109TH CONGRESS 2D SESSION H.R.4157

AN ACT

To promote a better health information system.

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

1 SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

- 2 (a) SHORT TITLE.—This Act may be cited as the
- 3 "Health Information Technology Promotion Act of 2006".
- 4 (b) TABLE OF CONTENTS.—The table of contents of
- 5 this Act is as follows:
 - Sec. 1. Short title and table of contents.
 - Sec. 2. Preserving privacy and security laws.

TITLE I—COORDINATION FOR, PLANNING FOR, AND INTEROPERABILITY OF HEALTH INFORMATION TECHNOLOGY

- Sec. 101. Office of the National Coordinator for Health Information Technology.
- Sec. 102. Report on the American Health Information Community.
- Sec. 103. Interoperability planning process; Federal information collection activities.
- Sec. 104. Grants to integrated health systems to promote health information technologies to improve coordination of care for the uninsured, underinsured, and medically underserved.
- Sec. 105. Small physician practice demonstration grants.

TITLE II—TRANSACTION STANDARDS, CODES, AND INFORMATION

- Sec. 201. Procedures to ensure timely updating of standards that enable electronic exchanges.
- Sec. 202. Upgrading ASC X12 and NCPDP standards.
- Sec. 203. Upgrading ICD codes; coding and documentation of non-medical information.
- Sec. 204. Strategic plan for coordinating implementation of transaction standards and ICD codes.
- Sec. 205. Study and report to determine impact of variation and commonality in State health information laws and regulations.
- Sec. 206. Report on appropriateness of classification methodologies and codes for additional purposes.

TITLE III—PROMOTING THE USE OF HEALTH INFORMATION TECHNOLOGY TO BETTER COORDINATE HEALTH CARE

- Sec. 301. Safe harbors to antikickback civil penalties and criminal penalties for provision of health information technology and training services.
- Sec. 302. Exception to limitation on certain physician referrals (under Stark) for provision of health information technology and training services to health care professionals.
- Sec. 303. Rules of construction regarding use of consortia.

TITLE IV—ADDITIONAL PROVISIONS

- Sec. 401. Promotion of telehealth services.
- Sec. 402. Study and report on expansion of home health-related telehealth services.

- Sec. 404. Ensuring health care providers participating in PHSA programs, Medicaid, SCHIP, or the MCH program may maintain health information in electronic form.
- Sec. 405. Ensuring health care providers participating in the Medicare program may maintain health information in electronic form.
- Sec. 406. Study and report on State, regional, and community health information exchanges.
- Sec. 407. Promoting health information technology as a tool for chronic disease management.

1 SEC. 2. PRESERVING PRIVACY AND SECURITY LAWS.

2 Nothing in this Act (or the amendments made by this 3 Act) shall be construed to affect the scope, substance, or 4 applicability of section 264(c) of the Health Insurance 5 Portability and Accountability Act of 1996 and any regulation issued pursuant to such section. 6

I—COORDINATION TITLE FOR. 7 PLANNING FOR. AND INTER-8 **OPERABILITY OF HEALTH IN-**9

FORMATION TECHNOLOGY 10

11 SEC. 101. OFFICE OF THE NATIONAL COORDINATOR FOR

HEALTH INFORMATION TECHNOLOGY.

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13 (a) IN GENERAL.—Title II of the Public Health Serv-

14 ice Act is amended by adding at the end the following new 15 part:

16 **"PART D—HEALTH INFORMATION TECHNOLOGY**

17 **"SEC. 271. OFFICE OF THE NATIONAL COORDINATOR FOR**

18 HEALTH INFORMATION TECHNOLOGY.

19 "(a) ESTABLISHMENT.—There is established within 20 the Department of Health and Human Services an Office

of the National Coordinator for Health Information Tech-1 2 nology that shall be headed by the National Coordinator 3 for Health Information Technology (referred to in this 4 part as the 'National Coordinator'). The National Coordi-5 nator shall be appointed by and report directly to the Secretary. The National Coordinator shall be paid at a rate 6 7 equal to the rate of basic pay for level IV of the Executive 8 Schedule.

"(b) 9 GOALS OF NATIONWIDE INTEROPERABLE 10 HEALTH INFORMATION TECHNOLOGY INFRASTRUC-TURE.—The National Coordinator shall perform the du-11 12 ties under subsection (c) in a manner consistent with the development of a nationwide interoperable health informa-13 tion technology infrastructure that— 14

"(1) improves health care quality, promotes
data accuracy, reduces medical errors, increases the
efficiency of care, and advances the delivery of appropriate, evidence-based health care services;

"(2) promotes wellness, disease prevention, and
management of chronic illnesses by increasing the
availability and transparency of information related
to the health care needs of an individual for such individual;

24 "(3) promotes the availability of appropriate25 and accurate information necessary to make medical

decisions in a usable form at the time and in the lo-
cation that the medical service involved is provided;
"(4) produces greater value for health care ex-
penditures by reducing health care costs that result

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penditures by reducing health care costs that result from inefficiency, medical errors, inappropriate care, and incomplete or inaccurate information;

7 "(5) promotes a more effective marketplace,
8 greater competition, greater systems analysis, in9 creased consumer choice, enhanced quality, and im10 proved outcomes in health care services;

"(6) with respect to health information of consumers, advances the portability of such information
and the ability of such consumers to share and use
such information to assist in the management of
their health care;

"(7) improves the coordination of information
and the provision of such services through an effective infrastructure for the secure and authorized exchange and use of health care information;

"(8) provides for the confidentiality and security of individually identifiable health information,
consistent with legally applicable requirements with
respect to securing and protecting the confidentiality
of individually identifiable health information of a
patient;

1	"(9) promotes the creation and maintenance of
2	transportable, secure, Internet-based personal health
3	records, including promoting the efforts of health
4	care payers and health plan administrators for a
5	health plan, such as Federal agencies, private health
6	plans, and third party administrators, to provide for
7	such records on behalf of members of such a plan;
8	((10) promotes access to and review of the elec-
9	tronic health record of a patient by such patient;
10	``(11) promotes health research and health care
11	quality research and assessment;
12	((12)) promotes the efficient and streamlined
13	development, submission, and maintenance of elec-
14	tronic health care clinical trial data; and
15	"(13) improves the availability of information
16	and resources for individuals with low or limited lit-
17	eracy or language skills.
18	"(c) Duties of the National Coordinator.—
19	"(1) STRATEGIC PLANNER FOR INTEROPER-
20	ABLE HEALTH INFORMATION TECHNOLOGY.—The
21	National Coordinator shall provide for a strategic
22	plan for the nationwide implementation of interoper-
23	able health information technology in both the public
24	and private health care sectors consistent with sub-
25	section (b).

(2)1 PRINCIPAL ADVISOR ТО THE SEC-2 RETARY.—The National Coordinator shall serve as 3 the principal advisor to the Secretary on the develop-4 ment, application, and use of health information 5 technology, and shall coordinate the policies and pro-6 grams of the Department of Health and Human 7 Services for promoting the use of health information 8 technology.

9 (3)INTRAGOVERNMENTAL COORDINATOR.— 10 The National Coordinator shall ensure that health 11 information technology policies and programs of the 12 Department of Health and Human Services are co-13 ordinated with those of relevant executive branch 14 agencies and departments with a goal to avoid dupli-15 cation of effort, to align the health information ar-16 chitecture of each agency or department toward a 17 common approach, to ensure that each agency or de-18 partment conducts programs within the areas of its 19 greatest expertise and its mission in order to create 20 a national interoperable health information system 21 capable of meeting national public health needs ef-22 fectively and efficiently, and to assist Federal agen-23 cies and departments in security programs, policies, 24 and protections to prevent unauthorized access to in-25 dividually identifiable health information created,

1 maintained, or in the temporary possession of that 2 agency or department. The coordination authority provided to the National Coordinator under the pre-3 4 vious sentence shall supercede any such authority otherwise provided to any other official of the De-5 6 partment of Health and Human Services. For the 7 purposes of this paragraph, the term 'unauthorized 8 access' means access that is not authorized by that 9 agency or department including unauthorized em-10 ployee access.

"(4) ADVISOR TO OMB.—The National Coordinator shall provide to the Director of the Office of
Management and Budget comments and advice with
respect to specific Federal health information technology programs.

16 "(5) PROMOTER OF HEALTH INFORMATION
17 TECHNOLOGY IN MEDICALLY UNDERSERVED COMMU18 NITIES.—The National Coordinator shall—

"(A) identify sources of funds that will be
made available to promote and support the
planning and adoption of health information
technology in medically underserved communities, including in urban and rural areas, either through grants or technical assistance;

"(B) coordinate with the funding sources
 to help such communities connect to identified
 funding; and

4 "(C) collaborate with the Agency for 5 Healthcare Research and Quality and the 6 Health Services Resources Administration and 7 other Federal agencies to support technical as-8 sistance, knowledge dissemination, and resource 9 development, to medically underserved commu-10 nities seeking to plan for and adopt technology 11 and establish electronic health information net-12 works across providers.".

