AMENDMENT IN THE NATURE OF A SUBSTITUTE TO COMMITTEE PRINT

OFFERED BY M__. _____

Amend title IV to read as follows:

TITLE IV—HEALTH INFORMATION TECHNOLOGY

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

(a) SHORT TITLE.—This title may be cited as the ''Health Information Technology for Economic and Clinical Health Act'' or the ''HITECH Act''.

(b) TABLE OF CONTENTS OF TITLE.—The table of 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.

Subtitle A—Promotion of Health Information Technology

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

SEC. 4101. ONCHIT; STANDARDS DEVELOPMENT AND ADOPTION.

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

"TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND QUALITY

"SEC. 3000. DEFINITIONS.

''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-

sician (as defined in section 1861(r) of the Social Security Act), a practitioner (as described in section 1842(b)(18)(C) of the Social Security Act), a provider operated by, or under contract with, the Indian Health Service or by an Indian tribe (as defined in the Indian Self-Determination and Education Assistance Act), tribal organization, or urban Indian organization (as defined in section 4 of the Indian Health Care Improvement Act), a rural health clinic, a covered entity under section 340B, an ambulatory surgical center described in section 1833(i) of the Social Security Act, and any other category of facility or clinician determined appropriate by the Secretary.

''(4) HEALTH INFORMATION.—The term 'health information' has the meaning given such term in section 1171(4) of the Social Security Act.

''(5) HEALTH INFORMATION TECHNOLOGY.—The term 'health information technology' means hardware, software, integrated technologies and related licenses, intellectual property, upgrades, and packaged solutions sold as services that are specifically designed for use by health care entities for the electronic creation, maintenance, or exchange of 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

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

"(A) includes patient demographic and clinical health information, such as medical history and problem lists; and

"(B) has the capacity—

"(i) to provide clinical decision support;

"(ii) to support physician order entry;

"(iii) to capture and query information relevant to health care quality; and

"(iv) to exchange electronic health information with, and integrate such information from other sources.

"(14) STATE.—The term 'State' means each of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

"Subtitle A—Promotion of Health Information Technology

"SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY.

"(a) ESTABLISHMENT.—There is established within the Department of Health and Human Services an Office 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

other information to ensure transparency in promotion of a nationwide health information technology infrastructure.

"(5) CERTIFICATION.—

"(A) IN GENERAL.—The National Coordinator, in consultation with the Director of the National Institute of Standards and Technology, shall develop a program (either directly or by contract) for the voluntary certification of health information technology as being in compliance with applicable certification criteria adopted under this subtitle. Such program shall include testing of the technology in accordance with section 4201(b) of the HITECH Act.

"(B) CERTIFICATION CRITERIA DESCRIBED.—In this title, the term 'certification criteria' means, with respect to standards and implementation specifications for health information technology, criteria to establish that the technology meets such standards and implementation specifications.

"(6) REPORTS AND PUBLICATIONS.—

"(A) REPORT ON ADDITIONAL FUNDING OR AUTHORITY NEEDED.—Not later than 12 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.

"SEC. 3002. HIT POLICY COMMITTEE.

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

"(b) DUTIES.—

"(1) RECOMMENDATIONS ON HEALTH INFORMATION TECHNOLOGY INFRASTRUCTURE.—The HIT Policy Committee shall recommend a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the strategic plan under section 3001(c)(3) and that includes the recommendations under paragraph (2). The Committee shall update such recommendations and make new recommendations as appropriate.

"(2) SPECIFIC AREAS OF STANDARD DEVELOPMENT.—

"(A) IN GENERAL.—The HIT Policy Committee shall recommend the areas in which standards, implementation specifications, and certification criteria are needed for the electronic exchange and use of health information

for purposes of adoption under section 3004 and shall recommend an order of priority for the development, harmonization, and recognition of such standards, specifications, and certification criteria among the areas so recommended. Such standards and implementation specifications shall include named standards, architectures, and software schemes for the authentication and security of individually identifiable health information and other information as needed to ensure the reproducible development of common solutions across disparate entities.

"(B) AREAS REQUIRED FOR CONSIDERATION.—For purposes of subparagraph (A), the HIT Policy Committee shall make recommendations for at least the following areas:

"(i) Technologies that protect the privacy of health information and promote security in a qualified electronic health record, including for the segmentation and protection from disclosure of specific and sensitive individually identifiable health information with the goal of minimizing the reluctance of patients to seek care (or dis-

close information about a condition) because of privacy concerns, in accordance with applicable law, and for the use and disclosure of limited data sets of such information.

''(ii) A nationwide health information technology infrastructure that allows for the electronic use and accurate exchange of health information.

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

''(iv) Technologies that as a part of a qualified electronic health record allow for an accounting of disclosures made by a covered entity (as defined for purposes of regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996) for purposes of treatment, payment, and health care operations (as such terms are defined for purposes of such regulations).

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

ordination of health care and improving continuity of health care among health care providers, by reducing medical errors, by improving population health, and by advancing research and education.

"(C) OTHER AREAS FOR CONSIDERATION.—In making recommendations under subparagraph (A), the HIT Policy Committee may consider the following additional areas:

"(i) The appropriate uses of a nationwide health information infrastructure, including for purposes of—

"(I) the collection of quality data and public reporting;

"(II) biosurveillance and public health;

"(III) medical and clinical research; and

"(IV) drug safety.

"(ii) Self-service technologies that facilitate the use and exchange of patient information and reduce wait times.

"(iii) Telemedicine technologies, in order to reduce travel requirements for patients 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-

chasers, health plans, technology vendors, researchers, relevant Federal agencies, and individuals with technical expertise on health care quality, privacy and security, and on the electronic exchange and use of health information.

''(3) CONSIDERATION.—The National Coordinator shall ensure that the relevant recommendations and comments from the National Committee on Vital and Health Statistics are considered in the development of policies.

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

''(e) PUBLICATION.—The Secretary shall provide for publication in the Federal Register and the posting on the Internet website of the Office of the National Coordinator for Health Information Technology of all policy recommendations made by the HIT Policy Committee under this section.

''SEC. 3003. HIT STANDARDS COMMITTEE.

''(a) ESTABLISHMENT.—There is established a committee to be known as the HIT Standards Committee to recommend to the National Coordinator standards, implementation specifications, and certification criteria for the 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-

priate, provide for the testing of such standards and specifications by the National Institute for Standards and Technology under section 4201 of the HITECH Act.

