

109TH CONGRESS
1ST SESSION

S. 1355

To enhance the adoption of health information technology and to improve the quality and reduce the costs of healthcare in the United States.

IN THE SENATE OF THE UNITED STATES

JUNE 30, 2005

Mr. ENZI (for himself, Mr. KENNEDY, Mr. GRASSLEY, Mr. BAUCUS, Mr. DODD, Mr. ALEXANDER, Mr. HARKIN, Mr. ISAKSON, Ms. MIKULSKI, Mr. DEWINE, Mr. JEFFORDS, Mr. HATCH, Mrs. MURRAY, Mr. REED, Mr. ALLEN, Mr. BURNS, Mr. CRAPO, Mr. DEMINT, Mr. SANTORUM, Mr. THOMAS, and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To enhance the adoption of health information technology and to improve the quality and reduce the costs of healthcare in the United States.

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 “Better Healthcare
5 Through Information Technology Act”.

1 **SEC. 2. IMPROVING HEALTHCARE, QUALITY, SAFETY, AND**
2 **EFFICIENCY.**

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

5 **“TITLE XXIX—HEALTH**
6 **INFORMATION TECHNOLOGY**

7 **“SEC. 2901. PURPOSES.**

8 “It is the purpose of this title to improve the quality,
9 safety, and efficiency of healthcare by—

10 “(1) protecting the privacy and security of
11 health information;

12 “(2) fostering the widespread adoption of health
13 information technology;

14 “(3) establishing the public-private American
15 Health Information Collaborative to identify uniform
16 national data standards (including content, commu-
17 nication, and security) and implementation policies
18 for the widespread adoption of health information
19 technology;

20 “(4) establishing health information network
21 demonstration programs;

22 “(5) awarding competitive grants to facilitate
23 the purchase and enhance the utilization of qualified
24 health information technology; and

25 “(6) awarding competitive grants to States for
26 the development of State loan programs to facilitate

1 the widespread adoption of health information tech-
2 nology.

3 **“SEC. 2902. DEFINITIONS.**

4 “In this title:

5 “(1) COLLABORATIVE.—The term ‘Collabo-
6 rative’ means the public-private American Health In-
7 formation Collaborative established under section
8 2904.

9 “(2) HEALTHCARE PROVIDER.—The term
10 ‘healthcare provider’ means a hospital, skilled nurs-
11 ing facility, home health entity, healthcare clinic,
12 community health center, group practice (as defined
13 in section 1877(h)(4) of the Social Security Act), a
14 pharmacist, a pharmacy, a laboratory, a physician
15 (as defined in section 1861(r) of the Social Security
16 Act), a health facility operated by or pursuant to a
17 contract with the Indian Health Service, a rural
18 health clinic, and any other category of facility or
19 clinician determined appropriate by the Secretary.

20 “(3) HEALTH INFORMATION.—The term ‘health
21 information’ means any information, whether oral or
22 recorded in any form or medium, that—

23 “(A) is created or received by a health care
24 provider, health plan, public health authority,

1 employer, life insurer, school or university, or
2 health care clearinghouse; and

3 “(B) relates to the past, present, or future
4 physical or mental health or condition of an in-
5 dividual, the provision of health care to an indi-
6 vidual, or the past, present, or future payment
7 for the provision of health care to an individual.

8 “(4) HEALTH INFORMATION NETWORK.—The
9 term ‘health information network’ means an organi-
10 zation of health care providers and other entities es-
11 tablished for the purpose of linking health informa-
12 tion systems to enable the electronic sharing of
13 health information.

14 “(5) HEALTH INSURANCE ISSUER.—The term
15 ‘health insurance issuer’ has the meaning given that
16 term in section 2791.

17 “(6) LABORATORY.—The term ‘laboratory’ has
18 the meaning given that term in section 353.

19 “(7) PHARMACIST.—The term ‘pharmacist’ has
20 the meaning given that term in section 804 of the
21 Federal Food, Drug, and Cosmetic Act.

22 “(8) QUALIFIED HEALTH INFORMATION TECH-
23 NOLOGY.—The term ‘qualified health information
24 technology’ means a computerized system (including
25 hardware, software, and training) that—

1 “(A) protects the privacy and security of
2 health information and properly encrypts such
3 health information;

4 “(B) maintains and provides permitted ac-
5 cess to patients’ health records in an electronic
6 format;

7 “(C) incorporates decision support soft-
8 ware to reduce medical errors and enhance
9 healthcare quality;

10 “(D) is consistent with the standards rec-
11 ommended by the collaborative; and

12 “(E) allows for the reporting of quality
13 measures.

14 “(9) STATE.—The term ‘State’ means each of
15 the several States, the District of Columbia, Puerto
16 Rico, the Virgin Islands, Guam, American Samoa,
17 and the Northern Mariana Islands.

18 **“SEC. 2903. OFFICE OF THE NATIONAL COORDINATOR OF**
19 **HEALTH INFORMATION TECHNOLOGY.**

20 “(a) OFFICE OF NATIONAL HEALTH INFORMATION
21 TECHNOLOGY.—There is established within the Office of
22 the Secretary an Office of the National Coordinator of
23 Health Information Technology (referred to in this section
24 as the ‘Office’). The Office shall be headed by a National

1 Coordinator who shall be appointed by the Secretary and
2 shall report directly to the Secretary.

3 “(b) PURPOSE.—It shall be the purpose of the Office
4 to carry out programs and activities to develop a nation-
5 wide interoperable health information technology infra-
6 structure that—

7 “(1) ensures that patients’ health information
8 is secure and protected;

9 “(2) improves healthcare quality, reduces med-
10 ical errors, and advances the delivery of patient-cen-
11 tered medical care;

12 “(3) reduces healthcare costs resulting from in-
13 efficiency, medical errors, inappropriate care, and in-
14 complete information;

15 “(4) ensures that appropriate information to
16 help guide medical decisions is available at the time
17 and place of care;

18 “(5) promotes a more effective marketplace,
19 greater competition, and increased choice through
20 the wider availability of accurate information on
21 healthcare costs, quality, and outcomes;

22 “(6) improves the coordination of care and in-
23 formation among hospitals, laboratories, physician
24 offices, and other entities through an effective infra-

1 structure for the secure and authorized exchange of
2 healthcare information;

3 “(7) improves public health reporting and facili-
4 tates the early identification and rapid response to
5 public health threats and emergencies, including bio-
6 terror events and infectious disease outbreaks;

7 “(8) facilitates health research; and

8 “(9) promotes prevention of chronic diseases.

