

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO COMMITTEE PRINT  
OFFERED BY M . \_\_\_\_\_**

Amend title IV to read as follows:

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 implementation 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 implementation 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 EHR 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 INFORMATION TECHNOLOGY AND**  
10             **QUALITY**

12     **“SEC. 3000. DEFINITIONS.**

13             “In this title:

1           “(1) CERTIFIED EHR TECHNOLOGY.—The term  
2           ‘certified EHR technology’ means a qualified elec-  
3           tronic health record that is certified pursuant to sec-  
4           tion 3001(c)(5) as meeting standards adopted under  
5           section 3004 that are applicable to the type of  
6           record involved (as determined by the Secretary,  
7           such as an ambulatory electronic health record for  
8           office-based physicians or an inpatient hospital elec-  
9           tronic health record for hospitals).

10           “(2) ENTERPRISE INTEGRATION.—The term  
11           ‘enterprise integration’ means the electronic linkage  
12           of health care providers, health plans, the govern-  
13           ment, and other interested parties, to enable the  
14           electronic exchange and use of health information  
15           among all the components in the health care infra-  
16           structure in accordance with applicable law, and  
17           such term includes related application protocols and  
18           other related standards.

19           “(3) HEALTH CARE PROVIDER.—The term  
20           ‘health care provider’ means a hospital, skilled nurs-  
21           ing facility, nursing facility, home health entity or  
22           other long term care facility, health care clinic, Fed-  
23           erally qualified health center, group practice (as de-  
24           fined in section 1877(h)(4) of the Social Security  
25           Act), a pharmacist, a pharmacy, a laboratory, a phy-

1       sician (as defined in section 1861(r) of the Social  
2       Security Act), a practitioner (as described in section  
3       1842(b)(18)(C) of the Social Security Act), a pro-  
4       vider operated by, or under contract with, the Indian  
5       Health Service or by an Indian tribe (as defined in  
6       the Indian Self-Determination and Education Assist-  
7       ance Act), tribal organization, or urban Indian orga-  
8       nization (as defined in section 4 of the Indian  
9       Health Care Improvement Act), a rural health clinic,  
10      a covered entity under section 340B, an ambulatory  
11      surgical center described in section 1833(i) of the  
12      Social Security Act, and any other category of facil-  
13      ity or clinician determined appropriate by the Sec-  
14      retary.

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

18           “(5) HEALTH INFORMATION TECHNOLOGY.—  
19      The term ‘health information technology’ means  
20      hardware, software, integrated technologies and re-  
21      lated licenses, intellectual property, upgrades, and  
22      packaged solutions sold as services that are specifi-  
23      cally designed for use by health care entities for the  
24      electronic creation, maintenance, or exchange of  
25      health information.

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

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

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

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

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

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

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

23          “(13) QUALIFIED ELECTRONIC HEALTH  
24          RECORD.—The term ‘qualified electronic health

1 record' means an electronic record of health-related  
2 information on an individual that—

3 “(A) includes patient demographic and  
4 clinical health information, such as medical his-  
5 tory and problem lists; and

6 “(B) has the capacity—

7 “(i) to provide clinical decision sup-  
8 port;

9 “(ii) to support physician order entry;

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

12 “(iv) to exchange electronic health in-  
13 formation with, and integrate such infor-  
14 mation from other sources.

15 “(14) STATE.—The term ‘State’ means each of  
16 the several States, the District of Columbia, Puerto  
17 Rico, the Virgin Islands, Guam, American Samoa,  
18 and the Northern Mariana Islands.

19 **“Subtitle A—Promotion of Health**  
20 **Information Technology**

21 **“SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR**  
22 **HEALTH INFORMATION TECHNOLOGY.**

23 “(a) ESTABLISHMENT.—There is established within  
24 the Department of Health and Human Services an Office  
25 of the National Coordinator for Health Information Tech-

1 nology (referred to in this section as the ‘Office’). The Of-  
2 fice shall be headed by a National Coordinator who shall  
3 be appointed by the Secretary and shall report directly to  
4 the Secretary.

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

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

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

16 “(3) reduces health care costs resulting from  
17 inefficiency, medical errors, inappropriate care, du-  
18 plicative care, and incomplete information;

19 “(4) provides appropriate information to help  
20 guide medical decisions at the time and place of  
21 care;

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

24 “(6) improves the coordination of care and in-  
25 formation among hospitals, laboratories, physician



1 offices, and other entities through an effective infra-  
2 structure for the secure and authorized exchange of  
3 health care information;

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

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

10 “(9) promotes prevention of chronic diseases;

11 “(10) promotes a more effective marketplace,  
12 greater competition, greater systems analysis, in-  
13 creased consumer choice, and improved outcomes in  
14 health care services; and

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

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

18 “(1) STANDARDS.—The National Coordinator  
19 shall review and determine whether to endorse each  
20 standard, implementation specification, and certifi-  
21 cation criterion for the electronic exchange and use  
22 of health information that is recommended by the  
23 HIT Standards Committee under section 3003 for  
24 purposes of adoption under section 3004. The Coor-  
25 dinator shall make such determination, and report to

1 the Secretary such determination, not later than 45  
2 days after the date the recommendation is received  
3 by the Coordinator.

4 “(2) HIT POLICY COORDINATION.—

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

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

22 “(3) STRATEGIC PLAN.—

23 “(A) IN GENERAL.—The National Coordi-  
24 nator shall, in consultation with other appro-  
25 priate Federal agencies (including the National

1 Institute of Standards and Technology), update  
2 the Federal Health IT Strategic Plan (devel-  
3 oped as of June 3, 2008) to include specific ob-  
4 jectives, milestones, and metrics with respect to  
5 the following:

6 “(i) The electronic exchange and use  
7 of health information and the enterprise  
8 integration of such information.

9 “(ii) The utilization of an electronic  
10 health record for each person in the United  
11 States by 2014.

12 “(iii) The incorporation of privacy and  
13 security protections for the electronic ex-  
14 change of an individual’s individually iden-  
15 tifiable health information.

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

22 “(v) Specifying a framework for co-  
23 ordination and flow of recommendations  
24 and policies under this subtitle among the  
25 Secretary, the National Coordinator, the

1 HIT Policy Committee, the HIT Standards  
2 Committee, and other health information  
3 exchanges and other relevant entities.

4 “(vi) Methods to foster the public un-  
5 derstanding of health information tech-  
6 nology.

7 “(vii) Strategies to enhance the use of  
8 health information technology in improving  
9 the quality of health care, reducing medical  
10 errors, reducing health disparities, improv-  
11 ing public health, and improving the con-  
12 tinuity of care among health care settings.

13 “(B) COLLABORATION.—The strategic  
14 plan shall be updated through collaboration of  
15 public and private entities.

16 “(C) MEASURABLE OUTCOME GOALS.—  
17 The strategic plan update shall include measur-  
18 able outcome goals.

19 “(D) PUBLICATION.—The National Coor-  
20 dinator shall republish the strategic plan, in-  
21 cluding all updates.

22 “(4) WEBSITE.—The National Coordinator  
23 shall maintain and frequently update an Internet  
24 website on which there is posted information on the  
25 work, schedules, reports, recommendations, and

1 other information to ensure transparency in pro-  
2 motion of a nationwide health information tech-  
3 nology infrastructure.

4 “(5) CERTIFICATION.—

5 “(A) IN GENERAL.—The National Coordi-  
6 nator, in consultation with the Director of the  
7 National Institute of Standards and Tech-  
8 nology, shall develop a program (either directly  
9 or by contract) for the voluntary certification of  
10 health information technology as being in com-  
11 pliance with applicable certification criteria  
12 adopted under this subtitle. Such program shall  
13 include testing of the technology in accordance  
14 with section 4201(b) of the HITECH Act.

15 “(B) CERTIFICATION CRITERIA DE-  
16 SCRIBED.—In this title, the term ‘certification  
17 criteria’ means, with respect to standards and  
18 implementation specifications for health infor-  
19 mation technology, criteria to establish that the  
20 technology meets such standards and implemen-  
21 tation specifications.

22 “(6) REPORTS AND PUBLICATIONS.—

23 “(A) REPORT ON ADDITIONAL FUNDING  
24 OR AUTHORITY NEEDED.—Not later than 12  
25 months after the date of the enactment of this

1 title, the National Coordinator shall submit to  
2 the appropriate committees of jurisdiction of  
3 the House of Representatives and the Senate a  
4 report on any additional funding or authority  
5 the Coordinator or the HIT Policy Committee  
6 or HIT Standards Committee requires to evalu-  
7 ate and develop standards, implementation  
8 specifications, and certification criteria, or to  
9 achieve full participation of stakeholders in the  
10 adoption of a nationwide health information  
11 technology infrastructure that allows for the  
12 electronic use and exchange of health informa-  
13 tion.

14 “(B) IMPLEMENTATION REPORT.—The  
15 National Coordinator shall prepare a report  
16 that identifies lessons learned from major pub-  
17 lic and private health care systems in their im-  
18 plementation of health information technology,  
19 including information on whether the tech-  
20 nologies and practices developed by such sys-  
21 tems may be applicable to and usable in whole  
22 or in part by other health care providers.

23 “(C) ASSESSMENT OF IMPACT OF HIT ON  
24 COMMUNITIES WITH HEALTH DISPARITIES AND  
25 UNINSURED, UNDERINSURED, AND MEDICALLY

1           UNDERSERVED AREAS.—The National Coordi-  
2           nator shall assess and publish the impact of  
3           health information technology in communities  
4           with health disparities and in areas with a high  
5           proportion of individuals who are uninsured,  
6           underinsured, and medically underserved indi-  
7           viduals (including urban and rural areas) and  
8           identify practices to increase the adoption of  
9           such technology by health care providers in  
10          such communities.

