

110TH CONGRESS
2D SESSION

H. R. 6898

To promote the adoption and meaningful use of health information technology,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 15, 2008

Mr. STARK (for himself, Ms. SCHWARTZ, Mr. McDERMOTT, Mr. McNULTY, Mr. LEVIN, Mr. EMANUEL, Mr. NEAL of Massachusetts, Mr. PASCRELL, and Mr. LEWIS of Georgia) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means and Science and Technology, 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 promote the adoption and meaningful use of health
information technology, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Health-e Information Technology Act of 2008”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PROMOTION OF HEALTH INFORMATION TECHNOLOGY

Subtitle A—Improving Health Care Quality, Safety, and Efficiency

Sec. 101. ONCHIT; standards development and adoption; health information technology resource center.

“TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND QUALITY

“Sec. 3000. Definitions.

“Subtitle A—Promotion of Health Information Technology

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

“Sec. 3002. HIT Advisory Committee.

“Sec. 3003. Process for adoption of recommended standards and guidance.

“Sec. 3004. Application and use of adopted standards by Federal agencies.

“Sec. 3005. Voluntary application and use of adopted standards by private entities.

“Sec. 3006. Health Information Technology Resource Center.

Sec. 102. Transitions.

Subtitle B—Application and Use of Adopted Health Information Technology Standards; Reports

Sec. 111. Coordination of Federal activities with adopted standards.

Sec. 112. Application to private entities.

Sec. 113. Annual reports.

TITLE II—TESTING OF HEALTH INFORMATION TECHNOLOGY

Sec. 201. National Institute for Standards and Technology testing.

TITLE III—INCENTIVES FOR ADOPTION OF HEALTH INFORMATION TECHNOLOGY

Subtitle A—Medicare Program

Sec. 301. Incentives for eligible professionals.

Sec. 302. Incentives for hospitals.

Sec. 303. Incentives for certain Medicare Advantage plans.

Subtitle B—Other Incentives for the Implementation and Use of Health Information Technology

Sec. 311. Grant, loan, and demonstration programs.

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

“Sec. 3011. Grants and loans to facilitate the widespread adoption of qualified health information technology.

“Sec. 3012. Demonstration program to integrate information technology into clinical education.

TITLE IV—PRIVACY AND SECURITY PROVISIONS

Sec. 400. Definitions.

Subtitle A—Improved Privacy Provisions and Security Provisions

- Sec. 401. Application of security provisions and penalties to business associates of covered entities; annual guidance on privacy and security provisions.
- Sec. 402. Notification in the case of breach.
- Sec. 403. Education on health information privacy and report on compliance.
- Sec. 404. Application of penalties to business associates of covered entities for violations of privacy contract requirements.
- Sec. 405. Restrictions on certain uses and disclosures and sales of health information; accounting of certain protected health information disclosures; access to certain information in electronic format.
- Sec. 406. Limitations on certain activities as part of health care operations.
- Sec. 407. Study and report on application of privacy and security requirements to non-HIPAA covered entities.
- Sec. 408. Temporary breach notification requirement for vendors of personal health records and other non-HIPAA covered entities.
- Sec. 409. Business associate contracts required for certain entities; other provisions related to business associate contracts.
- Sec. 410. Guidance on implementation specification to de-identify protected health information.
- Sec. 411. GAO report on treatment, payment, and health care operations uses and disclosures.
- Sec. 412. Clarification of application of wrongful disclosures criminal penalties.
- Sec. 413. Improved enforcement.
- Sec. 414. Audits.
- Sec. 415. Technical amendment.

Subtitle B—Chief Privacy Officer of ONCHIT; Standards and Guidance Recommendations Related to Privacy and Security

- Sec. 421. Chief Privacy Officer of the Office of the National Coordinator .
- Sec. 422. Additional standards and guidance recommendations related to privacy and security.

Subtitle C—Relationship to Other Laws; Regulatory References; Effective Date

- Sec. 431. Relationship to other laws.
- Sec. 432. Regulatory references.
- Sec. 433. Effective date.

1 **TITLE I—PROMOTION OF**
2 **HEALTH INFORMATION TECH-**
3 **NOLOGY**

4 **Subtitle A—Improving Health Care**
5 **Quality, Safety, and Efficiency**

6 **SEC. 101. ONCHIT; STANDARDS DEVELOPMENT AND ADOP-**
7 **TION; HEALTH INFORMATION TECHNOLOGY**
8 **RESOURCE CENTER.**

9 (a) IN GENERAL.—The Public Health Service Act
10 (42 U.S.C. 201 et seq.) is amended by adding at the end
11 the following:

12 **“TITLE XXX—HEALTH INFORMA-**
13 **TION TECHNOLOGY AND**
14 **QUALITY**

15 **“SEC. 3000. DEFINITIONS.**

16 “In this title:

17 “(1) ELECTRONIC HEALTH RECORD.—The term
18 ‘electronic health record’ means an electronic record
19 of health-related information on an individual that is
20 created, managed, and consulted by authorized
21 health care clinicians and staff of one or more orga-
22 nizations, that conforms to standards adopted under
23 section 3003(a), and is made accessible electronically
24 to other health care organizations and other author-
25 ized users.

1 “(2) HEALTH CARE PROVIDER.—The term
2 ‘health care provider’ means a hospital, skilled nurs-
3 ing facility, nursing facility, home health entity,
4 health care clinic, Federally qualified health center,
5 group practice (as defined in section 1877(h)(4) of
6 the Social Security Act), a pharmacist, a pharmacy,
7 a laboratory, a physician (as defined in section
8 1861(r)) of the Social Security Act), a practitioner
9 (as described in section 1842(b)(18)(C) of the Social
10 Security Act), a provider operated by, or under con-
11 tract with, the Indian Health Service or by an In-
12 dian tribe (as defined in the Indian Self-Determina-
13 tion and Education Assistance Act), tribal organiza-
14 tion, or urban Indian organization (as defined in
15 section 4 of the Indian Health Care Improvement
16 Act), a rural health clinic, and any other category of
17 facility or clinician determined appropriate by the
18 Secretary.

19 “(3) HEALTH INFORMATION.—The term ‘health
20 information’ has the meaning given such term in
21 section 1171(4) of the Social Security Act.

22 “(4) HEALTH INFORMATION TECHNOLOGY.—
23 The term ‘health information technology’ means
24 hardware, software, integrated technologies and re-
25 lated licenses, intellectual property, upgrades, and

1 packaged solutions sold as services that are specifi-
2 cally designed for use by health care entities for the
3 electronic creation, maintenance, or exchange of
4 health information.

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

8 “(6) HIT ADVISORY COMMITTEE.—The term
9 ‘HIT Advisory Committee’ means such Committee
10 established under section 3002(a).

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

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

17 “(9) NATIONAL COORDINATOR.—The term ‘Na-
18 tional Coordinator’ means the head of the Office of
19 the National Coordinator for Health Information
20 Technology established under section 3001(a).

21 “(10) PHARMACIST.—The term ‘pharmacist’
22 has the meaning given such term in section 804(2)
23 of the Federal Food, Drug, and Cosmetic Act.

24 “(11) STATE.—The term ‘State’ means each of
25 the several States, the District of Columbia, Puerto

1 Rico, the Virgin Islands, Guam, American Samoa,
2 and the Northern Mariana Islands.

3 **“Subtitle A—Promotion of Health**
4 **Information Technology**

5 **“SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR**
6 **HEALTH INFORMATION TECHNOLOGY.**

7 “(a) ESTABLISHMENT.—There is established within
8 the Department of Health and Human Services an Office
9 of the National Coordinator for Health Information Tech-
10 nology (referred to in this section as the ‘Office’). The Of-
11 fice shall be headed by a National Coordinator who shall
12 be appointed by the Secretary and shall report directly to
13 the Secretary.

14 “(b) PURPOSE.—The National Coordinator shall per-
15 form the duties under subsection (c) in a manner con-
16 sistent with the development of a nationwide health infor-
17 mation technology infrastructure that allows for the elec-
18 tronic use and exchange of information and that—

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

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

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

4 “(4) ensures that appropriate information to
5 help guide medical decisions is available at the time
6 and place of care;

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

9 “(6) improves the coordination of care and in-
10 formation among hospitals, laboratories, physician
11 offices, and other entities through an effective infra-
12 structure for the secure and authorized exchange of
13 health care information;

14 “(7) improves public health reporting and facili-
15 tates the early identification and rapid response to
16 public health threats and emergencies, including bio-
17 terror events and infectious disease outbreaks;

18 “(8) facilitates health and clinical research and
19 health care quality;

20 “(9) promotes prevention of chronic diseases;

21 “(10) promotes a more effective marketplace,
22 greater competition, greater systems analysis, in-
23 creased consumer choice, and improved outcomes in
24 health care services; and

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

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

4 “(1) HIT POLICY COORDINATION.—The Na-
5 tional Coordinator shall coordinate health informa-
6 tion technology policy and programs within the De-
7 partment and with those of other relevant executive
8 branch agencies with a goal of avoiding duplication
9 of efforts and of helping to ensure that each agency
10 undertakes health information technology activities
11 primarily within the areas of its greatest expertise
12 and technical capability.

13 “(2) STANDARDS, GUIDANCE.—

14 “(A) DEVELOPMENT AND RECOMMENDA-
15 TIONS OF STANDARDS AND GUIDANCE.—

16 “(i) IN GENERAL.—

17 “(I) INITIAL IMPLEMENTA-
18 TION.—The National Coordinator
19 shall, in consultation with the HIT
20 Advisory Committee under section
21 3002 and consistent with the imple-
22 mentation of the strategic plan under
23 paragraph (6), develop and rec-
24 ommend to the Secretary standards
25 and guidance (which may include best

1 practices), as applicable, for each of
2 the categories described in clauses
3 (iii), (iv), and (v). In accordance with
4 the previous sentence, the National
5 Coordinator shall ensure that an ini-
6 tial set of appropriate standards is de-
7 veloped and recommended to the Sec-
8 retary under this subclause by such
9 time as to enable the Secretary to
10 adopt such an initial set in accordance
11 with section 3003(b).

12 “(II) BIENNIAL UPDATING.—Bi-
13 ennially thereafter the National Coor-
14 dinator, in consultation with the HIT
15 Advisory Committee, shall update
16 such recommendations and make new
17 recommendations as appropriate, in-
18 cluding in response to a notification
19 sent under section 3003(a)(2).

20 “(ii) COORDINATION AMONG CAT-
21 EGORIES.—The National Coordinator shall
22 coordinate the development, recommenda-
23 tions, and updating among the categories
24 so described to take into account the inter-

1 dependence of standards and guidance
2 among such categories.

3 “(iii) TECHNICAL INTEROPERABILITY
4 CATEGORY.—

5 “(I) IN GENERAL.—The category
6 described in this clause is the category
7 for technical interoperability to pro-
8 vide for the electronic exchange and
9 use of health information.

10 “(II) APPLICATION TO DIF-
11 FERENT LEVELS OF INTEROPER-
12 ABILITY.—In developing recommenda-
13 tions respecting the category de-
14 scribed in this clause, the National
15 Coordinator shall initially use the dif-
16 ferent levels of interoperability (as de-
17 scribed on pages 6 through 8 of GAO
18 report 08–954 titled ‘Electronic
19 Health Records: DOD and VA Have
20 Increased Sharing of Health Informa-
21 tion, but More Work Remains’ and
22 provide for the development and rec-
23 ommendations of different standards
24 and guidance for each of such dif-
25 ferent levels.

1 “(iv) PRIVACY AND SECURITY CAT-
2 EGORY.—The category described in this
3 clause is the category for privacy and secu-
4 rity to ensure the secure exchange of pro-
5 tected health information, in accordance
6 with title IV of the Health-e Information
7 Technology Act of 2008 including the
8 amendments made by such title.

9 “(v) CLINICAL AND QUALITY CAT-
10 EGORY.—

11 “(I) IN GENERAL.—The category
12 described in this clause is the category
13 for clinical and quality functionalities
14 of health information technology and
15 strategies to enhance the use of such
16 technology including for the following
17 purposes:

18 “(aa) To improve the quality
19 of health care, such as through
20 the reduction of medical errors,
21 using electronic provider order
22 entry and clinical decision sup-
23 port systems.

24 “(bb) To facilitate patient-
25 centered care, such as through

1 improved patient-provider com-
2 munication through secure elec-
3 tronic messaging, and improved
4 patient support.

5 “(cc) To reduce health dis-
6 parities.

7 “(dd) To improve population
8 health, such as through the use
9 of registries and automated qual-
10 ity reporting and performance
11 measures.

12 “(ee) To improve the con-
13 tinuity of care among health care
14 settings.

15 “(II) REQUIREMENTS.—In devel-
16 oping recommendations respecting the
17 category described in this clause, the
18 National Coordinator shall ensure the
19 following:

20 “(aa) Information is col-
21 lected and transmitted in a man-
22 ner that is reliable, accurate, and
23 unambiguous and based on a uni-
24 form provider data set, including

1 a set of comprehensive data ele-
2 ments.

3 “(bb) Information is com-
4 municated in a manner to pro-
5 mote coordination of health care,
6 applying appropriate data fil-
7 tering for the situation.

8 “(cc) Practices optimize for
9 continuous improvement, ad-
10 vancement of research and edu-
11 cation, and population disease
12 management.

13 “(dd) Sensitive protected
14 health information may be seg-
15 mented, with the goal of mini-
16 mizing the reluctance of patients
17 to seek care (or disclose informa-
18 tion about a condition) because
19 of privacy concerns involving sen-
20 sitive protected health informa-
21 tion, while maximizing patient
22 safety and clinical utility of the
23 information.

24 “(B) INCORPORATION OF CURRENT CCHIT
25 CERTIFICATION CRITERIA.—In developing and

1 recommending standards and guidance under
2 subparagraph (A), the National Coordinator
3 shall, to the maximum extent appropriate, in-
4 corporate the ambulatory and inpatient
5 functionality certification criteria that have
6 been adopted by the Certification Commission
7 for Health Information Technology as of the
8 date of the enactment of this title. Nothing in
9 this paragraph shall be construed as preventing
10 the National Coordinator from incorporating
11 into such recommendations such certification
12 criteria as such Commission is in the process of
13 adopting as of such date.

14 “(C) PROVIDER AND SETTING SPECIFIC.—
15 Recommendations made under subparagraph
16 (A) may be established in a provider-specific
17 and setting-specific manner and in a manner
18 such that they apply to a broad variety of pro-
19 viders, including physicians, hospitals, and
20 other health care providers and to a broad vari-
21 ety of settings, including for health information
22 technology systems that are hospital-based and
23 for such systems that are office-based.

24 “(D) PILOT TESTING OF STANDARDS AND
25 IMPLEMENTATION SPECIFICATIONS.—In the de-

1 velopment of standards under this paragraph,
2 the National Coordinator, as appropriate, shall
3 provide for the testing of such standards in col-
4 laboration with the National Institute for
5 Standards and Technology under section 201 of
6 the Health-e Information Technology Act of
7 2008.

8 “(E) CONSISTENCY WITH PRIVACY AND
9 SECURITY REQUIREMENTS.—The standards rec-
10 ommended under this paragraph shall be con-
11 sistent with applicable privacy and security
12 standards and requirements adopted pursuant
13 to section 1173 of the Social Security Act, to
14 title IV of the Health-e Information Technology
15 Act of 2008, or otherwise.

16 “(F) PUBLIC INPUT.—The National Coor-
17 dinator shall conduct open public meetings and
18 develop a process to allow for public comment
19 on the recommendations made under this para-
20 graph. Under such process comments shall be
21 submitted in a timely manner after the date of
22 publication of a recommendation under this
23 paragraph.

24 “(G) PUBLICATION.—The Secretary shall
25 provide for publication in the Federal Register

1 and the posting on the Internet website of the
2 Office of the National Coordinator for Health
3 Information Technology of all recommendations
4 made by the National Coordinator under this
5 paragraph.

6 “(3) CERTIFICATION.—The National Coordi-
7 nator, in consultation with the Director of the Na-
8 tional Institute of Standards and Technology and
9 other relevant Federal agencies, shall develop a pro-
10 gram (either directly or by contract) for the vol-
11 untary certification (and periodic recertification) of
12 health information technology systems (and compo-
13 nents of such systems) as being in compliance with
14 all applicable standards (for each category described
15 in paragraph (2)(A)) that are adopted under this
16 subtitle. Such program shall include testing of the
17 technology in accordance with section 201(b) of the
18 Health-e Information Technology Act of 2008.

19 “(4) FEDERAL OPEN SOURCE HEALTH IT SYS-
20 TEM.—

21 “(A) IN GENERAL.—The National Coordi-
22 nator shall provide for coordinating the develop-
23 ment, routine updating, and provision of an
24 open source health information technology sys-
25 tem that is either new or based on an open

1 source health information technology system,
2 such as VistA, that is in existence as of the
3 date of the enactment of this title and that is
4 in compliance with all applicable standards (for
5 each category described in paragraph (2)(A))
6 that are adopted under this subtitle. The Na-
7 tional Coordinator shall make such system pub-
8 licly available for use, after appropriate pilot
9 testing, as soon as practicable but not later
10 than 9 months after the date of the adoption by
11 the Secretary of the initial set of standards and
12 guidance under section 3003(c).

13 “(B) CONSORTIUM.—In order to carry out
14 subparagraph (A), the National Coordinator
15 shall establish, not later than 6 months after
16 the date of the enactment of this section, a con-
17 sortium comprised of individuals with technical,
18 clinical, and legal expertise open source health
19 information technology. The Secretary, through
20 agencies with the Department, shall provide as-
21 sistance to the consortium in conducting its ac-
22 tivities under this paragraph.

23 “(C) AUTHORIZATION TO CHARGE NOMI-
24 NAL FEE.—The National Coordinator may im-
25 pose a nominal fee for the adoption by a health

1 care provider of the health information tech-
2 nology system developed or approved under sub-
3 paragraph (A). Such fee shall take into account
4 the circumstances of smaller providers and pro-
5 viders located in rural or other medically under-
6 served areas.

7 “(D) OPEN SOURCE DEFINED.—In this
8 paragraph, the term ‘open source’ has the
9 meaning given such term by the Open Source
10 Initiative.

11 “(5) NATIONWIDE HEALTH INFORMATION NET-
12 WORK.—The National Coordinator shall facilitate
13 the development and expansion of sub-national
14 health information organizations and the coordina-
15 tion of such organizations in order to provide for the
16 nationwide electronic exchange of health information
17 among such organizations that ensures that appro-
18 priate information is available at the time and place
19 of care and enables the aggregation of health infor-
20 mation for research and public health purposes.

21 “(6) STRATEGIC PLAN.—

22 “(A) IN GENERAL.—Not later than 12
23 months after the date of the enactment of this
24 title, the National Coordinator shall, in con-
25 sultation with other appropriate Federal agen-

1 cies (including the National Institute of Stand-
2 ards and Technology), develop and maintain a
3 strategic plan with specific objectives, mile-
4 stones, and metrics for each strategic plan area
5 described in subparagraph (B). The National
6 Coordinator shall, in consultation with such
7 other appropriate Federal agencies, annually
8 update such strategic plan.

9 “(B) STRATEGIC PLAN AREAS RE-
10 QUIRED.—The strategic plan areas include at
11 least the following:

12 “(i) The establishment of rec-
13 ommendations for and development of
14 standards and guidance for each category
15 under paragraph (2)(A), including rec-
16 ommendations described in section 422 of
17 the Health-e Information Technology Act
18 of 2008, and the adoption of standards so
19 recommended, including the process of up-
20 dating of such standards and guidance.