9 “(c) DUTIES OF THE NATIONAL COORDINATOR.—

10 The National Coordinator shall—

11 “(1) serve as a member of the public-private
12 American Health Information Collaboration estab-
13 lished under section 2904;

14 “(2) serve as the principal advisor to the Sec-
15 retary concerning the development, application, and
16 use of health information technology;

17 “(3) facilitate the adoption of a national system
18 for the electronic exchange of health information;

19 “(4) facilitate the adoption and implementation
20 of standards for the electronic exchange of health in-
21 formation to reduce cost and improve healthcare
22 quality; and

23 “(5) submit the reports described under section
24 2904(h).

25 “(d) DETAIL OF FEDERAL EMPLOYEES.—

1 “(1) IN GENERAL.—Upon the request of the
2 National Coordinator, the head of any Federal agen-
3 cy is authorized to detail, with or without reimburse-
4 ment from the Office, any of the personnel of such
5 agency to the Office to assist it in carrying out its
6 duties under this section.

7 “(2) EFFECT OF DETAIL.—Any detail of per-
8 sonnel under paragraph (1) shall—

9 “(A) not interrupt or otherwise affect the
10 civil service status or privileges of the Federal
11 employee; and

12 “(B) be in addition to any other staff of
13 the Department employed by the National Co-
14 ordinator.

15 “(3) ACCEPTANCE OF DETAILEES.—Notwith-
16 standing any other provision of law, the Office may
17 accept detailed personnel from other Federal agen-
18 cies without regard to whether the agency described
19 under paragraph (1) is reimbursed.

20 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated such sums as may be
22 necessary to carry out the activities of the Office under
23 this section for each of fiscal years 2006 through 2010.

1 **“SEC. 2904. AMERICAN HEALTH INFORMATION COLLABO-**
2 **RATIVE.**

3 “(a) ESTABLISHMENT.—Not later than 60 days after
4 the date of enactment of this title, and subject to the pro-
5 visions of this title, the Secretary shall establish the pub-
6 lic-private American Health Information Collaborative (re-
7 ferred to in this section as the ‘Collaborative’).

8 “(b) COMPOSITION.—The Collaborative shall be com-
9 posed of—

10 “(1) the Secretary, who shall serve as the chair-
11 person of the Collaborative;

12 “(2) the Secretary of Defense, or his or her
13 designee;

14 “(3) the Secretary of Veterans Affairs, or his or
15 her designee;

16 “(4) the National Coordinator for Health Infor-
17 mation Technology;

18 “(5) the Director of the National Institute of
19 Standards and Technology; and

20 “(6) one voting member from each of the fol-
21 lowing categories to be appointed by the Secretary
22 from nominations submitted by the public:

23 “(A) Patient advocates.

24 “(B) Physicians.

25 “(C) Hospitals.

26 “(D) Pharmacists.

1 “(E) Health insurance plans.

2 “(F) Standards development organizations.

3 “(G) Technology vendors.

4 “(H) Public health entities.

5 “(I) Clinical research and academic enti-
6 ties.

7 “(J) Employers.

8 “(K) An Indian tribe or tribal organiza-
9 tion.

10 “(L) State and local government agencies.

11 “(c) RECOMMENDATIONS AND POLICIES.—The Col-
12 laborative shall make recommendations to identify uni-
13 form national policies to the Federal Government and pri-
14 vate entities to support the widespread adoption of health
15 information technology, including—

16 “(1) protecting the privacy and security of per-
17 sonal health information;

18 “(2) measures to prevent unauthorized access
19 to health information;

20 “(3) measures to ensure accurate patient identi-
21 fication;

22 “(4) methods to facilitate secure patient access
23 to health information;

1 “(5) recommendations for a nationwide archi-
2 tecture that achieves interoperability of health infor-
3 mation technology systems; and

4 “(6) other policies determined to be necessary
5 by the Collaborative.

6 “(d) STANDARDS.—

7 “(1) IN GENERAL.—The Collaborative shall, on
8 an ongoing basis—

9 “(A) review existing standards (including
10 content, communication, and security stand-
11 ards) for the electronic exchange of health in-
12 formation, including such standards adopted by
13 the Secretary under paragraph (2)(A);

14 “(B) identify deficiencies and omissions in
15 such existing standards; and

16 “(C) identify duplications and omissions in
17 such existing standards;

18 and recommend modifications to such standards as
19 necessary.

20 “(2) RECOMMENDATIONS.—The Collaborative
21 shall recommend to the President the adoption by
22 the Federal Government of—

23 “(A) the standards adopted by the Consoli-
24 dated Health Informatics Initiative as of the
25 date of enactment of this title; and

1 “(B) on an ongoing basis as appropriate,
2 any additional standards or modifications rec-
3 ommended pursuant to the review described in
4 paragraph (1).

5 “(3) LIMITATION.—The standards described in
6 this section shall not include any standards devel-
7 oped pursuant to the Health Insurance Portability
8 and Accountability Act of 1996.

9 “(e) ACTION BY THE PRESIDENT.—Upon receipt of
10 a recommendation from the Collaborative under sub-
11 section (d)(2), the President shall review and if appro-
12 priate, provide for the adoption by the Federal Govern-
13 ment of such recommended standards.

14 “(f) COORDINATION OF FEDERAL SPENDING.—Not
15 later than 1 year after the adoption by the Federal Gov-
16 ernment of a recommendation as provided for in sub-
17 section (e), and in compliance with chapter 113 of title
18 40, United States Code, no Federal agency shall expend
19 Federal funds for the purchase of hardware, software, or
20 support services for the electronic exchange of health in-
21 formation that is not consistent with applicable standards
22 adopted by the Federal Government under subsection (e).

