

109TH CONGRESS
1ST SESSION

H. R. 2234

To authorize the Secretary of Health and Human Services to make health information technology grants, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 10, 2005

Mr. MURPHY (for himself and Mr. KENNEDY of Rhode Island) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To authorize the Secretary of Health and Human Services to make health information technology grants, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “21st Century Health
5 Information Act of 2005”.

6 **SEC. 2. FINDINGS; PURPOSE.**

7 (a) FINDINGS.—

1 (1) According to the Institute for Safe Medica-
2 tion Practices, pharmacists make over 150 million
3 calls to physicians for clarification of illegible pre-
4 scriptions each year and electronic prescribing can
5 reduce follow-up calls between pharmacists and doc-
6 tors by over 50 percent.

7 (2) A study by the Journal of the American
8 Medical Association found that laboratory and radi-
9 ology results, letters, and medical histories were
10 missing during 13.6 percent of 1,614 patient visits.
11 In 44 percent of these cases, doctors felt that the
12 missing information had the potential to adversely
13 affect a patient's well-being.

14 (3) A study by the Rand Corporation found
15 that patients only receive recommended care about
16 55 percent of the time.

17 (4) A study of emerging infectious diseases
18 finds that preventable health care acquired infec-
19 tions cost \$4.5 billion per year and contributed to
20 more than 88,000 deaths — one death every 6 min-
21 utes.

22 (5) The Centers for Disease Control and Pre-
23 vention reports that United States patients are pre-
24 scribed improper medications in about 1 out of every
25 12 physician visits. An estimated 16.7 million physi-

1 cian visits for the elderly result in prescription er-
2 rors per year.

3 (6) A March 2001 Institute of Medicine (IOM)
4 study called “Crossing the Quality Chasm: A New
5 Health System for the 21st Century” concludes that
6 in order to improve quality, the Nation must have a
7 national commitment to building an information in-
8 frastructure to support health care delivery, con-
9 sumer health, quality measurement and improve-
10 ment, public accountability, clinical and health serv-
11 ices research, and clinical education.

12 (7) An October 2003 Government Account-
13 ability Office report found that the benefits of an
14 electronic health care information system included
15 improved quality of care, reduced costs associated
16 with medication errors, more accurate and complete
17 medical documentation, more accurate capture of
18 codes and charges, and improved communication
19 among providers enabling them to respond more
20 quickly to patients’ needs.

21 (8) In January 2004, the President stated that
22 “by computerizing health records, we can avoid dan-
23 gerous medical mistakes, reduce costs, and improve
24 care” and outlined a plan to ensure that most Amer-

1 icans have electronic health records within the next
2 10 years.

3 (b) PURPOSE.—The Secretary of Health and Human
4 Services shall implement this Act for the purpose of devel-
5 oping interoperable regional health information networks
6 and promoting the adoption of health information tech-
7 nology products.

8 **SEC. 3. HEALTH INFORMATION TECHNOLOGY GRANTS.**

9 (a) GRANT AUTHORIZATION.—

10 (1) IN GENERAL.—The Secretary may make
11 not more than 20 grants to regional health informa-
12 tion organizations to enable each grantee to develop
13 and implement over a 3-year period a regional
14 health information technology plan that provides
15 for—

16 (A) a health information network that will
17 serve a geographic area that—

18 (i) is located in 1 or more States; and

19 (ii) does not include any area to be
20 served by the health information network
21 of any other grantee under this section;

22 (B) a plan to finance acquisition and im-
23 plementation of technology by health care pro-
24 viders as needed to allow participation by the
25 providers in the network; and

1 (C) a plan to use the network to improve
2 patient safety, quality, and efficiency within the
3 health care system.

4 (2) USE OF FUNDS.—The Secretary may not
5 make a grant to a regional health information orga-
6 nization under this section unless the organization
7 agrees to use the grant—

8 (A) to develop and implement a regional
9 health information technology plan described in
10 paragraph (3) for submission to the Secretary
11 under paragraph (4); and

12 (B) to begin implementation of the plan
13 not later than the beginning of the second year
14 of the grant.

