of such an individual  
2           who does not file an application by the last  
3           day of the month following the month dur-  
4           ing which the entity makes the determina-  
5           tion referred to in subparagraph (A), such  
6           last day.

7           “(2) QUALIFIED ENTITY.—

8           “(A) IN GENERAL.—Subject to subpara-  
9           graph (B), the term ‘qualified entity’ means  
10          any entity that—

11           “(i) is eligible for payments under a  
12          State plan approved under this title; and

13           “(ii) is determined by the State agen-  
14          cy to be capable of making determinations  
15          of the type described in paragraph (1)(A).

16          “(B) RULE OF CONSTRUCTION.—Nothing  
17          in this paragraph shall be construed as pre-  
18          venting a State from limiting the classes of en-  
19          tities that may become qualified entities in  
20          order to prevent fraud and abuse.

21          “(c) ADMINISTRATION.—

22           “(1) IN GENERAL.—The State agency shall pro-  
23          vide qualified entities with—

24           “(A) such forms as are necessary for an  
25          application to be made by an individual de-

1           scribed in subsection (a) for medical assistance  
2           under the State plan; and

3                   “(B) information on how to assist such in-  
4           dividuals in completing and filing such forms.

5                   “(2) NOTIFICATION REQUIREMENTS.—A quali-  
6           fied entity that determines under subsection  
7           (b)(1)(A) that an individual described in subsection  
8           (a) is presumptively eligible for medical assistance  
9           under a State plan shall—

10                   “(A) notify the State agency of the deter-  
11           mination within 5 working days after the date  
12           on which determination is made; and

13                   “(B) inform such individual at the time  
14           the determination is made that an application  
15           for medical assistance is required to be made by  
16           not later than the last day of the month fol-  
17           lowing the month during which the determina-  
18           tion is made.

19                   “(3) APPLICATION FOR MEDICAL ASSIST-  
20           ANCE.—In the case of an individual described in  
21           subsection (a) who is determined by a qualified enti-  
22           ty to be presumptively eligible for medical assistance  
23           under a State plan, the individual shall apply for  
24           medical assistance by not later than the last day of

1 the month following the month during which the de-  
2 termination is made.

3 “(d) PAYMENT.—Notwithstanding any other provi-  
4 sion of law, medical assistance that—

5 “(1) is furnished to an individual described in  
6 subsection (a)—

7 “(A) during a presumptive eligibility pe-  
8 riod;

9 “(B) by a entity that is eligible for pay-  
10 ments under the State plan; and

11 “(2) is included in the care and services covered  
12 by the State plan,

13 shall be treated as medical assistance provided by such  
14 plan for purposes of clause (4) of the first sentence of  
15 section 1905(b).”.

16 (2) CONFORMING AMENDMENTS.—

17 (A) Section 1902(a)(47) of the Social Se-  
18 curity Act (42 U.S.C. 1396a(a)(47)) is amend-  
19 ed by inserting before the semicolon at the end  
20 the following: “and provide for making medical  
21 assistance available to individuals described in  
22 subsection (a) of section 1920C during a pre-  
23 sumptive eligibility period in accordance with  
24 such section”.

1 (B) Section 1903(u)(1)(D)(v) of such Act  
2 (42 U.S.C. 1396b(u)(1)(D)(v)) is amended—

3 (i) by striking “or for” and inserting  
4 “for”; and

5 (ii) by inserting before the period the  
6 following: “, or for medical assistance pro-  
7 vided to an individual described in sub-  
8 section (a) of section 1920C during a pre-  
9 sumptive eligibility period under such sec-  
10 tion”.

11 (c) CLARIFICATION OF COVERAGE OF FAMILY PLAN-  
12 NING SERVICES AND SUPPLIES.—Section 1937(b) of the  
13 Social Security Act (42 U.S.C. 1396u–7(b)) is amended  
14 by adding at the end the following:

15 “(5) COVERAGE OF FAMILY PLANNING SERV-  
16 ICES AND SUPPLIES.—Notwithstanding the previous  
17 provisions of this section, a State may not provide  
18 for medical assistance through enrollment of an indi-  
19 vidual with benchmark coverage or benchmark-equiv-  
20 alent coverage under this section unless such cov-  
21 erage includes for any individual described in section  
22 1905(a)(4)(C), medical assistance for family plan-  
23 ning services and supplies in accordance with such  
24 section.”.

1 (d) EFFECTIVE DATE.—The amendments made by  
2 this section take effect on the date of the enactment of  
3 this Act and shall apply to items and services furnished  
4 on or after such date.

