108TH CONGRESS
2D SESSION

S. 2710

To amend the Public Health Service Act to improve the quality and efficiency of health care delivery through improvements in health care information technology, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 21, 2004

Mr. GREGG (for himself, Mr. SESSIONS, and Mr. FRIST) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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A BILL

To amend the Public Health Service Act to improve the quality and efficiency of health care delivery through improvements in health care information technology, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Health Information Technology Adoption Act''.

SEC. 2. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end thereof the following:

"TITLE XXIX—HEALTH CARE INFORMATION TECHNOLOGY

"SEC. 2901. DEFINITIONS.

''In this title:

''(1) COVERAGE AREA.—The term 'coverage area' means the boundaries of a local health information infrastructure.

''(2) DEMOGRAPHIC DATA.—The term 'demographic data' means data that includes race, ethnicity, socio-economic status, and primary language.

''(3) DIRECTOR.—The term 'Director' means the Director of the Office of Health Information Technology.

''(4) HEALTH CARE PROVIDER.—The term 'health care provider' means a hospital, skilled nursing facility, home health entity, health care clinic, community health center, group practice (as defined in section 1877(h)(4) of the Social Security Act, including practices with only 1 physician), and any other facility or clinician determined appropriate by the Director.

''(5) LOCAL HEALTH INFORMATION INFRASTRUCTURES.—The term 'local health information infrastructure' means an independent organization of health care entities established for the purpose of linking health information systems to electronically share information. A local health information infrastructure may not be a single business entity.

''(6) OFFICE.—The term 'Office' means the Office of Health Information Technology established under section 2902.

''SEC. 2902. OFFICE OF HEALTH INFORMATION TECHNOLOGY.

''(a) ESTABLISHMENT.—There is established within the Office of the Secretary an Office of Health Information Technology. The Office shall be headed by a Director to be appointed by the Secretary after consultation with the President. The Director shall report directly to the Secretary.

''(b) PURPOSE.—It shall be the purpose of the Office to—

''(1) improve the quality and increase the efficiency of health care delivery through the use of health information technology;

''(2) provide national leadership relating to, and encourage the adoption of, health information technology;

''(3) direct all health information technology activities within the Department of Health and Human Services;

''(4) act as the lead entity responsible for coordinating the health information technology efforts of the Federal Government; and

''(5) facilitate the interaction between the Federal Government and the private sector relating to health information technology development and use.

''(c) DUTIES AND RESPONSIBILITIES.—The Office shall be responsible for the following:

''(1) FEDERAL LEADERSHIP.—The Office shall—

''(A) serve as the principle advisor to the Secretary concerning health information technology;

''(B) direct all health information technology activity within the Department of Health and Human Services;

''(C) work with public and private health information technology stakeholders to implement a strategic plan for the establishment of

a National Health Information Infrastructure; and

''(D) ensure that health information technology is utilized as fully as practicable in carrying out health surveillance efforts.

''(2) COORDINATION.—The Office shall—

''(A) encourage the development and adoption of clinical, messaging, and decision support health information data standards, pursuant to the requirements of section 2903;

''(B) ensure the maintenance and implementation of the data standards described in subparagraph (A);

''(C) oversee and coordinate the health information technology efforts of the Federal Government;

''(D) ensure the compliance of the Department of Health and Human Services with Federally adopted health information technology data standards;

''(E) serve as the representative of the Department of Health and Human Services with respect to the Consolidated Health Informatics Initiative;

''(F) ensure that the Federal Government consults and collaborates on decision making with respect to health information technology with the private sector and other interested parties; and

''(G) in consultation with private sector, adopt certification and testing criteria to determine if electronic health information systems interoperate.

''(3) COMMUNICATION.—The Office shall—

''(A) act as the point of contact for the private sector with respect to the use of health information technology; and

''(B) work with the private sector to collect and disseminate best health information technology practices.

''(4) EVALUATION AND DISSEMINATION.—The Office shall coordinate with the Agency for Health Research and Quality and other Federal agencies to—

''(A) evaluate and disseminate information relating to evidence of the costs and benefits of health information technology and to whom those costs and benefits accrue;

''(B) evaluate and disseminate information on the impact of health information technology on the quality and efficiency of patient care; and

''(C) review Federal payment structures and differentials for health care providers that utilize health information technology systems.