21 “(ii) The development of the certifi-
22 cation program under paragraph (3) and
23 the establishment and maintenance of a
24 list of health information technology sys-
25 tems (and components of such systems)

1 that have been certified under such pro-
2 gram.

3 “(iii) The development of a Federal
4 open source health IT system in accord-
5 ance with paragraph (4).

6 “(iv) The widespread utilization of
7 electronic health records in the United
8 States and the establishment of a nation-
9 wide health information network described
10 in paragraph (5).

11 “(v) Specifying a framework for the
12 coordination and flow of recommendations
13 and policies under this subtitle among the
14 Secretary, the National Coordinator, the
15 HIT Policy Committee, health information
16 exchanges, and other relevant entities.

17 “(vi) Methods to foster the public un-
18 derstanding of health information tech-
19 nology and related privacy and security
20 laws.

21 “(vii) The availability of technical as-
22 sistance and training for health care pro-
23 viders in the implementation and utiliza-
24 tion of health information technology sys-
25 tems.

1 “(C) COLLABORATION.—The strategic plan
2 shall be developed and updated through collabo-
3 ration of public and private interests.

4 “(D) MEASURABLE OUTCOME GOALS.—
5 The strategic plan shall include measurable out-
6 come goals including timeframes for such goals.

7 “(E) PUBLICATION.—The National Coor-
8 dinator shall publish the strategic plan, includ-
9 ing all updates.

10 “(7) IMPLEMENTATION REPORTS.—Not later
11 than 12 months after the date of publication of the
12 strategic plan under paragraph (6) and annually
13 thereafter, the National Coordinator shall submit to
14 the Secretary a report that identifies the progress
15 achieved with respect to the objectives, milestones,
16 and metrics identified in such strategic plan for each
17 strategic plan area described in paragraph (6)(B).

18 “(8) ASSESSMENT OF IMPACT OF HIT ON COM-
19 MUNITIES WITH HEALTH DISPARITIES AND UNIN-
20 SURED, UNDERINSURED, AND MEDICALLY UNDER-
21 SERVED AREAS.—The National Coordinator shall as-
22 sess and publish the impact of health information
23 technology in communities with health disparities
24 and in areas that serve uninsured, underinsured,
25 and medically underserved individuals (including

1 urban and rural areas) and identify practices to in-
2 crease the adoption of such technology by health
3 care providers in such communities.

4 “(9) WEBSITE.—The National Coordinator
5 shall maintain and frequently update an Internet
6 website on which there is posted information that in-
7 cludes the following:

8 “(A) Recommendations made by the Na-
9 tional Coordinator under paragraph (2)(A).

10 “(B) The standards and guidance adopted
11 by the Secretary under section 3003(a).

12 “(C) Sources of Federal grant funds and
13 technical assistance that are available to facili-
14 tate the purchase of, or enhance the utilization
15 of, health information technology systems.

16 “(D) The reports prepared by the National
17 Coordinator under paragraph (7).

18 “(E) The assessment by the National Co-
19 ordinator under paragraph (8).

20 “(d) STAFF.—

21 “(1) IN GENERAL.—The National Coordinator
22 may appoint personnel to the Office as the National
23 Coordinator considers appropriate. Such personnel
24 shall have the requisite skills needed to develop and
25 make recommendations in each of the categories de-

scribed in clauses (iii), (iv), and (v) of subsection (c)(2)(A).

“(2) DETAIL OF FEDERAL EMPLOYEES.—

“(A) IN GENERAL.—Upon the request of the National Coordinator, the head of any Federal agency is authorized to detail, with or without reimbursement from the Office, any of the personnel of such agency to the Office to assist it in carrying out its duties under this section.

“(B) EFFECT OF DETAIL.—Any detail of personnel under subparagraph (A) shall—

“(i) not interrupt or otherwise affect the civil service status or privileges of the Federal employee; and

“(ii) be in addition to any other staff of the Department employed by the National Coordinator.

“(C) ACCEPTANCE OF DETAILEES.—Notwithstanding any other provision of law, the Office may accept detailed personnel from other Federal agencies without regard to whether the agency described under subparagraph (A) is reimbursed.

“(3) TEMPORARY AND INTERMITTENT SERVICES.—The National Coordinator may procure tem-

1 porary and intermittent services under section
2 3109(b) of title 5, United States Code to the extent
3 that such services cannot adequately be provided by
4 any personnel appointed or detailed under paragraph
5 (1) or (2), respectively.

6 “(e) FUNDING.—

7 “(1) AUTHORIZATION OF APPROPRIATIONS.—

8 There are authorized to be appropriated to carry out
9 this section such sums as may be necessary for each
10 of the fiscal years 2009 through 2013.

11 “(2) DHHS AGENCY CONTRIBUTIONS.—In ad-
12 dition to amounts authorized under paragraph (1),
13 for purposes of carrying out this section, for each of
14 the fiscal years 2009 through 2013 there shall be
15 transferred to the National Coordinator from the
16 amount appropriated for the fiscal year to each
17 agency within the Department an amount that is
18 equal to 1 percent of the amount appropriated to the
19 agency for the fiscal year to carry out health infor-
20 mation technology activities.

21 “(3) OPEN SOURCE PRODUCT LICENSING
22 FEE.—In addition to amounts authorized under
23 paragraph (1) and transferred under paragraph (2),
24 any fees collected under subsection (c)(4)(B) shall be

1 available to the National Coordinator for purposes of
2 carrying out this section.

3 **“SEC. 3002. HIT ADVISORY COMMITTEE.**

4 “(a) ESTABLISHMENT.—There is established a HIT
5 Advisory Committee to make recommendations to and ad-
6 vise the National Coordinator with respect to all of the
7 duties of the National Coordinator described in section
8 3001(c).

9 “(b) ADDITIONAL DUTIES.—

10 “(1) FORUM.—The HIT Advisory Committee
11 shall serve as a forum for broad stakeholder input
12 with specific expertise necessary to advise the Na-
13 tional Coordinator for purposes of carrying out the
14 duties of the National Coordinator described in sec-
15 tion 3001(c), including expertise related to the cat-
16 egories described in paragraph (2)(A) of such sec-
17 tion.

18 “(2) WEBSITE.—The HIT Advisory Committee
19 shall develop and maintain an Internet website on
20 which there is posted information that includes the
21 following:

22 “(A) Established governance rules.

23 “(B) A business plan.

24 “(C) Meeting notices at least 14 days prior
25 to each meeting.

1 “(D) Meeting agendas at least 7 days prior
2 to each meeting.

3 “(E) Meeting materials at least 3 days
4 prior to each meeting.

5 “(c) MEMBERSHIP.—

6 “(1) APPOINTMENTS.—The HIT Advisory
7 Committee shall be composed of members to be ap-
8 pointed as follows:

9 “(A) Such members as shall be appointed
10 by the Secretary, from the Department of
11 Health and Human Services as representatives
12 of agencies within the Department, including
13 from the Agency for Healthcare Research and
14 Quality, the Centers for Disease Control and
15 Prevention, the Centers of Medicare & Medicaid
16 Services, the Health Resources and Services
17 Administration, and the Indian Health Service.

18 “(B) 1 member shall be appointed by the
19 majority leader of the Senate.

20 “(C) 1 member shall be appointed by the
21 minority leader of the Senate.

22 “(D) 1 member shall be appointed by the
23 Speaker of the House of Representatives.

1 “(E) 1 member shall be appointed by the
2 minority leader of the House of Representa-
3 tives.

4 “(F) Such other members as shall be ap-
5 pointed by the President as representatives of
6 other relevant Federal agencies, such as the De-
7 partment of Veterans Affairs, the National In-
8 stitute of Standards and Technology, and the
9 Department of Defense.

10 “(G) 12 members shall be appointed by the
11 Comptroller General of the United States of
12 whom—

13 “(i) 1 member shall be an advocate
14 for patients or consumers;

15 “(ii) 2 members shall represent health
16 care providers, one of which shall be a phy-
17 sician;

18 “(iii) 1 member shall be from a labor
19 organization representing health care
20 workers;

21 “(iv) 1 member shall have expertise in
22 privacy and security;

23 “(v) 1 member shall have expertise in
24 improving the health of vulnerable popu-
25 lations;

1 “(vi) 1 member shall be from the
2 health research community;

3 “(vii) 1 member shall represent health
4 plans or other third-party payers;

5 “(viii) 1 member shall represent infor-
6 mation technology vendors;

7 “(ix) 1 member shall represent pur-
8 chasers or employers;

9 “(x) 1 member shall have expertise in
10 health care quality measurement and re-
11 porting; and

12 “(xi) 1 member shall have expertise in
13 open source health information technology
14 systems.

15 In no case may the total number of members
16 appointed under subparagraphs (A) and (F) ex-
17 ceed 10.

18 “(2) NATIONAL COORDINATOR.—The National
19 Coordinator shall be a member of the HIT Advisory
20 Committee and act as a liaison between the Com-
21 mittee and agencies of the Federal Government.

22 “(3) CHAIRPERSON AND VICE CHAIRPERSON.—
23 The HIT Advisory Committee shall designate 1
24 member to serve as the chairperson and 1 member
25 to serve as the vice chairperson of the HIT Advisory

1 Committee, such that one is a representative of the
2 public sector and one is a representative from the
3 private sector.

4 “(4) PARTICIPATION.—The members of the
5 HIT Advisory Committee appointed under para-
6 graph (1) shall represent a balance among various
7 sectors of the health care system so that no single
8 sector unduly influences the recommendations of
9 such Committee.

10 “(5) AUTHORIZED USE OF TASK FORCES AND
11 WORK GROUPS.—The National Coordinator, in con-
12 sultation with the chairperson and vice chairperson
13 of the HIT Advisory Committee, may convene task
14 forces or working groups as necessary to carry out
15 the duties of the Committee.

16 “(6) COMPENSATION.—Subject to the avail-
17 ability of appropriations, while serving on the busi-
18 ness of the HIT Advisory Committee (including
19 traveltime), a member of the Committee who is not
20 a Federal employee shall be entitled to compensation
21 at the per diem equivalent of the rate provided for
22 level IV of the Executive Schedule under section
23 5315 of title 5, United States Code; and while so
24 serving away from home and the member’s regular
25 place of business, a member may be allowed travel

1 expenses, as authorized by the Chairman of the
2 Committee.

3 “(7) TERMS.—

4 “(A) IN GENERAL.—The terms of mem-
5 bers of the HIT Advisory Committee appointed
6 under paragraph (1) shall be 3 years except
7 that the Comptroller General of the United
8 States shall designate staggered terms for the
9 members first appointed under paragraph
10 (1)(G).

11 “(B) VACANCIES.—Any member appointed
12 to fill a vacancy in the membership of the HIT
13 Advisory Committee that occurs prior to the ex-
14 piration of the term for which the member’s
15 predecessor was appointed shall be appointed
16 only for the remainder of that term. A member
17 may serve after the expiration of that member’s
18 term until a successor has been appointed. A
19 vacancy in the HIT Advisory Committee shall
20 be filled in the manner in which the original ap-
21 pointment was made.

22 “(8) OUTSIDE INVOLVEMENT.—The HIT Advi-
23 sory Committee shall ensure an adequate oppor-
24 tunity for the participation in activities of the Com-
25 mittee of outside advisors, including individuals with

1 expertise in the development of policies for the elec-
2 tronic exchange and use of health information, in-
3 cluding in the areas of health information privacy
4 and security.

5 “(9) QUORUM.—Ten members of the HIT Advi-
6 sory Committee shall constitute a quorum for pur-
7 poses of voting, but a lesser number of members
8 may meet and hold hearings.

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

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

18 **“SEC. 3003. PROCESS FOR ADOPTION OF RECOMMENDED**
19 **STANDARDS AND GUIDANCE.**

20 “(a) IN GENERAL.—

21 “(1) STANDARDS.—Not later than 9 months
22 after the date of receipt of a recommendation under
23 section 3001(c)(2) from the National Coordinator
24 for any grouping of standards for purposes of certi-
25 fying health information technology under the cer-

1 tification program under section 3001(c)(3), the
2 Secretary shall, through a rulemaking process and
3 after consideration of public comments, determine
4 whether or not to adopt such grouping of standards.

5 “(2) GUIDANCE.—Not later than 9 months
6 after the date of receipt of a recommendation under
7 section 3001(c)(2) from the National Coordinator
8 for any guidance, the Secretary shall, through the
9 applicable administrative process that includes public
10 notice in the Federal Register and opportunity for
11 public comment, determine whether or not to adopt
12 such guidance.

13 “(b) INITIAL STANDARDS.—Not later than Sep-
14 tember 30, 2011, the Secretary shall, through a rule-
15 making process and after consideration of public com-
16 ments, adopt the initial set of standards recommended
17 from the National Coordinator pursuant to the second
18 sentence under section 3001(c)(2). Such initial set of
19 standards shall include, at a minimum, technical stand-
20 ards for de-identifying health information and for immu-
21 table audit trails.

22 “(c) PUBLICATION.—Not later than 30 days after the
23 Secretary makes a determination under subsection (a), the
24 Secretary shall provide for publication in the Federal Reg-
25 ister, and on the Internet website maintained by the Na-

1 tional Coordinator in accordance with section 3001(c)(9),
2 of such determination.

3 **“SEC. 3004. APPLICATION AND USE OF ADOPTED STAND-**
4 **ARDS BY FEDERAL AGENCIES.**

5 “For requirements relating to the application and use
6 by Federal agencies of the standards adopted under sec-
7 tion 3003(a), see section 111 of the Health-e Information
8 Technology Act of 2008.

9 **“SEC. 3005. VOLUNTARY APPLICATION AND USE OF ADOPT-**
10 **ED STANDARDS BY PRIVATE ENTITIES.**

11 “(a) IN GENERAL.—Except as provided under section
12 112 of the Health-e Information Technology Act of 2008,
13 any standard adopted under section 3003(a) shall be vol-
14 untary with respect to private entities.

15 “(b) RULE OF CONSTRUCTION.—Nothing in this sub-
16 title shall be construed to require that a private entity that
17 enters into a contract with the Federal Government apply
18 or use the standards adopted under section 3003(a) with
19 respect to activities not related to the contract. The pre-
20 vious sentence shall not affect any other provision of law,
21 such as part C of title XI of the Social Security Act, title
22 III of the Health-e Information Technology Act of 2008,
23 or regulations promulgated to carry out section 264(c) of
24 the Health Insurance Portability and Accountability Act

1 of 1996, that requires the application or use of such a
2 standard.

3 **“SEC. 3006. HEALTH INFORMATION TECHNOLOGY RE-**
4 **SOURCE CENTER.**

5 “(a) DEVELOPMENT.—

6 “(1) IN GENERAL.—The National Coordinator
7 shall develop a Health Information Technology Re-
8 source Center to provide technical assistance and de-
9 velop best practices to support and accelerate efforts
10 to adopt, implement, and effectively use health infor-
11 mation technology that allows for the electronic ex-
12 change and use of information in compliance with
13 standards and any guidance adopted under section
14 3003(a), including for purposes of each of the cat-
15 egories described in such section 3001(c)(2).

16 “(2) PURPOSES.—The purpose of the Center is
17 to—

18 “(A) provide a forum for the exchange of
19 knowledge and experience;

20 “(B) accelerate the transfer of lessons
21 learned from existing public and private sector
22 initiatives, including those currently receiving
23 Federal financial support;

24 “(C) assemble, analyze, and widely dis-
25 seminate evidence and experience related to the

1 adoption, implementation, and effective use of
2 health information technology that allows for
3 the electronic exchange and use of information;

4 “(D) provide technical assistance for the
5 establishment and evaluation of regional and
6 local health information networks to facilitate
7 the electronic exchange of information across
8 health care settings and improve the quality of
9 health care;

10 “(E) provide technical assistance for the
11 development and dissemination of solutions to
12 barriers to the exchange of electronic health in-
13 formation;

14 “(F) learn about effective strategies to
15 adopt and utilize health information technology
16 in medically underserved communities;

17 “(G) conduct other activities identified by
18 the States, local or regional health information
19 networks, or health care stakeholders as a focus
20 for developing and sharing best practices; and

21 “(H) provide technical assistance to pro-
22 mote adoption and utilization of health informa-
23 tion technology by health care providers, includ-
24 ing in medically underserved communities.

1 “(b) TECHNICAL ASSISTANCE TELEPHONE NUMBER
2 OR WEBSITE.—The National Coordinator shall establish
3 a toll-free telephone number or Internet website to provide
4 health care providers with a single point of contact to—

5 “(1) learn about Federal grants and technical
6 assistance services related to the electronic exchange
7 and use of health information;

8 “(2) learn about standards adopted under sec-
9 tion 3003(a);

10 “(3) learn about regional and local health infor-
11 mation networks for assistance with health informa-
12 tion technology; and

13 “(4) disseminate additional information deter-
14 mined by the National Coordinator.”.

15 **SEC. 102. TRANSITIONS.**

16 (a) ONCHIT.—To the extent consistent with section
17 3001 of the Public Health Service Act, as added by section
18 101, all functions, personnel, assets, liabilities, and admin-
19 istrative actions applicable to the National Coordinator for
20 Health Information Technology appointed under Execu-
21 tive Order 13335 or the Office of such National Coordi-
22 nator on the date before the date of the enactment of this
23 Act shall be transferred to the National Coordinator ap-
24 pointed under section 3001(a) of such Act and the Office

1 of such National Coordinator as of the date of the enact-
2 ment of this Act.

3 (b) AHIC.—To the extent consistent with section
4 3002 of the Public Health Service Act, as added by section
5 101, all functions, personnel, assets, and liabilities applica-
6 ble to the American Health Information Community cre-
7 ated in response to Executive Order 13335 as of the day
8 before the date of the enactment of this Act shall be trans-
9 ferred to the HIT Advisory Committee, established under
10 section 3002(a) of such Act, as appropriate, as of the date
11 of the enactment of this Act.

12 (c) RULES OF CONSTRUCTION.—

13 (1) ONCHIT.—Nothing in section 3001 of the
14 Public Health Service Act, as added by section 101,
15 or subsection (a) shall be construed as requiring the
16 creation of a new entity to the extent that the Office
17 of the National Coordinator for Health Information
18 Technology established pursuant to Executive Order
19 13335 is consistent with the provisions of such sec-
20 tion 3001.

21 (2) AHIC.—Nothing in section 3002 of the
22 Public Health Service Act, as added by section 101,
23 or subsection (b) shall be construed as requiring the
24 creation of a new entity to the extent that the Amer-
25 ican Health Information Community created in re-

1 sponse to Executive Order 13335 is consistent with
2 the provisions of such section 3002.

3 **Subtitle B—Application and Use of**
4 **Adopted Health Information**
5 **Technology Standards; Reports**

6 **SEC. 111. COORDINATION OF FEDERAL ACTIVITIES WITH**
7 **ADOPTED STANDARDS.**

8 (a) SPENDING ON HEALTH INFORMATION TECH-
9 NOLOGY SYSTEMS.—As each agency (as defined in the Ex-
10 ecutive Order issued on August 22, 2006, relating to pro-
11 moting quality and efficient health care in Federal govern-
12 ment administered or sponsored health care programs) im-
13 plements, acquires, or upgrades health information tech-
14 nology systems used for the direct exchange of individually
15 identifiable health information between agencies and with
16 non-Federal entities, it shall utilize, where available,
17 health information technology systems and products that
18 meet standards adopted under section 3003(a) of the Pub-
19 lic Health Service Act, as added by section 101.

20 (b) FEDERAL INFORMATION COLLECTION ACTIVI-
21 TIES.—With respect to a standard adopted under section
22 3003(a) of the Public Health Service Act, as added by
23 section 101, the President shall take measures to ensure
24 that Federal activities involving the broad collection and
25 submission of health information are consistent with such

1 standard within three years after the date of such adop-
2 tion.

