

**eHealth Initiative Analysis of the
American Recovery and Reinvestment Act (HR 1)
(As signed into law on February 17, 2009)**

**Health Information Technology Provisions of
American Recovery and Reinvestment Act**

Please note that the following is only a summary of the final bill.
The full text of the bill through eHI's [members-only website](#).

DIVISION A – APPROPRIATIONS PROVISIONS

TITLE VII – INTERIOR, ENVIRONMENT, AND RELATED AGENCIES

INDIAN HEALTH SERVICE

Appropriates \$85 million for the Indian Health Service to use for health information technology activities. Such funds may be used for both telehealth services development and related infrastructure requirements that are typically funded through the "Indian Health Facilities" account.. The amounts shall allocated at the discretion of the Director of the Indian Health Service.

**TITLE VIII – DEPARTMENTS OF LABOR, HEALTH AND HUMAN
SERVICES, AND EDUCATION**

HEALTH RESOURCES AND SERVICES ADMINISTRATION

Provides \$1.5 billion for grants for construction, renovation, and equipment, and for the acquisition of health information technology systems, for health centers receiving operating grants under section 330 of the Public Health Service Act.

OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH IT

Provides \$2 billion for the Office of the National Coordinator to carry out title XIII of the Act, which shall be available until expended. Of this amount, \$300 million shall be used to support regional or sub-national efforts toward health information exchange and the Secretary shall transfer \$20 million to the Director of the National Institute of Standards and Technology in the Department of Commerce for continued work on advancing health care information enterprise integration through activities such as technical standards analysis and establishment of conformance testing infrastructure so long as such activities are coordinated with the Office of the National Coordinator.

Funds available under this heading shall become available for obligation only upon submission of an annual operating plan by the Secretary. The fiscal year 2009 operating plan shall be provided not later than 90 days after enactment of this Act and that subsequent annual operating plans shall be provided not later than November 1 of each year. These operating plans shall describe how expenditures are aligned with the specific objectives, milestones, and metrics of the Federal Health Information Technology Strategic Plan, including any subsequent updates to the Plan; the allocation of resources within the Department of Health and Human Services and other Federal agencies; and the identification of programs and activities that are supported. The Secretary shall provide a report on the actual obligations, expenditures, and unobligated balances for each major set of activities not later than November 1, 2009 and every 6 months thereafter as long as funding under this heading is available for obligation or expenditure.

SOCIAL SECURITY ADMINISTRATION

Provides \$500 million for processing disability and retirement workloads, of which up to \$40 million may be used by the Commissioner for health information technology research and activities to facilitate the adoption of electronic medical records in disability claims.

TITLE XIII – HEALTH INFORMATION TECHNOLOGY

“HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH (HITECH) ACT”

SUBTITLE A: PROMOTION OF HEALTH INFORMATION TECHNOLOGY

PART I: IMPROVING HEALTH CARE QUALITY, SAFETY AND EFFICIENCY

Sec. 13101. ONCHIT, standards development and adoption

Sec. 3000 Definitions

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

- a. **Establishment.** Established within Department of Health and Human Services (HHS) an Office of the National Coordinator for Health Information Technology (referred to in this section as the ‘Office’). The Office shall be headed by a National Coordinator who shall be appointed by the Secretary and shall report directly to the Secretary.
- b. **Purpose.** The National Coordinator shall perform the duties consistent with the development of a nationwide health information technology infrastructure that allows for the electronic use and exchange of information, among other purposes.

c. **Duties of the National Coordinator**

1. **Standards.** Shall review and determine within 45 days of receipt, whether to endorse each standard, implementation specification, and certification criterion for the electronic exchange and use of health information that is recommended by the HIT Standards Committee for purposes of adoption by the Federal government.
2. **Health IT Policy Coordination.** Shall coordinate health IT policy and programs of the Department with those of other relevant executive branch agencies with a goal of avoiding duplication of efforts. Shall be a leading member in the establishment and operations of the HIT Policy Committee and the HIT Standards Committee and shall serve as a liaison among those two Committees and the Federal Government.
3. **Strategic Plan.** Shall, in consultation with other appropriate Federal agencies (including the National Institute of Standards and Technology or NIST), update the Federal Health IT Strategic Plan to include specific objectives, milestones, and metrics with respect to:
 - The electronic exchange and use of health information and the enterprise integration of such information;
 - The utilization of an electronic health record (EHR) for each person in the U.S. by 2014; the incorporation of privacy and security protections for the electronic exchange of an individual's individually identifiable health information;
 - The incorporation of privacy and security protections for the electronic exchange of an individual's individually identifiable health information;
 - Ensuring security methods to ensure appropriate authorization and electronic authentication of health information and specifying technologies or methodologies for rendering health information unusable, unreadable, or indecipherable;
 - Specifying a framework for coordination and flow of recommendations and policies under this subtitle among the Secretary, the National Coordinator, the HIT Policy Committee, the HIT Standards Committee, and other health information exchanges and other relevant entities;
 - Methods to foster the public understanding of health IT; strategies to enhance the use of health IT in improving the quality of health care, reducing medical errors, reducing health disparities, improving public health, and improving the continuity of care among health care settings;
 - Specific plans for ensuring that populations with unique needs, such as children, are appropriately addressed.

The strategic plan shall be updated through collaboration of public and private entities, and include measurable outcome goals, and the updated plan shall be re-published.

4. **Website.** The National Coordinator shall maintain and frequently update a website on which there is posted information on the work, schedules, reports, recommendations, and other information to ensure transparency in promotion of a nationwide health IT infrastructure.
5. **Certification.** The National Coordinator, in consultation with the Director of NIST, shall keep or recognize a program for the voluntary certification of health IT as being in compliance with applicable certification criteria adopted under this section. Such program shall include, as appropriate, testing of the technology.

6. Reports and Publications

- Not later than 12 months after enactment, the National Coordinator shall submit to the appropriate committees of jurisdiction of the House and the Senate a report on any additional funding or authority the Coordinator or the HIT Policy Committee or HIT Standards Committee requires to evaluate and develop standards, implementation specifications, and certification criteria, or to achieve full participation of stakeholders in the adoption of a nationwide health IT infrastructure that allows for the electronic use and exchange of health information.
- The National Coordinator shall prepare a report that identifies lessons learned from major public and private health care systems in their implementation of health IT, including information on whether the technologies and practices developed by such systems may be applicable to and usable in whole or in part by other health care providers.
- The National Coordinator shall assess and publish the impact of health information technology in communities with health disparities and in areas with a high proportion of individuals who are uninsured, underinsured, and medically underserved individuals (including urban and rural areas) and identify practices to increase the adoption of such technology by health care providers in such communities.
- The National Coordinator shall evaluate and publish evidence on the benefits and costs of the electronic use and exchange of health information and assess to whom these benefits and costs accrue.
- The National Coordinator shall estimate and publish resources required annually to reach the goal of utilization of an EHR for each person in the U.S. by 2014, including the required level of Federal funding, expectations for regional, State, and private investment, and the expected contributions by volunteers to activities for the utilization of such records.

7. **Assistance.** The National Coordinator may provide financial assistance to consumer advocacy groups and not-for-profit entities that work in the public interest for purposes of defraying the cost to such groups and entities to participate under, whether in whole or in part, the National Technology Transfer Act of 1995.
 8. **Governance for Nationwide Health Information Network.** The National Coordinator shall establish a governance mechanism for the nationwide health information network.
- d. **Detail of Federal Employees.** 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.
 - e. **Chief Privacy Officer of the Office of the National Coordinator.** Not later than 12 months after enactment, the Secretary shall appoint a Chief Privacy Officer of the Office of the National Coordinator, whose duty it shall be to advise the National Coordinator on privacy, security, and data stewardship of electronic health information and to coordinate with other Federal agencies (and similar privacy officers in such agencies), with State and regional efforts, and with foreign countries with regard to the privacy, security, and data stewardship of electronic individually identifiable health information.

Sec. 3002 HIT Policy Committee

- a. **Establishment.** There is established a HIT Policy Committee to make policy recommendations to the National Coordinator relating to the implementation of a nationwide health IT infrastructure, including implementation of the strategic plan.
- b. **Duties.** Duties include the following:
 1. **Recommendations on Health IT Infrastructure.** The HIT Policy Committee shall recommend a policy framework for the development and adoption of a nationwide health IT infrastructure that permits the electronic exchange and use of health information as is consistent with the strategic plan. The Committee shall update such recommendations and make new recommendations as appropriate.
 2. **Specific Areas of Standard Development**
 - a. **General.** The HIT Policy Committee shall recommend the areas in which standards, implementation specifications, and certification criteria are needed for the electronic exchange and use of health information for purposes of adoption and shall recommend an order of priority for the development, harmonization, and recognition of such standards, specifications, and certification criteria among the areas so recommended. Such standards and

implementation specifications shall include named standards, architectures, and software schemes for the authentication and security of individually identifiable health information and other information as needed to ensure the reproducible development of common solutions across disparate entities.

b. **Areas Required for Consideration** The HIT Policy Committee shall make recommendations for at least the following areas:

- Technologies that protect the privacy of health information and promote security in a qualified HER, including for the segmentation and protection from disclosure of specific and sensitive individually identifiable health information with the goal of minimizing the reluctance of patients to seek care (or disclose information about a condition) because of privacy concerns, in accordance with applicable law, and for the use and disclosure of limited data sets of such information.
- A nationwide health IT infrastructure that allows for the electronic use and accurate exchange of health information.
- The utilization of a certified HER for each person in the United States by 2014.
- Technologies that as a part of a qualified EHR allow for an accounting of disclosures made by a covered entity for purposes of treatment, payment, and health care operations.
- The use of certified EHRs to improve the quality of health care, such as by promoting the coordination of health care and improving continuity of health care among healthcare providers, by reducing medical errors, by improving population health, and by advancing research and education.
- Technologies that allow individually identifiable health information to be rendered unusable, unreadable, or indecipherable to unauthorized individuals when such information is transmitted in the nationwide health information network or physically transported outside of the secured, physical perimeter of a health care provider, health plan, or health care clearinghouse.
- The use of electronic systems to ensure the comprehensive collection of patient demographic data, including, at a minimum, race, ethnicity, primary language, and gender information.
- Technologies that address the needs of children and other vulnerable populations.

c. **Other Areas for Consideration.** In making recommendations, the HIT Policy Committee may consider the following additional areas:

- The appropriate uses of a nationwide health information infrastructure, including for purposes of the collection of quality data and public

reporting; biosurveillance and public health; medical and clinical research; and drug safety.

- Self-service technologies that facilitate the use and exchange of patient information and reduce wait times.
- Telemedicine technologies, in order to reduce travel requirements for patients in remote areas.
- Technologies that facilitate home health care and the monitoring of patients recuperating at home.
- Technologies that help reduce medical errors.
- Technologies that facilitate the continuity of care among health settings.
- Technologies that meet the needs of diverse populations.
- Methods to facilitate secure access by an individual to such individual's protected health information
- Methods, guidelines, and safeguards to facilitate secure access to patient information by a family member, caregiver, or guardian acting on behalf of a patient due to age-related and other disability, cognitive impairment, or dementia.
- Any other technology that the HIT Policy Committee finds to be among the technologies with the greatest potential to improve the quality and efficiency of health care.

3. Forum. HIT Policy Committee shall serve as a forum for broad stakeholder input with specific expertise in policies relating to the matters described in paragraphs above.

4. Consistency with Evaluation Conducted Under MIPPA.

c. Membership and Operations

1. **General.** The National Coordinator shall provide leadership in the establishment and operations of the HIT Policy Committee.

2. **Membership.** The membership of the HIT Policy Committee shall be composed of the following:

- A. 3 members shall be appointed by the Secretary, 1 of whom shall be appointed to represent the Department of Health and Human Services and 1 of whom shall be a public health official
- B. 1 member shall be appointed by the majority leader of the Senate.
- C. 1 member shall be appointed by the minority leader of the Senate.
- D. 1 member shall be appointed by the Speaker of the House of Representatives.
- E. 1 member shall be appointed by the minority leader of the House of Representatives.
- F. Such other members as shall be appointed by the President as representatives of other relevant Federal agencies.

- G. 13 members shall be appointed by the Comptroller General of the United States of whom:
- I. 3 members shall advocates for patients or consumers;
 - II. 2 members shall represent healthcare providers, one of which shall be a physician;
 - III. 1 member shall be from a labor organization representing health care workers;
 - IV. 1 member shall have expertise in health information privacy and security;
 - V. 1 member shall have expertise in improving the health of vulnerable populations;
 - VI. 1 member shall be from the research community;
 - VII. 1 member shall represent health plans or other third-party payers;
 - VIII. 1 member shall represent information technology vendors;
 - IX. 1 member shall represent purchasers or employers; and
 - X. 1 member shall have expertise in health care quality measurement and reporting.

- 3. **Participation.** The members of the HIT Policy Committee shall represent a balance among various sectors of the health care system.
 - 4. **Terms.** The terms of the members shall be, with exceptions, 3 years. Vacancies shall be filled in the manner that the original appointments were made.
 - 5. **Outside Involvement.** The HIT Policy Committee shall ensure an opportunity for the participation in activities of the Committee of outside advisors, including individuals with expertise in the development of policies for the electronic exchange and use of health information, including in the areas of health information privacy and security.
 - 6. **Quorum.** A majority of the member of the IDT Policy Committee shall constitute a quorum for purposes of voting, but a lesser number of members may meet and hold hearings.
 - 7. **Failure of Initial Appointment.** If, on the date that is 45 days after the date of enactment of this title, an official authorized under paragraph (2) to appoint one or more members of the HIT Policy Committee has not appointed the full 10 number of members that such paragraph authorizes such official to appoint, the Secretary is authorized to appoint such members.
 - 8. **Consideration.** The National Coordinator shall ensure that the relevant recommendations and comments from the National Committee on Vital and Health Statistics are considered in the development of policies.
- d. **Application of FACA.** The Federal Advisory Committee Act (5 U.S.C. App.), other than section 14 of such Act, shall apply to the HIT Policy Committee.

- e. **Publication.** The Secretary shall provide for publication in the Federal Register and the posting on the Internet website of the Office of the National Coordinator for Health Information Technology of all policy recommendations made by the HIT Policy Committee under this section.

Sec. 3003 HIT Standards Committee

- a. **Establishment.** There is established a committee to be known as the HIT Standards Committee to recommend to the National Coordinator standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the strategic plan and beginning with the areas listed below in accordance with policies developed by the HIT Policy Committee.

- b. **Duties**

- 1. **Standards Development.**

- A. **General.** The HIT Standards Committee shall recommend to the National Coordinator standards, implementation specifications, and certification criteria that have been developed, harmonized, or recognized by the HIT Standards Committee. The HIT Standards Committee shall update such recommendations and make new recommendations as appropriate, including in response to a notification sent. Such recommendations shall be consistent with the latest recommendations made by the HIT Policy Committee.
 - B. **Harmonization.** The HIT Standards Committee recognize harmonized or updated standards from an entity or entities for the purpose of harmonizing or updating standards and implementation specifications in order to achieve uniform and consistent implementation of the standards and implementation specifications.
 - C. **Pilot Testing of Standards and Implementation Specifications.** In the development, harmonization, or recognition of standards and implementation specifications, the HIT Standards Committee shall, as appropriate, provide for the testing of such standards and specifications by the National Institute for Standards and Technology.
 - D. **Consistency.** The standards, implementation specifications, and certification criteria recommended under this subsection shall be consistent with the standards for information transactions and data elements.

