

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

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

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

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

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

          Subtitle A—Promotion of Health Information Technology

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

Sec. 4101. ONCHIT; standards development and adoption.

          “TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND  
          QUALITY

          “Sec. 3000. Definitions.

          “Subtitle A—Promotion of Health Information Technology

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

          “Sec. 3002. HIT Policy Committee.

          “Sec. 3003. HIT Standards Committee.

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

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

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

          “Sec. 3007. Federal health information technology.

          “Sec. 3008. Transitions.

          “Sec. 3009. Relation to HIPAA privacy and security law.

          “Sec. 3010. Authorization for appropriations.

Sec. 4102. Technical amendment.

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

- Sec. 4111. Coordination of Federal activities with adopted standards and 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 HIT payment incentives for providers not receiving other incentive payments.

PART III—MEDICAID FUNDING

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

Subtitle D—Privacy

- Sec. 4400. Definitions.

PART I—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS

- Sec. 4401. Application of security provisions and penalties to business associates of covered entities; annual guidance on security provisions.
- Sec. 4402. Notification in the case of breach.
- Sec. 4403. Education on Health Information Privacy.
- Sec. 4404. Application of privacy provisions and penalties to business associates of covered entities.
- Sec. 4405. Restrictions on certain disclosures and sales of health information; accounting of certain protected health information disclosures; access to certain information in electronic format.

- Sec. 4406. Conditions on certain contacts as part of health care operations.
- Sec. 4407. Temporary breach notification requirement for vendors of personal health records and other non-HIPAA covered entities.
- Sec. 4408. Business associate contracts required for certain entities.
- Sec. 4409. Clarification of application of wrongful disclosures criminal penalties.
- Sec. 4410. Improved enforcement.
- Sec. 4411. Audits.

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

- Sec. 4421. Relationship to other laws.
- Sec. 4422. Regulatory references.
- Sec. 4423. Effective date.
- Sec. 4424. Studies, reports, guidance.

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

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

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

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

9     **“TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND**  
10                    **QUALITY**

12    **“SEC. 3000. DEFINITIONS.**

13         “In this title:

14                 “(1) **CERTIFIED EHR TECHNOLOGY.**—The term  
15         ‘certified EHR technology’ means a qualified elec-  
16         tronic health record that is certified pursuant to sec-  
17         tion 3001(c)(5) as meeting standards adopted under  
18         section 3004 that are applicable to the type of

1 record involved (as determined by the Secretary,  
2 such as an ambulatory electronic health record for  
3 office-based physicians or an inpatient hospital elec-  
4 tronic health record for hospitals).

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

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

1 the Indian Self-Determination and Education Assist-  
2 ance Act), tribal organization, or urban Indian orga-  
3 nization (as defined in section 4 of the Indian  
4 Health Care Improvement Act), a rural health clinic,  
5 a covered entity under section 340B, and any other  
6 category of facility or clinician determined appro-  
7 priate by the Secretary.

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

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

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

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

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

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

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

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

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

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

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

24                   “(B) has the capacity—

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

3 “(ii) to support physician order entry;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 “(9) promotes prevention of chronic diseases;

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

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

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

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

24 “(2) HIT POLICY COORDINATION.—

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

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

18           “(3) STRATEGIC PLAN.—

19           “(A) IN GENERAL.—The National Coordi-  
20 nator shall, in consultation with other appro-  
21 priate Federal agencies (including the National  
22 Institute of Standards and Technology), update  
23 the Federal Health IT Strategic Plan (devel-  
24 oped as of June 3, 2008) to include specific ob-

1           jectives, milestones, and metrics with respect to  
2           the following:

3                   “(i) The electronic exchange and use  
4                   of health information and the enterprise  
5                   integration of such information.

6                   “(ii) The utilization of an electronic  
7                   health record for each person in the United  
8                   States by 2014.

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

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

19                  “(v) Specifying a framework for co-  
20                  ordination and flow of recommendations  
21                  and policies under this subtitle among the  
22                  Secretary, the National Coordinator, the  
23                  HIT Policy Committee, the HIT Standards  
24                  Committee, and other health information  
25                  exchanges and other relevant entities.

1                   “(vi) Methods to foster the public un-  
2                   derstanding of health information tech-  
3                   nology.

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

10                  “(B) COLLABORATION.—The strategic  
11                  plan shall be updated through collaboration of  
12                  public and private entities.

13                  “(C) MEASURABLE OUTCOME GOALS.—  
14                  The strategic plan update shall include measur-  
15                  able outcome goals.

16                  “(D) PUBLICATION.—The National Coor-  
17                  dinator shall republish the strategic plan, in-  
18                  cluding all updates.

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

1 “(5) CERTIFICATION.—

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

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

19 “(6) REPORTS AND PUBLICATIONS.—

20 “(A) REPORT ON ADDITIONAL FUNDING  
21 OR AUTHORITY NEEDED.—Not later than 12  
22 months after the date of the enactment of this  
23 title, the National Coordinator shall submit to  
24 the appropriate committees of jurisdiction of  
25 the House of Representatives and the Senate a

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

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

20 “(C) ASSESSMENT OF IMPACT OF HIT ON  
21 COMMUNITIES WITH HEALTH DISPARITIES AND  
22 UNINSURED, UNDERINSURED, AND MEDICALLY  
23 UNDERSERVED AREAS.—The National Coordi-  
24 nator shall assess and publish the impact of  
25 health information technology in communities

1 with health disparities and in areas with a high  
2 proportion of individuals who are uninsured,  
3 underinsured, and medically underserved indi-  
4 viduals (including urban and rural areas) and  
5 identify practices to increase the adoption of  
6 such technology by health care providers in  
7 such communities.

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

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

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

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

12          “(d) DETAIL OF FEDERAL EMPLOYEES.—

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

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

21                         “(A) not interrupt or otherwise affect the  
22                         civil service status or privileges of the Federal  
23                         employee; and

1           “(B) be in addition to any other staff of  
2           the Department employed by the National Co-  
3           ordinator.

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

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

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

22          “(a) ESTABLISHMENT.—There is established a HIT  
23          Policy Committee to make policy recommendations to the  
24          National Coordinator relating to the implementation of a  
25          nationwide health information technology infrastructure,

1 including implementation of the strategic plan described  
2 in section 3001(e)(3).

3 “(b) DUTIES.—

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

15 “(2) SPECIFIC AREAS OF STANDARD DEVELOP-  
16 MENT.—

17 “(A) IN GENERAL.—The HIT Policy Com-  
18 mittee shall recommend the areas in which  
19 standards, implementation specifications, and  
20 certification criteria are needed for the elec-  
21 tronic exchange and use of health information  
22 for purposes of adoption under section 3004  
23 and shall recommend an order of priority for  
24 the development, harmonization, and recogni-  
25 tion of such standards, specifications, and cer-

1           tification criteria among the areas so rec-  
2           ommended. Such standards and implementation  
3           specifications shall include named standards,  
4           architectures, and software schemes for the au-  
5           thentication and security of individually identifi-  
6           able health information and other information  
7           as needed to ensure the reproducible develop-  
8           ment of common solutions across disparate en-  
9           tities.

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

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

1 disclosure of limited data sets of such in-  
2 formation.

3 “(ii) A nationwide health information  
4 technology infrastructure that allows for  
5 the electronic use and accurate exchange of  
6 health information.

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

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

20 “(v) The use of certified electronic  
21 health records to improve the quality of  
22 health care, such as by promoting the co-  
23 ordination of health care and improving  
24 continuity of health care among health  
25 care providers, by reducing medical errors,

1 by improving population health, and by ad-  
2 vancing research and education.

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

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

10 “(I) the collection of quality data  
11 and public reporting;

12 “(II) biosurveillance and public  
13 health;

14 “(III) medical and clinical re-  
15 search; and

16 “(IV) drug safety.

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

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

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

1                   “(v) Technologies that help reduce  
2                   medical errors.

3                   “(vi) Technologies that facilitate the  
4                   continuity of care among health settings.

5                   “(vii) Technologies that meet the  
6                   needs of diverse populations.

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

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

16                  “(c) MEMBERSHIP AND OPERATIONS.—

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

20                  “(2) MEMBERSHIP.—The membership of the  
21                  HIT Policy Committee shall at least reflect pro-  
22                  viders, ancillary healthcare workers, consumers, pur-  
23                  chasers, health plans, technology vendors, research-  
24                  ers, relevant Federal agencies, and individuals with  
25                  technical expertise on health care quality, privacy

1 and security, and on the electronic exchange and use  
2 of health information.

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

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

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

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

18 “(a) ESTABLISHMENT.—There is established a com-  
19 mittee to be known as the HIT Standards Committee to  
20 recommend to the National Coordinator standards, imple-  
21 mentation specifications, and certification criteria for the  
22 electronic exchange and use of health information for pur-  
23 poses of adoption under section 3004, consistent with the  
24 implementation of the strategic plan described in section  
25 3001(c)(3) and beginning with the areas listed in section

1 3002(b)(2)(B) in accordance with policies developed by  
2 the HIT Policy Committee.

3 “(b) DUTIES.—

4 “(1) STANDARD DEVELOPMENT.—

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

18 “(B) PILOT TESTING OF STANDARDS AND  
19 IMPLEMENTATION SPECIFICATIONS.—In the de-  
20 velopment, harmonization, or recognition of  
21 standards and implementation specifications,  
22 the HIT Standards Committee shall, as appro-  
23 priate, provide for the testing of such standards  
24 and specifications by the National Institute for

1 Standards and Technology under section 4201  
2 of the HITECH Act.

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

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

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

1 schedule annually. The Secretary shall publish such  
2 schedule in the Federal Register.

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

11 “(c) MEMBERSHIP AND OPERATIONS.—

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

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

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

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

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

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

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

20 **“SEC. 3004. PROCESS FOR ADOPTION OF ENDORSED REC-**  
21 **COMMENDATIONS; ADOPTION OF INITIAL SET**  
22 **OF STANDARDS, IMPLEMENTATION SPECI-**  
23 **FICATIONS, AND CERTIFICATION CRITERIA.**

24 “(a) PROCESS FOR ADOPTION OF ENDORSED REC-  
25 OMMENDATIONS.—

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

13           “(2) DETERMINATION TO ADOPT STANDARDS,  
14          IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-  
15          CATION CRITERIA.—If the Secretary determines—

16                   “(A) to propose adoption of any grouping  
17                   of such standards, implementation specifica-  
18                   tions, or certification criteria, the Secretary  
19                   shall, by regulation, determine whether or not  
20                   to adopt such grouping of standards, implemen-  
21                   tation specifications, or certification criteria; or

22                   “(B) not to propose adoption of any group-  
23                   ing of standards, implementation specifications,  
24                   or certification criteria, the Secretary shall no-  
25                   tify the National Coordinator and the HIT

1 Standards Committee in writing of such deter-  
2 mination and the reasons for not proposing the  
3 adoption of such recommendation.

4 “(3) PUBLICATION.—The Secretary shall pro-  
5 vide for publication in the Federal Register of all de-  
6 terminations made by the Secretary under para-  
7 graph (1).

8 “(b) ADOPTION OF INITIAL SET OF STANDARDS, IM-  
9 PLEMENTATION SPECIFICATIONS, AND CERTIFICATION  
10 CRITERIA.—

11 “(1) IN GENERAL.—Not later than December  
12 31, 2009, the Secretary shall, through the rule-  
13 making process described in section 3003, adopt an  
14 initial set of standards, implementation specifica-  
15 tions, and certification criteria for the areas required  
16 for consideration under section 3002(b)(2)(B).

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

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

4 “For requirements relating to the application and use  
5 by Federal agencies of the standards and implementation  
6 specifications adopted under section 3004, see section  
7 4111 of the HITECH Act.

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

11 “(a) IN GENERAL.—Except as provided under section  
12 4112 of the HITECH Act, any standard or implementa-  
13 tion specification adopted under section 3004 shall be vol-  
14 untary with respect to private entities.