13 (b) TREATMENT OF EXECUTIVE ORDER NO.
14 13335.—Executive Order No. 13335 shall not have any
15 force or effect after the date of the enactment of this Act.
16 (c) TRANSITION FROM ONCHIT UNDER EXECUTIVE
17 ORDER.—

18 (1) IN GENERAL.—All functions, personnel, as-19 sets, liabilities, administrative actions, and statutory 20 reporting requirements applicable to the old Na-21 tional Coordinator or the Office of the old National 22 Coordinator on the date before the date of the enact-23 ment of this Act shall be transferred, and applied in 24 the same manner and under the same terms and 25 conditions, to the new National Coordinator and the

Office of the new National Coordinator as of the
 date of the enactment of this Act.

(2) RULE OF CONSTRUCTION.— Nothing in this 3 4 section or the amendment made by this section shall 5 be construed as requiring the duplication of Federal 6 efforts with respect to the establishment of the Of-7 fice of the National Coordinator for Health Informa-8 tion Technology, regardless of whether such efforts 9 are carried out before or after the date of the enact-10 ment of this Act.

11 (3) ACTING NATIONAL COORDINATOR.—Before 12 the appointment of the new National Coordinator, 13 the old National Coordinator shall act as the Na-14 tional Coordinator for Health Information Tech-15 nology until the office is filled as provided in section 16 271(a) of the Public Health Service Act, as added 17 by subsection (a). The Secretary of Health and 18 Human Services may appoint the old National Coor-19 dinator as the new National Coordinator.

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

(A) NEW NATIONAL COORDINATOR.—The
term "new National Coordinator" means the
National Coordinator for Health Information
Technology appointed under section 271(a) of

1	the Public Health Service Act, as added by sub-
2	section (a).
3	(B) OLD NATIONAL COORDINATOR.—The
4	term "old National Coordinator" means the
5	National Coordinator for Health Information
6	Technology appointed under Executive Order
7	No. 13335.
8	(d) Study of Health Information Technology
9	in Medically Underserved Communities.—
10	(1) Study.—The National Coordinator for
11	Health Information Technology shall conduct a
12	study on the development and implementation of
13	health information technology in medically under-
14	served communities. The study shall—
15	(A) identify barriers to successful imple-
16	mentation of health information technology in
17	these communities;
18	(B) examine the impact of health informa-
19	tion technology on providing quality care and
20	reducing the cost of care to these communities;
21	(C) examine urban and rural community
22	health systems and determine the impact that
23	health information technology may have on the
24	capacity of primary health providers; and

1 (D) assess the feasibility and the costs of 2 associated with the use of health information 3 technology in these communities.

4 (2) REPORT.—Not later than 18 months after 5 the date of the enactment of this Act, the National 6 Coordinator shall submit to Congress a report on the 7 study conducted under paragraph (1) and shall in-8 clude in such report such recommendations for legis-9 lation or administrative action as the Coordinator 10 determines appropriate.

11 SEC. 102. REPORT ON THE AMERICAN HEALTH INFORMA12 TION COMMUNITY.

Not later than one year after the date of the enactment of this Act, the Secretary of Health and Human
Services shall submit to Congress a report on the work
conducted by the American Health Information Community (in this section referred to as "AHIC"), as established
by the Secretary. Such report shall include the following:

(1) A description of the accomplishments of
AHIC, with respect to the promotion of the development of national guidelines, the development of a
nationwide health information network, and the increased adoption of health information technology.

24 (2) Information on how model privacy and secu-25 rity policies may be used to protect confidentiality of

1	health information, and an assessment of how exist-
2	ing policies compare to such model policies.
3	(3) Information on the progress in—
4	(A) establishing uniform industry-wide
5	health information technology standards;
6	(B) achieving an internet-based nationwide
7	health information network;
8	(C) achieving interoperable electronic
9	health record adoption across health care pro-
10	viders; and
11	(D) creating technological innovations to
12	promote security and confidentiality of individ-
13	ually identifiable health information.
14	(4) Recommendations for the transition of
15	AHIC to a longer-term or permanent advisory and
16	facilitation entity, including—
17	(A) a schedule for such transition;
18	(B) options for structuring the entity as ei-
19	ther a public-private or private sector entity;
20	(C) the collaborative role of the Federal
21	Government in the entity;
22	(D) steps for—
23	(i) continued leadership in the facilita-
24	tion of guidelines or standards;

1	(ii) the alignment of financial incen-
2	tives; and
3	(iii) the long-term plan for health care
4	transformation through information tech-
5	nology; and
6	(E) the elimination or revision of the func-
7	tions of AHIC during the development of the
8	nationwide health information network.
9	(5) Recommendations on the inclusion of emer-
10	gency contact or next-of-kin information (including
11	name and phone number) in interoperable electronic
12	health records.
13	SEC. 103. INTEROPERABILITY PLANNING PROCESS; FED-
13	SEC. 105. INTEROPERADILITT PLAINNING PROCESS; FED-
13	ERAL INFORMATION COLLECTION ACTIVI-
14	ERAL INFORMATION COLLECTION ACTIVI-
14 15	ERAL INFORMATION COLLECTION ACTIVI- TIES.
14 15 16 17	ERAL INFORMATION COLLECTION ACTIVI- TIES. Part D of title II of the Public Health Service Act,
14 15 16 17 18	ERAL INFORMATION COLLECTION ACTIVI- TIES. Part D of title II of the Public Health Service Act, as added by section 101(a), is amended by adding at the
14 15 16 17 18 19	ERAL INFORMATION COLLECTION ACTIVI- TIES. Part D of title II of the Public Health Service Act, as added by section 101(a), is amended by adding at the end the following new section:
14 15 16 17 18	ERAL INFORMATION COLLECTION ACTIVI- TIES. Part D of title II of the Public Health Service Act, as added by section 101(a), is amended by adding at the end the following new section: "SEC. 272. INTEROPERABILITY PLANNING PROCESS; FED-
 14 15 16 17 18 19 20 21 	ERAL INFORMATION COLLECTION ACTIVI- TIES. Part D of title II of the Public Health Service Act, as added by section 101(a), is amended by adding at the end the following new section: "SEC. 272. INTEROPERABILITY PLANNING PROCESS; FED- ERAL INFORMATION COLLECTION ACTIVI-
 14 15 16 17 18 19 20 21 22 	ERAL INFORMATION COLLECTION ACTIVI- TIES. Part D of title II of the Public Health Service Act, as added by section 101(a), is amended by adding at the end the following new section: "SEC. 272. INTEROPERABILITY PLANNING PROCESS; FED- ERAL INFORMATION COLLECTION ACTIVI- TIES.
 14 15 16 17 18 19 20 21 22 	ERAL INFORMATION COLLECTION ACTIVI- TIES. Part D of title II of the Public Health Service Act, as added by section 101(a), is amended by adding at the end the following new section: "SEC. 272. INTEROPERABILITY PLANNING PROCESS; FED- ERAL INFORMATION COLLECTION ACTIVI- TIES. "(a) STRATEGIC INTEROPERABILITY PLANNING

1	"(A) IN GENERAL.—Not later than De-
2	cember 31, 2006, the National Coordinator
3	shall publish a strategic plan, including a sched-
4	ule, for the assessment and the endorsement of
5	core interoperability guidelines for significant
6	use cases consistent with this subsection. The
7	National Coordinator may update such plan
8	from time to time.
9	"(B) ENDORSEMENT.—
10	"(i) IN GENERAL.—Consistent with
11	the schedule under this paragraph and not
12	later than one year after the publication of
13	such schedule, the National Coordinator
14	shall endorse a subset of core interoper-
15	ability guidelines for significant use cases.
16	The National Coordinator shall continue to
17	endorse subsets of core interoperability
18	guidelines for significant use cases annu-
19	ally consistent with the schedule published
20	pursuant to this paragraph, with endorse-
21	ment of all such guidelines completed not
22	later than August 31, 2009.
23	"(ii) Consultation.—All such en-
24	dorsements shall be in consultation with

2	the American Health Information Commu-
	nity and other appropriate entities.
3	"(iii) Voluntary compliance.—
4	Compliance with such guidelines shall be
5	voluntary, subject to subsection (b)(1).
6	"(C) Consultation with other par-
7	TIES.—The National Coordinator shall develop
8	and implement such strategic plan in consulta-
9	tion with the American Health Information
10	Community and other appropriate entities.
11	"(D) DEFINITIONS.—For purposes of this
12	section:
13	"(i) INTEROPERABILITY GUIDE-
14	LINE.—The term 'interoperability guide-
15	line' means a guideline to improve and pro-
16	mote the interoperability of health infor-
17	mation technology for purposes of elec-
18	tronically accessing and exchanging health
19	information. Such term includes named
20	standards, architectures, software schemes
-	for identification, authentication, and secu-
21	· · · · · · · · · · · · · · · · · · ·
	rity, and other information needed to en-
21	rity, and other information needed to en- sure the reproducible development of com-
19	information. Such term includes nam standards, architectures, software schem for identification, authentication, and sec

1	"(ii) Core interoperability guide-
2	LINE.—The term 'core interoperability
3	guideline' means an interoperability guide-
4	line that the National Coordinator deter-
5	mines is essential and necessary for pur-
6	poses described in clause (i).
7	"(iii) Significant use case.—The
8	term 'significant use case' means a cat-
9	egory (as specified by the National Coordi-
10	nator) that identifies a significant use or
11	purpose for the interoperability of health
12	information technology, such as for the ex-
13	change of laboratory information, drug
14	prescribing, clinical research, and elec-
15	tronic health records.
16	"(2) NATIONAL SURVEY.—
17	"(A) IN GENERAL.—Not later than August
18	31, 2008, the National Coordinator shall con-
19	duct one or more surveys designed to measure
20	the capability of entities (including Federal
21	agencies, State and local government agencies,
22	and private sector entities) to exchange elec-
23	tronic health information by appropriate signifi-
24	cant use case. Such surveys shall identify the
25	extent to which the type of health information,