3 (c) APPLICATION OF DEFINITIONS.—The definitions
4 contained in section 3000 of the Public Health Service
5 Act, as added by section 101, shall apply for purposes of
6 this part.

7 **SEC. 112. APPLICATION TO PRIVATE ENTITIES.**

8 Each agency (as defined in such Executive Order
9 issued on August 22, 2006, relating to promoting quality
10 and efficient health care in Federal government adminis-
11 tered or sponsored health care programs) shall require in
12 contracts or agreements with health care providers, health
13 plans, or health insurance issuers that as each provider,
14 plan, or issuer implements, acquires, or upgrades health
15 information technology systems, it shall utilize, where
16 available, health information technology systems and prod-
17 ucts that meet standards adopted under section 3003(a)
18 of the Public Health Service Act, as added by section 101.

19 **SEC. 113. ANNUAL REPORTS.**

20 Not later than 2 years after the date of the enact-
21 ment of this Act and annually thereafter, the Secretary
22 of Health and Human Services shall submit to the Com-
23 mittee on Finance, the Committee on Health, Education,
24 Labor, and Pensions and the Committee on Commerce,
25 Science, and Transportation of the Senate and the Com-

1 mittee on Ways and Means, the Committee on Energy and
 2 Commerce, and the Committee on Science and Technology
 3 of the House of Representatives a report that—

4 (1) describes the specific actions that have been
 5 taken by the Federal Government and private enti-
 6 ties to facilitate the adoption of a nationwide system
 7 for the electronic use and exchange of health infor-
 8 mation, including information from the implementa-
 9 tion reports submitted under section 3001(c)(7) of
 10 the Public Health Service Act, as added by section
 11 101;

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

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

16 **TITLE II—TESTING OF HEALTH** 17 **INFORMATION TECHNOLOGY**

18 **SEC. 201. NATIONAL INSTITUTE FOR STANDARDS AND** 19 **TECHNOLOGY TESTING.**

20 (a) PILOT TESTING OF STANDARDS AND IMPLEMEN-
 21 TATION SPECIFICATIONS.—In coordination with the Office
 22 of the National Coordinator of Health Information Tech-
 23 nology established under section 3001 of the Public
 24 Health Service Act, as added by section 101, with respect
 25 to the development of standards under such section, the

1 Director of the National Institute for Standards and Tech-
 2 nology shall test such standards in order to assure the
 3 efficient implementation and use of such standards.

4 (b) VOLUNTARY TESTING PROGRAM.—In coordina-
 5 tion with the Office of the National Coordinator of Health
 6 Information Technology established under section 3001 of
 7 the Public Health Service Act, as added by section 101,
 8 with respect to the development of standards under such
 9 section, the Director of the National Institute of Stand-
 10 ards and Technology shall support the establishment of
 11 a conformance testing infrastructure, including the devel-
 12 opment of technical test beds. The development of this
 13 conformance testing infrastructure may include a program
 14 to accredit independent, non-Federal laboratories to per-
 15 form testing.

16 **TITLE III—INCENTIVES FOR**
 17 **ADOPTION OF HEALTH IN-**
 18 **FORMATION TECHNOLOGY**

19 **Subtitle A—Medicare Program**

20 **SEC. 301. INCENTIVES FOR ELIGIBLE PROFESSIONALS.**

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

1 “(o) INCENTIVES FOR ADOPTION AND MEANINGFUL
2 USE OF CERTIFIED HEALTH INFORMATION TECHNOLOGY
3 SYSTEM.—

4 “(1) INCENTIVE PAYMENTS.—

5 “(A) IN GENERAL.—Subject to subpara-
6 graphs (B), (C), and (D), with respect to cov-
7 ered professional services furnished by an eligi-
8 ble professional during a reporting period dur-
9 ing the first calendar year beginning after the
10 date specified under subparagraph (B)(iv) (or,
11 if sooner, 2013) or any subsequent year (before
12 2017), if the eligible professional is a meaning-
13 ful HIT user for the reporting period (as deter-
14 mined under paragraph (2), in addition to the
15 amount otherwise paid under this part, there
16 also shall be paid to the eligible professional (or
17 to an employer or facility in the cases described
18 in clause (A) of section 1842(b)(6)) or, in the
19 case of a group practice under paragraph
20 (2)(D), to the group practice, from the Federal
21 Supplementary Medical Insurance Trust Fund
22 established under section 1841 an amount equal
23 to 75 percent of the Secretary’s estimate (based
24 on claims submitted not later than 2 months
25 after the end of the reporting period) of the al-

1 lowed charges under this part for all such cov-
2 ered professional services furnished by the eligi-
3 ble professional (or, in the case of a group prac-
4 tice under paragraph (2)(D), by the group
5 practice) during the reporting period.

6 “(B) LIMITATIONS ON AMOUNTS OF IN-
7 CENTIVE PAYMENTS.—

8 “(i) IN GENERAL.—In no case shall
9 the amount of the incentive payment pro-
10 vided under this paragraph exceed the ap-
11 plicable amount specified in clause (ii) with
12 respect to any eligible professional.

13 “(ii) AMOUNT.—Subject to clauses
14 (iii) and (iv), the applicable amount speci-
15 fied in this clause is as follows:

16 “(I) For the first calendar year
17 beginning after the date specified in
18 clause (iv) or, if sooner, for 2013,
19 \$15,000.

20 “(II) For the calendar year fol-
21 lowing the year specified in subclause
22 (I), \$12,000.

23 “(III) For the calendar year fol-
24 lowing the year specified in subclause
25 (II), \$8,000.

1 “(IV) For the calendar year fol-
2 lowing the year specified in subclause
3 (III), \$4,000.

4 “(V) For the calendar year fol-
5 lowing the year specified in subclause
6 (IV), \$2,000.

7 “(iii) PRO-RATION FOR PARTIAL YEAR
8 PROFESSIONALS.—In the case of an eligi-
9 ble professional who is a meaningful HIT
10 user for only a portion of a reporting pe-
11 riod for reasons such as the professional
12 did not provide services for which payment
13 is made under this part for the entire pe-
14 riod or the professional initiated the use of
15 health information technology during the
16 period, the Secretary may pro-rate the ap-
17 plicable amount specified under clause (ii)
18 to reflect the portion of the period during
19 which the professional was a meaningful
20 HIT user.

21 “(iv) DATE SPECIFIED.—The date
22 specified in this subclause is the date on
23 which the open source health information
24 technology system under section

1 3001(c)(4) of the Public Health Service
2 Act is first made publicly available.

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

5 “(i) IN GENERAL.—No payment may
6 be made under subparagraph (A) in the
7 case of hospital-based eligible professionals.

8 “(ii) HOSPITAL-BASED ELIGIBLE PRO-
9 FESSIONAL.—For purposes of clause (i),
10 the term ‘hospital-based eligible profes-
11 sional’ means an eligible professional, such
12 as a pathologist or anesthesiologist, who
13 furnishes items and services principally in
14 a hospital setting and through the use of
15 the facilities and equipment, including
16 computer equipment, of the hospital.

17 “(D) FORM OF PAYMENT.—The payment
18 under this subsection for a reporting period
19 may be in the form of a single consolidated pay-
20 ment or in the form of such periodic install-
21 ments as the Secretary may specify.

22 “(2) MEANINGFUL HIT USER.—

23 “(A) IN GENERAL.—For purposes of para-
24 graph (1), an eligible professional shall be
25 treated as a meaningful HIT user for a report-

1 ing period for a year if the eligible professional
2 demonstrates to the satisfaction of the Sec-
3 retary that the professional is meaningfully
4 using a certified health information technology
5 system during the reporting period, as dem-
6 onstrated in accordance with applicable meas-
7 ures established under subparagraph (B).

8 “(B) MEASURES FOR MEANINGFUL USE.—

9 The Secretary shall establish measures under
10 which an eligible professional may demonstrate
11 meaningful use of a certified health information
12 technology system for a reporting period. Such
13 measures may include—

14 “(i) self-certification of operational
15 use of such a system;

16 “(ii) the submission (or ability to sub-
17 mit), in a form and manner specified by
18 the Secretary, of such information on clin-
19 ical measures and data (that does not in-
20 clude individually identifiable health infor-
21 mation) from such system that indicates a
22 meaningful utilization of such a system
23 during the period; and

24 “(iii) such other means as the Sec-
25 retary may specify.

1 The Secretary may establish and apply different
2 measures based on the stage of implementation
3 or adoption of the certified health information
4 technology system involved.

5 “(C) USE OF PART D DATA.—Notwith-
6 standing sections 1860D–15(d)(2)(B) and
7 1860D–15(f)(2), the Secretary may use data
8 regarding drug claims submitted for purposes
9 of section 1860D–15 that are necessary for
10 purposes of subparagraph (B)(ii).

11 “(D) SATISFACTORY MEASURES FOR
12 GROUP PRACTICES.—

13 “(i) IN GENERAL.—Not later than
14 January 1, 2013, the Secretary shall pro-
15 vide for a method of applying the measures
16 established under subparagraph (B) or re-
17 vised under subparagraph (F) to eligible
18 professionals in a group practice (as de-
19 fined by the Secretary).

20 “(ii) STATISTICAL SAMPLING
21 MODEL.—In the case that the Secretary
22 provides for a method under clause (i), the
23 method may provide for the use of a statis-
24 tical sampling model to submit data on
25 measures, such as the model used under

1 the Physician Group Practice demonstra-
2 tion project under section 1866A.

3 “(iii) NO DOUBLE PAYMENTS.—Pay-
4 ments for a reporting period to a group
5 practice under this paragraph by reason of
6 the method under clause (i) shall be in lieu
7 of the payments that would otherwise be
8 made under this paragraph to eligible pro-
9 fessionals in the group practice for being a
10 meaningful HIT user during such period.

11 “(E) AUTHORITY TO REVISE MEASURES.—
12 The Secretary may periodically revise the meas-
13 ures established under subparagraph (B) with
14 respect to demonstrating meaningful use of a
15 certified health information technology system.

16 “(3) APPLICATION.—

17 “(A) PHYSICIAN REPORTING SYSTEM
18 RULES.—Paragraphs (5), (6), and (8) of sub-
19 section (k) shall apply for purposes of this sub-
20 section in the same manner as they apply for
21 purposes of such subsection.

22 “(B) COORDINATION WITH OTHER BONUS
23 PAYMENTS.—The provisions of this subsection
24 shall not be taken into account in applying sub-
25 sections (m) and (u) of section 1833 and any

1 payment under such subsections shall not be
2 taken into account in computing allowable
3 charges under this subsection.

4 “(C) LIMITATIONS ON REVIEW.—There
5 shall be no administrative or judicial review
6 under 1869, section 1878, or otherwise of—

7 “(i) the determination of measures
8 applicable to services furnished by eligible
9 professionals under this subsection;

10 “(ii) the determination of a meaning-
11 ful HIT user under paragraph (2)(A), a
12 limitation under paragraph (1)(B), and the
13 exception under subsection (a)(7)(B); and

14 “(iii) the determination of any incen-
15 tive payment under this subsection and the
16 payment adjustment under subsection
17 (a)(7)(A).

18 “(D) POSTING ON WEBSITE.—The Sec-
19 retary shall post on the Internet website of the
20 Centers for Medicare & Medicaid Services, in an
21 easily understandable format, a list of the
22 names, business addresses, and business phone
23 numbers of the eligible professionals (or, in the
24 case of reporting under paragraph (2)(D), the

1 group practices) who are meaningful HIT
2 users.

3 “(4) DEFINITIONS.—For purposes of this sub-
4 section:

5 “(A) CERTIFIED HEALTH INFORMATION
6 TECHNOLOGY SYSTEM.—The term ‘certified
7 health information technology system’ means,
8 with respect to an eligible professional and a re-
9 porting period for a year, a health information
10 technology system (as defined in section 3000
11 of the Public Health Service Act) that has a
12 current certification under section 3001(c)(3) of
13 such Act as satisfying all interoperability stand-
14 ards, privacy and security standards, and clin-
15 ical and quality functions adopted under section
16 3003(a) of such Act that are applicable to the
17 eligible professional.

18 “(B) COVERED PROFESSIONAL SERV-
19 ICES.—The term ‘covered professional services’
20 has the meaning given such term in subsection
21 (k)(3).

22 “(C) ELIGIBLE PROFESSIONAL.—The term
23 ‘eligible professional’ means a physician, as de-
24 fined in section 1861(r)(1).

1 “(D) REPORTING PERIOD.—The term ‘re-
2 reporting period’ means any period, with respect
3 to a calendar year, as specified by the Sec-
4 retary.”.

5 (b) INCENTIVE PAYMENT ADJUSTMENT.—Section
6 1848(a) of the Social Security Act (42 U.S.C. 1395w-
7 4(a)) is amended by adding at the end the following new
8 paragraph:

9 “(7) INCENTIVES FOR MEANINGFUL USE OF
10 HEALTH INFORMATION TECHNOLOGY SYSTEMS.—

11 “(A) ADJUSTMENT.—

12 “(i) IN GENERAL.—Subject to sub-
13 paragraph (B), with respect to covered
14 professional services furnished by an eligi-
15 ble professional during 2016 or any subse-
16 quent year, if the eligible professional is
17 not a meaningful HIT user for a reporting
18 period for the year (as determined under
19 subsection (o)(2)), the fee schedule amount
20 for such services furnished by such profes-
21 sional during the year (including the fee
22 schedule amount for purposes of deter-
23 mining a payment based on such amount)
24 shall be equal to the applicable percent of
25 the fee schedule amount that would other-

1 wise apply to such services under this sub-
 2 section (determined after application of
 3 paragraph (3) but without regard to this
 4 paragraph).

5 “(ii) APPLICABLE PERCENT.—For
 6 purposes of clause (i), the term ‘applicable
 7 percent’ means—

8 “(I) for 2016, 99 percent;

9 “(II) for 2017, 98.5 percent;

10 “(III) for 2018, 98 percent;

11 “(IV) for 2019, 97.5 percent;

12 and

13 “(V) for 2020 and each subse-
 14 quent year, 97 percent.

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

1 fessional be granted an exemption under this
2 subparagraph for more than 5 years.

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

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

14 “(E) DEFINITIONS.—For purposes of this
15 paragraph:

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

20 “(ii) ELIGIBLE PROFESSIONAL.—The
21 term ‘eligible professional’ means a physi-
22 cian, as defined in section 1861(r)(1).

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

1 (c) CONFORMING AMENDMENTS TO E-PRE-
2 SCRIBING.—

3 (1) Section 1848(a)(5)(A)(ii)(III) of the Social
4 Security Act (42 U.S.C. 1395w-4(a)(5)(A)(ii)(III))
5 is amended by striking “and each subsequent year”
6 and inserting “and 2015”.

7 (2) Section 1848(m)(2) of the Social Security
8 Act (42 U.S.C. 1395w-4(m)(2)) is amended—

9 (A) in subparagraph (A), by striking “For
10 2009” and inserting “Subject to subparagraph
11 (D), for 2009”; and

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

14 “(D) LIMITATION WITH RESPECT TO
15 HEALTH INFORMATION TECHNOLOGY INCEN-
16 TIVE PAYMENTS.—The provisions of this para-
17 graph shall not apply to an eligible professional
18 (or, in the case of a group practice under para-
19 graph (3)(C), to the group practice) if, for the
20 reporting period the eligible professional (or
21 group practice) receives an incentive payment
22 under subsection (o)(1)(A) with respect to a
23 certified health information system (as defined
24 in subsection (o)(4)(A)) that has the capability
25 of electronic prescribing.”.

1 (d) GAO STUDY AND REPORT.—

2 (1) STUDY.—The Comptroller General of the
3 United States shall conduct a study to determine the
4 extent to which and manner in which payment in-
5 centives (such as under title XVIII or XIX of the
6 Social Security Act) and other funding for purposes
7 of implementing and using health information tech-
8 nology should be made available to health care pro-
9 viders who are receiving minimal or no payment in-
10 centives or other funding under this Act, under title
11 XVIII or XIX of the Social Security Act, or other-
12 wise, for such purposes. Such study shall include an
13 examination of—

14 (A) the adoption rates of certified health
15 information technology systems by such health
16 care providers;

17 (B) the clinical utility of such systems by
18 such health care providers;

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

22 (D) the extent to which such health care
23 providers work in settings that might otherwise
24 receive an incentive payment or other funding

1 under this Act, title XVIII or XIX of the Social
 2 Security Act, or otherwise;

3 (E) the potential costs and the potential
 4 benefits of making payment incentives and
 5 other funding available to such health care pro-
 6 viders; and

7 (F) any other issues the Comptroller Gen-
 8 eral deems to be appropriate.

9 (2) REPORT.—Not later than June 30, 2010,
 10 the Comptroller General shall submit to Congress a
 11 report on the findings and conclusions of the study
 12 conducted under paragraph (1).

13 **SEC. 302. INCENTIVES FOR HOSPITALS.**

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

17 “(o) INCENTIVES FOR ADOPTION AND MEANINGFUL
 18 USE OF CERTIFIED HEALTH INFORMATION TECHNOLOGY
 19 SYSTEMS.—

20 “(1) IN GENERAL.—Subject to the succeeding
 21 provisions of this subsection, with respect to inpa-
 22 tient hospital services furnished by an eligible hos-
 23 pital during the first fiscal year beginning after the
 24 date specified in paragraph (6) (or, if sooner, fiscal
 25 year 2013) or any subsequent fiscal year (before fis-

cal year 2017), if the eligible hospital is a meaningful HIT user for the fiscal year (as determined under paragraph (3)), in addition to the amount otherwise paid under this section, there also shall be paid to the eligible hospital, from the Federal Hospital Insurance Trust Fund established under section 1817, an amount equal to the applicable amount specified in paragraph (2)(A) for such fiscal year.

“(2) PAYMENT AMOUNT.—

“(A) IN GENERAL.—Subject to subparagraph (F), the applicable amount specified in this subparagraph for an eligible hospital for a fiscal year is equal to the product of the following:

“(i) INITIAL AMOUNT.—The sum of—

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

“(II) the discharge related amount specified in subparagraph (C) for a period selected by the Secretary with respect to such fiscal year.

“(ii) MEDICARE SHARE.—The Medicare share as specified in subparagraph (D) for the hospital for a period selected

1 by the Secretary with respect to such fiscal
2 year.

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

6 “(B) BASE AMOUNT.—The base amount
7 specified in this subparagraph is \$1,000,000.

8 “(C) DISCHARGE RELATED AMOUNT.—The
9 discharge related amount specified in this sub-
10 paragraph for a period shall be determined as
11 the sum of the amount, based upon total dis-
12 charges (regardless of any source of payment)
13 for the period, for each discharge up to the
14 13,800th discharge as follows:

15 “(i) For the 1150th through the
16 9,200nd discharge, \$200.

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

20 “(D) MEDICARE SHARE.—The Medicare
21 share specified under this subparagraph for a
22 hospital for a period is equal to the fraction—

23 “(i) the numerator of which is the
24 sum (for the period and with respect to the
25 hospital) of—

1 “(I) the number of inpatient-bed-
2 days (as established by the Secretary)
3 which are attributable to individuals
4 with respect to whom payment may be
5 made under part A; and

6 “(II) the number of inpatient-
7 bed-days (as so established) which are
8 attributable to individuals who are en-
9 rolled under a risk-sharing contract
10 with an eligible organization under
11 section 1876 and who are entitled to
12 part A or with a Medicare Advantage
13 organization under part C; and

14 “(ii) the denominator of which is the
15 product of—

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

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

1 the total amount of the hospital's
2 charges during the period.