23 “(g) COORDINATION OF FEDERAL DATA COLLEC-
24 TION.—Not later than 2 years after the adoption by the
25 Federal Government of a recommendation as provided for

1 in subsection (e), all Federal agencies collecting health
2 data for the purposes of surveillance, epidemiology, ad-
3 verse event reporting, or research shall comply with stand-
4 ards adopted under subsection (e).

5 “(h) VOLUNTARY ADOPTION.—Any standards adopt-
6 ed by the Federal Government under subsection (e) shall
7 be voluntary with respect to private entities.

8 “(i) REPORTS.—The Secretary shall submit to the
9 Committee on Health, Education, Labor, and Pensions
10 and the Committee on Finance of the Senate and the
11 Committee on Energy and Commerce and the Committee
12 on Ways and Means of the House of Representatives, on
13 an annual basis, a report that—

14 “(1) describes the specific actions that have
15 been taken to facilitate the adoption of a nationwide
16 system for the electronic exchange of health informa-
17 tion;

18 “(2) describes barriers to the adoption of such
19 a nationwide system; and

20 “(3) contains recommendations to achieve full
21 implementation of such a nationwide system.

22 “(j) APPLICATION OF FACA.—The Federal Advisory
23 Committee Act (5 U.S.C. App.) shall apply to the Collabo-
24 rative, except that the term provided for under section
25 14(a)(2) shall be 5 years.

1 “(k) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as may be
3 necessary to carry out this section for each of fiscal years
4 2006 through 2010.

5 **“SEC. 2905. IMPLEMENTATION AND CERTIFICATION OF**
6 **HEALTH INFORMATION STANDARDS.**

7 “(a) IMPLEMENTATION.—

8 “(1) IN GENERAL.—The Secretary, based upon
9 the recommendations of the Collaborative, shall de-
10 velop criteria to ensure uniform and consistent im-
11 plementation of any standards for the electronic ex-
12 change of health information voluntarily adopted by
13 private entities in technical conformance with such
14 standards adopted under this title.

15 “(2) IMPLEMENTATION ASSISTANCE.—The Sec-
16 retary may recognize a private entity or entities to
17 assist private entities in the implementation of the
18 standards adopted under this title.

19 “(b) CERTIFICATION.—

20 “(1) IN GENERAL.—The Secretary, based upon
21 the recommendations of the Collaborative, shall de-
22 velop criteria to ensure and certify that hardware,
23 software, and support services that claim to be in
24 compliance with any standard for the electronic ex-
25 change of health information adopted under this title

1 have established and maintained such compliance in
2 technical conformance with such standards.

3 “(2) CERTIFICATION ASSISTANCE.—The Sec-
4 retary may recognize a private entity or entities to
5 assist in the certification described under paragraph
6 (1).

7 **“SEC. 2906. COMPETITIVE GRANTS TO FACILITATE THE**
8 **WIDESPREAD ADOPTION OF HEALTH INFOR-**
9 **MATION TECHNOLOGY.**

10 “(a) IN GENERAL.—The Secretary may award com-
11 petitive grants to eligible entities to facilitate the purchase
12 and enhance the utilization of qualified health information
13 technology systems to improve the quality and efficiency
14 of healthcare.

15 “(b) ELIGIBILITY.—To be eligible to receive a grant
16 under subsection (a) an entity shall—

17 “(1) submit to the Secretary an application at
18 such time, in such manner, and containing such in-
19 formation as the Secretary may require;

20 “(2) submit to the Secretary a strategic plan
21 for the implementation of data sharing and inter-
22 operability measures;

23 “(3) be a—

24 “(A) not for profit hospital;

1 “(B) group practice (including a single
2 physician); or

3 “(C) another healthcare provider not de-
4 scribed in subparagraph (A) or (B);

5 “(4) adopt the standards adopted by the Fed-
6 eral Government under section 2904;

7 “(5) submit to the Secretary a report on the de-
8 gree to which such entity has achieved the measures
9 adopted under section 2909;

10 “(6) demonstrate significant financial need; and

11 “(7) provide matching funds in accordance with
12 subsection (d).

13 “(c) USE OF FUNDS.—Amounts received under a
14 grant under this section shall be used to facilitate the pur-
15 chase and enhance the utilization of qualified health infor-
16 mation technology systems.

17 “(d) MATCHING REQUIREMENT.—To be eligible for
18 a grant under this section an entity shall contribute non-
19 Federal contributions to the costs of carrying out the ac-
20 tivities for which the grant is awarded in an amount equal
21 to \$1 for each \$3 of Federal funds provided under the
22 grant.

23 “(e) PREFERENCE IN AWARDING GRANTS.—In
24 awarding grants under this section the Secretary shall give
25 preference to—

1 “(1) eligible entities that are located in rural,
2 frontier, and other underserved areas as determined
3 by the Secretary;

4 “(2) eligible entities that will use grant funds to
5 enhance secure data sharing across various health
6 care settings or enhance interoperability with re-
7 gional or national health information networks; and

8 “(3) with respect to an entity described in sub-
9 section (b)(3)(C), a not for profit healthcare pro-
10 vider.

11 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated to carry out this section,
13 \$25,000,000 for fiscal year 2006, \$75,000,000 for fiscal
14 year 2007, and such sums as may be necessary for each
15 of fiscal years 2008 through 2010.

16 **“SEC. 2907. COMPETITIVE GRANTS TO STATES FOR THE DE-**
17 **VELOPMENT OF STATE LOAN PROGRAMS TO**
18 **FACILITATE THE WIDESPREAD ADOPTION OF**
19 **HEALTH INFORMATION TECHNOLOGY.**

20 “(a) IN GENERAL.—The Secretary may award com-
21 petitive grants to States for the establishment of State
22 programs for loans to healthcare providers to facilitate the
23 purchase and enhance the utilization of qualified health
24 information technology.

1 “(b) ESTABLISHMENT OF FUND.—To be eligible to
2 receive a competitive grant under this section, a State
3 shall establish a qualified health information technology
4 loan fund (referred to in this section as a ‘State loan
5 fund’) and comply with the other requirements contained
6 in this section. A grant to a State under this section shall
7 be deposited in the State loan fund established by the
8 State. No funds authorized by other provisions of this title
9 to be used for other purposes specified in this title shall
10 be deposited in any State loan fund.