"(C) CONSISTENCY.—The standards, implementation specifications, and certification criteria recommended under this subsection shall be consistent with the standards for information transactions and data elements adopted pursuant to section 1173 of the Social Security Act.

"(2) FORUM.—The HIT Standards Committee shall serve as a forum for the participation of a broad range of stakeholders to provide input on the development, harmonization, and recognition of standards, implementation specifications, and certification criteria necessary for the development and adoption of a nationwide health information technology infrastructure that allows for the electronic use and exchange of health information.

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

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

"(4) PUBLIC INPUT.—The HIT Standards Committee shall conduct open public meetings and develop a process to allow for public comment on the schedule described in paragraph (3) and recommendations described in this subsection. Under such process comments shall be submitted in a timely manner after the date of publication of a recommendation under this subsection.

"(c) MEMBERSHIP AND OPERATIONS.—

"(1) IN GENERAL.—The National Coordinator shall provide leadership in the establishment and operations of the HIT Standards Committee.

"(2) MEMBERSHIP.—The membership of the HIT Standards Committee shall at least reflect providers, ancillary healthcare workers, consumers, purchasers, health plans, technology vendors, researchers, relevant Federal agencies, and individuals with technical expertise on health care quality, privacy and security, and on the electronic exchange and use of health information.

"(3) CONSIDERATION.—The National Coordinator 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 FACA.—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.

"SEC. 3004. PROCESS FOR ADOPTION OF ENDORSED RECOMMENDATIONS; ADOPTION OF INITIAL SET OF STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.

"(a) PROCESS FOR ADOPTION OF ENDORSED RECOMMENDATIONS.—

"(1) REVIEW OF ENDORSED STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—Not later than 90 days after the date of receipt of standards, implementation specifications, or certification criteria endorsed under section 3001(c), the Secretary, in consultation with representatives of other relevant Federal agencies, shall jointly review such standards, implementation specifications, or certification criteria and shall determine whether or not to propose adoption of such standards, implementation specifications, or certification criteria.

"(2) DETERMINATION TO ADOPT STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—If the Secretary determines—

"(A) to propose adoption of any grouping of such standards, implementation specifications, or certification criteria, the Secretary shall, by regulation, determine whether or not

to adopt such grouping of standards, implementation specifications, or certification criteria; or

"(B) not to propose adoption of any grouping of standards, implementation specifications, or certification criteria, the Secretary shall notify the National Coordinator and the HIT Standards Committee in writing of such determination and the reasons for not proposing the adoption of such recommendation.

"(3) PUBLICATION.—The Secretary shall provide for publication in the Federal Register of all determinations made by the Secretary under paragraph (1).

"(b) ADOPTION OF INITIAL SET OF STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—

"(1) IN GENERAL.—Not later than December 31, 2009, the Secretary shall, through the rulemaking process described in section 3003, adopt an initial set of standards, implementation specifications, and certification criteria for the areas required for consideration under section 3002(b)(2)(B).

"(2) APPLICATION OF CURRENT STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—The standards, implementation

specifications, and certification criteria adopted before the date of the enactment of this title through the process existing through the Office of the National Coordinator for Health Information Technology may be applied towards meeting the requirement of paragraph (1).

"SEC. 3005. APPLICATION AND USE OF ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS BY FEDERAL AGENCIES.

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

"SEC. 3006. VOLUNTARY APPLICATION AND USE OF ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS BY PRIVATE ENTITIES.

''(a) IN GENERAL.—Except as provided under section 4112 of the HITECH Act, any standard or implementation specification adopted under section 3004 shall be voluntary with respect to private entities.

''(b) RULE OF CONSTRUCTION.—Nothing in this subtitle shall be construed to require that a private entity that enters into a contract with the Federal Government apply or use the standards and implementation specifications

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

"SEC. 3007. FEDERAL HEALTH INFORMATION TECHNOLOGY.

"(a) IN GENERAL.—The National Coordinator shall support the development, routine updating, and provision of qualified EHR technology (as defined in section 3000) consistent with subsections (b) and (c) unless the Secretary determines that the needs and demands of providers are being substantially and adequately met through the marketplace.

"(b) CERTIFICATION.—In making such EHR technology publicly available, the National Coordinator shall ensure that the qualified EHR technology described in subsection (a) is certified under the program developed under section 3001(c)(3) to be in compliance with applicable standards adopted under section 3003(a).

"(c) AUTHORIZATION TO CHARGE A NOMINAL FEE.—The National Coordinator may impose a nominal fee for the adoption by a health care provider of the health information technology system developed or approved under subsection (a) and (b). Such fee shall take into account the financial circumstances of smaller providers, low income providers, and providers located in rural or other 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.

"SEC. 3009. RELATION TO HIPAA PRIVACY AND SECURITY LAW.

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

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

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

''(b) DEFINITION.—For purposes of this section, the term 'HIPAA privacy and security law' means—

''(1) the provisions of part C of title XI of the Social Security Act, section 264 of the Health Insurance Portability and Accountability Act of 1996, and subtitle D of title IV of the HITECH Act; and

''(2) regulations under such provisions.

"SEC. 3010. AUTHORIZATION FOR APPROPRIATIONS.

''There is authorized to be appropriated to the Office of the National Coordinator for Health Information Technology to carry out this subtitle $250,000,000 for fiscal year 2009.''.

SEC. 4102. TECHNICAL AMENDMENT.

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

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

SEC. 4111. COORDINATION OF FEDERAL ACTIVITIES WITH ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS.

(a) SPENDING ON HEALTH INFORMATION TECHNOLOGY SYSTEMS.—As each agency (as defined in the Executive Order issued on August 22, 2006, relating to promoting quality and efficient health care in Federal government administered or sponsored health care programs) implements, acquires, or upgrades health information technology systems used for the direct exchange of individually identifiable health information between agencies and with non-Federal entities, it shall utilize, where available, health information technology systems and products that meet standards and implementation specifications adopted under section 3004 of the Public Health Service Act, as added by section 4101.

(b) FEDERAL INFORMATION COLLECTION ACTIVITIES.—With respect to a standard or implementation 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.

SEC. 4113. STUDY AND REPORTS.