''(5) TECHNICAL ASSISTANCE.—The Office shall utilize existing private sector quality improvement organizations to—

''(A) promote the adoption of health information technology among healthcare providers; and

''(B) provide technical assistance concerning the implementation of health information technology to healthcare providers.

''(d) RESOURCES.—The Secretary shall make available to the Office, the resources, both financial and otherwise, necessary to enable the Director to carry out the purposes of, and perform the duties and responsibilities of the Office under, this section.

''(e) DETAIL OF FEDERAL EMPLOYEES.—Upon the request of the Director, the head of any Federal agency is authorized to detail, 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. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

"SEC. 2903. PROMOTING THE INTEROPERABILITY OF HEALTH CARE INFORMATION TECHNOLOGY SYSTEMS.

"(a) DEVELOPMENT, AND FEDERAL GOVERNMENT ADOPTION, OF STANDARDS.—

"(1) ADOPTION.—

"(A) IN GENERAL.—Not later than 2 years after the date of the enactment of this title, the Director shall provide for the adoption by the Federal Government of national data and communication health information technology standards that promote the efficient exchange of data between varieties of provider health information technology systems. In carrying out the preceding sentence, the Director may adopt existing standards. Standards adopted under this section shall be voluntary for private sector entities.

"(B) GRANTS OR CONTRACTS.—The Director may utilize grants or contracts to provide for the private sector development of standards

for adoption by the Federal Government under subparagraph (A).

''(2) REQUIREMENTS.—The standards developed and adopted under paragraph (1) shall be designed to—

''(A) enable health information technology to be used for the collection and use of clinically specific data;

''(B) promote the interoperability of health care information across health care settings; and

''(C) facilitate clinical decision support through the use of health information technology.

''(3) PUBLIC PRIVATE PARTNERSHIP.—Consistent with activities being carried out on the date of enactment of this title, including the Consolidated Health Informatics initiative, health information technology standards shall be adopted by the Director under paragraph (1) at the conclusion of a collaborative process that includes consultation between the Federal Government and private sector health care and information technology stakeholders.

''(4) PRIVACY AND SECURITY.—The regulations promulgated by the Secretary under part C of title

XI of the Social Security Act (42 U.S.C. 1320d et seq.) and sections 261, 262, 263, and 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note) with respect to the privacy, confidentiality, and security of health information shall apply to the implementation of programs and activities under this title.

''(5) PILOT TESTS.—To the maximum extent practical, the Director shall pilot test the health information technology data standards developed under paragraph (1) prior to their implementation under this section.

''(6) DISSEMINATION.—

''(A) IN GENERAL.—The Director shall ensure that the standards adopted under paragraph (1) are widely disseminated to interested stakeholders.

''(B) LICENSING.—To facilitate the dissemination and implementation of the standards developed and adopted under paragraph (1), the Director may license such standards, or utilize other means, to ensure the widespread use of such standards.

''(b) IMPLEMENTATION OF STANDARDS.—

''(1) PURCHASE OF SYSTEMS BY THE SECRETARY.—Effective beginning on the date that is 5 years after the date of enactment of this title, the Secretary shall not purchase any health care information technology system unless such system is in compliance with the standards adopted under subsection (a).

''(2) RECIPIENTS OF FEDERAL FUNDS.—Effective on the date described in paragraph (1), the Secretary shall require that funds not appropriated under this title that are designated for Federal health information technology purposes shall be used to purchase health care information technology systems that are in compliance with the standards adopted under subsection (a).

''(c) MODIFICATION OF STANDARDS.—The Director shall provide for ongoing oversight of the health information technology standards developed under subsection (a) to—

''(1) identify gaps or other shortcomings in such standards; and

''(2) modify such standards when determined appropriate or develop additional standards, in collaboration with standard setting organizations.

"SEC. 2904. LOAN GUARANTEES FOR THE ADOPTION OF HEALTH INFORMATION TECHNOLOGY.

''(a) IN GENERAL.—The Director shall guarantee payment of the principal of and the interest on loans made to eligible entities to enable such entities—

''(1) to implement local health information infrastructures to facilitate the development of interoperability across health care settings to improve quality and efficiency; or

''(2) to facilitate the purchase and adoption of health information technology to improve quality and efficiency.

