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111TH CONGRESS
1ST SESSION

H. R. 1039

To encourage and enhance the adoption of interoperable health information technology to improve health care quality, reduce medical errors, and increase the efficiency of care.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 2009

Mr. SAM JOHNSON of Texas (for himself, Mr. BRADY of Texas, Ms. GINNY BROWN-WAITE of Florida, Mr. REICHERT, Mr. ROSKAM, and Mr. BOUSTANY) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To encourage and enhance the adoption of interoperable health information technology to improve health care quality, reduce medical errors, and increase the efficiency of care.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Promoting Health Information Technology Act of 2009''.

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

TITLE I—STRATEGIC PLAN TOWARDS NATIONWIDE INTEROPERABILITY

SEC. 101. OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY.

(a) ESTABLISHMENT.—There is established within the Department of Health and Human Services an Office of the National Coordinator for Health Information Technology that shall be headed by the National Coordinator for Health Information Technology (referred to in this

section as the ''National Coordinator''). The National Coordinator shall be appointed by the President and shall report directly to the Secretary of Health and Human Services. The National Coordinator shall be paid at a rate equal to the rate of basic pay for level IV of the Executive Schedule.

(b) GOALS OF NATIONWIDE INTEROPERABLE HEALTH INFORMATION TECHNOLOGY INFRASTRUCTURE.—The National Coordinator shall perform the duties under subsection (c) in a manner consistent with the development of a nationwide interoperable health information technology infrastructure that—

(1) improves health care quality, reduces medical errors, increases the efficiency of care, and advances the delivery of appropriate, evidence-based health care services;

(2) promotes wellness, disease prevention, and management of chronic illnesses by increasing the availability and transparency of information related to the health care needs of an individual for such individual;

(3) ensures that appropriate information necessary to make medical decisions is available in a usable form at the time and in the location that the medical service involved is provided;

(4) produces greater value for health care expenditures by reducing health care costs that result from inefficiency, medical errors, inappropriate care, and incomplete information;

(5) promotes a more effective marketplace, greater competition, greater systems analysis, increased choice, enhanced quality, and improved outcomes in health care services;

(6) improves the coordination of information and the provision of such services through an effective infrastructure for the secure and authorized exchange and use of health care information; and

(7) ensures that the confidentiality of individually identifiable health information of a patient is secure and protected.

(c) DUTIES OF NATIONAL COORDINATOR.—

(1) STRATEGIC PLANNER FOR INTEROPERABLE HEALTH INFORMATION TECHNOLOGY.—The National Coordinator shall maintain, direct, and oversee the continuous improvement of a strategic plan to guide the nationwide implementation of interoperable health information technology in both the public and private health care sectors consistent with subsection (b).

(2) PRINCIPAL ADVISOR TO HHS.—The National Coordinator shall serve as the principal advisor of the Secretary of Health and Human Services on the development, application, and use of health information technology, and coordinate the health information technology programs of the Department of Health and Human Services.

(3) COORDINATOR OF FEDERAL GOVERNMENT ACTIVITIES.—

(A) IN GENERAL.—The National Coordinator shall serve as the coordinator of Federal Government activities relating to health information technology.

(B) SPECIFIC COORDINATION FUNCTIONS.—In carrying out subparagraph (A), the National Coordinator shall provide for—

(i) the approval of standards developed and recommended by AHIC 2.0 under section 102 (which may include standards relating to the interoperability, privacy, and security of health information technology) to be used in the electronic creation, maintenance, or exchange of health information; and

(ii) the certification and inspection of health information technology products, exchanges, and architectures to ensure that such products, exchanges, and architectures conform to the applicable standards approved under clause (i).

Any standard approved or health information technology product, exchange, or architecture certified pursuant to Executive Order 13335 as of the day before the date of the enactment of this Act shall be deemed to be a standard approved or product, exchange, or architecture certified, respectively, pursuant to this subparagraph as of such date of enactment.

(C) USE OF PRIVATE ENTITIES.—The National Coordinator shall, to the maximum extent possible, contract with or recognize private entities in carrying out subparagraph (B).

(D) UNIFORM APPLICATION OF STANDARDS.—A standard approved under subparagraph (B)(i) for use in the electronic creation, maintenance, or exchange of health information shall preempt a standard adopted under State law, regulation, or rule for such a use.