11 “(c) ELIGIBILITY.—To be eligible to receive a grant
12 under subsection (a) a State shall—

13 “(1) submit to the Secretary an application at
14 such time, in such manner, and containing such in-
15 formation as the Secretary may require;

16 “(2) submit to the Secretary a strategic plan in
17 accordance with subsection (d);

18 “(3) establish a qualified health information
19 technology loan fund in accordance with subsection
20 (b);

21 “(4) require that healthcare providers receiving
22 such loans consult with the Center for Best Prac-
23 tices established in section 914(d) to access the
24 knowledge and experience of existing initiatives re-

1 garding the successful implementation and effective
2 use of health information technology;

3 “(5) require that healthcare providers receiving
4 such loans adopt the standards adopted by the Fed-
5 eral Government under section 2904(d);

6 “(6) submit to the Secretary a report on the de-
7 gree to which the State has achieved the measures
8 under section 2909; and

9 “(7) provide matching funds in accordance with
10 subsection (h).

11 “(d) STRATEGIC PLAN.—

12 “(1) IN GENERAL.—A State that receives a
13 grant under this section shall annually prepare a
14 strategic plan that identifies the intended uses of
15 amounts available to the State loan fund of the
16 State.

17 “(2) CONTENTS.—A strategic plan under para-
18 graph (1) shall include—

19 “(A) a list of the projects to be assisted
20 through the State loan fund in the first fiscal
21 year that begins after the date on which the
22 plan is submitted;

23 “(B) a description of the criteria and
24 methods established for the distribution of
25 funds from the State loan fund; and

1 “(C) a description of the financial status of
2 the State loan fund and the short-term and
3 long-term goals of the State loan fund.

4 “(e) USE OF FUNDS.—

5 “(1) IN GENERAL.—Amounts deposited in a
6 State loan fund, including loan repayments and in-
7 terest earned on such amounts, shall be used only
8 for awarding loans or loan guarantees, or as a
9 source of reserve and security for leveraged loans,
10 the proceeds of which are deposited in the State loan
11 fund established under subsection (a). Loans under
12 this section may be used by a healthcare provider to
13 facilitate the purchase and enhance the utilization of
14 qualified health information technology.

15 “(2) LIMITATION.—Amounts received by a
16 State under this section may not be used—

17 “(A) for the purchase or other acquisition
18 of any health information technology system
19 that is not a qualified health information tech-
20 nology system;

21 “(B) to conduct activities for which Fed-
22 eral funds are expended under this title, or the
23 amendments made by the Better Healthcare
24 Through Information Technology Act; or

1 “(C) for any purpose other than making
2 loans to eligible entities under this section.

3 “(f) TYPES OF ASSISTANCE.—Except as otherwise
4 limited by applicable State law, amounts deposited into a
5 State loan fund under this section may only be used for
6 the following:

7 “(1) To award loans that comply with the fol-
8 lowing:

9 “(A) The interest rate for each loan shall
10 be less than or equal to the market interest
11 rate.

12 “(B) The principal and interest payments
13 on each loan shall commence not later than 1
14 year after the loan was awarded, and each loan
15 shall be fully amortized not later than 10 years
16 after the date of the loan.

17 “(C) The State loan fund shall be credited
18 with all payments of principal and interest on
19 each loan awarded from the fund.

20 “(2) To guarantee, or purchase insurance for,
21 a local obligation (all of the proceeds of which fi-
22 nance a project eligible for assistance under this sec-
23 tion) if the guarantee or purchase would improve
24 credit market access or reduce the interest rate ap-
25 plicable to the obligation involved.

1 “(3) As a source of revenue or security for the
2 payment of principal and interest on revenue or gen-
3 eral obligation bonds issued by the State if the pro-
4 ceeds of the sale of the bonds will be deposited into
5 the State loan fund.

6 “(4) To earn interest on the amounts deposited
7 into the State loan fund.

8 “(g) ADMINISTRATION OF STATE LOAN FUNDS.—

9 “(1) COMBINED FINANCIAL ADMINISTRATION.—

10 A State may (as a convenience and to avoid unnec-
11 essary administrative costs) combine, in accordance
12 with State law, the financial administration of a
13 State loan fund established under this section with
14 the financial administration of any other revolving
15 fund established by the State if otherwise not pro-
16 hibited by the law under which the State loan fund
17 was established.

18 “(2) COST OF ADMINISTERING FUND.—Each
19 State may annually use not to exceed 4 percent of
20 the funds provided to the State under a grant under
21 this section to pay the reasonable costs of the ad-
22 ministration of the programs under this section, in-
23 cluding the recovery of reasonable costs expended to
24 establish a State loan fund which are incurred after
25 the date of enactment of this title.

1 “(3) GUIDANCE AND REGULATIONS.—The Sec-
2 retary shall publish guidance and promulgate regula-
3 tions as may be necessary to carry out the provisions
4 of this section, including—

5 “(A) provisions to ensure that each State
6 commits and expends funds allotted to the
7 State under this section as efficiently as pos-
8 sible in accordance with this title and applicable
9 State laws; and

10 “(B) guidance to prevent waste, fraud, and
11 abuse.

12 “(4) PRIVATE SECTOR CONTRIBUTIONS.—

13 “(A) IN GENERAL.—A State loan fund es-
14 tablished under this section may accept con-
15 tributions from private sector entities, except
16 that such entities may not specify the recipient
17 or recipients of any loan issued under this sec-
18 tion.

19 “(B) AVAILABILITY OF INFORMATION.—A
20 State shall make publically available the iden-
21 tity of, and amount contributed by, any private
22 sector entity under subparagraph (A) and may
23 issue letters of commendation or make other
24 awards (that have no financial value) to any
25 such entity.

1 “(5) RESERVATION OF AMOUNTS.—A State
2 may reserve not to exceed 40 percent of amounts in
3 the State loan fund to issue loans to recipients who
4 serve medically underserved areas.