1	the use for such information, or any other ap-
2	propriate characterization of such information
3	may relate to the capability of such entities to
4	exchange health information in a manner that
5	is consistent with methods to improve the inter-
6	operability of health information and with core
7	interoperability guidelines.
8	"(B) DISSEMINATION OF SURVEY RE-
9	SULTS.—The National Coordinator shall dis-
10	seminate the results of such surveys in a man-
11	ner so as to—
12	"(i) inform the public on the capabili-
13	ties of entities to exchange electronic
14	health information;
15	"(ii) assist in establishing a more
16	interoperable information architecture; and
17	"(iii) identify the status of health in-
18	formation systems used in Federal agen-
19	cies and the status of such systems with
20	respect to interoperability guidelines.
21	"(b) Federal Health Information Collection
22	ACTIVITIES.—
23	"(1) REQUIREMENTS.—With respect to a core
24	interoperability guideline endorsed under subsection
25	(a)(1)(B) for a significant use case, the President

shall take measures to ensure that Federal activities

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2 involving the broad collection and submission of 3 health information are consistent with such guideline 4 within three years after the date of such endorse-5 ment. 6 "(2) Promoting use of non-identifiable 7 HEALTH INFORMATION TO IMPROVE HEALTH RE-8 SEARCH AND HEALTH CARE QUALITY.-9 "(A) IN GENERAL.—Where feasible, and 10 consistent with applicable privacy or security or 11 other laws, the President, in consultation with 12 the Secretary, shall take measures to allow 13 timely access to useful categories of non-identi-14 fiable health information in records maintained 15 by the Federal government, or maintained by 16 entities under contract with the Federal govern-17 ment, to advance health care quality and health 18 research where such information is in a form 19 that can be used in such research. The Presi-20 dent shall consult with appropriate Federal 21 agencies, and solicit public comment, on useful 22 categories of information, and appropriate 23 measures to take. The President may consider 24 the administrative burden and the potential for 25 improvements in health care quality in deter-

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mining such appropriate measures. In addition, the President, in consultation with the Secretary, shall encourage voluntary private and public sector efforts to allow access to such useful categories of non-identifiable health information to advance health care quality and health research.

8 "(B) NON-IDENTIFIABLE HEALTH INFOR-9 MATION DEFINED.—For purposes of this para-10 graph, the term 'non-identifiable health infor-11 mation' means information that is not individ-12 ually identifiable health information as defined 13 in rules promulgated pursuant to section 264(c)14 of the Health Insurance Portability and Ac-15 countability Act of 1996 (42 U.S.C. 1320d–2 16 note), and includes information that has been 17 de-identified so that it is no longer individually 18 identifiable health information, as defined in 19 such rules.

20 "(3) ANNUAL REVIEW AND REPORT.—For each
21 year during the five-year period following the date of
22 the enactment of this section, the National Coordi23 nator shall review the operation of health informa24 tion collection by and submission to the Federal gov25 ernment and the purchases (and planned purchases)

1	of health information technology by the Federal gov-
2	ernment. For each such year and based on the re-
3	view for such year, the National Coordinator shall
4	submit to the President and Congress recommenda-
5	tions on methods to—
6	"(A) streamline (and eliminate redundancy
7	in) Federal systems used for the collection and
8	submission of health information;
9	"(B) improve efficiency in such collection
10	and submission;
11	"(C) increase the ability to assess health
12	care quality; and
13	"(D) reduce health care costs.".
14	SEC. 104. GRANTS TO INTEGRATED HEALTH SYSTEMS TO
15	PROMOTE HEALTH INFORMATION TECH-
16	NOLOGIES TO IMPROVE COORDINATION OF
17	CARE FOR THE UNINSURED, UNDERINSURED,
18	AND MEDICALLY UNDERSERVED.
19	Subpart I of part D of title III of the Public Health
20	Service Act (42 U.S.C. 254b et seq.) is amended by adding
21	at the end the following:

"SEC. 330M. GRANTS FOR IMPROVEMENT OF THE COORDI NATION OF CARE FOR THE UNINSURED,
 UNDERINSURED, AND MEDICALLY UNDER SERVED.

5 "(a) IN GENERAL.—The Secretary may make grants to integrated health care systems, in accordance with this 6 7 section, for projects to better coordinate the provision of 8 health care through the adoption of new health informa-9 tion technology, or the significant improvement of existing health information technology, to improve the provision of 10 health care to uninsured, underinsured, and medically un-11 derserved individuals (including in urban and rural areas) 12 13 through health-related information about such individuals, 14 throughout such a system and at the point of service.

- 15 "(b) ELIGIBILITY.—
- "(1) APPLICATION.—To be eligible to receive a
 grant under this section, an integrated health care
 system shall prepare and submit to the Secretary an
 application, at such time, in such manner, and containing such information as the Secretary may require, including—
- 22 "(A) a description of the project that the
 23 system will carry out using the funds provided
 24 under the grant;

"(B) a description of the manner in which
 the project funded under the grant will advance
 the goal specified in subsection (a); and
 "(C) a description of the populations to be
 served by the adoption or improvement of

health information technology.

7 "(2) Optional reporting condition.—The Secretary may also condition the provision of a 8 9 grant to an integrated health care system under this 10 section for a project on the submission by such sys-11 tem to the Secretary of a report on the impact of 12 the health information technology adopted (or im-13 proved) under such project on the delivery of health 14 care and the quality of care (in accordance with ap-15 plicable measures of such quality). Such report shall 16 be at such time and in such form and manner as 17 specified by the Secretary.

18 "(c) INTEGRATED HEALTH CARE SYSTEM DE-19 FINED.—For purposes of this section, the term 'integrated 20 health care system' means a system of health care pro-21 viders that is organized to provide care in a coordinated 22 fashion and has a demonstrated commitment to provide 23 uninsured, underinsured, and medically underserved indi-24 viduals with access to such care.

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1	"(d) PRIORITIES.—In making grants under this sec-
2	tion, the Secretary shall give priority to an integrated
3	health care system—
4	$\ensuremath{^{\prime\prime}}(1)$ that can demonstrate past successful com-
5	munity-wide efforts to improve the quality of care
6	provided and the coordination of care for the unin-
7	sured, underinsured, and medically underserved;
8	((2) if the project to be funded through such a
9	grant—
10	"(A) will improve the delivery of health
11	care and the quality of care provided; and
12	"(B) will demonstrate savings for State or
13	Federal health care benefits programs or enti-
14	ties legally obligated under Federal law to pro-
15	vide health care from the reduction of duplica-
16	tive health care services, administrative costs,
17	and medical errors; or
18	((3) if the project to be funded through such a
19	grant will emphasize the improvement of access to
20	medical care and medical care for medically under-
21	served populations which are geographically isolated
22	or located in underserved urban areas.
23	"(e) Limitation, Matching Requirement, and
24	CONDITIONS.—

"(1) LIMITATION ON USE OF FUNDS.—None of 1 2 the funds provided under a grant made under this 3 section may be used for a project providing for the 4 adoption or improvement of health information tech-5 nology that is used exclusively for financial record 6 keeping, billing, or other non-clinical applications. 7 "(2) MATCHING REQUIREMENT.—To be eligible 8 for a grant under this section an integrated health 9 care system shall contribute non-Federal contribu-10 tions to the costs of carrying out the project for 11 which the grant is awarded in an amount equal to 12 \$1 for each \$5 of Federal funds provided under the 13 grant. 14 "(f) AUTHORIZATION OF APPROPRIATIONS.—There 15 are authorized to be appropriated to carry out this section 16 \$15,000,000 for each of fiscal years 2007 and 2008.". 17 SEC. 105. SMALL PHYSICIAN PRACTICE DEMONSTRATION 18 GRANTS. 19 Part D of title II of the Public Health Service Act, as added by section 101(a) and amended by section 103, 20 21 is amended by adding at the end the following new section: 22 **"SEC. 273. SMALL PHYSICIAN PRACTICE DEMONSTRATION** 23 GRANTS. 24

24 "(a) IN GENERAL.—The Secretary shall establish a25 demonstration program under which the Secretary makes

grants to small physician practices (including such prac tices that furnish services to individuals with chronic ill nesses) that are located in rural areas or medically under served urban areas for the purchase and support of health
 information technology.

6 "(b) ELIGIBILITY.—To be eligible to receive a grant 7 under this section, an applicant shall prepare and submit 8 to the Secretary an application, at such time, in such man-9 ner, and containing such information, as the Secretary 10 may require.

