

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4859

To amend chapter 89 of title 5, United States Code, to provide for the implementation of a system of electronic health records under the Federal Employees Health Benefits Program.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 2006

Mr. PORTER (for himself and Mr. CLAY) introduced the following bill; which was referred to the Committee on Government Reform

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## A BILL

To amend chapter 89 of title 5, United States Code, to provide for the implementation of a system of electronic health records under the Federal Employees Health Benefits Program.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Federal Family Health  
5       Information Technology Act of 2006”.

1 **SEC. 2. ELECTRONIC HEALTH RECORDS.**

2 (a) IN GENERAL.—Chapter 89 of title 5, United  
3 States Code, is amended by inserting after section 8902a  
4 the following:

5 **“§ 8902b. Electronic health records**

6 “(a) This section provides for the establishment, in  
7 connection with the program established under this chap-  
8 ter, of electronic health records for each covered indi-  
9 vidual, including—

10 “(1) requiring the establishment of a carrier  
11 electronic health record under subsection (b);

12 “(2) requiring the offering by carriers to cov-  
13 ered individuals of a personal electronic health  
14 record under subsection (c); and

15 “(3) providing carrier-based incentives for es-  
16 tablishing provider-based electronic health records  
17 under subsection (d).

18 “(b)(1) Each contract under this chapter shall re-  
19 quire that the carrier establish, maintain, and make avail-  
20 able, in accordance with standards adopted by the Office  
21 of Personnel Management under this section, a carrier  
22 electronic health record for each covered individual who  
23 is enrolled under this chapter in a health benefits plan  
24 offered by the carrier.

25 “(2)(A) A carrier electronic health record for a cov-  
26 ered individual under this subsection shall consist of a car-

1 rier’s health information on the individual’s health care  
2 claims, health care services data, or both, such as informa-  
3 tion describing the individual’s inpatient facility admis-  
4 sions, emergency room visits, and claims for prescription  
5 drugs. Such a record shall include, to the maximum extent  
6 practicable, such information as it relates to claims or  
7 services for another carrier in which the covered individual  
8 was previously enrolled under this title.

9       “(B) The information under subparagraph (A) shall  
10 cover the period beginning on the later of January 1,  
11 2008, or the date of the covered individual’s enrollment  
12 with the carrier under this title. Such period is not re-  
13 quired to be longer than the period specified in standards  
14 adopted by the Office of Personnel Management under  
15 this section.

16       “(C) In the case of a covered individual who changes  
17 enrollment under this title after the effective date specified  
18 in paragraph (4) from one carrier to another carrier, the  
19 first carrier shall transfer information from the carrier  
20 electronic health record under this subsection to the sec-  
21 ond carrier to the extent specified by the Office of Per-  
22 sonnel Management by not later than 90 days after the  
23 date the first carrier receives notice of the change in en-  
24 rollment.

1       “(3) Information from a carrier electronic health  
2 record for a covered individual shall be made available to  
3 the individual and shall be made available (in accordance  
4 with the regulations promulgated pursuant to section  
5 264(e) of the Health Insurance Portability and Account-  
6 ability Act of 1996) to a health care provider treating the  
7 individual. A carrier shall make such information avail-  
8 able, in accordance with standards adopted under this sec-  
9 tion—

10               “(A) promptly;

11               “(B) over a secure internet or other electronic-  
12 based connection;

13               “(C) in a format useful for diagnosis and treat-  
14 ment; and

15               “(D) in a format that permits its importation  
16 into a personal electronic health record under sub-  
17 section (c).

18       “(4) The previous provisions of this subsection shall  
19 apply with respect to contracts for contract years begin-  
20 ning with—

21               “(A) the 3rd contract year (or 4th contract  
22 year, if the Office of Personnel Management deter-  
23 mines that carriers are not prepared to implement  
24 the previous provisions of this subsection by such

1 3rd contract year) beginning after the date of the  
2 enactment of this section; or

3 “(B) such earlier contract year as the Office of  
4 Personnel Management may determine.

