

113TH CONGRESS
1ST SESSION

H. R. 1331

To amend certain requirements and penalties implemented under the Medicare and Medicaid programs by the HITECH Act of 2009, which would otherwise impede eligible professionals from adopting electronic health records to improve patient care.

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 2013

Mrs. BLACK (for herself, Mr. CHABOT, Mr. GRIMM, Mr. HARRIS, and Mrs. BLACKBURN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend certain requirements and penalties implemented under the Medicare and Medicaid programs by the HITECH Act of 2009, which would otherwise impede eligible professionals from adopting electronic health records to improve patient care.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Electronic Health Records Improvement Act”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Exception for certain eligible professionals from application of Medicare payment adjustment for not demonstrating EHR meaningful use.
- Sec. 3. Shortening EHR reporting period for application of Medicare EHR payment adjustment to eligible professionals.
- Sec. 4. Additional exceptions to application of Medicare payment adjustment for certain Medicaid and hospital-based eligible professionals not demonstrating EHR meaningful use.
- Sec. 5. Alternate meaningful use criteria for eligible professionals utilizing electronic health records and specialty registry systems.
- Sec. 6. Enhancing Medicare EHR meaningful use among eligible professionals who are rural health care providers.
- Sec. 7. Improving EHR meaningful use under Medicare by eligible professionals who practice in ambulatory surgical centers.
- Sec. 8. Exemption from certain EHR meaningful use requirements for certain eligible professionals for purposes of Medicare payment adjustment.
- Sec. 9. Additional administrative provisions relating to Medicare eligible professionals' EHR incentives.
- Sec. 10. Non-application of provisions and amendments to eligible professional Medicare incentives for certain MA organizations and Medicaid incentives for adoption and meaningful use of certified EHR technology.

3 **SEC. 2. EXCEPTION FOR CERTAIN ELIGIBLE PROFES-**
 4 **SIONALS FROM APPLICATION OF MEDICARE**
 5 **PAYMENT ADJUSTMENT FOR NOT DEM-**
 6 **ONSTRATING EHR MEANINGFUL USE.**

7 (a) EXCEPTION FOR CERTAIN SMALL PHYSICIAN
 8 PRACTICES.—Section 1848(a)(7) of the Social Security
 9 Act (42 U.S.C. 1395w–4(a)(7)) is amended—

10 (1) in subparagraph (A)(i), by striking “sub-
 11 paragraphs (B) and (D)” and inserting “subpara-
 12 graphs (B), (D), and (F)”;

13 (2) by adding at the end the following new sub-
 14 paragraph:

1 “(F) 3-YEAR EXCEPTION FOR CERTAIN EL-
2 IGIBLE PROFESSIONALS.—

3 “(i) IN GENERAL.—The Secretary
4 shall exempt an eligible professional whom
5 the Secretary determines is described in
6 clause (ii) from the application of the pay-
7 ment adjustment under subparagraph (A)
8 for each of the payment years 2015
9 through 2017. The Secretary shall make a
10 determination under the previous sentence,
11 with respect to such an exemption for an
12 eligible professional, only if such eligible
13 professional submits a request for such ex-
14 emption. The Secretary shall determine
15 whether or not an eligible professional is
16 described in clause (ii) not later than 30
17 days after the date such eligible profes-
18 sional submits a request pursuant to the
19 previous sentence.

20 “(ii) ELIGIBLE PROFESSIONALS IN
21 SMALL PHYSICIAN PRACTICES.—An eligible
22 professional described in this clause is an
23 eligible professional furnishing covered pro-
24 fessional services during the EHR report-

1 ing period for 2015 in a physician practice
2 that is a solo practice.”.

3 (b) EXCEPTION FOR CERTAIN PHYSICIANS NEAR RE-
4 RETIREMENT AGE.—Subparagraph (F) of section
5 1848(a)(7) of the Social Security Act (42 U.S.C. 1395w-
6 4(a)(7)), as added by subsection (a), is amended—

7 (1) in clause (i), in the first and third sen-
8 tences, by striking “clause (ii)” and inserting
9 “clause (ii) or (iii)”; and

10 (2) by adding at the end the following new
11 clause:

12 “(iii) ELIGIBLE PROFESSIONALS AT
13 OR NEAR RETIREMENT AGE.—An eligible
14 professional described in this clause is an
15 eligible professional who as of the last day
16 of 2015 has attained early retirement age
17 (as defined in section 216(l)(2)) or who
18 will attain such age during the 5-year pe-
19 riod following such day.”.