11 "(c) Reporting.—

"(1) REQUIRED REPORTS BY SMALL PHYSICIAN
PRACTICES.—A small physician practice receiving a
grant under subsection (a) shall submit to the Secretary an evaluation on the health information technology funded by such grant. Such evaluation shall
include information on—

18 "(A) barriers to the adoption of health in19 formation technology by the small physician
20 practice;

21 "(B) issues for such practice in the use of
22 health information technology;

23 "(C) the effect health information tech24 nology will have on the quality of health care
25 furnished by such practice; and

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1	"(D) the effect of any medical liability
2	rules on such practice.
3	"(2) REPORT TO CONGRESS.—Not later than
4	January 1, 2009, the Secretary shall submit to Con-
5	gress a report on the results of the demonstration
6	program under this section.
7	"(d) Authorization of Appropriations.—There
8	are authorized to be appropriated to carry out this section
9	\$5,000,000 for each of fiscal years 2007 and 2008.".
10	TITLE II—TRANSACTION STAND-
11	ARDS, CODES, AND INFORMA-
12	TION
13	SEC. 201. PROCEDURES TO ENSURE TIMELY UPDATING OF
13 14	SEC. 201. PROCEDURES TO ENSURE TIMELY UPDATING OF STANDARDS THAT ENABLE ELECTRONIC EX-
14	STANDARDS THAT ENABLE ELECTRONIC EX-
14 15	STANDARDS THAT ENABLE ELECTRONIC EX- CHANGES.
14 15 16	STANDARDS THAT ENABLE ELECTRONIC EX- CHANGES. Section 1174(b) of the Social Security Act (42 U.S.C.
14 15 16 17	STANDARDS THAT ENABLE ELECTRONIC EX- CHANGES. Section 1174(b) of the Social Security Act (42 U.S.C. 1320d–3(b)) is amended—
14 15 16 17 18	STANDARDS THAT ENABLE ELECTRONIC EX- CHANGES. Section 1174(b) of the Social Security Act (42 U.S.C. 1320d–3(b)) is amended— (1) in paragraph (1)—
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 14 15 16 17 18 19 20 	STANDARDS THAT ENABLE ELECTRONIC EX- CHANGES. Section 1174(b) of the Social Security Act (42 U.S.C. 1320d–3(b)) is amended— (1) in paragraph (1)— (A) in the first sentence, by inserting "and in accordance with paragraph (3)" before the
 14 15 16 17 18 19 20 21 	STANDARDS THAT ENABLE ELECTRONIC EX- CHANGES. Section 1174(b) of the Social Security Act (42 U.S.C. 1320d–3(b)) is amended— (1) in paragraph (1)— (A) in the first sentence, by inserting "and in accordance with paragraph (3)" before the period; and
 14 15 16 17 18 19 20 21 22 	STANDARDS THAT ENABLE ELECTRONIC EX- CHANGES. Section 1174(b) of the Social Security Act (42 U.S.C. 1320d–3(b)) is amended— (1) in paragraph (1)— (A) in the first sentence, by inserting "and in accordance with paragraph (3)" before the period; and (B) by adding at the end the following new

	20
1	cludes a new version or a version upgrade.";
2	and
3	(2) by adding at the end the following new
4	paragraph:
5	"(3) EXPEDITED PROCEDURES FOR ADOPTION
6	OF ADDITIONS AND MODIFICATIONS TO STAND-
7	ARDS.—
8	"(A) IN GENERAL.—For purposes of para-
9	graph (1), the Secretary shall provide for an ex-
10	pedited upgrade program (in this paragraph re-
11	ferred to as the 'upgrade program'), in accord-
12	ance with this paragraph, to develop and ap-
13	prove additions and modifications to the stand-
14	ards adopted under section 1173(a) to improve
15	the quality of such standards or to extend the
16	functionality of such standards to meet evolving
17	requirements in health care.
18	"(B) PUBLICATION OF NOTICES.—Under
19	the upgrade program:
20	"(i) VOLUNTARY NOTICE OF INITI-
21	ATION OF PROCESS.—Not later than 30
22	days after the date the Secretary receives
23	a notice from a standard setting organiza-
24	tion that the organization is initiating a
25	process to develop an addition or modifica-

1	tion to a standard adopted under section
2	1173(a), the Secretary shall publish a no-
3	tice in the Federal Register that—
4	"(I) identifies the subject matter
5	of the addition or modification;
6	"(II) provides a description of
7	how persons may participate in the
8	development process; and
9	"(III) invites public participation
10	in such process.
11	"(ii) VOLUNTARY NOTICE OF PRE-
12	LIMINARY DRAFT OF ADDITIONS OR MODI-
13	FICATIONS TO STANDARDS.—Not later
14	than 30 days after the date of the date the
15	Secretary receives a notice from a standard
16	setting organization that the organization
17	has prepared a preliminary draft of an ad-
18	dition or modification to a standard adopt-
19	ed by section 1173(a), the Secretary shall
20	publish a notice in the Federal Register
21	that—
22	"(I) identifies the subject matter
23	of (and summarizes) the addition or
24	modification;

1	"(II) specifies the procedure for
2	obtaining the draft;
3	"(III) provides a description of
4	how persons may submit comments in
5	writing and at any public hearing or
6	meeting held by the organization on
7	the addition or modification; and
8	"(IV) invites submission of such
9	comments and participation in such
10	hearing or meeting without requiring
11	the public to pay a fee to participate.
12	"(iii) NOTICE OF PROPOSED ADDITION
13	OR MODIFICATION TO STANDARDS.—Not
14	later than 30 days after the date of the
15	date the Secretary receives a notice from a
16	standard setting organization that the or-
17	ganization has a proposed addition or
18	modification to a standard adopted under
19	section 1173(a) that the organization in-
20	tends to submit under subparagraph
21	(D)(iii), the Secretary shall publish a no-
22	tice in the Federal Register that contains,
23	with respect to the proposed addition or
24	modification, the information required in

1	the notice under clause (ii) with respect to
2	the addition or modification.
3	"(iv) Construction.—Nothing in
4	this paragraph shall be construed as re-
5	quiring a standard setting organization to
6	request the notices described in clauses (i)
7	and (ii) with respect to an addition or
8	modification to a standard in order to
9	qualify for an expedited determination
10	under subparagraph (C) with respect to a
11	proposal submitted to the Secretary for
12	adoption of such addition or modification.
13	"(C) Provision of expedited deter-
14	MINATION.—Under the upgrade program and
15	with respect to a proposal by a standard setting
16	organization for an addition or modification to
17	a standard adopted under section 1173(a), if
18	the Secretary determines that the standard set-
19	ting organization developed such addition or
20	modification in accordance with the require-
21	ments of subparagraph (D) and the National
22	Committee on Vital and Health Statistics rec-
23	ommends approval of such addition or modifica-
24	tion under subparagraph (E), the Secretary

1	shall provide for expedited treatment of such
2	proposal in accordance with subparagraph (F).
3	"(D) REQUIREMENTS.—The requirements
4	under this subparagraph with respect to a pro-
5	posed addition or modification to a standard by
6	a standard setting organization are the fol-
7	lowing:
8	"(i) Request for publication of
9	NOTICE.—The standard setting organiza-
10	tion submits to the Secretary a request for
11	publication in the Federal Register of a no-
12	tice described in subparagraph (B)(iii) for
13	the proposed addition or modification.
14	"(ii) PROCESS FOR RECEIPT AND
15	CONSIDERATION OF PUBLIC COMMENT
16	The standard setting organization provides
17	for a process through which, after the pub-
18	lication of the notice referred to under
19	clause (i), the organization—
20	"(I) receives and responds to
21	public comments submitted on a time-
22	ly basis on the proposed addition or
23	modification before submitting such
24	proposed addition or modification to

1	the National Committee on Vital and
2	Health Statistics under clause (iii);
3	"(II) makes publicly available a
4	written explanation for its response in
5	the proposed addition or modification
6	to comments submitted on a timely
7	basis; and
8	"(III) makes public comments re-
9	ceived under clause (I) available, or
10	provides access to such comments, to
11	the Secretary.
12	"(iii) SUBMITTAL OF FINAL PRO-
13	POSED ADDITION OR MODIFICATION TO
14	NCVHS.—After completion of the process
15	under clause (ii), the standard setting or-
16	ganization submits the proposed addition
17	or modification to the National Committee
18	on Vital and Health Statistics for review
19	and consideration under subparagraph (E).
20	Such submission shall include information
21	on the organization's compliance with the
22	notice and comment requirements (and re-
23	sponses to those comments) under clause
24	(ii).

1	"(E) HEARING AND RECOMMENDATIONS
2	BY NATIONAL COMMITTEE ON VITAL AND
3	HEALTH STATISTICS.—Under the upgrade pro-
4	gram, upon receipt of a proposal submitted by
5	a standard setting organization under subpara-
6	graph (D)(iii) for the adoption of an addition or
7	modification to a standard, the National Com-
8	mittee on Vital and Health Statistics shall pro-
9	vide notice to the public and a reasonable op-
10	portunity for public testimony at a hearing on
11	such addition or modification. The Secretary
12	may participate in such hearing in such capac-
13	ity (including presiding ex officio) as the Sec-
14	retary shall determine appropriate. Not later
15	than 120 days after the date of receipt of the
16	proposal, the Committee shall submit to the
17	Secretary its recommendation to adopt (or not
18	adopt) the proposed addition or modification.
19	"(F) DETERMINATION BY SECRETARY TO
20	ACCEPT OR REJECT NATIONAL COMMITTEE ON
21	VITAL AND HEALTH STATISTICS RECOMMENDA-
22	TION.—
23	"(i) TIMELY DETERMINATION.—
24	Under the upgrade program, if the Na-
25	tional Committee on Vital and Health Sta-

1 tistics submits to the Secretary a rec-2 ommendation under subparagraph (E) to 3 adopt a proposed addition or modification, 4 not later than 90 days after the date of re-5 ceipt of such recommendation the Sec-6 retary shall make a determination to ac-7 cept or reject the recommendation and 8 shall publish notice of such determination 9 in the Federal Register not later than 30 10 days after the date of the determination.