5 “(c)(1) Each contract under this chapter shall re-  
6 quire the carrier in accordance with standards adopted  
7 under this section—

8 “(A) to provide, upon the request of a covered  
9 individual, for the establishment and maintenance of  
10 a personal electronic health record for the individual;

11 “(B) to establish a method for the individual to  
12 access the individual’s personal electronic health  
13 record through a mechanism that is integrated with  
14 access to the carrier electronic health record for the  
15 individual under subsection (b); and

16 “(C) to establish a method for the individual to  
17 transfer the individual’s personal electronic health  
18 record to the individual (or to a carrier or other en-  
19 tity designated by the individual) upon the request  
20 of the individual at any time, including at the time  
21 of disenrollment of the individual.

22 “(2) A personal electronic health record for a covered  
23 individual shall consist of such personal health informa-  
24 tion, such as family health history, symptoms, use of over-  
25 the-counter medication, diet, exercise, and other relevant

1 health information and activities, as the individual may  
2 provide. Such record may also include information from  
3 a provider-based electronic health record referred to in  
4 subsection (d) as well as from a carrier electronic health  
5 record.

6       “(3) Each contract under this chapter shall require  
7 the carrier to enable health information to be imported  
8 in standard electronic format into a personal electronic  
9 health record from a provider-based electronic health  
10 record and from a carrier electronic health record con-  
11 sistent with standards adopted by the Office.

12       “(4) Nothing in this subsection shall be construed as  
13 authorizing the carrier or another person, other than a  
14 covered individual, to access a personal electronic health  
15 record of the individual without the authorization of the  
16 individual.

17       “(5) The previous provisions of this subsection shall  
18 apply with respect to contracts for contract years begin-  
19 ning with the contract year beginning after the first con-  
20 tract year with respect to which the requirements of sub-  
21 section (b) are in effect under subsection (b)(4).

22       “(d)(1) Each contract under this chapter shall re-  
23 quire the carrier to provide, in accordance with standards  
24 adopted by the Office under this section, incentives (sub-  
25 ject to the availability of amounts from the Federal Fam-

1 ily Health Information Technology Trust Fund, as estab-  
2 lished by section 4 of the Federal Family Health Informa-  
3 tion Technology Act of 2006) for providers to implement  
4 a comprehensive system of provider-based electronic  
5 health records for all patients covered by the contract.

6 “(2) The previous provisions of this subsection shall  
7 be effective with respect to contract years beginning with  
8 such contract year as the Office of Personnel Management  
9 shall determine.

10 “(e) Beginning with the contract year beginning after  
11 the first contract year with respect to which the require-  
12 ments of subsection (b) are in effect, each carrier shall  
13 report to the Office of Personnel Management its progress  
14 and plan for enabling each covered individual, upon re-  
15 quest, to store and access, through a portable, electronic  
16 medium, the individual’s personal electronic health record  
17 established under subsection (c), as well as the carrier  
18 electronic health record for the individual (established  
19 under subsection (b)) and provider-based electronic health  
20 records relating to the individual referred to in subsection  
21 (d). Such plan shall provide a means for such storage and  
22 access through such a portable medium beginning with the  
23 5th contract year after the first contract year with respect  
24 to which the requirements of subsection (b) are in effect.

1 “(f)(1) Standards adopted under this section regard-  
2 ing carrier, personal, and provider-based electronic health  
3 records shall be consistent with any standards for inter-  
4 operability of electronic health records developed by  
5 ONCHIT.

6 “(2) In addition to paragraph (1), the Office of Per-  
7 sonnel Management shall consult with ONCHIT in the im-  
8 plementation of this section, including the establishment  
9 of effective dates under subsections (b)(4)(B) and (d)(2).

10 “(3) For purposes of this subsection, the term  
11 ‘ONCHIT’ means the Office of the National Coordinator  
12 for Health Information Technology in the Department of  
13 Health and Human Services, and includes any successor  
14 to the functions performed by such Office.

15 “(g)(1) The Office of Personnel Management may  
16 waive any or all of the requirements of this section for  
17 a carrier described in paragraph (2) insofar as the carrier  
18 has established an electronic health record system that  
19 substantially meets the purpose of each such requirement  
20 that is waived.