- 2. **Forum.** The HIT Standards Committee shall serve as a forum for the participation of a broad range of stakeholders to provide input on the development, harmonization, and recognition of standards, implementation specifications, and

certification criteria necessary for the development and adoption of a nationwide health IT that allows for the electronic use and exchange of health information.

3. **Schedule.** Not later than 90 days after the date of the enactment of this title, the HIT Standards Committee shall develop a schedule for the assessment of policy recommendations developed by the HIT Policy Committee. The HIT Standards Committee shall update such schedule annually. The Secretary shall publish such schedule in the Federal Register.
4. **Public Input.** The HIT Standards Committee shall conduct open public meetings and develop a process to allow for public comment on the schedule described and recommendations described in this subsection. Under such process comments shall be submitted in a timely manner after the date of publication of a recommendation under this subsection.
5. **Consideration.** The National Coordinator shall ensure that the relevant recommendations and comments from the National Committee on Vital and Health Statistics are considered in the development of policies.

c. Membership and Operations

1. **General.** The National Coordinator shall take a leading position in the establishment and operations of the HIT Standards Committee.
2. **Membership.** The membership of the HIT Standards Committee shall at least reflect providers, ancillary healthcare workers, consumers, purchasers, health plans, technology vendors, researchers, relevant Federal agencies, and individuals with technical expertise on health care quality, privacy and security, and on the electronic exchange and use of health information.
3. **Participation.** The members of the HIT Policy Committee shall represent a balance among various sectors of the health care system.
4. **Outside Involvement.** The HIT Policy Committee shall ensure an opportunity for the participation in activities of the Committee of outside advisors, including individuals with expertise in the development of standards for the electronic exchange and use of health information, including in the areas of health information privacy and security.
5. **Balance Among Sectors.** In developing the procedures for conducting the activities of the HIT Standards Committee, the HIT Standards Committee shall act to ensure a balance among various sectors of the health care system so that no single sector unduly influences the actions of the HIT Standards Committee.
6. **Assistance.** For the purposes of carrying out this section, the Secretary may provide or ensure that financial assistance is provided by the HIT Standards

Committee to defray in whole or in part any membership fees or dues charged by such Committee to those consumer advocacy groups and not for profit entities that work in the public interest as a part of their mission.

- d. **Application of FACA.** The Federal Advisory Committee Act (5 U.S.C. App.), other than section 14, shall apply to the HIT Standards Committee.
- e. **Publication.** The Secretary shall provide for publication in the Federal Register and the posting on the Internet website of the Office of the National Coordinator for Health Information Technology of all recommendations made by the HIT Standards Committee under this section.

Sec. 3004 Process for Adoption of Endorsed Recommendations; Adoption of Initial Set of Standards; Implementation Specifications; and Certification Criteria

- a. **Process for Adoption of Endorsed Recommendations.**
 - 1. **Review of Endorsed Standards, Implementation Specifications, and Certification Criteria.** Not later than 90 days after the date of receipt of standards, implementation specifications, or certification criteria endorsed by the Secretary, in consultation with representatives of other relevant Federal agencies, shall jointly review such standards, implementation specifications, or certification criteria and shall determine whether or not to propose adoption of such standards, implementation specifications, or certification
 - 2. **Determination to Adopt Standards, Implementation Specifications, and Certification Criteria.** If the Secretary determines (A) to propose adoption of any grouping of such standards, implementation specifications, or certification criteria, the Secretary shall, by regulation, determine whether or not to adopt such grouping of standards, implementation specifications, or certification criteria; or (B) not to propose adoption of any grouping of standards, implementation specifications, or certification criteria, the Secretary shall notify the National Coordinator and the HIT Standards Committee in writing of such determination and the reasons for not proposing the adoption of such recommendation.
 - 3. **Publication.** The Secretary shall provide for publication in the Federal Register of all determinations made by the Secretary under paragraph.
- b. **Adoption of Standards; Implementation Specifications; and Certification Criteria.**
 - 1. **General.** Not later than December 31, 2009, the Secretary shall, through a rulemaking process, adopt an initial set of standards, implementation specifications, and certification criteria for the areas required for consideration.
 - 2. **Application of Current Standards, Implementation Specifications, and Certification Criteria.** The standards, implementation specifications, and

certification criteria adopted before the date of the enactment of this title through the process existing through the Office of the National Coordinator for Health Information Technology may be applied towards meeting the requirement.

3. **Subsequent Standards Activity.** The Secretary shall adopt additional standards, implementation specifications, and certification criteria as necessary and consistent with the schedule published under section 3003(b)(2).

Sec. 3005 Application and Use of Adopted Standards and Implementation Specifications by Federal Agencies. For requirements relating to the application and use by Federal agencies of the standards and implementation specifications adopted under section 3004, see section 13111 of the HITECH Act.

Sec. 3006 Voluntary Application and Use of Adopted Standards and Implementation Specifications by Private Entities

- a. **General.** Except as provided under section 13112 of the HITECH Act, any standard or implementation specification adopted under section 3004 shall be voluntary with respect to private entities.
- b. **Rule of Construction.** Nothing in this subtitle shall be construed to require that a private entity that enters into a contract with the Federal Government apply or use the standards and implementation specifications adopted under section 3004 with respect to activities not related to the contract.

Sec. 3007 Federal Health Information Technology

- a. **General.** The National Coordinator shall support the development, routine updating and provision of qualified EHR technology consistent with subsections unless the Secretary determines that the needs and demands of providers are being substantially and adequately met through the marketplace.
- b. **Certification.** In making such EHR technology publicly available, the National Coordinator shall ensure that the qualified EHR technology is certified under the program developed under section 3001 to be in compliance with applicable standards adopted under section 3003.
- c. **Authorization to Charge a Nominal Fee.** The National Coordinator may impose a nominal fee for the adoption by a health care provider of the health information technology system developed or approved. Such fee shall take into account the financial circumstances of smaller providers, low income providers, and providers located in rural or other medically underserved areas.
- d. **Rule of Construction.** Nothing in this section shall be construed to require that a private or government entity adopt or use the technology provided under this section.

Sec. 3008 Transitions

- a. **ONCHIT.** To the extent consistent with section 3001, all functions, personnel, assets, liabilities, and administrative actions applicable to the National Coordinator for Health Information Technology appointed under Executive Order 13335 or the Office of such National Coordinator on the date before the date of the enactment of this title shall be transferred to the National Coordinator appointed under section 3001(a) and the Office of such National Coordinator as of the date of the enactment of this title
- b. **National eHealth Collaborative.** Nothing in sections 3002 or 3003 or this subsection shall be construed as prohibiting the ARIC Successor, Inc. doing business as the National eHealth Collaborative from modifying its charter, duties, membership, and any other structure or function required to be consistent with section 3002 and 3003 so as to allow the Secretary to recognize such AHIC Successor, Inc. as the HIT Policy Committee or the HIT Standards Committee
- c. In carrying out section 3003(b)(1)(A), until recommendations are made by the HIT Policy Committee, recommendations of the HIT Standards Committee shall be consistent with the most recent recommendations made by such AHIC Successor, Inc.

Sec. 3009 Miscellaneous Provisions

a. Relation to HIPAA Privacy and Security Law

1. **General.** With respect to the relation of this title to HIPAA privacy and security law:
 - i. This title may not be construed as having any effect on the authorities of the Secretary under HIPAA privacy and security law.
 - ii. The purposes of this title include ensuring that the health information technology standards and implementation specifications adopted under section 3004 take into account the requirements of HIPAA privacy and security law.
 2. **Definition.**
- b. **Flexibility.** In administering the provisions of this title, the Secretary shall have flexibility in applying the definition of health care provider under section 3000(3), including the authority to omit certain entities listed in such definition when applying such definition under this title, where appropriate.

Sec. 13102. Technical Amendment

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

Sec. 13111 Coordination of Federal Activities With Adopted Standards and Implementation Specifications

- a. **Spending on Health IT Systems.** As each agency (as defined in the Executive Order issued on August 22, 2006, relating to promoting quality and efficient health care in Federal government administered or sponsored health care programs) implements, acquires, or upgrades health information technology systems used for the direct exchange of individually identifiable health information between agencies and with non-Federal entities, it shall utilize, where available, health information technology systems and products that meet standards and implementation specifications adopted under section 3004 of the Public Health Service Act, as added by section 13101.
- b. **Federal Information Collection Activities.** With respect to a standard or implementation specification adopted under section 3004 of the Public Health Service Act, as added by section 13101, the President shall take measures to ensure that Federal activities involving the broad collection and submission of health information are consistent with such standard or implementation specification, respectively, within three years after the date of such adoption.
- c. **Application of Definitions.** The definitions contained in section 3000 of the Public Health Service Act, as added by section 13101, shall apply for purposes of this part.

Sec. 13112 Application to Private Entities. Each agency shall require in contracts or agreements with health care providers, health plans, or health insurance issuers that as each provider, plan, or issuer implements, acquires, or upgrades health information technology systems, it shall utilize, where available, health information technology systems and products that meet standards and implementation specifications adopted under section 3004 of the Public Health Service Act, as added by section 13101.

Sec. 13113 Study and Reports

- a. **Report on Adoption of Nationwide System.** Not later than 2 years after the date of the enactment of this Act and annually thereafter, the Secretary of HHS shall submit to the appropriate committees of jurisdiction of the House of Representatives and the Senate a report that (1) describes the specific actions that have been taken by the Federal Government and private entities to facilitate the adoption of a nationwide system for the electronic use and exchange of health information; (2) describes barriers to the adoption of such a nationwide system; and (3) contains recommendations to achieve full implementation of such a nationwide system.
- b. **Reimbursement Incentive Study and Report.** The Secretary of HHS shall carry out, or contract with a private entity to carry out, a study that examines methods to create efficient reimbursement incentives for improving health care quality in Federally qualified health centers, rural health clinics, and free clinics. Not later than

2 years after the date of the enactment of this Act, the Secretary of HHS shall submit to the appropriate committees of jurisdiction of the House of Representatives and the Senate a report on the study carried out.

- c. **Aging Services Technology Study and Report.** The Secretary of HHS shall carry out, or contract with a private entity to carry out, a study of matters relating to the potential use of new aging services technology to assist seniors, individuals with disabilities, and their caregivers throughout the aging process. Not later than 24 months after the date of the enactment of this Act, the Secretary shall submit to the appropriate committees of jurisdiction of the House of Representatives and of the Senate a report on the study carried out.

SUBTITLE B: TESTING OF HEALTH INFORMATION TECHNOLOGY

Sec. 13201 National Institute for Standards and Technology Testing

- a. **Pilot Testing of Standards and Implementation Specifications.** In coordination with the HIT Standards Committee with respect to the development of standards and implementation specifications, the Director of NIST shall test such standards and implementation specifications, as appropriate, in order to assure the efficient implementation and use of such standards and implementation specifications.
- b. **Voluntary Testing Program.** In coordination with the HIT Standards Committee with respect to the development of standards and implementation specifications, the Director of NIST shall support the establishment of a conformance testing infrastructure, including the development of technical test beds. The development of this conformance testing infrastructure may include a program to accredit independent, non-Federal laboratories to perform testing.

Sec. 13202 Research and Development Programs

- a. **Health Care Information Enterprise Integration Research Centers**
 1. **General.** The Director of NIST, in consultation with the Director of the National Science Foundation and other appropriate Federal agencies, shall establish a program of assistance to institutions of higher education (or consortia thereof which may include nonprofit entities and Federal Government laboratories) to establish multidisciplinary Centers for Health Care Information Enterprise Integration.
 2. **Review; Competition.** Grants shall be awarded under this subsection on a merit-reviewed, competitive basis.
 3. **Purpose.** The purposes of the Centers shall be (A) to generate innovative approaches to health care information enterprise integration by conducting cutting-edge, multidisciplinary research on the systems challenges to health care delivery; and (B) the development and use of health information technologies and other complementary fields.
 4. **Research Areas.** Research areas may include interfaces between human information and communications technology systems; voice-recognition systems; software that improves interoperability and connectivity among health information systems; software dependability in systems critical to health care delivery; measurement of the impact of information technologies on the quality and productivity of health care; health information enterprise management; health IT security and integrity; and relevant health IT to reduce medical errors.

5. **Applications.** An institution of higher education (or a consortium thereof) seeking funding under this subsection shall submit an application to the Director of NIST at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum, a description of—

- A. The research projects that will be undertaken by the Center and the respective contributions of the participating entities;
- B. How the Center will promote active collaboration among scientists and engineers from different disciplines, such as information technology, biologic sciences, management, social sciences, and other appropriate disciplines;
- C. Technology transfer activities to demonstrate and diffuse the research results, technologies, and knowledge; and
- D. How the Center will contribute to the education and training of researchers and other professionals in fields relevant to health information enterprise integration.

b. **National Information Technology Research and Development Program.** The National High-Performance Computing Program established by the High-Performance Computing Act of 1991 shall coordinate Federal research and development programs related to the health information technology

SUBTITLE C: GRANTS AND LOANS FUNDING

PART I: GRANTS AND LOAN FUNDING

SEC. 13301. GRANT, LOAN, AND DEMONSTRATION PROGRAMS

Sec. 3011 Immediate Funding to Strengthen the Health IT Infrastructure

- a. **General.** The Secretary of HHS shall, using amounts appropriated under section 3018, invest in the infrastructure necessary to allow for and promote the electronic exchange and use of health information for each individual in the United States consistent with the goals outlined in the strategic plan developed by the National Coordinator.

The Secretary shall invest funds through the different agencies with expertise in such goals, such as the Office of the National Coordinator for Health Information Technology, the Health Resources and Services Administration, the Agency for Healthcare Research and Quality, the Centers of Medicare & Medicaid Services, the Centers for Disease Control and Prevention, and the Indian Health Service to support the following:

1. Health IT architecture that will support the nationwide electronic exchange and use of health information in a secure, private, and accurate manner, including connecting health information exchanges, and which may include updating and implementing the infrastructure necessary within different agencies of DHHS to support the electronic use and exchange of health information.
2. Development and adoption of appropriate certified electronic health records for categories of providers not eligible for support under title XVIII or XIX of the Social Security Act for the adoption of such records.
3. Training on and dissemination of information on best practices to integrate health IT including EHRs, into a provider's delivery of care, consistent with best practices learned from the Health Information Technology Research Center, including community health centers receiving assistance, covered entities, and providers participating in one or more of the programs under titles XVIII, XIX, and XXI of the Social Security Act (relating to Medicare, Medicaid, and the State Children's Health Insurance Program).
4. Infrastructure and tools for the promotion of telemedicine, including coordination among Federal agencies in the promotion of telemedicine.
5. Promotion of the interoperability of clinical data repositories or registries.