11 "(ii) CONTENTS OF NOTICE.—If the 12 determination is to reject the recommenda-13 tion, such notice shall include the reasons 14 for the rejection. If the determination is to 15 accept the recommendation, as part of 16 such notice the Secretary shall promulgate 17 the modified standard (including the ac-18 cepted proposed addition or modification 19 accepted) as a final rule under this sub-20 section without any further notice or public 21 comment period.

22 "(iii) LIMITATION ON CONSIDER23 ATION.—The Secretary shall not consider a
24 proposal under this subparagraph unless
25 the Secretary determines that the require-

ments of subparagraph (D) (including pub-1 2 lication of notice and opportunity for pub-3 lic comment) have been met with respect to 4 the proposal. "(G) EXEMPTION FROM PAPERWORK RE-5 6 DUCTION ACT.—Chapter 35 of title 44, United 7 States Code, shall not apply to a final rule pro-8 mulgated under subparagraph (F). 9 TREATMENT AS SATISFYING RE-"(H) 10 QUIREMENTS FOR NOTICE-AND-COMMENT.— 11 Any requirements under section 553 of title 5, 12 United States Code, relating to notice and an 13 opportunity for public comment with respect to 14 a final rule promulgated under subparagraph 15 (F) shall be treated as having been met by 16 meeting the requirements of the notice and op-17 portunity for public comment provided under 18 provisions of subparagraphs (B)(iii), (D), and 19 (E). 20 "(I) NO JUDICIAL REVIEW.—A final rule

promulgated under subparagraph (F) shall not
be subject to judicial review.".

23 SEC. 202. UPGRADING ASC X12 AND NCPDP STANDARDS.

(a) IN GENERAL.—The Secretary of Health andHuman Services shall provide by notice published in the

Federal Register for the following replacements of stand ards to apply to transactions occurring on or after April
 1, 2009:

4 (1) ACCREDITED STANDARDS COMMITTEE X12
5 (ASC X12) STANDARD.—The replacement of the Accelered ited Standards Committee X12 (ASC X12)
7 version 4010 adopted under section 1173(a) of such
8 Act (42 U.S.C. 1320d–2(a)) with the ASC X12
9 version 5010, as reviewed by the National Committee on Vital Health Statistics.

11 (2) NATIONAL COUNCIL FOR PRESCRIPTION 12 DRUG PROGRAMS (NCPDP) TELECOMMUNICATIONS 13 STANDARDS.—The replacement of the National 14 Council for Prescription Drug Programs (NCPDP) 15 Telecommunications Standards version 5.1 adopted 16 under section 1173(a) of such Act (42 U.S.C. 17 1320d-2(a)) with whichever is the latest version of 18 the NCPDP Telecommunications Standards that has 19 been approved by such Council and reviewed by the 20 National Committee on Vital Health Statistics as of 21 April 1, 2007.

(b) NO JUDICIAL REVIEW.—The implementation of
subsection (a), including the determination of the latest
version under subsection (a)(2), shall not be subject to judicial review.

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2 MENTATION OF NON-MEDICAL INFORMA-3 TION. 4 (a) Upgrading ICD Codes.— 5 (1) IN GENERAL.—The Secretary of Health and 6 Human Services shall provide by notice published in 7 the Federal Register for the replacement of the 8 International Classification of Diseases, 9th revision, 9 Clinical Modification (ICD–9-CM) under the regula-10 tion promulgated under section 1173(c) of the Social 11 Security Act (42 U.S.C. 1320d–2(c)), including for 12 purposes of part A of title XVIII of such Act, with 13 both of the following: The International Classification of 14 (A) 15 Diseases, 10th revision, Clinical Modification 16 (ICD-10-CM). 17 (\mathbf{B}) The International Classification of 18 Diseases, 10th revision, Procedure Coding Sys-19 tem (ICD–10-PCS). 20 (2) APPLICATION.—The replacement made by 21 paragraph (1) shall apply, for purposes of section 22 1175(b)(2) of the Social Security Act (42 U.S.C. 23 1320d-4(b)(2), to services furnished on or after Oc-24 tober 1, 2010. (3) RULES OF CONSTRUCTION.—Nothing in 25 26 paragraph (1) shall be construed(A) as affecting the application of classi fication methodologies or codes, such as CPT or
 HCPCS codes, other than under the Inter national Classification of Diseases (ICD); or

5 (B) as superseding the authority of the 6 Secretary of Health and Human Services to 7 maintain and modify the coding set for ICD– 8 10-CM and ICD–10-PCS, including under the 9 amendments made by section 201.

10 (b) CODING AND DOCUMENTATION OF NON-MEDICAL INFORMATION.—In any regulation or other action imple-11 12 menting the International Classification of Diseases, 10th 13 revision, Clinical Modification (ICD–10-CM), the International Classification of Diseases, 10th revision, Proce-14 15 dure Coding System (ICD-10-PCS), or other version of the International Classification of Diseases, 10th revision, 16 17 the Secretary of Health and Human Services shall ensure that no health care provider is required to code to a level 18 of specificity that would require documentation of non-19 20 medical information on the external cause of any given 21 type of injury.

1SEC. 204. STRATEGIC PLAN FOR COORDINATING IMPLE-2MENTATION OF TRANSACTION STANDARDS3AND ICD CODES.

4 Not later than the date that is 180 days after the
5 date of the enactment of this Act, the Secretary of Health
6 and Human Services, in consultation with relevant public
7 and private entities, shall develop a strategic plan with re8 spect to the need for coordination in the implementation
9 of—

(1) transaction standards under section 1173(a)
of the Social Security Act, including modifications to
such standards under section 1174(b)(3) of such
Act, as added by section 201; and

(2) any updated versions of the International
Classification of Diseases (ICD), including the replacement of ICD-9 provided for under section
203(a).

18 SEC. 205. STUDY AND REPORT TO DETERMINE IMPACT OF
 19 VARIATION AND COMMONALITY IN STATE

HEALTH INFORMATION LAWS AND REGULATIONS.

22 Part C of title XI of the Social Security Act is amend-23 ed by adding at the end the following new section:

"STUDY AND REPORT TO DETERMINE IMPACT OF VARI ATION AND COMMONALITY IN STATE HEALTH INFOR MATION LAWS AND REGULATIONS

"SEC. 1180. (a) STUDY.—For purposes of promoting 4 5 the development of a nationwide interoperable health information technology infrastructure consistent with sec-6 7 tion 271(b) of the Public Health Service Act, the Sec-8 retary shall conduct a study of the impact of variation in 9 State security and confidentiality laws and current Fed-10 eral security and confidentiality standards on the timely 11 exchanges of health information in order to ensure the 12 availability of health information necessary to make medical decisions at the location in which the medical care in-13 14 volved is provided. Such study shall examine—

15 "(1)(A) the degree of variation and com16 monality among the requirements of such laws for
17 States; and

18 "(B) the degree of variation and commonality
19 between the requirements of such laws and the cur20 rent Federal standards;

21 "(2) insofar as there is variation among and be22 tween such requirements, the strengths and weak23 nesses of such requirements; and

24 "(3) the extent to which such variation may ad-25 versely impact the secure, confidential, and timely

exchange of health information among States, the
 Federal government, and public and private entities,
 or may otherwise impact the reliability of such infor mation.

5 "(b) REPORT.—Not later than 18 months after the
6 date of the enactment of this section, the Secretary shall
7 submit to Congress a report on the study under subsection
8 (a) and shall include in such report the following:

9 "(1) ANALYSIS OF NEED FOR GREATER COM-10 MONALITY.—A determination by the Secretary on 11 the extent to which there is a need for greater com-12 monality of the requirements of State security and 13 confidentiality laws and current Federal security and 14 confidentiality standards to better protect, strength-15 en, or otherwise improve the secure, confidential, 16 and timely exchange of health information among 17 States, the Federal government, and public and pri-18 vate entities.

"(2) RECOMMENDATIONS FOR GREATER COMMONALITY.—Insofar as the Secretary determines
under paragraph (1) that there is a need for greater
commonality of such requirements, recommendations
on the extent to which (and how) the current Federal security and confidentiality standards should be
changed in order to provide the commonality needed

to better protect, strengthen, or otherwise improve
 the secure, confidential, and timely exchange of
 health information.

4 "(3) Specific recommendation on legisla-5 TIVE CHANGES FOR GREATER COMMONALITY.---A 6 specific recommendation on the extent to which and how such standards should supersede State laws, in 7 8 order to provide the commonality needed to better 9 protect or strengthen the security and confidentiality 10 of health information in the timely exchange of such 11 information and legislative language in the form of 12 a bill to effect ate such specific recommendation.