15 (3) REGIONAL HEALTH INFORMATION TECH-
16 NOLOGY PLAN.—

17 (A) IN GENERAL.—A regional health infor-
18 mation technology plan shall provide for—

19 (i) the establishment and implementa-
20 tion in a specified geographic area of a re-
21 gional health information network that—

22 (I) allows the seamless, secure,
23 electronic sharing of health informa-
24 tion among health care providers,

1 health plans, and other authorized
2 users;

3 (II) provides consumers with se-
4 cure, electronic access to their own
5 health information;

6 (III) meets data standards for
7 interoperability adopted by the Sec-
8 retary, including any standards pro-
9 viding for interoperability among re-
10 gional health information networks;

11 (IV) provides for interoperability
12 with any health information tech-
13 nology product certified by the certifi-
14 cation entity described in section 4(a);

15 (V) meets the privacy require-
16 ments of subsection (b);

17 (VI) gives patients the option of
18 allowing only designated health care
19 providers to access their individually
20 identifiable information concerning di-
21 agnosis and treatment of sexually
22 transmitted diseases, addiction, and
23 mental illnesses;

1 (VII) provides such public health
2 reporting capability as the Secretary
3 requires;

4 (VIII) allows for such reporting
5 of, and access to, health information
6 for purposes of research (other than
7 individually identifiable patient health
8 information) as the Secretary re-
9 quires; and

10 (IX) allows for the reporting of
11 provider-specific health information
12 (other than individually identifiable
13 patient health information) required
14 for the calculation of any voluntary
15 consensus standard endorsed by the
16 National Quality Forum;

17 (ii) the financing and technical assist-
18 ance required to allow health care pro-
19 viders, especially small physician groups, to
20 acquire and implement electronic medical
21 records or other technology necessary to
22 participate in the regional health informa-
23 tion network; and

24 (iii) agreements among health care
25 stakeholders regarding data reporting, re-

1 imbursement practices, or other mecha-
2 nisms to use the regional health informa-
3 tion network to improve patient safety,
4 quality, and efficiency within the health
5 care system.

6 (B) CONTENTS.—A regional health infor-
7 mation technology plan shall—

8 (i) be developed with the participation
9 and widespread support of all health care
10 stakeholders of the geographic area to be
11 served by the grantee’s health information
12 network, including but not limited to hos-
13 pitals, practicing physicians (including
14 those from small physician groups), nurs-
15 ing facilities and skilled nursing facilities,
16 other health care providers, health plans,
17 employers, and patient groups;

18 (ii) describe the governance structure
19 of the health information network;

20 (iii) describe the technologies and sys-
21 tems, including interoperability data stand-
22 ards, that will be used to establish a health
23 information network consistent with para-
24 graph (A)(i);

1 (iv) explain what information will be
2 able to be accessed, transferred, or ex-
3 changed through the health information
4 network and what capabilities the network
5 will have to include other types of informa-
6 tion in the future;

7 (v) describe plans to ensure network
8 reliability, expected frequency of network
9 interruptions, and backup procedures in
10 the event of network interruptions;

11 (vi) describe sources of initial financ-
12 ing for the development of the health infor-
13 mation network and a financing model for
14 long-term sustainability of the network;

15 (vii) describe sources of financing the
16 acquisition, implementation, and mainte-
17 nance of technology necessary to allow
18 health care providers, especially small phy-
19 sician groups, to participate in the health
20 information network;

21 (viii) describe how the health informa-
22 tion network will be used to improve health
23 care quality and the health outcomes of pa-
24 tients;

1 (ix) establish how administrative and
2 clinical savings resulting from widespread
3 use of the new health information network
4 will be accounted for and allocated;

5 (x) explain how the regional health in-
6 formation organization involved will ensure
7 widespread participation by health care
8 providers (especially small physician
9 groups) in the grantee's health information
10 network and what support and assistance
11 will be available to physicians seeking to
12 integrate health information technologies
13 into their practices;

14 (xi) describe how patients and care-
15 givers who are not health care providers
16 will be able to access and utilize the health
17 information network;

18 (xii) explain how the grantee's health
19 information network will protect patient
20 privacy and maintain security; and

21 (xiii) explain how the grantee will en-
22 sure the participation of health care pro-
23 viders serving minority communities, in-
24 cluding communities in which English is
25 not the primary language spoken.

1 (4) APPROVAL OF PLAN.—

2 (A) SUBMISSION BY GRANTEES.—Not later
3 than the end of the first year for which a re-
4 gional health information organization receives
5 a grant under this subsection, the organization
6 shall submit its regional health information
7 technology plan to the Secretary.

8 (B) SUBMISSION BY OTHER ORGANIZA-
9 TIONS.—A regional health information organi-
10 zation that has not received a grant under this
11 subsection may, at its discretion, submit a re-
12 gional health information technology plan to the
13 Secretary.