20 (c) NOTIFICATION OF ELIGIBILITY FOR EXCEPTIONS
21 FROM PAYMENT ADJUSTMENT.—Section 1848(a)(7) of
22 the Social Security Act (42 U.S.C. 1395w-4(a)(7)), as
23 amended by subsection (a), is further amended by adding
24 at the end the following new subparagraph:

1 “(G) NOTIFICATION.—Not later than 30
2 days after the date on which the Secretary de-
3 termines an eligible professional is exempt, pur-
4 suant to subparagraph (F), from the applica-
5 tion of the payment adjustment under subpara-
6 graph (A), the Secretary shall provide such eli-
7 gible professional notice of such determina-
8 tion.”.

9 **SEC. 3. SHORTENING EHR REPORTING PERIOD FOR APPLI-**
10 **CATION OF MEDICARE EHR PAYMENT AD-**
11 **JUSTMENT TO ELIGIBLE PROFESSIONALS.**

12 (a) IN GENERAL.—Section 1848(a)(7)(E)(ii) of the
13 Social Security Act (42 U.S.C. 1395w-4(a)(7)(E)(ii)) is
14 amended by inserting “, so long as all of such period (or
15 periods) occurs during the year in which the corresponding
16 adjustment, if any, under this paragraph would be applied
17 to the eligible professional involved” after “a period (or
18 periods) specified by the Secretary”.

19 (b) REBATES.—Section 1848(a)(7)(A) of the Social
20 Security Act (42 U.S.C. 1395w-4(a)(7)(A)) is amended
21 by adding at the end the following new clause:

22 “(iv) SPECIAL RULE.—The Secretary
23 shall establish a process under which if for
24 a calendar year, beginning with 2015, an
25 adjustment is made under this paragraph

1 with respect to covered professional serv-
2 ices furnished by an eligible professional
3 and then during such calendar year the eli-
4 gible professional meets the criteria for es-
5 tablishing meaningful use of certified EHR
6 technology, the Secretary shall provide to
7 the eligible professional a rebated amount
8 such that the total amount of payment
9 that the provider receives under this sub-
10 section for such services for such year is
11 the fee schedule amount that would other-
12 wise apply to such services under this sub-
13 section without application of this para-
14 graph.”.

15 (c) CONFORMING AMENDMENT.—Section
16 1848(o)(5)(B) of the Social Security Act is amended by
17 adding at the end the following new sentence: “Such term,
18 as used under this subsection with respect to subsection
19 (a)(7) and a year beginning with 2015, shall have the
20 meaning given such term under subsection (a)(7)(E)(ii).”.

1 **SEC. 4. ADDITIONAL EXCEPTIONS TO APPLICATION OF**
2 **MEDICARE PAYMENT ADJUSTMENT FOR CER-**
3 **TAIN MEDICAID AND HOSPITAL-BASED ELIGI-**
4 **BLE PROFESSIONALS NOT DEMONSTRATING**
5 **EHR MEANINGFUL USE.**

6 (a) ELIGIBLE PROFESSIONALS PARTICIPATING IN
7 MEDICAID EHR INCENTIVE PROGRAM.—Section
8 1848(a)(7) of the Social Security Act (42 U.S.C. 1395w-
9 4(a)(7)), as amended by section 2, is further amended—

10 (1) in subparagraph (A)(i), by striking “(D),
11 and (F)” and inserting “(D), (F), and (G)”;

12 (2) by redesignating subparagraph (G) as sub-
13 paragraph (H); and

14 (3) by inserting after subparagraph (F) the fol-
15 lowing new subparagraph:

16 “(G) ADDITIONAL EXCEPTIONS FOR CER-
17 TAIN MEDICAID PROVIDERS PARTICIPATING IN
18 MEDICAID EHR INCENTIVE PROGRAM.—In the
19 case of an eligible professional who is a Med-
20 icaid provider described in section
21 1903(t)(2)(A), the Secretary shall exempt such
22 eligible professional from the application of the
23 Medicare payment adjustment under subpara-
24 graph (A), with respect to a year, if such year
25 is the first year that such professional received
26 payment under section 1903(t).”.

1 (b) HOSPITAL-BASED ELIGIBLE PROFESSIONALS.—
2 Section 1848(a)(7)(D) of the Social Security Act (42
3 U.S.C. 1395w-4(a)(7)(D)) is amended by adding at the
4 end the following new sentence: “In applying the definition
5 under subsection (o)(1)(C)(ii) for purposes of the previous
6 sentence, the reference to ‘substantially all’ under such
7 subsection shall mean 90 percent or more and a deter-
8 mination described in such subsection, with respect to an
9 eligible professional, may only be made by the Secretary
10 pursuant to a request of the professional that is submitted
11 to the Secretary before 2015, and shall be effective for
12 such professional for 2015 and each subsequent year.”.