5 “(h) MATCHING REQUIREMENTS.—

6 “(1) IN GENERAL.—The Secretary may not
7 make a grant under subsection (a) to a State unless
8 the State agrees to make available (directly or
9 through donations from public or private entities)
10 non-Federal contributions in cash toward the costs
11 of the State program to be implemented under the
12 grant in an amount equal to not less than \$1 for
13 each \$1 of Federal funds provided under the grant.

14 “(2) DETERMINATION OF AMOUNT OF NON-
15 FEDERAL CONTRIBUTION.—In determining the
16 amount of non-Federal contributions that a State
17 has provided pursuant to paragraph (1), the Sec-
18 retary may not include any amounts provided to the
19 State by the Federal Government.

20 “(i) PREFERENCE IN AWARDING GRANTS.—The Sec-
21 retary may give a preference in awarding grants under
22 this section to States that adopt value-based purchasing
23 programs to improve healthcare quality.

24 “(j) REPORTS.—The Secretary shall annually submit
25 to the Committee on Health, Education, Labor, and Pen-

1 sions and the Committee on Finance of the Senate, and
2 the Committee on Energy and Commerce and the Com-
3 mittee on Ways and Means of the House of Representa-
4 tives, a report summarizing the reports received by the
5 Secretary from each State that receives a grant under this
6 section.

7 “(k) AUTHORIZATION OF APPROPRIATIONS.—

8 “(1) IN GENERAL.—For the purpose of making
9 grants under subsection (a), there is authorized to
10 be appropriated \$50,000,000 for fiscal year 2006,
11 \$100,000,000 for fiscal year 2007, and such sums
12 as may be necessary for each of fiscal years 2008
13 through 2010.

14 “(l) AVAILABILITY.—Amounts appropriated under
15 paragraph (1) shall remain available through fiscal year
16 2010.

17 **“SEC. 2908. DEMONSTRATION PROGRAM TO INTEGRATE IN-**
18 **FORMATION TECHNOLOGY INTO CLINICAL**
19 **EDUCATION.**

20 “(a) IN GENERAL.—The Secretary may award grants
21 under this section to carry out demonstration projects to
22 develop academic programs integrating qualified health in-
23 formation technology systems in the clinical education of
24 health professionals. Such awards shall be made on a com-
25 petitive basis and pursuant to peer review.

1 “(b) ELIGIBILITY.—To be eligible to receive a grant
2 under subsection (a), an entity shall—

3 “(1) submit to the Secretary an application at
4 such time, in such manner, and containing such in-
5 formation as the Secretary may require;

6 “(2) submit to the Secretary a strategic plan
7 for integrating qualified health information tech-
8 nology in the clinical education of health profes-
9 sionals and for ensuring the consistent utilization of
10 decision support software to reduce medical errors
11 and enhance healthcare quality;

12 “(3) be—

13 “(A) a health professions school; or

14 “(B) an academic health center;

15 “(4) provide for the collection of data regarding
16 the effectiveness of the demonstration project to be
17 funded under the grant in improving the safety of
18 patients, the efficiency of health care delivery, and
19 in increasing the likelihood that graduates of the
20 grantee will adopt and incorporate health informa-
21 tion technology in the delivery of health care serv-
22 ices; and

23 “(5) provide matching funds in accordance with
24 subsection (c).

25 “(c) MATCHING FUNDS.—

1 “(1) IN GENERAL.—The Secretary may award
2 a grant to an entity under this section only if the
3 entity agrees to make available non-Federal con-
4 tributions toward the costs of the program to be
5 funded under the grant in an amount that is not
6 less than \$1 for each \$2 of Federal funds provided
7 under the grant.

8 “(2) DETERMINATION OF AMOUNT CONTRIB-
9 UTED.—Non-Federal contributions under paragraph
10 (1) may be in cash or in kind, fairly evaluated, in-
11 cluding equipment or services. Amounts provided by
12 the Federal Government, or services assisted or sub-
13 sidized to any significant extent by the Federal Gov-
14 ernment, may not be included in determining the
15 amount of such contributions.

16 “(d) PREFERENCE IN AWARDING GRANTS.—In
17 awarding grants under subsection (a), the Secretary shall
18 give preference to applicants that—

19 “(1) will use grant funds in collaboration with
20 2 or more disciplines; and

21 “(2) will use grant funds to integrate qualified
22 health information technology into community-based
23 clinical education experiences.

24 “(e) EVALUATION.—The Secretary shall take such
25 action as may be necessary to evaluate the projects funded

1 under this section and publish, make available, and dis-
2 seminate the results of such evaluations on as wide a basis
3 as is practicable.

4 “(f) REPORTS.—Not later than 1 year after the date
5 of enactment of this title, and annually thereafter, the Sec-
6 retary shall submit to the Committee on Health, Edu-
7 cation, Labor, and Pensions and the Committee on Fi-
8 nance of the Senate, and the Committee on Energy and
9 Commerce and the Committee on Ways and Means of the
10 House of Representatives a report that—

11 “(1) describes the specific projects established
12 under this section; and

13 “(2) contains recommendations for Congress
14 based on the evaluation conducted under subsection
15 (e).

16 “(g) LIMITATION.—Not more than 10 percent of
17 amounts received under a grant awarded under this sec-
18 tion may be used for administrative expenses.

19 “(h) AUTHORIZATION OF APPROPRIATIONS.—There
20 is authorized to be appropriated to carry out this section,
21 such sums as may be necessary for fiscal year 2006,
22 \$5,000,000 for fiscal year 2007, and such sums as may
23 be necessary for each of fiscal years 2008 through 2010.

24 “(i) SUNSET.—This section shall not apply after Sep-
25 tember 30, 2008.

1 **“SEC. 2909. QUALITY MEASUREMENT SYSTEMS.**

2 “(a) IN GENERAL.—The Secretary shall develop
3 quality measurement systems for the purposes of meas-
4 uring the quality of care patients receive.