11           “(D) EVALUATION OF BENEFITS AND  
12          COSTS OF THE ELECTRONIC USE AND EX-  
13          CHANGE OF HEALTH INFORMATION.—The Na-  
14          tional Coordinator shall evaluate and publish  
15          evidence on the benefits and costs of the elec-  
16          tronic use and exchange of health information  
17          and assess to whom these benefits and costs ac-  
18          crue.

19           “(E) RESOURCE REQUIREMENTS.—The  
20          National Coordinator shall estimate and publish  
21          resources required annually to reach the goal of  
22          utilization of an electronic health record for  
23          each person in the United States by 2014, in-  
24          cluding the required level of Federal funding,  
25          expectations for regional, State, and private in-

1 vestment, and the expected contributions by vol-  
2 unteers to activities for the utilization of such  
3 records.

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

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

15 “(d) DETAIL OF FEDERAL EMPLOYEES.—

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

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



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

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

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

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

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

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

8       “(b) DUTIES.—

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

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

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

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

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

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

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

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

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

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

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

1           ordination of health care and improving  
2           continuity of health care among health  
3           care providers, by reducing medical errors,  
4           by improving population health, and by ad-  
5           vancing research and education.

6           “(C) OTHER AREAS FOR CONSIDER-  
7           ATION.—In making recommendations under  
8           subparagraph (A), the HIT Policy Committee  
9           may consider the following additional areas:

10                   “(i) The appropriate uses of a nation-  
11                   wide health information infrastructure, in-  
12                   cluding for purposes of—

13                           “(I) the collection of quality data  
14                           and public reporting;

15                           “(II) biosurveillance and public  
16                           health;

17                           “(III) medical and clinical re-  
18                           search; and

19                           “(IV) drug safety.

20                   “(ii) Self-service technologies that fa-  
21                   cilitate the use and exchange of patient in-  
22                   formation and reduce wait times.

23                   “(iii) Telemedicine technologies, in  
24                   order to reduce travel requirements for pa-  
25                   tients in remote areas.

1                   “(iv) Technologies that facilitate home  
2 health care and the monitoring of patients  
3 recuperating at home.

4                   “(v) Technologies that help reduce  
5 medical errors.

6                   “(vi) Technologies that facilitate the  
7 continuity of care among health settings.

8                   “(vii) Technologies that meet the  
9 needs of diverse populations.

10                   “(viii) Any other technology that the  
11 HIT Policy Committee finds to be among  
12 the technologies with the greatest potential  
13 to improve the quality and efficiency of  
14 health care.

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

19                   “(c) MEMBERSHIP AND OPERATIONS.—

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

23                   “(2) MEMBERSHIP.—The membership of the  
24 HIT Policy Committee shall at least reflect pro-  
25 viders, ancillary healthcare workers, consumers, pur-

1 chasers, health plans, technology vendors, research-  
2 ers, relevant Federal agencies, and individuals with  
3 technical expertise on health care quality, privacy  
4 and security, and on the electronic exchange and use  
5 of health information.

6 “(3) CONSIDERATION.—The National Coordi-  
7 nator shall ensure that the relevant recommenda-  
8 tions and comments from the National Committee  
9 on Vital and Health Statistics are considered in the  
10 development of policies.

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

14 “(e) PUBLICATION.—The Secretary shall provide for  
15 publication in the Federal Register and the posting on the  
16 Internet website of the Office of the National Coordinator  
17 for Health Information Technology of all policy rec-  
18 ommendations made by the HIT Policy Committee under  
19 this section.

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

21 “(a) ESTABLISHMENT.—There is established a com-  
22 mittee to be known as the HIT Standards Committee to  
23 recommend to the National Coordinator standards, imple-  
24 mentation specifications, and certification criteria for the  
25 electronic exchange and use of health information for pur-

1 poses of adoption under section 3004, consistent with the  
2 implementation of the strategic plan described in section  
3 3001(c)(3) and beginning with the areas listed in section  
4 3002(b)(2)(B) in accordance with policies developed by  
5 the HIT Policy Committee.

6 “(b) DUTIES.—

7 “(1) STANDARDS DEVELOPMENT.—

8 “(A) IN GENERAL.—The HIT Standards  
9 Committee shall recommend to the National  
10 Coordinator standards, implementation speci-  
11 fications, and certification criteria described in  
12 subsection (a) that have been developed, har-  
13 monized, or recognized by the HIT Standards  
14 Committee. The HIT Standards Committee  
15 shall update such recommendations and make  
16 new recommendations as appropriate, including  
17 in response to a notification sent under section  
18 3004(b)(2). Such recommendations shall be  
19 consistent with the latest recommendations  
20 made by the HIT Policy Committee.

21 “(B) PILOT TESTING OF STANDARDS AND  
22 IMPLEMENTATION SPECIFICATIONS.—In the de-  
23 velopment, harmonization, or recognition of  
24 standards and implementation specifications,  
25 the HIT Standards Committee shall, as appro-



1           appropriate, provide for the testing of such standards  
2           and specifications by the National Institute for  
3           Standards and Technology under section 4201  
4           of the HITECH Act.

5           “(C) CONSISTENCY.—The standards, im-  
6           plementation specifications, and certification  
7           criteria recommended under this subsection  
8           shall be consistent with the standards for infor-  
9           mation transactions and data elements adopted  
10          pursuant to section 1173 of the Social Security  
11          Act.

12          “(2) FORUM.—The HIT Standards Committee  
13          shall serve as a forum for the participation of a  
14          broad range of stakeholders to provide input on the  
15          development, harmonization, and recognition of  
16          standards, implementation specifications, and certifi-  
17          cation criteria necessary for the development and  
18          adoption of a nationwide health information tech-  
19          nology infrastructure that allows for the electronic  
20          use and exchange of health information.

21          “(3) SCHEDULE.—Not later than 90 days after  
22          the date of the enactment of this title, the HIT  
23          Standards Committee shall develop a schedule for  
24          the assessment of policy recommendations developed  
25          by the HIT Policy Committee under section 3002.

1       The HIT Standards Committee shall update such  
2       schedule annually. The Secretary shall publish such  
3       schedule in the Federal Register.

4           “(4) PUBLIC INPUT.—The HIT Standards  
5       Committee shall conduct open public meetings and  
6       develop a process to allow for public comment on the  
7       schedule described in paragraph (3) and rec-  
8       ommendations described in this subsection. Under  
9       such process comments shall be submitted in a time-  
10      ly manner after the date of publication of a rec-  
11      ommendation under this subsection.

12      “(c) MEMBERSHIP AND OPERATIONS.—

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

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

24           “(3) CONSIDERATION.—The National Coordi-  
25      nator shall ensure that the relevant recommenda-

1 tions and comments from the National Committee  
2 on Vital and Health Statistics are considered in the  
3 development of standards.

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

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

15 “(e) PUBLICATION.—The Secretary shall provide for  
16 publication in the Federal Register and the posting on the  
17 Internet website of the Office of the National Coordinator  
18 for Health Information Technology of all recommenda-  
19 tions made by the HIT Standards Committee under this  
20 section.

1 **“SEC. 3004. PROCESS FOR ADOPTION OF ENDORSED REC-**  
2 **COMMENDATIONS; ADOPTION OF INITIAL SET**  
3 **OF STANDARDS, IMPLEMENTATION SPECI-**  
4 **FICATIONS, AND CERTIFICATION CRITERIA.**

5 “(a) PROCESS FOR ADOPTION OF ENDORSED REC-  
6 OMMENDATIONS.—

7 “(1) REVIEW OF ENDORSED STANDARDS, IM-  
8 PLEMENTATION SPECIFICATIONS, AND CERTIFI-  
9 CATION CRITERIA.—Not later than 90 days after the  
10 date of receipt of standards, implementation speci-  
11 fications, or certification criteria endorsed under sec-  
12 tion 3001(c), the Secretary, in consultation with rep-  
13 resentatives of other relevant Federal agencies, shall  
14 jointly review such standards, implementation speci-  
15 fications, or certification criteria and shall determine  
16 whether or not to propose adoption of such stand-  
17 ards, implementation specifications, or certification  
18 criteria.

19 “(2) DETERMINATION TO ADOPT STANDARDS,  
20 IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-  
21 CATION CRITERIA.—If the Secretary determines—

22 “(A) to propose adoption of any grouping  
23 of such standards, implementation specifica-  
24 tions, or certification criteria, the Secretary  
25 shall, by regulation, determine whether or not

1 to adopt such grouping of standards, implemen-  
2 tation specifications, or certification criteria; or

3 “(B) not to propose adoption of any group-  
4 ing of standards, implementation specifications,  
5 or certification criteria, the Secretary shall no-  
6 tify the National Coordinator and the HIT  
7 Standards Committee in writing of such deter-  
8 mination and the reasons for not proposing the  
9 adoption of such recommendation.

10 “(3) PUBLICATION.—The Secretary shall pro-  
11 vide for publication in the Federal Register of all de-  
12 terminations made by the Secretary under para-  
13 graph (1).

14 “(b) ADOPTION OF INITIAL SET OF STANDARDS, IM-  
15 PLEMENTATION SPECIFICATIONS, AND CERTIFICATION  
16 CRITERIA.—

17 “(1) IN GENERAL.—Not later than December  
18 31, 2009, the Secretary shall, through the rule-  
19 making process described in section 3003, adopt an  
20 initial set of standards, implementation specifica-  
21 tions, and certification criteria for the areas required  
22 for consideration under section 3002(b)(2)(B).