14 (C) APPROVAL.—The Secretary shall ap-
15 prove or disapprove each regional health infor-
16 mation technology plan submitted to the Sec-
17 retary under this paragraph based on whether
18 the plan complies with the requirements of this
19 subsection.

20 (D) EFFECT OF FAILURE TO APPROVE.—
21 The Secretary may not make any payment
22 under this subsection to a regional health infor-
23 mation organization for the second or third
24 year for which the organization receives a grant
25 unless the Secretary has approved the organiza-

1 tion’s regional health information technology
2 plan.

3 (E) GEOGRAPHIC EXCLUSIVITY.—The Sec-
4 retary may not approve a regional health infor-
5 mation technology plan under this paragraph if
6 the plan applies to a geographic area for which
7 the Secretary has already approved a regional
8 health information technology plan under this
9 paragraph, irrespective of whether the approved
10 regional health information technology plan was
11 submitted by a grantee under subparagraph (A)
12 or by an organization under subparagraph (B).

13 (5) SELECTION.—In selecting grant recipients
14 under this section, the Secretary shall take into ac-
15 count—

16 (A) existing technological and organiza-
17 tional infrastructure upon which the health in-
18 formation network can build;

19 (B) the extent of stakeholder participation;

20 (C) health care provider participation com-
21 mitments;

22 (D) capacity to measure quality and effi-
23 ciency improvements;

24 (E) replicability;

1 (F) the extent of the opportunity for a
2 plan to improve health care quality and the
3 health outcomes of patients in the region to be
4 served;

5 (G) the extent to which an applicant in-
6 tends to develop a regional health information
7 technology plan that covers a complete medical
8 market area (as defined by the Secretary);

9 (H) the extent to which an applicant's pro-
10 posed network will allow the exchange of ma-
11 chine-computable data among providers;

12 (I) geographical diversity of grantees; and

13 (J) such other factors as the Secretary
14 considers relevant.

15 (b) PRIVACY PROTECTIONS.—

16 (1) IN GENERAL.—Any health information net-
17 work funded in whole or in part under this section
18 shall—

19 (A) comply with the privacy protections of
20 regulations promulgated pursuant to section
21 264(c) of the Health Insurance Portability and
22 Accountability Act of 1996 (Public Law 104–
23 191; 110 Stat. 2033); and

1 (B) allow patients to exclude their health
2 information from the health information net-
3 work.

4 (2) UNAUTHORIZED DISCLOSURE.—In the event
5 of the unauthorized access to or disclosure of indi-
6 vidually identifiable patient health information by or
7 through a health information network funded in
8 whole or in part under this section, the operator of
9 such network shall—

10 (A) report the conditions of such unauthor-
11 ized access or disclosure to the Secretary in
12 such manner as the Secretary requires; and

13 (B) provide notice to any individuals whose
14 patient health information may have been com-
15 promised in violation of this subsection as a re-
16 sult of such unauthorized access or disclosure.

17 (c) APPLICATION.—To seek a grant under this sec-
18 tion, an applicant shall submit an application to the Sec-
19 retary in such form, in such manner, and containing such
20 information and assurances as the Secretary may require.

21 (d) TECHNICAL ASSISTANCE.—

22 (1) IN GENERAL.—The Secretary shall provide
23 to regional health information organizations such
24 technical assistance as the Secretary deems appro-
25 priate to carry out this section, including assistance

1 relating to questions of governance, financing, and
2 technological approaches to the creation of health in-
3 formation networks.

4 (2) NATIONAL TECHNICAL ASSISTANCE CEN-
5 TER.—

6 (A) ESTABLISHMENT.—The Director of
7 the Agency for Healthcare Research and Qual-
8 ity shall by contract or grant establish and
9 maintain a national technical assistance center
10 to provide assistance to physicians described in
11 subparagraph (B) to facilitate successful adop-
12 tion of health information technologies and par-
13 ticipation in the development and implementa-
14 tion of regional health information technology
15 plans by such physicians.

16 (B) PHYSICIANS.—The national technical
17 assistance center shall provide assistance to
18 physicians in geographical areas served by a
19 health information network that has been ac-
20 credited or provisionally accredited under sub-
21 section (e).

22 (C) PRIORITY.—In providing assistance to
23 physicians under this paragraph, the national
24 technical assistance centers shall—

1 (i) give priority to physicians in small
2 physician groups; and

3 (ii) as resources allow, provide assist-
4 ance to physicians in larger groups.