13 (c) APPLICATION OF NOTIFICATION REQUIRE-
14 MENT.—Subparagraph (H) of section 1848(a)(7) of the
15 Social Security Act (42 U.S.C. 1395w-4(a)(7)), as added
16 by section 2(c) and redesignated by subsection (a)(2), is
17 amended by striking “subparagraph (F)” and inserting
18 “subparagraph (B), (D), (F), or (G)”.

19 **SEC. 5. ALTERNATE MEANINGFUL USE CRITERIA FOR ELI-**
20 **GIBLE PROFESSIONALS UTILIZING ELEC-**
21 **TRONIC HEALTH RECORDS AND SPECIALTY**
22 **REGISTRY SYSTEMS.**

23 Section 1848(o)(2) of the Social Security Act (42
24 U.S.C. 1395w-4(o)(2)) is amended—

1 (1) in subparagraph (A)(iii), by striking “Sub-
2 ject to” and inserting “For such period, the eligible
3 professional satisfactorily uses a qualified national
4 specialty registry system that measures quality im-
5 provement or improves patient safety (as described
6 in subparagraph (D)), or, subject to”; and

7 (2) by adding at the end the following new sub-
8 paragraph:

9 “(D) QUALIFIED NATIONAL SPECIALTY
10 REGISTRIES.—

11 “(i) Not later than January 1, 2015,
12 the Secretary shall specify, pursuant to
13 rulemaking, criteria for determining—

14 “(I) if a national speciality reg-
15 istry system is a qualified national
16 speciality registry system, for pur-
17 poses of this paragraph; and

18 “(II) if an eligible professional
19 has demonstrated satisfactory use (as
20 determined by the Secretary) of a
21 qualified national speciality registry
22 system for a period.

23 “(ii) For purposes of this paragraph,
24 the term ‘qualified national specialty reg-
25 istry system’ means, with respect to a

1 medical speciality, a nationally available
2 registry—

3 “(I) that is administered or en-
4 dored by a national medical specialty
5 society;

6 “(II) that collects clinical data
7 for purposes of measuring quality im-
8 provement or improving patient safety
9 related to the type of care provided or
10 conditions treated by the types of eli-
11 gible professionals that are typically
12 part such national medical specialty
13 society; and

14 “(III) that is determined to be a
15 qualified national speciality registry
16 system by the Secretary under clause
17 (ii).”.

18 **SEC. 6. ENHANCING MEDICARE EHR MEANINGFUL USE**
19 **AMONG ELIGIBLE PROFESSIONALS WHO ARE**
20 **RURAL HEALTH CARE PROVIDERS.**

21 (a) EXTENSION OF MEDICARE EHR INCENTIVES TO
22 ELIGIBLE PROFESSIONALS PRACTICING IN RURAL
23 HEALTH CLINICS.—

24 (1) EHR PAYMENT ADJUSTMENT.—Section
25 1848(a)(7)(E)(i) of the Social Security Act (42

1 U.S.C. 1395w-4(a)(7)(E)(i)) is amended by insert-
2 ing before the period at the end the following: “and,
3 with respect to payment years after 2014, includes
4 rural health clinic services (as defined in section
5 1861(aa)(1)) furnished by an eligible professional”.

6 (2) EHR INCREASED PAYMENTS.—Section
7 1848(o)(5)(A) of the Social Security Act (42 U.S.C.
8 1395w-4(o)(5)(A)) is amended by inserting before
9 the period at the end the following: “and, with re-
10 spect to payment years after 2014, includes rural
11 health clinic services (as defined in section
12 1861(aa)(1)) furnished by an eligible professional”.

13 (b) EXTENSION OF MEDICARE ERX AND QUALITY
14 REPORTING INCENTIVES TO RURAL HEALTH CLINICS.—
15 Section 1848(m)(6)(A) of the Social Security Act (42
16 U.S.C. 1395w-4(m)(6)(A)) is amended by inserting before
17 the period at the end the following: “except that the term
18 ‘covered professional services’ shall, with respect to report-
19 ing periods for 2015 or a subsequent year, include rural
20 health clinic services (as defined in section 1861(aa)(1))
21 furnished by an eligible professional”.