5 **SEC. 5005. PROTECTIONS FOR INDIANS UNDER MEDICAID**  
6 **AND CHIP.**

7 (a) PREMIUMS AND COST SHARING PROTECTION  
8 UNDER MEDICAID.—

9 (1) IN GENERAL.—Section 1916 of the Social  
10 Security Act (42 U.S.C. 1396o) is amended—

11 (A) in subsection (a), in the matter pre-  
12 ceding paragraph (1), by striking “and (i)” and  
13 inserting “, (i), and (j)”; and

14 (B) by adding at the end the following new  
15 subsection:

16 “(j) NO PREMIUMS OR COST SHARING FOR INDIANS  
17 FURNISHED ITEMS OR SERVICES DIRECTLY BY INDIAN  
18 HEALTH PROGRAMS OR THROUGH REFERRAL UNDER  
19 CONTRACT HEALTH SERVICES.—

20 “(1) NO COST SHARING FOR ITEMS OR SERV-  
21 ICES FURNISHED TO INDIANS THROUGH INDIAN  
22 HEALTH PROGRAMS.—

23 “(A) IN GENERAL.—No enrollment fee,  
24 premium, or similar charge, and no deduction,  
25 copayment, cost sharing, or similar charge shall



1 be imposed against an Indian who is furnished  
2 an item or service directly by the Indian Health  
3 Service, an Indian Tribe, Tribal Organization,  
4 or Urban Indian Organization or through refer-  
5 ral under contract health services for which  
6 payment may be made under this title.

7 “(B) NO REDUCTION IN AMOUNT OF PAY-  
8 MENT TO INDIAN HEALTH PROVIDERS.—Pay-  
9 ment due under this title to the Indian Health  
10 Service, an Indian Tribe, Tribal Organization,  
11 or Urban Indian Organization, or a health care  
12 provider through referral under contract health  
13 services for the furnishing of an item or service  
14 to an Indian who is eligible for assistance under  
15 such title, may not be reduced by the amount  
16 of any enrollment fee, premium, or similar  
17 charge, or any deduction, copayment, cost shar-  
18 ing, or similar charge that would be due from  
19 the Indian but for the operation of subpara-  
20 graph (A).

21 “(2) RULE OF CONSTRUCTION.—Nothing in  
22 this subsection shall be construed as restricting the  
23 application of any other limitations on the imposi-  
24 tion of premiums or cost sharing that may apply to

1 an individual receiving medical assistance under this  
2 title who is an Indian.”.

3 (2) CONFORMING AMENDMENT.—Section  
4 1916A(b)(3) of such Act (42 U.S.C. 1396o–1(b)(3))  
5 is amended—

6 (A) in subparagraph (A), by adding at the  
7 end the following new clause:

8 “(vi) An Indian who is furnished an  
9 item or service directly by the Indian  
10 Health Service, an Indian Tribe, Tribal  
11 Organization or Urban Indian Organiza-  
12 tion or through referral under contract  
13 health services.”; and

14 (B) in subparagraph (B), by adding at the  
15 end the following new clause:

16 “(ix) Items and services furnished to  
17 an Indian directly by the Indian Health  
18 Service, an Indian Tribe, Tribal Organiza-  
19 tion or Urban Indian Organization or  
20 through referral under contract health  
21 services.”.

22 (3) EFFECTIVE DATE.—The amendments made  
23 by this subsection shall take effect on October 1,  
24 2009.

1 (b) TREATMENT OF CERTAIN PROPERTY FROM RE-  
2 SOURCES FOR MEDICAID AND CHIP ELIGIBILITY.—

3 (1) MEDICAID.—Section 1902 of the Social Se-  
4 curity Act (42 U.S.C. 1396a), as amended by sec-  
5 tion 3003(a) of the Health Insurance Assistance for  
6 the Unemployed Act of 2009 and section 5004, is  
7 amended by adding at the end the following new  
8 subsection:

9 “(ff) Notwithstanding any other requirement of this  
10 title or any other provision of Federal or State law, a State  
11 shall disregard the following property from resources for  
12 purposes of determining the eligibility of an individual who  
13 is an Indian for medical assistance under this title:

14 “(1) Property, including real property and im-  
15 provements, that is held in trust, subject to Federal  
16 restrictions, or otherwise under the supervision of  
17 the Secretary of the Interior, located on a reserva-  
18 tion, including any federally recognized Indian  
19 Tribe’s reservation, pueblo, or colony, including  
20 former reservations in Oklahoma, Alaska Native re-  
21 gions established by the Alaska Native Claims Set-  
22 tlement Act, and Indian allotments on or near a res-  
23 ervation as designated and approved by the Bureau  
24 of Indian Affairs of the Department of the Interior.

1           “(2) For any federally recognized Tribe not de-  
2           scribed in paragraph (1), property located within the  
3           most recent boundaries of a prior Federal reserva-  
4           tion.

5           “(3) Ownership interests in rents, leases, roy-  
6           alties, or usage rights related to natural resources (in-  
7           cluding extraction of natural resources or harvesting  
8           of timber, other plants and plant products, animals,  
9           fish, and shellfish) resulting from the exercise of fed-  
10          erally protected rights.