6. Promotion of technologies and best practices that enhance the protection of health information by all holders of individually identifiable health information.
 7. Improve and expand the use of health IT by public health departments.
- b. **Coordination.** The Secretary shall ensure funds under this section are used in a coordinated manner with other health information promotion activities.
 - c. **Additional Use of Funds.** In addition to using funds as provided in this subsection, the Secretary may use amounts appropriated under section 3018 to carry out activities that are provided for under laws in effect on the date of the enactment of this title.
 - d. **Standards for Acquisition of Health IT.** To the greatest extent practicable, the Secretary shall ensure that where funds are expended under this section for the acquisition of health information technology, such funds shall be used to acquire health information technology that meets applicable standards adopted under section 3004. Where it is not practicable to expend funds on health information technology that meets such applicable standards, the Secretary shall ensure that such health information technology meets applicable standards otherwise adopted by the Secretary.

Sec. 3012 Health IT Implementation Assistance

a. Health Information Technology Extension Program

To assist health care providers to adopt, implement, and effectively use certified EHR technology that allows for the electronic exchange and use of health information, the Secretary, acting through the Office of the National Coordinator, shall establish a health IT extension program to provide health IT assistance services to be carried out through DHHS. The National Coordinator shall consult with other Federal agencies with demonstrated experience and expertise in information technology services, such as NIST in developing and implementing this program.

b. Health Information Technology Research Center

1. **General.** The Secretary shall create a Health Information Technology Research Center (in this section referred to as the ‘Center’) to provide technical assistance and develop or recognize best practices to support and accelerate efforts to adopt, implement, and effectively utilize health IT that allows for the electronic exchange and use of information in compliance with standards, implementation specifications, and certification criteria adopted under section 3004.
2. **Input.** The Center shall incorporate input from:
 - a. Other Federal agencies with demonstrated experience and expertise in information technology services such as NIST

- b. Users of health IT, such as providers and their support and clerical staff and others involved in the care and care coordination of patients, from the health care and health IT industry; and
- c. Others as appropriate.

3. **Purposes.** The purposes of the Center are to—

- A. provide a forum for the exchange of knowledge and experience;
- B. accelerate the transfer of lessons learned from existing public and private sector initiatives, including those currently receiving Federal financial support;
- C. assemble, analyze, and widely disseminate evidence and experience related to the adoption, implementation, and effective use of health IT that allows for the electronic exchange and use of information including through the regional centers described;
- D. provide technical assistance for the establishment and evaluation of regional and local health information networks to facilitate the electronic exchange of information across health care settings and improve the quality of health care;
- E. provide technical assistance for the development and dissemination of solutions to barriers to the exchange of electronic health information; and
- F. learn about effective strategies to adopt and utilize health IT in medically underserved communities.

c. Health Information Technology Regional Extension Centers

- 1. **General.** The Secretary shall provide assistance for the creation and support of regional centers (in this subsection referred to as ‘regional centers’) to provide technical assistance and disseminate best practices and other information learned from the Center to support and accelerate efforts to adopt, implement, and effectively utilize health IT that allows for the electronic exchange and use of information in compliance with standards, implementation specifications, and certification criteria adopted under section 3004. Activities conducted under this subsection shall be consistent with the strategic plan developed by the National Coordinator under section 3001.
- 2. **Affiliation.** Regional centers shall be affiliated with any US-based nonprofit institution or organization, or group thereof, that applies and is awarded financial assistance under this section. Individual awards shall be decided on the basis of merit.
- 3. **Objective.** The objective of the regional centers is to enhance and promote the adoption of health information technology through—
 - A. assistance with the implementation, effective use, upgrading, and ongoing maintenance of health information technology, including EHRs, to healthcare providers nationwide;

- B. broad participation of individuals from industry, universities, and State governments;
 - C. active dissemination of best practices and research on the implementation, effective use, upgrading, and ongoing maintenance of health IT, including EHRs, to health care providers in order to improve the quality of healthcare and protect the privacy and security of health information;
 - D. participation, to the extent practicable, in health information exchanges; and
 - E. utilization, when appropriate, of the expertise and capability that exists in federal agencies other than the Department; and
 - F. integration of health IT, including EHRs, into the initial and ongoing training of health professionals and others in the healthcare industry that would be instrumental to improving the quality of healthcare through the smooth and accurate electronic use and exchange of health information.
4. **Regional Assistance.** Each regional center shall aim to provide assistance and education to all providers in a region, but shall prioritize any direct assistance first to the following:
- A. Public or not-for-profit hospitals or critical access
 - B. Federally qualified health centers
 - C. Entities that are located in rural and other areas that serve uninsured, underinsured, and medically underserved individuals (regardless of whether such area is urban or rural).
 - D. Individual or small group practices (or a consortium thereof) that are primarily focused on primary care.
5. **Financial Support.** The Secretary may provide financial support to any regional center created under this subsection for a period not to exceed four years. The Secretary may not provide more than 50 percent of the capital and annual operating and maintenance funds required to create and maintain such a center, except in an instance of national economic conditions which would render this cost-share requirement detrimental to the program and upon notification to Congress as to the justification to waive the cost-share requirement.
6. **Notice of Program Description and Availability of Funds.** The Secretary shall publish in the Federal Register, not later than 90 days after the date of the enactment of this Act, a draft description of the program for establishing regional centers under this subsection. Such description shall include the following:
- A. A detailed explanation of the program and the programs goals.
 - B. Procedures to be followed by the applicants.
 - C. Criteria for determining qualified applicants.
 - D. Maximum support levels expected to be available to centers under the program.

7. **Application Review.** The Secretary shall subject each application under this subsection to merit review. In making a decision whether to approve such application and provide financial support, the Secretary shall consider at a minimum the merits of the application, including those portions of the application regarding—
 - A. the ability of the applicant to provide assistance under this subsection and utilization of health IT appropriate to the needs of particular categories of health care providers;
 - B. the types of service to be provided to health care providers;
 - C. geographical diversity and extent of service area; and
 - D. the percentage of funding and amount of in-kind commitment from other sources.
8. **Biennial Evaluation.** Each regional center which receives financial assistance under this subsection shall be evaluated biennially by an evaluation panel appointed by the Secretary. Each evaluation panel shall be composed of private experts, none of whom shall be connected with the center involved, and of Federal officials. Each evaluation panel shall measure the involved center's performance against the objective specified. The Secretary shall not continue to provide funding to a regional center unless its evaluation is overall positive.
9. **Continuing Support.** After the second year of assistance under this subsection a regional center may receive additional support under this subsection if it has received positive evaluations and a finding by the Secretary that continuation of Federal funding to the center was in the best interest of provision of health information technology extension services.

Sec. 3013 State Grants to Promote Health IT

- a. **General.** The Secretary, acting through the National Coordinator, shall establish a program in accordance with this section to facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards.
- b. **Planning Grants.** The Secretary may award a grant to a State or qualified State-designated entity that submits an application to the Secretary at such time, in such manner, and containing such information as the Secretary may specify, for the purpose of planning activities described.
- c. **Implementation Grants.** The Secretary may award a grant to a State or qualified State designated entity that has submitted, and the Secretary has approved, a plan (regardless of whether such plan was prepared using amounts awarded under this paragraph); and submits an application at such time, in such manner, and containing such information as the Secretary may specify.

- d. **Use of Funds.** Amounts received under a grant under subsection shall be used to conduct activities to facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards through activities that include—
1. Enhancing broad and varied participation in the authorized and secure nationwide electronic use and exchange of health information;
 2. Identifying State or local resources available towards a nationwide effort to promote health IT;
 3. Complementing other Federal grants, programs, and efforts towards the promotion of health IT;
 4. Providing technical assistance for the development and dissemination of solutions to barriers to the exchange of electronic health information;
 5. Promoting effective strategies to adopt and utilize health IT in medically underserved communities;
 6. Assisting patients in utilizing health IT;
 7. Encouraging clinicians to work with Health Information Technology Regional Extension Centers, to the extent they are available and valuable;
 8. Supporting public health agencies' authorized use of and access to electronic health information;
 9. Promoting the use of EHRs for quality improvement including through quality measures reporting; and
 10. Such other activities as the Secretary may specify.
- e. **Plan**
1. **General.** A plan described in this subsection is a plan that describes the activities to be carried out by a State or by the qualified State-designated entity within such State to facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards and implementation specifications.
 2. **Required Elements.** A plan described in paragraph (1) shall—
 - a. be pursued in the public interest;
 - b. be consistent with the strategic plan developed by the National Coordinator,;
 - c. include a description of the ways the State or qualified State-designated entity will carry out the activities; and
 - d. contain such elements as the Secretary may require.
- f. **Qualified State-Designated Entity.** For purposes of this section, to be a qualified State-designated entity, with respect to a State, an entity shall—
1. be designated by the State as eligible to receive awards under this section;
 2. be a not-for-profit entity with broad stake-holder representation on its governing board;

3. demonstrate that one of its principal goals is to use IT to improve health care quality and efficiency through the authorized and secure electronic exchange and use of health information;
 4. adopt nondiscrimination and conflict of interest policies that demonstrate a commitment to open, fair, and nondiscriminatory participation by stakeholders; and
 5. conform to such other requirements as the Secretary may establish.
- g. **Required Consultation.** In carrying out activities described, a State or qualified State-designated entity shall consult with and consider the recommendations of—
1. health care providers (including providers that provide services to low income and underserved populations);
 2. health plans;
 3. patient or consumer organizations that represent the population to be served;
 4. health information technology vendors;
 5. health care purchasers and employers;
 6. public health agencies;
 7. health professions schools, universities and colleges;
 8. clinical researchers;
 9. other users of health IT such as the support and clerical staff of providers and others involved in the care and care coordination of patients; and
 10. such other entities, as may be determined appropriate by the Secretary.
- h. **Continuous Improvement.** The Secretary shall annually evaluate the activities conducted and shall, in awarding grants under this section, implement the lessons learned from such evaluation in a manner so that awards made subsequent to each such evaluation are made in a manner that, in the determination of the Secretary, will lead towards the greatest improvement in quality of care, decrease in costs, and the most effective authorized and secure electronic exchange of health information.
- i. **Required Match**
1. **General.** For a fiscal year (beginning with fiscal year 2011), the Secretary may not make a grant under subsection to a State unless the State agrees to make available non-Federal contributions (which may include in-kind contributions) toward the costs of a grant awarded in an amount equal to—
 - A. for fiscal year 2011, not less than \$1 for each \$10 of Federal funds provided under the grant;
 - B. for fiscal year 2012, not less than \$1 for each \$7 of Federal funds provided under the grant; and
 - C. for fiscal year 2013 and each subsequent fiscal year, not less than \$1 for each \$3 of Federal funds provided under the grant.

2. **Authority to Require State Match for Fiscal Years Before Fiscal Year 2011.** For any fiscal year during the grant program under this section before fiscal year 2011, the Secretary may determine the extent to which there shall be required a non-Federal contribution from a State receiving a grant under this section.

Sec. 3014 Competitive Grants to States and Indian Tribes for the Development of Loan Programs to Facilitate the Widespread Adoption of Certified EHR Technology

- a. **General.** The National Coordinator may award competitive grants to eligible entities for the establishment of programs for loans to health care providers to conduct the activities described below.
- b. **Eligible Entity Defined.** For purposes of this subsection, the term ‘eligible entity’ means a State or Indian tribe that—
 1. Submits to the National Coordinator an application at such time, in such manner, and containing such information as the National Coordinator may require;
 2. Submits to the National Coordinator a strategic plan in accordance with subsection and provides assurances that the entity will update such plan annually in accordance with such subsection;
 3. Provides assurances to the National Coordinator that the entity will establish a Loan Fund in accordance with subsection;
 4. Provides assurances to the National Coordinator that the entity will not provide a loan from the Loan Fund to a health care provider unless the provider agrees to
 - A. submit reports on quality measures adopted by the Federal Government (by not later than 90 days after the date on which such measures are adopted), to—
 - the Administrator of the Centers for Medicare & Medicaid Services (or his or her designee), in the case of an entity participating in the Medicare program under title XVIII of the Social Security Act or the Medicaid program under title XIX of such Act; or
 - the Secretary in the case of other entities;
 - B. demonstrate to the satisfaction of the Secretary that any certified EHR technology purchased, improved, or otherwise financially supported under a loan under this section is used to exchange health information in a manner that, in accordance with law and standards applicable to the exchange of information, improves the quality of health care, such as promoting care coordination; and

- C. comply with such other requirements as the entity or the Secretary may require;
- D. include a plan on how health care providers involved intend to maintain and support the certified EHR technology over time;
- E. include a plan on how the health care providers involved intend to maintain and support the certified EHR technology that would be purchased with such loan, including the type of resources expected to be involved and any such other information as the State or Indian Tribe, respectively, may require; and

5. Agrees to provide matching funds.

c. **Establishment of Fund.** An eligible entity shall establish a certified EHR technology loan fund (referred to in this subsection as a ‘Loan Fund’) and comply with the other requirements contained in this section. A grant to an eligible entity under this section shall be deposited in the Loan Fund established by the eligible entity. No funds authorized by other provisions of this title to be used for other purposes specified in this title shall be deposited in any Loan Fund.

d. Strategic Plan

1. **General.** For purposes of subsection, a strategic plan of an eligible entity under this subsection shall identify the intended uses of amounts available to the Loan Fund of such entity.

2. **Contents.** A strategic plan with respect to a Loan Fund of an eligible entity, shall include for a year the following:

- A. A list of the projects to be assisted through the Loan Fund during such year.
- B. A description of the criteria and methods established for the distribution of funds from the Loan Fund during the year.
- C. A description of the financial status of the Loan Fund as of the date of submission of the plan.
- D. The short-term and long-term goals of the Loan Fund.

e. **Use of Funds.** Amounts deposited in a Loan Fund, including loan repayments and interest earned on such amounts, shall be used only for awarding loans or loan guarantees, making reimbursements, or as a source of reserve and security for leveraged loans, the proceeds of which are deposited in the Loan Fund established. Loans under this section may be used by a health care provider to—

- 1. facilitate the purchase of certified EHR technology;
- 2. enhance the utilization of certified EHR technology;
- 3. train personnel in the use of such technology; or

4. improve the secure electronic exchange of health information.
- f. **Types of Assistance.** Except as otherwise limited by applicable State law, amounts deposited into a Loan Fund under this subsection may only be used for the following:
 1. To award loans that comply with the following:
 2. To guarantee, or purchase insurance for, a local obligation (all of the proceeds of which finance a project eligible for assistance under this subsection) if the guarantee or purchase would improve credit market access or reduce the interest rate applicable to the obligation involved.
 3. As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the eligible entity if the proceeds of the sale of the bonds will be deposited into the Loan Fund.
 4. To earn interest on the amounts deposited into the Loan Fund.
 5. To make certain reimbursements.

g. Administration of Loan Funds

1. **Combined Financial Administration.** An eligible entity may (as a convenience and to avoid unnecessary administrative costs) combine, in accordance with applicable State law, the financial administration of a Loan Fund established under this subsection with the financial administration of any other revolving fund established by the entity if otherwise not prohibited by the law under which the Loan Fund was established.
2. **Cost of Administering the Fund.** Each eligible entity may annually use not to exceed 4 percent of the funds provided to the entity under a grant under this subsection to pay the reasonable costs of the administration of the programs under this section, including the recovery of reasonable costs expended to establish a Loan Fund which are incurred after the date of the enactment of this title.
3. **Guidance and Regulations.** The National Coordinator shall publish guidance and promulgate regulations as may be necessary to carry out the provisions of this section.
4. **Private Sector Contributions.**
 - A. **In General.** A Loan Fund established under this subsection may accept contributions from private sector entities, except that such entities may not specify the recipient or recipients of any loan issued under this subsection. An eligible entity may agree to reimburse a private sector entity for any contribution made under this subparagraph, except that the amount of such reimbursement may not be greater than the principal amount of the contribution made.