3 “(E) TRANSITION FACTOR SPECIFIED.—

4 The transition factor specified in this subpara-
5 graph is as follows:

6 “(i) For the first fiscal year beginning
7 after the date specified in paragraph (6)
8 (or, of sooner, fiscal year 2013), 1.

9 “(ii) For the fiscal year following the
10 fiscal year specified in clause (i), $\frac{3}{4}$.

11 “(iii) For the fiscal year following the
12 fiscal year specified in clause (ii), $\frac{1}{2}$.

13 “(iv) For the fiscal year following the
14 fiscal year specified in clause (iii), $\frac{1}{4}$.

15 “(F) LIMITATIONS.—

16 “(i) PRO-RATION FOR PARTIAL YEAR
17 HOSPITALS.—In the case of an eligible hos-
18 pital that is a meaningful HIT user for
19 only a portion of a fiscal year for reasons
20 such as the hospital did not provide serv-
21 ices for which payment is made under this
22 section for a portion of the fiscal year or
23 the hospital changed the use of health in-
24 formation technology during the fiscal
25 year, the Secretary may pro-rate the appli-

1 cable amount specified under subparagraph
2 (A) to reflect the portion of the fiscal year
3 during which the hospital was a meaning-
4 ful HIT user.

5 “(ii) FORM OF PAYMENT.—The pay-
6 ment under this subsection for a fiscal
7 year may be in the form of a single con-
8 solidated payment or in the form of such
9 periodic installments as the Secretary may
10 specify.

11 There shall be no incentive payment under this
12 subsection, or payment adjustment under sub-
13 section (b)(3)(B)(ix), for a fiscal year in the
14 case of an eligible hospital for which the sum of
15 the inpatient-bed days described in subclauses
16 (I) and (II) of subparagraph (D)(i), for a pe-
17 riod specified by the Secretary with respect to
18 such fiscal year, is an amount that is less than
19 1,000.

20 “(3) MEANINGFUL HIT USER.—

21 “(A) IN GENERAL.—For purposes of para-
22 graph (1), an eligible hospital shall be treated
23 as a meaningful HIT user for a fiscal year if
24 the eligible hospital demonstrates to the satis-
25 faction of the Secretary that the hospital is

1 meaningfully using a certified health informa-
2 tion technology system with respect to such fis-
3 cal year, as demonstrated in accordance with
4 applicable measures established under subpara-
5 graph (B).

6 “(B) STANDARDS FOR MEANINGFUL
7 USE.—The Secretary shall establish measures
8 under which an eligible hospital may dem-
9 onstrate meaningful use of a certified health in-
10 formation technology system for a fiscal year.
11 Such measures may include—

12 “(i) self-certification of operational
13 use of such a system;

14 “(ii) the submission (or ability to sub-
15 mit), in a form and manner specified by
16 the Secretary (which may include the man-
17 ner used for purposes of subsection
18 (b)(3)(B)(viii)), of such information on
19 clinical measures and data (that does not
20 include individually identifiable health in-
21 formation) from such system that indicates
22 a meaningful utilization of such a system
23 during the year; and

24 “(iii) such other means as the Sec-
25 retary may specify.

1 The Secretary may establish and apply different
2 measures based on the stage of implementation
3 or adoption of the certified health information
4 technology system involved or based on the
5 characteristics (such as size) of the hospital.

6 “(C) AUTHORITY TO REVISE MEASURES.—

7 The Secretary may periodically revise the meas-
8 ures established under subparagraph (B) with
9 respect to demonstrating meaningful use of a
10 certified health information technology system.

11 “(4) APPLICATION.—

12 “(A) LIMITATIONS ON REVIEW.—There
13 shall be no administrative or judicial review
14 under 1869, section 1878, or otherwise of—

15 “(i) the determination of measures
16 applicable to services furnished by eligible
17 hospitals under this subsection;

18 “(ii) the determination of a meaning-
19 ful HIT user under paragraph (3)(A) and
20 the exception under subsection
21 (b)(3)(B)(ix)(III); and

22 “(iii) the determination of any incen-
23 tive payment under this subsection and the
24 payment adjustment under subsection
25 (b)(3)(B)(ix).

1 “(B) POSTING ON WEBSITE.—The Sec-
2 retary shall post on the Internet website of the
3 Centers for Medicare & Medicaid Services, in an
4 easily understandable format, a list of the
5 names of the eligible hospitals that are mean-
6 ingful HIT users and other relevant data as de-
7 termined appropriate by the Secretary. The
8 Secretary shall ensure that a hospital has the
9 opportunity to review the other relevant data
10 that are to be made public with respect to the
11 hospital prior to such data being made public.

12 “(5) APPLICATION TO CERTAIN MA HOS-
13 PITALS.—Notwithstanding section 1851(i)(1), an eli-
14 gible hospital that is under common corporate gov-
15 ernance with a qualifying MA organization (as de-
16 fined in section 1853(l)(5)) and that serves individ-
17 uals enrolled under a plan offered by such organiza-
18 tion shall be eligible for an incentive payment under
19 this subsection in the same manner as an eligible
20 hospital that is not under such common corporate
21 governance with a qualifying MA organization.

22 “(6) DATE SPECIFIED.—The date specified in
23 this paragraph is the date on which the open source
24 health information technology system under section

1 3001(c)(4) of the Public Health Service Act is first
2 made publicly available.

3 “(7) DEFINITIONS.—For purposes of this sub-
4 section and subsection (b)(3)(B)(ix):

5 “(A) CERTIFIED HEALTH INFORMATION
6 TECHNOLOGY SYSTEM.—The term ‘certified
7 health information technology system’ means,
8 with respect to an eligible hospital and a fiscal
9 year, a health information technology system
10 (as defined in section 3000 of the Public Health
11 Service Act) that has a current certification
12 under section 3001(c)(3) of such Act as satis-
13 fying all interoperability standards, privacy and
14 security standards, and clinical and quality
15 functions adopted under section 3003(a) of
16 such Act as of a date specified by the Secretary
17 with respect to such fiscal year that are applica-
18 ble to the eligible hospital.

19 “(B) ELIGIBLE HOSPITAL.—The term ‘eli-
20 gible hospital’ means a subsection (d) hos-
21 pital.”.

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

1 (1) in clause (viii)(I), by inserting “(or, begin-
2 ning with fiscal year 2016, by one-half)” after “2.0
3 percentage points”; and

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

6 “(ix)(I) Subject to the third sentence of subsection
7 (o)(2)(F), for purposes of clause (i) for fiscal year 2016
8 and each subsequent fiscal year, in the case of a sub-
9 section (d) hospital that is not a meaningful HIT user (as
10 defined in subsection (o)(3)) with respect to such fiscal
11 year, one-half of the applicable percentage increase other-
12 wise applicable under clause (i) for such fiscal year shall
13 be reduced by 25 percent for fiscal year 2016, 50 percent
14 for fiscal year 2017, 75 percent for fiscal year 2018, and
15 100 percent for fiscal year 2019 and each subsequent fis-
16 cal year. Such reduction shall apply only with respect to
17 the fiscal year involved and the Secretary shall not take
18 into account such reduction in computing the applicable
19 percentage increase under clause (i) for a subsequent fis-
20 cal year.

21 “(II) The Secretary may, on a case-by-case basis, ex-
22 empt a subsection (d) hospital from the application of sub-
23 clause (I) with respect to a fiscal year if the Secretary
24 determines, subject to annual renewal, that requiring such
25 hospital to be a meaningful HIT user during such fiscal

1 year would result in a significant hardship, such as in the
2 case of a hospital in a rural area without sufficient Inter-
3 net access. In no case may a hospital be granted an ex-
4emption under this subclause for more than 5 years.”.

5 (c) CONFORMING AMENDMENT.—Section 1851(i)(1)
6 of such Act (42 U.S.C. 1395w–21(i)(1)) is amended by
7 striking “and 1886(h)(3)(D)” and inserting
8 “1886(h)(3)(D), and 1886(o)(6)”.

9 (d) GAO STUDY AND REPORT.—

10 (1) STUDY.—The Comptroller General of the
11 United States shall conduct a study to determine the
12 extent to which and manner in which payment in-
13centives (such as under title XVIII or XIX of the
14 Social Security Act) and other funding for purposes
15 of implementing and using health information tech-
16 nology should be made available to health care set-
17 tings that are receiving minimal or no payments or
18 other funding under this Act, title XVIII or XIX of
19 the Social Security Act, or otherwise, for such pur-
20 poses. Such health care settings may include skilled
21 nursing facilities, home health agencies, hospice pro-
22 grams, laboratories, federally qualified health cen-
23 ters, and pediatric hospitals. Such study shall in-
24 clude an examination of—

1 (A) the adoption rates of certified health
2 information technology systems at such set-
3 tings;

4 (B) the clinical utility of such systems at
5 such settings;

6 (C) whether the services furnished at such
7 settings are appropriate for or would benefit
8 from the use of such systems;

9 (D) the potential costs and the potential
10 benefits of providing such settings with incen-
11 tive payments and other funding for such pur-
12 poses; and

13 (E) any other issues the Comptroller Gen-
14 eral deems to be appropriate.

15 (2) REPORT.—Not later than June 30, 2010,
16 the Comptroller General shall submit to Congress a
17 report on the findings and conclusions of the study
18 conducted under paragraph (1).

19 **SEC. 303. INCENTIVES FOR CERTAIN MEDICARE ADVAN-**
20 **TAGE PLANS.**

21 (a) IN GENERAL.—Section 1853 of the Social Secu-
22 rity Act (42 U.S.C. 1395w–23) is amended—

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

1 (2) by adding at the end the following new sub-
2 sections:

3 “(1) APPLICATION OF ELIGIBLE PROFESSIONAL IN-
4 CENTIVES FOR CERTAIN MA ORGANIZATIONS TO IMPLE-
5 MENT CERTIFIED HEALTH INFORMATION TECHNOLOGY
6 SYSTEMS.—

7 “(1) IN GENERAL.—Subject to paragraphs (3)
8 and (4), in the case of a qualifying MA organization,
9 the provisions of sections 1848(o) and 1848(a)(7)
10 shall apply with respect to eligible professionals de-
11 scribed in paragraph (2) of the organization who the
12 organization attests under section 1854(a)(1)(A)(iv)
13 to be meaningful HIT users under in a similar man-
14 ner as they apply to eligible professionals in a group
15 practice under such sections.

16 “(2) ELIGIBLE PROFESSIONALS DESCRIBED.—
17 With respect to a qualifying MA organization, eligi-
18 ble professionals described in this paragraph are eli-
19 gible professionals (as defined for purposes of sec-
20 tion 1848(o)) who—

21 “(A) are employed by the organization or
22 are employed by or partners of an entity that,
23 through contract with the organization, pro-
24 vides its services predominantly or exclusively to
25 enrollees of such organization; and

1 “(B) furnish, on average, at least 20 hours
2 per week of professional services.

3 “(3) INCENTIVE PAYMENTS.—In applying sec-
4 tion 1848(o) under paragraph (1), instead of the ad-
5 ditional payment amount under subparagraph (A) of
6 section 1848(o)(1), there shall be substituted the
7 maximum amount permitted under such section mul-
8 tiplied by the medicare share (as determined by the
9 Secretary). Such medicare share for an organization
10 shall be determined in a manner so as to result in
11 the same aggregate payments to the organization as
12 would be paid under section 1848(o) to the eligible
13 professionals described in paragraph (2)(A) for serv-
14 ices furnished under part B of this title.

15 “(4) PAYMENT ADJUSTMENT.—

16 “(A) IN GENERAL.—In applying section
17 1848(a)(7) under paragraph (1), instead of the
18 payment adjustment being an applicable per-
19 cent of the fee schedule amount for a year
20 under such section, the payment adjustment
21 under paragraph (1) shall be equal to the per-
22 cent specified in subparagraph (B) for such
23 year of the payment amount otherwise provided
24 under this section for the year.

1 “(B) SPECIFIED PERCENT.—The percent
2 specified under this subparagraph for—

3 “(i) 2016 is 99.6 percent;

4 “(ii) 2017 is 99.2 percent;

5 “(iii) 2018 is 98.8 percent; and

6 “(iv) 2019 and each subsequent year
7 is 98.4 percent.

8 “(5) QUALIFYING MA ORGANIZATION DE-
9 FINED.—In this subsection and subsection (m), the
10 term ‘qualifying MA organization’ means an organi-
11 zation that is organized as a health maintenance or-
12 ganization (as defined in section 2791(b)(3) of the
13 Public Health Service Act) that offers one or more
14 MA plans under which the physicians furnishing
15 physicians’ services under such a plan are predomi-
16 nantly either employees of the organization or are
17 employees or partners of an entity that, through
18 contract with the organization, provides its services
19 predominantly or exclusively to enrollees of such or-
20 ganization.

21 “(m) ELIGIBLE HOSPITAL INCENTIVES FOR CER-
22 TAIN MA ORGANIZATIONS TO IMPLEMENT CERTIFIED
23 HEALTH INFORMATION TECHNOLOGY SYSTEMS.—

24 “(1) IN GENERAL.—Subject to paragraph (3),
25 in the case of a qualifying MA organization (as de-

1 fined in section 1853(l)(5)), if, according to the at-
2 testation of the organization submitted under section
3 1854(a)(1)(A)(iv) for a year, one or more eligible
4 hospitals (as defined in section 1886(o)(7)(B)) that
5 are under common corporate governance with such
6 organization and that serve individuals enrolled
7 under a plan offered by such organization are not
8 meaningful HIT users (as defined in section
9 1886(o)(3) with respect to a year, the payment
10 amount payable under this section for such organi-
11 zation for such year shall be—

12 “(A) reduced by a percent specified by the
13 Secretary for such year; or

14 “(B) in the case the Secretary is not able
15 to specify reductions under subparagraph (A)
16 because of insufficient encounter data or other
17 appropriate data, the amount that is equal to
18 the percent specified under paragraph (2) of
19 the payment amount otherwise provided under
20 this section to the organization for the year.

21 Reductions specified by the Secretary under sub-
22 paragraph (A) shall be determined in a manner so
23 as to result in the same aggregate reductions to the
24 organization as would be applied under section
25 1886(b)(3)(B)(ix) to all such eligible hospitals under

1 common corporate governance with such organiza-
2 tion if payment for inpatient services furnished by
3 such hospitals was payable under part A instead of
4 this part.

5 “(2) ALTERNATIVE PERCENT SPECIFIED.—The
6 percent specified under this paragraph for—

7 “(A) 2016 is 99.95 percent;

8 “(B) 2017 is 99.90 percent;

9 “(C) 2018 is 99.85 percent; and

10 “(D) 2019 and each subsequent year is
11 99.80 percent.

12 “(3) LIMITATION.—In no case may the applica-
13 tion of subsection (l) and this subsection with re-
14 spect to a year result in a payment amount payable
15 under this section for a qualifying MA organization
16 for the year that is less than the amount that is
17 equal to the percent specified under paragraph (4)
18 of the payment amount that would otherwise be pro-
19 vided under this section to the organization for the
20 year without regard to subsection (l) and this sub-
21 section.

22 “(4) SPECIFIED PERCENT.—The percent speci-
23 fied under this paragraph for—

24 “(A) 2016 is 99 percent;

25 “(B) 2017 is 98 percent;

1 “(C) 2018 is 97 percent; and

2 “(D) 2019 and each subsequent year is 96
3 percent.”.

4 (b) MEANINGFUL HIT USER ATTESTATION WITH
5 BIDS.—Section 1854(a)(1)(A) of the Social Security Act
6 (42 U.S.C. 1395w–24(a)(1)(A)) is amended by adding at
7 the end the following new clause:

8 “(iv) An attestation identifying wheth-
9 er each eligible professional described in
10 section 1853(l)(2) with respect to such or-
11 ganization is a meaningful HIT user (as
12 defined in section 1848(o)(3)) for the year
13 and whether each eligible hospital de-
14 scribed in section 1853(m)(1), with respect
15 to such organization, is a meaningful HIT
16 user (as defined in section 1886(o)(3)) for
17 the year.”.

18 (c) HIT INCENTIVE PAYMENTS EXEMPT FROM
19 BENCHMARK DETERMINATIONS.—Section 1853(c) of the
20 Social Security Act (42 U.S.C. 1395w–23(c)) is amend-
21 ed—

22 (1) in paragraph (1)(D)(i), by striking “section
23 1886(h)” and inserting “sections 1848(o), 1886(h),
24 and 1886(o)”; and

1 (2) in paragraph (6)(A), by inserting after
 2 “under part B,” the following: “excluding expendi-
 3 tures attributable to sections 1848(o) and 1886(o)”.

4 (d) CONFORMING AMENDMENT.—Section 1853(f) of
 5 such Act (42 U.S.C. 1395w–23(f)) is amended by insert-
 6 ing “and for payments under subsection (l)” after “with
 7 the organization”.

8 **Subtitle B—Other Incentives for**
 9 **the Implementation and Use of**
 10 **Health Information Technology**

11 **SEC. 311. GRANT, LOAN, AND DEMONSTRATION PROGRAMS.**

12 Title XXX of the Public Health Service Act, as added
 13 by section 101, is amended by adding at the end the fol-
 14 lowing new subtitle:

15 **“Subtitle B—Incentives for the Use**
 16 **of Health Information Technology**

17 **“SEC. 3011. GRANTS AND LOANS TO FACILITATE THE WIDE-**

18 **SPREAD ADOPTION OF QUALIFIED HEALTH**

19 **INFORMATION TECHNOLOGY.**

20 “(a) COMPETITIVE GRANTS TO FACILITATE THE
 21 WIDESPREAD ADOPTION OF HEALTH INFORMATION
 22 TECHNOLOGY.—

23 “(1) IN GENERAL.—The National Coordinator
 24 may award competitive grants to eligible entities to
 25 purchase qualified health information technology.

1 “(2) QUALIFIED HEALTH INFORMATION TECH-
2 NOLOGY.—For purposes of this section, the term
3 ‘qualified health information technology’ means
4 health information technology that consists of hard-
5 ware, software, or the provision of support services
6 and that—

7 “(A) enables the protection of health infor-
8 mation, in accordance with applicable law;

9 “(B) is (or is necessary for the operation
10 of) an electronic health records system, includ-
11 ing the provision of decision support and physi-
12 cian order entry for medications;

13 “(C) has the ability to allow timely and
14 permissible access to patient information and to
15 transmit and exchange health information
16 among providers, patients, or insurers; and

17 “(D) is certified under the program devel-
18 oped under section 3001(c)(3) to be in compli-
19 ance with any applicable standards adopted
20 under section 3003(a).

21 “(3) ELIGIBILITY.—To be eligible to receive a
22 grant under paragraph (1) an entity shall—

23 “(A) submit to the National Coordinator
24 an application at such time and in such manner

1 as the National Coordinator may require, and
2 containing—

3 “(i) a plan on how the entity intends
4 to maintain and support the qualified
5 health information technology that would
6 be purchased with amounts under such
7 grant, including the type of resources ex-
8 pected to be involved; and

9 “(ii) such other information as the
10 National Coordinator may require;

11 “(B) submit to the National Coordinator a
12 plan for how qualified health information tech-
13 nology purchased by the entity will result in the
14 electronic exchange and use of health informa-
15 tion;

16 “(C) be—

17 “(i) a not for profit hospital or a Fed-
18 erally qualified health center (as defined in
19 section 1861(aa)(4) of the Social Security
20 Act);

21 “(ii) an individual or group practice;
22 or

23 “(iii) another health care provider,
24 such as a rural health clinic, not described
25 in clause (i) or (ii);

1 “(D) demonstrate significant financial
2 need;

3 “(E) agree to notify individuals in accord-
4 ance with section 402 of the Health-e Informa-
5 tion Technology Act of 2008 (relating to notifi-
6 cations in the case of breaches);

7 “(F) provide matching funds in accordance
8 with paragraph (5);

9 “(G) consult with the Health Information
10 Technology Resource Center established under
11 section 3006 to access the knowledge and expe-
12 rience of existing initiatives regarding the suc-
13 cessful implementation and effective use of
14 health information technology; and

15 “(H) link, to the extent practicable, to one
16 or more local or regional health information
17 plans.