(4) INTRAGOVERNMENTAL COORDINATOR.—The National Coordinator shall ensure that health information technology policies and programs of the Department of Health and Human Services are coordinated with those of relevant executive branch agencies and departments with a goal to avoid duplication of effort and to ensure that each agency or department conducts programs within the areas of its greatest expertise and its mission in order to create a national interoperable health information system capable of meeting national public health needs effectively and efficiently.

(5) ADVISOR TO OMB.—The National Coordinator shall provide to the Director of the Office of Management and Budget comments and advice with respect to specific Federal health information technology programs.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section for each of fiscal years 2009 through 2013.

(e) TREATMENT OF EXECUTIVE ORDER 13335.—Executive Order 13335 shall not have any force or effect after the date of the enactment of this Act.

(f) TRANSITION FROM ONCHIT UNDER EXECUTIVE ORDER.—

(1) IN GENERAL.—All functions, personnel, assets, liabilities, administrative actions, and statutory reporting requirements applicable to the old National Coordinator or the Office of the old National Coordinator on the date before the date of the enactment of this Act shall be transferred, and applied in the same manner and under the same terms and conditions, to the new National Coordinator and the Office of the new National Coordinator as of the date of the enactment of this Act.

(2) ACTING NATIONAL COORDINATOR.—Before the appointment of the new National Coordinator, the old National Coordinator shall act as the National Coordinator for Health Information Technology until the office is filled as provided in subsection (a). The President may appoint the old National Coordinator as the new National Coordinator.

(3) DEFINITIONS.—For purposes of this subsection:

(A) NEW NATIONAL COORDINATOR.—The term ''new National Coordinator'' means the National Coordinator for Health Information Technology appointed under subsection (a).

(B) OLD NATIONAL COORDINATOR.—The term ''old National Coordinator'' means the National Coordinator for Health Information Technology appointed under Executive Order 13335.

SEC. 102. SUCCESSOR TO THE AMERICAN HEALTH INFORMATION COMMUNITY.

(a) IN GENERAL.—The Secretary of Health and Human Services shall (through a grant, contract, or cooperative agreement) ensure the establishment and provide for the operation of an entity described in subsection (b) (in this Act to be referred to as ''AHIC 2.0'') for purposes of developing and recommending standards described in section 101(c)(3)(B)(i) for approval under such section.

(b) STRUCTURE AND PROCEDURES OF ENTITY.—An entity described in this subsection is an entity—

(1) in the operation of which there is broad participation by a variety of public and private stakeholders, (whether through membership or through other means);

(2) that uses a consensus approach and a fair and open process to support the development of standards under subsection (a); and

(3) that has a business plan and a published set of governance rules that enables the entity to be

self-sustaining and to fulfill the purposes described in subsection (a).

(c) CONSULTATION.—In establishing AHIC 2.0, the entity awarded a grant, contract, or cooperative agreement pursuant to subsection (a), shall consult with a wide variety of private and public stakeholders that are knowledgeable with respect to standards to be developed by AHIC 2.0 or that would be potentially affected by the recommendations of AHIC 2.0.

(d) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $13,000,000, to remain available until expended.

(2) FURTHER FEDERAL FUNDING OTHER THAN DUES PROHIBITED.—Except as otherwise provided by this subsection, and except for such dues as may be paid by a Federal agency for membership or other participation in AHIC 2.0, no Federal agency may provide funding to the entity. There are authorized to be appropriated to such agencies such amounts as are necessary to pay the dues described in the previous sentence.

(e) NONDUPLICATION OF EFFORTS TO ESTABLISH AHIC 2.0.—Nothing in this section shall be construed as

requiring the duplication of Federal efforts (such as awarding a grant, contract, or cooperative agreement) that were carried out before the date of the enactment of this Act, with respect to the establishment of an entity to support the development and recommendation of standards under subsection (a).

(f) TREATMENT OF STANDARDS DEVELOPED OR APPROVED BY AHIC.—For purposes of this title, a standard developed or approved (or in a stage of development or approval) by the American Health Information Community established pursuant to Executive Order 13335 (or the AHIC Successor, Inc. doing business as the National eHealth Collaborative) as of the day before the date of the enactment of this Act shall be deemed to be a standard developed or approved, respectively, (or in such stage of development or approval) by AHIC 2.0 as of such date of enactment.

SEC. 103. HEALTH INFORMATION TECHNOLOGY RESOURCE CENTER.