23 “(2) APPLICATION OF CURRENT STANDARDS,  
24 IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-  
25 CATION CRITERIA.—The standards, implementation

1 specifications, and certification criteria adopted be-  
2 fore the date of the enactment of this title through  
3 the process existing through the Office of the Na-  
4 tional Coordinator for Health Information Tech-  
5 nology may be applied towards meeting the require-  
6 ment of paragraph (1).

7 **“SEC. 3005. APPLICATION AND USE OF ADOPTED STAND-**  
8 **ARDS AND IMPLEMENTATION SPECIFICA-**  
9 **TIONS BY FEDERAL AGENCIES.**

10 “For requirements relating to the application and use  
11 by Federal agencies of the standards and implementation  
12 specifications adopted under section 3004, see section  
13 4111 of the HITECH Act.

14 **“SEC. 3006. VOLUNTARY APPLICATION AND USE OF ADOPT-**  
15 **ED STANDARDS AND IMPLEMENTATION**  
16 **SPECIFICATIONS BY PRIVATE ENTITIES.**

17 “(a) IN GENERAL.—Except as provided under section  
18 4112 of the HITECH Act, any standard or implementa-  
19 tion specification adopted under section 3004 shall be vol-  
20 untary with respect to private entities.

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

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

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

5 “(a) IN GENERAL.—The National Coordinator shall  
6 support the development, routine updating, and provision  
7 of qualified EHR technology (as defined in section 3000)  
8 consistent with subsections (b) and (c) unless the Sec-  
9 retary determines that the needs and demands of pro-  
10 viders are being substantially and adequately met through  
11 the marketplace.

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

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

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

5       **“SEC. 3008. TRANSITIONS.**

6       “(a) **ONCHIT.**—To the extent consistent with sec-  
7 tion 3001, all functions, personnel, assets, liabilities, and  
8 administrative actions applicable to the National Coordi-  
9 nator for Health Information Technology appointed under  
10 Executive Order 13335 or the Office of such National Co-  
11 ordinator on the date before the date of the enactment  
12 of this title shall be transferred to the National Coordi-  
13 nator appointed under section 3001(a) and the Office of  
14 such National Coordinator as of the date of the enactment  
15 of this title.

16       “(b) **AHIC.**—

17               “(1) To the extent consistent with sections  
18 3002 and 3003, all functions, personnel, assets, and  
19 liabilities applicable to the AHIC Successor, Inc.  
20 doing business as the National eHealth Collaborative  
21 as of the day before the date of the enactment of  
22 this title shall be transferred to the HIT Policy  
23 Committee or the HIT Standards Committee, estab-  
24 lished under section 3002(a) or 3003(a), as appro-  
25 priate, as of the date of the enactment of this title.



1           “(2) In carrying out section 3003(b)(1)(A),  
2           until recommendations are made by the HIT Policy  
3           Committee, recommendations of the HIT Standards  
4           Committee shall be consistent with the most recent  
5           recommendations made by such AHIC Successor,  
6           Inc.

7           “(c) RULES OF CONSTRUCTION.—

8           “(1) ONCHIT.—Nothing in section 3001 or  
9           subsection (a) shall be construed as requiring the  
10          creation of a new entity to the extent that the Office  
11          of the National Coordinator for Health Information  
12          Technology established pursuant to Executive Order  
13          13335 is consistent with the provisions of section  
14          3001.

15          “(2) AHIC.—Nothing in sections 3002 or 3003  
16          or subsection (b) shall be construed as prohibiting  
17          the AHIC Successor, Inc. doing business as the Na-  
18          tional eHealth Collaborative from modifying its char-  
19          ter, duties, membership, and any other structure or  
20          function required to be consistent with section 3002  
21          and 3003 in a manner that would permit the Sec-  
22          retary to choose to recognize such AHIC Successor,  
23          Inc. as the HIT Policy Committee or the HIT  
24          Standards Committee.

1 **“SEC. 3009. RELATION TO HIPAA PRIVACY AND SECURITY**  
2 **LAW.**

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

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

8 “(2) The purposes of this title include ensuring  
9 that the health information technology standards  
10 and implementation specifications adopted under  
11 section 3004 take into account the requirements of  
12 HIPAA privacy and security law.

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

15 “(1) the provisions of part C of title XI of the  
16 Social Security Act, section 264 of the Health Insur-  
17 ance Portability and Accountability Act of 1996, and  
18 subtitle D of title IV of the HITECH Act; and

19 “(2) regulations under such provisions.

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

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

1 **SEC. 4102. TECHNICAL AMENDMENT.**

2 Section 1171(5) of the Social Security Act (42 U.S.C.  
3 1320d) is amended by striking “or C” and inserting “C,  
4 or D”.

5 **PART II—APPLICATION AND USE OF ADOPTED**  
6 **HEALTH INFORMATION TECHNOLOGY**  
7 **STANDARDS; REPORTS**

8 **SEC. 4111. COORDINATION OF FEDERAL ACTIVITIES WITH**  
9 **ADOPTED STANDARDS AND IMPLEMENTA-**  
10 **TION SPECIFICATIONS.**

11 (a) SPENDING ON HEALTH INFORMATION TECH-  
12 NOLOGY SYSTEMS.—As each agency (as defined in the Ex-  
13 ecutive Order issued on August 22, 2006, relating to pro-  
14 moting quality and efficient health care in Federal govern-  
15 ment administered or sponsored health care programs) im-  
16 plements, acquires, or upgrades health information tech-  
17 nology systems used for the direct exchange of individually  
18 identifiable health information between agencies and with  
19 non-Federal entities, it shall utilize, where available,  
20 health information technology systems and products that  
21 meet standards and implementation specifications adopted  
22 under section 3004 of the Public Health Service Act, as  
23 added by section 4101.

24 (b) FEDERAL INFORMATION COLLECTION ACTIVI-  
25 TIES.—With respect to a standard or implementation  
26 specification adopted under section 3004 of the Public

1 Health Service Act, as added by section 4101, the Presi-  
2 dent shall take measures to ensure that Federal activities  
3 involving the broad collection and submission of health in-  
4 formation are consistent with such standard or implemen-  
5 tation specification, respectively, within three years after  
6 the date of such adoption.

7 (c) APPLICATION OF DEFINITIONS.—The definitions  
8 contained in section 3000 of the Public Health Service  
9 Act, as added by section 4101, shall apply for purposes  
10 of this part.

11 **SEC. 4112. APPLICATION TO PRIVATE ENTITIES.**

12 Each agency (as defined in such Executive Order  
13 issued on August 22, 2006, relating to promoting quality  
14 and efficient health care in Federal government adminis-  
15 tered or sponsored health care programs) shall require in  
16 contracts or agreements with health care providers, health  
17 plans, or health insurance issuers that as each provider,  
18 plan, or issuer implements, acquires, or upgrades health  
19 information technology systems, it shall utilize, where  
20 available, health information technology systems and prod-  
21 ucts that meet standards and implementation specifica-  
22 tions adopted under section 3004 of the Public Health  
23 Service Act, as added by section 4101.

1 **SEC. 4113. STUDY AND REPORTS.**

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

8 (1) describes the specific actions that have been  
9 taken by the Federal Government and private enti-  
10 ties to facilitate the adoption of a nationwide system  
11 for the electronic use and exchange of health infor-  
12 mation;

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

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

17 (b) REIMBURSEMENT INCENTIVE STUDY AND RE-  
18 PORT.—

19 (1) STUDY.—The Secretary of Health and  
20 Human Services shall carry out, or contract with a  
21 private entity to carry out, a study that examines  
22 methods to create efficient reimbursement incentives  
23 for improving health care quality in Federally quali-  
24 fied health centers, rural health clinics, and free  
25 clinics.

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

7           (c) AGING SERVICES TECHNOLOGY STUDY AND RE-  
8           PORT.—

9           (1) IN GENERAL.—The Secretary of Health and  
10          Human Services shall carry out, or contract with a  
11          private entity to carry out, a study of matters relat-  
12          ing to the potential use of new aging services tech-  
13          nology to assist seniors, individuals with disabilities,  
14          and their caregivers throughout the aging process.

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

17                 (A) an evaluation of—

18                         (i) methods for identifying current,  
19                         emerging, and future health technology  
20                         that can be used to meet the needs of sen-  
21                         iors and individuals with disabilities and  
22                         their caregivers across all aging services  
23                         settings, as specified by the Secretary;

24                         (ii) methods for fostering scientific in-  
25                         novation with respect to aging services

1 technology within the business and aca-  
2 demic communities; and

3 (iii) developments in aging services  
4 technology in other countries that may be  
5 applied in the United States; and

6 (B) identification of—

7 (i) barriers to innovation in aging  
8 services technology and devising strategies  
9 for removing such barriers; and

10 (ii) barriers to the adoption of aging  
11 services technology by health care pro-  
12 viders and consumers and devising strate-  
13 gies to removing such barriers.

14 (3) REPORT.—Not later than 24 months after  
15 the date of the enactment of this Act, the Secretary  
16 shall submit to the appropriate committees of juris-  
17 diction of the House of Representatives and of the  
18 Senate a report on the study carried out under para-  
19 graph (1).

20 (4) DEFINITIONS.—For purposes of this sub-  
21 section:

22 (A) AGING SERVICES TECHNOLOGY.—The  
23 term “aging services technology” means health  
24 technology that meets the health care needs of

1 seniors, individuals with disabilities, and the  
2 caregivers of such seniors and individuals.