- B. **Availability of Information.** An eligible entity shall make publicly available the identity of, and amount contributed by, any private sector entity under subparagraph (A) and may issue letters of commendation or make other awards (that have no financial value) to any such entity.

h. Matching Requirements

1. **General.** The National Coordinator may not make a grant to an eligible entity unless the entity agrees to make available (directly or through donations from public or private entities) non-Federal contributions in cash to the costs of carrying out the activities for which the grant is awarded in an amount equal to not less than \$1 for each \$5 of Federal funds provided under the grant.
 2. **Determination of Amount of Non-Federal Contribution.** In determining the amount of non-Federal contributions that an eligible entity has provided, the National Coordinator may not include any amounts provided to the entity by the Federal Government
- i. **Effective Date.** The Secretary may not make an award under this section prior to January 1, 2010.

Sec. 3015 Demonstration Program to Integrate IT into Clinical Education (Section 3015)

- a. **General.** The Secretary may award grants under this section to carry out demonstration projects to develop academic curricula integrating certified EHR technology in the clinical education of health professionals. Such awards shall be made on a competitive basis and pursuant to peer review.
- b. **Eligibility.** To be eligible to receive a grant under subsection (a), an entity shall—
 1. Submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;
 2. Submit to the Secretary a strategic plan for integrating certified EHR technology in the clinical education of health professionals to reduce medical errors and enhance health care quality;
 3. be—
 - A school of medicine, osteopathic medicine, dentistry, or pharmacy, a graduate program in behavioral or mental health, or any other graduate health professions school;
 - A graduate school of nursing or physician assistant studies;
 - A consortium of two or more schools; or
 - An institution with a graduate medical education program in medicine, osteopathic medicine, dentistry, pharmacy, nursing, or physician assistance studies.
 4. Provide for the collection of data regarding the effectiveness of the demonstration project to be funded under the grant in improving the safety of patients, the

efficiency of health care delivery, and in increasing the likelihood that graduates of the grantee will adopt and incorporate certified EHR technology, in the delivery of health care services; and

5. Provide matching funds.

c. Use of Funds

1. **General.** With respect to a grant under subsection (a), an eligible entity shall—

- use grant funds in collaboration with 2 or more disciplines; and
- use grant funds to integrate certified EHR technology into community-based clinical education.

2. **Limitation.** An eligible entity shall not use amounts received under a grant to purchase hardware, software, or services.

d. Financial Support. The Secretary may not provide more than 50 percent of the costs of any activity for which assistance is provided except in an instance of national economic conditions which would render the cost-share requirement under this subsection detrimental to the program and upon notification to Congress as to the justification to waive the cost-share requirement.

e. Evaluation. The Secretary shall take such action as may be necessary to evaluate the projects funded under this section and publish, make available, and disseminate the results of such evaluations on as wide a basis as is practicable.

f. Reports. Not later than 1 year after the date of enactment of this title, and annually thereafter, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate, and the Committee on Energy and Commerce of the House of Representatives a report.

Sec. 3016 Information Technology Professionals in Health Care

a. General. The Secretary, in consultation with the Director of NIST shall provide assistance to institutions of higher education (or consortia thereof) to establish or expand medical health informatics education programs, including certification, undergraduate, and masters degree programs, for both health care and information technology students to ensure the rapid and effective utilization and development of health information technologies (in the United States health care infrastructure).

b. Activities. Activities for which assistance may be provided may include the following:

1. Developing and revising curricula in medical health informatics and related disciplines.
2. Recruiting and retaining students to the program involved.

3. Acquiring equipment necessary for student instruction in these programs, including the installation of testbed networks for student use.
 4. Establishing or enhancing bridge programs in the health informatics fields between community colleges and universities.
- c. **Priority.** In providing assistance, the Secretary shall give preference to the following:
1. Existing education and training programs.
 2. Programs designed to be completed in less than six months.

Sec. 3017 General Grant and Loan Provisions

- a. **Reports.** The Secretary may require that an entity receiving assistance under this title shall submit to the Secretary, not later than the date that is 1 year after the date of receipt of such assistance, a report that includes—
1. an analysis of the effectiveness of the activities for which the entity receives such assistance, as compared to the goals for such activities; and
 2. an analysis of the impact of the project on health care quality and safety.
- b. **Requirement to Improve Quality of Care and Decrease in Costs.** The National Coordinator shall annually evaluate the activities conducted under this title and shall, in awarding grants, implement the lessons learned from such evaluation in a manner so that awards made subsequent to each such evaluation are made in a manner that, in the determination of the National Coordinator, will result in the greatest improvement in the quality and efficiency of health care.

Sec. 3018 Authorization for Appropriations. For the purposes of carrying out this subtitle, there is authorized to be appropriated such sums as may be necessary for each of the fiscal years 2009 through 2013.

SUBTITLE D - PRIVACY

Sec. 13400. Definitions.

PART I—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS

Sec. 13401 Application of Security Provisions and Penalties to Business Associates of Covered Entities; Annual Guidance on Security Provisions

- a. **Application of Security Provisions.** Sections 164.308, 164.310, 164.312, and 164.316 of title 45, Code of Federal Regulations, shall apply to a business associate of a covered entity in the same manner that such sections apply to the covered entity. The additional requirements of this title that relate to security and that are made applicable with respect to covered entities shall also be applicable to such a business associate and shall be incorporated into the business associate agreement between the business associate and the covered entity.
- b. **Application of Civil and Criminal Penalties.** In the case of a business associate that violates any security provision specified in subsection (a), sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6) shall apply to the business associate with respect to such violation in the same manner such sections apply to a covered entity that violates such security provision.
- c. **Annual Guidance.** For the first year beginning after the date of the enactment of this Act and annually thereafter, the Secretary of HHS shall, in consultation with stakeholders, annually issue guidance on the most effective and appropriate technical safeguards for use in carrying out the sections referred to in subsection (a) and the security standards in subpart C of part 164 of title 45, Code of Federal Regulations, including the use of standards developed under section 3002, as such provisions are in effect as of the date before the enactment of this Act.

Sec. 13402 Notification in the Case of Breach

- a. **In General.** A covered entity that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured protected health information shall, in the case of a breach of such information that is discovered by the covered entity, notify each individual whose unsecured protected health information has been, or is reasonably believed by the covered entity to have been, accessed, acquired, or disclosed as a result of such breach.
- b. **Notification of Covered Entity by Business Associate.** A business associate of a covered entity that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured protected health information shall, following the discovery of a breach of such information, notify the covered entity of

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

- c. **Breaches Treated as Discovered.** For purposes of this section, a breach shall be treated as discovered by a covered entity or by a business associate as of the first day on which such breach is known to such entity or associate, respectively, (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of such entity or associate, respectively) or should reasonably have been known to such entity or associate (or person) to have occurred.

d. Timeliness of Notification

1. **In General.** All notifications required under this section shall be made without unreasonable delay and in no case later than 60 calendar days after the discovery of a breach by the covered entity involved (or business associate involved).
2. **Burden of Proof.** The covered entity involved (or business associate involved), shall have the burden of demonstrating that all notifications were made as required under this part, including evidence demonstrating the necessity of any delay.

e. Methods of Notice

1. **Individual Notice.** Notice required under this section to be provided to an individual, with respect to a breach, shall be provided promptly and in the following form:
 - A. Written notification by first-class mail to the individual (or the next of kin of the individual if the individual is deceased) at the last known address of the individual or the next of kin, respectively, or, if specified as a preference by the individual, by electronic mail. The notification may be provided in one or more mailings as information is available.
 - B. In the case in which there is insufficient, or out-of-date contact information (including a phone number, email address, or any other form of appropriate communication) that precludes direct written (or, if specified by the individual under subparagraph (A), electronic) notification to the individual, a substitute form of notice shall be provided, including, in the case that there are 10 or more individuals for which there is insufficient or out-of-date contact information, a conspicuous posting for a period determined by the Secretary on the home page of the Web site of the covered entity involved or notice in major print or broadcast media, including major media in geographic areas where the individuals affected by the breach likely reside. Such a notice in media or web posting will include a toll-free phone number where an

individual can learn whether or not the individual's unsecured protected health information is possibly included in the breach.

- C. In any case deemed by the covered entity involved to require urgency because of possible imminent misuse of unsecured protected health information, the covered entity, in addition to notice provided under subparagraph, may provide information to individuals by telephone or other means, as appropriate.
2. **Media Notice.** Notice shall be provided to prominent media outlets serving a State or jurisdiction, following the discovery of a breach described in subsection (a), if the unsecured protected health information of more than 500 residents of such State or jurisdiction is, or is reasonably believed to have been, accessed, acquired, or disclosed during such breach.
 3. **Notice to Secretary.** Notice shall be provided to the Secretary by covered entities of unsecured protected health information that has been acquired or disclosed in a breach. If the breach was with respect to 500 or more individuals than such notice must be provided immediately. If the breach was with respect to less than 500 individuals, the covered entity involved may maintain a log of any such breach occurring and annually submit such a log to the Secretary documenting such breaches occurring during the year involved.
 4. **Posting on HHS Public Website.** The Secretary shall make available to the public on the Internet website of the Department of Health and Human Services a list that identifies each covered entity involved in a breach described in subsection (a) in which the unsecured protected health information of more than 500 individuals is acquired or disclosed.
- f. **Content Notification.** Regardless of the method by which notice is provided to individuals under this section, notice of a breach shall include, to the extent possible, the following:
1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.
 2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
 3. The steps individuals should take to protect themselves from potential harm resulting from the breach.
 4. A brief description of what the covered entity involved is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
 5. Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

g. **Delay of Notification Authorized for Law Enforcement Purposes.** If a law enforcement official determines that a notification, notice, or posting required under this section would impede a criminal investigation or cause damage to national security, such notification, notice, or posting shall be delayed in the same manner as provided under section 164.528(a)(2) of title 45, Code of Federal Regulations, in the case of a disclosure covered under such section.

h. Unsecured Protected Health Information

1. Definition

- a. **In General.** For purposes of this section, the term “unsecured protected health information” means protected health information that is not secured through the use of a technology or methodology specified by the Secretary in the guidance issued under paragraph.
 - b. **Exception in Case Timely Guidance Not Issued.** In the case that the Secretary does not issue guidance under paragraph by the date specified in such paragraph, for purposes of this section, the term “unsecured protected health information” shall mean protected health information that is not secured by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.
2. **Guidance.** Not later than the date that is 60 days after the date of the enactment of this Act, the Secretary shall, after consultation with stakeholders, issue (and annually update) guidance specifying the technologies and methodologies that render protected health information unusable, unreadable, or indecipherable to unauthorized individuals.

i. Report to Congress on Breaches

1. **In General.** Not later than 12 months after the date of the enactment of this Act and annually thereafter, the Secretary shall prepare and submit to Congress a report containing the information described regarding breaches for which notice was provided to the Secretary.
2. **Information.** The information described in this paragraph regarding breaches shall include—
 - the number and nature of such breaches; and
 - actions taken in response to such breaches.

- j. **Regulations Effective Date.** To carry out this section, the Secretary of HHS shall promulgate interim final regulations by not later than the date that is 180 days after the date of the enactment of this title. The provisions of this section shall apply to breaches that are discovered on or after the date that is 30 days after the date of publication of such interim final regulations.

Sec. 13403 Education on Health Information Privacy

- a. **Regional Office Privacy Advisors.** Not later than 6 months after the date of the enactment of this Act, the Secretary shall designate an individual in each regional office of DHHS to offer guidance and education to covered entities, business associates, and individuals on their rights and responsibilities related to Federal privacy and security requirements for protected health information.
- b. **Education Initiative on Uses of Health Information.** Not later than 12 months after the date of the enactment of this Act, the Office for Civil Rights within DHHS shall develop and maintain a multi-faceted national education initiative to enhance public transparency regarding the uses of protected health information, including programs to educate individuals about the potential uses of their protected health information, the effects of such uses, and the rights of individuals with respect to such uses. Such programs shall be conducted in a variety of languages and present information in a clear and understandable manner.

Sec. 13404 Application of Privacy Provisions and Penalties to Business Associates of Covered Entities

- a. **Application of Contract Requirements.** In the case of a business associate of a covered entity that obtains or creates protected health information pursuant to a written contract (or other written arrangement) with such covered entity, the business associate may use and disclose such protected health information only if such use or disclosure, respectively, is in compliance with each applicable requirement. The additional requirements of this subtitle that relate to privacy and that are made applicable with respect to covered entities shall also be applicable to such a business associate and shall be incorporated into the business associate agreement between the business associate and the covered entity.
- b. **Application of Knowledge Elements Associated with Contracts.** Section 164.504(e)(1)(ii) of title 45, Code of Federal Regulations, shall apply to a business associate described in subsection (a), with respect to compliance with such subsection, in the same manner that such section applies to a covered entity, with respect to compliance with the standards in sections 164.502(e) and 164.504(e) of such title, except that in applying such section 164.504(e)(1)(ii) each reference to the business associate, with respect to a contract, shall be treated as a reference to the covered entity involved in such contract.

- c. **Application of Civil and Criminal Penalties.** In the case of a business associate that violates any provision of subsection (a) or (b), the provisions of sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6) shall apply to the business associate with respect to such violation in the same manner as such provisions apply to a person who violates a provision of part C of title XI of such Act.

Sec. 13405 Restrictions on Certain Disclosures and Sales of Health Information; Accounting of Certain Protected Health Information Disclosures; Access to Certain Information in Electronic Format

- a. **Requested Restrictions on Certain Disclosures of Health Information.** In the case that an individual requests under paragraph (a)(1)(i)(A) of section 164.522 of title 45, Code of Federal Regulations, that a covered entity restrict the disclosure of the protected health information of the individual, notwithstanding paragraph (a)(1)(ii) of such section, the covered entity must comply with the requested restriction if—
 - 1. except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and
 - 2. the protected health information pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full.
- b. **Disclosures Required to be Limited to the Limited Data Set or the Minimum Necessary**
 - 1. **In General**
 - a. **In General.** A covered entity shall be treated as being in compliance with section 164.502(b)(1) of title 45, Code of Federal Regulations, with respect to the use, disclosure, or request of protected health information described in such section, only if the covered entity limits such protected health information, to the extent practicable, to the limited data set (as defined in section 164.514(e)(2) of such title) or, if needed by such entity, to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request, respectively.
 - b. **Guidance.** Not later than 18 months after the date of the enactment of this section, the Secretary shall issue guidance on what constitutes “minimum necessary” for purposes of subpart E of part 164 of title 45, Code of Federal Regulation. In issuing such guidance the Secretary shall take into consideration the guidance under section 4424(c).
 - c. **Sunset.** Subparagraph shall not apply on and after the effective date on which the Secretary issues the guidance under subparagraph above.
 - 2. **Determination of Minimum Necessary.** In the case of the disclosure of protected health information, the covered entity or business associate disclosing

such information shall determine what constitutes the minimum necessary to accomplish the intended purpose of such disclosure.