(a) IN GENERAL.—There is established within the Office of the National Coordinator for Health Information Technology the Health Information Technology Resource Center (referred to in this section as the ''Center'') to carry out the following functions:

(1) Provide assistance and support for adoption and implementation efforts and effective use of interoperable health information technology.

(2) Serve as a forum for the exchange of knowledge and experience.

(3) Accelerate the transmission of knowledge from existing health information initiatives in both the private and public sectors.

(4) Support the establishment of regional and local health information networks to facilitate the interoperability of health care data across health care settings.

(5) Develop solutions to barriers to electronic health information exchange.

(6) Provide technical assistance and tools to help health information exchanges develop a path toward financial sustainability.

(7) Establish a longitudinal database to measure the business sustainability of health information exchange and evaluate the impact of health information exchange on community health outcomes and value.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require the duplication of Federal efforts with respect to the establishment of the Cen-

ter, regardless of whether such efforts were carried out prior to or after the enactment of this subsection.

(c) TRANSITION FROM NATIONAL RESOURCE CENTER FOR HEALTH INFORMATION TECHNOLOGY UNDER AHRQ.—All functions, personnel, assets, and liabilities applicable to the National Resource Center for Health Information Technology under the Agency for Healthcare Research and Quality as of the day before the date of the enactment of this Act shall be transferred, and applied in the same manner and under the same terms and conditions, to the Health Information Technology Resource Center under the Office of the National Coordinator for Health Information Technology established under subsection (a) as of the date of the enactment of this Act.

SEC. 104. STRATEGIC PLAN FOR COORDINATING IMPLEMENTATION OF HEALTH INFORMATION TECHNOLOGY.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services, in consultation with entities involved in the area of health information technology, shall develop a strategic plan related to the need for coordination in such area.

(b) COORDINATION OF SPECIFIC IMPLEMENTATION PROCESSES.—The strategic plan under subsection (a)

shall address the need for coordination in the implementation of the following:

(1) HEALTH INFORMATION TECHNOLOGY STANDARDS.—Health information technology standards approved under section 101(c)(3)(B)(i).

(2) HIPAA TRANSACTION STANDARDS.—Transaction standards under section 1173(a) of the Social Security Act (42 U.S.C. 1320d–2(d)).

(c) COORDINATION AMONG SPECIFIC FEDERAL ENTITIES.—The strategic plan under subsection (a) shall address any methods to coordinate, with respect to the electronic exchange of health information, actions taken by the following entities:

(1) The Office of the National Coordinator for Health Information Technology.

(2) AHIC 2.0 established under section 102.

(3) The Office of Electronic Standards and Security of the Centers for Medicare and Medicaid Services.

(4) The National Committee on Vital Health Statistics.

(5) Any other entity involved in the electronic exchange of health information that the Secretary determines appropriate.

TITLE II—MODERNIZING THE HEALTH CARE DELIVERY SYSTEM

SEC. 201. PROCEDURES TO ENSURE TIMELY UPDATING OF STANDARDS THAT ENABLE ELECTRONIC EXCHANGES.

Section 1174(b) of the Social Security Act (42 U.S.C. 1320d–3(b)) is amended—

(1) in paragraph (1)—

(A) in the first sentence, by inserting ''and in accordance with paragraph (3)'' before the period; and

(B) by adding at the end the following new sentence: ''For purposes of this subsection and section 1173(c)(2), the term 'modification' includes a new version or a version upgrade.''; and

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

''(3) EXPEDITED PROCEDURES FOR ADOPTION OF ADDITIONS AND MODIFICATIONS TO STANDARDS.—

''(A) IN GENERAL.—For purposes of paragraph (1), the Secretary shall provide for an expedited upgrade program (in this paragraph re-

ferred to as the 'upgrade program'), in accordance with this paragraph, to develop and approve additions and modifications to the standards adopted under section 1173(a) to improve the quality of such standards or to extend the functionality of such standards to meet evolving requirements in health care.

"(B) PUBLICATION OF NOTICES.—Under the upgrade program:

"(i) VOLUNTARY NOTICE OF INITIATION OF PROCESS.—Not later than 30 days after the date the Secretary receives a notice from a standard setting organization that the organization is initiating a process to develop an addition or modification to a standard adopted under section 1173(a), the Secretary shall publish a notice in the Federal Register that—

"(I) identifies the subject matter of the addition or modification;

"(II) provides a description of how persons may participate in the development process; and

"(III) invites public participation in such process.