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

## 5 **Subtitle B—Testing of Health** 6 **Information Technology**

### 7 **SEC. 4201. NATIONAL INSTITUTE FOR STANDARDS AND** 8 **TECHNOLOGY TESTING.**

9 (a) PILOT TESTING OF STANDARDS AND IMPLEMEN-  
10 TATION SPECIFICATIONS.—In coordination with the HIT  
11 Standards Committee established under section 3003 of  
12 the Public Health Service Act, as added by section 4101,  
13 with respect to the development of standards and imple-  
14 mentation specifications under such section, the Director  
15 of the National Institute for Standards and Technology  
16 shall test such standards and implementation specifica-  
17 tions, as appropriate, in order to assure the efficient im-  
18 plementation and use of such standards and implementa-  
19 tion specifications.

20 (b) VOLUNTARY TESTING PROGRAM.—In coordina-  
21 tion with the HIT Standards Committee established under  
22 section 3003 of the Public Health Service Act, as added  
23 by section 4101, with respect to the development of stand-  
24 ards and implementation specifications under such sec-  
25 tion, the Director of the National Institute of Standards



1 and Technology shall support the establishment of a con-  
2 formance testing infrastructure, including the develop-  
3 ment of technical test beds. The development of this con-  
4 formance testing infrastructure may include a program to  
5 accredit independent, non-Federal laboratories to perform  
6 testing.

7 **SEC. 4202. RESEARCH AND DEVELOPMENT PROGRAMS.**

8 (a) HEALTH CARE INFORMATION ENTERPRISE INTE-  
9 GRATION RESEARCH CENTERS.—

10 (1) IN GENERAL.—The Director of the National  
11 Institute of Standards and Technology, in consulta-  
12 tion with the Director of the National Science Foun-  
13 dation and other appropriate Federal agencies, shall  
14 establish a program of assistance to institutions of  
15 higher education (or consortia thereof which may in-  
16 clude nonprofit entities and Federal Government  
17 laboratories) to establish multidisciplinary Centers  
18 for Health Care Information Enterprise Integration.

19 (2) REVIEW; COMPETITION.—Grants shall be  
20 awarded under this subsection on a merit-reviewed,  
21 competitive basis.

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

24 (A) to generate innovative approaches to  
25 health care information enterprise integration

1 by conducting cutting-edge, multidisciplinary  
2 research on the systems challenges to health  
3 care delivery; and

4 (B) the development and use of health in-  
5 formation technologies and other complemen-  
6 tary fields.

7 (4) RESEARCH AREAS.—Research areas may in-  
8 clude—

9 (A) interfaces between human information  
10 and communications technology systems;

11 (B) voice-recognition systems;

12 (C) software that improves interoperability  
13 and connectivity among health information sys-  
14 tems;

15 (D) software dependability in systems crit-  
16 ical to health care delivery;

17 (E) measurement of the impact of informa-  
18 tion technologies on the quality and productivity  
19 of health care;

20 (F) health information enterprise manage-  
21 ment;

22 (G) health information technology security  
23 and integrity; and

24 (H) relevant health information technology  
25 to reduce medical errors.

1           (5) APPLICATIONS.—An institution of higher  
2 education (or a consortium thereof) seeking funding  
3 under this subsection shall submit an application to  
4 the Director of the National Institute of Standards  
5 and Technology at such time, in such manner, and  
6 containing such information as the Director may re-  
7 quire. The application shall include, at a minimum,  
8 a description of—

9           (A) the research projects that will be un-  
10 dertaken by the Center established pursuant to  
11 assistance under paragraph (1) and the respec-  
12 tive contributions of the participating entities;

13           (B) how the Center will promote active col-  
14 laboration among scientists and engineers from  
15 different disciplines, such as information tech-  
16 nology, biologic sciences, management, social  
17 sciences, and other appropriate disciplines;

18           (C) technology transfer activities to dem-  
19 onstrate and diffuse the research results, tech-  
20 nologies, and knowledge; and

21           (D) how the Center will contribute to the  
22 education and training of researchers and other  
23 professionals in fields relevant to health infor-  
24 mation enterprise integration.

1 (b) NATIONAL INFORMATION TECHNOLOGY RE-  
2 SEARCH AND DEVELOPMENT PROGRAM.—The National  
3 High-Performance Computing Program established by  
4 section 101 of the High-Performance Computing Act of  
5 1991 (15 U.S.C. 5511) shall coordinate Federal research  
6 and development programs related to the development and  
7 deployment of health information technology, including ac-  
8 tivities related to—

9 (1) computer infrastructure;

10 (2) data security;

11 (3) development of large-scale, distributed, reli-  
12 able computing systems;

13 (4) wired, wireless, and hybrid high-speed net-  
14 working;

15 (5) development of software and software-inten-  
16 sive systems;

17 (6) human-computer interaction and informa-  
18 tion management technologies; and

19 (7) the social and economic implications of in-  
20 formation technology.

1    **Subtitle C—Incentives for the Use**  
2    **of Health Information Technology**

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

4    **SEC. 4301. GRANT, LOAN, AND DEMONSTRATION PRO-**  
5           **GRAMS.**

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

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

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

14           “(a) IN GENERAL.—The Secretary shall, using  
15 amounts appropriated under section 3018, invest in the  
16 infrastructure necessary to allow for and promote the elec-  
17 tronic exchange and use of health information for each  
18 individual in the United States consistent with the goals  
19 outlined in the strategic plan developed by the National  
20 Coordinator (and as available) under section 3001. To the  
21 greatest extent practicable, the Secretary shall ensure that  
22 any funds so appropriated shall be used for the acquisition  
23 of health information technology that meets standards and  
24 certification criteria adopted before the date of the enact-  
25 ment of this title until such date as the standards are

1 adopted under section 3004. The Secretary shall invest  
2 funds through the different agencies with expertise in such  
3 goals, such as the Office of the National Coordinator for  
4 Health Information Technology, the Health Resources and  
5 Services Administration, the Agency for Healthcare Re-  
6 search and Quality, the Centers of Medicare & Medicaid  
7 Services, the Centers for Disease Control and Prevention,  
8 and the Indian Health Service to support the following:

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

18           “(2) Development and adoption of appropriate  
19           certified electronic health records for categories of  
20           providers, as defined in section 3000, not eligible for  
21           support under title XVIII or XIX of the Social Secu-  
22           rity Act for the adoption of such records.

23           “(3) Training on and dissemination of informa-  
24           tion on best practices to integrate health information  
25           technology, including electronic health records, into

1 a provider’s delivery of care, consistent with best  
2 practices learned from the Health Information Tech-  
3 nology Research Center developed under section  
4 3012(b), including community health centers receiv-  
5 ing assistance under section 330, covered entities  
6 under section 340B, and providers participating in  
7 one or more of the programs under titles XVIII,  
8 XIX, and XXI of the Social Security Act (relating  
9 to Medicare, Medicaid, and the State Children’s  
10 Health Insurance Program).

11 “(4) Infrastructure and tools for the promotion  
12 of telemedicine, including coordination among Fed-  
13 eral agencies in the promotion of telemedicine.

14 “(5) Promotion of the interoperability of clinical  
15 data repositories or registries.

16 “(6) Promotion of technologies and best prac-  
17 tices that enhance the protection of health informa-  
18 tion by all holders of individually identifiable health  
19 information.

20 “(7) Improvement and expansion of the use of  
21 health information technology by public health de-  
22 partments.

23 “(8) Provision of \$300 million to support re-  
24 gional or sub-national efforts towards health infor-  
25 mation exchange.

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

4       “(c) ADDITIONAL USE OF FUNDS.—In addition to  
5 using funds as provided in subsection (a), the Secretary  
6 may use amounts appropriated under section 3018 to  
7 carry out activities that are provided for under laws in  
8 effect on the date of the enactment of this title.

9       **“SEC. 3012. HEALTH INFORMATION TECHNOLOGY IMPLE-**  
10                            **MENTATION ASSISTANCE.**

11       “(a) HEALTH INFORMATION TECHNOLOGY EXTEN-  
12 SION PROGRAM.—To assist health care providers to adopt,  
13 implement, and effectively use certified EHR technology  
14 that allows for the electronic exchange and use of health  
15 information, the Secretary, acting through the Office of  
16 the National Coordinator, shall establish a health informa-  
17 tion technology extension program to provide health infor-  
18 mation technology assistance services to be carried out  
19 through the Department of Health and Human Services.  
20 The National Coordinator shall consult with other Federal  
21 agencies with demonstrated experience and expertise in in-  
22 formation technology services, such as the National Insti-  
23 tute of Standards and Technology, in developing and im-  
24 plementing this program.



1       “(b) HEALTH INFORMATION TECHNOLOGY RE-  
2 SEARCH CENTER.—

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

13           “(2) INPUT.—The Center shall incorporate  
14 input from—

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

19           “(B) users of health information tech-  
20 nology, such as providers and their support and  
21 clerical staff and others involved in the care and  
22 care coordination of patients, from the health  
23 care and health information technology indus-  
24 try; and

25           “(C) others as appropriate.

1           “(3) PURPOSES.—The purposes of the Center  
2           are to—

3                   “(A) provide a forum for the exchange of  
4                   knowledge and experience;

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

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

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

22                  “(E) provide technical assistance for the  
23                  development and dissemination of solutions to  
24                  barriers to the exchange of electronic health in-  
25                  formation; and

1           “(F) learn about effective strategies to  
2           adopt and utilize health information technology  
3           in medically underserved communities.