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

21 **“SEC. 3007. FEDERAL HEALTH INFORMATION TECH-**  
22 **NOLOGY.**

23 “(a) IN GENERAL.—The National Coordinator shall  
24 support the development, routine updating and provision  
25 of qualified EHR technology (as defined in section 3000)  
26 consistent with subsections (b) and (c) unless the Sec-

1 retary determines that the needs and demands of pro-  
2 viders are being substantially and adequately met through  
3 the marketplace.

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

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

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

22 **“SEC. 3008. TRANSITIONS.**

23 “(a) ONCHIT.—To the extent consistent with sec-  
24 tion 3001, all functions, personnel, assets, liabilities, and  
25 administrative actions applicable to the National Coordi-

1 nator for Health Information Technology appointed under  
2 Executive Order 13335 or the Office of such National Co-  
3 ordinator on the date before the date of the enactment  
4 of this title shall be transferred to the National Coordi-  
5 nator appointed under section 3001(a) and the Office of  
6 such National Coordinator as of the date of the enactment  
7 of this title.

8 “(b) AHIC.—

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

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

24 “(c) RULES OF CONSTRUCTION.—

1           “(1) ONCHIT.—Nothing in section 3001 or  
2           subsection (a) shall be construed as requiring the  
3           creation of a new entity to the extent that the Office  
4           of the National Coordinator for Health Information  
5           Technology established pursuant to Executive Order  
6           13335 is consistent with the provisions of section  
7           3001.

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

18       **“SEC. 3009. RELATION TO HIPAA PRIVACY AND SECURITY**

19                       **LAW.**

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

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

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

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

8           “(1) the provisions of part C of title XI of the  
9           Social Security Act, section 264 of the Health Insur-  
10          ance Portability and Accountability Act of 1996, and  
11          subtitle D of title IV of the HITECH Act; and

12          “(2) regulations under such provisions.

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

14          “‘There is authorized to be appropriated to the Office  
15          of the National Coordinator for Health Information Tech-  
16          nology to carry out this subtitle \$250,000,000 for fiscal  
17          year 2009.’”.

18   **SEC. 4102. TECHNICAL AMENDMENT.**

19          Section 1171(5) of the Social Security Act (42 U.S.C.  
20          1320d) is amended by striking “or C” and inserting “C,  
21          or D”.

1 **PART II—APPLICATION AND USE OF ADOPTED**  
2 **HEALTH INFORMATION TECHNOLOGY**  
3 **STANDARDS; REPORTS**

4 **SEC. 4111. COORDINATION OF FEDERAL ACTIVITIES WITH**  
5 **ADOPTED STANDARDS AND IMPLEMENTA-**  
6 **TION SPECIFICATIONS.**

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

20 (b) FEDERAL INFORMATION COLLECTION ACTIVI-  
21 TIES.—With respect to a standard or implementation  
22 specification adopted under section 3004(b) of the Public  
23 Health Service Act, as added by section 4101, the Presi-  
24 dent shall take measures to ensure that Federal activities  
25 involving the broad collection and submission of health in-  
26 formation are consistent with such standard or implemen-

1 tation specification, respectively, within three years after  
2 the date of such adoption.

3 (c) APPLICATION OF DEFINITIONS.—The definitions  
4 contained in section 3000 of the Public Health Service  
5 Act, as added by section 4101, shall apply for purposes  
6 of this part.

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

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

20 **SEC. 4113. STUDY AND REPORTS.**

21 (a) REPORT ON ADOPTION OF NATIONWIDE SYS-  
22 TEM.—Not later than 2 years after the date of the enact-  
23 ment of this Act and annually thereafter, the Secretary  
24 of Health and Human Services shall submit to the appro-

1 p r i a t e c o m m i t t e e s o f j u r i s d i c t i o n o f t h e H o u s e o f R e p -  
2 r e s e n t a t i v e s a n d t h e S e n a t e a r e p o r t t h a t —

3 (1) d e s c r i b e s t h e s p e c i f i c a c t i o n s t h a t h a v e b e e n  
4 t a k e n b y t h e F e d e r a l G o v e r n m e n t a n d p r i v a t e e n t i -  
5 t i e s t o f a c i l i t a t e t h e a d o p t i o n o f a n a t i o n w i d e s y s t e m  
6 f o r t h e e l e c t r o n i c u s e a n d e x c h a n g e o f h e a l t h i n f o r -  
7 m a t i o n ;

8 (2) d e s c r i b e s b a r r i e r s t o t h e a d o p t i o n o f s u c h a  
9 n a t i o n w i d e s y s t e m ; a n d

10 (3) c o n t a i n s r e c o m m e n d a t i o n s t o a c h i e v e f u l l  
11 i m p l e m e n t a t i o n o f s u c h a n a t i o n w i d e s y s t e m .

12 (b) R E I M B U R S E M E N T I N C E N T I V E S T U D Y A N D R E -  
13 P O R T . —

14 (1) S T U D Y . — T h e S e c r e t a r y o f H e a l t h a n d  
15 H u m a n S e r v i c e s s h a l l c a r r y o u t , o r c o n t r a c t w i t h a  
16 p r i v a t e e n t i t y t o c a r r y o u t , a s t u d y t h a t e x a m i n e s  
17 m e t h o d s t o c r e a t e e f f i c i e n t r e i m b u r s e m e n t i n c e n t i v e s  
18 f o r i m p r o v i n g h e a l t h c a r e q u a l i t y i n F e d e r a l l y q u a l i -  
19 f i e d h e a l t h c e n t e r s , r u r a l h e a l t h c l i n i c s , a n d f r e e  
20 c l i n i c s .

21 (2) R E P O R T . — N o t l a t e r t h a n 2 y e a r s a f t e r t h e  
22 d a t e o f t h e e n a c t m e n t o f t h i s A c t , t h e S e c r e t a r y o f  
23 H e a l t h a n d H u m a n S e r v i c e s s h a l l s u b m i t t o t h e a p -  
24 p r o p r i a t e c o m m i t t e e s o f j u r i s d i c t i o n o f t h e H o u s e o f

1 Representatives and the Senate a report on the  
2 study carried out under paragraph (1).

3 (c) AGING SERVICES TECHNOLOGY STUDY AND RE-  
4 PORT.—

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

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

13 (A) an evaluation of—

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

20 (ii) methods for fostering scientific in-  
21 novation with respect to aging services  
22 technology within the business and aca-  
23 demic communities; and

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

4 (B) identification of—

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

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

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

18 (4) DEFINITIONS.—For purposes of this sub-  
19 section:

20 (A) AGING SERVICES TECHNOLOGY.—The  
21 term “aging services technology” means health  
22 technology that meets the health care needs of  
23 seniors, individuals with disabilities, and the  
24 caregivers of such seniors and individuals.

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

3 **Subtitle B—Testing of Health**  
4 **Information Technology**

5 **SEC. 4201. NATIONAL INSTITUTE FOR STANDARDS AND**  
6 **TECHNOLOGY TESTING.**

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

18 (b) VOLUNTARY TESTING PROGRAM.—In coordina-  
19 tion with the HIT Standards Committee established under  
20 section 3003 of the Public Health Service Act, as added  
21 by section 4101, with respect to the development of stand-  
22 ards and implementation specifications under such sec-  
23 tion, the Director of the National Institute of Standards  
24 and Technology shall support the establishment of a con-  
25 formance testing infrastructure, including the develop-

1 ment of technical test beds. The development of this con-  
2 formance testing infrastructure may include a program to  
3 accredit independent, non-Federal laboratories to perform  
4 testing.

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

6 (a) HEALTH CARE INFORMATION ENTERPRISE INTE-  
7 GRATION RESEARCH CENTERS.—

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

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

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

22 (A) to generate innovative approaches to  
23 health care information enterprise integration  
24 by conducting cutting-edge, multidisciplinary

1 research on the systems challenges to health  
2 care delivery; and

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

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

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

10 (B) voice-recognition systems;

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

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

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

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

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

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

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

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

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

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

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

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

9 (1) computer infrastructure;

10 (2) data security;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19           “(2) Development and adoption of appropriate  
20           certified electronic health records for categories of  
21           providers not eligible for support under title XVIII  
22           or XIX of the Social Security Act for the adoption  
23           of such records.

24           “(3) Training on and dissemination of informa-  
25           tion on best practices to integrate health information

1 technology, including electronic health records, into  
2 a provider's delivery of care, consistent with best  
3 practices learned from the Health Information Tech-  
4 nology Research Center developed under section 302,  
5 including community health centers receiving assist-  
6 ance under section 330 of the Public Health Service  
7 Act, covered entities under section 340B of such  
8 Act, and providers participating in one or more of  
9 the programs under titles XVIII, XIX, and XXI of  
10 the Social Security Act (relating to Medicare, Med-  
11 icaid, and the State Children's Health Insurance  
12 Program).

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

16 “(5) Promotion of the interoperability of clinical  
17 data repositories or registries.

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

22 “(7) Improve and expand the use of health in-  
23 formation technology by public health departments.



1 tute of Standards and Technology, in developing and im-  
2 plementing this program.

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

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

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

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

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

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

3 “(C) others as appropriate.

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

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

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

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

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

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

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

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

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

24           “(2) AFFILIATION.—Regional centers shall be  
25           affiliated with any US-based nonprofit institution or

1 organization, or group thereof, that applies and is  
2 awarded financial assistance under this section. Indi-  
3 vidual awards shall be decided on the basis of merit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6           “(e) PLAN.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4           “(2) health plans;

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

7           “(4) health information technology vendors;

8           “(5) health care purchasers and employers;

9           “(6) public health agencies;

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

12          “(8) clinical researchers;

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

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

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

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

4 “(i) REQUIRED MATCH.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 used to exchange health information in a man-  
2 ner that, in accordance with law and standards  
3 (as adopted under section 3005) applicable to  
4 the exchange of information, improves the qual-  
5 ity of health care, such as promoting care co-  
6 ordination; and

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

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

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

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

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

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

6 “(d) STRATEGIC PLAN.—

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

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

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

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

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

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

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

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

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

10           “(2) enhance the utilization of certified EHR  
11           technology;

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

14           “(4) improve the secure electronic exchange of  
15           health information.

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

20           “(1) To award loans that comply with the fol-  
21           lowing:

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

24                   “(B) The principal and interest payments  
25                   on each loan shall commence not later than 1

1           year after the date the loan was awarded, and  
2           each loan shall be fully amortized not later than  
3           10 years after the date of the loan.

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

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

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

18                   “(4) To earn interest on the amounts deposited  
19          into the Loan Fund.

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

22                   “(g) ADMINISTRATION OF LOAN FUNDS.—

23                   “(1) COMBINED FINANCIAL ADMINISTRATION.—

24          An eligible entity may (as a convenience and to  
25          avoid unnecessary administrative costs) combine, in

1       accordance with applicable State law, the financial  
2       administration of a Loan Fund established under  
3       this subsection with the financial administration of  
4       any other revolving fund established by the entity if  
5       otherwise not prohibited by the law under which the  
6       Loan Fund was established.

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

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

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

24                      “(B) guidance to prevent waste, fraud, and  
25      abuse.

1           “(4) PRIVATE SECTOR CONTRIBUTIONS.—

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

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

20          “(h) MATCHING REQUIREMENTS.—

21                   “(1) IN GENERAL.—The National Coordinator  
22          may not make a grant under subsection (a) to an el-  
23          igible entity unless the entity agrees to make avail-  
24          able (directly or through donations from public or  
25          private entities) non-Federal contributions in cash to

1 the costs of carrying out the activities for which the  
2 grant is awarded in an amount equal to not less  
3 than \$1 for each \$5 of Federal funds provided under  
4 the grant.

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

12 “(i) EFFECTIVE DATE.—The Secretary may not  
13 make an award under this section prior to January 1,  
14 2010.