5 “(b) REQUIREMENTS.—The Secretary shall ensure
6 that the quality measurement systems developed under
7 subsection (a) comply with the following:

8 “(1) MEASURES.—

9 “(A) IN GENERAL.—Subject to subpara-
10 graph (B), the Secretary shall select measures
11 of quality to be used by the Secretary under the
12 systems.

13 “(B) REQUIREMENTS.—In selecting the
14 measures to be used under each system pursu-
15 ant to subparagraph (A), the Secretary shall, to
16 the extent feasible, ensure that—

17 “(i) such measures are evidence
18 based, reliable and valid, and feasible to
19 collect and report;

20 “(ii) such measures include measures
21 of process, structure, beneficiary experi-
22 ence, efficiency, and equity;

23 “(iii) such measures include measures
24 of overuse, underuse, and misuse of
25 healthcare items and services; and

26 “(iv) such measures include—

1 “(I) with respect to the initial
2 year in which such measures are used,
3 one or more elements of a qualified
4 health information technology system
5 as defined in section 2901; and

6 “(II) with respect to subsequent
7 years, additional elements of qualified
8 health information technology systems
9 as defined in section 2901.

10 “(2) WEIGHTS OF MEASURES.—The Secretary
11 shall assign weights to the measures used by the
12 Secretary under each system established under sub-
13 section (a).

14 “(3) MAINTENANCE.—The Secretary shall, as
15 determined appropriate, but in no case more often
16 than once during each 12-month period, update the
17 quality measurement systems developed under sub-
18 section (a), including through—

19 “(A) the addition of more accurate and
20 precise measures under the systems and the re-
21 tirement of existing outdated measures under
22 the systems; and

23 “(B) the refinement of the weights as-
24 signed to measures under the systems.

1 “(c) REQUIRED CONSIDERATIONS IN DEVELOPING
2 AND UPDATING THE SYSTEMS.—In developing and updat-
3 ing the quality measurement systems under this section,
4 the Secretary shall—

5 “(1) consult with, and take into account the
6 recommendations of, the entity that the Secretary
7 has an arrangement with under subsection (e);

8 “(2) consult with provider-based groups and
9 clinical specialty societies; and

10 “(3) take into account—

11 “(A) the demonstrations required under
12 this Act;

13 “(B) the demonstration program under
14 section 1866A of the Social Security Act;

15 “(C) the demonstration program under
16 section 1866C of such Act;

17 “(D) any other demonstration or pilot pro-
18 gram conducted by the Secretary relating to
19 measuring and rewarding quality and efficiency
20 of care; and

21 “(E) the report by the Institute of Medi-
22 cine of the National Academy of Sciences under
23 section 238(b) of the Medicare Prescription
24 Drug, Improvement, and Modernization Act of
25 2003.

1 “(d) REQUIRED CONSIDERATIONS IN IMPLEMENTING
2 THE SYSTEMS.—In implementing the quality measure-
3 ment systems under this section, the Secretary shall take
4 into account the recommendations of public-private enti-
5 ties—

6 “(1) that are established to examine issues of
7 data collection and reporting, including the feasi-
8 bility of collecting and reporting data on measures;
9 and

10 “(2) that involve representatives of health care
11 providers, consumers, employers, and other individ-
12 uals and groups that are interested in quality of
13 care.

14 “(e) ARRANGEMENT WITH AN ENTITY TO PROVIDE
15 ADVICE AND RECOMMENDATIONS.—

16 “(1) ARRANGEMENT.—On and after July 1,
17 2006, the Secretary shall have in place an arrange-
18 ment with an entity that meets the requirements de-
19 scribed in paragraph (2) under which such entity
20 provides the Secretary with advice on, and rec-
21 ommendations with respect to, the development and
22 updating of the quality measurement systems under
23 this section, including the assigning of weights to
24 the measures under subsection (b)(2).

1 “(2) REQUIREMENTS DESCRIBED.—The re-
2 quirements described in this paragraph are the fol-
3 lowing:

4 “(A) The entity is a private nonprofit enti-
5 ty governed by an executive director and a
6 board.

7 “(B) The members of the entity include
8 representatives of—

9 “(i)(I) health plans and providers re-
10 ceiving reimbursement under this title for
11 the provision of items and services, includ-
12 ing health plans and providers with experi-
13 ence in the care of frail elderly and individ-
14 uals with multiple complex chronic condi-
15 tions; or

16 “(II) groups representing such health
17 plans and providers;

18 “(ii) groups representing individuals
19 entitled to benefits under part A of title
20 XVIII of the Social Security Act or en-
21 rolled under part B of such title;

22 “(iii) purchasers and employers or
23 groups representing purchasers or employ-
24 ers;

1 “(iv) organizations that focus on qual-
2 ity improvement as well as the measure-
3 ment and reporting of quality measures;

4 “(v) State government health pro-
5 grams;

6 “(vi) individuals skilled in the conduct
7 and interpretation of biomedical, health
8 services, and health economics research
9 and with expertise in outcomes and effec-
10 tiveness research and technology assess-
11 ment; and

12 “(vii) individuals or entities involved
13 in the development and establishment of
14 standards and certification for health in-
15 formation technology systems and clinical
16 data.

17 “(C) The membership of the entity is rep-
18 resentative of individuals with experience with
19 urban health care issues and individuals with
20 experience with rural and frontier health care
21 issues.

22 “(D) The entity does not charge a fee for
23 membership for participation in the work of the
24 entity related to the arrangement with the Sec-
25 retary under paragraph (1). If the entity does

1 require a fee for membership for participation
2 in other functions of the entity, there shall be
3 no linkage between such fee and participation
4 in the work of the entity related to such ar-
5 rangement with the Secretary.

6 “(E) The entity—

7 “(i) permits any member described in
8 subparagraph (B) to vote on matters of
9 the entity related to the arrangement with
10 the Secretary under paragraph (1); and

11 “(ii) ensures that such members have
12 an equal vote on such matters.

13 “(F) With respect to matters related to the
14 arrangement with the Secretary under para-
15 graph (1), the entity conducts its business in an
16 open and transparent manner and provides the
17 opportunity for public comment.