"(ii) VOLUNTARY NOTICE OF PRELIMINARY DRAFT OF ADDITIONS OR MODIFICATIONS TO STANDARDS.—Not later than 30 days after the date the Secretary receives a notice from a standard setting organization that the organization has prepared a preliminary draft of an addition or modification to a standard adopted by section 1173(a), the Secretary shall publish a notice in the Federal Register that—

"(I) identifies the subject matter of (and summarizes) the addition or modification;

"(II) specifies the procedure for obtaining the draft;

"(III) provides a description of how persons may submit comments in writing and at any public hearing or meeting held by the organization on the addition or modification; and

"(IV) invites submission of such comments and participation in such hearing or meeting without requiring the public to pay a fee to participate.

"(iii) NOTICE OF PROPOSED ADDITION OR MODIFICATION TO STANDARDS.—Not later than 30 days after the date the Secretary receives a notice from a standard setting organization that the organization has a proposed addition or modification to a standard adopted under section 1173(a) that the organization intends to submit under subparagraph (D)(iii), the Secretary shall publish a notice in the Federal Register that contains, with respect to the proposed addition or modification, the information required in the notice under clause (ii) with respect to the addition or modification.

"(iv) CONSTRUCTION.—Nothing in this paragraph shall be construed as requiring a standard setting organization to request the notices described in clauses (i) and (ii) with respect to an addition or modification to a standard in order to qualify for an expedited determination under subparagraph (C) with respect to a proposal submitted to the Secretary for adoption of such addition or modification.

"(C) PROVISION OF EXPEDITED DETERMINATION.—Under the upgrade program and with respect to a proposal by a standard setting organization for an addition or modification to a standard adopted under section 1173(a), if the Secretary determines that the standard setting organization developed such addition or modification in accordance with the requirements of subparagraph (D) and the National Committee on Vital and Health Statistics recommends approval of such addition or modification under subparagraph (E), the Secretary shall provide for expedited treatment of such proposal in accordance with subparagraph (F).

"(D) REQUIREMENTS.—The requirements under this subparagraph with respect to a proposed addition or modification to a standard by a standard setting organization are the following:

"(i) REQUEST FOR PUBLICATION OF NOTICE.—The standard setting organization submits to the Secretary a request for publication in the Federal Register of a notice described in subparagraph (B)(iii) for the proposed addition or modification.

"(ii) PROCESS FOR RECEIPT AND CONSIDERATION OF PUBLIC COMMENT.—The standard setting organization provides for a process through which, after the publication of the notice referred to under clause (i), the organization—

"(I) receives and responds to public comments submitted on a timely basis on the proposed addition or modification before submitting such proposed addition or modification to the National Committee on Vital and Health Statistics under clause (iii);

"(II) makes publicly available a written explanation for its response in the proposed addition or modification to comments submitted on a timely basis; and

"(III) makes public comments received under clause (I) available, or provides access to such comments, to the Secretary.

"(iii) SUBMITTAL OF FINAL PROPOSED ADDITION OR MODIFICATION TO NCVHS.—After completion of the process

under clause (ii), the standard setting organization submits the proposed addition or modification to the National Committee on Vital and Health Statistics for review and consideration under subparagraph (E). Such submission shall include information on the organization's compliance with the notice and comment requirements (and responses to those comments) under clause (ii).

"(E) HEARING AND RECOMMENDATIONS BY NATIONAL COMMITTEE ON VITAL AND HEALTH STATISTICS.—Under the upgrade program, upon receipt of a proposal submitted by a standard setting organization under subparagraph (D)(iii) for the adoption of an addition or modification to a standard, the National Committee on Vital and Health Statistics shall provide notice to the public and a reasonable opportunity for public testimony at a hearing on such addition or modification. The Secretary may participate in such hearing in such capacity (including presiding ex officio) as the Secretary shall determine appropriate. Not later than 90 days after the date of receipt of the

proposal, the Committee shall submit to the Secretary its recommendation to adopt (or not adopt) the proposed addition or modification.

"(F) DETERMINATION BY SECRETARY TO ACCEPT OR REJECT NATIONAL COMMITTEE ON VITAL AND HEALTH STATISTICS RECOMMENDATION.—

"(i) TIMELY DETERMINATION.—Under the upgrade program, if the National Committee on Vital and Health Statistics submits to the Secretary a recommendation under subparagraph (E) to adopt a proposed addition or modification, not later than 90 days after the date of receipt of such recommendation the Secretary shall make a determination to accept or reject the recommendation and shall publish notice of such determination in the Federal Register not later than 30 days after the date of the determination.