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

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

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

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

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

8           “(3) be—

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

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

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

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

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

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

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

6 “(c) USE OF FUNDS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 “(1) Existing education and training programs.

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

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

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

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

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

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

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

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

1 nator, will result in the greatest improvement in the qual-  
2 ity and efficiency of health care.

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

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

9 **PART II—MEDICARE PROGRAM**

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

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

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

16 “(1) INCENTIVE PAYMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 “(D) PAYMENT.—

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

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

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

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

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

6 “(E) PAYMENT YEAR DEFINED.—

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

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

24 “(2) MEANINGFUL EHR USER.—

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

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

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

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

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

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

23 “(B) REPORTING ON MEASURES.—

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

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

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

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

14 “(III) The Secretary shall, to the  
15 extent practicable, select the same  
16 measures for purposes of subpara-  
17 graph (A)(iii) as are selected for qual-  
18 ity purposes under title XIX.

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

1                   “(iii) COORDINATION OF REPORTING  
2                   OF INFORMATION.—In selecting such  
3                   measures, and in establishing the form and  
4                   manner for reporting measures under sub-  
5                   paragraph (A)(iii), the Secretary shall seek  
6                   to avoid redundant or duplicative reporting  
7                   otherwise required, including reporting  
8                   under subsection (k)(2)(C).

9                   “(C) DEMONSTRATION OF MEANINGFUL  
10                  USE OF CERTIFIED EHR TECHNOLOGY AND IN-  
11                  FORMATION EXCHANGE.—

12                  “(i) IN GENERAL.—A professional  
13                  may satisfy the demonstration requirement  
14                  of clauses (i) and (ii) of subparagraph (A)  
15                  through means specified by the Secretary,  
16                  which may include—

17                                 “(I) an attestation;

18                                 “(II) the submission of claims  
19                                 with appropriate coding (such as a  
20                                 code indicating that a patient encoun-  
21                                 ter was documented using certified  
22                                 EHR technology);

23                                 “(III) a survey response;

24                                 “(IV) reporting under subpara-  
25                                 graph (A)(iii); and

1                   “(V) other means specified by the  
2                   Secretary.

3                   “(ii) USE OF PART D DATA.—Not-  
4                   withstanding sections 1860D–15(d)(2)(B)  
5                   and 1860D–15(f)(2), the Secretary may  
6                   use data regarding drug claims submitted  
7                   for purposes of section 1860D–15 that are  
8                   necessary for purposes of subparagraph  
9                   (A).

10                  “(3) APPLICATION.—

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

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

24                  “(C) LIMITATIONS ON REVIEW.—There  
25                  shall be no administrative or judicial review

1 under section 1869, section 1878, or otherwise  
2 of the determination of any incentive payment  
3 under this subsection and the payment adjust-  
4 ment under subsection (a)(7), including the de-  
5 termination of a meaningful EHR user under  
6 paragraph (2), a limitation under paragraph  
7 (1)(B), and the exception under subsection  
8 (a)(7)(B).

9 “(D) POSTING ON WEBSITE.—The Sec-  
10 retary shall post on the Internet website of the  
11 Centers for Medicare & Medicaid Services, in an  
12 easily understandable format, a list of the  
13 names, business addresses, and business phone  
14 numbers of the eligible professionals who are  
15 meaningful EHR users and, as determined ap-  
16 propriate by the Secretary, of group practices  
17 receiving incentive payments under paragraph  
18 (1).

19 “(4) CERTIFIED EHR TECHNOLOGY DEFINED.—  
20 For purposes of this section, the term ‘certified  
21 EHR technology’ means a qualified electronic health  
22 record (as defined in 3000(13) of the Public Health  
23 Service Act) that is certified pursuant to section  
24 3001(c)(5) of such Act as meeting standards adopt-  
25 ed under section 3004 of such Act that are applica-

1 ble to the type of record involved (as determined by  
2 the Secretary, such as an ambulatory electronic  
3 health record for office-based physicians or an inpa-  
4 tient hospital electronic health record for hospitals).

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

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

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

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

18 (b) INCENTIVE PAYMENT ADJUSTMENT.—Section  
19 1848(a) of the Social Security Act (42 U.S.C. 1395w-  
20 4(a)) is amended by adding at the end the following new  
21 paragraph:

22 “(7) INCENTIVES FOR MEANINGFUL USE OF  
23 CERTIFIED EHR TECHNOLOGY.—

24 “(A) ADJUSTMENT.—

1                   “(i) IN GENERAL.—Subject to sub-  
2                   paragraphs (B) and (D), with respect to  
3                   covered professional services furnished by  
4                   an eligible professional during 2016 or any  
5                   subsequent payment year, if the eligible  
6                   professional is not a meaningful EHR user  
7                   (as determined under subsection (o)(2)) for  
8                   a reporting period for the year, the fee  
9                   schedule amount for such services fur-  
10                  nished by such professional during the year  
11                  (including the fee schedule amount for pur-  
12                  poses of determining a payment based on  
13                  such amount) shall be equal to the applica-  
14                  ble percent of the fee schedule amount that  
15                  would otherwise apply to such services  
16                  under this subsection (determined after ap-  
17                  plication of paragraph (3) but without re-  
18                  gard to this paragraph).

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

22                               “(I) for 2016, 99 percent;

23                               “(II) for 2017, 98 percent; and

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

1                   “(iii) AUTHORITY TO DECREASE AP-  
2                   PLICABLE PERCENTAGE FOR 2019 AND  
3                   SUBSEQUENT YEARS.—For 2019 and each  
4                   subsequent year, if the Secretary finds that  
5                   the proportion of eligible professionals who  
6                   are meaningful EHR users (as determined  
7                   under subsection (o)(2)) is less than 75  
8                   percent, the applicable percent shall be de-  
9                   creased by 1 percentage point from the ap-  
10                  plicable percent in the preceding year, but  
11                  in no case shall the applicable percent be  
12                  less than 95 percent.

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

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

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

12          “(E) DEFINITIONS.—For purposes of this  
13          paragraph:

14               “(i) COVERED PROFESSIONAL SERV-  
15               ICES.—The term ‘covered professional  
16               services’ has the meaning given such term  
17               in subsection (k)(3).

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

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

24          (c) APPLICATION TO CERTAIN HMO-AFFILIATED  
25          ELIGIBLE PROFESSIONALS.—Section 1853 of the Social

1 Security Act (42 U.S.C. 1395w–23) is amended by adding  
2 at the end the following new subsection:

3 “(l) APPLICATION OF ELIGIBLE PROFESSIONAL IN-  
4 CENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOP-  
5 TION AND MEANINGFUL USE OF CERTIFIED EHR TECH-  
6 NOLOGY.—

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

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

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

24 “(ii)(I) is employed by, or is a partner of,

25 an entity that through contract with the organi-

1           zation furnishes at least 80 percent of the enti-  
2           ty's patient care services to enrollees of such or-  
3           ganization; and

4           “(II) furnishes at least 75 percent of the  
5           professional services of the eligible professional  
6           to enrollees of the organization; and

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

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

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

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

24           “(i) IN GENERAL.—If an individual is  
25           an eligible professional described in para-

1 graph (2) and also is eligible for the max-  
2 imum incentive payment under section  
3 1848(o)(1)(A) for the same payment pe-  
4 riod, the payment incentive shall be made  
5 only under such section and not under this  
6 subsection.

7 “(ii) METHODS.—In the case of an in-  
8 dividual who is an eligible professional de-  
9 scribed in paragraph (2) and also is eligi-  
10 ble for an incentive payment under section  
11 1848(o)(1)(A) but is not described in  
12 clause (i) for the same payment period, the  
13 Secretary shall develop a process—

14 “(I) to ensure that duplicate pay-  
15 ments are not made with respect to  
16 an eligible professional both under  
17 this subsection and under section  
18 1848(o)(1)(A); and

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

22 “(C) FIXED SCHEDULE FOR APPLICATION  
23 OF LIMITATION ON INCENTIVE PAYMENTS FOR  
24 ALL ELIGIBLE PROFESSIONALS.—In applying  
25 section 1848(o)(1)(B)(ii) under subparagraph

1 (A), in accordance with rules specified by the  
2 Secretary, a qualifying MA organization shall  
3 specify a year (not earlier than 2011) that shall  
4 be treated as the first payment year for all eli-  
5 gible professionals with respect to such organi-  
6 zation.

7 “(4) PAYMENT ADJUSTMENT.—

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

18 “(B) SPECIFIED PERCENT.—The percent  
19 specified under this subparagraph for a year is  
20 100 percent minus a number of percentage  
21 points equal to the product of—

22 “(i) the number of percentage points  
23 by which the applicable percent (under sec-  
24 tion 1848(a)(7)(A)(ii)) for the year is less  
25 than 100 percent; and

1                   “(ii) the Medicare physician expendi-  
2                   ture proportion specified in subparagraph  
3                   (C) for the year.

4                   “(C) MEDICARE PHYSICIAN EXPENDITURE  
5                   PROPORTION.—The Medicare physician expend-  
6                   iture proportion under this subparagraph for a  
7                   year is the Secretary’s estimate of the propor-  
8                   tion, of the expenditures under parts A and B  
9                   that are not attributable to this part, that are  
10                  attributable to expenditures for physicians’  
11                  services.

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

20                  “(5) QUALIFYING MA ORGANIZATION DE-  
21                  FINED.—In this subsection and subsection (m), the  
22                  term ‘qualifying MA organization’ means a Medicare  
23                  Advantage organization that is organized as a health  
24                  maintenance organization (as defined in section  
25                  2791(b)(3) of the Public Health Service Act).

1           “(6) MEANINGFUL EHR USER ATTESTATION.—  
2           For purposes of this subsection and subsection (m),  
3           a qualifying MA organization shall submit an attes-  
4           tation, in a form and manner specified by the Sec-  
5           retary which may include the submission of such at-  
6           testation as part of submission of the initial bid  
7           under section 1854(a)(1)(A)(iv), identifying—

8                   “(A) whether each eligible professional de-  
9                   scribed in paragraph (2), with respect to such  
10                  organization is a meaningful EHR user (as de-  
11                  fined in section 1848(o)(3)) for a year specified  
12                  by the Secretary; and

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

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

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

23                   (2) in subsection (c)—

1 (A) in paragraph (1)(D)(i), by striking  
2 “section 1886(h)” and inserting “sections  
3 1848(o) and 1886(h)”;

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

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

11 (e) CONFORMING AMENDMENTS TO E-PRE-  
12 SCRIBING.—

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

15 (A) in clause (i), by striking “or any sub-  
16 sequent year” and inserting “, 2013, 2014, or  
17 2015”; and

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

20 (2) Section 1848(m)(2) of such Act (42 U.S.C.  
21 1395w-4(m)(2)) is amended—

22 (A) in subparagraph (A), by striking “For  
23 2009” and inserting “Subject to subparagraph  
24 (D), for 2009”; and

1 (B) by adding at the end the following new  
2 subparagraph:

3 “(D) LIMITATION WITH RESPECT TO EHR  
4 INCENTIVE PAYMENTS.—The provisions of this  
5 paragraph shall not apply to an eligible profes-  
6 sional (or, in the case of a group practice under  
7 paragraph (3)(C), to the group practice) if, for  
8 the reporting period the eligible professional (or  
9 group practice) receives an incentive payment  
10 under subsection (o)(1)(A) with respect to a  
11 certified EHR technology (as defined in sub-  
12 section (o)(6)(A)) that has the capability of  
13 electronic prescribing.”.