(a) REPORT ON ADOPTION OF NATIONWIDE SYSTEM.—Not later than 2 years after the date of the enactment of this Act and annually thereafter, the Secretary of Health and Human Services shall submit to the appropriate committees of jurisdiction of the House of Representatives and the Senate a report that—

(1) describes the specific actions that have been taken by the Federal Government and private entities to facilitate the adoption of a nationwide system for the electronic use and exchange of health information;

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

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

(b) REIMBURSEMENT INCENTIVE STUDY AND REPORT.—

(1) STUDY.—The Secretary of Health and Human Services shall carry out, or contract with a private entity to carry out, a study that examines methods to create efficient reimbursement incentives for improving health care quality in Federally qualified health centers, rural health clinics, and free clinics.

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

(c) AGING SERVICES TECHNOLOGY STUDY AND REPORT.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall carry out, or contract with a private entity to carry out, a study of matters relating to the potential use of new aging services technology to assist seniors, individuals with disabilities, and their caregivers throughout the aging process.

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

(A) an evaluation of—

(i) methods for identifying current, emerging, and future health technology that can be used to meet the needs of seniors and individuals with disabilities and their caregivers across all aging services settings, as specified by the Secretary;

(ii) methods for fostering scientific innovation with respect to aging services

technology within the business and academic communities; and

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

(B) identification of—

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

(ii) barriers to the adoption of aging services technology by health care providers and consumers and devising strategies to removing such barriers.

(3) REPORT.—Not later than 24 months after the date of the enactment of this Act, the Secretary shall submit to the appropriate committees of jurisdiction of the House of Representatives and of the Senate a report on the study carried out under paragraph (1).

(4) DEFINITIONS.—For purposes of this subsection:

(A) AGING SERVICES TECHNOLOGY.—The term ''aging services technology'' means health technology that meets the health care needs of

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

(B) SENIOR.—The term ''senior'' has such meaning as specified by the Secretary.

Subtitle B—Testing of Health Information Technology

SEC. 4201. NATIONAL INSTITUTE FOR STANDARDS AND TECHNOLOGY TESTING.

(a) PILOT TESTING OF STANDARDS AND IMPLEMENTATION SPECIFICATIONS.—In coordination with the HIT Standards Committee established under section 3003 of the Public Health Service Act, as added by section 4101, with respect to the development of standards and implementation specifications under such section, the Director of the National Institute for Standards and Technology shall test such standards and implementation specifications, as appropriate, in order to assure the efficient implementation and use of such standards and implementation specifications.

(b) VOLUNTARY TESTING PROGRAM.—In coordination with the HIT Standards Committee established under section 3003 of the Public Health Service Act, as added by section 4101, with respect to the development of standards and implementation specifications under such section, the Director of the National Institute of Standards

and Technology shall support the establishment of a conformance testing infrastructure, including the development of technical test beds. The development of this conformance testing infrastructure may include a program to accredit independent, non-Federal laboratories to perform testing.

SEC. 4202. RESEARCH AND DEVELOPMENT PROGRAMS.

(a) HEALTH CARE INFORMATION ENTERPRISE INTEGRATION RESEARCH CENTERS.—

(1) IN GENERAL.—The Director of the National Institute of Standards and Technology, in consultation with the Director of the National Science Foundation and other appropriate Federal agencies, shall establish a program of assistance to institutions of higher education (or consortia thereof which may include nonprofit entities and Federal Government laboratories) to establish multidisciplinary Centers for Health Care Information Enterprise Integration.

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

(3) PURPOSE.—The purposes of the Centers described in paragraph (1) shall be—

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

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

(B) the development and use of health information technologies and other complementary fields.

(4) RESEARCH AREAS.—Research areas may include—

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

(B) voice-recognition systems;

(C) software that improves interoperability and connectivity among health information systems;

(D) software dependability in systems critical to health care delivery;

(E) measurement of the impact of information technologies on the quality and productivity of health care;

(F) health information enterprise management;

(G) health information technology security and integrity; and

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

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

(A) the research projects that will be undertaken by the Center established pursuant to assistance under paragraph (1) and the respective contributions of the participating entities;

(B) how the Center will promote active collaboration among scientists and engineers from different disciplines, such as information technology, biologic sciences, management, social sciences, and other appropriate disciplines;

(C) technology transfer activities to demonstrate and diffuse the research results, technologies, and knowledge; and

(D) how the Center will contribute to the education and training of researchers and other professionals in fields relevant to health information 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.

Subtitle C—Incentives for the Use of Health Information Technology

PART I—GRANTS AND LOANS FUNDING

SEC. 4301. GRANT, LOAN, AND DEMONSTRATION PROGRAMS.

Title XXX of the Public Health Service Act, as added by section 4101, is amended by adding at the end the following new subtitle:

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

"SEC. 3011. IMMEDIATE FUNDING TO STRENGTHEN THE HEALTH INFORMATION TECHNOLOGY INFRASTRUCTURE.

''(a) IN GENERAL.—The Secretary shall, using amounts appropriated under section 3018, invest in the infrastructure necessary to allow for and promote the electronic exchange and use of health information for each individual in the United States consistent with the goals outlined in the strategic plan developed by the National Coordinator (and as available) under section 3001. To the greatest extent practicable, the Secretary shall ensure that any funds so appropriated shall be used for the acquisition of health information technology that meets standards and certification criteria adopted before the date of the enactment 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 GIONAL 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-

tion panel shall be composed of private experts, none of whom shall be connected with the center involved, and of Federal officials. Each evaluation panel shall measure the involved center's performance against the objective specified in paragraph (3). The Secretary shall not continue to provide funding to a regional center unless its evaluation is overall positive.

"(9) CONTINUING SUPPORT.—After the second year of assistance under this subsection, a regional center may receive additional support under this subsection if it has received positive evaluations and a finding by the Secretary that continuation of Federal funding to the center was in the best interest of provision of health information technology extension services.

"SEC. 3013. STATE GRANTS TO PROMOTE HEALTH INFORMATION TECHNOLOGY.

"(a) IN GENERAL.—The Secretary, acting through the National Coordinator, shall establish a program in accordance with this section to facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards.

"(b) PLANNING GRANTS.—The Secretary may award 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.

"SEC. 3014. COMPETITIVE GRANTS TO STATES AND INDIAN TRIBES FOR THE DEVELOPMENT OF LOAN PROGRAMS TO FACILITATE THE WIDESPREAD ADOPTION OF CERTIFIED EHR TECHNOLOGY.