18 “(G) The entity operates as a voluntary
19 consensus standards setting organization as de-
20 fined for purposes of section 12(d) of the Na-
21 tional Technology Transfer and Advancement
22 Act of 1995 (Public Law 104–113) and Office
23 of Management and Budget Revised Circular
24 A–119 (published in the Federal Register on
25 February 10, 1998).

1 **“SEC. 2910. APPLICABILITY OF PRIVACY AND SECURITY**
2 **REGULATIONS.**

3 “The regulations promulgated by the Secretary under
4 part C of title XI of the Social Security Act and sections
5 261, 262, 263, and 264 of the Health Insurance Port-
6 ability and Accountability Act of 1996 with respect to the
7 privacy, confidentiality, and security of health information
8 shall—

9 “(1) apply to any health information stored or
10 transmitted in an electronic format on or after the
11 date of enactment of this title; and

12 “(2) apply to the implementation of standards,
13 programs, and activities under this title.

14 **“SEC. 2911. STUDY OF REIMBURSEMENT INCENTIVES.**

15 “The Secretary shall carry out, or contract with a
16 private entity to carry out, a study that examines methods
17 to create efficient reimbursement incentives for improving
18 healthcare quality in community health centers and other
19 federally qualified health centers, rural health clinics, free
20 clinics, and other programs reimbursed primarily on a cost
21 basis deemed appropriate by the Secretary.”.

22 **SEC. 3. CENTER FOR BEST PRACTICES.**

23 Section 914 of the Public Health Service Act (42
24 U.S.C. 299b–3) is amended by adding at the end the fol-
25 lowing:

26 “(d) CENTER FOR BEST PRACTICES.—

1 “(1) IN GENERAL.—The Secretary, acting
2 through the Director, shall develop a Center for Best
3 Practices to provide technical assistance and develop
4 best practices to support and accelerate the efforts
5 of States and healthcare providers to adopt, imple-
6 ment, and effectively use health information tech-
7 nology.

8 “(2) CENTER FOR BEST PRACTICES.—

9 “(A) IN GENERAL.—In carrying out para-
10 graph (1), the Director shall establish a vol-
11 untary Center for Best Practices (referred to in
12 this subsection as the ‘Center’) for States and
13 healthcare stakeholders seeking to facilitate mu-
14 tual learning and accelerate the pace of innova-
15 tion in, and implementation of, health informa-
16 tion technology. The Center shall support ac-
17 tivities to meet goals, including—

18 “(i) providing for the widespread
19 adoption of interoperable health informa-
20 tion technology;

21 “(ii) providing for the establishment
22 of regional and local health information
23 networks to facilitate the development of
24 interoperability across healthcare settings;

1 “(iii) the development of solutions to
2 barriers to the exchange of electronic
3 health information; or

4 “(iv) other activities identified by the
5 States or health care stakeholders as a
6 focus for developing and sharing best prac-
7 tices.

8 “(B) PURPOSES.—The purpose of the Cen-
9 ter is to—

10 “(i) provide a forum for the exchange
11 of knowledge and experience;

12 “(ii) accelerate the transfer of lessons
13 learned from existing public and private
14 sector initiatives, including those currently
15 receiving Federal financial support;

16 “(iii) assemble, analyze, and widely
17 disseminate evidence and experience re-
18 lated to the adoption, implementation, and
19 effective use of health information tech-
20 nology;

21 “(iv) assure the timely provision of
22 technical and expert assistance from the
23 Agency and its contractors;

24 “(v) accelerate the pace of health in-
25 formation technology innovation; and

1 “(vi) provide technical assistance to
2 entities developing applications for dem-
3 onstration grants under subsection (b).

4 “(C) SUPPORT FOR ACTIVITIES.—To pro-
5 vide support for the activities of the Center, the
6 Director shall—

7 “(i) modify the requirements, if nec-
8 essary, that apply to the National Re-
9 source Center for Health Information
10 Technology to provide the necessary infra-
11 structure to support the duties and activi-
12 ties of the Network and facilitate informa-
13 tion exchange across the public and private
14 sectors;

15 “(ii) expand the Agency’s focus on the
16 adoption, implementation, and effective use
17 of health information technology through
18 the development of practical implementa-
19 tion guidance based upon existing knowl-
20 edge and support for rapid-cycle implemen-
21 tation research to address questions for
22 which existing knowledge is insufficient;
23 and

24 “(iii) develop the capacity to identify
25 and widely share in a timely manner inno-

1 vative approaches to advancing health in-
2 formation technology and its ultimate goal,
3 the improvement of the quality, safety, and
4 efficiency of health care.

5 “(3) TECHNICAL ASSISTANCE TELEPHONE
6 NUMBER OR WEBSITE.—The Secretary shall estab-
7 lish a toll-free telephone number or Internet website
8 to provide healthcare providers with a single point of
9 contact to—

10 “(A) learn about Federal grants and tech-
11 nical assistance services related to health infor-
12 mation technology;

13 “(B) learn about qualified health informa-
14 tion software that has been certified to be in
15 compliance with the standards adopted by the
16 Federal Government under section 2904 and is
17 available for commercial use;

18 “(C) receive referrals to regional and local
19 health information networks for assistance with
20 health information technology;

21 “(D) provide information regarding—

22 “(i) the electronic submission of
23 health data collected by Federal agencies;
24 and

1 “(ii) the uniform and consistent im-
2 plementation of standards; and

3 “(E) disseminate additional information
4 determined by the Secretary to be helpful to
5 such providers.

6 “(4) AUTHORIZATION OF APPROPRIATIONS.—
7 There are authorized to be appropriated to carry out
8 this subsection, such sums as may be necessary for
9 each of fiscal years 2006 through 2010.”.