14 **SEC. 4312. INCENTIVES FOR HOSPITALS.**

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

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

20 “(1) IN GENERAL.—Subject to the succeeding  
21 provisions of this subsection, with respect to inpa-  
22 tient hospital services furnished by an eligible hos-  
23 pital during a payment year (as defined in para-  
24 graph (2)(G)), if the eligible hospital is a meaningful  
25 EHR user (as determined under paragraph (3)) for

1 the reporting period with respect to such year, in ad-  
2 dition to the amount otherwise paid under this sec-  
3 tion, there also shall be paid to the eligible hospital,  
4 from the Federal Hospital Insurance Trust Fund es-  
5 tablished under section 1817, an amount equal to  
6 the applicable amount specified in paragraph (2)(A)  
7 for the hospital for such payment year.

8 “(2) PAYMENT AMOUNT.—

9 “(A) IN GENERAL.—Subject to the suc-  
10 ceeding subparagraphs of this paragraph, the  
11 applicable amount specified in this subpara-  
12 graph for an eligible hospital for a payment  
13 year is equal to the product of the following:

14 “(i) INITIAL AMOUNT.—The sum of—

15 “(I) the base amount specified in  
16 subparagraph (B); plus

17 “(II) the discharge related  
18 amount specified in subparagraph (C)  
19 for a 12-month period selected by the  
20 Secretary with respect to such pay-  
21 ment year.

22 “(ii) MEDICARE SHARE.—The Medi-  
23 care share as specified in subparagraph  
24 (D) for the hospital for a period selected

1 by the Secretary with respect to such pay-  
2 ment year.

3 “(iii) TRANSITION FACTOR.—The  
4 transition factor specified in subparagraph  
5 (E) for the hospital for the payment year.

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

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

16 “(i) For the 1,150th through the  
17 9,200th discharge, \$200.

18 “(ii) For the 9,201st through the  
19 13,800th discharge, 50 percent of the  
20 amount specified in clause (i).

21 “(iii) For the 13,801st through the  
22 23,000th discharge, 30 percent of the  
23 amount specified in clause (i).

24 “(D) MEDICARE SHARE.—The Medicare  
25 share specified under this subparagraph for a

1 hospital for a period selected by the Secretary  
2 for a payment year is equal to the fraction—

3 “(i) the numerator of which is the  
4 sum (for such period and with respect to  
5 the hospital) of—

6 “(I) the number of inpatient-bed-  
7 days (as established by the Secretary)  
8 which are attributable to individuals  
9 with respect to whom payment may be  
10 made under part A; and

11 “(II) the number of inpatient-  
12 bed-days (as so established) which are  
13 attributable to individuals who are en-  
14 rolled with a Medicare Advantage or-  
15 ganization under part C; and

16 “(ii) the denominator of which is the  
17 product of—

18 “(I) the total number of inpa-  
19 tient-bed-days with respect to the hos-  
20 pital during such period; and

21 “(II) the total amount of the hos-  
22 pital’s charges during such period, not  
23 including any charges that are attrib-  
24 utable to charity care (as such term is  
25 used for purposes of hospital cost re-

1                   porting under this title), divided by  
2                   the total amount of the hospital's  
3                   charges during such period.

4                   Insofar as the Secretary determines that data  
5                   are not available on charity care necessary to  
6                   calculate the portion of the formula specified in  
7                   clause (ii)(II), the Secretary shall use data on  
8                   uncompensated care and may adjust such data  
9                   so as to be an appropriate proxy for charity  
10                  care including a downward adjustment to elimi-  
11                  nate bad debt data from uncompensated care  
12                  data. In the absence of the data necessary, with  
13                  respect to a hospital, for the Secretary to com-  
14                  pute the amount described in clause (ii)(II), the  
15                  amount under such clause shall be deemed to  
16                  be 1. In the absence of data, with respect to a  
17                  hospital, necessary to compute the amount de-  
18                  scribed in clause (i)(II), the amount under such  
19                  clause shall be deemed to be 0.

20                  “(E) TRANSITION FACTOR SPECIFIED.—

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

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

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

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

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

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

11                  “(ii) PHASE DOWN FOR ELIGIBLE  
12                  HOSPITALS FIRST ADOPTING EHR AFTER  
13                  2013.—If the first payment year for an eli-  
14                  gible hospital is after 2013, then the tran-  
15                  sition factor specified in this subparagraph  
16                  for a payment year for such hospital is the  
17                  same as the amount specified in clause (i)  
18                  for such payment year for an eligible hos-  
19                  pital for which the first payment year is  
20                  2013. If the first payment year for an eli-  
21                  gible hospital is after 2015 then the transi-  
22                  tion factor specified in this subparagraph  
23                  for such hospital and for such year and  
24                  any subsequent year shall be 0.

1           “(F) FORM OF PAYMENT.—The payment  
2           under this subsection for a payment year may  
3           be in the form of a single consolidated payment  
4           or in the form of such periodic installments as  
5           the Secretary may specify.

6           “(G) PAYMENT YEAR DEFINED.—

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

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

23           “(3) MEANINGFUL EHR USER.—

24                   “(A) IN GENERAL.—For purposes of para-  
25                  graph (1), an eligible hospital shall be treated

1 as a meaningful EHR user for a reporting pe-  
2 riod for a payment year (or, for purposes of  
3 subsection (b)(3)(B)(ix), for a reporting period  
4 under such subsection for a fiscal year) if the  
5 following requirements are met:

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

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

24 “(iii) REPORTING ON MEASURES  
25 USING EHR.—Subject to subparagraph

1 (B)(ii) and using such certified EHR tech-  
2 nology, the eligible hospital submits infor-  
3 mation for such period, in a form and  
4 manner specified by the Secretary, on such  
5 clinical quality measures and such other  
6 measures as selected by the Secretary  
7 under subparagraph (B)(i).

8 The Secretary shall seek to improve the use of  
9 electronic health records and health care quality  
10 over time by requiring more stringent measures  
11 of meaningful use selected under this para-  
12 graph.

13 “(B) REPORTING ON MEASURES.—

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

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

1                   “(II) Prior to any measure (other  
2                   than a clinical quality measure that  
3                   has been selected for purposes of ap-  
4                   plying subsection (b)(3)(B)(viii))  
5                   being selected under this subpara-  
6                   graph, the Secretary shall publish in  
7                   the Federal Register such measure  
8                   and provide for a period of public  
9                   comment on such measure.

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

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

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

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

9                                 “(I) an attestation;

10                                “(II) the submission of claims  
11                               with appropriate coding (such as a  
12                               code indicating that inpatient care  
13                               was documented using certified EHR  
14                               technology);

15                                “(III) a survey response;

16                                “(IV) reporting under subpara-  
17                               graph (A)(iii); and

18                                “(V) other means specified by the  
19                               Secretary.

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

1           necessary for purposes of subparagraph  
2           (A).

3           “(4) APPLICATION.—

4           “(A) LIMITATIONS ON REVIEW.—There  
5           shall be no administrative or judicial review  
6           under section 1869, section 1878, or otherwise  
7           of the determination of any incentive payment  
8           under this subsection and the payment adjust-  
9           ment under subsection (b)(3)(B)(ix), including  
10          the determination of a meaningful EHR user  
11          under paragraph (3), determination of meas-  
12          ures applicable to services furnished by eligible  
13          hospitals under this subsection, and the excep-  
14          tion under subsection (b)(3)(B)(ix)(II).

15          “(B) POSTING ON WEBSITE.—The Sec-  
16          retary shall post on the Internet website of the  
17          Centers for Medicare & Medicaid Services, in an  
18          easily understandable format, a list of the  
19          names of the eligible hospitals that are mean-  
20          ingful EHR users under this subsection or sub-  
21          section (b)(3)(B)(ix) and other relevant data as  
22          determined appropriate by the Secretary. The  
23          Secretary shall ensure that a hospital has the  
24          opportunity to review the other relevant data

1           that are to be made public with respect to the  
2           hospital prior to such data being made public.

3           “(5) CERTIFIED EHR TECHNOLOGY DEFINED.—

4           The term ‘certified EHR technology’ has the mean-  
5           ing given such term in section 1848(o)(4).

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

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

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

17                   (1) in clause (viii)(I), by inserting “(or, begin-  
18                   ning with fiscal year 2016, by one-quarter)” after  
19                   “2.0 percentage points”; and

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

22                   “(ix)(I) For purposes of clause (i) for fiscal year  
23                   2016 and each subsequent fiscal year, in the case of an  
24                   eligible hospital (as defined in subsection (n)(6)(A)) that  
25                   is not a meaningful EHR user (as defined in subsection

1 (n)(3)) for the reporting period for such fiscal year, three-  
2 quarters of the applicable percentage increase otherwise  
3 applicable under clause (i) for such fiscal year shall be  
4 reduced by  $33\frac{1}{3}$  percent for fiscal year 2016,  $66\frac{2}{3}$  per-  
5 cent for fiscal year 2017, and 100 percent for fiscal year  
6 2018 and each subsequent fiscal year. Such reduction  
7 shall apply only with respect to the fiscal year involved  
8 and the Secretary shall not take into account such reduc-  
9 tion in computing the applicable percentage increase under  
10 clause (i) for a subsequent fiscal year.

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

20 “(III) For fiscal year 2016 and each subsequent fis-  
21 cal year, a State in which hospitals are paid for services  
22 under section 1814(b)(3) shall adjust the payments to  
23 each subsection (d) hospital in the State that is not a  
24 meaningful EHR user (as defined in subsection (n)(3))  
25 in a manner that is designed to result in an aggregate

1 reduction in payments to hospitals in the State that is  
2 equivalent to the aggregate reduction that would have oc-  
3 curred if payments had been reduced to each subsection  
4 (d) hospital in the State in a manner comparable to the  
5 reduction under the previous provisions of this clause. The  
6 State shall report to the Secretary the methodology it will  
7 use to make the payment adjustment under the previous  
8 sentence.

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

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

18 “(m) APPLICATION OF ELIGIBLE HOSPITAL INCEN-  
19 TIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION  
20 AND MEANINGFUL USE OF CERTIFIED EHR TECH-  
21 NOLOGY.—

22 “(1) APPLICATION.—Subject to paragraphs (3)  
23 and (4), in the case of a qualifying MA organization,  
24 the provisions of sections 1886(n) and  
25 1886(b)(3)(B)(ix) shall apply with respect to eligible

1 hospitals described in paragraph (2) of the organiza-  
2 tion which the organization attests under subsection  
3 (1)(6) to be meaningful EHR users in a similar man-  
4 ner as they apply to eligible hospitals under such  
5 sections. Incentive payments under paragraph (3)  
6 shall be made to and payment adjustments under  
7 paragraph (4) shall apply to such qualifying organi-  
8 zations.

9 “(2) ELIGIBLE HOSPITAL DESCRIBED.—With  
10 respect to a qualifying MA organization, an eligible  
11 hospital described in this paragraph is an eligible  
12 hospital that is under common corporate governance  
13 with such organization and serves individuals en-  
14 rolled under an MA plan offered by such organiza-  
15 tion.

16 “(3) ELIGIBLE HOSPITAL INCENTIVE PAY-  
17 MENTS.—

18 “(A) IN GENERAL.—In applying section  
19 1886(n)(2) under paragraph (1), instead of the  
20 additional payment amount under section  
21 1886(n)(2), there shall be substituted an  
22 amount determined by the Secretary to be simi-  
23 lar to the estimated amount in the aggregate  
24 that would be payable if payment for services  
25 furnished by such hospitals was payable under

1 part A instead of this part. In implementing the  
2 previous sentence, the Secretary—

3 “(i) shall, insofar as data to deter-  
4 mine the discharge related amount under  
5 section 1886(n)(2)(C) for an eligible hos-  
6 pital are not available to the Secretary, use  
7 such alternative data and methodology to  
8 estimate such discharge related amount as  
9 the Secretary determines appropriate; and

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

1 discharges) with respect to such hospital  
2 during such period.

3 “(B) AVOIDING DUPLICATION OF PAY-  
4 MENTS.—

5 “(i) IN GENERAL.—In the case of a  
6 hospital that for a payment year is an eli-  
7 gible hospital described in paragraph (2),  
8 is an eligible hospital under section  
9 1886(n), and for which at least one-third  
10 of their discharges (or bed-days) of Medi-  
11 care patients for the year are covered  
12 under part A, payment for the payment  
13 year shall be made only under section  
14 1886(n) and not under this subsection.