"(a) IN GENERAL.—The National Coordinator may award competitive grants to eligible entities for the establishment of programs for loans to health care providers to conduct the activities described in subsection (e).

"(b) ELIGIBLE ENTITY DEFINED.—For purposes of this subsection, the term 'eligible entity' means a State or Indian tribe (as defined in the Indian Self-Determination and Education Assistance Act) that—

"(1) submits to the National Coordinator an application at such time, in such manner, and containing such information as the National Coordinator may require;

"(2) submits to the National Coordinator a strategic plan in accordance with subsection (d) and provides to the National Coordinator assurances that the entity will update such plan annually in accordance with such subsection;

"(3) provides assurances to the National Coordinator that the entity will establish a Loan Fund 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

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

"(1) facilitate the purchase of certified EHR technology;

"(2) enhance the utilization of certified EHR technology;

"(3) train personnel in the use of such technology; or

"(4) improve the secure electronic exchange of health information.

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

"(1) To award loans that comply with the following:

"(A) The interest rate for each loan shall not exceed the market interest rate.

"(B) The principal and interest payments on each loan shall commence not later than 1 year after the date the loan was awarded, and each loan shall be fully amortized not later than 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

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

"(2) DETERMINATION OF AMOUNT OF NON-FEDERAL CONTRIBUTION.—In determining the amount of non-Federal contributions that an eligible entity has provided pursuant to subparagraph (A), the National Coordinator may not include any amounts provided to the entity by the Federal Government.

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

"SEC. 3015. DEMONSTRATION PROGRAM TO INTEGRATE INFORMATION TECHNOLOGY INTO CLINICAL EDUCATION.

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

"(b) ELIGIBILITY.—To be eligible to receive a grant 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

for which assistance is provided under subsection (a), except in an instance of national economic conditions which would render the cost-share requirement under this subsection detrimental to the program and upon notification to Congress as to the justification to waive the cost-share requirement.

"SEC. 3017. GENERAL GRANT AND LOAN PROVISIONS.

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

"(1) an analysis of the effectiveness of the activities for which the entity receives such assistance, as compared to the goals for such activities; and

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

"(b) REQUIREMENT TO IMPROVE QUALITY OF CARE AND DECREASE IN COSTS.—The National Coordinator shall annually evaluate the activities conducted under this subtitle and shall, in awarding grants, implement the lessons learned from such evaluation in a manner so that awards made subsequent to each such evaluation are made 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

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

"(B) LIMITATIONS ON AMOUNTS OF INCENTIVE PAYMENTS.—

"(i) IN GENERAL.—In no case shall the amount of the incentive payment provided under this paragraph for an eligible professional for a payment year exceed the applicable amount specified under this subparagraph with respect to such eligible professional and such year.

"(ii) AMOUNT.—Subject to clause (iii), the applicable amount specified in this subparagraph for an eligible professional is 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

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

''(ii) COORDINATION OF APPLICATION OF LIMITATION FOR PROFESSIONALS IN DIFFERENT PRACTICES.—In the case of an eligible professional furnishing covered professional services in more than one practice (as specified by the Secretary), the Secretary shall establish rules to coordinate the incentive payments, including the application of the limitation on amounts of such incentive payments under this paragraph, among such practices.

''(iii) COORDINATION WITH MEDICAID.—The Secretary shall seek, to the maximum extent practicable, to avoid duplicative requirements from Federal and State Governments to demonstrate meaningful use of certified EHR technology under this title and title XIX. In doing so, the Secretary may deem satisfaction of State requirements for such meaningful use for a payment year under title XIX to 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-

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

"(I) The Secretary shall provide preference to clinical quality measures that have been endorsed by the entity with a contract with the Secretary under section 1890(a).

"(II) Prior to any measure being selected under this subparagraph, the Secretary shall publish in the Federal Register such measure and provide for a period of public comment on such measure.

"(ii) LIMITATION.—The Secretary may not require the electronic reporting of information on clinical quality measures under subparagraph (A)(iii) unless the Secretary has the capacity to accept the information electronically, which may be on a pilot basis.

"(iii) COORDINATION OF REPORTING OF INFORMATION.—In selecting such measures, and in establishing the form and manner for reporting measures under subparagraph (A)(iii), the Secretary shall seek

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

"(C) DEMONSTRATION OF MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY AND INFORMATION EXCHANGE.—

"(i) IN GENERAL.—A professional may satisfy the demonstration requirement of clauses (i) and (ii) of subparagraph (A) through means specified by the Secretary, which may include—

"(I) an attestation;

"(II) the submission of claims with appropriate coding (such as a code indicating that a patient encounter was documented using certified EHR technology);

"(III) a survey response;

"(IV) reporting under subparagraph (A)(iii); and

"(V) other means specified by the Secretary.

"(ii) USE OF PART D DATA.—Notwithstanding sections 1860D–15(d)(2)(B) and 1860D–15(f)(2), the Secretary may

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

"(3) APPLICATION.—

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

"(B) COORDINATION WITH OTHER PAYMENTS.—The provisions of this subsection shall not be taken into account in applying the provisions of subsection (m) of this section and of section 1833(m) and any payment under such provisions shall not be taken into account in computing allowable charges under this subsection.

"(C) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the determination of any incentive payment under this subsection and the payment adjustment under subsection (a)(7), including the determination 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(c)(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 PLICABLE 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

are meaningful EHR users (as determined under subsection (o)(2)) is less than 75 percent, the applicable percent shall be decreased by 1 percentage point from the applicable percent in the preceding year, but in no case shall the applicable percent be less than 95 percent.

"(B) SIGNIFICANT HARDSHIP EXCEPTION.—The Secretary may, on a case-by-case basis, exempt an eligible professional from the application of the payment adjustment under subparagraph (A) if the Secretary determines, subject to annual renewal, that compliance with the requirement for being a meaningful EHR user would result in a significant hardship, such as in the case of an eligible professional who practices in a rural area without sufficient Internet access. In no case may an eligible professional be granted an exemption under this subparagraph for more than 5 years.