"(ii) CONTENTS OF NOTICE.—If the determination is to reject the recommendation, such notice shall include the reasons for the rejection. If the determination is to accept the recommendation, as part of

such notice the Secretary shall promulgate the modified standard (including the accepted proposed addition or modification accepted).

''(iii) LIMITATION ON CONSIDERATION.—The Secretary shall not consider a proposal under this subparagraph unless the Secretary determines that the requirements of subparagraph (D) (including publication of notice and opportunity for public comment) have been met with respect to the proposal.

''(G) EXEMPTION FROM PAPERWORK REDUCTION ACT.—Chapter 35 of title 44, United States Code, shall not apply to a final rule promulgated under subparagraph (F).''.

SEC. 202. FEDERAL PURCHASING AND DATA COLLECTION.

(a) COORDINATION OF FEDERAL SPENDING.—

(1) IN GENERAL.—Subject to section 203(c), not later than 1 year after the date of the approval of an applicable standard under section 101(c)(3)(B)(i), no Federal funds may be used for the purchase of any health information technology or health information technology system for clinical care or for the electronic retrieval, storage, or ex-

change of health information unless such technology or system has been certified under section 101(c)(3)(B)(ii) with respect to compliance with such standard.

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to restrict the purchase of minor (as determined by the Secretary) hardware or software components in order to modify, correct a deficiency in, or extend the life of existing hardware or software.

(b) COORDINATION OF FEDERAL DATA COLLECTION.—Subject to section 203(c), not later than 3 years after the date of the approval of an applicable standard under section 101(c)(3)(B)(i), all Federal agencies collecting health data in an electronic format for the purposes of quality reporting, surveillance, epidemiology, adverse event reporting, research, or for other purposes determined appropriate by the Secretary of Health and Human Services, shall comply with such standard.

SEC. 203. STUDY TO IMPROVE PRESERVATION AND PROTECTION OF SECURITY AND CONFIDENTIALITY OF HEALTH INFORMATION.

(a) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study of current Federal security and confidentiality standards to determine the

strengths and weaknesses of such standards for purposes of protecting the security and confidentiality of individually identifiable health information while taking into account the need for timely and efficient exchanges of health information to improve quality of care and ensure the availability of health information necessary to make medical decisions at the location in which the medical care involved is provided.

(b) REPORT.—Not later than 24 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the study under subsection (a) and shall include in such report recommendations for improving the current Federal security and confidentiality standards, including recommendations for a mechanism to track breaches to the security or confidentiality of individually identifiable health information and for appropriate penalties to apply in the case of such a breach.

(c) PRESERVATION OF CURRENT SECURITY AND CONFIDENTIALITY STANDARDS BEFORE SUBMITTAL OF REPORT.—None of the provisions of this Act or amendments made by this Act may limit, or require issuance of a regulation that would limit, the effect of a current Federal security and confidentiality standard before the date of the submittal of the report under subsection (b).

(d) CURRENT FEDERAL SECURITY AND CONFIDENTIALITY STANDARDS DEFINED.—For purposes of this section, the term ''current Federal security and confidentiality standards'' means the Federal privacy standards established pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note) and security standards established under section 1173(d) of the Social Security Act.

TITLE III—INCENTIVIZING ADOPTION OF HEALTH IT

SEC. 301. INCENTIVES FOR MEDICAL CARE PROVIDERS TO ADOPT HEALTH CARE INFORMATION TECHNOLOGY.

(a) IN GENERAL.—Subsection (b) of section 179 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(8) INCREASED LIMITATION FOR HEALTH CARE INFORMATION TECHNOLOGY.—

''(A) IN GENERAL.—In the case of a medical care provider for any taxable year beginning after December 31, 2008, and before January 1, 2014—

''(i) the dollar amount in effect under paragraph (1) shall be increased by the lesser of—

"(I) $250,000, or

"(II) the cost of qualified health care information technology placed in service by such provider during the taxable year, and

"(ii) the dollar amount in effect under paragraph (2) shall be increased by the lesser of—

"(I) $800,000, or

"(II) the cost of qualified health care information technology placed in service by such provider during the taxable year.