18 “(4) USE OF FUNDS.—Amounts received under
19 a grant under this subsection shall be used to facili-
20 tate the purchase of qualified health information
21 technology.

22 “(5) MATCHING REQUIREMENT.—To be eligible
23 for a grant under this subsection an entity shall con-
24 tribute non-Federal contributions to the costs of car-
25 rying out the activities for which the grant is award-

1 ed in an amount equal to \$1 for each \$3 of Federal
2 funds provided under the grant.

3 “(6) PREFERENCE IN AWARDING GRANTS.—

4 “(A) IN GENERAL.—In awarding grants
5 under this subsection the National Coordinator
6 shall give preference to the following eligible en-
7 tities:

8 “(i) Small health care providers.

9 “(ii) Entities that are located in rural
10 and other areas that serve uninsured,
11 underinsured, and medically underserved
12 individuals (regardless of whether such
13 area is urban or rural).

14 “(iii) Nonprofit health care providers.

15 “(iv) Health care providers (such as
16 children’s hospitals, pediatricians, obstetri-
17 cian-gynecologists, and hospitals that serve
18 uninsured, underinsured, and medically un-
19 derserved individuals and that have limited
20 Medicare patient loads) that have not re-
21 ceived any funds, or have received a mini-
22 mal amount of funds, under sections
23 1848(o) and 1886(o) of the Social Security
24 Act.

1 “(B) CONSIDERATION.—In awarding
2 grants to entities under this subsection, the Na-
3 tional Coordinator shall take into account the
4 amount of funds provided to such entities under
5 other laws, including under sections 1848(o)
6 and 1886(o) of the Social Security Act.

7 “(7) ADDITIONAL SOURCES OF FUNDING FOR
8 HEALTH INFORMATION TECHNOLOGY.—Funding
9 made available under this subsection is in addition
10 to funding which may be used toward the acquisition
11 and utilization of health information technology
12 under other law, which includes the following:

13 “(A) Medicaid transformation grants
14 under section 1903(z) of the Social Security
15 Act.

16 “(B) Grants or funding available through
17 the Agency for Healthcare Research and Qual-
18 ity.

19 “(C) Grants or funding that may be avail-
20 able through the Health Resources and Services
21 Administration for investment in health infor-
22 mation technologies or telehealth.

23 “(D) Grants or funding that may be avail-
24 able through the Department of Agriculture’s

1 Rural Development Telecommunications Pro-
2 gram for investment in telemedicine.

3 “(E) Sections 1848(o) and 1886(o) of the
4 Social Security Act.

5 “(b) COMPETITIVE GRANTS TO STATES AND INDIAN
6 TRIBES FOR THE DEVELOPMENT OF LOAN PROGRAMS TO
7 FACILITATE THE WIDESPREAD ADOPTION OF QUALIFIED
8 HEALTH INFORMATION TECHNOLOGY.—

9 “(1) IN GENERAL.—The National Coordinator
10 may award competitive grants to eligible entities for
11 the establishment of programs for loans to health
12 care providers to purchase qualified health informa-
13 tion technology.

14 “(2) ELIGIBLE ENTITY DEFINED.—For pur-
15 poses of this subsection, the term ‘eligible entity’
16 means a State or Indian tribe (as defined in the In-
17 dian Self-Determination and Education Assistance
18 Act) that—

19 “(A) submits to the National Coordinator
20 an application at such time, in such manner,
21 and containing such information as the Na-
22 tional Coordinator may require;

23 “(B) submits to the National Coordinator
24 a strategic plan in accordance with paragraph
25 (4) and provides to the National Coordinator

1 assurances that the entity will update such plan
2 annually in accordance with such paragraph;

3 “(C) provides assurances to the National
4 Coordinator that the entity will establish a
5 Loan Fund in accordance with paragraph (3);

6 “(D) provides assurances to the National
7 Coordinator that the entity will not provide a
8 loan from the Loan Fund to a health care pro-
9 vider unless the provider meets each of the con-
10 ditions described in paragraph (5); and

11 “(E) agrees to provide matching funds in
12 accordance with paragraph (9).

13 “(3) ESTABLISHMENT OF FUND.—For purposes
14 of paragraph (2)(C), an eligible entity shall establish
15 a qualified health information technology loan fund
16 (referred to in this subsection as a ‘Loan Fund’)
17 and comply with the other requirements contained in
18 this section. A grant to an eligible entity under this
19 subsection shall be deposited in the Loan Fund es-
20 tablished by the eligible entity. No funds authorized
21 by other provisions of this subtitle to be used for
22 other purposes specified in this subtitle shall be de-
23 posited in any Loan Fund.

24 “(4) STRATEGIC PLAN.—

1 “(A) IN GENERAL.—For purposes of para-
2 graph (2)(B), a strategic plan of an eligible en-
3 tity under this paragraph shall identify the in-
4 tended uses of amounts available to the Loan
5 Fund of such entity.

6 “(B) CONTENTS.—A strategic plan under
7 subparagraph (A), with respect to a Loan Fund
8 of an eligible entity, shall include for a year the
9 following:

10 “(i) A list of the projects to be as-
11 sisted through the Loan Fund during such
12 year.

13 “(ii) A description of the criteria and
14 methods established for the distribution of
15 funds from the Loan Fund during the
16 year.

17 “(iii) A description of the financial
18 status of the Loan Fund as of the date of
19 submission of the plan.

20 “(iv) The short-term and long-term
21 goals of the Loan Fund.

22 “(5) HEALTH CARE PROVIDER CONDITIONS FOR
23 RECEIPT OF LOANS.—For purposes of paragraph
24 (2)(D), the conditions described in this paragraph,
25 with respect to a health care provider that seeks a

1 loan from a Loan Fund established under this sub-
2 section, are the following:

3 “(A) The health care provider links, to the
4 extent practicable, to one or more local or re-
5 gional health information networks.

6 “(B) The health care provider consults
7 with the Health Information Technology Re-
8 source Center established under section 3006 to
9 access the knowledge and experience of existing
10 initiatives regarding the successful implementa-
11 tion and effective use of health information
12 technology.

13 “(C) The health care provider agrees to
14 notify individuals in accordance with section
15 402 of the Health-e Information Technology
16 Act of 2008 (relating to notifications in the
17 case of breaches).

18 “(D) The health care provider submits to
19 the State or Indian tribe involved a plan on how
20 the health care provider intends to maintain
21 and support the qualified health information
22 technology that would be purchased with such
23 loan, including the type of resources expected to
24 be involved and any such other information as

1 the State or Indian Tribe, respectively, may re-
2 quire.

3 “(6) USE OF FUNDS.—

4 “(A) IN GENERAL.—Amounts deposited in
5 a Loan Fund, including loan repayments and
6 interest earned on such amounts, shall be used
7 only for awarding loans or loan guarantees,
8 making reimbursements described in paragraph
9 (8)(D)(I), or as a source of reserve and security
10 for leveraged loans, the proceeds of which are
11 deposited in the Loan Fund established under
12 paragraph (1). Loans under this section may be
13 used by a health care provider to purchase
14 qualified health information technology.

15 “(B) LIMITATION.—Amounts received by
16 an eligible entity under this subsection may not
17 be used—

18 “(i) for the purchase or other acquisi-
19 tion of any health information technology
20 system that is not a qualified health infor-
21 mation technology; or

22 “(ii) to conduct activities for which
23 Federal funds are expended under this
24 title.

1 “(7) TYPES OF ASSISTANCE.—Except as other-
2 wise limited by applicable State law, amounts depos-
3 ited into a Loan Fund under this subsection may
4 only be used for the following:

5 “(A) To award loans that comply with the
6 following:

7 “(i) The interest rate for each loan
8 shall not exceed the market interest rate.

9 “(ii) The principal and interest pay-
10 ments on each loan shall commence not
11 later than 1 year after the date the loan
12 was awarded, and each loan shall be fully
13 amortized not later than 10 years after the
14 date of the loan.

15 “(iii) The Loan Fund shall be cred-
16 ited with all payments of principal and in-
17 terest on each loan awarded from the Loan
18 Fund.

19 “(B) To guarantee, or purchase insurance
20 for, a local obligation (all of the proceeds of
21 which finance a project eligible for assistance
22 under this subsection) if the guarantee or pur-
23 chase would improve credit market access or re-
24 duce the interest rate applicable to the obliga-
25 tion involved.

1 “(C) As a source of revenue or security for
2 the payment of principal and interest on rev-
3 enue or general obligation bonds issued by the
4 eligible entity if the proceeds of the sale of the
5 bonds will be deposited into the Loan Fund.

6 “(D) To earn interest on the amounts de-
7 posited into the Loan Fund.

8 “(E) To make reimbursements described in
9 paragraph (8)(D)(I).

10 “(8) ADMINISTRATION OF LOAN FUNDS.—

11 “(A) COMBINED FINANCIAL ADMINISTRA-
12 TION.—An eligible entity may (as a convenience
13 and to avoid unnecessary administrative costs)
14 combine, in accordance with applicable State
15 law, the financial administration of a Loan
16 Fund established under this subsection with the
17 financial administration of any other revolving
18 fund established by the entity if otherwise not
19 prohibited by the law under which the Loan
20 Fund was established.

21 “(B) COST OF ADMINISTERING FUND.—
22 Each eligible entity may annually use not to ex-
23 ceed 4 percent of the funds provided to the en-
24 tity under a grant under this subsection to pay
25 the reasonable costs of the administration of

1 the programs under this section, including the
2 recovery of reasonable costs expended to estab-
3 lish a Loan Fund which are incurred after the
4 date of the enactment of this title.

5 “(C) GUIDANCE AND REGULATIONS.—The
6 National Coordinator shall publish guidance
7 and promulgate regulations as may be nec-
8 essary to carry out the provisions of this sub-
9 section, including—

10 “(i) provisions to ensure that each eli-
11 gible entity commits and expends funds al-
12 lotted to the entity under this subsection
13 as efficiently as possible in accordance with
14 this title and applicable State laws; and

15 “(ii) guidance to prevent waste, fraud,
16 and abuse.

17 “(D) PRIVATE SECTOR CONTRIBUTIONS.—

18 “(i) IN GENERAL.—A Loan Fund es-
19 tablished under this subsection may accept
20 contributions from private sector entities,
21 except that such entities may not specify
22 the recipient or recipients of any loan
23 issued under this subsection. An eligible
24 entity may agree to reimburse a private
25 sector entity for any contribution made

1 under this subparagraph, except that the
2 amount of such reimbursement may not be
3 greater than the principal amount of the
4 contribution made.

5 “(ii) AVAILABILITY OF INFORMA-
6 TION.—An eligible entity shall make pub-
7 licly available the identity of, and amount
8 contributed by, any private sector entity
9 under clause (i) and may issue letters of
10 commendation or make other awards (that
11 have no financial value) to any such entity.

12 “(9) MATCHING REQUIREMENTS.—

13 “(A) IN GENERAL.—The National Coordi-
14 nator may not make a grant under paragraph
15 (1) to an eligible entity unless the entity agrees
16 to make available (directly or through donations
17 from public or private entities) non-Federal
18 contributions in cash to the costs of carrying
19 out the activities for which the grant is awarded
20 in an amount equal to not less than \$1 for each
21 \$1 of Federal funds provided under the grant.

22 “(B) DETERMINATION OF AMOUNT OF
23 NON-FEDERAL CONTRIBUTION.—In determining
24 the amount of non-Federal contributions that
25 an eligible entity has provided pursuant to sub-

1 paragraph (A), the National Coordinator may
2 not include any amounts provided to the entity
3 by the Federal Government.

4 “(10) REPORTS.—The National Coordinator
5 shall annually submit to the Committee on Health,
6 Education, Labor, and Pensions and the Committee
7 on Finance of the Senate, and the Committees on
8 Energy and Commerce and Ways and Means of the
9 House of Representatives, a report summarizing the
10 reports received by the National Coordinator from
11 each eligible entity that receives a grant under this
12 subsection.

13 “(c) COMPETITIVE GRANTS FOR THE IMPLEMENTA-
14 TION OF REGIONAL OR LOCAL HEALTH INFORMATION
15 TECHNOLOGY PLANS.—

16 “(1) IN GENERAL.—The National Coordinator
17 may award competitive grants to eligible entities to
18 implement regional or local health information plans
19 to improve health care quality and efficiency through
20 the electronic exchange and use of health informa-
21 tion.

22 “(2) ELIGIBILITY.—To be eligible to receive a
23 grant under paragraph (1) an entity shall—

1 “(A) facilitate the electronic exchange and
2 use of health information within the local or re-
3 gional area and among local and regional areas;

4 “(B) demonstrate financial need to the Na-
5 tional Coordinator;

6 “(C) demonstrate that one of its principal
7 missions or purposes is to use information tech-
8 nology to improve health care quality and effi-
9 ciency;

10 “(D) adopt bylaws, memoranda of under-
11 standing, or other charter documents that dem-
12 onstrate that the governance structure and de-
13 cisionmaking processes of such entity allow for
14 participation on an ongoing basis by multiple
15 stakeholders within a community, including—

16 “(i) physicians (as defined in section
17 1861(r)) of the Social Security Act), in-
18 cluding physicians that provide services to
19 low income populations and populations
20 that are uninsured, underinsured, and
21 medically underserved (including such pop-
22 ulations in urban and rural areas);

23 “(ii) other health care providers, such
24 as hospitals that serve uninsured, under-

1 insured, and medically underserved individ-
2 uals;

3 “(iii) patient or consumer organiza-
4 tions that reflect the population to be
5 served;

6 “(iv) employers;

7 “(v) public health agencies; and

8 “(vi) such other entities, as deter-
9 mined appropriate by the National Coordi-
10 nator;

11 “(E) demonstrate the participation, to the
12 extent practicable, of stakeholders in the elec-
13 tronic exchange and use of health information
14 within the local or regional health information
15 plan pursuant to subparagraph (D);

16 “(F) adopt nondiscrimination and conflict
17 of interest policies that demonstrate a commit-
18 ment to open, fair, and nondiscriminatory par-
19 ticipation in the regional or local health infor-
20 mation plan by all stakeholders;

21 “(G) comply with applicable standards
22 adopted under section 3003(a);

23 “(H) prepare and submit to the National
24 Coordinator an application in accordance with
25 paragraph (3); and

1 “(I) agree to provide matching funds in ac-
2 cordance with paragraph (6).

3 “(3) APPLICATION.—

4 “(A) IN GENERAL.—To be eligible to re-
5 ceive a grant under paragraph (1), an entity
6 shall submit to the National Coordinator an ap-
7 plication at such time, in such manner, and
8 containing such information (in addition to in-
9 formation required under subparagraph (B)), as
10 the National Coordinator may require.

11 “(B) REQUIRED INFORMATION.—At a
12 minimum, an application submitted under this
13 paragraph shall include—

14 “(i) clearly identified short-term and
15 long-term objectives of the regional or local
16 health information plan;

17 “(ii) an estimate of costs of the hard-
18 ware, software, training, and other services
19 necessary to implement the regional or
20 local health information plan;

21 “(iii) a strategy that includes initia-
22 tives to improve health care quality and ef-
23 ficiency;

24 “(iv) a plan that describes provisions
25 to encourage the electronic exchange and

1 use of health information by all physicians,
2 including single physician practices and
3 small physician groups, participating in the
4 health information plan;

5 “(v) a plan to ensure the privacy and
6 security of individually identifiable health
7 information that is consistent with applica-
8 ble Federal and State law;

9 “(vi) a governance plan that defines
10 the manner in which the stakeholders shall
11 jointly make policy and operational deci-
12 sions on an ongoing basis;

13 “(vii) a financial or business plan that
14 describes—

15 “(I) the sustainability of the
16 plan;

17 “(II) the financial costs and ben-
18 efits of the plan; and

19 “(III) the entities to which such
20 costs and benefits will accrue;

21 “(viii) a plan on how the entity in-
22 volved intends to maintain and support the
23 regional or local health information plan,
24 including the type of resources expected to
25 be involved; and

1 “(ix) in the case of an applicant that
2 is unable to demonstrate the participation
3 of all stakeholders pursuant to paragraph
4 (2)(D), the justification from the entity for
5 any such nonparticipation.

6 “(4) USE OF FUNDS.—Amounts received under
7 a grant under paragraph (1) shall be used to estab-
8 lish and implement a regional or local health infor-
9 mation plan in accordance with this subsection.

10 “(5) PREFERENCE.—In awarding grants under
11 paragraph (1), the Secretary shall give preference to
12 eligible entities that intend to use amounts received
13 under a grant to establish or implement a regional
14 or local health information plan that encompasses
15 communities with health disparities or areas that
16 serve uninsured, underinsured, and medically under-
17 served individuals (including urban and rural areas).

18 “(6) MATCHING REQUIREMENT.—

19 “(A) IN GENERAL.—The National Coordi-
20 nator may not make a grant under this sub-
21 section to an entity unless the entity agrees
22 that, with respect to the costs of carrying out
23 the activities for which the grant is awarded,
24 the entity will make available (directly or
25 through donations from public or private enti-

1 ties) non-Federal contributions toward such
2 costs in an amount equal to not less than 50
3 percent of such costs (\$1 for each \$2 of Federal
4 funds provided under the grant).

5 “(B) DETERMINATION OF AMOUNT CON-
6 TRIBUTED.—Non-Federal contributions re-
7 quired under subparagraph (A) may be in cash
8 or in kind, fairly evaluated, including equip-
9 ment, technology, or services. Amounts provided
10 by the Federal Government, or services assisted
11 or subsidized to any significant extent by the
12 Federal Government, may not be included in
13 determining the amount of such non-Federal
14 contributions.

15 “(d) REPORTS.—Not later than 1 year after the date
16 on which the first grant is awarded under this section,
17 and annually thereafter during the grant period, an entity
18 that receives a grant under this section shall submit to
19 the National Coordinator a report on the activities carried
20 out under the grant involved. Each such report shall in-
21 clude—

22 “(1) a description of the financial costs and
23 benefits of the project involved and of the entities to
24 which such costs and benefits accrue;

1 “(2) an analysis of the impact of the project on
2 health care quality and safety;

3 “(3) a description of any reduction in duplica-
4 tive or unnecessary care as a result of the project in-
5 volved;

6 “(4) a description of the efforts of recipients
7 under this section to facilitate secure patient access
8 to health information;

9 “(5) an analysis of the effectiveness of the
10 project involved on ensuring the privacy and security
11 of individually identifiable health information in ac-
12 cordance with applicable Federal and State law; and

13 “(6) other information as required by the Na-
14 tional Coordinator.

15 “(e) REQUIREMENT TO IMPROVE QUALITY OF CARE
16 AND DECREASE IN COSTS.—The National Coordinator
17 shall annually evaluate the activities conducted under this
18 section and shall, in awarding grants, implement the les-
19 sons learned from such evaluation in a manner so that
20 awards made subsequent to each such evaluation are made
21 in a manner that, in the determination of the National
22 Coordinator, will result in the greatest improvement in
23 quality of care and decrease in costs.

24 “(f) LIMITATION.—An eligible entity may only receive
25 one non-renewable grant under subsection (a), one non-

1 renewable grant under subsection (b), and one non-renew-
2 able grant under subsection (c).