13 "(c) CONGRESSIONAL CONSIDERATION OF LEGISLA14 TION PROVIDING FOR GREATER COMMONALITY.—

15 "(1) RULES OF HOUSE OF REPRESENTATIVES
16 AND SENATE.—This subsection is enacted by the
17 Congress—

"(A) as an exercise of the rulemaking 18 19 power of the House of Representatives and the 20 Senate, respectively, and as such they are 21 deemed a part of the rules of each House, re-22 spectively, but applicable only with respect to 23 the procedure to be followed in that House in 24 the case of a greater commonality bill defined 25 in paragraph (4), and they supersede other

1	rules only to the extent that they are incon-
2	sistent therewith; and
3	"(B) with full recognition of the constitu-
4	tional right of either House to change the rules
5	(so far as relating to the procedure of that
6	House) at any time, in the same manner and
7	to the same extent as in the case of any other
8	rule of that House.
9	"(2) INTRODUCTION.—On the date on which
10	the final report is submitted under subsection
11	(b)(3)—
12	"(A) a greater commonality bill shall be in-
13	troduced (by request) in the House by the ma-
14	jority leader of the House, for himself and the
15	minority leader of the House, or by Members of
16	the House designated by the majority leader
17	and minority leader of the House; and
18	"(B) a greater commonality bill shall be
19	introduced (by request) in the Senate by the
20	majority leader of the Senate, for himself and
21	the minority leader of the Senate, or by Mem-
22	bers of the Senate designated by the majority
23	leader and minority leader of the Senate.
24	If either House is not in session on the day on which
25	such a report is submitted, the greater commonality

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1	bill shall be introduced in that House, as provided
2	in the preceding sentence, on the first day thereafter
3	on which the House is in session.
4	"(3) REFERRAL.—A greater commonality bill
5	shall be referred by the Presiding Officers of the re-
6	spective House to the appropriate committee (or
7	committees) of such House, in accordance with the
8	rules of that House.
9	"(4) Greater commonality bill defined.—
10	For purposes of this section, the term 'greater com-
11	monality bill' means a bill—
12	"(A) the title of which is the following: 'A
13	Bill to provide the commonality needed to bet-
14	ter protect, strengthen, or otherwise improve
15	the secure, confidential, and timely exchange of
16	health information'; and
17	"(B) the text of which, as introduced, con-
18	sists of the text of the bill included in the re-
19	port submitted under subsection $(b)(3)$.
20	"(d) DEFINITIONS.—For purposes of this section:
21	"(1) CURRENT FEDERAL SECURITY AND CON-
22	FIDENTIALITY STANDARDS.—The term 'current Fed-
23	eral security and confidentiality standards' means
24	the Federal privacy standards established pursuant
25	to section 264(c) of the Health Insurance Portability

1	and Accountability Act of 1996 (42 U.S.C. 1320d–
2	2 note) and security standards established under
3	section 1173(d) of the Social Security Act.
4	"(2) STATE.—The term 'State' has the mean-
5	ing given such term when used in title XI of the So-
6	cial Security Act, as provided under section 1101(a)
7	of such Act (42 U.S.C. 1301(a)).
8	"(3) STATE SECURITY AND CONFIDENTIALITY
9	LAWS.—The term 'State security and confidentiality
10	laws' means State laws and regulations relating to
11	the privacy and confidentiality of health information
12	or to the security of such information.".
13	SEC. 206. REPORT ON APPROPRIATENESS OF CLASSIFICA-
14	TION METHODOLOGIES AND CODES FOR AD-
15	DITIONAL PURPOSES.
16	Not later than the date that is 180 days after the
17	date of the enactment of this Act, the Secretary of Health
18	and Human Services shall submit to Congress a report
19	that evaluates—
20	(1) the applicability of health care classification
21	methodologies and codes for purposes beyond the
22	coding of services for diagnostic documentation or

23 billing purposes;

1 (2) the usefulness, accuracy, and completeness 2 of such methodologies and codes for such purposes; 3 and 4 (3) the capacity of such methodologies and 5 codes to produce erroneous or misleading informa-6 tion, with respect to such purposes. TITLE III—PROMOTING THE USE 7 **HEALTH** OF **INFORMATION** 8 **TECHNOLOGY TO BETTER CO-**9 **ORDINATE HEALTH CARE** 10 11 SEC. 301. SAFE HARBORS TO ANTIKICKBACK CIVIL PEN-12 ALTIES AND CRIMINAL PENALTIES FOR PRO-13 VISION OF HEALTH INFORMATION TECH-14 NOLOGY AND TRAINING SERVICES. 15 (a) FOR CIVIL PENALTIES.—Section 1128A of the Social Security Act (42 U.S.C. 1320a-7a) is amended— 16 17 (1) in subsection (b), by adding at the end the 18 following new paragraph: "(4) For purposes of this subsection, inducements to 19 reduce or limit services described in paragraph (1) shall 20 21 not include the practical or other advantages resulting 22 from health information technology or related installation, 23 maintenance, support, or training services."; and 24 (2) in subsection (i), by adding at the end the 25 following new paragraph:

1	"(8) The term 'health information technology'
2	means hardware, software, license, right, intellectual
3	property, equipment, or other information tech-
4	nology (including new versions, upgrades, and
5	connectivity) designed or provided primarily for the
6	electronic creation, maintenance, or exchange of
7	health information to better coordinate care or im-
8	prove health care quality, efficiency, or research.".
9	(b) For Criminal Penalties.—Section 1128B of
10	such Act (42 U.S.C. 1320a-7b) is amended—
11	(1) in subsection $(b)(3)$ —
12	(A) in subparagraph (G), by striking
13	"and" at the end;
14	(B) in the subparagraph (H) added by sec-
15	tion 237(d) of the Medicare Prescription Drug,
16	Improvement, and Modernization Act of 2003
17	(Public Law 108–173; 117 Stat. 2213)—
18	(i) by moving such subparagraph 2
19	ems to the left; and
20	(ii) by striking the period at the end
21	and inserting a semicolon;
22	(C) in the subparagraph (H) added by sec-
23	tion 431(a) of such Act (117 Stat. 2287)—
24	(i) by redesignating such subpara-
25	graph as subparagraph (I);

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1	(ii) by moving such subparagraph 2
2	ems to the left; and
3	(iii) by striking the period at the end
4	and inserting "; and"; and
5	(D) by adding at the end the following new
6	subparagraph:
7	((J) any nonmonetary remuneration (in the
8	form of health information technology, as defined in
9	section 1128A(i)(8), or related installation, mainte-
10	nance, support or training services) made to a per-
11	son by a specified entity (as defined in subsection
12	(g)) if—
13	"(i) the provision of such remuneration is
14	without an agreement between the parties or
15	legal condition that—
16	"(I) limits or restricts the use of the
17	health information technology to services
18	provided by the physician to individuals re-
19	ceiving services at the specified entity;
20	"(II) limits or restricts the use of the
21	health information technology in conjunc-
22	tion with other health information tech-
23	nology; or

1	"(III) conditions the provision of such
2	remuneration on the referral of patients or
3	business to the specified entity;
4	"(ii) such remuneration is arranged for in
5	a written agreement that is signed by the par-
6	ties involved (or their representatives) and that
7	specifies the remuneration solicited or received
8	(or offered or paid) and states that the provi-
9	sion of such remuneration is made for the pri-
10	mary purpose of better coordination of care or
11	improvement of health quality, efficiency, or re-
12	search; and
13	"(iii) the specified entity providing the re-
14	muneration (or a representative of such entity)
15	has not taken any action to disable any basic
16	feature of any hardware or software component
17	of such remuneration that would permit inter-
18	operability."; and
19	(2) by adding at the end the following new sub-
20	section:
21	"(g) Specified Entity Defined.—For purposes of
22	subsection $(b)(3)(J)$, the term 'specified entity' means an
23	entity that is a hospital, group practice, prescription drug
24	plan sponsor, a Medicare Advantage organization, or any

other such entity specified by the Secretary, considering

the goals and objectives of this section, as well as the goals
 to better coordinate the delivery of health care and to pro mote the adoption and use of health information tech nology.".

5 (c) EFFECTIVE DATE AND EFFECT ON STATE6 LAWS.—

7 (1) EFFECTIVE DATE.—The amendments made
8 by subsections (a) and (b) shall take effect on the
9 date that is 120 days after the date of the enact10 ment of this Act.

11 (2) PREEMPTION OF STATE LAWS.—No State 12 (as defined in section 1101(a) of the Social Security 13 Act (42 U.S.C. 1301(a)) for purposes of title XI of 14 such Act) shall have in effect a State law that im-15 poses a criminal or civil penalty for a transaction de-16 scribed in section 1128A(b)(4)section or 17 1128B(b)(3)(J) of such Act, as added by subsections 18 (a)(1) and (b), respectively, if the conditions de-19 scribed in the respective provision, with respect to 20 such transaction, are met.

