

ECR # 1111111111  
Amend # 1K  
Defeated RC:  
16-32

**AMENDMENT**

**OFFERED BY M R. BURGESS**

At the end of subtitle A in title IV, insert the following

**1 PART III—PROMOTING THE USE OF HEALTH IN-**  
**2 FORMATION TECHNOLOGY TO BETTER CO-**  
**3 ORDINATE HEALTH CARE**

**4 SEC. 4121. SAFE HARBORS TO ANTIKICKBACK CIVIL PEN-**  
**5 ALTIES AND CRIMINAL PENALTIES FOR PRO-**  
**6 VISION OF HEALTH INFORMATION TECH-**  
**7 NOLOGY AND TRAINING SERVICES.**

8 (a) FOR CIVIL PENALTIES.—Section 1128A of the  
9 Social Security Act (42 U.S.C. 1320a-7a) is amended—

10 (1) in subsection (b), by adding at the end the  
11 following new paragraph:

12 “(4) For purposes of this subsection, induce-  
13 ments to reduce or limit services described in para-  
14 graph (1) shall not include the practical or other ad-  
15 vantages resulting from health information tech-  
16 nology or related installation, maintenance, support,  
17 or training services.”; and

18 (2) in subsection (i), by adding at the end the  
19 following new paragraph:

1           “(8) The term ‘health information technology’  
2           means hardware, software, license, right, intellectual  
3           property, equipment, or other information tech-  
4           nology (including new versions, upgrades, and  
5           connectivity) designed or provided primarily for the  
6           electronic creation, maintenance, or exchange of  
7           health information to better coordinate care or im-  
8           prove health care quality, efficiency, or research.”.

9           (b) FOR CRIMINAL PENALTIES.— Section 1128B of  
10          such Act (42 U.S.C. 1320a-7b) is amended—

11           (1) in subsection (b)(3)—

12                   (A) in subparagraph (G), by striking  
13                   “and” at the end;

14                   (B) in the subparagraph (H) added by sec-  
15                   tion 237(d) of the Medicare Prescription Drug,  
16                   Improvement, and Modernization Act of 2003  
17                   (Public Law 108-173; 117 Stat. 2213)—

18                           (i) by moving such subparagraph 2  
19                           ems to the left; and

20                           (ii) by striking the period at the end  
21                           and inserting a semicolon;

22                   (C) in the subparagraph (H) added by sec-  
23                   tion 431(a) of such Act (117 Stat. 2287)—

24                           (i) by redesignating such subpara-  
25                           graph as subparagraph (I);

1 (ii) by moving such subparagraph 2  
2 ems to the left; and

3 (iii) by striking the period at the end  
4 and inserting “; and”; and

5 (D) by adding at the end the following new  
6 subparagraph:

7 “(J) any nonmonetary remuneration (in  
8 the form of health information technology, as  
9 defined in section 1128A(i)(8), or related instal-  
10 lation, maintenance, support, or training serv-  
11 ices) made to a person by a specified entity (as  
12 defined in subsection (g)) if—

13 “(i) the provision of such remunera-  
14 tion is without an agreement between the  
15 parties or legal condition that—

16 “(I) limits or restricts the use of  
17 the health information technology to  
18 services provided by the physician to  
19 individuals receiving services at the  
20 specified entity;

21 “(II) limits or restricts the use of  
22 the health information technology in  
23 conjunction with other health informa-  
24 tion technology; or

1                   “(III) conditions the provision of  
2                   such remuneration on the referral of  
3                   patients or business to the specified  
4                   entity;

5                   “(ii) such remuneration is arranged  
6                   for in a written agreement that is signed  
7                   by the parties involved (or their represent-  
8                   atives) and that specifies the remuneration  
9                   solicited or received (or offered or paid)  
10                  and states that the provision of such remuneration is made for the primary purpose  
11                  of better coordination of care or improve-  
12                  ment of health quality, efficiency, or re-  
13                  search; and  
14

15                  “(iii) the specified entity providing the  
16                  remuneration (or a representative of such  
17                  entity) has not taken any action to disable  
18                  any basic feature of any hardware or soft-  
19                  ware component of such remuneration that  
20                  would permit interoperability.”; and

21                  (2) by adding at the end the following new sub-  
22                  section:

23                  “(g) Specified Entity Defined- For purposes of sub-  
24                  section (b)(3)(J), the term ‘specified entity’ means an en-  
25                  tity that is a hospital, group practice, prescription drug

1 plan sponsor, a Medicare Advantage organization, or any  
2 other such entity specified by the Secretary, considering  
3 the goals and objectives of this section, as well as the goals  
4 to better coordinate the delivery of health care and to pro-  
5 mote the adoption and use of health information tech-  
6 nology.”.