3. **Application of Exceptions.** The exceptions described in section 164.502(b)(2) of title 45, Code of Federal Regulations, shall apply to the requirement under paragraph as of the effective date described in section 4423 in the same manner that such exceptions apply to section 164.502(b)(1) of such title before such date.
 4. **Rule of Construction.** Nothing in this subsection shall be construed as affecting the use, disclosure, or request of protected health information that has been de-identified.
- c. Accounting of Certain Protected Health Information Disclosures Required if Covered Entity Uses Electronic Health Record**
1. **In General.** In applying section 164.528 of title 45, Code of Federal Regulations, in the case that a covered entity uses or maintains an electronic health record with respect to protected health information—
 - A. the exception under paragraph (a)(1)(i) of such section shall not apply to disclosures through an electronic health record made by such entity of such information; and
 - B. an individual shall have a right to receive an accounting of disclosures described in such paragraph of such information made by such covered entity during only the three years prior to the date on which the accounting is requested.
 2. **Regulations.** The Secretary shall promulgate regulations on what information shall be collected about each disclosure referred to in paragraph (1)(A) not later than 6 months after the date on which the Secretary adopts standards on accounting for disclosure as added by section 4101. Such regulations shall only require such information to be collected through an EHR in a manner that takes into account the interests of individuals in learning the circumstances under which their protected health information is being disclosed and takes into account the administrative burden of accounting for such disclosures.
 3. **Process.** In response to a request from an individual for an accounting, a covered entity shall elect to provide either an—
 - A. Accounting for disclosures of protected health information that are made by such covered entity and by a business associate acting on behalf of the covered entity; or
 - B. Accounting for disclosures that are made by such covered entity and provide a list of all business associates acting on behalf of the covered entity, including contact information for such associates (such as mailing address, phone, and email address). A business associate included on a list under subparagraph (B) shall provide an accounting of disclosures (as required for a covered entity)

made by the business associate upon a request made by an individual directly to the business associate for such an accounting.

4. Effective Date

A. **Current Users of Electronic Records.** In the case of a covered entity insofar as it acquired an EHR as of January 1, 2009, paragraph shall apply to disclosures, with respect to protected health information, made by the covered entity from such a record on and after January 1, 2014.

B. **Others.** In the case of a covered entity insofar as it acquires an EHR after January 1, 2009, paragraph shall apply to disclosures, with respect to protected health information, made by the covered entity from such record on and after the later of the following:

- i. January 1, 2011; or
- ii. the date that it acquires an electronic health record.

C. **Later Date.** The Secretary may set an effective date that is later than the date specified under subparagraph (A) or (B) if the Secretary determines that such later date is necessary, but in no case may the date specified under

- i. subparagraph (A) be later than 2016; or
- ii. subparagraph (B) be later than 2013.

d. Prohibition of Sale of Electronic Health Records or Protected Health Information

1. **In General.** Except as provided in paragraph (2), a covered entity or business associate shall not directly or indirectly receive remuneration in exchange for any protected health information of an individual unless the covered entity obtained from the individual, in accordance with section 164.508 of title 45, Code of Federal Regulations, a valid authorization that includes, in accordance with such section, a specification of whether the protected health information can be further exchanged for remuneration by the entity receiving protected health information of that individual.

2. **Exceptions.** Paragraph (1) shall not apply in the following cases:

- A. The purpose of the exchange is for public health activities (as described in section 164.512(b) of title 45, Code of Federal Regulations).
- B. The purpose of the exchange is for research (as described in sections 164.501, 164.512(i) of title 45, Code of Federal Regulations) and the price charged reflects the costs of preparation and transmittal of the data for such purpose.
- C. The purpose of the exchange is for the treatment of the individual, subject to any regulation that the Secretary may promulgate to prevent protected health information from inappropriate access, use, or disclosure.

- D. The purpose of the exchange is the health care operation specifically described in subparagraph (iv) of paragraph (6) of the definition of health care operations in section 164.501 of title 45, Code of Federal Regulations.
 - E. The purpose of the exchange is for remuneration that is provided by a covered entity to a business associate for activities involving the exchange of protected health information that the business associate undertakes on behalf of and at the specific request of the covered entity pursuant to a business associate agreement.
 - F. The purpose of the exchange is to provide an individual with a copy of the individual's protected health information pursuant to section 164.524 of title 45, Code of Federal Regulations.
 - G. The purpose of the exchange is otherwise determined by the Secretary in regulations to be similarly necessary and appropriate as the exceptions provided in subparagraphs (A) through (F).
3. **Regulations.** The Secretary shall promulgate regulations to carry out paragraph not later than 18 months after the date of the enactment of this title. In promulgating such regulations, the Secretary—
- A. shall evaluate the impact of restricting the exception described in paragraph (2)(A) to require that the price charged for the purposes described in such paragraph reflects the costs of the preparation and transmittal of the data for such purpose, on research or public health activities, including those conducted by or for the use of the Food and Drug Administration; and
 - B. may further restrict the exception described in paragraph (2) (A) to require that the price charged for the purposes described in such paragraph reflects the costs of the preparation and transmittal of the data for such purpose, if the Secretary finds that such further restriction will not impede such research or public health activities.
4. **Effective Date.** Paragraph (1) shall apply to exchanges occurring on or after the date that is 6 months after the date of the promulgation of final regulations implementing this subsection.
- e. **Access to Certain Information in Electronic Format.** In applying section 164.524 of title 45, Code of Federal Regulations, in the case that a covered entity uses or maintains an EHR with respect to protected health information of an individual—
- 1. the individual shall have a right to obtain from such covered entity a copy of such information in an electronic format; and if the individual chooses, to direct the covered entity to transmit such copy directly to an entity or person designated by the individual, provided that any such choice is clear, conspicuous, and specific; and
 - 2. notwithstanding paragraph (c)(4) of such section, any fee that the covered entity may impose for providing such individual with a copy of such information (or a summary or explanation of such information) if such copy (or summary or

explanation) is in an electronic form shall not be greater than the entity's labor costs in responding to the request for the copy (or summary or explanation).

Sec. 13406 Conditions of Certain Contacts as Part of Health Care Operations

a. Marketing

1. **In General.** A communication by a covered entity or business associate that is about a product or service and that encourages recipients of the communication to purchase or use the product or service shall not be considered a health care operation for purposes of subpart E of part 164 of title 45, Code of Federal Regulations, unless the communication is made as described in subparagraphs of the definition of marketing in section 164.501 of such title.
2. **Payment for Certain Communications.** A communication by a covered entity or business associate that is described in subparagraph (i), (ii), or (iii) of paragraph (1) of the definition of marketing in section 164.501 of title 45, Code of Federal Regulations, shall not be considered a health care operation for purposes of subpart E of part 164 of title 45, Code of Federal Regulations if the covered entity receives or has received direct or indirect payment in exchange for making such communication, except where—
 1.
 1. such communication describes only a drug or biologic that is currently being prescribed for the recipient of the communication; and
 2. any payment received by such covered entity in exchange for making a communication described in clause (i) is reasonable in amount;
 2. each of the following conditions apply—
 1. the communication is made by the covered entity; and
 2. the covered entity making such communications obtains from the recipient of the communication, a valid authorization with respect to such communication; or
 3. each of the following conditions apply—
 1. the communication is made by a business associate on behalf of the covered entity; and
 2. the communication is consistent with the written contract (or other written arrangement) between such business associate and covered entity.
3. **Reasonable in Amount Defined.** For purposes of paragraph (2), the term "reasonable in amount" shall have the meaning given such term by the Secretary by regulation.

- 4. Direct or Indirect Payment.** For purposes of paragraph (2), the term "direct or indirect payment" shall not include any payment for treatment (as defined in section 164.501 of title 45, Code of Federal Regulations) of an individual.
- b. **Opportunity to Opt Out of Fundraising.** The Secretary shall by rule provide that any written fundraising communication that is a healthcare operation as defined under section 164.501 of title 45, Code of Federal Regulations, shall, in a clear and conspicuous manner, provide an opportunity for the recipient of the communications to elect not to receive any further such communication. When an individual elects not to receive any further such communication, such election shall be treated as a revocation of authorization under section 164.508 of title 45, Code of Federal Regulations.
- c. **Effective Date.** This section shall apply to contracting occurring on or after the effective date specified under section 13423.

Sec. 13407 Temporary Breach Notification Requirement for Vendors of Personal Health Records and Other Non-HIPAA Covered Entities

- a. **In General.** Each vendor of personal health records (PHRs), following the discovery of a breach of security of unsecured PHR identifiable health information that is in a PHR maintained or offered by such vendor, and each entity described in clause (ii), (iii), or (iv) of section 13424(b)(1)(A), following the discovery of a breach of security of such information that is obtained through a product or service provided by such entity, shall—
1. notify each individual who is a citizen or resident of the United States whose unsecured PHR identifiable health information was acquired by an unauthorized person as a result of such a breach of security; and
 2. notify the Federal Trade Commission.
- b. **Notification by Third Party Service Providers.** A third party service provider that provides services to a vendor of personal health records or to an entity described in section 13424 in connection with the offering or maintenance of a PHR or a related product or service and that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured PHR identifiable health information in such a record as a result of such services shall, following the discovery of a breach of security of such information, notify such vendor or entity, respectively, of such breach. Such notice shall include the identification of each individual whose unsecured PHR identifiable health information has been, or is reasonably believed to have been, accessed, acquired, or disclosed during such breach.
- c. **Application of Requirements for Timeliness, Method and Content of Notifications.** Subsections (c), (d), (e), and (f) of section 13402 shall apply to a notification required under subsection (a) and a vendor of personal health records, an entity described in subsection (a) and a third party service provider described in subsection (b), with respect to a breach of security under subsection (a) of unsecured

PHR identifiable health information in such records maintained or offered by such vendor, in a manner specified by the Federal Trade Commission.

- d. **Notification of the Secretary.** Upon receipt of a notification of a breach of security, the Federal Trade Commission shall notify the Secretary of such breach.
- e. **Enforcement.** A violation shall be treated as an unfair and deceptive act or practice in violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive acts or practices.
- f. **Definitions.**
- g. **Regulations, Effective Date, Sunset.**
 - 1. **Regulations, Effective Date.** To carry out this section, the Secretary of HHS shall promulgate interim final regulations by not later than the date that is 180 days after the date of the enactment of this section. The provisions of this section shall apply to breaches of security that are discovered on or after the date that is 30 days after the date of publication of such interim final regulations.
 - 2. **Sunset.** If Congress enacts new legislation establishing requirements for notification in the case of a breach of security, that apply to entities that are not covered entities or business associates, the provisions of this section shall not apply to breaches of security discovered on or after the effective date of regulations implementing such legislation.

Sec. 13408 Business Associate Contracts Required for Certain Entities. Each organization, with respect to a covered entity, that provides data transmission of protected health information to such entity (or its business associate) and that requires access on a routine basis to such protected health information, such as a Health Information Exchange Organization, Regional Health Information Organization, E-prescribing Gateway, or each vendor that contracts with a covered entity to allow that covered entity to offer a personal health record to patients as part of its electronic health record, is required to enter into a written contract (or other written arrangement) described in section 164.502(e)(2) of title 45, Code of Federal Regulations and a written contract (or other arrangement) described in section 164.308(b) of such title, with such entity and shall be treated as a business associate of the covered entity for purposes of the provisions of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this title.

Sec. 13409 Clarification of Application of Wrongful Disclosures Criminal Penalties. Section 1177(a) of the Social Security Act (42 U.S.C. 1320d–6(a)) is amended by adding at the end the following new sentence: “For purposes of the previous sentence, a person (including an employee or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a

covered entity (as defined in the HIPAA privacy regulation described in section 1180(b)(3)) and the individual obtained or disclosed such information without authorization.”.

Sec. 13410 Improved Enforcement

- a. **In General.** Section 1176 of the Social Security Act (42 U.S.C. 1320d-5) is amended by striking “the act constitutes an offense punishable under section 1177” and inserting “a penalty has been imposed under section 1177 with respect to such act”; and (2) by adding at the end the following new subsection

“(c) NONCOMPLIANCE DUE TO WILLFUL NEGLIGENCE.—

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

“(2) REQUIRED INVESTIGATION.—For purposes of paragraph (1), the Secretary shall formally investigate any complaint of a violation of a provision of this part if a preliminary investigation of the facts of the complaint indicate such a possible violation due to willful neglect.”.

b. Effective Date; Regulations

1. The amendments made by subsection shall apply to penalties imposed on or after the date that is 24 months after the date of the enactment of this title.
2. Not later than 18 months after the date of the enactment of this title, the Secretary of HHS shall promulgate regulations to implement such amendments.

c. Distribution of Certain Civil Monetary Penalties Collected

1. **In General.** Subject to the regulation promulgated, any civil monetary penalty or monetary settlement collected with respect to an offense punishable under this subtitle or section 1176 of the Social Security Act (42 U.S.C. 1320d-5) insofar as such section relates to privacy or security shall be transferred to the Office of Civil Rights of DHHS to be used for purposes of enforcing the provisions of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this Act.
2. **GAO Report.** Not later than 18 months after the date of the enactment of this title, the Comptroller General shall submit to the Secretary a report including recommendations for a methodology under which an individual who is harmed by an act that constitutes an offense referred to in paragraph (1) may receive a percentage of any civil monetary penalty or monetary settlement collected with respect to such offense
3. **Establishment of Methodology to Distribute Percentage of CMPS Collected to Harmed Individuals.** Not later than 3 years after the date of the enactment of this title, the Secretary shall establish by regulation and based on the

recommendations submitted a methodology under which an individual who is harmed by an act that constitutes an offense may receive a percentage of any civil monetary penalty or monetary settlement collected with respect to such offense.

4. **Application of Methodology.** The methodology shall be applied with respect to civil monetary penalties or monetary settlements imposed on or after the effective date of the regulation.

d. Tiered Increase in Amount of Civil Monetary Penalties

1. **In General.** . Section 1176(a)(1) of the Social Security Act (42 U.S.C. 1320d-5(a)(1)) is amended by striking “who violates a provision of this part a penalty of not more than” and all that follows and inserting the following: “who violates a provision of this part—
 - A. in the case of a violation of such provision in which it is established that the person did not know (and by exercising reasonable diligence would not have known) that such person violated such provision, a penalty for each such violation of an amount that is at least the amount described in paragraph (3)(A) but not to exceed the amount described in paragraph (3)(D);
 - B. in the case of a violation of such provision in which it is established that the violation was due to reasonable cause and not to willful neglect, a penalty for each such violation of an amount that is at least the amount described in paragraph (3)(B) but not to exceed the amount described in paragraph (3)(D); and
 - C. in the case of a violation of such provision in which it is established that the violation was due to willful neglect— “(i) if the violation is corrected as described in subsection (b)(3)(A), a penalty in an amount that is at least the amount described in paragraph (3)(C) but not to exceed the amount described in paragraph (3)(D); and “(ii) if the violation is not corrected as described in such subsection, a penalty in an amount that is at least the amount described in paragraph (3)(D). In determining the amount of a penalty under this section for a violation, the Secretary shall base such determination on the nature and extent of the violation and the nature and extent of the harm resulting from such violation.”
2. **Tiers of Penalties Described.** Section 1176(a) of such Act (42 U.S.C. 1320d-5(a)) is further amended by adding at the end the following new paragraph:
 3. **Tiers of Penalties Described.** For purposes of paragraph (1), with respect to a violation by a person of a provision of this part
 - a. the amount described in this subparagraph is \$100 for each such violation, except that the total amount imposed on the person for all such violations

of an identical requirement or prohibition during a calendar year may not exceed \$25,000;

- b. the amount described in this subparagraph is \$1,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed \$100,000;
- c. the amount described in this subparagraph is \$10,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed \$250,000; and
- d. the amount described in this subparagraph is \$50,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed \$1,500,000.’’.