"(C) APPLICATION OF PHYSICIAN REPORTING SYSTEM RULES.—Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this paragraph in the same manner as they 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

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

"(ii) METHODS.—In the case of an eligible professional described in paragraph (2) who is eligible for an incentive payment under section 1848(o)(1)(A) but is not described in clause (i) for the same payment period, the Secretary shall develop a process—

"(I) to ensure that duplicate payments are not made with respect to an eligible professional both under this subsection and under section 1848(o)(1)(A); and

"(II) to collect data from Medicare Advantage organizations to ensure against such duplicate payments.

"(C) FIXED SCHEDULE FOR APPLICATION OF LIMITATION ON INCENTIVE PAYMENTS FOR ALL ELIGIBLE PROFESSIONALS.—In applying section 1848(o)(1)(B)(ii) under subparagraph (A), in accordance with rules specified by the Secretary, a qualifying MA organization shall specify a year (not earlier than 2011) that shall 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-

tation, in a form and manner specified by the Secretary which may include the submission of such attestation as part of submission of the initial bid under section 1854(a)(1)(A)(iv), identifying—

"(A) whether each eligible professional described in paragraph (2), with respect to such organization is a meaningful EHR user (as defined in section 1848(o)(2)) for a year specified by the Secretary; and

"(B) whether each eligible hospital described in subsection (m)(1), with respect to such organization, is a meaningful EHR user (as defined in section 1886(n)(3)) for an applicable period specified by the Secretary.".

(d) CONFORMING AMENDMENTS.—Section 1853 of the Social Security Act (42 U.S.C. 1395w–23) is amended—

(1) in subsection (a)(1)(A), by striking "and (i)" and inserting "(i), and (l)";

(2) in subsection (c)—

(A) in paragraph (1)(D)(i), by striking "section 1886(h)" and inserting "sections 1848(o) and 1886(h)"; and

(B) in paragraph (6)(A), by inserting after "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

calculate the portion of the formula specified in clause (ii)(II), the Secretary shall use data on uncompensated care and may adjust such data so as to be an appropriate proxy for charity care including a downward adjustment to eliminate bad debt data from uncompensated care data. In the absence of the data necessary, with respect to a hospital, for the Secretary to compute the amount described in clause (ii)(II), the amount under such clause shall be deemed to be 1. In the absence of data, with respect to a hospital, necessary to compute the amount described in clause (i)(II), the amount under such clause shall be deemed to be 0.

"(E) TRANSITION FACTOR SPECIFIED.—

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

"(I) For the first payment year for such hospital, 1.

"(II) For the second payment year for such hospital, ¾.

"(III) For the third payment year for such hospital, ½.

1 "(IV) For the fourth payment
2 year for such hospital, ¼.
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)

through means specified by the Secretary, which may include—

"(I) an attestation;

"(II) the submission of claims with appropriate coding (such as a code indicating that inpatient care was documented using certified EHR technology);

"(III) a survey response;

"(IV) reporting under subparagraph (A)(iii); and

"(V) other means specified by the Secretary.

"(ii) USE OF PART D DATA.—Notwithstanding sections 1860D–15(d)(2)(B) and 1860D–15(f)(2), the Secretary may use data regarding drug claims submitted for purposes of section 1860D–15 that are necessary for purposes of subparagraph (A).

"(4) APPLICATION.—

"(A) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise 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:

"(A) ELIGIBLE HOSPITAL.—The term 'eligible hospital' means a subsection (d) hospital.

"(B) REPORTING PERIOD.—The term 'reporting period' means any period (or periods), with respect to a payment year, as specified by the Secretary.".

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

(1) in clause (viii)(I), by inserting "(or, beginning with fiscal year 2016, by one-quarter)" after "2.0 percentage points"; and

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

"(ix)(I) For purposes of clause (i) for fiscal year 2016 and each subsequent fiscal year, in the case of an eligible hospital (as defined in subsection (n)(6)(A)) that is not a meaningful EHR user (as defined in subsection (n)(3)) for the reporting period for such fiscal year, three-quarters of the applicable percentage increase otherwise applicable under clause (i) for such fiscal year shall be reduced by 33⅓ percent for fiscal year 2016, 66⅔ percent for fiscal year 2017, and 100 percent for fiscal year 2018 and each subsequent fiscal year. Such reduction 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

use to make the payment adjustment under the previous sentence.

"(IV) For purposes of this clause, the term 'reporting period' means, with respect to a fiscal year, any period (or periods), with respect to the fiscal year, as specified by the Secretary.".

(c) APPLICATION TO CERTAIN HMO-AFFILIATED ELIGIBLE HOSPITALS.—Section 1853 of the Social Security Act (42 U.S.C. 1395w-23), as amended by section 4311(c), is further amended by adding at the end the following new subsection:

"(m) APPLICATION OF ELIGIBLE HOSPITAL INCENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION AND MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—

"(1) APPLICATION.—Subject to paragraphs (3) and (4), in the case of a qualifying MA organization, the provisions of sections 1886(n) and 1886(b)(3)(B)(ix) shall apply with respect to eligible hospitals described in paragraph (2) of the organization which the organization attests under subsection (l)(6) to be meaningful EHR users in a similar manner as they apply to eligible hospitals under such sections. Incentive payments under paragraph (3) 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),

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

"(ii) METHODS.—In the case of a hospital that is an eligible hospital described in paragraph (2) and also is eligible for an incentive payment under section 1886(n) but is not described in clause (i) for the same payment period, the Secretary shall develop a process—

"(I) to ensure that duplicate payments are not made with respect to an eligible hospital both under this subsection and under section 1886(n); and

"(II) to collect data from Medicare Advantage organizations to ensure against such duplicate payments.

"(4) PAYMENT ADJUSTMENT.—

"(A) Subject to paragraph (3), in the case 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.

"(C) MEDICARE HOSPITAL EXPENDITURE PROPORTION.—The Medicare hospital expenditure proportion under this subparagraph for a year is the Secretary's estimate of the proportion, of the expenditures under parts A and B that are not attributable to this part, that are attributable to expenditures for inpatient hospital services.

"(D) APPLICATION OF PAYMENT ADJUSTMENT.—In the case that a qualifying MA organization attests that not all eligible hospitals are meaningful EHR users with respect to an applicable period, the Secretary shall apply the payment adjustment under this paragraph based on a methodology specified by the Secretary, taking into account the proportion of such eligible hospitals, or discharges from such hospitals, that are not meaningful EHR users for such period.".