7 (c) EFFECTIVE DATE AND EFFECT ON STATE  
8 LAWS.—

9 (1) EFFECTIVE DATE.—The amendments made  
10 by subsections (a) and (b) shall take effect on the  
11 date that is 120 days after the date of the enact-  
12 ment of this Act.

13 (2) PREEMPTION OF STATE LAWS.—No State  
14 (as defined in section 1101(a) of the Social Security  
15 Act (42 U.S.C. 1301(a)) for purposes of title XI of  
16 such Act) shall have in effect a State law that im-  
17 poses a criminal or civil penalty for a transaction de-  
18 scribed in section 1128A(b)(4) or section  
19 1128B(b)(3)(J) of such Act, as added by subsections  
20 (a)(1) and (b), respectively, if the conditions de-  
21 scribed in the respective provision, with respect to  
22 such transaction, are met.

23 (d) STUDY AND REPORT TO ASSESS EFFECT OF  
24 SAFE HARBORS ON HEALTH SYSTEM.—

1           (1) IN GENERAL.—The Secretary of Health and  
2           Human Services shall conduct a study to determine  
3           the impact of each of the safe harbors described in  
4           paragraph (3). In particular, the study shall examine  
5           the following:

6                   (A) The effectiveness of each safe harbor  
7                   in increasing the adoption of health information  
8                   technology.

9                   (B) The types of health information tech-  
10                  nology provided under each safe harbor.

11                  (C) The extent to which the financial or  
12                  other business relationships between providers  
13                  under each safe harbor have changed as a re-  
14                  sult of the safe harbor in a way that adversely  
15                  affects or benefits the health care system or  
16                  choices available to consumers.

17                  (D) The impact of the adoption of health  
18                  information technology on health care quality,  
19                  cost, and access under each safe harbor.

20           (2) REPORT.—Not later than three years after  
21           the effective date described in subsection (c)(1), the  
22           Secretary of Health and Human Services shall sub-  
23           mit to Congress a report on the study under para-  
24           graph (1).

1           (3) SAFE HARBORS DESCRIBED.—For purposes  
2 of paragraphs (1) and (2), the safe harbors de-  
3 scribed in this paragraph are—

4           (A) the safe harbor under section  
5 1128A(b)(4) of such Act (42 U.S.C. 1320a-  
6 7a(b)(4)), as added by subsection (a)(1); and

7           (B) the safe harbor under section  
8 1128B(b)(3)(J) of such Act (42 U.S.C. 1320a-  
9 7b(b)(3)(J)), as added by subsection (b).

10 **SEC. 4122. EXCEPTION TO LIMITATION ON CERTAIN PHYSI-**  
11 **CIAN REFERRALS (UNDER STARK) FOR PRO-**  
12 **VISION OF HEALTH INFORMATION TECH-**  
13 **NOLOGY AND TRAINING SERVICES TO**  
14 **HEALTH CARE PROFESSIONALS.**

15           (a) IN GENERAL.— Section 1877(b) of the Social Se-  
16 curity Act (42 U.S.C. 1395nn(b)) is amended by adding  
17 at the end the following new paragraph:

18           “(6) INFORMATION TECHNOLOGY AND TRAIN-  
19 ING SERVICES.—

20           “(A) IN GENERAL.—Any nonmonetary re-  
21 munerated (in the form of health information  
22 technology or related installation, maintenance,  
23 support or training services) made by a speci-  
24 fied entity to a physician if—

1                   “(i) the provision of such remunera-  
2                   tion is without an agreement between the  
3                   parties or legal condition that—

4                   “(I) limits or restricts the use of  
5                   the health information technology to  
6                   services provided by the physician to  
7                   individuals receiving services at the  
8                   specified entity;

9                   “(II) limits or restricts the use of  
10                  the health information technology in  
11                  conjunction with other health informa-  
12                  tion technology; or

13                  “(III) conditions the provision of  
14                  such remuneration on the referral of  
15                  patients or business to the specified  
16                  entity;

17                  “(ii) such remuneration is arranged  
18                  for in a written agreement that is signed  
19                  by the parties involved (or their represent-  
20                  atives) and that specifies the remuneration  
21                  made and states that the provision of such  
22                  remuneration is made for the primary pur-  
23                  pose of better coordination of care or im-  
24                  provement of health quality, efficiency, or  
25                  research; and

1                   “(iii) the specified entity (or a rep-  
2                   resentative of such entity) has not taken  
3                   any action to disable any basic feature of  
4                   any hardware or software component of  
5                   such remuneration that would permit  
6                   interoperability.