''(b) ELIGIBILITY.—To be eligible to receive a loan guarantee under subsection (a) an entity shall—

''(1) with respect to an entity desiring a loan guarantee—

''(A) under subsection (a)(1), be a coalition of entities that represent an independent consortium of health care stakeholders within a community that—

''(i) includes—

''(I) physicians (as defined in section 1881(r)(1) of the Social Security Act), including physicians that provide services to low income and underserved populations;

''(II) hospitals (including hospitals that provide services to low income and underserved populations); and

''(III) group health plans or other health insurance issuers (as such terms are defined in section 2791); and

''(ii) may include any other health care providers; or

''(B) under subsection (a)(2) be a health care provider that provides health care services to low-income and underserved populations;

''(2) to the extent practicable, adopt the national health information technology standards adopted under section 2903; and

''(3) prepare and submit to the Director an application at such time, in such manner, and containing such information as the Director may require.

''(c) USE OF FUNDS.—Amounts received under a loan guarantee under subsection (a) shall be used—

''(1) with respect to a loan guarantee described in subsection (a)(1)—

''(A) to develop a plan for the implementation of a local health information infrastructure under this section;

''(B) to establish systems for the sharing of data in accordance with the national health information technology standards developed under section 2903;

''(C) to purchase directly related integrated hardware and software to establish an interoperable health information technology system that is capable of linking to a local health care information infrastructure; and

''(D) to train staff, maintain health information technology systems, and maintain adequate security and privacy protocols;

''(2) with respect to a loan or loan guarantee described in subsection (a)(2)—

''(A) to develop a plan for the purchase and installation of health information technology;

''(B) to purchase directly related integrated hardware and software to establish an interoperable health information technology system that is capable of linking to a local health care information infrastructure; and

''(C) to train staff, maintain health information technology systems, and maintain adequate security and privacy protocols; and

''(3) to carry out any other activities determined appropriate by the Director.

''(d) SPECIAL CONSIDERATIONS.—In awarding loan guarantees under this section to local health information infrastructures, the Director shall give special consideration to eligible entities that—

''(1) include at least 50 percent of the patients living in the designated coverage area;

''(2) incorporate public health surveillance and reporting into the overall architecture of the proposed infrastructure; and

''(3) link local health information infrastructures.

''(e) AREAS OF SPECIFIC INTEREST.—In awarding loan guarantees under this section, the Director shall include—

''(1) entities with a coverage area that includes an entire State; and

''(2) entities with a multi-state coverage area.

''(f) ADMINISTRATIVE PROVISIONS.—

''(1) AGGREGATE AMOUNT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the aggregate amount of principal of loans guaranteed under subsection (a) with respect to an eligible entity may not exceed $5,000,000. In any 12-month period the amount disbursed to an eligible entity under this section (by a lender under a guaranteed loan) may not exceed $5,000,000.

''(B) EXCEPTION.—The cumulative total of the principal of the loans outstanding at any time to which guarantees have been issued under subsection (a) may not exceed such limitations as may be specified in appropriation Acts.

''(2) PROTECTION OF FEDERAL GOVERNMENT.—

''(A) IN GENERAL.—The Director may not approve an application for a loan guarantee under this section unless the Director determines that—

''(i) the terms, conditions, security (if any), and schedule and amount of repayments with respect to the loan are sufficient to protect the financial interests of the United States and are otherwise rea-

sonable, including a determination that the rate of interest does not exceed such percent per annum on the principal obligation outstanding as the Director determines to be reasonable, taking into account the range of interest rates prevailing in the private market for loans with similar maturities, terms, conditions, and security and the risks assumed by the United States; and

''(ii) the loan would not be available on reasonable terms and conditions without the enactment of this section.

''(B) RECOVERY.—

''(i) IN GENERAL.—The United States shall be entitled to recover from the applicant for a loan guarantee under this section the amount of any payment made pursuant to such loan guarantee, unless the Director for good cause waives such right of recovery, and, upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payments with respect to which the loan was made.

''(ii) MODIFICATION OF TERMS.—Any terms and conditions applicable to a loan guarantee under this section may be modified by the Director to the extent he determines it to be consistent with the financial interest of the United States.

''(3) DEFAULTS.—The Director may take such action as the Director deems appropriate to protect the interest of the United States in the event of a default on a loan guaranteed under this section, including taking possession of, holding, and using real property pledged as security for such a loan guarantee.

''(g) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There is authorized to be appropriated to carry out this section, $50,000,000 for each of fiscal years 2005 through 2010.

''(2) AVAILABILITY.—Amounts appropriated under subparagraph (A) shall remain available for obligation until expended.