3 “(g) SMALL HEALTH CARE PROVIDER.—For pur-
4 poses of this section, the term ‘small health care provider’
5 means a health care provider that has an average of 10
6 or fewer full-time equivalent employees during the period
7 involved.

8 “(h) AUTHORIZATION OF APPROPRIATIONS.—

9 “(1) IN GENERAL.—For the purpose of car-
10 rying out subsections (a) through (d), there is au-
11 thorized to be appropriated \$115,000,000 for each
12 of the fiscal years 2009 through 2013.

13 “(2) AVAILABILITY.—Amounts appropriated
14 under paragraph (1) shall remain available through
15 fiscal year 2013.

16 **“SEC. 3012. DEMONSTRATION PROGRAM TO INTEGRATE IN-**
17 **FORMATION TECHNOLOGY INTO CLINICAL**
18 **EDUCATION.**

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

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

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

6 “(2) submit to the Secretary a strategic plan
7 for integrating qualified health information tech-
8 nology in the clinical education of health profes-
9 sionals to reduce medical errors and enhance health
10 care quality;

11 “(3) be—

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

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

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

20 “(D) an institution with a graduate med-
21 ical education program in medicine, osteopathic
22 medicine, dentistry, pharmacy, nursing, or phy-
23 sician assistance studies;

24 “(4) provide for the collection of data regarding
25 the effectiveness of the demonstration project to be

1 funded under the grant in improving the safety of
2 patients, the efficiency of health care delivery, and
3 in increasing the likelihood that graduates of the
4 grantee will adopt and incorporate qualified health
5 information technology, in the delivery of health care
6 services; and

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

9 “(c) USE OF FUNDS.—

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

12 “(A) use grant funds in collaboration with
13 2 or more disciplines; and

14 “(B) use grant funds to integrate qualified
15 health information technology into community-
16 based clinical education.

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

21 “(d) MATCHING FUNDS.—

22 “(1) IN GENERAL.—The Secretary may award
23 a grant to an entity under this section only if the
24 entity agrees to make available non-Federal con-
25 tributions toward the costs of the program to be

1 funded under the grant in an amount that is not
2 less than \$1 for each \$2 of Federal funds provided
3 under the grant.

4 “(2) DETERMINATION OF AMOUNT CONTRIB-
5 UTED.—Non-Federal contributions under paragraph
6 (1) may be in cash or in kind, fairly evaluated, in-
7 cluding equipment or services. Amounts provided by
8 the Federal Government, or services assisted or sub-
9 sidized to any significant extent by the Federal Gov-
10 ernment, may not be included in determining the
11 amount of such contributions.

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

17 “(f) REPORTS.—Not later than 1 year after the date
18 of enactment of this title, and annually thereafter, the Sec-
19 retary shall submit to the Committee on Health, Edu-
20 cation, Labor, and Pensions and the Committee on Fi-
21 nance of the Senate, and the Committees on Energy and
22 Commerce and Ways and Means of the House of Rep-
23 resentatives a report that—

24 “(1) describes the specific projects established
25 under this section; and

1 “(2) contains recommendations for Congress
2 based on the evaluation conducted under subsection
3 (e).

4 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
5 is authorized to be appropriated to carry out this section,
6 \$10,000,000 for each of fiscal years 2009 through 2011.

7 “(h) SUNSET.—This section shall not apply after
8 September 30, 2011.”.

9 **TITLE IV—PRIVACY AND** 10 **SECURITY PROVISIONS**

11 **SEC. 400. DEFINITIONS.**

12 In this title, except as specified otherwise:

13 (1) BREACH.—The term “breach” means the
14 unauthorized acquisition, access, or disclosure of
15 protected health information which compromises the
16 security, privacy, or integrity of protected health in-
17 formation maintained by or on behalf of a person.
18 Such term does not include any unintentional acqui-
19 sition or access of such information by an employee
20 or agent of the covered entity or business associate
21 involved if such acquisition or access, respectively,
22 was made in good faith and within the course and
23 scope of the employment or other contractual rela-
24 tionship of such employee or agent, respectively,
25 with the covered entity or business associate and if

1 such information is not further acquired, accessed,
2 or disclosed by such employee or agent.

3 (2) BUSINESS ASSOCIATE.—The term “business
4 associate” has the meaning given such term in sec-
5 tion 160.103 of title 45, Code of Federal Regula-
6 tions.

7 (3) COVERED ENTITY.—The term “covered en-
8 tity” has the meaning given such term in section
9 160.103 of title 45, Code of Federal Regulations.

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

14 (5) ELECTRONIC HEALTH RECORD.—The term
15 “electronic health record” means an electronic
16 record of health-related information on an individual
17 that is created, gathered, managed, and consulted by
18 authorized health care clinicians and staff of one or
19 more organizations, that conforms to standards
20 adopted under section 3003(a) of the Public Health
21 Service Act, as added by section 101, and is made
22 accessible electronically to other health care organi-
23 zations and other authorized users.

24 (6) ELECTRONIC MEDICAL RECORD.—The term
25 “electronic medical record” means an electronic

1 record of individually identifiable health information
2 on an individual that is created, gathered, managed,
3 and consulted by authorized health care clinicians
4 and staff within a single organization.

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

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

13 (9) HEALTH PLAN.—The term “health plan”
14 has the meaning given such term in section 1171(5)
15 of the Social Security Act, as amended by section
16 415.

17 (10) NATIONAL COORDINATOR.—The term
18 “National Coordinator” means the head of the Of-
19 fice of the National Coordinator for Health Informa-
20 tion Technology established under section 3001(a) of
21 the Public Health Service Act, as added by section
22 101.

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

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

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

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

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

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

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

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

1 (19) VENDOR OF PERSONAL HEALTH
2 RECORDS.—The term “vendor of personal health
3 records” means an entity that offers or maintains a
4 personal health record. Such term does not include
5 an entity that is a covered entity for purposes of of-
6 fering or maintaining such personal health record.

7 **Subtitle A—Improved Privacy**
8 **Provisions and Security Provisions**

9 **SEC. 401. APPLICATION OF SECURITY PROVISIONS AND**
10 **PENALTIES TO BUSINESS ASSOCIATES OF**
11 **COVERED ENTITIES; ANNUAL GUIDANCE ON**
12 **PRIVACY AND SECURITY PROVISIONS.**

13 (a) APPLICATION OF SECURITY PROVISIONS.—Sec-
14 tions 164.308, 164.310, 164.312, and 164.316 of title 45,
15 Code of Federal Regulations, and any applicable security
16 standards adopted by the Secretary under section 3003(a)
17 of the Public Health Service Act, as added by section 101,
18 shall apply to a business associate of a covered entity in
19 the same manner that such sections and standards, re-
20 spectively, apply to the covered entity.

21 (b) APPLICATION OF CIVIL AND CRIMINAL PEN-
22 ALTIES.—Sections 1176 and 1177 of the Social Security
23 Act (42 U.S.C. 1320d–5, 1320d–6) shall apply to a busi-
24 ness associate of a covered entity with respect to a section
25 applied under subsection (a) to such business associate in

1 the same manner that such sections apply to a covered
2 entity with respect to such section.

3 (c) ANNUAL GUIDANCE.—Not later than 12 months
4 after the date of the enactment of this Act and annually
5 thereafter, the Secretary of Health and Human Services
6 shall, in consultation with industry stakeholders, annually
7 issue guidance on the latest privacy and security safeguard
8 technologies for use in carrying out the sections described
9 in subsection (a).

10 **SEC. 402. NOTIFICATION IN THE CASE OF BREACH.**

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

20 (b) NOTIFICATION OF COVERED ENTITY BY BUSI-
21 NESS ASSOCIATE.—A business associate of a covered enti-
22 ty that accesses, maintains, retains, modifies, records,
23 stores, destroys, or otherwise holds, uses, or discloses un-
24 secured protected health information shall, following the
25 discovery of a breach of such information, notify the cov-

1 ered entity of such breach. Such notice shall include the
2 identification of each individual whose unsecured protected
3 health information has been, or is reasonably believed by
4 the business associate to have been, accessed, acquired,
5 or disclosed during such breach.

6 (c) BREACHES TREATED AS DISCOVERED.—For pur-
7 poses of this section, a breach shall be treated as discov-
8 ered by a covered entity or by a business associate as of
9 the first day on which such breach is known to such entity
10 or associate, respectively, (including any person that is an
11 employee, officer, or other agent of such entity or asso-
12 ciate, respectively) or should reasonably have been known
13 to such entity or associate (or person) to have occurred.

14 (d) TIMELINESS OF NOTIFICATION.—

15 (1) IN GENERAL.—Subject to subsection (g), all
16 notifications required under this section shall be
17 made without unreasonable delay and in no case
18 later than 60 calendar days after the discovery of a
19 breach by the covered entity involved (or business
20 associate involved in the case of a notification re-
21 quired under subsection (b)).

22 (2) BURDEN OF PROOF.—The covered entity in-
23 volved (or business associate involved in the case of
24 a notification required under subsection (b)), shall
25 have the burden of demonstrating that all notifica-

1 tions were made as required under this subtitle, in-
2 cluding evidence demonstrating the necessity of any
3 delay.

4 (e) METHODS OF NOTICE.—

5 (1) INDIVIDUAL NOTICE.—Notice required
6 under this section to be provided to an individual,
7 with respect to a breach, shall be provided promptly
8 and in the following form:

9 (A) Written notification by first-class mail
10 to the individual (or the next of kin of the indi-
11 vidual if the individual is deceased) at the last
12 known address of the individual or the next of
13 kin, respectively, or, if specified as a preference
14 by the individual, by electronic mail. The notifi-
15 cation may be provided in one or more mailings
16 as information is available.

17 (B) In the case in which there is insuffi-
18 cient, or out-of-date contact information that
19 precludes direct written (or, if specified by the
20 individual under subparagraph (A), electronic)
21 notification to the individual, a substitute form
22 of notice shall be provided, including a con-
23 spicuous posting on the home page of the Web
24 site of the covered entity involved or notice in
25 major print or broadcast media, including

1 major media in geographic areas where the in-
2 dividuals affected by the breach likely reside.
3 Such a notice in media will include a toll-free
4 phone number where an individual can learn
5 whether or not the individual's unsecured pro-
6 tected health information is possibly included in
7 the breach.

8 (C) In any case deemed by the covered en-
9 tity involved to require urgency because of pos-
10 sible imminent misuse of unsecured protected
11 health information, the covered entity, in addi-
12 tion to notice provided under subparagraph (A),
13 may provide information to individuals by tele-
14 phone or other means, as appropriate.

15 (2) MEDIA NOTICE.—Notice shall be provided
16 to prominent media outlets serving a State or juris-
17 diction, following the discovery of a breach described
18 in subsection (a), if the unsecured protected health
19 information of more than 500 residents of such
20 State or jurisdiction is, or is reasonably believed to
21 have been, accessed, acquired, or disclosed during
22 such breach.

23 (3) NOTICE TO SECRETARY.—Notice shall be
24 provided to the Secretary by covered entities of un-

1 secured protected health information that has been
2 acquired or disclosed in a breach.

3 (4) POSTING ON HHS PUBLIC WEBSITE.—The
4 Secretary shall make available to the public on the
5 Internet website of the Department of Health and
6 Human Services a list that identifies each covered
7 entity involved in a breach described in subsection
8 (a) in which the unsecured protected health informa-
9 tion of more than 1,000 individuals is acquired or
10 disclosed.

11 (f) CONTENT OF NOTIFICATION.—Regardless of the
12 method by which notice is provided to individuals under
13 this section, notice of a breach shall include, to the extent
14 possible, the following:

15 (1) A brief description of what happened, in-
16 cluding the date of the breach and the date of the
17 discovery of the breach, if known.

18 (2) A description of the types of unsecured pro-
19 tected health information that were involved in the
20 breach (such as full name, Social Security number,
21 date of birth, home address, account number, or dis-
22 ability code).

23 (3) The steps individuals should take to protect
24 themselves from potential harm resulting from the
25 breach.

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

5 (5) Contact procedures for individuals to ask
6 questions or learn additional information, which
7 shall include a toll-free telephone number, an e-mail
8 address, Web site, or postal address.

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

18 (h) UNSECURED PROTECTED HEALTH INFORMA-
19 TION.—

20 (1) DEFINITION.—

21 (A) IN GENERAL.—Subject to subpara-
22 graph (B), for purposes of this section, the
23 term “unsecured protected health information”
24 means protected health information that is not
25 protected through the use of a technology or

1 methodology specified by the Secretary in the
2 guidance issued under paragraph (2).

3 (B) EXCEPTION IN CASE TIMELY GUID-
4 ANCE NOT ISSUED.—In the case that the Sec-
5 retary does not issue guidance under paragraph
6 (2) by the date specified in such paragraph, for
7 purposes of this section, the term “unsecured
8 protected health information” shall mean infor-
9 mation that is not protected by technology
10 standards developed or endorsed by a standards
11 developing organization that is accredited by
12 the American National Standards Institute.

13 (2) GUIDANCE.—For purposes of paragraph (1)
14 and section 415(f), not later than the date that is
15 60 days after the date of the enactment of this Act,
16 the Secretary shall, after consultation with stake-
17 holders, issue (and annually update) guidance speci-
18 fying the technologies and methodologies that render
19 protected health information unusable, unreadable,
20 or indecipherable to unauthorized individuals.

21 (i) REPORT TO CONGRESS ON BREACHES.—

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

1 mittee on Health, Education, Labor, and Pensions
2 of the Senate and the Committee on Ways and
3 Means and the Committee on Energy and Commerce
4 of the House of Representatives a report containing
5 the information described in paragraph (2) regard-
6 ing breaches for which notice was provided to the
7 Secretary under subsection (e)(3).

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

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

13 (B) actions taken in response to such
14 breaches; and

15 (C) any recommendations described in sec-
16 tion 422(b)(9) made by the National Coordi-
17 nator for the year involved.

18 (j) EFFECTIVE DATE.—The provisions of this section
19 shall apply to breaches that are discovered on or after the
20 date that is 90 days after the date of the enactment of
21 this Act.

22 **SEC. 403. EDUCATION ON HEALTH INFORMATION PRIVACY**
23 **AND REPORT ON COMPLIANCE.**

24 (a) REGIONAL OFFICE PRIVACY ADVISORS.—Not
25 later than 6 months after the date of the enactment of

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

7 (b) REPORT ON COMPLIANCE.—

8 (1) IN GENERAL.—Not later than 24 months
9 after the date of the enactment of this Act and an-
10 nually thereafter, the Secretary shall prepare and
11 submit to the Committee on Finance and the Com-
12 mittee on Health, Education, Labor, and Pensions
13 of the Senate and the Committee on Ways and
14 Means and the Committee on Energy and Commerce
15 of the House of Representatives a report concerning
16 the number of audits performed and a summary of
17 audit findings pursuant to section 414 and com-
18 plaints of alleged violations of the provisions of sec-
19 tions 401 and 402, the provisions of subtitle B, and
20 the provisions of subparts C and E of title 45, Code
21 of Federal Regulations that are received by the Sec-
22 retary during the year for which the report is being
23 prepared. Each such report shall include, with re-
24 spect to such complaints received during the year—

25 (A) the number of such complaints;

1 (B) the number of such complaints re-
2 solved informally, a summary of the types of
3 such complaints so resolved, and the number of
4 covered entities that received technical assist-
5 ance from the Secretary during such year in
6 order to achieve compliance with such provi-
7 sions and the types of such technical assistance
8 provided;

9 (C) the number of such complaints that re-
10 sulted in the imposition of civil money penalties,
11 the amount of the civil money penalty imposed
12 in each such case, and a summary of the basis
13 for each such civil money penalty;

14 (D) the number of compliance reviews con-
15 ducted and the outcome of each such review;

16 (E) the number of subpoenas or inquiries
17 issued; and

18 (F) the Secretary's plan for improving
19 compliance with and enforcement of such provi-
20 sions for the following year.

21 (2) AVAILABILITY TO PUBLIC.—Each report
22 under paragraph (1) shall be made available to the
23 public on the Internet website of the Department of
24 Health and Human Services.

1 (c) EDUCATION INITIATIVE ON USES OF HEALTH IN-
2 FORMATION.—

3 (1) IN GENERAL.—Not later than 12 months
4 after the date of the enactment of this Act, the Of-
5 fice for Civil Rights within the Department of
6 Health and Human Services shall develop and main-
7 tain a multi-faceted national education initiative to
8 enhance public transparency regarding the uses of
9 protected health information, including programs to
10 educate individuals about the potential uses of their
11 protected health information, the effects of such
12 uses, and the rights of individuals with respect to
13 such uses. Such programs shall be conducted in a
14 variety of languages and present information in a
15 clear and understandable manner.

16 (2) AUTHORIZATION OF APPROPRIATIONS.—
17 There is authorized to be appropriated to carry out
18 paragraph (1), \$10,000,000 for the period of fiscal
19 years 2009 through 2013.

20 **SEC. 404. APPLICATION OF PENALTIES TO BUSINESS ASSO-**
21 **CIATES OF COVERED ENTITIES FOR VIOLA-**
22 **TIONS OF PRIVACY CONTRACT REQUIRE-**
23 **MENTS.**

24 (a) APPLICATION OF CONTRACT REQUIREMENTS.—
25 In the case of a business associate of a covered entity that

1 obtains or creates protected health information pursuant
2 to a written contract (or other written arrangement) de-
3 scribed in section 164.502(e)(2) of title 45, Code of Fed-
4 eral Regulations, with such covered entity, the business
5 associate may use and disclose such protected health infor-
6 mation only if such use or disclosure, respectively, is in
7 compliance with each applicable requirement of section
8 164.504(e) of such title and section 405(b).

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

20 (c) APPLICATION OF CIVIL AND CRIMINAL PEN-
21 ALTIES.—In the case of a business associate that violates
22 any provision of subsection (a) or (b), the provisions of
23 sections 1176 and 1177 of the Social Security Act (42
24 U.S.C. 1320d–5, 1320d–6) shall apply to the business as-
25 sociate with respect to such violation in the same manner

1 as such provisions apply to a person who violates a provi-
2 sion of part C of title XI of such Act.

3 **SEC. 405. RESTRICTIONS ON CERTAIN USES AND DISCLO-**
4 **SURES AND SALES OF HEALTH INFORMA-**
5 **TION; ACCOUNTING OF CERTAIN PROTECTED**
6 **HEALTH INFORMATION DISCLOSURES; AC-**
7 **CESS TO CERTAIN INFORMATION IN ELEC-**
8 **TRONIC FORMAT.**

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

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

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

1 (b) DISCLOSURES REQUIRED TO BE LIMITED TO
2 THE LIMITED DATA SET OR THE MINIMUM NEC-
3 ESSARY.—

4 (1) TRANSITIONAL RULE.—

5 (A) IN GENERAL.—Subject to subpara-
6 graph (B), a covered entity shall be treated as
7 being in compliance with section 164.502(b)(1)
8 of title 45, Code of Federal Regulations, and
9 for purposes of section 404(a) a business asso-
10 ciate shall be treated as being in compliance
11 with this subsection, with respect to the use,
12 disclosure, or request of protected health infor-
13 mation described in such section, only if the
14 covered entity or business associate, respec-
15 tively, limits such protected health information,
16 to the extent practicable, to either the limited
17 data set (as defined in section 164.514(e)(2) of
18 such title) or to the minimum necessary to ac-
19 complish the intended purpose of such use, dis-
20 closure, or request, respectively.