10 **SEC. 4. HEALTH INFORMATION NETWORK DEMONSTRATION PROGRAM.**
11

12 Section 914 of the Public Health Service Act (42
13 U.S.C. 299b–3), as amended by subsection (b), is further
14 amended by adding at the end the following:

15 “(e) HEALTH INFORMATION NETWORK DEMONSTRATION PROGRAM.—
16

17 “(1) IN GENERAL.—The Director may establish
18 a demonstration program under which grants or
19 contracts shall be awarded to support health information network planning, implementation, and evaluation activities.
20
21

22 “(2) ELIGIBILITY.—To be eligible to receive a
23 grant or contract under the demonstration program
24 under paragraph (1), an entity shall—

1 “(A) submit to the Director an application
2 at such time, in such manner, and containing
3 such information as the Director may require;

4 “(B) submit to the Director a strategic
5 plan for the implementation of data sharing
6 and interoperability measures across the various
7 health care settings within the proposed net-
8 work;

9 “(C) be a public or nonprofit private entity
10 that is or represents a network or potential net-
11 work that includes healthcare providers and
12 group health plans in a defined area of geo-
13 graphic proximity or organizational affinity,
14 and that may include for profit entities so long
15 as such an entity is not the grantee;

16 “(D) demonstrate, where appropriate, the
17 involvement and commitment of the appropriate
18 State or States;

19 “(E) specify a defined area of geographic
20 proximity or organizational affinity that the
21 health information network will encompass;

22 “(F) demonstrate active participation in
23 the best practice network described in sub-
24 section (d);

1 “(G) demonstrate compliance with the data
2 standards and technical policies adopted by the
3 Federal Government under section 2904(e);

4 “(H) submit to the Secretary a report on
5 the degree to which such entity has achieved
6 the measures under section 2909;

7 “(I) demonstrate financial need; and

8 “(J) agree to provide matching funds in
9 accordance with paragraph (4).

10 “(3) USE OF FUNDS.—

11 “(A) IN GENERAL.—Amounts received
12 under a grant under this subsection shall be
13 used to establish and implement a regional or
14 local health information network.

15 “(B) LIMITATION.—Amounts received
16 under a grant under this subsection may not be
17 used to purchase a health information tech-
18 nology system that is not a qualified health in-
19 formation technology system.

20 “(4) MATCHING REQUIREMENT.—To be eligible
21 to receive a grant or contract under this subsection
22 an entity shall contribute non-Federal funds to the
23 costs of carrying out the activities for which the
24 grant or contract is awarded in an amount equal to

1 \$1 for each of \$2 of Federal funds, provided under
2 the grant.

3 “(5) AUTHORIZATION OF APPROPRIATIONS.—
4 There are authorized to be appropriated to carry out
5 this subsection, \$50,000,000 for fiscal year 2006,
6 \$70,000,000 for fiscal year 2007, and such sums as
7 may be necessary for each of fiscal years 2008
8 through 2010.”.

9 **SEC. 5. EXCEPTION TO FEDERAL ANTI-KICKBACK AND**
10 **STARK LAWS FOR THE PROVISION OF PER-**
11 **MITTED SUPPORT.**

12 (a) ANTI-KICKBACK.—Section 1128B(b) of the So-
13 cial Security Act (42 U.S.C. 1320a–7b(b)(3)) is amend-
14 ed—

15 (1) in paragraph (3)—

16 (A) in subparagraph (G), by striking
17 “and” at the end;

18 (B) in subparagraph (H), as added by sec-
19 tion 237(d) of the Medicare Prescription Drug,
20 Improvement, and Modernization Act of 2003
21 (Public Law 108–173; 117 Stat. 2213)—

22 (i) by moving such subparagraph 2
23 ems to the left; and

24 (ii) by striking the period at the end
25 and inserting a semicolon;

1 (C) by redesignating subparagraph (H), as
2 added by section 431(a) of the Medicare Pre-
3 scription Drug, Improvement, and Moderniza-
4 tion Act of 2003 (Public Law 108–173; 117
5 Stat. 2287), as subparagraph (I);

6 (D) in subparagraph (I), as so redesign-
7 nated—

8 (i) by moving such subparagraph 2
9 ems to the left; and

10 (ii) by striking the period at the end
11 and inserting “; and”; and

12 (E) by adding at the end the following
13 new:

14 “(J) during the 5-year period beginning on
15 the date the Secretary issues the interim final
16 rule under section 5(c)(1) of the Better
17 Healthcare Through Information Technology
18 Act, the provision, with or without charge, of
19 any permitted support (as defined in paragraph
20 (4)).”; and

21 (2) by adding at the end the following new
22 paragraph:

23 “(4) PERMITTED SUPPORT.—

24 “(A) DEFINITION OF PERMITTED SUP-
25 PORT.—Subject to subparagraph (B), in this

1 section, the term ‘permitted support’ means the
2 provision of any equipment, item, information,
3 right, license, intellectual property, software,
4 training, or service used for developing, imple-
5 menting, operating, or facilitating the use of
6 systems designed to improve the quality of
7 health care and to promote the electronic ex-
8 change of health information.

9 “(B) EXCEPTION.—The term ‘permitted
10 support’ shall not include the provision of—

11 “(i) any support that is determined in
12 a manner that is related to the volume or
13 value of any referrals or other business
14 generated between the parties for which
15 payment may be made in whole or in part
16 under a Federal health care program;

17 “(ii) any support that has more than
18 incidental utility or value to the recipient
19 beyond the exchange of health care infor-
20 mation; or

21 “(iii) any health information tech-
22 nology system, product, or service that is
23 not in compliance with data standards
24 adopted by the Federal Government under

1 section 2904 of the Public Health Service
2 Act.”.

3 (b) STARK.—Section 1877(e) of the Social Security
4 Act (42 U.S.C. 1395nn(e)) is amended by adding at the
5 end the following new paragraph:

6 “(9) PERMITTED SUPPORT.—During the 5-year
7 period beginning on the date the Secretary issues
8 the interim final rule under section 5(c)(1) of the
9 Better Healthcare Through Information Technology
10 Act, the provision, with or without charge, of any
11 permitted support (as defined in section
12 1128B(b)(4)).”.

13 (c) REGULATIONS.—In order to carry out the amend-
14 ments made by this section—

15 (1) the Secretary of Health and Human Serv-
16 ices shall issue an interim final rule with comment
17 period by not later than the date that is 180 days
18 after the date of enactment of this Act; and

19 (2) the Secretary shall issue a final rule by not
20 later than the date that is 180 days after the date
21 that the interim final rule under paragraph (1) is
22 issued.

○