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

(1) IN GENERAL.—The Secretary of Health and
Human Services shall conduct a study to determine
the impact of each of the safe harbors described in

1	paragraph (3). In particular, the study shall examine
2	the following:
3	(A) The effectiveness of each safe harbor
4	in increasing the adoption of health information
5	technology.
6	(B) The types of health information tech-
7	nology provided under each safe harbor.
8	(C) The extent to which the financial or
9	other business relationships between providers
10	under each safe harbor have changed as a re-
11	sult of the safe harbor in a way that adversely
12	affects or benefits the health care system or
13	choices available to consumers.
14	(D) The impact of the adoption of health
15	information technology on health care quality,
16	cost, and access under each safe harbor.
17	(2) REPORT.—Not later than three years after
18	the effective date described in subsection $(c)(1)$, the
19	Secretary of Health and Human Services shall sub-
20	mit to Congress a report on the study under para-
21	graph (1).
22	(3) SAFE HARBORS DESCRIBED.—For purposes
23	of paragraphs (1) and (2), the safe harbors de-
24	scribed in this paragraph are—

1	(A) the safe harbor under section
2	1128A(b)(4) of such Act (42 U.S.C. 1320a-
3	7a(b)(4), as added by subsection $(a)(1)$; and
4	(B) the safe harbor under section
5	1128B(b)(3)(J) of such Act (42 U.S.C. 1320a-
6	7b(b)(3)(J), as added by subsection (b).
7	SEC. 302. EXCEPTION TO LIMITATION ON CERTAIN PHYSI-
8	CIAN REFERRALS (UNDER STARK) FOR PRO-
9	VISION OF HEALTH INFORMATION TECH-
10	NOLOGY AND TRAINING SERVICES TO
11	HEALTH CARE PROFESSIONALS.
12	(a) IN GENERAL.—Section 1877(b) of the Social Se-
13	curity Act (42 U.S.C. 1395nn(b)) is amended by adding
14	at the end the following new paragraph:
15	"(6) INFORMATION TECHNOLOGY AND TRAIN-
16	ING SERVICES.—
17	"(A) IN GENERAL.—Any nonmonetary re-
18	muneration (in the form of health information
19	technology or related installation, maintenance,
20	support or training services) made by a speci-
21	fied entity to a physician if—
22	"(i) the provision of such remunera-
23	tion is without an agreement between the
24	parties or legal condition that—

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1	"(I) limits or restricts the use of
2	the health information technology to
3	services provided by the physician to
4	individuals receiving services at the
5	specified entity;
6	"(II) limits or restricts the use of
7	the health information technology in
8	conjunction with other health informa-
9	tion technology; or
10	"(III) conditions the provision of
11	such remuneration on the referral of
12	patients or business to the specified
13	entity;
14	"(ii) such remuneration is arranged
15	for in a written agreement that is signed
16	by the parties involved (or their represent-
17	atives) and that specifies the remuneration
18	made and states that the provision of such
19	remuneration is made for the primary pur-
20	pose of better coordination of care or im-
21	provement of health quality, efficiency, or
22	research; and
23	"(iii) the specified entity (or a rep-
24	resentative of such entity) has not taken
25	any action to disable any basic feature of

1	any hardware or software component of
2	such remuneration that would permit
3	interoperability.

4 "(B) HEALTH INFORMATION TECHNOLOGY 5 DEFINED.—For purposes of this paragraph, the 6 term 'health information technology' means 7 hardware, software, license, right, intellectual 8 property, equipment, or other information tech-9 nology (including new versions, upgrades, and 10 connectivity) designed or provided primarily for the electronic creation, maintenance, or ex-11 12 change of health information to better coordi-13 nate care or improve health care quality, effi-14 ciency, or research.

"(C) Specified entity defined.—For 15 16 purposes of this paragraph, the term 'specified 17 entity' means an entity that is a hospital, group 18 practice, prescription drug plan sponsor, a 19 Medicare Advantage organization, or any other 20 such entity specified by the Secretary, consid-21 ering the goals and objectives of this section, as 22 well as the goals to better coordinate the deliv-23 ery of health care and to promote the adoption 24 and use of health information technology.".

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

1	(1) EFFECTIVE DATE.—The amendment made
2	by subsection (a) shall take effect on the date that
3	is 120 days after the date of the enactment of this
4	Act.
5	(2) PREEMPTION OF STATE LAWS.—No State
6	(as defined in section 1101(a) of the Social Security
7	Act (42 U.S.C. 1301(a)) for purposes of title XI of
8	such Act) shall have in effect a State law that im-
9	poses a criminal or civil penalty for a transaction de-
10	scribed in section $1877(b)(6)$ of such Act, as added
11	by subsection (a), if the conditions described in such
12	section, with respect to such transaction, are met.
13	(c) Study and Report to Assess Effect of Ex-
14	CEPTION ON HEALTH SYSTEM.—

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

21 (A) The effectiveness of the exception in
22 increasing the adoption of health information
23 technology.

24 (B) The types of health information tech-25 nology provided under the exception.

1	(C) The extent to which the financial or
2	other business relationships between providers
3	under the exception have changed as a result of
4	the exception in a way that adversely affects or
5	benefits the health care system or choices avail-
6	able to consumers.
7	(D) The impact of the adoption of health
8	information technology on health care quality,
9	cost, and access under the exception.
10	(2) REPORT.—Not later than three years after
11	the effective date described in subsection $(b)(1)$, the
12	Secretary of Health and Human Services shall sub-
13	mit to Congress a report on the study under para-
13 14	mit to Congress a report on the study under para- graph (1).
14	graph (1).
14 15	graph (1). SEC. 303. RULES OF CONSTRUCTION REGARDING USE OF
14 15 16 17	graph (1). SEC. 303. RULES OF CONSTRUCTION REGARDING USE OF CONSORTIA.
14 15 16 17	graph (1). SEC. 303. RULES OF CONSTRUCTION REGARDING USE OF CONSORTIA. (a) APPLICATION TO SAFE HARBOR FROM CRIMINAL
14 15 16 17 18	graph (1). SEC. 303. RULES OF CONSTRUCTION REGARDING USE OF CONSORTIA. (a) APPLICATION TO SAFE HARBOR FROM CRIMINAL PENALTIES.—Section 1128B(b)(3) of the Social Security
14 15 16 17 18 19	graph (1). SEC. 303. RULES OF CONSTRUCTION REGARDING USE OF CONSORTIA. (a) APPLICATION TO SAFE HARBOR FROM CRIMINAL PENALTIES.—Section 1128B(b)(3) of the Social Security Act (42 U.S.C. 1320a-7b(b)(3)) is amended by adding
 14 15 16 17 18 19 20 	graph (1). SEC. 303. RULES OF CONSTRUCTION REGARDING USE OF CONSORTIA. (a) APPLICATION TO SAFE HARBOR FROM CRIMINAL PENALTIES.—Section 1128B(b)(3) of the Social Security Act (42 U.S.C. 1320a-7b(b)(3)) is amended by adding after and below subparagraph (J), as added by section
 14 15 16 17 18 19 20 21 	graph (1). SEC. 303. RULES OF CONSTRUCTION REGARDING USE OF CONSORTIA. (a) APPLICATION TO SAFE HARBOR FROM CRIMINAL PENALTIES.—Section 1128B(b)(3) of the Social Security Act (42 U.S.C. 1320a-7b(b)(3)) is amended by adding after and below subparagraph (J), as added by section 301(b)(1), the following: "For purposes of subparagraph
 14 15 16 17 18 19 20 21 22 	graph (1). SEC. 303. RULES OF CONSTRUCTION REGARDING USE OF CONSORTIA. (a) APPLICATION TO SAFE HARBOR FROM CRIMINAL PENALTIES.—Section 1128B(b)(3) of the Social Security Act (42 U.S.C. 1320a-7b(b)(3)) is amended by adding after and below subparagraph (J), as added by section 301(b)(1), the following: "For purposes of subparagraph (J), nothing in such subparagraph shall be construed as

ployers, and other interested entities to collectively pur chase and donate health information technology, or from
 offering health care providers a choice of health informa tion technology products in order to take into account the
 varying needs of such providers receiving such products.".

6 (b) APPLICATION TO STARK EXCEPTION.—Para7 graph (6) of section 1877(b) of the Social Security Act
8 (42 U.S.C. 1395nn(b)), as added by section 302(a), is
9 amended by adding at the end the following new subpara10 graph:

"(D) RULE OF CONSTRUCTION.—For purposes of subparagraph (A), nothing in such
subparagraph shall be construed as preventing
a specified entity, consistent with the specific
requirements of such subparagraph, from—

16 "(i) forming a consortium composed
17 of health care providers, payers, employers,
18 and other interested entities to collectively
19 purchase and donate health information
20 technology; or

21 "(ii) offering health care providers a
22 choice of health information technology
23 products in order to take into account the
24 varying needs of such providers receiving
25 such products.".

TITLE IV—ADDITIONAL PROVISIONS

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3 SEC. 401. PROMOTION OF TELEHEALTH SERVICES.

1

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4 (a) Facilitating the Provision of Telehealth SERVICES ACROSS STATE LINES.—The Secretary of 5 Health and Human Services shall, in coordination with 6 physicians, health care practitioners, patient advocates, 7 8 and representatives of States, encourage and facilitate the 9 adoption of State reciprocity agreements for practitioner licensure in order to expedite the provision across State 10 11 lines of telehealth services.

(b) REPORT.—Not later than 18 months after the
date of the enactment of this Act, the Secretary of Health
and Human Services shall submit to Congress a report
on the actions taken to carry out subsection (a).

(c) STATE DEFINED.—For purposes of this subsection, the term "State" has the meaning given that term
for purposes of title XVIII of the Social Security Act.

19SEC. 402. STUDY AND REPORT ON EXPANSION OF HOME20HEALTH-RELATED TELEHEALTH SERVICES.