15 “(ii) METHODS.—In the case of a  
16 hospital that is an eligible hospital de-  
17 scribed in paragraph (2) and also is eligi-  
18 ble for an incentive payment under section  
19 1886(n) but is not described in clause (i)  
20 for the same payment period, the Secretary  
21 shall develop a process—

22 “(I) to ensure that duplicate pay-  
23 ments are not made with respect to  
24 an eligible hospital both under this

1 subsection and under section 1886(n);  
2 and

3 “(II) to collect data from Medi-  
4 care Advantage organizations to en-  
5 sure against such duplicate payments.

6 “(4) PAYMENT ADJUSTMENT.—

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

24 “(B) SPECIFIED PERCENT.—The percent  
25 specified under this subparagraph for a year is

1           100 percent minus a number of percentage  
2           points equal to the product of—

3                   “(i) the number of the percentage  
4                   point reduction effected under section  
5                   1886(b)(3)(B)(ix)(I) for the period; and

6                   “(ii) the Medicare hospital expendi-  
7                   ture proportion specified in subparagraph  
8                   (C) for the year.

9                   “(C) MEDICARE HOSPITAL EXPENDITURE  
10                  PROPORTION.—The Medicare hospital expendi-  
11                  ture proportion under this subparagraph for a  
12                  year is the Secretary’s estimate of the propor-  
13                  tion, of the expenditures under parts A and B  
14                  that are not attributable to this part, that are  
15                  attributable to expenditures for inpatient hos-  
16                  pital services.

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

1 hospitals, that are not meaningful EHR users  
2 for such period.”.

3 (d) CONFORMING AMENDMENTS.—

4 (1) Section 1814(b) of the Social Security Act  
5 (42 U.S.C. 1395f(b)) is amended—

6 (A) in paragraph (3), in the matter pre-  
7 ceding subparagraph (A), by inserting “, sub-  
8 ject to section 1886(d)(3)(B)(ix)(III),” after  
9 “then”; and

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

15 (2) Section 1851(i)(1) of the Social Security  
16 Act (42 U.S.C. 1395w–21(i)(1)) is amended by  
17 striking “and 1886(h)(3)(D)” and inserting  
18 “1886(h)(3)(D), and 1853(m)”.

19 (3) Section 1853 of the Social Security Act (42  
20 U.S.C. 1395w–23), as amended by section  
21 4311(d)(1), is amended—

22 (A) in subsection (c)—

23 (i) in paragraph (1)(D)(i), by striking  
24 “1848(o)” and inserting “, 1848(o), and  
25 1886(n)”; and

1 (ii) in paragraph (6)(A), by inserting  
2 “and subsections (b)(3)(B)(ix) and (n) of  
3 section 1886” after “section 1848”; and  
4 (B) in subsection (f), by inserting “and  
5 subsection (m)” after “under subsection (l)”.

6 **SEC. 4313. TREATMENT OF PAYMENTS AND SAVINGS; IM-**  
7 **PLEMENTATION FUNDING.**

8 (a) PREMIUM HOLD HARMLESS.—

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

16 (2) PAYMENT.—Section 1844(a) of such Act  
17 (42 U.S.C. 1395w(a)) is amended—

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

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

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

1 (b) MEDICARE IMPROVEMENT FUND.—Section 1898  
2 of the Social Security Act (42 U.S.C. 1395iii), as added  
3 by section 7002(a) of the Supplemental Appropriations  
4 Act, 2008 (Public Law 110–252) and as amended by sec-  
5 tion 188(a)(2) of the Medicare Improvements for Patients  
6 and Providers Act of 2008 (Public Law 110–275; 122  
7 Stat. 2589) and by section 6 of the QI Program Supple-  
8 mental Funding Act of 2008, is amended—

9 (1) in subsection (a)—

10 (A) by inserting “medicare” before “fee-  
11 for-service”; and

12 (B) by inserting before the period at the  
13 end the following: “including, but not limited  
14 to, an increase in the conversion factor under  
15 section 1848(d) to address, in whole or in part,  
16 any projected shortfall in the conversion factor  
17 for 2014 relative to the conversion factor for  
18 2008 and adjustments to payments for items  
19 and services furnished by providers of services  
20 and suppliers under such original medicare fee-  
21 for-service program”; and

22 (2) in subsection (b)—

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

1           “(A) fiscal year 2014, \$22,290,000,000;  
2           and

3           “(B) fiscal year 2020 and each subsequent  
4           fiscal year, the Secretary’s estimate, as of July  
5           1 of the fiscal year, of the aggregate reduction  
6           in expenditures under this title during the pre-  
7           ceding fiscal year directly resulting from the re-  
8           duction in payment amounts under sections  
9           1848(a)(7), 1853(l)(4), 1853(m)(4), and  
10          1886(b)(3)(B)(ix).”; and

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

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

20          (c) IMPLEMENTATION FUNDING.—In addition to  
21          funds otherwise available, out of any funds in the Treas-  
22          ury not otherwise appropriated, there are appropriated to  
23          the Secretary of Health and Human Services for the Cen-  
24          ter for Medicare & Medicaid Services Program Manage-  
25          ment Account, \$60,000,000 for each of fiscal years 2009

1 through 2015 and \$30,000,000 for each succeeding fiscal  
2 year through fiscal year 2019, which shall be available for  
3 purposes of carrying out the provisions of (and amend-  
4 ments made by) this part. Amounts appropriated under  
5 this subsection for a fiscal year shall be available until ex-  
6 pended.

7 **SEC. 4314. STUDY ON APPLICATION OF HIT PAYMENT IN-**  
8 **CENTIVES FOR PROVIDERS NOT RECEIVING**  
9 **OTHER INCENTIVE PAYMENTS.**

10 (a) STUDY.—

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

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

1 (A) the adoption rates of qualified health  
2 information technology by such health care pro-  
3 viders;

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

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

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

14 (E) the potential costs and the potential  
15 benefits of making payment incentives and  
16 other funding available to such health care pro-  
17 viders; and

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

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

1                                   **PART III—MEDICAID FUNDING**  
2   **SEC. 4321. MEDICAID PROVIDER HIT ADOPTION AND OPER-**  
3                                   **ATION PAYMENTS; IMPLEMENTATION FUND-**  
4                                   **ING.**

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

7                   (1) in subsection (a)(3)—

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

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

12                           (C) by adding at the end the following new  
13 subparagraph:

14                                   “(F)(i) 100 percent of so much of the  
15 sums expended during such quarter as are at-  
16 tributable to payments for certified EHR tech-  
17 nology (and support services including mainte-  
18 nance and training that is for, or is necessary  
19 for the adoption and operation of, such tech-  
20 nology) by Medicaid providers described in sub-  
21 section (t)(1); and

22                                   “(ii) 90 percent of so much of the sums ex-  
23 pended during such quarter as are attributable  
24 to payments for reasonable administrative ex-  
25 penses related to the administration of pay-  
26 ments described in clause (i) if the State meets

1 the condition described in subsection (t)(9);  
2 plus”; and

3 (2) by inserting after subsection (s) the fol-  
4 lowing new subsection:

5 “(t)(1) For purposes of subsection (a)(3)(F), the pay-  
6 ments for certified EHR technology (and support services  
7 including maintenance that is for, or is necessary for the  
8 operation of, such technology) by Medicaid providers de-  
9 scribed in this paragraph are payments made by the State  
10 in accordance with this subsection of 85 percent of the  
11 net allowable costs of Medicaid providers (as defined in  
12 paragraph (2)) for such technology (and support services).

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

15 “(A) an eligible professional (as defined in  
16 paragraph (3)(B)) who is not hospital-based and has  
17 at least 30 percent of the professional’s patient vol-  
18 ume (as estimated in accordance with standards es-  
19 tablished by the Secretary) attributable to individ-  
20 uals who are receiving medical assistance under this  
21 title; and

22 “(B)(i) a children’s hospital, (ii) an acute-care  
23 hospital that is not described in clause (i) and that  
24 has at least 10 percent of the hospital’s patient vol-  
25 ume (as estimated in accordance with standards es-

1        established by the Secretary) attributable to individ-  
2        uals who are receiving medical assistance under this  
3        title, or (iii) a Federally-qualified health center or  
4        rural health clinic that has at least 30 percent of the  
5        center's or clinic's patient volume (as estimated in  
6        accordance with standards established by the Sec-  
7        retary) attributable to individuals who are receiving  
8        medical assistance under this title.

9        A professional shall not qualify as a Medicaid provider  
10       under this subsection unless the professional has waived,  
11       in a manner specified by the Secretary, any right to pay-  
12       ment under section 1848(o) with respect to the adoption  
13       or support of certified EHR technology by the profes-  
14       sional. In applying clauses (ii) and (iii) of subparagraph  
15       (B), the standards established by the Secretary for patient  
16       volume shall include individuals enrolled in a Medicaid  
17       managed care plan (under section 1903(m) or section  
18       1932).

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

20                “(A) The term ‘certified EHR technology’  
21       means a qualified electronic health record (as de-  
22       fined in 3000(13) of the Public Health Service Act)  
23       that is certified pursuant to section 3001(c)(5) of  
24       such Act as meeting standards adopted under sec-  
25       tion 3004 of such Act that are applicable to the type

1 of record involved (as determined by the Secretary,  
2 such as an ambulatory electronic health record for  
3 office-based physicians or an inpatient hospital elec-  
4 tronic health record for hospitals).

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

9 “(C) The term ‘hospital-based’ means, with re-  
10 spect to an eligible professional, a professional (such  
11 as a pathologist, anesthesiologist, or emergency phy-  
12 sician) who furnishes substantially all of the individ-  
13 ual’s professional services in a hospital setting  
14 (whether inpatient or outpatient) and through the  
15 use of the facilities and equipment, including com-  
16 puter equipment, of the hospital.

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

23 “(B) The term ‘net allowable costs’ means allowable  
24 costs reduced by any payment that is made to the provider  
25 involved from any other source that is directly attributable

1 to payment for certified EHR technology or services de-  
2 scribed in subparagraph (A).

3 “(C) In no case shall—

4 “(i) the aggregate allowable costs under this  
5 subsection (covering one or more years) with respect  
6 to a Medicaid provider described in paragraph  
7 (2)(A) for purchase and initial implementation of  
8 certified EHR technology (and services described in  
9 subparagraph (A)) exceed \$25,000 or include costs  
10 over a period of longer than 5 years;

11 “(ii) for costs not described in clause (i) relat-  
12 ing to the operation, maintenance, or use of certified  
13 EHR technology, the annual allowable costs under  
14 this subsection with respect to such a Medicaid pro-  
15 vider for costs not described in clause (i) for any  
16 year exceed \$10,000;

17 “(iii) payment described in paragraph (1) for  
18 costs described in clause (ii) be made with respect  
19 to such a Medicaid provider over a period of more  
20 than 5 years;

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

24 “(v) the allowable costs, whether for purchase  
25 and initial implementation, maintenance, or other-

1 wise, for a Medicaid provider described in paragraph  
2 (2)(B) exceed such aggregate or annual limitation as  
3 the Secretary shall establish, based on an amount  
4 determined by the Secretary as being adequate to  
5 adopt and maintain certified EHR technology, con-  
6 sistent with paragraph (6).

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

10 “(A) The State provides assurances satisfactory  
11 to the Secretary that amounts received under sub-  
12 section (a)(3)(F) with respect to costs of a Medicaid  
13 provider are paid directly to such provider without  
14 any deduction or rebate.

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

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

1           “(D) To the extent specified by the Secretary,  
2           the certified EHR technology is compatible with  
3           State or Federal administrative management sys-  
4           tems.