1 **SEC. 7. IMPROVING EHR MEANINGFUL USE UNDER MEDI-**
2 **CARE BY ELIGIBLE PROFESSIONALS WHO**
3 **PRACTICE IN AMBULATORY SURGICAL CEN-**
4 **TERS.**

5 (a) 3-YEAR EXEMPTION FROM ENCOUNTERS CAL-
6 CULATION TO DEMONSTRATE EHR MEANINGFUL USE
7 FOR PURPOSES OF PAYMENT ADJUSTMENT.—Section
8 1848(o)(2) of the Social Security Act (42 U.S.C. 1395w-
9 4(o)(2)), as amended by section 5, is further amended by
10 adding at the end the following new subparagraph:

11 “(E) TREATMENT OF PATIENT ENCOUN-
12 TERS AT AMBULATORY SURGICAL CENTERS.—

13 “(i) IN GENERAL.—Subject to clause
14 (ii), in applying this paragraph for pur-
15 poses of subsection (a)(7), any submissions
16 of claims for items or services furnished by
17 an eligible professional at an ambulatory
18 surgical center during performance years
19 for the 2015, 2016, or 2017 payment de-
20 terminations shall not be included in the
21 data used to determine if such eligible pro-
22 fessional is a meaningful EHR user.

23 “(ii) RULE OF CONSTRUCTION.—
24 Nothing in clause (i) shall prohibit an eli-
25 gible professional from receiving an addi-
26 tional payment under paragraph (1) with

1 respect to covered professional services fur-
2 nished in a payment year if the eligible
3 professional is determined to be a mean-
4 ingful EHR user under this paragraph for
5 the reporting period for such year.

6 “(iii) LIMITATION OF PAYMENT AD-
7 JUSTMENT.—In applying clause (i) for
8 purposes of subsection (a)(7) and a year,
9 if an eligible professional is not a meaning-
10 ful EHR user pursuant to such clause for
11 an EHR reporting period for the year, any
12 adjustment under such subsection shall not
13 apply to the fee schedule amount for cov-
14 ered professional services furnished by
15 such eligible professional during the year
16 in an ambulatory surgical center.”.

17 (b) REINSTATEMENT OF BATCHING PROCESS.—Sub-
18 paragraph (E) of section 1848(o)(2) of the Social Security
19 Act (42 U.S.C. 1395w-4(o)(2)), as added by subsection
20 (a), is amended by adding at the end the following new
21 clause:

22 “(iv) USE OF BATCHING PROCESS.—
23 In applying this paragraph for purposes of
24 subsection (a)(7) and with respect to a pa-
25 tient encounter occurring at an ambulatory

1 surgical center, if an eligible professional
2 creates a record of such patient encounter
3 without using certified EHR technology at
4 the ambulatory surgical center and subse-
5 quently inputs the information of such
6 record of such encounter into certified
7 EHR technology at a different location,
8 certified EHR technology shall be treated
9 as being available at such patient encoun-
10 ter.”.

11 **SEC. 8. EXEMPTION FROM CERTAIN EHR MEANINGFUL USE**
12 **REQUIREMENTS FOR CERTAIN ELIGIBLE**
13 **PROFESSIONALS FOR PURPOSES OF MEDI-**
14 **CARE PAYMENT ADJUSTMENT.**

15 Section 1848(o)(2) of the Social Security Act (42
16 U.S.C. 1395w-4(o)(2)), as amended by section 7, is fur-
17 ther amended by adding at the end the following new sub-
18 paragraph:

19 “(F) EXCEPTIONS FOR CERTAIN ELIGIBLE
20 PROFESSIONALS.—In applying this paragraph
21 for purposes of subsection (a)(7), the following
22 shall apply:

23 “(i) In the case of an eligible profes-
24 sional who is an anesthesiologist or physi-
25 cian of any other specialty or subspecialty

1 identified through rulemaking as not con-
2 ducting traditional office visits, in order to
3 be treated as a meaningful EHR user for
4 an EHR reporting period under such sub-
5 section for a year such eligible professional
6 shall not be required to—

7 “(I) provide clinical summaries to
8 patients; or

9 “(II) provide patients, upon re-
10 quest, with an electronic copy of the
11 health information of such patients
12 (including diagnostic test results,
13 problem lists, medication lists, and
14 medication allergies).