11          “(4) Ownership interests in or usage rights to  
12          items not covered by paragraphs (1) through (3)  
13          that have unique religious, spiritual, traditional, or  
14          cultural significance or rights that support subsist-  
15          ence or a traditional lifestyle according to applicable  
16          tribal law or custom.”.

17          (2) APPLICATION TO CHIP.—Section 2107(e)(1)  
18          of such Act (42 U.S.C. 1397gg(e)(1)) is amended by  
19          adding at the end the following new subparagraph:

20                  “(E) Section 1902(ff) (relating to dis-  
21                  regard of certain property for purposes of mak-  
22                  ing eligibility determinations).”.

23          (c) CONTINUATION OF CURRENT LAW PROTECTIONS  
24          OF CERTAIN INDIAN PROPERTY FROM MEDICAID ESTATE

1 RECOVERY.—Section 1917(b)(3) of the Social Security  
2 Act (42 U.S.C. 1396p(b)(3)) is amended—

3 (1) by inserting “(A)” after “(3)”; and

4 (2) by adding at the end the following new sub-  
5 paragraph:

6 “(B) The standards specified by the Sec-  
7 retary under subparagraph (A) shall require  
8 that the procedures established by the State  
9 agency under subparagraph (A) exempt income,  
10 resources, and property that are exempt from  
11 the application of this subsection as of April 1,  
12 2003, under manual instructions issued to carry  
13 out this subsection (as in effect on such date)  
14 because of the Federal responsibility for Indian  
15 Tribes and Alaska Native Villages. Nothing in  
16 this subparagraph shall be construed as pre-  
17 venting the Secretary from providing additional  
18 estate recovery exemptions under this title for  
19 Indians.”.

20 **SEC. 5006. CONSULTATION ON MEDICAID AND CHIP.**

21 (a) IN GENERAL.—Section 1139 of the Social Secu-  
22 rity Act (42 U.S.C. 1320b–9) is amended to read as fol-  
23 lows:

24 “CONSULTATION WITH TRIBAL TECHNICAL ADVISORY  
25 GROUP (TTAG)

26 “SEC. 1139.

1           “The Secretary shall maintain within the Centers for  
2 Medicaid & Medicare Services (CMS) a Tribal Technical  
3 Advisory Group, which was first established in accordance  
4 with requirements of the charter dated September 30,  
5 2003, and the Secretary shall include in such Group a rep-  
6 resentative of the Urban Indian Organizations and the  
7 Service. The representative of the Urban Indian Organiza-  
8 tion shall be deemed to be an elected officer of a tribal  
9 government for purposes of applying section 204(b) of the  
10 Unfunded Mandates Reform Act of 1995 (2 U.S.C.  
11 1534(b)).”.

12           (b) SOLICITATION OF ADVICE UNDER MEDICAID AND  
13 CHIP.—

14           (1) MEDICAID STATE PLAN AMENDMENT.—Sec-  
15 tion 1902(a) of the Social Security Act (42 U.S.C.  
16 1396a(a)) is amended—

17           (A) in paragraph (70), by striking “and”  
18 at the end;

19           (B) in paragraph (71), by striking the pe-  
20 riod at the end and inserting “; and”; and

21           (C) by inserting after paragraph (71), the  
22 following new paragraph:

23           “(72) in the case of any State in which 1 or  
24 more Indian Health Programs or Urban Indian Or-  
25 ganizations furnishes health care services, provide

1 for a process under which the State seeks advice on  
2 a regular, ongoing basis from designees of such In-  
3 dian Health Programs and Urban Indian Organiza-  
4 tions on matters relating to the application of this  
5 title that are likely to have a direct effect on such  
6 Indian Health Programs and Urban Indian Organi-  
7 zations and that—

8 “(A) shall include solicitation of advice  
9 prior to submission of any plan amendments,  
10 waiver requests, and proposals for demonstra-  
11 tion projects likely to have a direct effect on In-  
12 dians, Indian Health Programs, or Urban In-  
13 dian Organizations; and

14 “(B) may include appointment of an advi-  
15 sory committee and of a designee of such In-  
16 dian Health Programs and Urban Indian Orga-  
17 nizations to the medical care advisory com-  
18 mittee advising the State on its State plan  
19 under this title.”.

20 (2) APPLICATION TO CHIP.—Section 2107(e)(1)  
21 of such Act (42 U.S.C. 1397gg(e)(1)), as amended  
22 by section 5005(b), is amended by adding at the end  
23 the following new subparagraph:

24 “(F) Section 1902(a)(72) (relating to re-  
25 quiring certain States to seek advice from des-

1           ignees of Indian Health Programs and Urban  
2           Indian Organizations).”.

3       (c) RULE OF CONSTRUCTION.—Nothing in the  
4 amendments made by this section shall be construed as  
5 superseding existing advisory committees, working groups,  
6 guidance, or other advisory procedures established by the  
7 Secretary of Health and Human Services or by any State  
8 with respect to the provision of health care to Indians.