3. **Conforming Amendments.**

4. **Effective Date.** The amendments made by this subsection shall apply to violations occurring after the date of the enactment of this title.

e. **Enforcement Through State Attorneys General**

1. **In General.** Section 1176 of the Social Security Act (42 U.S.C. 1320d–5) is amended by adding at the end the following new subsection: “

d. **Enforcement by State Attorneys General**

1. **Civil Action.** In any case in which the attorney general of a State has reason to believe that an interest of one or more of the residents of that State has been or is threatened or adversely affected by any person who violates a provision of this part, the attorney general of the State, as *parens patriae*, may bring a civil action on behalf of such residents of the State in a district court of the United States of appropriate jurisdiction—

- a. to enjoin further such violation by the defendant; or
- b. to obtain damages on behalf of such residents of the State, in an amount equal to the amount determined under paragraph (2).

2. **Statutory Damages.**

- a. **In General.** The amount determined under this paragraph is the amount calculated by multiplying the number of violations by up to \$100. For purposes of the preceding sentence, in the case of a continuing violation, the number of violations shall be determined consistent with the HIPAA privacy regulations

- b. **Limitation.** The total amount of damages imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed \$25,000.
 - c. **Reduction of Damages.** In assessing damages under subparagraph (A), the court may consider the factors the Secretary may consider in determining the amount of a civil money penalty under subsection (a) under the HIPAA privacy regulations.
3. **Attorney Fees.** In the case of any successful action, the court, in its discretion, may award the costs of the action and reasonable attorney fees to the State.
 4. **Notice to the Secretary.** The State shall serve prior written notice of any action under paragraph (1) upon the Secretary and provide the Secretary with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Secretary shall have the right—“(A) to intervene in the action;“(B) upon so intervening, to be heard on all matters arising therein; and“(C) to file petitions for appeal.
 5. **Construction.** For purposes of bringing any civil action under paragraph (1), nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State.
 6. **Venue; Service of Process**
 7. **Limitation on State Action While Federal Action is Pending.** If the Secretary has instituted an action against a person under subsection (a) with respect to a specific violation of this part, no State attorney general may bring an action under this subsection against the person with respect to such violation during the pendency of that action.
 8. **Application of CMP Statute of Limitation.** A civil action may not be instituted with respect to a violation of this part unless an action to impose a civil money penalty may be instituted under subsection (a) with respect to such violation consistent with the second sentence of section 1128A(c)(1).’’.

2. Conforming Amendments

3. **Effective Date.** The amendments made by this subsection shall apply to violations occurring after the date of the enactment of this Act.
- f. **Allowing Continued Use of Correction Action.** Nothing in this section shall be construed as preventing the Office of Civil Rights of the Department of Health and Human Services from continuing, in its discretion, to use corrective action without a penalty in cases where the person did not know (and by exercising reasonable diligence would not have known) of the violation involved.

Sec. 13411 Audits. The Secretary shall provide for periodic audits to ensure that covered entities and business associates that are subject to the requirements of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this Act, comply with such requirements.

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

Sec. 13421 Relationship to Other Laws

- a. **Application of HIPAA State Preemption.** Section 1178 of the Social Security Act (42 U.S.C. 1320d–7) shall apply to a provision or requirement under this subtitle in the same manner that such section applies to a provision or requirement under part C of title XI of such Act or a standard or implementation specification adopted or established under sections 1172 through 1174 of such Act.
- b. **Health Insurance Portability and Accountability Act.** The standards governing the privacy and security of individually identifiable health information promulgated by the Secretary under sections 262(a) and 264 of the Health Insurance Portability and Accountability Act of 1996 shall remain in effect to the extent that they are consistent with this subtitle. The Secretary shall by rule amend such Federal regulations as required to make such regulations consistent with this subtitle.
- c. **Construction.** Nothing in this subtitle shall constitute a waiver of any privilege otherwise applicable to an individual with respect to the protected health information of such individual.

Sec. 13422 Regulatory References. Each reference in this subtitle to a provision of the Code of Federal Regulations refers to such provision as in effect on the date of the enactment of this title (or to the most recent update of such provision).

Sec. 13423 Effective Date. Except as otherwise specifically provided, the provisions of part I shall take effect on the date that is 12 months after the date of the enactment of this title.

Sec. 13424 Studies, Reports, Guidance

a. Report on Compliance

1. **In General.** For the first year beginning after the date of the enactment of this Act and annually thereafter, the Secretary shall prepare and submit to Congress a report concerning complaints of alleged violations of law, including the provisions of this subtitle as well as the provisions of subparts C and E of part 164 of title 45, Code of Federal Regulations, (as such provisions are in effect as of the

date of enactment of this Act) relating to privacy and security of health information that are received by the Secretary during the year for which the report is being prepared. Each such report shall include, with respect to such complaints received during the year—

- A. the number of such complaints;
- B. the number of such complaints resolved informally, a summary of the types of such complaints so resolved, and the number of covered entities that received technical assistance from the Secretary during such year in order to achieve compliance with such provisions and the types of such technical assistance provided;
- C. the number of such complaints that have resulted in the imposition of civil monetary penalties or have been resolved through monetary settlements, including the nature of the complaints involved and the amount paid in each penalty or settlement;
- D. the number of compliance reviews conducted and the outcome of each such review;
- E. the number of subpoenas or inquiries issued;
- F. the Secretary's plan for improving compliance with and enforcement of such provisions for the following year; and
- G. the number of audits performed and a summary of audit findings pursuant to section 13411.

- 2. **Availability to Public.** Each report shall be made available to the public on the Internet website of DHHS.

b. Study and Report on Application of Privacy and Security Requirements to Non-HIPAA Covered Entities

- 1. **Study.** Not later than one year after the date of the enactment of this title, the Secretary, in consultation with the Federal Trade Commission, shall conduct a study, and submit a report under paragraph (2), on privacy and security requirements for entities that are not covered entities or business associates as of the date of the enactment of this title, including—
 - A. requirements relating to security, privacy, and notification in the case of a breach of security or privacy (including the applicability of an exemption to notification in the case of individually identifiable health information that has been rendered unusable, unreadable, or indecipherable through technologies or methodologies recognized by appropriate professional organization or

standard setting bodies to provide effective security for the information) that should be applied to—

1. vendors of personal health records;
2. entities that offer products or services through the website of a vendor of personal health records;
3. entities that are not covered entities and that offer products or services through the websites of covered entities that offer individuals personal health records;
4. entities that are not covered entities and that access information in a personal health record or send information to a personal health record; and
5. third party service providers used by a vendor or entity to assist in providing personal health record products or services;

B. a determination of which Federal government agency is best equipped to enforce such requirements recommended to be applied to such vendors, entities, and service providers under subparagraph (A); and

C. a timeframe for implementing regulations based on such findings.

2. **Report.** The Secretary shall submit to Congress a report on the findings of the study and shall include in such report recommendations on the privacy and security requirements described in such paragraph.

c. **Guidance on Implementation Specification to De-Identify Protected Health Information.** Not later than 12 months after the date of the enactment of this title, the Secretary shall, in consultation with stakeholders, issue guidance on how best to implement the requirements for the de-identification of protected health information under section 164.514(b) of title 45, Code of Federal Regulations.

d. **GAO Report on Treatment Disclosures.** Not later than one year after the date of the enactment of this title, the Comptroller General of the United States shall submit to Congress a report on the best practices related to the disclosure among health care providers of protected health information of an individual for purposes of treatment of such individual. Such report shall include an examination of the best practices implemented by States and by other entities, such as health information exchanges and regional health information organizations, an examination of the extent to which such best practices are successful with respect to the quality of the resulting health care provided to the individual and with respect to the ability of the health care provider to manage such best practices, and an examination of the use of electronic informed consent for disclosing protected health information for treatment, payment, and health care operations.

e. **Report Required.** Not later than 5 years after the date of enactment of this section, the Government Accountability Office shall submit to Congress and the Secretary of

Health and Human Services a report on the impact of any of the provisions of this Act on health insurance premiums, overall health care costs, adoption of electronic health records by providers, and reduction in medical errors and other quality improvements.

- f. **Study.** The Secretary shall study the definition of "psychotherapy notes" in section 164.501 of title 45, Code of Federal Regulations, with regard to including test data that is related to direct responses, scores, items, forms, protocols, manuals, or other materials that are part of a mental health evaluation, as determined by the mental health professional providing treatment or evaluation in such definitions and may, based on such study, issue regulations to revise such definition.

DIVISION B – TAX, UNEMPLOYMENT, HEALTH, STATE FISCAL RELIEF, AND OTHER PROVISIONS

TITLE IV – MEDICARE AND MEDICAID HEALTH INFORMATION TECHNOLOGY; MISCELLANEOUS MEDICARE PROVISIONS

SUBTITLE A – MEDICARE INCENTIVES

Sec. 4101 Incentives for Eligible Professionals

a.

1. Incentive Payments

A. In General.

- i. **In General.** Subject to the succeeding subparagraphs of this paragraph, with respect to covered professional services furnished by an eligible professional during a payment year, if the eligible professional is a meaningful EHR user for the reporting period with respect to such year, in addition to the amount otherwise paid under this part, there also shall be paid to the eligible professional (or to an employer or facility) from the Federal Supplementary Medical Insurance Trust Fund an amount equal to 75 percent of the Secretary's estimate (based on claims submitted not later than 2 months after the end of the payment year) of the allowed charges under this part for all such covered professional services furnished by the eligible professional during such year.
- ii. **No Incentive Payments with Respect to Years After 2016.**

B. Limitations on Amounts of Incentive Payments

- i. **In General.** In no case shall the amount of the incentive payment provided exceed the applicable amount specified with respect to such eligible professional and such year.
- ii. The applicable amount specified for an eligible professional is as follows:
 - For the first payment year for such professional, \$15,000 (or if the first payment year is 2011 or 2012, \$18,000)
 - For the second payment year for such professional, \$12,000.
 - For the third payment year for such professional, \$8,000.

- For the fourth payment year for such professional, \$4,000.
- For the fifth payment year for such professional, \$2,000.
- For any succeeding payment year for such professional, \$0.

- iii. **Phase Down for Eligible Professionals First Adopting EHR After 2013.** If the first payment year for an eligible professional is after 2013, then the amount specified in this subparagraph for a payment year for such professional is the same as the amount specified in clause (ii) for such payment year for an eligible professional whose first payment year is 2013.
- iv. **Increase for Certain Eligible Professionals.** In the case of an eligible professional who predominantly furnishes services under this part in an area that is designated by the Secretary as a health professional shortage area, the amount that would otherwise apply for a payment year for such professional under subclauses (I) through (V) of clause (ii) shall be increased by 10 percent. In implementing the preceding sentence, the Secretary may, as determined appropriate, apply provisions of subsections (m) and (u) of section 1833 in a similar manner as such provisions apply under such subsection.
- v. **No Incentive Payment if First Adopting After 2014.**

C. Non-Application to Hospital-Based Eligible Professionals

- i. **In General.** No incentive payment may be made under this paragraph in the case of a hospital-based eligible professional.
- ii. **Hospital-Based Eligible Professional.** For purposes of clause the term ‘hospital-based eligible professional’ means, an eligible professional, such as a pathologist, anesthesiologist, or emergency physician, who furnishes substantially all of such services in a hospital setting (whether inpatient or outpatient) and through the use of the facilities and equipment, including computer equipment, of the hospital. The determination of whether an eligible professional is a hospital-based eligible professional shall be made on the basis of the site of service (as defined by the Secretary) and without regard to any employment or billing arrangement between the eligible professional and any other provider.

D. Payment

- i. **Form of Payment.** The payment under this paragraph may be in the form of a single consolidated payment or in the form of such periodic installments as the Secretary may specify.
- ii. **Coordination of Application of Limitation for Professionals in Different Practices.** In the case of an eligible professional

furnishing covered professional services in more than one practice, the Secretary shall establish rules to coordinate the incentive payments.

- iii. **Coordination with Medicaid.** The Secretary shall seek, to the maximum extent practicable, to avoid duplicative requirements from Federal and State Governments to demonstrate meaningful use of certified EHR technology.

E. **Payment Year Defined.**

- i. **General.** For purposes of this subsection, the term ‘payment year’ means a year beginning with 2011.
- ii. **First, Second, etc. Payment. Year.** The term ‘first payment year’ means, the first year for which an incentive payment is made for such services under this subsection. The terms ‘second payment year’, ‘third payment year’, ‘fourth payment year’, and ‘fifth payment year’ mean, with respect to covered professional services furnished by such eligible professional, each successive year immediately following the first payment year for such professional.

2. **Meaningful EHR User**

A. **General.** An eligible professional shall be treated as a meaningful EHR user for a reporting period for a payment year if each of the following requirements is met:

- i. **Meaningful Use of Certified EHR Technology.** The eligible professional demonstrates to the satisfaction of the Secretary that during such period the professional is using certified EHR technology in a meaningful manner, which shall include the use of electronic prescribing as determined to be appropriate by the Secretary.
- ii. **Information Exchange.** The eligible professional demonstrates to the satisfaction of the Secretary that during such period such certified EHR technology is connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to improve the quality of health care, such as promoting care coordination.
- iii. **Reporting on Measures Using EHR.** Using such certified EHR technology, the eligible professional submits information for such period, in a form and manner specified by the Secretary, on such clinical quality measures and such other measures as selected by the Secretary. The Secretary may provide for the use of alternative means for meeting the requirements of clauses in the case of an

eligible professional furnishing covered professional services in a group practice. The Secretary shall seek to improve the use of electronic health records and health care quality over time by requiring more stringent measures of meaningful use selected under this paragraph.

B. Reporting on Measures

- i. **Selection.** The Secretary shall select measures but only consistent with the following:
 1. The Secretary shall provide preference to clinical quality measures that have been endorsed by the entity with a contract with the Secretary.
 2. Prior to any measure being selected under this subparagraph, the Secretary shall publish in the Federal Register such measure and provide for a period of public comment on such measure.
- ii. **Limitation.** The Secretary may not require the electronic reporting of information on clinical quality measures unless the Secretary has the capacity to accept the information electronically, which may be on a pilot basis.
- iii. **Coordination of Reporting of Information.** In selecting such measures, and in establishing the form and manner for reporting measures, the Secretary shall seek to avoid redundant or duplicative reporting otherwise required.

C. Demonstration of Meaningful Use of Certified EHR Technology and Information Exchange

- i. **General.** A professional may satisfy the demonstration requirement through means specified by the Secretary, which may include—
 1. an attestation;
 2. the submission of claims with appropriate coding (such as a code indicating that a patient encounter was documented using certified EHR technology);
 3. a survey response;
 4. reporting under subparagraph; and
 5. other means specified by the Secretary.
- ii. **Use of Part D Data.** The Secretary may use data regarding drug claims submitted for purposes of section.