5 (D) REQUIREMENTS.—Technical assist-
6 ance provided under this paragraph shall, at a
7 minimum, include the following:

8 (i) A clearinghouse of best practices,
9 guidelines, and implementation strategies
10 directed at the small medical practices that
11 plan to adopt electronic medical records,
12 electronic prescribing, and other health in-
13 formation technologies.

14 (ii) A change management tool kit to
15 enable physicians and their office staffs to
16 successfully prepare practice workflows for
17 adoption of electronic medical records and
18 electronic prescribing, to receive guidance
19 in the selection of vendors of health infor-
20 mation technology products and services
21 that are appropriate within the context of
22 the individual practice and the community
23 setting, to implement health information
24 technology solutions and manage the
25 project at the practice level, and to address

1 the ongoing need for upgrades, mainte-
2 nance, and security of office-based health
3 information technologies.

4 (iii) The capability to provide con-
5 sultations and advice to small medical
6 practices to facilitate adoption of health in-
7 formation technologies.

8 (e) ACCREDITATION.—

9 (1) IN GENERAL.—Not later than the date that
10 is 1 year after the date of the enactment of this Act,
11 the Secretary shall establish a program of accred-
12 iting health information networks that are in compli-
13 ance with the requirements of subparagraph (A) of
14 subsection (a)(3), subsection (b), and any other re-
15 quirements of the national health information infra-
16 structure as established by the Secretary.

17 (2) PROVISIONAL ACCREDITATION.—The pro-
18 gram under this subsection shall include a process
19 for provisional accreditation of networks that are in
20 the process of being implemented. Approval of a re-
21 gional health information technology plan by the
22 Secretary under subsection (a)(4) is deemed to con-
23 stitute initial provisional accreditation of the health
24 information network described in the plan.

1 (f) PROHIBITION.—No funds under this section may
2 be used for the establishment of a national database of
3 individually identifiable patient health information.

4 (g) REPORT BY GAO.—Not later than 4 years after
5 the date of the enactment of this Act, the Comptroller
6 General of the United States shall submit a report to the
7 Congress on the progress of the regional health informa-
8 tion organizations in realizing the purposes of this Act,
9 with particular attention to the following:

10 (1) The capacity to exchange health informa-
11 tion between and among regional health information
12 networks.

13 (2) Rates of health information technology
14 usage and provider participation in regional health
15 information networks.

16 (3) The security and privacy of regional health
17 information networks.

18 (4) The differing approaches of regional health
19 information organizations to implementing the pur-
20 poses of this Act and common characteristics of suc-
21 cessful efforts.

22 (5) The impact of health information networks
23 on health care quality, health outcomes of patients,
24 and health care costs.

25 (h) AUTHORIZATION OF APPROPRIATIONS.—

1 (1) IN GENERAL.—To carry out the provisions
2 of this section other than subsection (d)(2), there
3 are authorized to be appropriated for grants under
4 subsection (a), \$50,000,000 for fiscal year 2006 and
5 such sums as may be necessary for each of fiscal
6 years 2007, 2008, 2009, and 2010.

7 (2) TECHNICAL ASSISTANCE.—

8 (A) IN GENERAL.—Of the amount appro-
9 priated to carry out this section for a fiscal
10 year, not more than than 10 percent of such
11 amount or \$5,000,000, whichever is lesser, may
12 be used to provide technical assistance under
13 subsection (d)(1).

14 (B) NATIONAL TECHNICAL ASSISTANCE
15 CENTER.—To carry out subsection (d)(2), there
16 is authorized to be appropriated \$2,500,000 for
17 each of fiscal years 2006 through 2010.

18 **SEC. 4. INTEROPERABILITY.**

19 (a) PURCHASE OF HEALTH INFORMATION TECH-
20 NOLOGY PRODUCTS.—

21 (1) REQUIREMENT.—No Federal funds may be
22 made available to any entity under this Act for the
23 purchase of a health information technology product,
24 unless—

1 (A) for any period during which there is a
2 certification entity described in paragraph (2)—

3 (i) the product is certified by the enti-
4 ty; or

5 (ii) if a certification process has not
6 yet been developed for the product by the
7 entity, the Federal department or agency
8 involved has determined that the product
9 incorporates, to the extent feasible, appro-
10 priate interoperability data standards and
11 compliance criteria adopted by the entity
12 for another product; and

13 (B) for any period for which the Secretary
14 (or the Secretary's designee) adopts applicable
15 standards and criteria under paragraph (4), the
16 product complies with such standards and cri-
17 teria.