21 (B) SUNSET.—Subparagraph (A) shall not
22 apply on and after the earlier of—

23 (i) the effective date on which the
24 Secretary adopts, taking into consideration
25 the regulations promulgated under section

1 406(d), the study under section 410, and
2 the report under section 411, a standard
3 under section 3003(a) of the Public Health
4 Service Act, as added by section 101,
5 which defines the term “minimum nec-
6 essary” for purposes of subpart E of part
7 164 of title 45, Code of Federal Regula-
8 tions; or

9 (ii) the National Coordinator rec-
10 ommends guidance under section
11 3001(c)(2) of such Act which defines such
12 term for such purposes.

13 (2) DETERMINATION OF MINIMUM NEC-
14 ESSARY.—For purposes of paragraph (1), in the
15 case of the disclosure of protected health informa-
16 tion, the covered entity or business associate dis-
17 closing such information shall determine what con-
18 stitute the minimum necessary to accomplish the in-
19 tended purpose of such disclosure.

20 (3) APPLICATION OF EXCEPTIONS.—The excep-
21 tions described in section 164.502(b)(2) of title 45,
22 Code of Federal Regulations, shall apply to the re-
23 quirement under paragraph (1) as of the effective
24 date described in section 433 in the same manner

1 that such exceptions apply to section 164.502(b)(1)
2 of such title before such date.

3 (4) RULE OF CONSTRUCTION.—Nothing in this
4 subsection shall be construed as affecting the use,
5 disclosure, or request of protected health information
6 that has been de-identified to the greatest extent
7 practicable rather than the use of protected health
8 information that has been limited to the limited data
9 set.

10 (c) ACCOUNTING OF CERTAIN PROTECTED HEALTH
11 INFORMATION DISCLOSURES REQUIRED IF COVERED EN-
12 TITY USES ELECTRONIC MEDICAL RECORD OR ELEC-
13 TRONIC HEALTH RECORD.—

14 (1) IN GENERAL.—In applying section 164.528
15 of title 45, Code of Federal Regulations, in the case
16 of protected health information used or maintained
17 by a covered entity in an electronic medical record
18 or an electronic health record—

19 (A) the exception under section paragraph
20 (a)(1)(i) of such section shall not apply to dis-
21 closures (other than oral disclosures) made by
22 such entity of such information; and

23 (B) an individual shall have a right to re-
24 ceive an accounting of disclosures described in
25 such paragraph of such information made by

1 such covered entity during only the three years
2 prior to the date on which the accounting is re-
3 quested.

4 (2) EFFECTIVE DATE.—The provisions of this
5 subsection shall apply to disclosures, with respect to
6 protected health information, made by a covered en-
7 tity on or after the sooner of the following dates:

8 (A) In the case of an entity that does not
9 use or maintain an electronic medical record or
10 electronic health record before the date of the
11 enactment of this Act with respect to such in-
12 formation, the date on which the covered entity
13 first uses or maintains an electronic medical
14 record or electronic health record, with respect
15 to such information, and in the case of an enti-
16 ty that uses or maintains an electronic medical
17 record or electronic health record with respect
18 to such information before such date of enact-
19 ment, the date on which the covered entity up-
20 grades such electronic medical record or elec-
21 tronic health record.

22 (B) If a standard that relates to tech-
23 nologies that allow for an accounting for disclo-
24 sures made by a covered entity for purposes of
25 treatment, payment, and health care operations

1 is adopted under section 3003(a) of the Public
2 Health Service Act, as added by section 101,
3 the date that is 6 months after the date of such
4 adoption.

5 (d) PROHIBITION ON CERTAIN DISCLOSURES.—

6 (1) IN GENERAL.—The following uses and dis-
7 closures shall not be considered to be permitted uses
8 or disclosures of protected health information for
9 purposes of subparts C and E of part 164 of title
10 45, Code of Federal Regulations:

11 (A) SALE OF PROTECTED HEALTH INFOR-
12 MATION.—The sale of any protected health in-
13 formation of an individual by a covered entity
14 or business associate unless the covered entity
15 or business associate obtains from the indi-
16 vidual, in accordance with section 164.508 of
17 title 45, Code of Federal Regulations, a valid
18 authorization (as described in paragraph (b) of
19 such section) to sell such information or unless
20 the sale is for purposes of research and public
21 health activities (as described in sections
22 164.501, 164.512(i), and 164.512(b) of title
23 45, Code of Federal Regulations) and the price
24 charged reflects the costs of preparation and
25 transmittal of the data for such purposes.

1 (B) RE-IDENTIFICATION OF DE-IDENTI-
2 FIED INFORMATION.—In the case of an entity
3 that has received information that has been de-
4 identified in accordance with section 164.514 of
5 title 45, Code of Federal Regulations, the re-
6 identification by the entity of such information.

7 (C) IDENTIFICATION OF INDIVIDUAL
8 THROUGH USE OF LIMITED DATA SET.—In the
9 case of an entity that has received a limited
10 data set (as defined in section 164.514(e)(2) of
11 title 45, Code of Federal Regulations), the use,
12 alone or in combination with other information,
13 of such set to identify the subject of the data
14 set.

15 (2) LIMITATION ON CONDITION.—In no case
16 may a covered entity condition the provision of
17 treatment to an individual, or payment for such
18 treatment, on the individual providing authorization
19 described in paragraph (1)(A).

20 (3) CONSTRUCTION.—Nothing in this sub-
21 section shall be construed as limiting the authority
22 of the Secretary to adopt standards and guidance
23 under section 3003(a) of the Public Health Service
24 Act, as added by section 101.

1 (4) EFFECTIVE DATE.—The provisions of this
2 subsection shall apply to uses and disclosures made
3 on or after the date of the enactment of this Act.

4 (e) ACCESS TO CERTAIN INFORMATION IN ELEC-
5 TRONIC FORMAT.—In applying section 164.524 of title
6 45, Code of Federal Regulations, in the case that a cov-
7 ered entity uses or maintains an electronic medical record
8 or electronic health record with respect to protected health
9 information of an individual—

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

13 (2) notwithstanding paragraph (c)(4) of such
14 section, the covered entity may not impose any fee
15 for providing such individual with a copy of such in-
16 formation (or a summary or explanation of such in-
17 formation) if such copy (or summary or explanation)
18 is in an electronic form.

19 (f) APPLICATION OF PRIVACY REGULATIONS FOR
20 MAKING AMENDMENTS TO PROTECTED HEALTH INFOR-
21 MATION TO INFORMATION IN ELECTRONIC FORMAT.—In
22 applying section 164.526 of title 45, Code of Regulations,
23 in the case of protected health information used or main-
24 tained by a covered entity in an electronic medical record
25 or electronic health record, instead of any timeframes or

1 deadlines described in such section the Secretary may
2 apply such timeframes and deadlines as the Secretary de-
3 termines to be appropriate.

4 **SEC. 406. LIMITATIONS ON CERTAIN ACTIVITIES AS PART**
5 **OF HEALTH CARE OPERATIONS.**

6 (a) **MARKETING.**—

7 (1) **IN GENERAL.**—A communication by a cov-
8 ered entity or business associate that is about a
9 product or service and that encourages recipients of
10 the communication to purchase or use the product
11 or service shall not be considered a health care oper-
12 ation for purposes of subpart E of part 164 of title
13 45, Code of Federal Regulations, unless the commu-
14 nication is made as described in subparagraph (i),
15 (ii), or (iii) of paragraph (1) of the definition of
16 marketing in section 164.501 of such title.

17 (2) **PAYMENT FOR CERTAIN COMMUNICA-**
18 **TIONS.**—Subject to subparagraph (B), a covered en-
19 tity or business associate may not receive direct or
20 indirect payment in exchange for making any com-
21 munication described in subparagraph (i), (ii), or
22 (iii) of paragraph (1) of the definition of marketing
23 in section 164.501 of title 45, Code of Federal Reg-
24 ulations, except—

1 (A) a business associate of a covered entity
2 may receive payment from the covered entity
3 for making any such communication on behalf
4 of the covered entity that is consistent with the
5 written contract (or other written arrangement)
6 described in section 164.502(e)(2) of such title
7 between such business associate and covered en-
8 tity; and

9 (B) a covered entity may receive payment
10 in exchange for making any such communica-
11 tion if the entity obtains from the recipient of
12 the communication, in accordance with section
13 164.508 of title 45, Code of Federal Regula-
14 tions, a valid authorization (as described in
15 paragraph (b) of such section), which shall be
16 explicitly and affirmatively provided by the re-
17 cipient, with respect to such communication.

18 (b) FUND RAISING.—Fundraising for the benefit of
19 a covered entity shall not be considered a health care oper-
20 ation for purposes of section 164.501 of title 45, Code of
21 Federal Regulations.

22 (c) EFFECTIVE DATE.—Subsections (a) and (b) shall
23 apply to contracting occurring on or after the effective
24 date specified under section 433.

25 (d) REGULATIONS.—

1 (1) IN GENERAL.—Not later than 18 months
2 after the date of the enactment of this Act, the Sec-
3 retary shall issue a notice of proposed rulemaking in
4 the Federal Register, taking into account the report
5 submitted under section 411 and the study under
6 section 410, to eliminate from the definition of
7 health care operations under section 164.501 of title
8 45, Code of Federal Regulations, those activities
9 (other than the process of de-identifying health in-
10 formation) that can reasonably and efficiently be
11 conducted through the use of information that is de-
12 identified (in accordance with the requirements of
13 section 164.514(b) of such title) or that should re-
14 quire a valid authorization for use or disclosure. In
15 promulgating any such regulations, the Secretary
16 may consider the form in which the health informa-
17 tion is maintained, such as non-electronic records.

18 (2) CONSIDERATIONS.—In promulgating any
19 such regulations, the Secretary shall take into con-
20 sideration the extent to which—

21 (A) specific health care operations require
22 the use or disclosure of protected health infor-
23 mation; and

24 (B) clinical utility of such information
25 would potentially be decreased in the case that

1 such information is de-identified or valid au-
2 thorization is required; and

3 (C) the classification of health care oper-
4 ations (as in existence as of the date of the en-
5 actment of this Act) under section 164.501 of
6 title 45, Code of Federal Regulations, may be
7 further delineated.

8 **SEC. 407. STUDY AND REPORT ON APPLICATION OF PRI-**
9 **VACY AND SECURITY REQUIREMENTS TO**
10 **NON-HIPAA COVERED ENTITIES.**

11 Not later than one year after the date of the enact-
12 ment of this Act, the Secretary, in consultation with the
13 Federal Trade Commission, shall conduct a study on pri-
14 vacy and security requirements to entities that are not
15 considered covered entities as of the date of the enactment
16 of this Act and submit to the Committee on Finance and
17 the Committee on Health, Education, Labor, and Pen-
18 sions of the Senate and the Committee on Ways and
19 Means and the Committee on Energy and Commerce of
20 the House of Representatives a report on the findings of
21 the study, including—

22 (1) requirements relating to security, privacy,
23 and notification in the case of a breach of security
24 or privacy (including the applicability of an exemp-
25 tion to notification in the case of individually identi-

1 fiable health information that has been rendered un-
2 usable, unreadable, or indecipherable through tech-
3 nologies or methodologies recognized by appropriate
4 professional organization or standard setting bodies
5 to provide effective security for the information) that
6 should be applied to—

7 (A) vendors of personal health records;

8 (B) entities that offer products or services
9 through the website of a vendor of personal
10 health records;

11 (C) entities that are not covered entities
12 and that offer products or services through the
13 websites of covered entities that offer individ-
14 uals personal health records;

15 (D) entities that are not covered entities
16 and that access information in a personal
17 health record or send information to a personal
18 health record; and

19 (E) third party service providers used by a
20 vendor or entity described in subparagraph (A),
21 (B), (C), or (D) to assist in providing personal
22 health record products or services;

23 (2) a determination of which Federal govern-
24 ment agency is best equipped to enforce such re-
25 quirements recommended to be applied to such ven-

1 dors, entities, and service providers under paragraph
2 (1); and

3 (3) a timeframe for implementing regulations
4 based on such findings.

5 **SEC. 408. TEMPORARY BREACH NOTIFICATION REQUIRE-**
6 **MENT FOR VENDORS OF PERSONAL HEALTH**
7 **RECORDS AND OTHER NON-HIPAA COVERED**
8 **ENTITIES.**

9 (a) IN GENERAL.—In accordance with subsection (c),
10 each vendor of personal health records, following the dis-
11 covery of a breach of security of unsecured PHR identifi-
12 able health information that is in a personal health record
13 maintained or offered by such vendor, and each entity de-
14 scribed in subparagraph (B), (C), or (D) of section
15 407(1), following the discovery of a breach of security of
16 such information that is obtained through a product or
17 service provided by such entity, shall—

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

23 (2) notify the Federal Trade Commission.

24 (b) NOTIFICATION BY THIRD PARTY SERVICE PRO-
25 VIDERS.—A third party service provider that provides

1 services to a vendor of personal health records or to an
2 entity described in subparagraph (B), (C), or (D) of sec-
3 tion 407(1) in connection with the offering or maintenance
4 of a personal health record or a related product or service
5 and that accesses, maintains, retains, modifies, records,
6 stores, destroys, or otherwise holds, uses, or discloses un-
7 secured PHR identifiable health information in such a
8 record as a result of such services shall, following the dis-
9 covery of a breach of security of such information, notify
10 such vendor or entity, respectively, of such breach. Such
11 notice shall include the identification of each individual
12 whose unsecured PHR identifiable health information has
13 been, or is reasonably believed to have been, accessed, ac-
14 quired, or disclosed during such breach.

15 (c) APPLICATION OF REQUIREMENTS FOR TIMELI-
16 NESS, METHOD, AND CONTENT OF NOTIFICATIONS.—
17 Subsections (c), (d), (e), and (f) of section 402 shall apply
18 to a notification required under subsection (a) and a ven-
19 dor of personal health records, an entity described in sub-
20 section (a) and a third party service provider described
21 in subsection (b), with respect to a breach of security
22 under subsection (a) of unsecured PHR identifiable health
23 information in such records maintained or offered by such
24 vendor, in a manner specified by the Federal Trade Com-
25 mission.

1 (d) NOTIFICATION OF THE SECRETARY.—Upon re-
2 ceipt of a notification of a breach of security under sub-
3 section (a)(2), the Federal Trade Commission shall notify
4 the Secretary of such breach.

5 (e) ENFORCEMENT.—A violation of subsection (a) or
6 (b) shall be treated as an unfair and deceptive act or prac-
7 tice in violation of a regulation under section 18(a)(1)(B)
8 of the Federal Trade Commission Act (15 U.S.C.
9 57a(a)(1)(B)) regarding unfair or deceptive acts or prac-
10 tices.

11 (f) DEFINITIONS.—For purposes of this section:

12 (1) BREACH OF SECURITY.—The term “breach
13 of security” means, with respect to unsecured PHR
14 identifiable health information of an individual in a
15 personal health record, the acquisition, use, or dis-
16 closure of such information without the authoriza-
17 tion of the individual.

18 (2) PHR IDENTIFIABLE HEALTH INFORMA-
19 TION.—The term “PHR identifiable health informa-
20 tion” means individually identifiable health informa-
21 tion, as defined in section 1171(6) of the Social Se-
22 curity Act (42 U.S.C. 1320d(6)), and includes, with
23 respect to an individual, information—

24 (A) that is provided by or on behalf of the
25 individual; and

1 (B) that identifies the individual or with
2 respect to which there is a reasonable basis to
3 believe that the information can be used to
4 identify the individual.

5 (3) UNSECURED PHR IDENTIFIABLE HEALTH
6 INFORMATION.—

7 (A) IN GENERAL.—Subject to subpara-
8 graph (B), the term “unsecured PHR identifi-
9 able health information” means PHR identifi-
10 able health information that is not protected
11 through the use of a technology or methodology
12 specified by the Secretary in the guidance
13 issued under section 402(h)(2).

14 (B) EXCEPTION IN CASE TIMELY GUID-
15 ANCE NOT ISSUED.—In the case that the Sec-
16 retary does not issue guidance under section
17 402(h)(2) by the date specified in such section,
18 for purposes of this section, the term “unse-
19 cured PHR identifiable health information”
20 shall mean information that is not protected by
21 technology standards developed or endorsed by
22 a standards developing organization that is ac-
23 credited by the American National Standards
24 Institute.

25 (g) EFFECTIVE DATE; SUNSET.—

1 (1) IN GENERAL.—Subject to paragraph (2),
2 the provisions of this section shall apply to breaches
3 of security occurring during the period beginning on
4 the date that is 90 days after the date of the enact-
5 ment of this Act.

6 (2) SUNSET.—The provisions of this section
7 shall not apply to breaches of security occurring on
8 or after the earlier of the following:

9 (A) A standard relating to requirements
10 for entities that are not covered entities that in-
11 cludes requirements relating to breach notifica-
12 tion has been adopted by the Secretary under
13 section 3002 of the Public Health Service Act,
14 as added by section 101, and has taken effect.

15 (B) A standard relating to requirements
16 for entities that are not covered entities that in-
17 cludes requirements relating to breach notifica-
18 tion has been promulgated by the Federal
19 Trade Commission and has taken effect.

20 **SEC. 409. BUSINESS ASSOCIATE CONTRACTS REQUIRED**
21 **FOR CERTAIN ENTITIES; OTHER PROVISIONS**
22 **RELATED TO BUSINESS ASSOCIATE CON-**
23 **TRACTS.**

24 (a) IN GENERAL.—Each organization, with respect
25 to a covered entity, that provides data transmission of pro-

1 tected health information to such entity and that requires
2 access on a routine basis to such protected health informa-
3 tion, such as a Health Information Exchange, Regional
4 Health Information Organization, or E-prescribing Gate-
5 way and each vendor of a personal health record that con-
6 tracts with a covered entity for purposes of including a
7 personal health record within an electronic medical record
8 or electronic health record, is required to enter into a writ-
9 ten contract (or other written arrangement) described in
10 section 164.502(e)(2) of title 45, Code of Federal Regula-
11 tions and a written contract (or other arrangement) de-
12 scribed in section 164.308(b) of such title, with such enti-
13 ty and shall be treated as a business associate of the cov-
14 ered entity for purposes of the provisions of this title and
15 subparts C and E of title 45, Code of Federal Regulations.

16 (b) COVERED ENTITIES TO MONITOR COMPLIANCE
17 OF BUSINESS ASSOCIATES.—

18 (1) IN GENERAL.—A covered entity shall mon-
19 itor the extent to which a business associate of such
20 entity complies with the terms of the written con-
21 tract (or other arrangement) described in section
22 164.502(e)(2) of title 45, Code of Federal Regula-
23 tions or section 164.308(b) of such title, as applica-
24 ble, entered into between such entity and such busi-
25 ness associate.

1 (2) ENFORCEMENT.—If in the process of inves-
2 tigating a complaint related to a violation of the re-
3 quirements of this title or subpart C or E of title 45,
4 Code of Federal Regulations, committed by a busi-
5 ness associate of a covered entity, the Office for
6 Civil Rights of the Department of Health and
7 Human Services determines that—

8 (A) the covered entity reasonably should
9 have known of a pattern of activity or practice
10 of the business associate that was not in com-
11 pliance with the terms of a contract described
12 in paragraph (1) and that relates to such viola-
13 tion; and

14 (B) the covered entity did not take action
15 required under section 164.504(e)(1)(ii) of title
16 45, Code of Federal Regulations in response to
17 such pattern or practice,

18 the covered entity shall be treated, for purposes of
19 section 1176 of the Social Security Act (42 U.S.C.
20 1320d–5), as having violated part C of title XI of
21 such Act.