''SEC. 2905. GRANTS FOR THE PURCHASE OF HEALTH INFORMATION TECHNOLOGY.

''(a) IN GENERAL.—The Director may award competitive grants to eligible entities—

''(1) to implement local health information infrastructures to facilitate the development of interoperability across health care settings; or

''(2) to facilitate the purchase and adoption of health information technology.

''(b) ELIGIBILITY.—To be eligible to receive a grant under section (a) an entity shall—

''(1) demonstrate financial need to the Director;

''(2) with respect to an entity desiring a grant—

''(A) under subsection (a)(1), represent an independent consortium of health care stakeholders within a community that—

''(i) includes—

''(I) physicians (as defined in section 1881(r)(1) of the Social Security Act), including physicians that provide services to low income and underserved populations;

''(II) hospitals (including hospitals that provide services to low income and underserved populations); and

''(III) group health plans or other health insurance issuers (as

such terms are defined in section 2791); and

''(ii) may include any other health care providers; or

''(B) under subsection (a)(2) be a health care provider that provides health care services to low-income and underserved populations;

''(3) adopt the national health information technology standards developed under section 2903;

''(4) prepare and submit to the Director an application at such time, in such manner, and containing such information as the Director may require; and

''(5) agree to provide matching funds in accordance with subsection (d).

''(c) USE OF FUNDS.—Amounts received under a grant under subsection (a) shall be used to—

''(1) with respect to a grant described in subsection (a)(1)—

''(A) to develop a plan for the implementation of a local health information infrastructure under this section;

''(B) to establish systems for the sharing of data in accordance with the national health

information technology standards developed under section 2903;

''(C) to implement, enhance, or upgrade a comprehensive, electronic health information technology system; and

''(D) to maintain adequate security and privacy protocols;

''(2) with respect to a grant described in subsection (a)(2)—

''(A) to develop a plan for the purchase and installation of health information technology;

''(B) to purchase directly related integrated hardware and software to establish an interoperable health information technology system that is capable of linking to a local health care information infrastructure; and

''(C) to train staff, maintain health information technology systems, and maintain adequate security and privacy protocols;

''(3) maintain adequate security and privacy protocols; and

''(4) to carry out any other activities determined appropriate by the Director.

''(d) MATCHING REQUIREMENT.—

''(1) IN GENERAL.—The Director may not make a grant under this section to an entity unless the entity agrees that, with respect to the costs to be incurred by the entity in carrying out the infrastructure program for which the grant was awarded, the entity will make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount equal to not less than 20 percent of such costs ($1 for each $5 of Federal funds provided under the grant).

''(2) DETERMINATION OF AMOUNT CONTRIBUTED.—Non-Federal contributions required under paragraph (1) may be in cash or in kind, fairly evaluated, including equipment, technology, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

''(e) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There is authorized to be appropriated to carry out this section, $50,000,000 for each of fiscal years 2005 through 2010.

''(2) AVAILABILITY.—Amounts appropriated under paragraph (1) shall remain available for obligation until expended.

''SEC. 2906. REPORTS.

''(a) IN GENERAL.—Not later than 1 year after the date of enactment of this title, and annually thereafter, an entity that receives a grant or loan guarantee under this title shall submit to the Director a report on the activities carried out under the grant or loan guarantee involved. Each such report shall include—

''(1) a description of the financial costs and benefits of the project involved and of the entities to which such costs and benefits accrue;

''(2) a description of the impact of the project on health care quality and safety; and

''(3) a description of any reduction in duplicative or unnecessary care as a result of the project involved.

''(b) PREFERENCE.—In awarding grants and loan guarantees under this title, the Director may give a preference to eligible entities that agree to electronically submit reports on a daily basis.''.

SEC. 3. STANDARDIZED MEASURES OF QUALITY HEALTH CARE AND DATA COLLECTION.

Title XIX of the Public Health Service Act, as added by section 2, is amended by adding at the end the following:

"SEC. 2907. STANDARDIZED MEASURES OF QUALITY HEALTH CARE.

''(a) IN GENERAL.—

''(1) COLLABORATION.—The Secretary of Health and Human Services, the Secretary of Defense, and the Secretary of Veterans Affairs (referred to in this section as the 'Secretaries') shall establish uniform health care quality measures to assess the effectiveness, timeliness, patient self-management, efficiency, and safety of care delivered across all federally supported health delivery programs, including those in which health care services are delivered to health disparity populations.