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

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

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

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

1           “(C) The Medicaid share computed under this sub-  
2 paragraph, for a hospital for a period specified by the Sec-  
3 retary, shall be calculated in the same manner as the  
4 Medicare share under section 1886(n)(2)(D) for such a  
5 hospital and period, except that there shall be substituted  
6 for the numerator under clause (i) of such section the  
7 amount that is equal to the number of inpatient-bed-days  
8 (as established by the Secretary) which are attributable  
9 to individuals who are receiving medical assistance under  
10 this title and who are not described in section  
11 1886(n)(2)(D)(i). In computing inpatient-bed-days under  
12 the previous sentence, the Secretary shall take into ac-  
13 count inpatient-bed-days attributable to inpatient-bed-  
14 days that are paid for individuals enrolled in a Medicaid  
15 managed care plan (under section 1903(m) or section  
16 1932).

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

24           “(8) In carrying out paragraph (5)(C), the State and  
25 Secretary shall seek, to the maximum extent practicable,

1 to avoid duplicative requirements from Federal and State  
2 Governments to demonstrate meaningful use of certified  
3 EHR technology under this title and title XVIII. In doing  
4 so, the Secretary may deem satisfaction of requirements  
5 for such meaningful use for a payment year under title  
6 XVIII to be sufficient to qualify as meaningful use under  
7 this subsection. The Secretary may also specify the report-  
8 ing periods under this subsection in order to carry out this  
9 paragraph.

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

14 “(A) is using the funds provided for the pur-  
15 poses of administering payments under this sub-  
16 section, including tracking of meaningful use by  
17 Medicaid providers;

18 “(B) conducting adequate oversight of the pro-  
19 gram under this subsection, including routine track-  
20 ing of meaningful use attestations and reporting  
21 mechanisms; and

22 “(C) be pursuing initiatives to encourage the  
23 adoption of certified EHR technology to promote  
24 health care quality and the exchange of health care

1 information under this title, subject to applicable  
2 laws and regulations governing such exchange.

3 “(10) The Secretary shall periodically submit reports  
4 to the Committee on Energy and Commerce of the House  
5 of Representatives and the Committee on Finance of the  
6 Senate on status, progress, and oversight of payments  
7 under paragraph (1).”.

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

## 20 **Subtitle D—Privacy**

### 21 **SEC. 4400. DEFINITIONS.**

22 In this subtitle, except as specified otherwise:

23 (1) BREACH.—The term “breach” means the  
24 unauthorized acquisition, access, use, or disclosure  
25 of protected health information which compromises

1 the security, privacy, or integrity of protected health  
2 information maintained by or on behalf of a person.  
3 Such term does not include any unintentional acqui-  
4 sition, access, use, or disclosure of such information  
5 by an employee or agent of the covered entity or  
6 business associate involved if such acquisition, ac-  
7 cess, use, or disclosure, respectively, was made in  
8 good faith and within the course and scope of the  
9 employment or other contractual relationship of such  
10 employee or agent, respectively, with the covered en-  
11 tity or business associate and if such information is  
12 not further acquired, accessed, used, or disclosed by  
13 such employee or agent.

14 (2) BUSINESS ASSOCIATE.—The term “business  
15 associate” has the meaning given such term in sec-  
16 tion 160.103 of title 45, Code of Federal Regula-  
17 tions.

18 (3) COVERED ENTITY.—The term “covered en-  
19 tity” has the meaning given such term in section  
20 160.103 of title 45, Code of Federal Regulations.

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

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

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

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

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

17          (9) NATIONAL COORDINATOR.—The term “Na-  
18          tional Coordinator” means the head of the Office of  
19          the National Coordinator for Health Information  
20          Technology established under section 3001(a) of the  
21          Public Health Service Act, as added by section  
22          4101.

23          (10) PAYMENT.—The term “payment” has the  
24          meaning given such term in section 164.501 of title  
25          45, Code of Federal Regulations.

1           (11) PERSONAL HEALTH RECORD.—The term  
2           “personal health record” means an electronic record  
3           of individually identifiable health information on an  
4           individual that can be drawn from multiple sources  
5           and that is managed, shared, and controlled by or  
6           for the individual.

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

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

13          (14) SECURITY.—The term “security” has the  
14          meaning given such term in section 164.304 of title  
15          45, Code of Federal Regulations.

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

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

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



1 1320d-5, 1320d-6) shall apply to the business associate  
2 with respect to such violation in the same manner such  
3 sections apply to a covered entity that violates such secu-  
4 rity provision.

5 (c) ANNUAL GUIDANCE.—For the first year begin-  
6 ning after the date of the enactment of this Act and annu-  
7 ally thereafter, the Secretary of Health and Human Serv-  
8 ices shall, in consultation with industry stakeholders, an-  
9 nually issue guidance on the most effective and appro-  
10 priate technical safeguards for use in carrying out the sec-  
11 tions referred to in subsection (a) and the security stand-  
12 ards in subpart C of part 164 of title 45, Code of Federal  
13 Regulations, as such provisions are in effect as of the date  
14 before the enactment of this Act.

15 **SEC. 4402. NOTIFICATION IN THE CASE OF BREACH.**

16 (a) IN GENERAL.—A covered entity that accesses,  
17 maintains, retains, modifies, records, stores, destroys, or  
18 otherwise holds, uses, or discloses unsecured protected  
19 health information (as defined in subsection (h)(1)) shall,  
20 in the case of a breach of such information that is discov-  
21 ered by the covered entity, notify each individual whose  
22 unsecured protected health information has been, or is  
23 reasonably believed by the covered entity to have been,  
24 accessed, acquired, or disclosed as a result of such breach.

1 (b) NOTIFICATION OF COVERED ENTITY BY BUSI-  
2 NESS ASSOCIATE.—A business associate of a covered enti-  
3 ty that accesses, maintains, retains, modifies, records,  
4 stores, destroys, or otherwise holds, uses, or discloses un-  
5 secured protected health information shall, following the  
6 discovery of a breach of such information, notify the cov-  
7 ered entity of such breach. Such notice shall include the  
8 identification of each individual whose unsecured protected  
9 health information has been, or is reasonably believed by  
10 the business associate to have been, accessed, acquired,  
11 or disclosed during such breach.

12 (c) BREACHES TREATED AS DISCOVERED.—For pur-  
13 poses of this section, a breach shall be treated as discov-  
14 ered by a covered entity or by a business associate as of  
15 the first day on which such breach is known to such entity  
16 or associate, respectively, (including any person, other  
17 than the individual committing the breach, that is an em-  
18 ployee, officer, or other agent of such entity or associate,  
19 respectively) or should reasonably have been known to  
20 such entity or associate (or person) to have occurred.

21 (d) TIMELINESS OF NOTIFICATION.—

22 (1) IN GENERAL.—Subject to subsection (g), all  
23 notifications required under this section shall be  
24 made without unreasonable delay and in no case  
25 later than 60 calendar days after the discovery of a

1 breach by the covered entity involved (or business  
2 associate involved in the case of a notification re-  
3 quired under subsection (b)).

4 (2) BURDEN OF PROOF.—The covered entity in-  
5 volved (or business associate involved in the case of  
6 a notification required under subsection (b)), shall  
7 have the burden of demonstrating that all notifica-  
8 tions were made as required under this part, includ-  
9 ing evidence demonstrating the necessity of any  
10 delay.

11 (e) METHODS OF NOTICE.—

12 (1) INDIVIDUAL NOTICE.—Notice required  
13 under this section to be provided to an individual,  
14 with respect to a breach, shall be provided promptly  
15 and in the following form:

16 (A) Written notification by first-class mail  
17 to the individual (or the next of kin of the indi-  
18 vidual if the individual is deceased) at the last  
19 known address of the individual or the next of  
20 kin, respectively, or, if specified as a preference  
21 by the individual, by electronic mail. The notifi-  
22 cation may be provided in one or more mailings  
23 as information is available.

24 (B) In the case in which there is insuffi-  
25 cient, or out-of-date contact information (in-

1 including a phone number, email address, or any  
2 other form of appropriate communication) that  
3 precludes direct written (or, if specified by the  
4 individual under subparagraph (A), electronic)  
5 notification to the individual, a substitute form  
6 of notice shall be provided, including, in the  
7 case that there are 10 or more individuals for  
8 which there is insufficient or out-of-date contact  
9 information, a conspicuous posting for a period  
10 determined by the Secretary on the home page  
11 of the Web site of the covered entity involved or  
12 notice in major print or broadcast media, in-  
13 cluding major media in geographic areas where  
14 the individuals affected by the breach likely re-  
15 side. Such a notice in media or web posting will  
16 include a toll-free phone number where an indi-  
17 vidual can learn whether or not the individual's  
18 unsecured protected health information is pos-  
19 sibly included in the breach.

20 (C) In any case deemed by the covered en-  
21 tity involved to require urgency because of pos-  
22 sible imminent misuse of unsecured protected  
23 health information, the covered entity, in addi-  
24 tion to notice provided under subparagraph (A),

1           may provide information to individuals by tele-  
2           phone or other means, as appropriate.

3           (2) MEDIA NOTICE.—Notice shall be provided  
4           to prominent media outlets serving a State or juris-  
5           diction, following the discovery of a breach described  
6           in subsection (a), if the unsecured protected health  
7           information of more than 500 residents of such  
8           State or jurisdiction is, or is reasonably believed to  
9           have been, accessed, acquired, or disclosed during  
10          such breach.

11          (3) NOTICE TO SECRETARY.—Notice shall be  
12          provided to the Secretary by covered entities of un-  
13          secured protected health information that has been  
14          acquired or disclosed in a breach. If the breach was  
15          with respect to 500 or more individuals than such  
16          notice must be provided immediately. If the breach  
17          was with respect to less than 500 individuals, the  
18          covered entity involved may maintain a log of any  
19          such breach occurring and annually submit such a  
20          log to the Secretary documenting such breaches  
21          occurring during the year involved.

22          (4) POSTING ON HHS PUBLIC WEBSITE.—The  
23          Secretary shall make available to the public on the  
24          Internet website of the Department of Health and  
25          Human Services a list that identifies each covered

1       entity involved in a breach described in subsection  
2       (a) in which the unsecured protected health informa-  
3       tion of more than 500 individuals is acquired or dis-  
4       closed.

5       (f) CONTENT OF NOTIFICATION.—Regardless of the  
6       method by which notice is provided to individuals under  
7       this section, notice of a breach shall include, to the extent  
8       possible, the following:

9           (1) A brief description of what happened, in-  
10          cluding the date of the breach and the date of the  
11          discovery of the breach, if known.

12          (2) A description of the types of unsecured pro-  
13          tected health information that were involved in the  
14          breach (such as full name, Social Security number,  
15          date of birth, home address, account number, or dis-  
16          ability code).

17          (3) The steps individuals should take to protect  
18          themselves from potential harm resulting from the  
19          breach.

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

24          (5) Contact procedures for individuals to ask  
25          questions or learn additional information, which

1 shall include a toll-free telephone number, an e-mail  
2 address, Web site, or postal address.

3 (g) DELAY OF NOTIFICATION AUTHORIZED FOR LAW  
4 ENFORCEMENT PURPOSES.—If a law enforcement official  
5 determines that a notification, notice, or posting required  
6 under this section would impede a criminal investigation  
7 or cause damage to national security, such notification,  
8 notice, or posting shall be delayed in the same manner  
9 as provided under section 164.528(a)(2) of title 45, Code  
10 of Federal Regulations, in the case of a disclosure covered  
11 under such section.

12 (h) UNSECURED PROTECTED HEALTH INFORMA-  
13 TION.—

14 (1) DEFINITION.—

15 (A) IN GENERAL.—Subject to subpara-  
16 graph (B), for purposes of this section, the  
17 term “unsecured protected health information”  
18 means protected health information that is not  
19 secured through the use of a technology or  
20 methodology specified by the Secretary in the  
21 guidance issued under paragraph (2).