1 **SEC. 410. GUIDANCE ON IMPLEMENTATION SPECIFICATION**
2 **TO DE-IDENTIFY PROTECTED HEALTH INFOR-**
3 **MATION.**

4 Not later than 12 months after the date of the enact-
5 ment of this Act, the Secretary shall, in consultation with
6 stakeholders, issue guidance on how best to implement the
7 requirements for the de-identification of protected health
8 information under section 164.514(b) of title 45, Code of
9 Federal Regulations.

10 **SEC. 411. GAO REPORT ON TREATMENT, PAYMENT, AND**
11 **HEALTH CARE OPERATIONS USES AND DIS-**
12 **CLOSURES.**

13 Not later than one year after the date of the enact-
14 ment of this Act, the Comptroller General of the United
15 States shall submit to the Committee on Finance and the
16 Committee on Health, Education, Labor, and Pensions of
17 the Senate and the Committee on Ways and Means and
18 the Committee on Energy and Commerce of the House
19 of Representatives a report on—

20 (1) the best practices related to the disclosure
21 among health care providers of protected health in-
22 formation of an individual for purposes of treatment
23 of such individual, including an examination of the
24 best practices implemented by States and by other
25 entities, such as health information exchanges and
26 regional health information organizations, and an

1 examination of the extent to which such best prac-
 2 tices are successful with respect to the quality of the
 3 resulting health care provided to the individual and
 4 with respect to the ability of the health care provider
 5 to manage such best practices; and

6 (2) the best practices with respect to deter-
 7 mining the minimum necessary set of protected
 8 health information for uses and disclosures of such
 9 information for purposes of payment and the most
 10 common health care operations, as specified by the
 11 Secretary, including those health care operations
 12 that could be reasonably and efficiently performed
 13 with either de-identified data (as defined in section
 14 164.514(a) of title 45, Code of Federal Regulations)
 15 or the limited data set (as defined section
 16 164.514(e)(1) of such title).

17 **SEC. 412. CLARIFICATION OF APPLICATION OF WRONGFUL**
 18 **DISCLOSURES CRIMINAL PENALTIES.**

19 Section 1177(a) of the Social Security Act (42 U.S.C.
 20 1320d–6(a)) is amended by adding at the end the fol-
 21 lowing new sentence: “For purposes of the previous sen-
 22 tence, a person (including an employee or other individual
 23 who is not a covered entity, as defined in the HIPAA pri-
 24 vacy regulation described in section 1180(b)(3)) shall be
 25 considered to have obtained or disclosed individually iden-

1 tifiable health information in violation of this part if the
 2 information is maintained by a covered entity (as so de-
 3 fined) and the person knowingly obtained or disclosed such
 4 information without authorization.”.

5 **SEC. 413. IMPROVED ENFORCEMENT.**

6 (a) IMPROVED CIVIL PENALTIES.—

7 (1) IN GENERAL.—Section 1176 of the Social
 8 Security Act (42 U.S.C. 1320d–5) is amended—

9 (A) in subsection (b)(1), by striking “the
 10 act constitutes an offense punishable under sec-
 11 tion 1177” and inserting “a penalty has been
 12 imposed under section 1177 with respect to
 13 such act”; and

14 (B) by adding at the end the following new
 15 subsection:

16 “(c) NONCOMPLIANCE DUE TO WILLFUL NE-
 17 GLECT.—

18 “(1) IN GENERAL.—A violation of a provision
 19 of this part due to willful neglect is a violation for
 20 which the Secretary is required to impose a penalty
 21 under subsection (a)(1).

22 “(2) REQUIRED INVESTIGATION.—For purposes
 23 of paragraph (1), the Secretary shall formally inves-
 24 tigate any complaint of a violation of a provision of
 25 this part if a preliminary investigation of the facts

1 of the complaint indicate such a possible violation
2 due to willful neglect.

3 “(3) REGULATIONS.—Not later than 90 days
4 after the date of the enactment of the Health-e In-
5 formation Technology Act of 2008, the Secretary
6 shall issue a notice of proposed rulemaking in the
7 Federal Register to implement this subsection.”.

8 (2) EFFECTIVE DATE.—The amendments made
9 by paragraph (1) shall apply to penalties imposed on
10 or after the date specified in section 433.

11 (b) DISTRIBUTION OF CIVIL MONETARY PENALTIES
12 COLLECTED.—

13 (1) IN GENERAL.—Subject to the regulation
14 promulgated pursuant to paragraph (3), any civil
15 monetary penalty collected with respect to an offense
16 punishable under this title or section 1176 of the
17 Social Security Act (42 U.S.C. 1320d–5) shall be
18 transferred to the Office of Civil Rights of the De-
19 partment of Health and Human Services to be used
20 for purposes of enforcing the provisions of this title
21 and subparts C and E of title 45, Code of Federal
22 Regulations.

23 (2) GAO REPORT.—Not later than 18 months
24 after the date of the enactment of this Act, the
25 Comptroller General shall submit to the Secretary a

1 report including recommendations for a methodology
2 under which an individual who is harmed by an act
3 that constitutes an offense punishable under this
4 title or section 1176 of the Social Security Act may
5 receive a percentage of any civil monetary penalty
6 collected with respect to such offense under this title
7 or such section.

8 (3) ESTABLISHMENT OF METHODOLOGY TO
9 DISTRIBUTE PERCENTAGE OF CMPS COLLECTED TO
10 HARMED INDIVIDUALS.—Not later 3 years after the
11 date of the enactment of this Act, the Secretary
12 shall establish by regulation and based on the rec-
13 ommendations submitted under paragraph (2), a
14 methodology under which an individual who is
15 harmed by an act that constitutes an offense punish-
16 able under this title or section 1176 of the Social
17 Security Act may receive a percentage of any civil
18 monetary penalty collected with respect to such of-
19 fense under this title or such section.

20 (4) APPLICATION OF METHODOLOGY.—The
21 methodology under paragraph (3) shall be applied
22 with respect to civil monetary penalties imposed on
23 or after the effective date of the regulation.

24 (c) TIERED INCREASE IN AMOUNT OF CIVIL MONE-
25 TARY PENALTIES.—

1 (1) IN GENERAL.—Section 1176(a)(1) of the
2 Social Security Act (42 U.S.C. 1320d–5(a)(1)) is
3 amended by striking “who violates a provision of
4 this part a penalty of not more than” and all that
5 follows and inserting the following: “who violates a
6 provision of this part—

7 “(A) in the case of a violation of such pro-
8 vision in which it is established to the satisfac-
9 tion of the Secretary that the person did not
10 know (and by exercising reasonable diligence
11 would not have known) that such person vio-
12 lated such provision, a penalty for each such
13 violation of an amount that is at least the
14 amount described in paragraph (3)(A) but not
15 to exceed the amount described in paragraph
16 (3)(D);

17 “(B) in the case of a violation of such pro-
18 vision in which it is established to the satisfac-
19 tion of the Secretary that the violation was due
20 to reasonable cause and not to willful neglect,
21 a penalty for each such violation of an amount
22 that is at least the amount described in para-
23 graph (3)(B) but not to exceed the amount de-
24 scribed in paragraph (3)(D); and

1 “(C) in the case of a violation of such pro-
2 vision in which it is established to the satisfac-
3 tion of the Secretary that the violation was due
4 to willful neglect—

5 “(i) if the violation is corrected as de-
6 scribed in subsection (b)(3)(A), a penalty
7 in an amount that is at least the amount
8 described in paragraph (3)(C) but not to
9 exceed the amount described in paragraph
10 (3)(D); and

11 “(ii) if the violation is not corrected
12 as described in such subsection, a penalty
13 in an amount that is at least the amount
14 described in paragraph (3)(D).

15 In determining the amount of a penalty under
16 this section for a violation, the Secretary shall
17 base such determination on the nature and ex-
18 tent of the violation and the nature and extent
19 of the harm resulting from such violation.”.

20 (2) TIERS OF PENALTIES DESCRIBED.—Section
21 1176(a) of such Act (42 U.S.C. 1320d–5(a)) is fur-
22 ther amended by adding at the end the following
23 new paragraph:

1 “(3) TIERS OF PENALTIES DESCRIBED.—For
2 purposes of paragraph (1), with respect to a viola-
3 tion by a person of a provision of this part—

4 “(A) the amount described in this subpara-
5 graph is \$100 for each such violation, except
6 that the total amount imposed on the person
7 for all such violations of an identical require-
8 ment or prohibition during a calendar year may
9 not exceed \$25,000;

10 “(B) the amount described in this subpara-
11 graph is \$1,000 for each such violation, except
12 that the total amount imposed on the person
13 for all such violations of an identical require-
14 ment or prohibition during a calendar year may
15 not exceed \$100,000;

16 “(C) the amount described in this subpara-
17 graph is \$10,000 for each such violation, except
18 that the total amount imposed on the person
19 for all such violations of an identical require-
20 ment or prohibition during a calendar year may
21 not exceed \$250,000; and

22 “(D) the amount described in this sub-
23 paragraph is \$50,000 for each such violation,
24 except that the total amount imposed on the
25 person for all such violations of an identical re-

1 quirement or prohibition during a calendar year
2 may not exceed \$1,500,000.”.

3 (3) CONFORMING AMENDMENTS.—Section
4 1176(b) of such Act (42 U.S.C. 1320d–5(b)) is
5 amended—

6 (A) by striking paragraph (2) and redesignig-
7 nating paragraphs (3) and (4) as paragraphs
8 (2) and (3), respectively; and

9 (B) in paragraph (3)—

10 (i) in subparagraph (A), by striking
11 “in subparagraph (B), a penalty may not
12 be imposed under subsection (a) if” and all
13 that follows through “the failure to comply
14 is corrected” and inserting “in subpara-
15 graph (B) or subsection (a)(1)(C), a pen-
16 alty may not be imposed under subsection
17 (a) if the failure to comply is corrected”;
18 and

19 (ii) in subparagraph (B), by striking
20 “(A)(ii)” each place it appears and insert-
21 ing “(A)”.

22 (4) EFFECTIVE DATE.—The amendments made
23 by this subsection shall apply to violations occurring
24 after the date of the enactment of this Act.

1 (d) ENFORCEMENT BY STATE ATTORNEYS GEN-
2 ERAL.—

3 (1) CIVIL ACTIONS.—In any case in which the
4 attorney general of a State or any State or local law
5 enforcement agency authorized by the State attorney
6 general or by State law to prosecute violations of
7 consumer protection laws, has reason to believe that
8 an interest of the residents of that State has been
9 or is threatened or adversely affected by the engage-
10 ment of a person in a practice that is prohibited
11 under a provision of this title or subparts C or E of
12 title 45, Code of Federal Regulations, the State or
13 local law enforcement agency on behalf of the resi-
14 dents of the agency's jurisdiction, may bring a civil
15 action on behalf of the residents of the State or ju-
16 risdiction in a district court of the United States of
17 appropriate jurisdiction to—

18 (A) enjoin that act or practice;

19 (B) enforce compliance with the provision;

20 or

21 (C) obtain civil penalties in an amount cal-
22 culated by multiplying the number of violations
23 by an amount not greater than \$11,000.

24 (2) RULE OF CONSTRUCTION.—For purposes of
25 bringing any civil action under paragraph (1), noth-

ing in this title regarding notification shall be construed to prevent an attorney general of a State from exercising the powers conferred on such attorney general by the laws of that State to—

(A) conduct investigations;

(B) administer oaths or affirmations; or

(C) compel the attendance of witnesses or the production of documentary and other evidence.

(3) VENUE; SERVICE OF PROCESS.—

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

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

(i) is an inhabitant; or

(ii) may be found.

SEC. 414. AUDITS.

The Secretary shall provide for periodic audits to ensure that entities that are subject to the requirements of this title and subparts C and E of title 45, Code of Federal Regulations, comply with such requirements.

1 **SEC. 415. TECHNICAL AMENDMENT.**

2 Section 1171(5) of the Social Security Act (42 U.S.C.
3 1320d) is amended by striking “or C” and inserting “C,
4 or D”.

5 **Subtitle B—Chief Privacy Officer**
6 **of ONCHIT; Standards and**
7 **Guidance Recommendations Re-**
8 **lated to Privacy and Security**

9 **SEC. 421. CHIEF PRIVACY OFFICER OF THE OFFICE OF THE**
10 **NATIONAL COORDINATOR .**

11 (a) IN GENERAL.—To assist the National Coordi-
12 nator in carrying out all the duties of the National Coordi-
13 nator relating to the privacy and security of health infor-
14 mation, not later than 12 months after the date of the
15 enactment of this Act, the Secretary shall appoint a Chief
16 Privacy Officer of the Office of the National Coordinator
17 established under section 3001(a) of the Public Health
18 Service Act, as added by section 101.

19 (b) CONSULTATION.—In carrying out the duties
20 under subsection (a), the Chief Privacy Officer shall con-
21 sult with the officials designated under subsection (c)(1)
22 and is encouraged to consult with officials in other Federal
23 agencies who have primary responsibility relating to the
24 privacy and security of individually identifiable informa-
25 tion.

1 (c) COORDINATION WITH INTERNAL PRIVACY OFFI-
2 CERS.—The Secretary shall ensure that—

3 (1) not later than 12 months after the date of
4 the enactment of this Act, each agency specified by
5 the Secretary with the Department of Health and
6 Human Services that deals with health information
7 has an official who is designated with specific re-
8 sponsibilities with regard to the privacy and security
9 of such information; and

10 (2) such officials coordinate their activities with
11 the Chief Privacy Officer.

12 **SEC. 422. ADDITIONAL STANDARDS AND GUIDANCE REC-**
13 **COMMENDATIONS RELATED TO PRIVACY AND**
14 **SECURITY.**

15 (a) IN GENERAL.—In carrying out section 3001(c)(2)
16 of the Public Health Service Act, as added by section 101,
17 the National Coordinator shall—

18 (1) periodically recommend to the Secretary
19 standards and guidance related to ensuring the pri-
20 vacy and security of health information for purposes
21 of adoption under section 3003(a) of such Act, as so
22 added; and

23 (2) periodically review and revise as necessary
24 health information privacy and security standards
25 and regulations implemented under this title and

1 subparts C and E of title 45, Code of Federal Regu-
2 lations.

3 (b) SPECIFIC RECOMMENDATIONS.—For purposes of
4 subsection (a), the National Coordinator shall submit to
5 the Secretary recommendations on at least the following:

6 (1) APPLICATION OF HIPAA TO ENTITIES THAT
7 AREN'T COVERED ENTITIES.—Taking into account
8 the results of the study conducted under section
9 407, recommendations—

10 (A) on the extent to which the provisions
11 of this title and subparts C and E of title 45,
12 Code of Federal Regulations, should apply to
13 entities using, disclosing or receiving health in-
14 formation that are not included under this title
15 or such subparts as a covered entity or business
16 associate; and

17 (B) that identify to which entities that are
18 not so included should such provisions apply.

19 (2) COLLECTION LIMITATIONS.—Recommendations
20 identifying under what circumstances and for
21 what purposes protected health information may be
22 collected, including model notices for such purposes
23 as necessary and recommendations about which of
24 such purposes should require separate, prior author-

1 ization from the individual involved. Such rec-
2 ommendations shall provide that—

3 (A) such collection will occur in a trans-
4 parent process;

5 (B) such collection shall be in accordance
6 with applicable Federal, State, and local laws;
7 and

8 (C) such collection may only occur for the
9 purposes specified by the entity collecting the
10 information and such purposes must be so spec-
11 ified at least not later than the time of collec-
12 tion.

13 (3) DISCLOSURE AND USE LIMITATIONS.—Rec-
14 ommendations identifying the circumstances under
15 which, to whom, and for what purposes protected
16 health information may be used or disclosed, includ-
17 ing—

18 (A) recommendations about what uses or
19 purposes are permitted or required (taking into
20 account that protected health information shall
21 be disclosed in a non-identifiable manner to the
22 maximum extent possible);

23 (B) recommendations on best practices on
24 de-identifying data;

1 (C) recommendations for a technical stand-
2 ard that allows for the de-identification of
3 health information;

4 (D) recommendations on how to segregate
5 sensitive protected health information with the
6 goal of minimizing the reluctance of patients to
7 seek care (or disclose information about a con-
8 dition) because of privacy concerns involving
9 sensitive protected health information while
10 maximizing patient safety and clinical utility of
11 the information;

12 (E) recommendations to define the “min-
13 imum necessary” set of health information for
14 the most common treatment and health care
15 operations, as specified by the Secretary; and

16 (F) recommendations for standardized no-
17 tification describing, in terms that are easily
18 understandable to individuals, permissible uses
19 and disclosures for the most common payment
20 and health care operations purposes and spe-
21 cific to the most common covered entities.

22 (4) ELECTRONIC HEALTH RECORDS AND ELEC-
23 TRONIC MEDICAL RECORDS SECURITY FEATURES.—
24 Recommendations on security features, such as user
25 authentication, identity management tools, and data

1 scrubbing, that electronic health records must have
2 in order to receive certification under the program
3 under section 3001(c)(3) of the Public Health Serv-
4 ice Act, as added by section 101. Such recommenda-
5 tions shall include at a minimum recommendations
6 with respect to immutable audit trails.

7 (5) DATA ACCURACY.—Recommendations on
8 how to maximize the accuracy of health information
9 used or disclosed.

10 (6) ACCOUNTABILITY.—Recommendations on
11 how to best provide for accountability for uses and
12 disclosures of health information.

13 (7) TRANSPARENCY.—Recommendations on
14 how to maximize the transparency and openness of
15 health information privacy and security policies, in-
16 cluding requiring that notices informing individuals
17 of such policies be written in an understandable and
18 simple manner and clearly and simply describe what
19 the privacy and security policies are and how indi-
20 viduals can access their protected health information
21 and amend it.

22 (8) ENFORCEMENT.—Recommendation on how
23 to improve and revise the enforcement of this title
24 and subparts C and E of title 45, Code of Federal
25 Regulations.

1 (9) REDUCTIONS IN BREACHES.—Recommendations on how to reduce the number and scope of breaches, taking into account information received by the Secretary under section 3002(e)(3) of the Public Health Service Act.

6 The National Coordinator shall, to the maximum extent practicable, include the recommendations described in paragraphs (1), (3)(C), (3)(D), and (4) in the initial set of recommendations submitted by the Coordinator under section 3001(c)(2)(A) of the Public Health Service Act, as added by section 101.

12 **Subtitle C—Relationship to Other**
13 **Laws; Regulatory References;**
14 **Effective Date**

15 **SEC. 431. RELATIONSHIP TO OTHER LAWS.**

16 (a) APPLICATION OF HIPAA STATE PREEMPTION.—
17 Section 1178 of the Social Security Act (42 U.S.C.
18 1320d–7) shall apply to a provision or requirement under
19 this title in the same manner that such section applies
20 to a provision or requirement under part C of title XI of
21 such Act or a standard or implementation specification
22 adopted or established under sections 1172 through 1174
23 of such Act.

24 (b) HEALTH INSURANCE PORTABILITY AND AC-
25 COUNTABILITY ACT.—The standards governing the pri-

1 vacy and security of individually identifiable health infor-
2 mation promulgated by the Secretary under sections
3 262(a) and 264 of the Health Insurance Portability and
4 Accountability Act of 1996 shall remain in effect to the
5 extent that they are consistent with this title. The Sec-
6 retary shall by rule amend such Federal regulations as re-
7 quired to make such regulations consistent with this title.

8 **SEC. 432. REGULATORY REFERENCES.**

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

13 **SEC. 433. EFFECTIVE DATE.**

14 The provisions of subtitles A and B of this title (other
15 than sections 401(c), 402, 403, 405(c), 405(d), 406(d),
16 407, 408, 410, 411, 412, 413(b)(2), 413(b)(3), 413(c),
17 415, 421, 422, 431, and 432) shall take effect on the date
18 that is 12 months after the date of the enactment of this
19 Act.

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