4           “(c) HEALTH INFORMATION TECHNOLOGY RE-  
5 REGIONAL EXTENSION CENTERS.—

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

20          “(2) AFFILIATION.—Regional centers shall be  
21          affiliated with any United States-based nonprofit in-  
22          stitution or organization, or group thereof, that ap-  
23          plies and is awarded financial assistance under this  
24          section. Individual awards shall be decided on the  
25          basis of merit.

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

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

9                   “(B) broad participation of individuals  
10                  from industry, universities, and State govern-  
11                  ments;

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

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

22                  “(E) utilization, when appropriate, of the  
23                  expertise and capability that exists in Federal  
24                  agencies other than the Department; and

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

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

13                 “(A) Public or not-for-profit hospitals or  
14                 critical access hospitals.

15                 “(B) Federally qualified health centers (as  
16                 defined in section 1861(aa)(4) of the Social Se-  
17                 curity Act).

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

22                 “(D) Individual or small group practices  
23                 (or a consortium thereof) that are primarily fo-  
24                 cused on primary care.

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

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

19                 “(A) A detailed explanation of the program  
20                 and the programs goals.

21                 “(B) Procedures to be followed by the ap-  
22                 plicants.

23                 “(C) Criteria for determining qualified ap-  
24                 plicants.

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

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

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

15           “(B) the types of service to be provided to  
16           health care providers;

17           “(C) geographical diversity and extent of  
18           service area; and

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

22           “(8) BIENNIAL EVALUATION.—Each regional  
23           center which receives financial assistance under this  
24           subsection shall be evaluated biennially by an evalua-  
25           tion panel appointed by the Secretary. Each evalua-

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

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

16       **“SEC. 3013. STATE GRANTS TO PROMOTE HEALTH INFOR-**  
17               **MATION TECHNOLOGY.**

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

24               “(b) PLANNING GRANTS.—The Secretary may award  
25       a grant to a State or qualified State-designated entity (as



1 described in subsection (f)) that submits an application  
2 to the Secretary at such time, in such manner, and con-  
3 taining such information as the Secretary may specify, for  
4 the purpose of planning activities described in subsection  
5 (d).

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

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

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

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

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

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

4           “(3) complementing other Federal grants, pro-  
5           grams, and efforts towards the promotion of health  
6           information technology;

7           “(4) providing technical assistance for the de-  
8           velopment and dissemination of solutions to barriers  
9           to the exchange of electronic health information;

10           “(5) promoting effective strategies to adopt and  
11           utilize health information technology in medically  
12           underserved communities;

13           “(6) assisting patients in utilizing health infor-  
14           mation technology;

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

19           “(8) supporting public health agencies’ author-  
20           ized use of and access to electronic health informa-  
21           tion;

22           “(9) promoting the use of electronic health  
23           records for quality improvement including through  
24           quality measures reporting; and

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

3           “(e) PLAN.—

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

12           “(2) REQUIRED ELEMENTS.—A plan described  
13 in paragraph (1) shall—

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

15           “(B) be consistent with the strategic plan  
16 developed by the National Coordinator, (and, as  
17 available) under section 3001;

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

22           “(D) contain such elements as the Sec-  
23 retary may require.

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

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

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

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

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

17                   “(5) conform to such other requirements as the  
18 Secretary may establish.

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

23                   “(1) health care providers (including providers  
24 that provide services to low income and underserved  
25 populations);

1 “(2) health plans;

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

4 “(4) health information technology vendors;

5 “(5) health care purchasers and employers;

6 “(6) public health agencies;

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

9 “(8) clinical researchers;

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

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

16 “(h) CONTINUOUS IMPROVEMENT.—The Secretary  
17 shall annually evaluate the activities conducted under this  
18 section and shall, in awarding grants under this section,  
19 implement the lessons learned from such evaluation in a  
20 manner so that awards made subsequent to each such  
21 evaluation are made in a manner that, in the determina-  
22 tion of the Secretary, will lead towards the greatest im-  
23 provement in quality of care, decrease in costs, and the  
24 most effective authorized and secure electronic exchange  
25 of health information.

1 “(i) REQUIRED MATCH.—

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

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

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

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

18 “(2) AUTHORITY TO REQUIRE STATE MATCH  
19 FOR FISCAL YEARS BEFORE FISCAL YEAR 2011.—For  
20 any fiscal year during the grant program under this  
21 section before fiscal year 2011, the Secretary may  
22 determine the extent to which there shall be required  
23 a non-Federal contribution from a State receiving a  
24 grant under this section.

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

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

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

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

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

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

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

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

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

16                           “(ii) the Secretary in the case of other  
17                           entities;

18                           “(B) demonstrate to the satisfaction of the  
19                           Secretary (through criteria established by the  
20                           Secretary) that any certified EHR technology  
21                           purchased, improved, or otherwise financially  
22                           supported under a loan under this section is  
23                           used to exchange health information in a man-  
24                           ner that, in accordance with law and standards  
25                           (as adopted under section 3004) applicable to



1 the exchange of information, improves the qual-  
2 ity of health care, such as promoting care co-  
3 ordination; and

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

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

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

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

18 “(c) ESTABLISHMENT OF FUND.—For purposes of  
19 subsection (b)(3), an eligible entity shall establish a cer-  
20 tified EHR technology loan fund (referred to in this sub-  
21 section as a ‘Loan Fund’) and comply with the other re-  
22 quirements contained in this section. A grant to an eligible  
23 entity under this section shall be deposited in the Loan  
24 Fund established by the eligible entity. No funds author-  
25 ized by other provisions of this title to be used for other

1 purposes specified in this title shall be deposited in any  
2 Loan Fund.

3 “(d) STRATEGIC PLAN.—

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

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

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

13 “(B) A description of the criteria and  
14 methods established for the distribution of  
15 funds from the Loan Fund during the year.

16 “(C) A description of the financial status  
17 of the Loan Fund as of the date of submission  
18 of the plan.

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

21 “(e) USE OF FUNDS.—Amounts deposited in a Loan  
22 Fund, including loan repayments and interest earned on  
23 such amounts, shall be used only for awarding loans or  
24 loan guarantees, making reimbursements described in sub-  
25 section (g)(4)(A), or as a source of reserve and security

1 for leveraged loans, the proceeds of which are deposited  
2 in the Loan Fund established under subsection (c). Loans  
3 under this section may be used by a health care provider  
4 to—

5 “(1) facilitate the purchase of certified EHR  
6 technology;

7 “(2) enhance the utilization of certified EHR  
8 technology;

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

11 “(4) improve the secure electronic exchange of  
12 health information.

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

17 “(1) To award loans that comply with the fol-  
18 lowing:

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

21 “(B) The principal and interest payments  
22 on each loan shall commence not later than 1  
23 year after the date the loan was awarded, and  
24 each loan shall be fully amortized not later than  
25 10 years after the date of the loan.

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

4           “(2) To guarantee, or purchase insurance for,  
5           a local obligation (all of the proceeds of which fi-  
6           nance a project eligible for assistance under this  
7           subsection) if the guarantee or purchase would im-  
8           prove credit market access or reduce the interest  
9           rate applicable to the obligation involved.

10          “(3) As a source of revenue or security for the  
11          payment of principal and interest on revenue or gen-  
12          eral obligation bonds issued by the eligible entity if  
13          the proceeds of the sale of the bonds will be depos-  
14          ited into the Loan Fund.

15          “(4) To earn interest on the amounts deposited  
16          into the Loan Fund.

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

19          “(g) ADMINISTRATION OF LOAN FUNDS.—

20          “(1) COMBINED FINANCIAL ADMINISTRATION.—

21          An eligible entity may (as a convenience and to  
22          avoid unnecessary administrative costs) combine, in  
23          accordance with applicable State law, the financial  
24          administration of a Loan Fund established under  
25          this subsection with the financial administration of

1 any other revolving fund established by the entity if  
2 otherwise not prohibited by the law under which the  
3 Loan Fund was established.

4 “(2) COST OF ADMINISTERING FUND.—Each el-  
5 igible entity may annually use not to exceed 4 per-  
6 cent of the funds provided to the entity under a  
7 grant under this section to pay the reasonable costs  
8 of the administration of the programs under this  
9 section, including the recovery of reasonable costs  
10 expended to establish a Loan Fund which are in-  
11 curred after the date of the enactment of this title.

12 “(3) GUIDANCE AND REGULATIONS.—The Na-  
13 tional Coordinator shall publish guidance and pro-  
14 mulgate regulations as may be necessary to carry  
15 out the provisions of this section, including—

16 “(A) provisions to ensure that each eligible  
17 entity commits and expends funds allotted to  
18 the entity under this section as efficiently as  
19 possible in accordance with this title and appli-  
20 cable State laws; and

21 “(B) guidance to prevent waste, fraud, and  
22 abuse.

23 “(4) PRIVATE SECTOR CONTRIBUTIONS.—

24 “(A) IN GENERAL.—A Loan Fund estab-  
25 lished under this section may accept contribu-

1           tions from private sector entities, except that  
2           such entities may not specify the recipient or  
3           recipients of any loan issued under this sub-  
4           section. An eligible entity may agree to reim-  
5           burse a private sector entity for any contribu-  
6           tion made under this subparagraph, except that  
7           the amount of such reimbursement may not be  
8           greater than the principal amount of the con-  
9           tribution made.

