To amend title XVIII of the Social Security Act to provide for a 90-day EHR reporting period for the determination of whether an eligible professional or eligible hospital is a meaningful EHR user and to remove the all-or-nothing approach to meaningful use, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 13, 2016

Mr. Thune (for himself, Mr. Alexander, Mr. Burr, Mr. Enzi, Mr. Roberts, and Mr. Cassidy) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to provide for a 90-day EHR reporting period for the determination of whether an eligible professional or eligible hospital is a meaningful EHR user and to remove the all-or-nothing approach to meaningful use, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “EHR Regulatory Relief Act”.

1. Be it enacted by the Senate and House of Representa-
2. tives of the United States of America in Congress assembled,
3. SECTION 1. SHORT TITLE.
4. This Act may be cited as the “EHR Regulatory Relief
5. Act”.
SEC. 2. 90-DAY EHR REPORTING PERIOD FOR DETERMINATION OF WHETHER AN ELIGIBLE PROFESSIONAL OR ELIGIBLE HOSPITAL IS A MEANINGFUL EHR USER.

(a) For an Eligible Professional for the 2016 EHR Reporting Period for the 2018 Payment Adjustment.—Section 1848(a)(7)(E)(ii) of the Social Security Act (42 U.S.C. 1395w–4(a)(7)(E)(ii)) is amended by adding at the end the following new sentence: “For the EHR reporting period with respect to 2018 or additional years, such term shall also include a 90-day EHR reporting period, in addition to any period (or periods) specified by the Secretary.”.

(b) Continuation of 90-Day EHR Reporting Period Under MIPS.—Section 1848(o)(5)(B) of the Social Security Act (42 U.S.C. 1395w–4(o)(5)(B)) is amended by adding at the end the following new sentence: “For purposes of determining a performance period under subsection (q)(4) with respect to the performance category described in subsection (q)(2)(A)(iv), and for purposes of the performance period described in paragraph (2)(D), for years as the Secretary determines appropriate, such term shall also include a 90-day EHR performance period, in addition to any period (or periods) specified by the Secretary.”.
(c) For an Eligible Hospital for the 2016 EHR Reporting Period and Subsequent Reporting Periods and Payment Adjustments for Fiscal Year 2018 and Subsequent Fiscal Years.—Section 1886(b)(3)(B)(ix)(IV) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(ix)(IV)) is amended by adding at the end the following new sentence: “For the EHR reporting period with respect to fiscal year 2018 and each subsequent fiscal year, such term shall also include a 90-day EHR reporting period (or periods) specified by the Secretary.”.

SEC. 3. REMOVING THE ALL-OR-NOTHING APPROACH TO MEANINGFUL USE.

(a) For an Eligible Professional.—Section 1848(o)(2) of the Social Security Act (42 U.S.C. 1395w–4(o)(2)) is amended by adding at the end the following new subparagraph:

“(E) Flexibility for Meaningful Use Determinations for Eligible Professionals.—In applying clauses (i), (ii), and (iii) of subparagraph (A), the Secretary may determine that an eligible professional is a meaningful EHR user for the EHR reporting period for 2018 or additional years as determined by the Secretary if such eligible professional meets at
least 70 percent (or a portion between 50 and 70 percent) of the measures established by the Secretary.”.

(b) For an Eligible Hospital.—Section 1886(n)(3) of the Social Security Act (42 U.S.C. 1395ww(n)(3)) is amended by adding at the end the following new paragraph:

“(D) Flexibility for Meaningful Use Determinations for Eligible Hospitals.—In applying clauses (i), (ii), and (iii) of subparagraph (A), for purposes of subsection (b)(3)(B)(ix) for an EHR reporting period under such subsection with respect to fiscal years after 2018, the Secretary shall determine that an eligible hospital is a meaningful EHR user for the EHR reporting period for such fiscal years using a methodology specified by the Secretary through rulemaking based on performance with respect to objectives and measures established by the Secretary that is met by an eligible hospital. Such methodology shall allow an eligible hospital to be a meaningful EHR user if they achieve 70 percent (or a portion between 50 and 70 percent) of such measures or if they achieve a composite score (as de-
termined by the Secretary through rulemaking) based on such measures.”.

(c) CONFORMING AMENDMENTS.—The last sentence of each of sections 1848(o)(2)(A) and 1886(n)(3)(A) of the Social Security Act (42 U.S.C. 1395w–4(o)(2)(A), 1395ww(n)(3)(A)) are amended by striking “by” and all that follows before the period at the end.

SEC. 4. EXTENDING FLEXIBILITY IN APPLYING HARDSHIP EXCEPTION FOR MEANINGFUL USE.

(a) FOR AN ELIGIBLE PROFESSIONAL FOR THE 2016 EHR REPORTING PERIOD FOR THE 2018 PAYMENT ADJUSTMENT.—Section 1848(a)(7)(B) of the Social Security Act (42 U.S.C. 1395w–4(a)(7)(B)) is amended—

(1) by striking “EXCEPTION.—The Secretary” and inserting “EXCEPTION.—

“(i) IN GENERAL.—The Secretary”;

(2) in the first sentence of clause (i), as added by paragraph (1)—

(A) by striking “2017” and inserting “each of 2017 and 2018”; and

(B) by striking “March 15, 2016” and inserting “the applicable date (as defined in clause (ii))”; and

(3) by adding at the end the following new clause:
“(ii) APPLICABLE DATE DEFINED.—

In this subparagraph, the term ‘applicable date’ means—

“(I) with respect to the payment adjustment under subparagraph (A) for 2017, March 15, 2016; and

“(II) with respect to the payment adjustment under subparagraph (A) for 2018, March 15, 2017.”.

(b) For an Eligible Hospital for the 2016 and 2017 EHR Reporting Periods and Payment Adjustments for Fiscal Years 2018 and 2019.—Section 1886(b)(3)(B)(ix) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(ix)) is amended—

(1) in the first sentence of subclause (II)—

(A) by striking “fiscal year 2017” and inserting “each of fiscal years 2017 through 2019”; and

(B) by striking “April 1, 2016” and inserting “the applicable date (as defined in subclause (V))”; and

(2) by adding at the end the following new subclause:

“(V) For purposes of this clause, the term ‘applicable date’ means—
“(aa) with respect to the payment reduction under subclause (I) for fiscal year 2017, April 1, 2016;

“(bb) with respect to the payment reduction under subclause (I) for fiscal year 2018, April 1, 2017; and

“(cc) with respect to the payment reduction under subclause (I) for fiscal year 2019, April 1, 2018.”.