15 “(ii) In the case of an eligible profes-
16 sional who is an anesthesiologist or physi-
17 cian of any other specialty that does not
18 traditionally order prescription drugs be-
19 fore administration of such drugs, as speci-
20 fied through rulemaking, in order to be
21 treated as a meaningful EHR user for an
22 EHR reporting period under such sub-
23 section for a year such eligible professional
24 shall not be required to utilize EHR tech-
25 nology that provides for checks on pre-

1 scripted drug interactions until EHR
2 technology is available to accommodate
3 checks on interactions between prescription
4 drugs administered in operating rooms or
5 other anesthetizing locations.

6 The Secretary shall provide notice to each eligi-
7 ble professional to whom clause (i) or (ii) ap-
8 plies of the application of such clause.”.

9 **SEC. 9. ADDITIONAL ADMINISTRATIVE PROVISIONS RELAT-**
10 **ING TO MEDICARE ELIGIBLE PROFES-**
11 **SIONALS’ EHR INCENTIVES.**

12 (a) APPEALS PROCESS.—Section 1848(o)(3) of the
13 Social Security Act (42 U.S.C. 1395w-4(o)(3)) is amend-
14 ed—

15 (1) in subparagraph (C), by striking “There
16 shall be no” and inserting “Except as provided
17 under subparagraph (E), there shall be no”; and

18 (2) by adding at the end the following new sub-
19 paragraph:

20 “(E) APPEALS PROCESS BEFORE APPLICA-
21 TION OF PENALTIES.—The Secretary shall, by
22 not later than January 1, 2015, establish and
23 have in place a process for eligible professionals
24 to seek, before application of a payment adjust-
25 ment under subsection (a)(7)(A) with respect to

1 such an eligible professional, a review of the de-
2 termination that the eligible professional did
3 not qualify as a meaningful EHR user under
4 paragraph (2).”.

5 (b) SEMI-ANNUAL PROGRESS REPORT.—

6 (1) IN GENERAL.—Not later than six months
7 after the date of the enactment of this Act and every
8 six months thereafter until the date specified in
9 paragraph (3), the Secretary of Health and Human
10 Services, through the Administrator of the Centers
11 for Medicare & Medicaid Services, shall submit to
12 Congress a report that contains the following infor-
13 mation:

14 (A) Improvements that have been made in
15 streamlining requirements among various pro-
16 grams under the Medicare program under title
17 XVIII of the Social Security Act regarding
18 similar information (such as for purposes of
19 meaningful use of certified EHR technology,
20 physician quality reporting, and electronic pre-
21 scribing).

22 (B) Improvements certified EHR tech-
23 nology vendors have made in interoperability.

24 (C) The progress of the adoption of cer-
25 tified EHR technology by physician specialty

1 groups and the percentage of eligible profes-
2 sionals (as defined in section 1848(a)(7)(E) of
3 the Social Security Act) who are eligible for in-
4 centive payments under the Medicare program
5 for meaningful use of certified EHR technology.

6 (D) The reporting capabilities of qualified
7 national specialty reporting systems (as defined
8 in section 1848(o)(2) of the Social Security Act,
9 as added by section 5) and recommendations
10 for making such registries more interactive with
11 EHR technology.

12 (E) The results of the most recent survey
13 conducted under paragraph (2).

14 (2) PHYSICIAN SURVEY.—Not later than six
15 months after the date of the enactment of this Act
16 and every six months thereafter until the date speci-
17 fied in paragraph (3), the Secretary of Health and
18 Human Services, through the Administrator of the
19 Centers for Medicare & Medicaid Services, shall con-
20 duct a survey of physicians to identify barriers en-
21 countered by physicians in achieving stage 3 of
22 meaningful use of certified EHR technology.

23 (3) DATE SPECIFIED.—For purposes of para-
24 graphs (1) and (2), the date specified in this para-
25 graph is the date on which 75 percent of all eligible

1 professionals (as defined in section 1848(o)(5) of the
2 Social Security Act) have satisfied the requirements
3 of stage 2 of meaningful use of certified EHR tech-
4 nology (as defined by the Secretary of Health and
5 Human Services).

6 **SEC. 10. NON-APPLICATION OF PROVISIONS AND AMEND-**
7 **MENTS TO ELIGIBLE PROFESSIONAL MED-**
8 **ICAID INCENTIVES FOR ADOPTION AND**
9 **MEANINGFUL USE OF CERTIFIED EHR TECH-**
10 **NOLOGY.**

11 Section 1903(t) of the Social Security Act (42 U.S.C.
12 1396b(t)) is amended by adding at the end the following
13 new paragraph:

14 “(11) The provisions of, including the amendments
15 made by, the Electronic Health Records Improvement Act
16 (other than section 10 of such Act) shall not apply for
17 purposes of this subsection or subsection (a)(3)(F).”.

○