21 “(2) A carrier described in this paragraph is a carrier  
22 that—

23 “(A) is an integrated health care system that  
24 combines the functions of a health plan, hospitals,  
25 pharmacy, laboratories, and clinicians; and

1           “(B) has developed and is implementing, as of  
2           the date of the enactment of this section, a provider-  
3           based comprehensive electronic medical record for  
4           each member of the health plan.

5           “(h) For purposes of this section, the term ‘covered  
6           individual’ has the meaning given such term by section  
7           8902a(a)(1)(B).”.

8           (b) CONFORMING AMENDMENTS.—(1) Section 8902  
9           of title 5, United States Code, is amended by adding at  
10          the end the following:

11          “(p) A contract may not be made which is not in con-  
12          formance with the requirements of section 8902b, except  
13          that the Office of Personnel Management may phase in  
14          or waive conformance with some or all of such require-  
15          ments during the first two contract years in which a car-  
16          rier has a contract under this title.”.

17          (2) The table of sections for chapter 89 of such title  
18          is amended by inserting after the item relating to section  
19          8902a the following:

          “8902b. Electronic health records.”.

20       **SEC. 3. PROVISION REGARDING RATES.**

21          During the period ending with the contract year fol-  
22          lowing the first contract year with respect to which the  
23          requirements of subsection (b) of section 8902b of title  
24          5, United States Code, as inserted by section 2(a), are  
25          in effect, in determining rates under section 8902(i) of

1 such title, the Office of Personnel Management shall not  
2 take into account any carrier administrative costs, mone-  
3 tary savings, or return on investment resulting from im-  
4 plementation of carrier and personal electronic health  
5 records required under subsections (b) and (c) of such sec-  
6 tion 8902b, except that the Office shall have access to the  
7 unused portion of contributions set aside in the Employees  
8 Health Benefits Fund under section 8909(b)(1) of such  
9 title without fiscal year limitation for such use as the Of-  
10 fice considers necessary to assist carriers in complying  
11 with such subsections.

12 **SEC. 4. FEDERAL FAMILY HEALTH INFORMATION TECH-**  
13 **NOLOGY TRUST FUND.**

14 (a) **IN GENERAL.**—The Office of Personnel Manage-  
15 ment shall establish the Federal Family Health Informa-  
16 tion Technology Trust Fund (in this section referred to  
17 as the “Trust Fund”) for the purpose of receiving dona-  
18 tions to be used to award grants to carriers who meet cer-  
19 tain requirements as set forth by the Office.

20 (b) **ACCEPTANCE OF DONATIONS.**—In accordance  
21 with the section, the Office may accept donations made  
22 to the Trust Fund. Donations made to the Trust Fund,  
23 and grants awarded from such Fund to carriers, shall not  
24 be considered to be the solicitation or payment of remu-  
25 nation of any kind, nor shall receipt of such grants be

1 considered an inducement to refer, purchase, order, or  
2 lease any good, facility, item, or service.

3 (c) DEPOSIT OF AMOUNTS RECEIVED.—Funds re-  
4 ceived by the Office under this section shall be transmitted  
5 by the Office to the Trust Fund.

6 (d) FUNDS TO BE USED FOR CARRIER GRANTS.—  
7 The Office shall award grants from the Trust Fund to  
8 carriers under chapter 89 of title 5, United States Code,  
9 to be distributed under section 8902b(d) of such title as  
10 incentives to their contracting health care providers for  
11 implementing provider-based electronic health records  
12 based on requirements and qualifications set forth by the  
13 Office and standards adopted under section 8902b(f) of  
14 such title.

15 **SEC. 5. IMPLEMENTATION.**

16 The Office of Personnel Management shall provide  
17 for the implementation of this Act through appropriate ad-  
18 ministrative guidance, which may be by regulation, by car-  
19 rier letter, or otherwise.

20 **SEC. 6. HIPAA COMPLIANCE.**

21 Nothing in this Act shall be construed as affecting  
22 the application or compliance with regulations promul-  
23 gated pursuant to section 264(c) of the Health Insurance

- 1 Portability and Accountability Act of 1996 (relating to ac-
- 2 cess to and disclosure of health information).