(d) CONFORMING AMENDMENTS.—

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

(A) in paragraph (3), in the matter preceding 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.

SEC. 4314. STUDY ON APPLICATION OF EHR PAYMENT INCENTIVES FOR PROVIDERS NOT RECEIVING OTHER INCENTIVE PAYMENTS.

(a) STUDY.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine the extent to which and manner in which payment incentives (such as under title XVIII or XIX of the Social Security Act) and other funding for purposes of implementing and using certified EHR technology (as defined in section 3000 of the Public Health Service Act) should be made available to health care providers who are receiving minimal or no payment incentives or other funding under this Act, under title XVIII or XIX of the Social Security Act, or otherwise, for such purposes.

(2) DETAILS OF STUDY.—Such study shall include an examination of—

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

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

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

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

(E) the potential costs and the potential benefits of making payment incentives and other funding available to such health care providers; and

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

(b) REPORT.—Not later than June 30, 2010, the Secretary shall submit to Congress a report on the findings and conclusions of the study conducted under subsection (a).

PART III—MEDICAID FUNDING

SEC. 4321. MEDICAID PROVIDER HIT ADOPTION AND OPERATION PAYMENTS; IMPLEMENTATION FUNDING.

(a) IN GENERAL.—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended—

(1) in subsection (a)(3)—

(A) by striking ''and'' at the end of subparagraph (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

business associate involved if such acquisition, access, use, or disclosure, respectively, was made in good faith and within the course and scope of the employment or other contractual relationship of such employee or agent, respectively, with the covered entity or business associate and if such information is not further acquired, accessed, used, or disclosed by such employee or agent.

(2) BUSINESS ASSOCIATE.—The term ''business associate'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(3) COVERED ENTITY.—The term ''covered entity'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(4) DISCLOSE.—The terms ''disclose'' and ''disclosure'' have the meaning given the term ''disclosure'' in section 160.103 of title 45, Code of Federal Regulations.

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

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

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

(8) HEALTH PLAN.—The term ''health plan'' has the meaning given such term in section 1171(5) of the Social Security Act.

(9) NATIONAL COORDINATOR.—The term ''National Coordinator'' means the head of the Office of the National Coordinator for Health Information Technology established under section 3001(a) of the Public Health Service Act, as added by section 4101.

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

(11) PERSONAL HEALTH RECORD.—The term ''personal health record'' means an electronic record of individually identifiable health information on an individual that can be drawn from multiple sources

and that is managed, shared, and controlled by or for the individual.

(12) PROTECTED HEALTH INFORMATION.—The term ''protected health information'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(13) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

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

(15) STATE.—The term ''State'' means each of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

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

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

(18) VENDOR OF PERSONAL HEALTH RECORDS.—The term ''vendor of personal health records'' means an entity, other than a covered enti-

ty (as defined in paragraph (3)), that offers or maintains a personal health record.

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.

(a) APPLICATION OF SECURITY PROVISIONS.—Sections 164.308, 164.310, 164.312, and 164.316 of title 45, Code of Federal Regulations, shall apply to a business associate of a covered entity in the same manner that such sections apply to the covered entity. The additional requirements of this title that relate to security and that are made applicable with respect to covered entities shall also be applicable to such a business associate and shall be incorporated into the business associate agreement between the business associate and the covered entity.

(b) APPLICATION OF CIVIL AND CRIMINAL PENALTIES.—In the case of a business associate that violates any security provision specified in subsection (a), sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6) shall apply to the business associate 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

individual under subparagraph (A), electronic) notification to the individual, a substitute form of notice shall be provided, including, in the case that there are 10 or more individuals for which there is insufficient or out-of-date contact information, a conspicuous posting for a period determined by the Secretary on the home page of the Web site of the covered entity involved or notice in major print or broadcast media, including major media in geographic areas where the individuals affected by the breach likely reside. Such a notice in media or web posting will include a toll-free phone number where an individual can learn whether or not the individual's unsecured protected health information is possibly included in the breach.

(C) In any case deemed by the covered entity involved to require urgency because of possible imminent misuse of unsecured protected health information, the covered entity, in addition to notice provided under subparagraph (A), may provide information to individuals by telephone or other means, as appropriate.

(2) MEDIA NOTICE.—Notice shall be provided 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-

ing breaches for which notice was provided to the Secretary under subsection (e)(3).

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

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

(B) actions taken in response to such breaches.

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

SEC. 4403. EDUCATION ON HEALTH INFORMATION PRIVACY.

(a) REGIONAL OFFICE PRIVACY ADVISORS.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall designate an individual in each regional office of the Department of Health and Human Services to offer guidance and education to covered 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

as such provisions apply to a person who violates a provision of part C of title XI of such Act.

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.

(a) REQUESTED RESTRICTIONS ON CERTAIN DISCLOSURES OF HEALTH INFORMATION.—In the case that an individual requests under paragraph (a)(1)(i)(A) of section 164.522 of title 45, Code of Federal Regulations, that a covered entity restrict the disclosure of the protected health information of the individual, notwithstanding paragraph (a)(1)(ii) of such section, the covered entity must comply with the requested restriction if—

(1) except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and

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

1 (b) DISCLOSURES REQUIRED TO BE LIMITED TO
2 THE LIMITED DATA SET OR THE MINIMUM NEC-
3 ESSARY.—
4 (1) IN GENERAL.—
5 (A) IN GENERAL.—Subject to subpara-
6 graph (B), a covered entity shall be treated as
7 being in compliance with section 164.502(b)(1)
8 of title 45, Code of Federal Regulations, with
9 respect to the use, disclosure, or request of pro-
10 tected health information described in such sec-
11 tion, only if the covered entity limits such pro-
12 tected health information, to the extent prac-
13 ticable, to the limited data set (as defined in
14 section 164.514(e)(2) of such title) or, if needed
15 by such entity, to the minimum necessary to ac-
16 complish the intended purpose of such use, dis-
17 closure, or request, respectively.
18 (B) GUIDANCE.—Not later than 18
19 months after the date of the enactment of this
20 section, the Secretary shall issue guidance on
21 what constitutes "minimum necessary" for pur-
22 poses of subpart E of part 164 of title 45, Code
23 of Federal Regulation. In issuing such guidance
24 the Secretary shall take into consideration the
25 guidance under section 4424(c).