3. Application

A. Physician Reporting System Rules.

B. Coordination With Other Payments.

- C. **Limitations on Review.** There shall be no administrative or judicial review under certain sections, or otherwise of the determination of any incentive payment under this subsection and the payment adjustment under certain subsections, including the determination of a meaningful EHR user, the limitation, and the exception.
- D. **Posting on Website.** The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services, in an easily understandable format, a list of the names, business addresses, and business phone numbers of the eligible professionals who are meaningful EHR users and, as determined appropriate by the Secretary, of group practices receiving incentive payments.

- 4. **Certified EHR Technology Defined.** For purposes of this section, the term ‘certified EHR technology’ means a qualified electronic health record that is certified pursuant to certain section as meeting standards adopted under certain section that are applicable to the type of record involved (as determined by the Secretary, such as an ambulatory electronic health record for office-based physicians or an inpatient hospital electronic health record for hospitals).

5. Definitions.

b. Incentive Payment Adjustment

1. Incentives for Meaningful Use of Certified EHR Technology

A. Adjustment

- i. **General.** With respect to covered professional services furnished by an eligible professional during 2015 or any subsequent payment year, if the eligible professional is not a meaningful EHR user for a reporting period for the year, the fee schedule amount for such services furnished by such professional during the year shall be equal to the applicable percent of the fee schedule amount that would otherwise apply to such services under this subsection
- ii. **Applicable Percent.**
 - 1. for 2015, 99 percent (or, in the case of an eligible professional who was subject to the application of the payment adjustment under section 1848(a)(5) for 2014, 98 percent);
 - 2. for 2016, 98 percent; and
 - 3. for 2017 and each subsequent year, 97 percent.
- iii. **Authority to Decrease Applicable Percentage for 2018 and Subsequent Years.** For 2018 and each subsequent year, if the Secretary finds that the proportion of eligible professionals who are meaningful EHR users is less than 75 percent, the applicable percent shall be decreased by 1 percentage point from the applicable percent in the

preceding year, but in no case shall the applicable percent be less than 95 percent.

B. Significant Hardship Exception. The Secretary may, on a case-by-case basis, exempt an eligible professional from the application of the payment adjustment if the Secretary determines, subject to annual renewal, that compliance with the requirement for being a meaningful EHR user would result in a significant hardship, such as in the case of an eligible professional who practices in a rural area without sufficient Internet access. In no case may an eligible professional be granted an exemption under this subparagraph for more than 5 years.

C. Application of Physician Reporting Rules

D. Non-Application to Hospital Based Eligible Professionals. No payment adjustment may be made in the case of hospital-based eligible professionals.

E. Definitions

c. Application of Certain MA-Affiliated Eligible Professionals

1. Eligible Professional Incentives for Certain MA Organizations for Adoption and Meaningful Use of Certified EHR Technology. In the case of a qualifying MA organization, the provisions shall apply with respect to eligible professionals described who the organization attests to be meaningful EHR users.

2. Eligible Professional Described. With respect to a qualifying MA organization, an eligible professional described in this paragraph is an eligible professional who—

- A. is employed by the organization, or is employed by, or is a partner of, an entity that through contract with the organization furnishes at least 80 percent of the entity's patient care services to enrollees of such organization; and
- B. furnishes at least 80 percent of the professional services of the eligible professional to enrollees of the organization; and
- C. furnishes, on average, at least 20 hours per week of patient care services.

3. Eligible Professional Incentive Payments

A. General..

B. Avoiding Duplication of Payments.

C. Fixed Schedule for Application of Limitation on Incentive Payments for All Eligible Professionals

4. Payment Adjustment

- A. In applying section 1848(a)(7) under paragraph (1), instead of the payment adjustment being an applicable percent of the fee schedule amount for a year under such section, subject to subparagraph (D), the payment adjustment under paragraph (1) shall be equal to the percent specified in subparagraph (B) for such year of the payment amount otherwise provided under this section for such year.
- B. Specified Percent.** The percent specified under this subparagraph for a year is 100 percent minus a number of percentage points equal to the product of
 - a. the number of percentage points by which the applicable percent (under section 1848(a)(7)(A)(ii)) for the year is less than 100 percent; and
 - b. the Medicare physician expenditure proportion specified in subparagraph (C) for the year.
- C. Medicare Physician Expenditure Proportion.** The Medicare physician expenditure proportion under this subparagraph for a year is the Secretary's estimate of the proportion, of the expenditures under parts A and B that are not attributable to this part, that are attributable to expenditures for physicians' services.
- D. Application of Payment Adjustment.** In the case that a qualifying MA organization attests that not all eligible professionals of the organization are meaningful HER users with respect to a year, the Secretary shall apply the payment adjustment under this paragraph based on the proportion of all such eligible professionals of the organization that are not meaningful EHR users for such year.

5. Qualifying MA Organization Defined. The term ‘qualifying MA organization’ means a Medicare Advantage organization that is organized as a health maintenance organization (as defined in section 2791(b)(3) of the Public Health Service Act).

6. Meaningful EHR User Attestation. A qualifying MA organization shall submit an attestation, in a form and manner specified by the Secretary identifying—

- a. whether each eligible professional described in paragraph with respect to such organization is a meaningful EHR user for a year specified by the Secretary; and
- b. whether each eligible hospital described with respect to such organization, is a meaningful EHR user for an applicable period specified by the Secretary.

7. Posting on Website

8. Limitation on Review

d. Study and Report Relating to MA Organizations.

1. The Secretary of Health and Human Services shall conduct a study on the extent to which and manner in which payment incentives and adjustments (such as under sections 1848(0) and 1848(a)(7) of the Social Security Act) could be made available to professionals, as defined in 1861(r), who are not eligible for HIT incentive payments under section 1848(0) and receive payments for Medicare patient services nearly exclusively through contractual arrangements with one or more Medicare Advantage organizations, or an intermediary organization or organizations with contracts with Medicare Advantage organizations. Such study shall assess approaches for measuring meaningful use of qualified EHR technology among such professionals and mechanisms for delivering incentives and adjustments to those professionals, including through incentive payments and adjustments through Medicare Advantage organizations or intermediary organizations.
2. **REPORT.**-Not later than 120 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the findings and the conclusions of the study conducted under paragraph (1), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

e. Conforming Amendments

f. Conforming Amendments to e-Prescribing

Sec. 4102 Incentives for Hospitals

a. Incentives for Adoption and Meaningful Use of Certified EHR Technology

1. **General.** Subject to the succeeding provisions of this subsection, with respect to inpatient hospital services furnished by an eligible hospital during a payment year, if the eligible hospital is a meaningful EHR user for the reporting period with respect to such year, 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, in an amount equal to the applicable amount specified below for the hospital for such payment year.

2. Payment Amount

- A. **General.** Subject to the succeeding subparagraphs of this paragraph, the applicable amount specified in this subparagraph for an eligible hospital for a payment year is equal to the product of the following:
 - **Initial Amount.** The sum of the base amount; plus the discharge related amount for a 12-month period selected by the Secretary with respect to such payment year.
 - **Medicare Share.** The Medicare share for the hospital for a period selected by the Secretary with respect to such payment year.

- **Transition Factor.** The transition factor for the hospital for the payment year.
- B. **Base Amount.** The base amount specified in this subparagraph is \$2,000,000.
- C. **Discharge Related Amount.** The discharge related amount for a 12-month period selected by the Secretary shall be determined as the sum of the amount, based upon total discharges for the period, for each discharge up to the 23,000th discharge as follows:
- For the first through the 1,149th discharge, \$0.
 - For the 1,150th through the 23,000th discharge, \$200.
 - For any discharge greater than 23,000th, \$0.
- D. **Medicare Share.** The Medicare share specified under this subparagraph for a hospital for a period selected by the Secretary for a payment year is equal to the fraction—
- The numerator of which is the sum (for such period and with respect to the hospital) of the number of inpatient-bed-days which are attributable to individuals with respect to whom payment may be made under part A; and the number of inpatient bed-days which are attributable to individuals who are enrolled with a Medicare Advantage organization under part C; and
 - The denominator of which is the product of the total number of inpatient-bed-days with respect to the hospital during such period; and the total amount of the hospital's charges during such period, not including any charges that are attributable to charity care, divided by the total amount of the hospital's charges during such period.
- E. **Transition Factor Specified.** Subject to above clause, the transition factor specified in this subparagraph for an eligible hospital for a payment year is as follows:
- For the first payment year for such hospital, 1.
 - For the second payment year for such hospital, 3/4.
 - For the third payment year for such hospital, 1/2.
 - For the fourth payment year for such hospital, 1/4.
 - For any succeeding payment year for such hospital, 0.

Phase Down for Eligible Hospitals First Adopting EHRs After 2013. If the first payment year for an eligible hospital is after 2013, then the transition factor specified in this subparagraph for a payment year for such hospital is the same as the amount specified in clause for such payment year for an eligible hospital for which the first payment year is 2013. If the first payment year for an eligible hospital is after 2015 then the transition factor specified in

this subparagraph for such hospital and for such year and any subsequent year shall be 0.

- F. **Form of Payment.** The payment under this subsection for a payment year may be in the form of a single consolidated payment or in the form of such periodic installments as the Secretary may specify.

G. Payment Year Defined

- i. **General.** For purposes of this subsection, the term ‘payment year’ means a fiscal year beginning with fiscal year 2011.
- ii. **First, Second, etc. Payment Year.** The term ‘first payment year’ means, with respect to inpatient hospital services furnished by an eligible hospital, the first fiscal year for which an incentive payment is made for such services under this subsection. The terms ‘second payment year’, ‘third payment year’, and ‘fourth payment year’ mean, with respect to an eligible hospital, each successive year immediately following the first payment year for that hospital.

3. Meaningful EHR User

- A. **In General.** An eligible hospital shall be treated as a meaningful EHR user for a reporting period for a payment year if the following requirements are met:

- **Meaningful Use of Certified EHR Technology.** The eligible hospital demonstrates to the satisfaction of the Secretary, that during such period the hospital is using certified EHR technology in a meaningful manner.
- **Information Exchange.** The eligible hospital demonstrates to the satisfaction of the Secretary that during such period such certified EHR technology is connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to improve the quality of health care, such as promoting care coordination.
- **Reporting of Measures Using EHR.** Using such certified EHR technology, the eligible hospital submits information for such period, in a form and manner specified by the Secretary, on such clinical quality measures and such other measures as selected by the Secretary. The Secretary shall seek to improve the use of electronic health records and health care quality over time by requiring more stringent measures of meaningful use selected under this paragraph.

B. Reporting on Measures.

- **Selection.** The Secretary shall select measures but only consistent with the following:

- The Secretary shall provide preference to clinical quality measures that have been selected for purposes of applying subsection or that have been endorsed by the entity with a contract with the Secretary.
- Prior to any measure (other than a clinical quality measure that has been selected for purposes of applying subsection) being selected under this subparagraph, the Secretary shall publish in the Federal Register such measure and provide for a period of public comment on such measure.
- **Limitations.** The Secretary may not require the electronic reporting of information on clinical quality measures unless the Secretary has the capacity to accept the information electronically, which may be on a pilot basis.
- **Coordination of Reporting of Information.** In selecting such measures, and in establishing the form and manner for reporting measures, the Secretary shall seek to avoid redundant or duplicative reporting with reporting otherwise required.

C. Demonstration of Meaningful Use of Certified EHR Technology and Information Exchange

- **General.** A hospital may satisfy the demonstration requirement through means specified by the Secretary, which may include—
 - An attestation;
 - The submission of claims with appropriate coding (such as a code indicating that inpatient care was documented using certified EHR technology);
 - A survey response;
 - Reporting under subparagraph and
 - Other means specified by the Secretary.
- **Use of Part D Data.** The Secretary may use data regarding drug claims.

4. Application

- **Limitations on Review.** There shall be no administrative or judicial review or otherwise of the determination of any incentive payment under this subsection and the payment adjustment, including the determination of a meaningful EHR user, determination of measures applicable to services furnished by eligible hospitals under this subsection, and the exception under subsection.
- **Posting on Website.** The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services, in an easily understandable

format, a list of the names of the eligible hospitals that are meaningful EHR users and other relevant data as determined appropriate by the Secretary. The Secretary shall ensure that a hospital has the opportunity to review the other relevant data that are to be made public with respect to the hospital prior to such data being made public.

5. Certified EHR Technology Defined

6. Definitions

b. Critical Access Hospitals.

- A. The following rules shall apply in determining payment and reasonable costs for a critical access hospital that would be a meaningful EHR user (as would be determined under paragraph (3) of section 1886(n)) for an EHR reporting period for a cost reporting period beginning during a payment year if such critical access hospital was treated as an eligible hospital under such section:
 - i. The Secretary shall compute reasonable costs by expensing such costs in a single payment year and not depreciating such costs over a period of years (and shall include as costs with respect to cost reporting periods beginning during a payment year costs from previous cost reporting periods to the extent they have not been fully depreciated as of the period involved).
 - ii. (ii) There shall be substituted for the Medicare share that would otherwise be applied under paragraph (1) a percent (not to exceed 100 percent) equal to the sum of-
 1. the Medicare share (as would be specified under paragraph (2)(D) of section 1886(n)) for such critical access hospital if such critical access hospital was treated as an eligible hospital under such section; and
 2. 20 percentage points.
- B. The payment under this paragraph with respect to a critical access hospital shall be paid through a prompt interim payment (subject to reconciliation) after submission and review of such information (as specified by the Secretary) necessary to make such payment, including information necessary to apply this paragraph. In no case may payment under this paragraph be made with respect to a cost reporting period beginning during a payment year after 2015 and in no case may a critical access hospital receive payment under this paragraph with respect to more than 4 consecutive payment years.
- C. The costs described in this subparagraph are costs for the purchase of certified EHR technology to which purchase depreciation (excluding interest) would apply if payment was made under paragraph (1) and not under this paragraph.
- D. For purposes of this paragraph, paragraph (4), and paragraph (5), the terms 'certified EHR technology', 'eligible hospital', 'EHR reporting period', and 'payment year' have the meanings given such terms in sections 1886(n).

c. **Incentive Market Basket Adjustment.** Section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)) is amended—

1. in clause (viii)(I), by inserting “(or, beginning with fiscal year 2015, by one-quarter)” after “2.0 percentage points”; and
2. by adding at the end the following new clause:
 - A. For purposes of clause for fiscal year 2015 and each subsequent fiscal year, in the case of an eligible hospital that is not a meaningful EHR user for the reporting period for such fiscal year, three-quarters of the applicable percentage increase otherwise applicable under clause for such fiscal year shall be reduced by 33 1/3 percent for fiscal year 2015, 66 2/3 percent for fiscal year 2016, and 100 percent for fiscal year 2017 and each subsequent fiscal year. Such reduction shall apply only with respect to the fiscal year involved and the Secretary shall not take into account such reduction in computing the applicable percentage increase under clause for a subsequent fiscal year. “
 - B. The Secretary may, on a case-by-case basis, exempt a subsection (d) hospital from the application of subclause with respect to a fiscal year if the Secretary determines, subject to annual renewal, that requiring such hospital to be a meaningful EHR user during such fiscal year would result in a significant hardship, such as in the case of a hospital in a rural area without sufficient Internet access. In no case may a hospital be granted an exemption under this subclause for more than 5 years.
 - C. For fiscal year 2015 and each subsequent fiscal year, a State in which hospitals are paid for services under section 1814(b)(3) shall adjust the payments to each subsection (d) hospital in the State that is not a meaningful EHR user in a manner that is designed to result in an aggregate reduction in payments to hospitals in the State that is equivalent to the aggregate reduction that would have occurred if payments had been reduced to each subsection (d) hospital in the State in a manner comparable to the reduction under the previous provisions of this clause. The State shall report to the Secretary the methodology it will use to make the payment adjustment under the previous sentence.
 - D. For purposes of this clause, the term ‘EHR reporting period’ means, with respect to a fiscal year, any period (or periods), with respect to the fiscal year, as specified by the Secretary.’”.

d. **Critical Access Hospitals.**

- a. Subject to subparagraph (C), for cost reporting periods beginning in fiscal year 2015 or a subsequent fiscal year, in the case of a critical access hospital that is not a meaningful EHR user (as would be determined under

paragraph (3) of section 1886(n) if such critical access hospital was treated as an eligible hospital under such section) for an EHR reporting period with respect to such fiscal year, paragraph (1) shall be applied by substituting the applicable percent under subparagraph (B) for the percent described in such paragraph (1).