18 (2) CERTIFICATION ENTITY.—The certification
19 entity described in this paragraph is—

20 (A) for any period during which the Cer-
21 tification Commission for Healthcare Informa-
22 tion Technology is accredited by the American
23 National Standards Institute or approved by
24 the Secretary under paragraph (3), the Certifi-

1 cation Commission for Healthcare Information
2 Technology; and

3 (B) for any other period, the private enti-
4 ty, if any, designated by the Secretary under
5 paragraph (4)(A)(ii) or, as applicable, para-
6 graph (4)(B).

7 (3) APPROVAL OF COMMISSION BY SEC-
8 RETARY.—For any period during which the Certifi-
9 cation Commission for Healthcare Information Tech-
10 nology is not accredited by the American National
11 Standards Institute, the Secretary of Health and
12 Human Services—

13 (A) shall examine biannually the Commis-
14 sion’s certification processes;

15 (B) shall approve the Commission for pur-
16 poses of this subsection if the Secretary deter-
17 mines that—

18 (i) the Commission’s certification
19 processes—

20 (I) are open to input from all af-
21 fected parties, including providers, pa-
22 tients, vendors, and regional health
23 information organizations;

24 (II) reflect the prevailing opinion
25 among the affected parties; and

1 (III) promote quality, safety, and
2 efficiency in health care; and

3 (ii) the Commission's governance pro-
4 cedures ensure effective representation of
5 and accountability to affected stakeholder
6 groups and transparent decision-making
7 processes;

8 (C) shall disapprove the Commission for
9 purposes of this subsection if the Secretary de-
10 termines that the Commission's certification
11 processes or governance procedures do not sat-
12 isfy clause (i) or (ii), respectively, of subpara-
13 graph (B); and

14 (D) if the Secretary disapproves the Com-
15 mission under this paragraph, shall provide spe-
16 cific recommendations to the Commission on
17 changes that may be implemented by the Com-
18 mission in order to obtain approval under this
19 paragraph.

20 (4) INTEROPERABILITY STANDARDS; ALTER-
21 NATIVE CERTIFICATION ENTITY.—

22 (A) IN GENERAL.—For any period during
23 which the Certification Commission for
24 Healthcare Information Technology is not ac-
25 credited by the American National Standards

1 Institute and the Secretary disapproves such
2 Commission under paragraph (3)(C), the Sec-
3 retary—

4 (i) shall adopt interoperability stand-
5 ards and compliance criteria for health in-
6 formation technology products, including
7 electronic medical records; or

8 (ii) shall designate a private entity
9 with certification and governance processes
10 in accordance with paragraph (3)(B) to
11 adopt such standards and criteria and to
12 certify such products.

13 (B) NINE-MONTH DEADLINE.—If the Cer-
14 tification Commission for Healthcare Informa-
15 tion Technology is accredited by the American
16 National Standards Institute or approved by
17 the Secretary under paragraph (3)(B) but fails
18 to adopt interoperability standards and compli-
19 ance criteria for electronic medical records by
20 the date that is 9 months after the date of the
21 enactment of this Act, the Secretary may adopt
22 such standards and criteria, or designate a pri-
23 vate entity with certification and governance
24 processes in accordance with paragraph (3)(B)

1 to adopt such standards and criteria and to cer-
2 tify such products.

3 (C) CONSULTATION.—In adopting stand-
4 ards and criteria under subparagraph (A)(i) or
5 (B), the Secretary shall take into consideration
6 the recommendations (if any) of the National
7 Committee on Vital and Health Statistics. In
8 making such recommendations, the National
9 Committee on Vital and Health Statistics shall
10 consult with all affected parties, including
11 health care providers, patients, vendors, health
12 plans, and regional health information organiza-
13 tions.

14 (5) EFFECT OF FAILURE TO SEEK ACCREDITA-
15 TION BY ANSI.—In determining whether to approve
16 the Certification Commission for Healthcare Infor-
17 mation Technology under paragraph (3)(B), the Sec-
18 retary shall not give any negative weight to a deci-
19 sion by the Commission to forgo seeking accredita-
20 tion by the American National Standards Institute.