(a) STUDY.—The Secretary of Health and Human
Services shall conduct a study to determine the feasibility,
advisability, and the costs of—

(1) including coverage and payment for homehealth-related telehealth services as part of home

health services under title XVIII of the Social Secu rity Act; and

3 (2) expanding the list of sites described in para4 graph (4)(C)(ii) of section 1834(m) of the Social Se5 curity Act (42 U.S.C. 1395m(m)) to include county
6 mental health clinics or other publicly funded mental
7 health facilities for the purpose of payment under
8 such section for the provision of telehealth services
9 at such clinics or facilities.

(b) SPECIFICS OF STUDY.—Such study shall demonstrate whether the changes described in paragraphs (1)
and (2) of subsection (a) will result in the following:

13 (1) Enhanced health outcomes for individuals14 with one or more chronic conditions.

(2) Health outcomes for individuals furnished
telehealth services or home health-related telehealth
services that are at least comparable to the health
outcomes for individuals furnished similar items and
services by a health care provider at the same location of the individual or at the home of the individual, respectively.

(3) Facilitation of communication of more accurate clinical information between health care providers.

(4) Closer monitoring of individuals by health
 care providers.

3 (5) Overall reduction in expenditures for health
4 care items and services.

(6) Improved access to health care.

5

6 (c) Home Health-Related Telehealth Serv-7 ICES DEFINED.—For purposes of this section, the term 8 "home health-related telehealth services" means tech-9 nology-based professional consultations, patient moni-10 toring, patient training services, clinical observation, patient assessment, and any other health services that utilize 11 12 telecommunications technologies. Such term does not in-13 clude a telecommunication that consists solely of a telephone audio conversation, facsimile, electronic text mail, 14 15 or consultation between two health care providers.

16 (d) REPORT.—Not later than 18 months after the 17 date of the enactment of this Act, the Secretary of Health 18 and Human Services shall submit to Congress a report 19 on the study conducted under subsection (a) and shall in-20 clude in such report such recommendations for legislation 21 or administration action as the Secretary determines ap-22 propriate.

1 SEC. 403. STUDY AND REPORT ON STORE AND FORWARD 2 TECHNOLOGY FOR TELEHEALTH.

3 (a) STUDY.—The Secretary of Health and Human Services, acting through the Director of the Office for the 4 5 Advancement of Telehealth, shall conduct a study on the use of store and forward technologies (that provide for the 6 7 asynchronous transmission of health care information in 8 single or multimedia formats) in the provision of tele-9 health services. Such study shall include an assessment of 10 the feasibility, advisability, and the costs of expanding the 11 use of such technologies for use in the diagnosis and treatment of certain conditions. 12

(b) REPORT.—Not later than 18 months after the
14 date of the enactment of this Act, the Secretary of Health
15 and Human Services shall submit to Congress a report
16 on the study conducted under subsection (a) and shall in17 clude in such report such recommendations for legislation
18 or administration action as the Secretary determines ap19 propriate.

20SEC. 404. ENSURING HEALTH CARE PROVIDERS PARTICI-21PATING IN PHSA PROGRAMS, MEDICAID,22SCHIP, OR THE MCH PROGRAM MAY MAIN-23TAIN HEALTH INFORMATION IN ELECTRONIC24FORM.

25 Part D of title II of the Public Health Service Act,
26 as added by section 101(a) and amended by sections 103
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1 and 105, is further amended by adding at the end the2 following new section:

3 "SEC. 274. ENSURING HEALTH CARE PROVIDERS MAY MAINTAIN HEALTH INFORMATION IN ELECTRONIC 5 FORM.

6 "(a) IN GENERAL.—Any health care provider that 7 participates in a health care program that receives Federal 8 funds under this Act, or under title V, XIX, or XXI of 9 the Social Security Act, shall be deemed as meeting any 10 requirement for the maintenance of data in paper form under such program (whether or not for purposes of man-11 12 agement, billing, reporting, reimbursement, or otherwise) if the required data is maintained in an electronic form. 13 14 "(b) RELATION TO STATE LAWS.—Beginning on the 15 date that is one year after the date of the enactment of this section, subsection (a) shall supersede any contrary 16 provision of State law. 17

18 "(c) CONSTRUCTION.—Nothing in this section shall19 be construed as—

20 "(1) requiring health care providers to maintain21 or submit data in electronic form;

22 "(2) preventing a State from permitting health
23 care providers to maintain or submit data in paper
24 form; or

"(3) preventing a State from requiring health
 care providers to maintain or submit data in elec tronic form.".

4 SEC. 405. ENSURING HEALTH CARE PROVIDERS PARTICI5 PATING IN THE MEDICARE PROGRAM MAY
6 MAINTAIN HEALTH INFORMATION IN ELEC7 TRONIC FORM.

8 Section 1871 of the Social Security Act (42 U.S.C.
9 1395hh) is amended by adding at the end the following
10 new subsection:

11 "(g)(1) Any provider of services or supplier shall be 12 deemed as meeting any requirement for the maintenance 13 of data in paper form under this title (whether or not for 14 purposes of management, billing, reporting, reimburse-15 ment, or otherwise) if the required data is maintained in 16 an electronic form.

17 "(2) Nothing in this subsection shall be construed as18 requiring health care providers to maintain or submit data19 in electronic form.".

20SEC. 406. STUDY AND REPORT ON STATE, REGIONAL, AND21COMMUNITY HEALTH INFORMATION EX-22CHANGES.

(a) STUDY.—The Secretary of Health and Human
Services shall conduct a study on issues related to the development, operation, and implementation of State, re-

1	gional, and community health information exchanges.
2	Such study shall include the following, with respect to
3	such health information exchanges:
4	(1) Profiles detailing the current stages of such
5	health information exchanges with respect to the
6	progression of the development, operation, imple-
7	mentation, organization, and governance of such ex-
8	changes.
9	(2) The impact of such exchanges on healthcare
10	quality, safety, and efficiency, including—
11	(A) any impact on the coordination of
12	health information and services across
13	healthcare providers and other organizations
14	relevant to health care;
15	(B) any impact on the availability of health
16	information at the point-of-care to make timely
17	medical decisions;
18	(C) any benefits with respect to the pro-
19	motion of wellness, disease prevention, and
20	chronic disease management;
21	(D) any improvement with respect to pub-
22	lic health preparedness and response;
23	(E) any impact on the widespread adoption
24	of interoperable health information technology,
25	including electronic health records;

1	(F) any contributions to achieving an
2	Internet-based national health information net-
3	work;
4	(G) any contribution of health information
5	exchanges to consumer access and to con-
6	sumers' use of their health information; and
7	(H) any impact on the operation of—
8	(i) the Medicaid and Medicare pro-
9	grams;
10	(ii) the State Children's Health Insur-
11	ance Program (SCHIP);
12	(iii) disproportionate share hospitals
13	described in section 1923 of the Social Se-
14	curity Act;
15	(iv) Federally-qualified health centers;
16	OF
17	(v) managed care plans, if a signifi-
18	cant number of the plan's enrollees are
19	beneficiaries in the Medicaid program or
20	SCHIP.
21	(3) Best practice models for financing,
22	incentivizing, and sustaining such health information
23	exchanges.
24	(4) Information identifying the common prin-
25	ciples, policies, tools, and standards used (or pro-

posed) in the public and private sectors to support
 the development, operation, and implementation of
 such health information exchanges.

4 (5) A description of any areas in which Federal
5 government leadership is needed to support growth
6 and sustainability of such health information ex7 changes.

8 (b) REPORT.—Not later than one year after the date 9 of enactment of this Act, the Secretary of Health and 10 Human Services shall submit to Congress a report on the 11 study described in subsection (a), including such rec-12 ommendations as the Secretary determines appropriate to 13 facilitate the development, operation, and implementation 14 of health information exchanges.

15 SEC. 407. PROMOTING HEALTH INFORMATION TECH16 NOLOGY AS A TOOL FOR CHRONIC DISEASE
17 MANAGEMENT.

(a) IN GENERAL.—The Secretary of Health and
Human Services shall establish a two-year project to demonstrate the impact of health information technology on
disease management for individuals entitled to medical assistance under a State plan under title XIX of the Social
Security Act.

24 (b) STRUCTURE OF PROJECT.—The project under25 subsection (a) shall—

(1) create a web-based virtual case management
 tool that provides access to best practices for man aging chronic disease; and

4 (2) provide chronic disease patients and care5 givers access to their own medical records and to a
6 single source of information on chronic disease.

7 (c) COMPETITION.—Not later than the date that is 8 90 days after the date of the enactment of this Act, the 9 Secretary of Health and Human Services shall seek pro-10 posals from States to carry out the project under sub-11 section (a). The Secretary shall select not less than four of such proposals submitted, and at least one proposal se-12 lected shall include a regional approach that features ac-13 cess to an integrated hospital information system in at 14 15 least two adjoining States and that permits the measurement of health outcomes. 16

(d) REPORT.—Not later than the date that is 90 days
after the last day of the project under subsection (a), the
Secretary of Health and Human Services shall submit to
Congress a report on such project and shall include in
such report the amount of any cost-savings resulting from
the project and such recommendations for legislation or

- 1 administrative action as the Secretary determines appro-
- 2 priate.

Passed the House of Representatives July 27, 2006. Attest:

Clerk.

109TH CONGRESS 2D SESSION H. R. 4157

AN ACT

To promote a better health information system.