10           “(B) AVAILABILITY OF INFORMATION.—

11           An eligible entity shall make publicly available  
12           the identity of, and amount contributed by, any  
13           private sector entity under subparagraph (A)  
14           and may issue letters of commendation or make  
15           other awards (that have no financial value) to  
16           any such entity.

17           “(h) MATCHING REQUIREMENTS.—

18           “(1) IN GENERAL.—The National Coordinator  
19           may not make a grant under subsection (a) to an el-  
20           igible entity unless the entity agrees to make avail-  
21           able (directly or through donations from public or  
22           private entities) non-Federal contributions in cash to  
23           the costs of carrying out the activities for which the  
24           grant is awarded in an amount equal to not less

1 than \$1 for each \$5 of Federal funds provided under  
2 the grant.

3 “(2) DETERMINATION OF AMOUNT OF NON-  
4 FEDERAL CONTRIBUTION.—In determining the  
5 amount of non-Federal contributions that an eligible  
6 entity has provided pursuant to subparagraph (A),  
7 the National Coordinator may not include any  
8 amounts provided to the entity by the Federal Gov-  
9 ernment.

10 “(i) EFFECTIVE DATE.—The Secretary may not  
11 make an award under this section prior to January 1,  
12 2010.

13 **“SEC. 3015. DEMONSTRATION PROGRAM TO INTEGRATE IN-**  
14 **FORMATION TECHNOLOGY INTO CLINICAL**  
15 **EDUCATION.**

16 “(a) IN GENERAL.—The Secretary may award grants  
17 under this section to carry out demonstration projects to  
18 develop academic curricula integrating certified EHR  
19 technology in the clinical education of health professionals.  
20 Such awards shall be made on a competitive basis and  
21 pursuant to peer review.

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

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

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

8           “(3) be—

9           “(A) a school of medicine, osteopathic  
10          medicine, dentistry, or pharmacy, a graduate  
11          program in behavioral or mental health, or any  
12          other graduate health professions school;

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

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

17          “(D) an institution with a graduate med-  
18          ical education program in medicine, osteopathic  
19          medicine, dentistry, pharmacy, nursing, or phy-  
20          sician assistance studies;

21          “(4) provide for the collection of data regarding  
22          the effectiveness of the demonstration project to be  
23          funded under the grant in improving the safety of  
24          patients, the efficiency of health care delivery, and  
25          in increasing the likelihood that graduates of the



1 grantee will adopt and incorporate certified EHR  
2 technology, in the delivery of health care services;  
3 and

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

6 “(c) USE OF FUNDS.—

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

9 “(A) use grant funds in collaboration with  
10 2 or more disciplines; and

11 “(B) use grant funds to integrate certified  
12 EHR technology into community-based clinical  
13 education.

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

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

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

6           “(f) REPORTS.—Not later than 1 year after the date  
7 of enactment of this title, and annually thereafter, the Sec-  
8 retary shall submit to the Committee on Health, Edu-  
9 cation, Labor, and Pensions and the Committee on Fi-  
10 nance of the Senate, and the Committee on Energy and  
11 Commerce of the House of Representatives a report  
12 that—

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

15                   “(2) contains recommendations for Congress  
16           based on the evaluation conducted under subsection  
17           (e).

18   **“SEC. 3016. INFORMATION TECHNOLOGY PROFESSIONALS**  
19                   **ON HEALTH CARE.**

20           “(a) IN GENERAL.—The Secretary, in consultation  
21 with the Director of the National Science Foundation,  
22 shall provide assistance to institutions of higher education  
23 (or consortia thereof) to establish or expand medical  
24 health informatics education programs, including certifi-  
25 cation, undergraduate, and masters degree programs, for

1 both health care and information technology students to  
2 ensure the rapid and effective utilization and development  
3 of health information technologies (in the United States  
4 health care infrastructure).

5 “(b) ACTIVITIES.—Activities for which assistance  
6 may be provided under subsection (a) may include the fol-  
7 lowing:

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

10 “(2) Recruiting and retaining students to the  
11 program involved.

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

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

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

21 “(1) Existing education and training programs.

22 “(2) Programs designed to be completed in less  
23 than six months.

24 “(d) FINANCIAL SUPPORT.—The Secretary may not  
25 provide more than 50 percent of the costs of any activity

1 for which assistance is provided under subsection (a), ex-  
2 cept in an instance of national economic conditions which  
3 would render the cost-share requirement under this sub-  
4 section detrimental to the program and upon notification  
5 to Congress as to the justification to waive the cost-share  
6 requirement.

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

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

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

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

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

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

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

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

9 **PART II—MEDICARE PROGRAM**

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

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

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

16 “(1) INCENTIVE PAYMENTS.—

17 “(A) IN GENERAL.—Subject to the suc-  
18 ceeding subparagraphs of this paragraph, with  
19 respect to covered professional services fur-  
20 nished by an eligible professional during a pay-  
21 ment year (as defined in subparagraph (E)), if  
22 the eligible professional is a meaningful EHR  
23 user (as determined under paragraph (2)) for  
24 the reporting period with respect to such year,  
25 in addition to the amount otherwise paid under

1           this part, there also shall be paid to the eligible  
2           professional (or to an employer or facility in the  
3           cases described in clause (A) of section  
4           1842(b)(6)), from the Federal Supplementary  
5           Medical Insurance Trust Fund established  
6           under section 1841 an amount equal to 75 per-  
7           cent of the Secretary's estimate (based on  
8           claims submitted not later than 2 months after  
9           the end of the payment year) of the allowed  
10          charges under this part for all such covered  
11          professional services furnished by the eligible  
12          professional during such year.

13                   “(B) LIMITATIONS ON AMOUNTS OF IN-  
14                   CENTIVE PAYMENTS.—

15                           “(i) IN GENERAL.—In no case shall  
16                           the amount of the incentive payment pro-  
17                           vided under this paragraph for an eligible  
18                           professional for a payment year exceed the  
19                           applicable amount specified under this sub-  
20                           paragraph with respect to such eligible  
21                           professional and such year.

22                                   “(ii) AMOUNT.—Subject to clause  
23                                   (iii), the applicable amount specified in this  
24                                   subparagraph for an eligible professional is  
25                                   as follows:

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

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

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

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

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

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

13                  “(iii) PHASE DOWN FOR ELIGIBLE  
14                  PROFESSIONALS FIRST ADOPTING EHR  
15                  AFTER 2013.—If the first payment year for  
16                  an eligible professional is after 2013, then  
17                  the amount specified in this subparagraph  
18                  for a payment year for such professional is  
19                  the same as the amount specified in clause  
20                  (ii) for such payment year for an eligible  
21                  professional whose first payment year is  
22                  2013. If the first payment year for an eli-  
23                  gible professional is after 2015 then the  
24                  applicable amount specified in this sub-

1 paragraph for such professional for such  
2 year and any subsequent year shall be \$0.

3 “(C) NON-APPLICATION TO HOSPITAL-  
4 BASED ELIGIBLE PROFESSIONALS.—

5 “(i) IN GENERAL.—No incentive pay-  
6 ment may be made under this paragraph  
7 in the case of a hospital-based eligible pro-  
8 fessional.

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

23 “(D) PAYMENT.—

24 “(i) FORM OF PAYMENT.—The pay-  
25 ment under this paragraph may be in the



1 form of a single consolidated payment or  
2 in the form of such periodic installments  
3 as the Secretary may specify.

4 “(ii) COORDINATION OF APPLICATION  
5 OF LIMITATION FOR PROFESSIONALS IN  
6 DIFFERENT PRACTICES.—In the case of an  
7 eligible professional furnishing covered pro-  
8 fessional services in more than one practice  
9 (as specified by the Secretary), the Sec-  
10 retary shall establish rules to coordinate  
11 the incentive payments, including the ap-  
12 plication of the limitation on amounts of  
13 such incentive payments under this para-  
14 graph, among such practices.

15 “(iii) COORDINATION WITH MED-  
16 ICAID.—The Secretary shall seek, to the  
17 maximum extent practicable, to avoid du-  
18 plicative requirements from Federal and  
19 State Governments to demonstrate mean-  
20 ingful use of certified EHR technology  
21 under this title and title XIX. In doing so,  
22 the Secretary may deem satisfaction of  
23 State requirements for such meaningful  
24 use for a payment year under title XIX to  
25 be sufficient to qualify as meaningful use

1 under this subsection and subsection (a)(7)  
2 and vice versa. The Secretary may also ad-  
3 just the reporting periods under such title  
4 and such subsections in order to carry out  
5 this clause.

6 “(E) PAYMENT YEAR DEFINED.—

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

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

24 “(2) MEANINGFUL EHR USER.—

1           “(A) IN GENERAL.—For purposes of para-  
2 graph (1), an eligible professional shall be  
3 treated as a meaningful EHR user for a report-  
4 ing period for a payment year (or, for purposes  
5 of subsection (a)(7), for a reporting period  
6 under such subsection for a year) if each of the  
7 following requirements is met:

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

18           “(ii) INFORMATION EXCHANGE.—The  
19 eligible professional demonstrates to the  
20 satisfaction of the Secretary, in accordance  
21 with subparagraph (C)(i), that during such  
22 period such certified EHR technology is  
23 connected in a manner that provides, in  
24 accordance with law and standards appli-  
25 cable to the exchange of information, for

1 the electronic exchange of health informa-  
2 tion to improve the quality of health care,  
3 such as promoting care coordination.

4 “(iii) REPORTING ON MEASURES  
5 USING EHR.—Subject to subparagraph  
6 (B)(ii) and using such certified EHR tech-  
7 nology, the eligible professional submits in-  
8 formation for such period, in a form and  
9 manner specified by the Secretary, on such  
10 clinical quality measures and such other  
11 measures as selected by the Secretary  
12 under subparagraph (B)(i).