21 (b) TECHNICAL STANDARDS AND COMPLIANCE CRI-
22 TERIA.—The Secretary shall adopt such technical stand-
23 ards and compliance criteria for the organization and con-
24 tent of health information networks under section 3 as the
25 Secretary deems appropriate to ensure that health infor-

1 mation data can be exchanged among such networks and
2 between health information networks and Federal agen-
3 cies. The Secretary may delegate the authority to adopt
4 such standards and criteria to a private entity, if—

5 (1) the entity is accredited by the American
6 National Standards Institute; or

7 (2) the Secretary biannually certifies that the
8 entity's processes for adoption of standards and—

9 (A) compliance criteria—

10 (i) are open to input for all affected
11 parties, including health care providers,
12 patients, vendors, and health plans re-
13 gional health information organizations;

14 (ii) reflect the prevailing opinion
15 among the affected parties; and

16 (iii) promote quality, safety, and effi-
17 ciency in health care;

18 (B) governance procedures ensure effective
19 representation of and accountability to affected
20 stakeholder groups and transparent decision-
21 making processes.

22 **SEC. 5. LOANS.**

23 (a) IN GENERAL.—The Secretary may make loans to
24 any regional health information organization with a health
25 information network that is accredited or provisionally ac-

1 credited under section 3(e) to finance investments in net-
2 work infrastructure and technology acquisition, training,
3 and workflow engineering for physicians.

4 (b) TERMS AND CONDITIONS.—Each loan under this
5 section shall be subject to such terms and conditions as
6 the Secretary deems appropriate, except that—

7 (1) the repayment period of each such loan may
8 not exceed 10 years;

9 (2) no funds from the loan may be used to ac-
10 quire a health information technology product for
11 which the Certification Commission for Healthcare
12 Information Technology has established a certifi-
13 cation process unless such health information tech-
14 nology product has been so certified;

15 (3) any technology investments paid for in
16 whole or in part with funds from the loan must com-
17 ply with the privacy requirements of section 3(b);
18 and

19 (4) the Secretary shall require the regional
20 health information organization involved to provide
21 to the Secretary an annual accounting of loan funds.

1 **SEC. 6. SAFE HARBOR FOR EQUIPMENT AND SERVICES**
2 **PROVIDED FOR THE DEVELOPMENT OR IM-**
3 **PLEMENTATION OF A HEALTH INFORMATION**
4 **NETWORK.**

5 (a) IN GENERAL.—Paragraph (3) of section
6 1128B(b) of the Social Security Act (42 U.S.C. 1320a–
7 7b(b)) is amended—

8 (1) by striking the period at the end of the first
9 subparagraph (H) and inserting a semicolon;

10 (2) by redesignating the second subparagraph
11 (H) as subparagraph (I);

12 (3) by striking the period at the end of sub-
13 paragraph (I) (as so redesignated) and inserting “;
14 and”; and

15 (4) by adding at the end the following:

16 “(J) the provision of any equipment or
17 services that are appropriate for the develop-
18 ment or implementation of a regional health in-
19 formation technology plan approved by the Sec-
20 retary under section 3 of the 21st Century
21 Health Information Act of 2005, including the
22 provision of hardware, software, and services
23 necessary to participate in a health information
24 network so long as—

25 “(i) any patient data and information
26 that is accessible to recipients of such

1 equipment and services is also accessible to
2 other appropriate persons or entities
3 through a regional health information net-
4 work accredited or provisionally accredited
5 under section 3(e) of the 21st Century
6 Health Information Act of 2005;

7 “(ii) any such equipment or services
8 provided are capable of and intended to be
9 used to access, transfer, and exchange pa-
10 tient data and information with other par-
11 ticipants in a regional health information
12 network accredited or provisionally accred-
13 ited under section 3(e) of the 21st Century
14 Health Information Act of 2005; and

15 “(iii) any such equipment or services
16 are not provided in a manner that takes
17 into account the volume or value of refer-
18 rals or other business generated between
19 the parties.”.

20 (b) ADDITIONAL SAFE HARBOR.—(1) Subject to
21 paragraph (2), the Secretary shall consider the establish-
22 ment of a safe harbor under subsection (a) of section
23 1128C of the Social Security Act (42 U.S.C. 1320a–7c)
24 to permit the provision of equipment or services intended
25 to permit the exchange of health care information to im-

1 prove health care quality, reduce medical errors, reduce
2 health care costs, or improve the coordination of health
3 care services.