1 (C) SUNSET.—Subparagraph (A) shall not
2 apply on and after the effective date on which
3 the Secretary issues the guidance under sub-
4 paragraph (B).
5 (2) DETERMINATION OF MINIMUM NEC-
6 ESSARY.—For purposes of paragraph (1), in the
7 case of the disclosure of protected health informa-
8 tion, the covered entity or business associate dis-
9 closing such information shall determine what con-
10 stitutes the minimum necessary to accomplish the
11 intended purpose of such disclosure.
12 (3) APPLICATION OF EXCEPTIONS.—The excep-
13 tions described in section 164.502(b)(2) of title 45,
14 Code of Federal Regulations, shall apply to the re-
15 quirement under paragraph (1) as of the effective
16 date described in section 4423 in the same manner
17 that such exceptions apply to section 164.502(b)(1)
18 of such title before such date.
19 (4) RULE OF CONSTRUCTION.—Nothing in this
20 subsection shall be construed as affecting the use,
21 disclosure, or request of protected health information
22 that has been de-identified.
23 (c) ACCOUNTING OF CERTAIN PROTECTED HEALTH
24 INFORMATION DISCLOSURES REQUIRED IF COVERED EN-
25 TITY USES ELECTRONIC HEALTH RECORD.—

1 (1) IN GENERAL.—In applying section 164.528
2 of title 45, Code of Federal Regulations, in the case
3 that a covered entity uses or maintains an electronic
4 health record with respect to protected health infor-
5 mation—
6 (A) the exception under paragraph
7 (a)(1)(i) of such section shall not apply to dis-
8 closures through an electronic health record
9 made by such entity of such information; and
10 (B) an individual shall have a right to re-
11 ceive an accounting of disclosures described in
12 such paragraph of such information made by
13 such covered entity during only the three years
14 prior to the date on which the accounting is re-
15 quested.
16 (2) REGULATIONS.—The Secretary shall pro-
17 mulgate regulations on what information shall be
18 collected about each disclosure referred to in para-
19 graph (1)(A) not later than 18 months after the
20 date on which the Secretary adopts standards on ac-
21 counting for disclosure described in the section
22 3002(b)(2)(B)(iv) of the Public Health Service Act,
23 as added by section 4101. Such regulations shall
24 only require such information to be collected through
25 an electronic health record in a manner that takes

1 into account the interests of individuals in learning
2 the circumstances under which their protected health
3 information is being disclosed and takes into account
4 the administrative burden of accounting for such
5 disclosures.

6 (3) CONSTRUCTION.—Nothing in this sub-
7 section shall be construed as requiring a covered en-
8 tity to account for disclosures of protected health in-
9 formation that are not made by such covered entity
10 or by a business associate acting on behalf of the
11 covered entity.

12 (4) EFFECTIVE DATE.—

13 (A) CURRENT USERS OF ELECTRONIC
14 RECORDS.—In the case of a covered entity inso-
15 far as it acquired an electronic health record as
16 of January 1, 2009, paragraph (1) shall apply
17 to disclosures, with respect to protected health
18 information, made by the covered entity from
19 such a record on and after January 1, 2014.

20 (B) OTHERS.—In the case of a covered en-
21 tity insofar as it acquires an electronic health
22 record after January 1, 2009, paragraph (1)
23 shall apply to disclosures, with respect to pro-
24 tected health information, made by the covered

1 entity from such record on and after the later
2 of the following:
3 (i) January 1, 2011; or
4 (ii) the date that it acquires an elec-
5 tronic health record.
6 (d) REVIEW OF HEALTH CARE OPERATIONS.—Not
7 later than 18 months after the date of the enactment of
8 this title, the Secretary shall promulgate regulations to
9 eliminate from the definition of health care operations
10 under section 164.501 of title 45, Code of Federal Regula-
11 tions, those activities that can reasonably and efficiently
12 be conducted through the use of information that is de-
13 identified (in accordance with the requirements of section
14 164.514(b) of such title) or that should require a valid
15 authorization for use or disclosure. In promulgating such
16 regulations, the Secretary may choose to narrow or clarify
17 activities that the Secretary chooses to retain in the defini-
18 tion of health care operations and the Secretary shall take
19 into account the report under section 424(d). In such reg-
20 ulations the Secretary shall specify the date on which such
21 regulations shall apply to disclosures made by a covered
22 entity, but in no case would such date be sooner than the
23 date that is 24 months after the date of the enactment
24 of this section.

1 (e) PROHIBITION ON SALE OF ELECTRONIC HEALTH
2 RECORDS OR PROTECTED HEALTH INFORMATION.—
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 muneration 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 muneration 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

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

(3) REGULATIONS.—The Secretary shall promulgate regulations to carry out paragraph (this subsection, including exceptions described in paragraph (2), not later than 18 months after the date of the enactment of this title.

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

(f) ACCESS TO CERTAIN INFORMATION IN ELECTRONIC FORMAT.—In applying section 164.524 of title 45, Code of Federal Regulations, in the case that a covered entity uses or maintains an electronic health record with respect to protected health information of an individual—

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

(2) notwithstanding paragraph (c)(4) of such section, any fee that the covered entity may impose for providing such individual with a copy of such information (or a summary or explanation of such information) if such copy (or summary or explanation)

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

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

(a) MARKETING.—

(1) IN GENERAL.—A communication by a covered entity or business associate that is about a product or service and that encourages recipients of the communication to purchase or use the product or service shall not be considered a health care operation for purposes of subpart E of part 164 of title 45, Code of Federal Regulations, unless the communication is made as described in subparagraph (i), (ii), or (iii) of paragraph (1) of the definition of marketing in section 164.501 of such title.

(2) PAYMENT FOR CERTAIN COMMUNICATIONS.—A covered entity or business associate may not receive direct or indirect payment in exchange for making any communication described in subparagraph (i), (ii), or (iii) of paragraph (1) of the definition of marketing in section 164.501 of title 45, Code of Federal Regulations, except—

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

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

(B) a covered entity may receive payment in exchange for making any such communication if the entity obtains from the recipient of the communication, in accordance with section 164.508 of title 45, Code of Federal Regulations, a valid authorization (as described in paragraph (b) of such section) with respect to such communication.

(b) FUNDRAISING.—Fundraising for the benefit of a covered entity shall not be considered a health care operation for purposes of section 164.501 of title 45, Code of Federal Regulations.