''(2) DEVELOPMENT OF MEASURES.—Relying on earlier work by the Secretary of Health and Human Services or other Federal departments or agencies and with an emphasis on health conditions disproportionately affecting health disparity populations and taking into account health literacy and primary language and cultural factors, the Secre-

taries shall develop standardized sets of quality measures for—

"(A) 5 common health conditions by not later than January 1, 2006; and

"(B) an additional 10 common health conditions by not later than January 1, 2007.

"(3) PILOT TESTING.—Each federally supported health delivery program may conduct a pilot test of the quality measures developed under paragraph (2) that shall include a collection of patient-level data and a public release of comparative performance reports.

"(b) PUBLIC REPORTING REQUIREMENTS.—The Secretaries shall work collaboratively to establish public reporting requirements for clinicians, institutional providers, and health plans in each of the federally supported health delivery program described in subsection (a).

"(c) FULL IMPLEMENTATION.—The Secretaries shall work collaboratively to implement all sets of quality measures and reporting systems developed under subsections (a) and (b) by not later than January 1, 2009.

"(d) PROGRESS REPORT.—The Secretary of Health and Human Services shall prepare an annual progress report that details the collaborative efforts carried out under subsection (a).

''(e) COMPARATIVE QUALITY REPORTS.—Beginning on January 1, 2008, in order to make comparative quality information available to health care consumers, including members of health disparity populations, health professionals, public health officials, researchers, and other appropriate individuals and entities, the Secretaries shall provide for the pooling, analysis, and dissemination of quality measures collected under this section. Nothing in this section shall be construed as modifying the privacy standards under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191).

''(f) ONGOING EVALUATION OF USE.—The Secretary of Health and Human Services shall ensure the ongoing evaluation of the use of the health care quality measures established under this section.

''(g) EXISTING ACTIVITIES.—Notwithstanding any other provision of law, the measures and reporting activities described in this section shall replace, to the extent practicable and appropriate, any duplicative or redundant existing measurement and reporting activities currently utilized by federally supported health care delivery programs.

''(h) EVALUATION AND REGULATIONS.—

''(1) EVALUATION.—

"(A) IN GENERAL.—The Secretary shall, directly or indirectly through a contract with another entity, conduct an evaluation of the collaborative efforts of the Secretaries to establish uniform health care quality measures and reporting requirements for federally supported health care delivery programs as required under this section.

"(B) REPORT.—Not later than 2 years after the date of enactment of this title, the Secretary of Health and Human Services shall submit a report to the appropriate committees of Congress concerning the results of the evaluation under subparagraph (A).

"(2) REGULATIONS.—

"(A) PROPOSED.—Not later than 18 months after the date on which the report is submitted under paragraph (1)(B), the Secretary shall publish proposed regulations regarding the application of the uniform health care quality measures and reporting requirements described in this section to federally supported health delivery programs.

"(B) FINAL REGULATIONS.—Not later than 3 years after the date on which the report

is submitted under paragraph (1)(B), the Secretary shall publish final regulations regarding the uniform health care quality measures and reporting requirements described in this section.

''(i) DEFINITIONS.—In this section, the term 'federally supported health delivery program' means a program that is funded by the Federal Government under which health care items or services are delivered directly to patients.

''SEC. 2908. DATA COLLECTION.

''The Secretary shall—

''(1) ensure that demographic data collected under the medicare program are accurate and available for inclusion in the National Health Disparities Report;

''(2) enforce existing State demographic data collection and reporting requirements for enrollees in the medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) and the State Children's Health Insurance Program under title XXI of such Act (42 U.S.C. 1397aa et seq.), promote and encourage the collection of such demographic data in those States that do not have existing demographic data collection and reporting requirements under these programs, and ensure that

such demographic data are available for inclusion in the National Health Disparities Report;

''(3) ensure that any new Federal program initiatives—

''(A) collect and report demographic data and provide technical assistance to promote compliance;

''(B) address technological difficulties;

''(C) ensure privacy and confidentiality of demographic data collected; and

''(D) disseminate an analysis of the demographic data collection to appropriate stakeholders;

''(4) work with insurers, providers, agencies and the public to reassure and inform such entities of the importance of demographic data collection regarding health disparity populations to improving health care access and quality; and

''(5) support research on existing best practices for data collection.''.

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