4 (2) Insofar as the Secretary develops a safe harbor
5 under paragraph (1)___

6 (A) such safe harbor may only apply to geo-
7 graphic areas that are not covered by a regional
8 health information network accredited by the Sec-
9 retary under section 3(e) of the 21st Century Health
10 Information Act of 2005;

11 (B) any equipment or services provided pursu-
12 ant to the safe harbor are not provided in a manner
13 that takes into account the volume or value of refer-
14 rals or other business generated between the parties
15 involved; and

16 (C) any such equipment or services shall comply
17 with data standards for interoperability adopted by
18 the certification entity described in section 4 of the
19 21st Century Health Information Act of 2005.

20 **SEC. 7. EXCEPTION TO MEDICARE LIMITATIONS ON PHYSI-**
21 **CIAN SELF-REFERRAL.**

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

1 “(9) DEVELOPMENT OR IMPLEMENTATION OF A
2 HEALTH INFORMATION NETWORK.—The provision of
3 any equipment or services that are appropriate for
4 the development or implementation of a regional
5 health information technology plan approved by the
6 Secretary under section 3 of the 21st Century
7 Health Information Act of 2005, including the provi-
8 sion of hardware, software, and services necessary to
9 participate in a health information network so long
10 as—

11 “(A) any patient data and information
12 that is accessible to recipients of such equip-
13 ment and services is also accessible to other ap-
14 propriate persons or entities through a regional
15 health information network accredited or provi-
16 sionally accredited under section 3(e) of the
17 21st Century Health Information Act of 2005;

18 “(B) any such equipment or services pro-
19 vided are capable of and intended to be used to
20 access, transfer, and exchange patient data and
21 information with other participants in a re-
22 gional health information network accredited or
23 provisionally accredited under section 3(e) of
24 the 21st Century Health Information Act of
25 2005; and

1 “(C) any such equipment or services are
2 not provided in a manner that takes into ac-
3 count the volume or value of referrals or other
4 business generated between the parties.”.

5 (b) ADVISORY OPINION.—(1) Subject to paragraph
6 (2), the Secretary shall consider the issuance of an advi-
7 sory opinion under subsection (g)(6) of section 1877 of
8 the Social Security Act (42 U.S.C. 1395nn) to permit the
9 provision of equipment or services intended to permit the
10 exchange of health care information to improve health care
11 quality, reduce medical errors, reduce health care costs,
12 or improve the coordination of health care services.

13 (2) Insofar as the Secretary develops an advisory
14 opinion under paragraph (1)___

15 (A) such advisory opinion may only apply to ge-
16 ographic areas that are not covered by a regional
17 health information network accredited by the Sec-
18 retary under section 3(e) of the 21st Century Health
19 Information Act of 2005;

20 (B) any equipment or services provided pursu-
21 ant to the advisory opinion are not provided in a
22 manner that takes into account the volume or value
23 of referrals or other business generated between the
24 parties involved; and

1 (C) any such equipment or services shall comply
2 with data standards for interoperability adopted by
3 the certification entity described in section 4 of the
4 21st Century Health Information Act of 2005.

5 **SEC. 8. ADJUSTMENTS TO MEDICARE PAYMENTS TO PRO-**
6 **VIDERS OF SERVICE AND SUPPLIERS PAR-**
7 **TICIPATING IN HEALTH INFORMATION NET-**
8 **WORKS.**

9 (a) IN GENERAL.—The Secretary shall establish a
10 methodology for making adjustments in payment amounts
11 under title XVIII of the Social Security Act (42 U.S.C.
12 1395 et seq.) made to providers of services and suppliers
13 who furnish items or services for which payment is made
14 under that title who—

15 (1) participate in a health information network
16 accredited or provisionally accredited by the Sec-
17 retary under section 3(e); and

18 (2) in the course of furnishing items and serv-
19 ices for which payment may be made under such
20 title, use health information technology with patient-
21 specific applications that the Secretary determines
22 improve the quality and accuracy of clinical decision-
23 making (such as electronic medical records, elec-
24 tronic prescribing, and computerized physician order
25 entry with clinical decision-support capabilities) .

1 (b) ESTABLISHMENT AND MODIFICATION OF
2 CODES.—The methodology under subsection (a) shall—

3 (1) include the establishment of new codes,
4 modification of existing codes, and adjustment of
5 evaluation and management modifiers to such codes
6 that take into account the costs of acquiring, using,
7 and maintaining health information technology with
8 patient-specific applications; and

9 (2) take into account estimated aggregate an-
10 nual savings in overall payments under such title
11 XVIII attributable to the use of health information
12 technology with patient-specific applications.