22 (B) EXCEPTION IN CASE TIMELY GUID-  
23 ANCE NOT ISSUED.—In the case that the Sec-  
24 retary does not issue guidance under paragraph  
25 (2) by the date specified in such paragraph, for

1 purposes of this section, the term “unsecured  
2 protected health information” shall mean pro-  
3 tected health information that is not secured by  
4 a technology standard that renders protected  
5 health information unusable, unreadable, or in-  
6 decipherable to unauthorized individuals and is  
7 developed or endorsed by a standards devel-  
8 oping organization that is accredited by the  
9 American National Standards Institute.

10 (2) GUIDANCE.—For purposes of paragraph (1)  
11 and section 407(f)(3), not later than the date that  
12 is 60 days after the date of the enactment of this  
13 Act, the Secretary shall, after consultation with  
14 stakeholders, issue (and annually update) guidance  
15 specifying the technologies and methodologies that  
16 render protected health information unusable,  
17 unreadable, or indecipherable to unauthorized indi-  
18 viduals.

19 (i) REPORT TO CONGRESS ON BREACHES.—

20 (1) IN GENERAL.—Not later than 12 months  
21 after the date of the enactment of this Act and an-  
22 nually thereafter, the Secretary shall prepare and  
23 submit to the Committee on Finance and the Com-  
24 mittee on Health, Education, Labor, and Pensions  
25 of the Senate and the Committee on Ways and

1 Means and the Committee on Energy and Commerce  
2 of the House of Representatives a report containing  
3 the information described in paragraph (2) regard-  
4 ing breaches for which notice was provided to the  
5 Secretary under subsection (e)(3).

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

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

11 (B) actions taken in response to such  
12 breaches.

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

21 **SEC. 4403. EDUCATION ON HEALTH INFORMATION PRI-**  
22 **VACY.**

23 (a) REGIONAL OFFICE PRIVACY ADVISORS.—Not  
24 later than 6 months after the date of the enactment of  
25 this Act, the Secretary shall designate an individual in

1 each regional office of the Department of Health and  
2 Human Services to offer guidance and education to cov-  
3 ered entities, business associates, and individuals on their  
4 rights and responsibilities related to Federal privacy and  
5 security requirements for protected health information.

6 (b) EDUCATION INITIATIVE ON USES OF HEALTH IN-  
7 FORMATION.—Not later than 12 months after the date of  
8 the enactment of this Act, the Office for Civil Rights with-  
9 in the Department of Health and Human Services shall  
10 develop and maintain a multi-faceted national education  
11 initiative to enhance public transparency regarding the  
12 uses of protected health information, including programs  
13 to educate individuals about the potential uses of their  
14 protected health information, the effects of such uses, and  
15 the rights of individuals with respect to such uses. Such  
16 programs shall be conducted in a variety of languages and  
17 present information in a clear and understandable man-  
18 ner.

19 **SEC. 4404. APPLICATION OF PRIVACY PROVISIONS AND**  
20 **PENALTIES TO BUSINESS ASSOCIATES OF**  
21 **COVERED ENTITIES.**

22 (a) APPLICATION OF CONTRACT REQUIREMENTS.—  
23 In the case of a business associate of a covered entity that  
24 obtains or creates protected health information pursuant  
25 to a written contract (or other written arrangement) de-

1 scribed in section 164.502(e)(2) of title 45, Code of Fed-  
2 eral Regulations, with such covered entity, the business  
3 associate may use and disclose such protected health infor-  
4 mation only if such use or disclosure, respectively, is in  
5 compliance with each applicable requirement of section  
6 164.504(e) of such title. The additional requirements of  
7 this subtitle that relate to privacy and that are made ap-  
8 plicable with respect to covered entities shall also be appli-  
9 cable to such a business associate and shall be incor-  
10 porated into the business associate agreement between the  
11 business associate and the covered entity.

12 (b) APPLICATION OF KNOWLEDGE ELEMENTS ASSO-  
13 CIATED WITH CONTRACTS.—Section 164.504(e)(1)(ii) of  
14 title 45, Code of Federal Regulations, shall apply to a  
15 business associate described in subsection (a), with respect  
16 to compliance with such subsection, in the same manner  
17 that such section applies to a covered entity, with respect  
18 to compliance with the standards in sections 164.502(e)  
19 and 164.504(e) of such title, except that in applying such  
20 section 164.504(e)(1)(ii) each reference to the business as-  
21 sociate, with respect to a contract, shall be treated as a  
22 reference to the covered entity involved in such contract.

23 (c) APPLICATION OF CIVIL AND CRIMINAL PEN-  
24 ALTIES.—In the case of a business associate that violates  
25 any provision of subsection (a) or (b), the provisions of

1 sections 1176 and 1177 of the Social Security Act (42  
2 U.S.C. 1320d-5, 1320d-6) shall apply to the business as-  
3 sociate with respect to such violation in the same manner  
4 as such provisions apply to a person who violates a provi-  
5 sion of part C of title XI of such Act.

6 **SEC. 4405. RESTRICTIONS ON CERTAIN DISCLOSURES AND**  
7 **SALES OF HEALTH INFORMATION; ACCOUNT-**  
8 **ING OF CERTAIN PROTECTED HEALTH IN-**  
9 **FORMATION DISCLOSURES; ACCESS TO CER-**  
10 **TAIN INFORMATION IN ELECTRONIC FOR-**  
11 **MAT.**

12 (a) REQUESTED RESTRICTIONS ON CERTAIN DIS-  
13 CLOSURES OF HEALTH INFORMATION.—In the case that  
14 an individual requests under paragraph (a)(1)(i)(A) of  
15 section 164.522 of title 45, Code of Federal Regulations,  
16 that a covered entity restrict the disclosure of the pro-  
17 tected health information of the individual, notwith-  
18 standing paragraph (a)(1)(ii) of such section, the covered  
19 entity must comply with the requested restriction if—

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

24 (2) the protected health information pertains  
25 solely to a health care item or service for which the

1 health care provider involved has been paid out of  
2 pocket in full.

3 (b) DISCLOSURES REQUIRED TO BE LIMITED TO  
4 THE LIMITED DATA SET OR THE MINIMUM NEC-  
5 ESSARY.—

6 (1) IN GENERAL.—

7 (A) IN GENERAL.—Subject to subpara-  
8 graph (B), a covered entity shall be treated as  
9 being in compliance with section 164.502(b)(1)  
10 of title 45, Code of Federal Regulations, with  
11 respect to the use, disclosure, or request of pro-  
12 tected health information described in such sec-  
13 tion, only if the covered entity limits such pro-  
14 tected health information, to the extent prac-  
15 ticable, to the limited data set (as defined in  
16 section 164.514(e)(2) of such title) or, if needed  
17 by such entity, to the minimum necessary to ac-  
18 complish the intended purpose of such use, dis-  
19 closure, or request, respectively.

20 (B) GUIDANCE.—Not later than 18  
21 months after the date of the enactment of this  
22 section, the Secretary shall issue guidance on  
23 what constitutes “minimum necessary” for pur-  
24 poses of subpart E of part 164 of title 45, Code  
25 of Federal Regulation. In issuing such guidance

1 the Secretary shall take into consideration the  
2 guidance under section 4424(c).

3 (C) SUNSET.—Subparagraph (A) shall not  
4 apply on and after the effective date on which  
5 the Secretary issues the guidance under sub-  
6 paragraph (B).

7 (2) DETERMINATION OF MINIMUM NEC-  
8 ESSARY.—For purposes of paragraph (1), in the  
9 case of the disclosure of protected health informa-  
10 tion, the covered entity or business associate dis-  
11 closing such information shall determine what con-  
12 stitutes the minimum necessary to accomplish the  
13 intended purpose of such disclosure.

14 (3) APPLICATION OF EXCEPTIONS.—The excep-  
15 tions described in section 164.502(b)(2) of title 45,  
16 Code of Federal Regulations, shall apply to the re-  
17 quirement under paragraph (1) as of the effective  
18 date described in section 4423 in the same manner  
19 that such exceptions apply to section 164.502(b)(1)  
20 of such title before such date.

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

1 (c) ACCOUNTING OF CERTAIN PROTECTED HEALTH  
2 INFORMATION DISCLOSURES REQUIRED IF COVERED EN-  
3 TITY USES ELECTRONIC HEALTH RECORD.—

4 (1) IN GENERAL.—In applying section 164.528  
5 of title 45, Code of Federal Regulations, in the case  
6 that a covered entity uses or maintains an electronic  
7 health record with respect to protected health infor-  
8 mation—

9 (A) the exception under paragraph  
10 (a)(1)(i) of such section shall not apply to dis-  
11 closures through an electronic health record  
12 made by such entity of such information; and

13 (B) an individual shall have a right to re-  
14 ceive an accounting of disclosures described in  
15 such paragraph of such information made by  
16 such covered entity during only the three years  
17 prior to the date on which the accounting is re-  
18 quested.

19 (2) REGULATIONS.—The Secretary shall pro-  
20 mulgate regulations on what information shall be  
21 collected about each disclosure referred to in para-  
22 graph (1)(A) not later than 18 months after the  
23 date on which the Secretary adopts standards on ac-  
24 counting for disclosure described in the section  
25 3002(b)(2)(B)(iv) of the Public Health Service Act,

1 as added by section 4101. Such regulations shall  
2 only require such information to be collected through  
3 an electronic health record in a manner that takes  
4 into account the interests of individuals in learning  
5 the circumstances under which their protected health  
6 information is being disclosed and takes into account  
7 the administrative burden of accounting for such  
8 disclosures.

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

15 (4) EFFECTIVE DATE.—

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

23 (B) OTHERS.—In the case of a covered en-  
24 tity insofar as it acquires an electronic health  
25 record after January 1, 2009, paragraph (1)

1 shall apply to disclosures, with respect to pro-  
2 tected health information, made by the covered  
3 entity from such record on and after the later  
4 of the following:

5 (i) January 1, 2011; or

6 (ii) the date that it acquires an elec-  
7 tronic health record.

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

1 date that is 24 months after the date of the enactment  
2 of this section.

3 (e) PROHIBITION ON SALE OF ELECTRONIC HEALTH  
4 RECORDS OR PROTECTED HEALTH INFORMATION OB-  
5 TAINED FROM ELECTRONIC HEALTH RECORDS.—

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

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

20 (A) The purpose of the exchange is for re-  
21 search or public health activities (as described  
22 in sections 164.501, 164.512(i), and 164.512(b)  
23 of title 45, Code of Federal Regulations) and  
24 the price charged reflects the costs of prepara-

1           tion and transmittal of the data for such pur-  
2           pose.

3           (B) The purpose of the exchange is for the  
4           treatment of the individual and the price  
5           charges reflects not more than the costs of  
6           preparation and transmittal of the data for  
7           such purpose.

8           (C) The purpose of the exchange is the  
9           health care operation specifically described in  
10          subparagraph (iv) of paragraph (6) of the defi-  
11          nition of health care operations in section  
12          164.501 of title 45, Code of Federal Regula-  
13          tions.

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

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

1           (F) The purpose of the exchange is other-  
2           wise determined by the Secretary in regulations  
3           to be similarly necessary and appropriate as the  
4           exceptions provided in subparagraphs (A)  
5           through (E).

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

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

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

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

24                (2) notwithstanding paragraph (c)(4) of such  
25                section, any fee that the covered entity may impose

1 for providing such individual with a copy of such in-  
2 formation (or a summary or explanation of such in-  
3 formation) if such copy (or summary or explanation)  
4 is in an electronic form shall not be greater than the  
5 entity's labor costs in responding to the request for  
6 the copy (or summary or explanation).