- i. The percent described in this subparagraph is-
 1. for fiscal year 2015, 100.66 percent;
 2. for fiscal year 2016, 100.33 percent; and
 3. for fiscal year 2017 and each subsequent fiscal year, 100 percent.
 - ii. The provisions of subclause (II) of section 1886(b)(3)(B)(ix) shall apply with respect to subparagraph (A) for a critical access hospital with respect to a cost reporting period beginning in a fiscal year in the same manner as such subclause applies with respect to subclause (I) of such section for a subsection (d) hospital with respect to such fiscal year.
- b. There shall be no administrative or judicial review under section 1869, section 1878, or otherwise, of-
- i. the methodology and standards for determining the amount of payment and reasonable cost under paragraph (3) and payment adjustments under paragraph (4), including selection of periods under section 1886(n)(2) for determining, and making estimates or using proxies of, inpatient-bed-days, hospital charges, charity charges, and Medicare share under subparagraph (D) of section 1886(n)(2);
 - ii. the methodology and standards for determining a meaningful EHR user under section 1886(n)(3) as would apply if the hospital was treated as an eligible hospital under section 1886(n), and the hardship exception under paragraph (4)(C);
 - iii. the specification of EHR reporting periods under section 1886(n)(6)(B) as applied under paragraphs (3) and (4); and
 - iv. the identification of costs for purposes of paragraph (3)(C).".

e. Application of Eligible Hospital Incentives for Certain MA Organizations for Adoption and Meaningful Use of Certified EHR Technology

1. **Application.** In the case of a qualifying MA organization, the provisions of sections shall apply with respect to eligible hospitals of the organization which the organization attests to be meaningful EHR users in a similar manner as they apply to eligible hospitals under such sections. Incentive payments shall be made to and payment adjustments shall apply to such qualifying organizations.
2. **Eligible Hospital Described.** With respect to a qualifying MA organization, an eligible hospital described in this paragraph is an eligible hospital that is under common corporate governance with such organization and serves individuals enrolled under an MA plan offered by such organization.

3. Eligible Hospital Incentive Payments

a. **In General.** Instead of the additional payment amount there shall be substituted an amount determined by the Secretary to be similar to the estimated amount in the aggregate that would be payable if payment for services furnished by such hospitals was payable under part A instead of this part.

b. **Avoiding Duplication of Payments.**

4. Payment Adjustment.

a. **Specified Percent**

b. **Medicare Hospital Expenditure Proportion**

c. **Application of Payment Adjustment**

5. Posting on Website.

6. Limitations on Review.

f. Conforming Amendments

Section 4103 Treatment of Payments and Savings; Implementation Funding

A. Premium Hold Harmless

1. **In General..**

2. **Payment.**

B. **Medicare Improvement Fund.** Section 1898 of the Social Security Act (42 U.S.C. 1395iii), as added by section 7002(a) of the Supplemental Appropriations Act, 2008 (Public Law 110–252) and as amended by section 188(a)(2) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275; 122 Stat. 2589) and by section 6 of the QI Program Supplemental Funding Act of 2008, is amended— (1) in subsection (a)— (A) by inserting “medicare” before “fee- for- service”; and by inserting before the period at the end the following: “including, but not limited to, an increase in the conversion factor under section 1848(d) to address, in whole or in part, any projected shortfall in the conversion factor for 2014 relative to the conversion factor for 2008 and adjustments to payments for items and services furnished by providers of services and suppliers under such original medicare fee- for-service program”; and in subsection (b)— in paragraph (1), by striking “during

fiscal year 2014,” and all that follows and inserting the following: “during— “(A) fiscal year 2014, \$22,290,000,000; and fiscal year 2020 and each subsequent fiscal year, the Secretary’s estimate, as of July 1 of the fiscal year, of the aggregate reduction in expenditures under this title during the preceding fiscal year directly resulting from the reduction in payment amounts under sections 1848(a)(7), 1853(l)(4), 1853(m)(4), and 1886(b)(3)(B)(ix).””; and by adding at the end the following new paragraph:

No Effect on Payments in Subsequent Years. In the case that expenditures from the Fund are applied to, or otherwise affect, a payment rate for an item or service under this title for a year, the payment rate for such item or service shall be computed for a subsequent year as if such application or effect had never occurred.”

- C. **Implementation Funding.** In addition to funds otherwise available, out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary of HHS for the Center for Medicare & Medicaid Services Program Management Account, \$100,000,000 for each of fiscal years 2009 through 2015 and \$345,000,000 for fiscal year 2016, which shall be available for purposes of carrying out the provisions of (and amendments made by) this part. Amounts appropriated under this subsection for a fiscal year shall be available until expended.

Section 4104 Study on Application of EHR Payment Incentives for Providers Not Receiving Other Incentive Payments (Section 4314)

a. Study

1. **In General.** The Secretary of HHS shall conduct a study to determine the extent to which and manner in which payment incentives and other funding for purposes of implementing and using qualified health information technology should be made available to health care providers who are receiving minimal or no payment incentives or other funding under this Act, under title XVIII or XIX of the Social Security Act, or otherwise, for such purposes.
2. **Details of Study.** Such study shall include an examination of—
 - A. the adoption rates of qualified health IT by such health care providers;
 - B. the clinical utility of such technology by such health care providers;
 - C. whether the services furnished by such health care providers are appropriate for or would benefit from the use of such technology;
 - D. the extent to which such health care providers work in settings that might otherwise receive an incentive payment or other funding under this Act, title XVIII or XIX of the Social Security Act, or otherwise;
 - E. the potential costs and the potential benefits of making payment incentives and other funding available to such health care providers; and
 - F. any other issues the Secretary deems to be appropriate.

3. **Report.** Not later than June 30, 2010, the Secretary shall submit to Congress a report on the findings and conclusions of the study conducted.

b. Study and Report on Availability of Open Source Health Information Technology Systems.

1. **Study.** The Secretary of Health and Human Services shall, in consultation with other relevant federal agencies, conduct a study on-
 - A. The current availability of open source health IT systems to Federal safety net providers
 - B. the total cost of ownership of such systems in comparison to the cost of proprietary commercial products available;
 - C. the ability of such systems to respond to the needs of, and be applied to, various populations (including children and disabled individuals); and
 - D. the capacity of such systems to facilitate interoperability.
2. **Considerations.** In conducting the study, the Secretary of Health and Human Services shall take into account the circumstances of smaller health care providers, health care providers located in rural or other medically underserved areas, and safety net providers that deliver a significant level of health care to uninsured individuals, Medicaid beneficiaries, SCHIP beneficiaries, and other vulnerable individuals.
3. **Report.** Not later than October 1, 2010, the Secretary of Health and Human Services shall submit to Congress a report on the findings and the conclusions of the study conducted under paragraph(1), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

SUBTITLE B – MEDICAID INCENTIVES

Sec. 4201 Medicaid Provider HIT Adoption and Operation Payments; Implementation Funding

A. **In General.** Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended—

1. in subsection (a)(3)—

a. by adding at the end the following new subparagraph: ‘

A) ‘(F)(i) 100 percent of so much of the sums expended during such quarter as are attributable to payments for certified EHR technology (and support services including maintenance and training that is for, or is necessary for the adoption and operation of, such technology) by Medicaid providers described in subsection (t)(1); and ‘(ii) 90 percent of so much of the sums expended during such quarter as are attributable to payments for reasonable administrative expenses related to the administration of payments described in clause (i) if the State meets the condition described in subsection (t)(9);’;

2. by inserting after subsection (s) the following new subsection:

a. ‘‘(t)(1) For purposes of subsection (a)(3)(F), the payments for certified EHR technology (and support services including maintenance that is for, or is necessary for the operation of, such technology) by Medicaid providers described in this paragraph are payments made by the State in accordance with this subsection of 85 percent of the net average allowable costs of Medicaid providers for such technology (and support services).

b. The term ‘Medicaid provider’ means—

- an eligible professional who is not hospital-based and has at least 30 percent of the professional’s patient volume attributable to individuals who are receiving medical assistance under this title; and
- (i) a children’s hospital, (ii) an acute-care hospital that is not described in clause (i) and that has at least 10 percent of the hospital’s patient volume attributable to individuals who are receiving medical assistance under this title, (iii) a pediatrician who is not hospital-based and who has at least 20 percent of the professional’s patient volume attributable to individuals who are receiving medical assistance under this title, or (iv) a Federally-qualified health center or rural health clinic that has at least 30 percent of the center’s or clinic’s patient volume (as estimated in accordance with standards established by the Secretary) attributable to individuals who are receiving medical assistance under this title. A professional shall not qualify as a Medicaid provider under this subsection unless the professional has

waived, in a manner specified by the Secretary, any right to payment under section 1848(o) with respect to the adoption or support of certified EHR technology by the professional. In applying clauses (ii) and (iii) of subparagraph (B), the standards established by the Secretary for patient volume shall include individuals enrolled in a Medicaid managed care plan

c. Definitions

- The term “average allowable cost” means
 - i. In the first year of payment with respect to a provider, the average costs for the purchase and initial implementation or upgrade of such technology (and support services including training)
 - ii. For subsequent years of payment, the average costs not described above in relation to the operation, maintenance and use of such technology.
- The term “net average allowable cost” means
 - i. Average allowable costs reduced by any payments to Medicaid providers from any other source that is directly attributable to payment for certified HER technology or support

d. With respect to a Medicaid provider described above:

- the net average allowable costs under this subsection for the first year of payment shall not exceed \$25,000;
- the net average allowable costs under this subsection for subsequent years of payment shall not exceed \$10,000;
- payment described for costs described be made with respect to such a Medicaid provider after 2021 or over a period of more than 5 years
- For pediatricians, the dollar amounts shall be 2/3 of the amount otherwise specified

e. In no case shall payments with respect to a Medicaid provider:

- Begin after 2016 for any provider who has not been provided payment for the previous year, or shall be paid out over a period of more than 6 years
- Exceed
 - i. In aggregate the product of
 - 1. the overall hospital EHR amount for the provider; and
 - 2. the Medicaid share for such provider computed.
 - ii. In any year 50 percent of the product described above
 - iii. In any 2-year period 90 percent of such product
- For purposes of this paragraph, the overall hospital HIT amount, with respect to a hospital, is the sum of the applicable amounts specified in section for such hospital for the first 4 payment years determined as if the Medicare share specified in clause of such section were 1. The Secretary shall publish in the Federal Register the overall hospital HIT

amount for each hospital eligible for payments under this subsection. In computing amounts under clause (ii) for payment years after the first payment year, the Secretary shall assume that in subsequent payment years discharges increase at the average annual rate of the most recent 3 years for which discharge data is available.

- The Medicaid share computed for a hospital for a period specified by the Secretary, shall be calculated in the same manner as the Medicare share under section 1886(n)(2)(D) for such a hospital and period, except that there shall be substituted for the numerator under clause (i) of such section the amount that is equal to the number of inpatient-bed-days which are attributable to individuals who are receiving medical assistance under Medicaid and who are not described in section 1886(n)(2)(D)(i). In computing inpatient-bed-days under the previous sentence, the Secretary shall take into account inpatient-bed-days attributable to inpatient-bed-days that are paid for individuals enrolled in a Medicaid managed care plan (under section 1903(m) or section 1932).

f. Payments described are not in accordance with subsection unless the following requirements are met

- The State provides assurances satisfactory to the Secretary that amounts received with respect to costs of a Medicaid provider are paid directly to such provider without any deduction or rebate.
 - i. Amounts may be paid to an entity promoting adoption, as designated by the state, if participation is voluntary for the eligible professional and the entity retains less than 5 percent of such payments
- Such Medicaid provider is responsible for payment of the remaining 15 percent of the net average allowable cost.
- With respect to payments to such Medicaid provider:
 - i. In the first year, the Medicaid provider must demonstrate that it is engaged in efforts to adopt, implement, or upgrade certified EHR technology, unless they already have a system in place
 - ii. After the first year, must demonstrate meaningful use of certified EHR technology through a means that is approved by the State and acceptable to the Secretary, and that may be based upon the methodologies applied.
- To the extent specified by the Secretary, the certified EHR technology is compatible with State or Federal administrative management systems.

g. With respect to health care providers other than hospitals, the Secretary shall ensure coordination of the different programs for payment of such health care providers for adoption or use of health information technology (including certified EHR technology), as well as payments for such health care providers provided under this title or title XVIII, to assure no duplication of funding.

- h. The State and Secretary shall seek, to the maximum extent practicable, to avoid duplicative requirements from Federal and State Governments to demonstrate meaningful use of certified EHR technology under this title and title XVIII. In doing so, the Secretary may deem satisfaction of requirements for such meaningful use for a payment year under title XVIII to be sufficient to qualify as meaningful use under this subsection. The Secretary may also specify the reporting periods under this subsection in order to carry out this paragraph.
- i. In order to be provided Federal financial participation under subsection a State must demonstrate to the satisfaction of the Secretary, that the State—
 - is using the funds provided for the purposes of administering payments under this subsection, including tracking of meaningful use by Medicaid providers;
 - conducting adequate oversight of the program under this subsection, including routine tracking of meaningful use attestations and reporting mechanisms; and
 - be pursuing initiatives to encourage the adoption of certified EHR technology to promote health care quality and the exchange of health care information under this title, subject to applicable laws and regulations governing such exchange.
- j. The Secretary shall periodically submit reports to Congress on status, progress, and oversight of payments.

B. Implementation Funding. In addition to funds otherwise available, out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary of Health and Human Services for the Center for Medicare & Medicaid Services Program Management Account, \$40,000,000 for each of fiscal years 2009 through 2015 and \$20,000,000 for fiscal year 2016, which shall be available for purposes of carrying out the provisions of (and the amendments made by) this part. Amounts appropriated under this subsection for a fiscal year shall be available until expended.