7                   “(B) HEALTH INFORMATION TECHNOLOGY  
8                   DEFINED.—For purposes of this paragraph, the  
9                   term ‘health information technology’ means  
10                  hardware, software, license, right, intellectual  
11                  property, equipment, or other information tech-  
12                  nology (including new versions, upgrades, and  
13                  connectivity) designed or provided primarily for  
14                  the electronic creation, maintenance, or ex-  
15                  change of health information to better coordi-  
16                  nate care or improve health care quality, effi-  
17                  ciency, or research.

18                  “(C) SPECIFIED ENTITY DEFINED.—For  
19                  purposes of this paragraph, the term ‘specified  
20                  entity’ means an entity that is a hospital, group  
21                  practice, prescription drug plan sponsor, a  
22                  Medicare Advantage organization, or any other  
23                  such entity specified by the Secretary, consid-  
24                  ering the goals and objectives of this section, as  
25                  well as the goals to better coordinate the deliv-

1           ery of health care and to promote the adoption  
2           and use of health information technology.”.

3           (b) EFFECTIVE DATE; EFFECT ON STATE LAWS.—

4           (1) EFFECTIVE DATE.—The amendment made  
5           by subsection (a) shall take effect on the date that  
6           is 120 days after the date of the enactment of this  
7           Act.

8           (2) PREEMPTION OF STATE LAWS.—No State  
9           (as defined in section 1101(a) of the Social Security  
10          Act (42 U.S.C. 1301(a)) for purposes of title XI of  
11          such Act) shall have in effect a State law that im-  
12          poses a criminal or civil penalty for a transaction de-  
13          scribed in section 1877(b)(6) of such Act, as added  
14          by subsection (a), if the conditions described in such  
15          section, with respect to such transaction, are met.

16          (c) STUDY AND REPORT TO ASSESS EFFECT OF EX-  
17          CEPTION ON HEALTH SYSTEM.—

18          (1) IN GENERAL.—The Secretary of Health and  
19          Human Services shall conduct a study to determine  
20          the impact of the exception under section 1877(b)(6)  
21          of such Act (42 U.S.C. 1395nn(b)(6)), as added by  
22          subsection (a). In particular, the study shall examine  
23          the following:

1 (A) The effectiveness of the exception in  
2 increasing the adoption of health information  
3 technology.

4 (B) The types of health information tech-  
5 nology provided under the exception.

6 (C) The extent to which the financial or  
7 other business relationships between providers  
8 under the exception have changed as a result of  
9 the exception in a way that adversely affects or  
10 benefits the health care system or choices avail-  
11 able to consumers.

12 (D) The impact of the adoption of health  
13 information technology on health care quality,  
14 cost, and access under the exception.

15 (2) REPORT.—Not later than three years after  
16 the effective date described in subsection (b)(1), the  
17 Secretary of Health and Human Services shall sub-  
18 mit to Congress a report on the study under para-  
19 graph (1).

20 **SEC. 4123. RULES OF CONSTRUCTION REGARDING USE OF**  
21 **CONSORTIA.**

22 (a) APPLICATION TO SAFE HARBOR FROM CRIMINAL  
23 PENALTIES.—Section 1128B(b)(3) of the Social Security  
24 Act (42 U.S.C. 1320a-7b(b)(3)) is amended by adding  
25 after and below subparagraph (J), as added by section

1 4121(b)(1), the following: “For purposes of subparagraph  
2 (J), nothing in such subparagraph shall be construed as  
3 preventing a specified entity, consistent with the specific  
4 requirements of such subparagraph, from forming a con-  
5 sortium composed of health care providers, payers, em-  
6 ployers, and other interested entities to collectively pur-  
7 chase and donate health information technology, or from  
8 offering health care providers a choice of health informa-  
9 tion technology products in order to take into account the  
10 varying needs of such providers receiving such products.”.

11 (b) APPLICATION TO STARK EXCEPTION.— Para-  
12 graph (6) of section 1877(b) of the Social Security Act  
13 (42 U.S.C. 1395nn(b)), as added by section 4122(a), is  
14 amended by adding at the end the following new subpara-  
15 graph:

16 “(D) RULE OF CONSTRUCTION.—For pur-  
17 poses of subparagraph (A), nothing in such  
18 subparagraph shall be construed as preventing  
19 a specified entity, consistent with the specific  
20 requirements of such subparagraph, from—

21 “(i) forming a consortium composed  
22 of health care providers, payers, employers,  
23 and other interested entities to collectively  
24 purchase and donate health information  
25 technology; or

1                   “(ii) offering health care providers a  
2                   choice of health information technology  
3                   products in order to take into account the  
4                   varying needs of such providers receiving  
5                   such products.”.