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

9 (a) **MARKETING.**—

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

20 (2) **PAYMENT FOR CERTAIN COMMUNICA-**  
21 **TIONS.**—A covered entity or business associate may  
22 not receive direct or indirect payment in exchange  
23 for making any communication described in sub-  
24 paragraph (i), (ii), or (iii) of paragraph (1) of the

1 definition of marketing in section 164.501 of title  
2 45, Code of Federal Regulations, except—

3 (A) a business associate of a covered entity  
4 may receive payment from the covered entity  
5 for making any such communication on behalf  
6 of the covered entity that is consistent with the  
7 written contract (or other written arrangement)  
8 described in section 164.502(e)(2) of such title  
9 between such business associate and covered en-  
10 tity; and

11 (B) a covered entity may receive payment  
12 in exchange for making any such communica-  
13 tion if the entity obtains from the recipient of  
14 the communication, in accordance with section  
15 164.508 of title 45, Code of Federal Regula-  
16 tions, a valid authorization (as described in  
17 paragraph (b) of such section) with respect to  
18 such communication.

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

23 (c) EFFECTIVE DATE.—This section shall apply to  
24 contracting occurring on or after the effective date speci-  
25 fied under section 4423.

1 **SEC. 4407. TEMPORARY BREACH NOTIFICATION REQUIRE-**  
2 **MENT FOR VENDORS OF PERSONAL HEALTH**  
3 **RECORDS AND OTHER NON-HIPAA COVERED**  
4 **ENTITIES.**

5 (a) IN GENERAL.—In accordance with subsection (c),  
6 each vendor of personal health records, following the dis-  
7 covery of a breach of security of unsecured PHR identifi-  
8 able health information that is in a personal health record  
9 maintained or offered by such vendor, and each entity de-  
10 scribed in clause (ii) or (iii) of section 4424(b)(1)(A), fol-  
11 lowing the discovery of a breach of security of such infor-  
12 mation that is obtained through a product or service pro-  
13 vided by such entity, shall—

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

19 (2) notify the Federal Trade Commission.

20 (b) NOTIFICATION BY THIRD PARTY SERVICE PRO-  
21 VIDERS.—A third party service provider that provides  
22 services to a vendor of personal health records or to an  
23 entity described in clause (ii) or (iii) of section  
24 4424(b)(1)(A) in connection with the offering or mainte-  
25 nance of a personal health record or a related product or  
26 service and that accesses, maintains, retains, modifies,

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

10 (c) APPLICATION OF REQUIREMENTS FOR TIMELI-  
11 NESS, METHOD, AND CONTENT OF NOTIFICATIONS.—

12 Subsections (c), (d), (e), and (f) of section 402 shall apply  
13 to a notification required under subsection (a) and a ven-  
14 dor of personal health records, an entity described in sub-  
15 section (a) and a third party service provider described  
16 in subsection (b), with respect to a breach of security  
17 under subsection (a) of unsecured PHR identifiable health  
18 information in such records maintained or offered by such  
19 vendor, in a manner specified by the Federal Trade Com-  
20 mission.

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

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

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

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

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

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

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

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

3           (A) IN GENERAL.—Subject to subpara-  
4 graph (B), the term “unsecured PHR identifi-  
5 able health information” means PHR identifi-  
6 able health information that is not protected  
7 through the use of a technology or methodology  
8 specified by the Secretary in the guidance  
9 issued under section 4402(h)(2).

10           (B) EXCEPTION IN CASE TIMELY GUID-  
11 ANCE NOT ISSUED.—In the case that the Sec-  
12 retary does not issue guidance under section  
13 4402(h)(2) by the date specified in such sec-  
14 tion, for purposes of this section, the term “un-  
15 secured PHR identifiable health information”  
16 shall mean PHR identifiable health information  
17 that is not secured by a technology standard  
18 that renders protected health information unus-  
19 able, unreadable, or indecipherable to unauthor-  
20 ized individuals and that is developed or en-  
21 dored by a standards developing organization  
22 that is accredited by the American National  
23 Standards Institute.

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

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

10           (2) SUNSET.—The provisions of this section  
11 shall not apply to breaches of security occurring on  
12 or after the earlier of the following the dates:

13           (A) The date on which a standard relating  
14 to requirements for entities that are not covered  
15 entities that includes requirements relating to  
16 breach notification has been promulgated by the  
17 Secretary.

18           (B) The date on which a standard relating  
19 to requirements for entities that are not covered  
20 entities that includes requirements relating to  
21 breach notification has been promulgated by the  
22 Federal Trade Commission and has taken ef-  
23 fect.

1 **SEC. 4408. BUSINESS ASSOCIATE CONTRACTS REQUIRED**  
2 **FOR CERTAIN ENTITIES.**

3 Each organization, with respect to a covered entity,  
4 that provides data transmission of protected health infor-  
5 mation to such entity (or its business associate) and that  
6 requires access on a routine basis to such protected health  
7 information, such as a Health Information Exchange Or-  
8 ganization, Regional Health Information Organization, E-  
9 prescribing Gateway, or each vendor that contracts with  
10 a covered entity to allow that covered entity to offer a per-  
11 sonal health record to patients as part of its electronic  
12 health record, is required to enter into a written contract  
13 (or other written arrangement) described in section  
14 164.502(e)(2) of title 45, Code of Federal Regulations and  
15 a written contract (or other arrangement) described in  
16 section 164.308(b) of such title, with such entity and shall  
17 be treated as a business associate of the covered entity  
18 for purposes of the provisions of this subtitle and subparts  
19 C and E of part 164 of title 45, Code of Federal Regula-  
20 tions, as such provisions are in effect as of the date of  
21 enactment of this title.

22 **SEC. 4409. CLARIFICATION OF APPLICATION OF WRONGFUL**  
23 **DISCLOSURES CRIMINAL PENALTIES.**

24 Section 1177(a) of the Social Security Act (42 U.S.C.  
25 1320d-6(a)) is amended by adding at the end the fol-  
26 lowing new sentence: “For purposes of the previous sen-

1 tence, a person (including an employee or other individual)  
2 shall be considered to have obtained or disclosed individ-  
3 ually identifiable health information in violation of this  
4 part if the information is maintained by a covered entity  
5 (as defined in the HIPAA privacy regulation described in  
6 section 1180(b)(3)) and the individual obtained or dis-  
7 closed such information without authorization.”.

8 **SEC. 4410. IMPROVED ENFORCEMENT.**

9 (a) IN GENERAL.—Section 1176 of the Social Secu-  
10 rity Act (42 U.S.C. 1320d-5) is amended—

11 (1) in subsection (b)(1), by striking “the act  
12 constitutes an offense punishable under section  
13 1177” and inserting “a penalty has been imposed  
14 under section 1177 with respect to such act”; and

15 (2) by adding at the end the following new sub-  
16 section:

17 “(c) NONCOMPLIANCE DUE TO WILLFUL NE-  
18 GLECT.—

19 “(1) IN GENERAL.—A violation of a provision  
20 of this part due to willful neglect is a violation for  
21 which the Secretary is required to impose a penalty  
22 under subsection (a)(1).

23 “(2) REQUIRED INVESTIGATION.—For purposes  
24 of paragraph (1), the Secretary shall formally inves-  
25 tigate any complaint of a violation of a provision of

1 this part if a preliminary investigation of the facts  
2 of the complaint indicate such a possible violation  
3 due to willful neglect.”.

4 (b) EFFECTIVE DATE; REGULATIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (e) ENFORCEMENT THROUGH STATE ATTORNEYS

2 GENERAL.—

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

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

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

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

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

23 “(2) STATUTORY DAMAGES.—

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

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

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

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

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

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

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

6               “(A) to intervene in the action;

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

9               “(C) to file petitions for appeal.

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

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

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

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

25                      “(i) is an inhabitant; or

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

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

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

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

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

1 (B) in paragraph (2)(A)—

2 (i) in the matter before clause (i), by  
3 striking “a penalty may not be imposed  
4 under subsection (a)” and inserting “no  
5 penalty may be imposed under subsection  
6 (a) and no damages obtained under sub-  
7 section (c)”;

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

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

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

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

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

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

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

6 **SEC. 4411. AUDITS.**

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

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

16 **SEC. 4421. RELATIONSHIP TO OTHER LAWS.**

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

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

11 **SEC. 4422. REGULATORY REFERENCES.**

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

16 **SEC. 4423. EFFECTIVE DATE.**

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

20 **SEC. 4424. STUDIES, REPORTS, GUIDANCE.**

21 (a) REPORT ON COMPLIANCE.—

22 (1) IN GENERAL.—For the first year beginning  
23 after the date of the enactment of this Act and an-  
24 nually thereafter, the Secretary shall prepare and  
25 submit to the Committee on Health, Education,

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

14 (A) the number of such complaints;

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

23 (C) the number of such complaints that  
24 have resulted in the imposition of civil monetary  
25 penalties or have been resolved through mone-

1            tary settlements, including the nature of the  
2            complaints involved and the amount paid in  
3            each penalty or settlement;

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

6            (E) the number of subpoenas or inquiries  
7            issued;

8            (F) the Secretary's plan for improving  
9            compliance with and enforcement of such provi-  
10           sions for the following year; and

11           (G) the number of audits performed and a  
12           summary of audit findings pursuant to section  
13           4411.

14           (2) AVAILABILITY TO PUBLIC.—Each report  
15           under paragraph (1) shall be made available to the  
16           public on the Internet website of the Department of  
17           Health and Human Services.

18           (b) STUDY AND REPORT ON APPLICATION OF PRI-  
19           VACY AND SECURITY REQUIREMENTS TO NON-HIPAA  
20           COVERED ENTITIES.—

21           (1) STUDY.—Not later than one year after the  
22           date of the enactment of this title, the Secretary, in  
23           consultation with the Federal Trade Commission,  
24           shall conduct a study, and submit a report under  
25           paragraph (2), on privacy and security requirements

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

4 (A) requirements relating to security, pri-  
5 vacy, and notification in the case of a breach of  
6 security or privacy (including the applicability  
7 of an exemption to notification in the case of  
8 individually identifiable health information that  
9 has been rendered unusable, unreadable, or in-  
10 decipherable through technologies or methodolo-  
11 gies recognized by appropriate professional or-  
12 ganization or standard setting bodies to provide  
13 effective security for the information) that  
14 should be applied to—

15 (i) vendors of personal health records;

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

19 (iii) entities that are not covered enti-  
20 ties and that offer products or services  
21 through the websites of covered entities  
22 that offer individuals personal health  
23 records;

24 (iv) entities that are not covered enti-  
25 ties and that access information in a per-

1           sonal health record or send information to  
2           a personal health record; and

3                   (v) third party service providers used  
4           by a vendor or entity described in clause  
5           (i), (ii), (iii), or (iv) to assist in providing  
6           personal health record products or services;

7           (B) a determination of which Federal gov-  
8           ernment agency is best equipped to enforce  
9           such requirements recommended to be applied  
10          to such vendors, entities, and service providers  
11          under subparagraph (A); and

12                   (C) a timeframe for implementing regula-  
13          tions based on such findings.

14          (2) REPORT.—The Secretary shall submit to  
15          the Committee on Finance, the Committee on  
16          Health, Education, Labor, and Pensions, and the  
17          Committee on Commerce of the Senate and the  
18          Committee on Ways and Means and the Committee  
19          on Energy and Commerce of the House of Rep-  
20          resentatives a report on the findings of the study  
21          under paragraph (1) and shall include in such report  
22          recommendations on the privacy and security re-  
23          quirements described in such paragraph.

24          (c) GUIDANCE ON IMPLEMENTATION SPECIFICATION  
25          TO DE-IDENTIFY PROTECTED HEALTH INFORMATION.—

1 Not later than 12 months after the date of the enactment  
2 of this title, the Secretary shall, in consultation with stake-  
3 holders, issue guidance on how best to implement the re-  
4 quirements for the de-identification of protected health in-  
5 formation under section 164.514(b) of title 45, Code of  
6 Federal Regulations.

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

- 1 health information for treatment, payment, and health
- 2 care operations.