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

23 “(B) REPORTING ON MEASURES.—

24 “(i) SELECTION.—The Secretary shall  
25 select measures for purposes of subpara-

1 graph (A)(iii) but only consistent with the  
2 following:

3 “(I) The Secretary shall provide  
4 preference to clinical quality measures  
5 that have been endorsed by the entity  
6 with a contract with the Secretary  
7 under section 1890(a).

8 “(II) Prior to any measure being  
9 selected under this subparagraph, the  
10 Secretary shall publish in the Federal  
11 Register such measure and provide for  
12 a period of public comment on such  
13 measure.

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

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

1 to avoid redundant or duplicative reporting  
2 otherwise required, including reporting  
3 under subsection (k)(2)(C).

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

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

12 “(I) an attestation;

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

18 “(III) a survey response;

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

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

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

1 use data regarding drug claims submitted  
2 for purposes of section 1860D–15 that are  
3 necessary for purposes of subparagraph  
4 (A).

5 “(3) APPLICATION.—

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

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

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

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

4 “(D) POSTING ON WEBSITE.—The Sec-  
5 retary shall post on the Internet website of the  
6 Centers for Medicare & Medicaid Services, in an  
7 easily understandable format, a list of the  
8 names, business addresses, and business phone  
9 numbers of the eligible professionals who are  
10 meaningful EHR users and, as determined ap-  
11 propriate by the Secretary, of group practices  
12 receiving incentive payments under paragraph  
13 (1).

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



1           “(5) DEFINITIONS.—For purposes of this sub-  
2           section:

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

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

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

14           (b) INCENTIVE PAYMENT ADJUSTMENT.—Section  
15           1848(a) of the Social Security Act (42 U.S.C. 1395w-  
16           4(a)) is amended by adding at the end the following new  
17           paragraph:

18                   “(7) INCENTIVES FOR MEANINGFUL USE OF  
19                   CERTIFIED EHR TECHNOLOGY.—

20                   “(A) ADJUSTMENT.—

21                           “(i) IN GENERAL.—Subject to sub-  
22                           paragraphs (B) and (D), with respect to  
23                           covered professional services furnished by  
24                           an eligible professional during 2016 or any  
25                           subsequent payment year, if the eligible

1 professional is not a meaningful EHR user  
2 (as determined under subsection (o)(2)) for  
3 a reporting period for the year, the fee  
4 schedule amount for such services fur-  
5 nished by such professional during the year  
6 (including the fee schedule amount for pur-  
7 poses of determining a payment based on  
8 such amount) shall be equal to the applica-  
9 ble percent of the fee schedule amount that  
10 would otherwise apply to such services  
11 under this subsection (determined after ap-  
12 plication of paragraph (3) but without re-  
13 gard to this paragraph).

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

17 “(I) for 2016, 99 percent;

18 “(II) for 2017, 98 percent; and

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

21 “(iii) AUTHORITY TO DECREASE AP-  
22 PPLICABLE PERCENTAGE FOR 2019 AND  
23 SUBSEQUENT YEARS.—For 2019 and each  
24 subsequent year, if the Secretary finds that  
25 the proportion of eligible professionals who

1           are meaningful EHR users (as determined  
2           under subsection (o)(2)) is less than 75  
3           percent, the applicable percent shall be de-  
4           creased by 1 percentage point from the ap-  
5           plicable percent in the preceding year, but  
6           in no case shall the applicable percent be  
7           less than 95 percent.

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

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

1           “(D) NON-APPLICATION TO HOSPITAL-  
2           BASED ELIGIBLE PROFESSIONALS.—No pay-  
3           ment adjustment may be made under subpara-  
4           graph (A) in the case of hospital-based eligible  
5           professionals (as defined in subsection  
6           (o)(1)(C)(ii)).

7           “(E) DEFINITIONS.—For purposes of this  
8           paragraph:

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

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

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

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

23           “(l) APPLICATION OF ELIGIBLE PROFESSIONAL IN-  
24           CENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOP-

1 TION AND MEANINGFUL USE OF CERTIFIED EHR TECH-  
2 NOLOGY.—

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

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

19 “(A)(i) is employed by the organization; or

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

1           “(II) furnishes at least 75 percent of the  
2 professional services of the eligible professional  
3 to enrollees of the organization; and

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

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

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

19           “(B) AVOIDING DUPLICATION OF PAY-  
20 MENTS.—

21           “(i) IN GENERAL.—If an eligible pro-  
22 fessional described in paragraph (2) is eli-  
23 gible for the maximum incentive payment  
24 under section 1848(o)(1)(A) for the same  
25 payment period, the payment incentive

1 shall be made only under such section and  
2 not under this subsection.

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

10 “(I) to ensure that duplicate pay-  
11 ments are not made with respect to  
12 an eligible professional both under  
13 this subsection and under section  
14 1848(o)(1)(A); and

15 “(II) to collect data from Medi-  
16 care Advantage organizations to en-  
17 sure against such duplicate payments.

18 “(C) FIXED SCHEDULE FOR APPLICATION  
19 OF LIMITATION ON INCENTIVE PAYMENTS FOR  
20 ALL ELIGIBLE PROFESSIONALS.—In applying  
21 section 1848(o)(1)(B)(ii) under subparagraph  
22 (A), in accordance with rules specified by the  
23 Secretary, a qualifying MA organization shall  
24 specify a year (not earlier than 2011) that shall  
25 be treated as the first payment year for all eli-

1           gible professionals with respect to such organi-  
2           zation.

3           “(4) PAYMENT ADJUSTMENT.—

4                   “(A) IN GENERAL.—In applying section  
5           1848(a)(7) under paragraph (1), instead of the  
6           payment adjustment being an applicable per-  
7           cent of the fee schedule amount for a year  
8           under such section, subject to subparagraph  
9           (D), the payment adjustment under paragraph  
10          (1) shall be equal to the percent specified in  
11          subparagraph (B) for such year of the payment  
12          amount otherwise provided under this section  
13          for such year.

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

18                           “(i) the number of percentage points  
19                           by which the applicable percent (under sec-  
20                           tion 1848(a)(7)(A)(ii)) for the year is less  
21                           than 100 percent; and

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



1           “(C) MEDICARE PHYSICIAN EXPENDITURE  
2           PROPORTION.—The Medicare physician expend-  
3           iture 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 physicians’  
8           services.

9           “(D) APPLICATION OF PAYMENT ADJUST-  
10          MENT.—In the case that a qualifying MA orga-  
11          nization attests that not all eligible profes-  
12          sionals are meaningful EHR users with respect  
13          to a year, the Secretary shall apply the payment  
14          adjustment under this paragraph based on the  
15          proportion of such eligible professionals that are  
16          not meaningful EHR users for such year.

17          “(5) QUALIFYING MA ORGANIZATION DE-  
18          FINED.—In this subsection and subsection (m), the  
19          term ‘qualifying MA organization’ means a Medicare  
20          Advantage organization that is organized as a health  
21          maintenance organization (as defined in section  
22          2791(b)(3) of the Public Health Service Act).

23          “(6) MEANINGFUL EHR USER ATTESTATION.—  
24          For purposes of this subsection and subsection (m),  
25          a qualifying MA organization shall submit an attes-

1 tation, in a form and manner specified by the Sec-  
2 retary which may include the submission of such at-  
3 testation as part of submission of the initial bid  
4 under section 1854(a)(1)(A)(iv), identifying—

5 “(A) whether each eligible professional de-  
6 scribed in paragraph (2), with respect to such  
7 organization is a meaningful EHR user (as de-  
8 fined in section 1848(o)(2)) for a year specified  
9 by the Secretary; and

10 “(B) whether each eligible hospital de-  
11 scribed in subsection (m)(1), with respect to  
12 such organization, is a meaningful EHR user  
13 (as defined in section 1886(n)(3)) for an appli-  
14 cable period specified by the Secretary.”.

15 (d) CONFORMING AMENDMENTS.—Section 1853 of  
16 the Social Security Act (42 U.S.C. 1395w–23) is amend-  
17 ed—

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

20 (2) in subsection (c)—

21 (A) in paragraph (1)(D)(i), by striking  
22 “section 1886(h)” and inserting “sections  
23 1848(o) and 1886(h)”;

24 (B) in paragraph (6)(A), by inserting after  
25 “under part B,” the following: “excluding ex-

1           penditures attributable to subsections (a)(7)  
2           and (o) of section 1848,”; and  
3           (3) in subsection (f), by inserting “and for pay-  
4           ments under subsection (l)” after “with the organi-  
5           zation”.

6           (e) CONFORMING AMENDMENTS TO E-PRE-  
7           SCRIBING.—

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

10           (A) in clause (i), by striking “or any sub-  
11           sequent year” and inserting “, 2013, 2014, or  
12           2015”; and

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

15           (2) Section 1848(m)(2) of such Act (42 U.S.C.  
16           1395w-4(m)(2)) is amended—

17           (A) in subparagraph (A), by striking “For  
18           2009” and inserting “Subject to subparagraph  
19           (D), for 2009”; and

20           (B) by adding at the end the following new  
21           subparagraph:

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

1 paragraph (3)(C), to the group practice) if, for  
2 the reporting period the eligible professional (or  
3 group practice) receives an incentive payment  
4 under subsection (o)(1)(A) with respect to a  
5 certified EHR technology (as defined in sub-  
6 section (o)(4)) that has the capability of elec-  
7 tronic prescribing.”.