(c) EFFECTIVE DATE.—This section shall apply to contracting occurring on or after the effective date specified under section 4423.

SEC. 4407. TEMPORARY BREACH NOTIFICATION REQUIREMENT FOR VENDORS OF PERSONAL HEALTH RECORDS AND OTHER NON-HIPAA COVERED ENTITIES.

(a) IN GENERAL.—In accordance with subsection (c), each vendor of personal health records, following the discovery of a breach of security of unsecured PHR identifiable health information that is in a personal health record maintained or offered by such vendor, and each entity described in clause (ii) or (iii) of section 4424(b)(1)(A), following the discovery of a breach of security of such information that is obtained through a product or service provided by such entity, shall—

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

(2) notify the Federal Trade Commission.

(b) NOTIFICATION BY THIRD PARTY SERVICE PROVIDERS.—A third party service provider that provides services to a vendor of personal health records or to an entity described in clause (ii) or (iii) of section 4424(b)(1)(A) in connection with the offering or maintenance of a personal health record or a related product or 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 57*a*(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 dorsed 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.

SEC. 4408. BUSINESS ASSOCIATE CONTRACTS REQUIRED FOR CERTAIN ENTITIES.

Each organization, with respect to a covered entity, that provides data transmission of protected health information to such entity (or its business associate) and that requires access on a routine basis to such protected health information, such as a Health Information Exchange Organization, Regional Health Information Organization, E-prescribing Gateway, or each vendor that contracts with a covered entity to allow that covered entity to offer a personal health record to patients as part of its electronic health record, is required to enter into a written contract (or other written arrangement) described in section 164.502(e)(2) of title 45, Code of Federal Regulations and a written contract (or other arrangement) described in section 164.308(b) of such title, with such entity and shall be treated as a business associate of the covered entity for purposes of the provisions of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this title.

SEC. 4409. CLARIFICATION OF APPLICATION OF WRONGFUL DISCLOSURES CRIMINAL PENALTIES.

Section 1177(a) of the Social Security Act (42 U.S.C. 1320d–6(a)) is amended by adding at the end the following 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

this part if a preliminary investigation of the facts of the complaint indicate such a possible violation due to willful neglect.''.

(b) EFFECTIVE DATE; REGULATIONS.—

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

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

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

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

as such provisions are in effect as of the date of enactment of this Act.

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

(3) ESTABLISHMENT OF METHODOLOGY TO DISTRIBUTE PERCENTAGE OF CMPS COLLECTED TO HARMED INDIVIDUALS.—Not later than 3 years after the date of the enactment of this title, the Secretary shall establish by regulation and based on the recommendations submitted under paragraph (2), a methodology under which an individual who is harmed by an act that constitutes an offense referred to in paragraph (1) may receive a percentage of any civil monetary penalty or monetary settlement collected with respect to such offense.

(4) APPLICATION OF METHODOLOGY.—The methodology under paragraph (3) shall be applied 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:

"(3) TIERS OF PENALTIES DESCRIBED.—For purposes of paragraph (1), with respect to a violation by a person of a provision of this part—

"(A) the amount described in this subparagraph is $100 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $25,000;

"(B) the amount described in this subparagraph is $1,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $100,000;

"(C) the amount described in this subparagraph is $10,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $250,000; and

"(D) the amount described in this subparagraph is $50,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical re-

1 quirement 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 redesig-
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 "(e) 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

this paragraph is the amount calculated by multiplying the number of violations by up to $100. For purposes of the preceding sentence, in the case of a continuing violation, the number of violations shall be determined consistent with the HIPAA privacy regulations (as defined in section 1180(b)(3)) for violations of subsection (a).

"(B) LIMITATION.—The total amount of damages imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed $25,000.

"(C) REDUCTION OF DAMAGES.—In assessing damages under subparagraph (A), the court may consider the factors the Secretary may consider in determining the amount of a civil money penalty under subsection (a) under the HIPAA privacy regulations.

"(3) ATTORNEY FEES.—In the case of any successful action under paragraph (1), the court, in its discretion, may award the costs of the action and reasonable attorney fees to the State.

"(4) NOTICE TO SECRETARY.—The State shall serve prior written notice of any action under paragraph (1) upon the Secretary and provide the Sec-

retary with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Secretary shall have the right—

"(A) to intervene in the action;

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

"(C) to file petitions for appeal.

"(5) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State.

"(6) VENUE; SERVICE OF PROCESS.—

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

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

"(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 LIMI-
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)''; and
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''; and
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

of Health and Human Services from continuing, in its discretion, to use corrective action without a penalty in cases where the person did not know (and by exercising reasonable diligence would not have known) of the violation involved.''.

SEC. 4411. AUDITS.

The Secretary shall provide for periodic audits to ensure that covered entities and business associates that are subject to the requirements of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this Act, comply with such requirements.

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

SEC. 4421. RELATIONSHIP TO OTHER LAWS.

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

(b) HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT.—The standards governing the privacy and security of individually identifiable health information promulgated by the Secretary under sections 262(a) and 264 of the Health Insurance Portability and Accountability Act of 1996 shall remain in effect to the extent that they are consistent with this subtitle. The Secretary shall by rule amend such Federal regulations as required to make such regulations consistent with this subtitle.

SEC. 4422. REGULATORY REFERENCES.

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

SEC. 4423. EFFECTIVE DATE.

Except as otherwise specifically provided, the provisions of part I shall take effect on the date that is 12 months after the date of the enactment of this title.

SEC. 4424. STUDIES, REPORTS, GUIDANCE.

(a) REPORT ON COMPLIANCE.—

(1) IN GENERAL.—For the first year beginning after the date of the enactment of this Act and annually thereafter, the Secretary shall prepare and 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

for entities that are not covered entities or business associates as of the date of the enactment of this title, including—

(A) requirements relating to security, privacy, and notification in the case of a breach of security or privacy (including the applicability of an exemption to notification in the case of individually identifiable health information that has been rendered unusable, unreadable, or indecipherable through technologies or methodologies recognized by appropriate professional organization or standard setting bodies to provide effective security for the information) that should be applied to—

(i) vendors of personal health records;

(ii) entities that offer products or services through the website of a vendor of personal health records;

(iii) entities that are not covered entities and that offer products or services through the websites of covered entities that offer individuals personal health records;

(iv) entities that are not covered entities 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.

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