13 (c) DURATION.—The Secretary may reduce or elimi-
14 nate adjustments established made to subsection (a) as
15 payment methodologies under title XVIII of the Social Se-
16 curity Act are adjusted to reflect provider quality and effi-
17 ciency.

18 (d) RULE OF CONSTRUCTION.—In making national
19 coverage determinations under section 1862(a) of the So-
20 cial Security Act (42 U.S.C. 1395y(a)) with respect to
21 maintaining health information technology with patient-
22 specific applications, in determining whether the health in-
23 formation technology is reasonable and necessary for the
24 diagnosis or treatment of illness or injury or to improve
25 the functioning of a malformed body member, the Sec-

1 retary shall consider whether the health information tech-
2 nology improves clinical outcomes or cost-effectiveness of
3 treatment.

4 (e) DEFINITIONS.—In this section:

5 (1) PROVIDER OF SERVICES.—The term “pro-
6 vider of services” has the meaning given such term
7 under section 1861(u) of the Social Security Act (42
8 U.S.C. 1395x(u)).

9 (2) SUPPLIER.—The term “supplier” has the
10 meaning given such term under section 1861(d) of
11 such Act (42 U.S.C. 1395x(d)).

12 **SEC. 9. MEDICAID PAYMENTS FOR INFORMATION INFRA-**
13 **STRUCTURE FOR HEALTH INFORMATION**
14 **NETWORK AND INFORMATION TECHNOLOGY.**

15 In the case of a State that provides funding under
16 a State plan under title XIX of the Social Security Act
17 (42 U.S.C. 1396 et seq.) for the development and imple-
18 mentation of a regional health information technology plan
19 approved by the Secretary under section 3, the Secretary
20 shall make matching payments to States under section
21 1903(a) of such Act (42 U.S.C. 1396b(a)) for such fund-
22 ing—

23 (1) to the extent such funding supports develop-
24 ment of the health information network and is rea-
25 sonably related to the Medicaid population’s share of

1 the applicable region’s patient population or to Med-
2 icaid’s share of the applicable region’s health care
3 costs; or

4 (2) to the extent such funding directly or indi-
5 rectly assists community health centers or other
6 Medicaid providers acquire and implement tech-
7 nology in order to participate in the network.

8 **SEC. 10. DEFINITIONS.**

9 In this Act:

10 (1) The term “community health center” means
11 a health center eligible for assistance under section
12 330 of the Public Health Service Act (42 U.S.C.
13 254b).

14 (2) The term “health care provider” means an
15 entity involved in consultation, prevention, diagnosis,
16 and treatment, including but not limited to a physi-
17 cian group, physician in individual practice, psychol-
18 ogist or other mental health clinician licensed by the
19 State, hospital, community health center, community
20 mental health center, nursing facility, skilled nursing
21 facility, laboratory, imaging center, or pharmacy.

22 (3) The term “health information network”
23 means a health information network described in
24 section 3(a)(3)(A)(i).

1 (4) The term “health information technology”
2 means products, devices, or systems that allow for
3 the electronic collection, storage, exchange, or man-
4 agement of patient information.

5 (5) The term “health plans” means a group
6 health plan or a health insurance issuer that is of-
7 fering health insurance coverage.

8 (6) The terms “health insurance coverage” and
9 “health insurance issuer” have the meanings given
10 such terms under paragraphs (1) and (2), respec-
11 tively, of section 733(b) of the Employee Retirement
12 Income Security Act of 1974 (29 U.S.C. 1191b(b)).

13 (7) The term “group health plan” has the
14 meaning given that term in section 733(a)(1) of the
15 Employee Retirement Income Security Act of 1974
16 (29 U.S.C. 1191b(a)(1)).

17 (8) The term “physician” has the meaning
18 given to that term in section 1861(r) of the Social
19 Security Act (42 U.S.C. 1395x(r)).

20 (9) The term “regional health information orga-
21 nization” means an organization or consortium of
22 organizations that—

23 (A) facilitates the drafting and implemen-
24 tation of a regional health information network

1 plan for a given geographic area in 1 or more
2 States;

3 (B) includes representatives of health plans
4 and other third party payers, government
5 health care programs, employers, physicians,
6 hospitals, other health care providers, and
7 health care consumers; and

8 (C) may include representatives of orga-
9 nized labor.

10 (10) The term “small physician group” means
11 a physician practice group of 10 or fewer physicians.

12 (11) The term “State” includes the 50 States
13 and the District of Columbia.

○