8 **SEC. 4312. INCENTIVES FOR HOSPITALS.**

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

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

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

1 the applicable amount specified in paragraph (2)(A)  
2 for the hospital for such payment year.

3 “(2) PAYMENT AMOUNT.—

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

9 “(i) INITIAL AMOUNT.—The sum of—

10 “(I) the base amount specified in  
11 subparagraph (B); plus

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

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

22 “(iii) TRANSITION FACTOR.—The  
23 transition factor specified in subparagraph  
24 (E) for the hospital for the payment year.

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

3           “(C) DISCHARGE RELATED AMOUNT.—The  
4 discharge related amount specified in this sub-  
5 paragraph for a 12-month period selected by  
6 the Secretary shall be determined as the sum of  
7 the amount, based upon total discharges (re-  
8 gardless of any source of payment) for the pe-  
9 riod, for each discharge up to the 23,000th dis-  
10 charge as follows:

11           “(i) For the 1,150th through the  
12 9,200nd discharge, \$200.

13           “(ii) For the 9,201st through the  
14 13,800th discharge, 50 percent of the  
15 amount specified in clause (i).

16           “(iii) For the 13,801st through the  
17 23,000th discharge, 30 percent of the  
18 amount specified in clause (i).

19           “(D) MEDICARE SHARE.—The Medicare  
20 share specified under this subparagraph for a  
21 hospital for a period selected by the Secretary  
22 for a payment year is equal to the fraction—

23           “(i) the numerator of which is the  
24 sum (for such period and with respect to  
25 the hospital) of—

1                   “(I) the number of inpatient-bed-  
2                   days (as established by the Secretary)  
3                   which are attributable to individuals  
4                   with respect to whom payment may be  
5                   made under part A; and

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

11                  “(ii) the denominator of which is the  
12                  product of—

13                  “(I) the total number of inpa-  
14                  tient-bed-days with respect to the hos-  
15                  pital during such period; and

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

24                  Insofar as the Secretary determines that data  
25                  are not available on charity care necessary to

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

15 “(E) TRANSITION FACTOR SPECIFIED.—

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

20 “(I) For the first payment year  
21 for such hospital, 1.

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

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



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

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

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

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

24                  “(G) PAYMENT YEAR DEFINED.—

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

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

17                  “(3) MEANINGFUL EHR USER.—

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

1           “(i) MEANINGFUL USE OF CERTIFIED  
2           EHR TECHNOLOGY.—The eligible hospital  
3           demonstrates to the satisfaction of the Sec-  
4           retary, in accordance with subparagraph  
5           (C)(i), that during such period the hospital  
6           is using certified EHR technology in a  
7           meaningful manner.

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

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

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

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

8           “(B) REPORTING ON MEASURES.—

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

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

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

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

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

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

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

23 “(i) IN GENERAL.—A hospital may  
24 satisfy the demonstration requirement of  
25 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 4311(c), is further amended by adding at the end the fol-  
11 lowing 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 EHR 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 certified EHR technology  
11 (as defined in section 3000 of the Public Health  
12 Service Act) should be made available to health care  
13 providers who are receiving minimal or no payment  
14 incentives or other funding under this Act, under  
15 title XVIII or XIX of the Social Security Act, or  
16 otherwise, for such purposes.

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

19 (A) the adoption rates of certified EHR  
20 technology by such health care providers;

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 An eligible professional shall not qualify as a Medicaid  
2 provider under this subsection unless the eligible profes-  
3 sional has waived, in a manner specified by the Secretary,  
4 any right to payment under section 1848(o) with respect  
5 to the adoption or support of certified EHR technology  
6 by the professional. In applying clauses (ii) and (iii) of  
7 subparagraph (B), the standards established by the Sec-  
8 retary for patient volume shall include individuals enrolled  
9 in a Medicaid managed care plan (under section 1903(m)  
10 or section 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 Med-  
17          icaid provider involved from any other source that is di-  
18          rectly attributable to payment for certified EHR tech-  
19          nology or services described 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 EHR 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 EHR 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 EHR 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 the average annual rate  
20 of growth of the most recent 3 years for which discharge  
21 data are available per year.

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

1 hospital and period, except that there shall be substituted  
2 for the numerator under clause (i) of such section the  
3 amount that is equal to the number of inpatient-bed-days  
4 (as established by the Secretary) which are attributable  
5 to individuals who are receiving medical assistance under  
6 this title and who are not described in section  
7 1886(n)(2)(D)(i). In computing inpatient-bed-days under  
8 the previous sentence, the Secretary shall take into ac-  
9 count inpatient-bed-days attributable to inpatient-bed-  
10 days that are paid for individuals enrolled in a Medicaid  
11 managed care plan (under section 1903(m) or section  
12 1932).

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

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

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

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

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

14 “(B) is conducting adequate oversight of the  
15 program under this subsection, including routine  
16 tracking of meaningful use attestations and report-  
17 ing mechanisms; and

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

23 “(10) The Secretary shall periodically submit reports  
24 to the Committee on Energy and Commerce of the House  
25 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 oc-  
17      curring 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       ing breaches for which notice was provided to the  
2       Secretary under subsection (e)(3).

3               (2) INFORMATION.—The information described  
4       in this paragraph regarding breaches specified in  
5       paragraph (1) shall include—

6                       (A) the number and nature of such  
7       breaches; and

8                       (B) actions taken in response to such  
9       breaches.

10       (j) REGULATIONS; EFFECTIVE DATE.—To carry out  
11       this section, the Secretary of Health and Human Services  
12       shall promulgate interim final regulations by not later  
13       than the date that is 180 days after the date of the enact-  
14       ment of this title. The provisions of this section shall apply  
15       to breaches that are discovered on or after the date that  
16       is 30 days after the date of publication of such interim  
17       final regulations.

18       **SEC. 4403. EDUCATION ON HEALTH INFORMATION PRI-**  
19                       **VACY.**

20       (a) REGIONAL OFFICE PRIVACY ADVISORS.—Not  
21       later than 6 months after the date of the enactment of  
22       this Act, the Secretary shall designate an individual in  
23       each regional office of the Department of Health and  
24       Human Services to offer guidance and education to cov-  
25       ered entities, business associates, and individuals on their

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           CESSARY.—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.—

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

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

17 (A) The purpose of the exchange is for re-  
18 search or public health activities (as described  
19 in sections 164.501, 164.512(i), and 164.512(b)  
20 of title 45, Code of Federal Regulations) and  
21 the price charged reflects the costs of prepara-  
22 tion and transmittal of the data for such pur-  
23 pose.

24 (B) The purpose of the exchange is for the  
25 treatment of the individual and the price

1 charges reflects not more than the costs of  
2 preparation and transmittal of the data for  
3 such purpose.

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

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

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

22 (F) The purpose of the exchange is other-  
23 wise determined by the Secretary in regulations  
24 to be similarly necessary and appropriate as the

1 exceptions provided in subparagraphs (A)  
2 through (E).

3 (3) REGULATIONS.—The Secretary shall pro-  
4 mulgate regulations to carry out paragraph (this  
5 subsection, including exceptions described in para-  
6 graph (2), not later than 18 months after the date  
7 of the enactment of this title.

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

12 (f) ACCESS TO CERTAIN INFORMATION IN ELEC-  
13 TRONIC FORMAT.—In applying section 164.524 of title  
14 45, Code of Federal Regulations, in the case that a cov-  
15 ered entity uses or maintains an electronic health record  
16 with respect to protected health information of an indi-  
17 vidual—

18 (1) the individual shall have a right to obtain  
19 from such covered entity a copy of such information  
20 in an electronic format; and

21 (2) notwithstanding paragraph (c)(4) of such  
22 section, any fee that the covered entity may impose  
23 for providing such individual with a copy of such in-  
24 formation (or a summary or explanation of such in-  
25 formation) if such copy (or summary or explanation)

1 is in an electronic form shall not be greater than the  
2 entity's labor costs in responding to the request for  
3 the copy (or summary or explanation).

4 **SEC. 4406. CONDITIONS ON CERTAIN CONTACTS AS PART**  
5 **OF HEALTH CARE OPERATIONS.**

6 (a) **MARKETING.**—

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

17 (2) **PAYMENT FOR CERTAIN COMMUNICA-**  
18 **TIONS.**—A covered entity or business associate may  
19 not receive direct or indirect payment in exchange  
20 for making any communication described in sub-  
21 paragraph (i), (ii), or (iii) of paragraph (1) of the  
22 definition of marketing in section 164.501 of title  
23 45, Code of Federal Regulations, except—

24 (A) a business associate of a covered entity  
25 may receive payment from the covered entity



1 for making any such communication on behalf  
2 of the covered entity that is consistent with the  
3 written contract (or other written arrangement)  
4 described in section 164.502(e)(2) of such title  
5 between such business associate and covered en-  
6 tity; or

7 (B) a covered entity may receive payment  
8 in exchange for making any such communica-  
9 tion if the entity obtains from the recipient of  
10 the communication, in accordance with section  
11 164.508 of title 45, Code of Federal Regula-  
12 tions, a valid authorization (as described in  
13 paragraph (b) of such section) with respect to  
14 such communication.

15 (b) FUNDRAISING.—Fundraising for the benefit of a  
16 covered entity shall not be considered a health care oper-  
17 ation for purposes of section 164.501 of title 45, Code of  
18 Federal Regulations.

19 (c) EFFECTIVE DATE.—This section shall apply to  
20 contracting occurring on or after the effective date speci-  
21 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.