"(B) DEFINITIONS.—For purposes of this subsection—

"(i) QUALIFIED HEALTH CARE INFORMATION TECHNOLOGY.—The term 'qualified health care information technology' means section 179 property which—

"(I) has been certified pursuant to section 101(c)(3)(B)(ii) of the Promoting Health Information Technology Act of 2009, and

"(II) is used primarily for the electronic creation, maintenance, and

exchange of medical care information to improve the quality or efficiency of medical care.

''(ii) MEDICAL CARE PROVIDER.—The term 'medical care provider' means any person engaged in the trade or business of providing medical care.

''(iii) MEDICAL CARE.—The term 'medical care' has the meaning given such term by section 213(d).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2008.

SEC. 302. ELIMINATION OF SUNSET APPLICABLE TO STARK EXCEPTION FOR ELECTRONIC HEALTH RECORDS ARRANGEMENTS.

In applying section 1877(e) of the Social Security Act (42 U.S.C. 1395(e)), with respect to a regulation implementing such section by providing an exception to the prohibition against making certain physician referrals in the case of the offering or payment of nonmonetary remuneration (consisting of items and services in the form of software or information technology and training services) necessary and used predominantly to create, maintain, transmit, or receive electronic health records, the Secretary of

Health and Human Services shall not limit the period in which such an exception under such a regulation applies.

SEC. 303. PROMOTION OF TELEHEALTH SERVICES.

(a) FACILITATING THE PROVISION OF TELEHEALTH SERVICES ACROSS STATE LINES.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall, in coordination with physicians, health care practitioners, patient advocates, and representatives of States, encourage and facilitate the adoption of State reciprocity agreements for practitioner licensure in order to expedite the provision across State lines of telehealth services.

(2) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the actions taken to carry out paragraph (1).

(3) STATE DEFINED.—For purposes of this subsection, the term ''State'' has the meaning given that term for purposes of title XVIII of the Social Security Act.

(b) STUDY AND REPORT ON EXPANSION OF HOME HEALTH-RELATED TELEHEALTH SERVICES.—

(1) STUDY.—The Secretary of Health and Human Services shall conduct a study to determine the feasibility, advisability, and the costs of—

(A) including coverage and payment for home health-related telehealth services as part of home health services under title XVIII of the Social Security Act; and

(B) expanding the list of sites described in paragraph (4)(C)(ii) of section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)) to include county mental health clinics or other publicly funded mental health facilities for the purpose of payment under such section for the provision of telehealth services at such clinics or facilities.

(2) SPECIFICS OF STUDY.—Such study shall demonstrate whether the changes described in subparagraphs (A) and (B) of paragraph (1) are likely to result in the following:

(A) Enhanced health outcomes for individuals with one or more chronic conditions.

(B) Health outcomes for individuals furnished telehealth services or home health-related telehealth services that are at least comparable to the health outcomes for individuals

furnished similar items and services by a health care provider at the same location of the individual or at the home of the individual, respectively.

(C) Facilitation of communication of more accurate clinical information between health care providers.

(D) Closer monitoring of individuals by health care providers.

(E) Overall reduction in expenditures for health care items and services.

(F) Improved access to health care.

(3) HOME HEALTH-RELATED TELEHEALTH SERVICES DEFINED.—For purposes of this subsection, the term ''home health-related telehealth services'' means technology-based professional consultations, patient monitoring, patient training services, clinical observation, patient assessment, and any other health services that utilize telecommunications technologies. Such term does not include a telecommunication that consists solely of a telephone audio conversation, facsimile, electronic text mail, or consultation between two health care providers.

(4) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary

of Health and Human Services shall submit to Congress a report on the study conducted under paragraph (1) and shall include in such report such recommendations for legislation or administration action as the Secretary determines appropriate.

(c) STUDY AND REPORT ON STORE AND FORWARD TECHNOLOGY FOR TELEHEALTH.—

(1) STUDY.—The Secretary of Health and Human Services, acting through the Director of the Office for the Advancement of Telehealth, shall conduct a study on the use of store and forward technologies (that provide for the asynchronous transmission of health care information in single or multimedia formats) in the provision of telehealth services. Such study shall include an assessment of the feasibility, advisability, and the costs of expanding the use of such technologies for use in the diagnosis and treatment of certain health conditions, as specified by the Secretary.

(2) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the study conducted under paragraph (1) and shall include in such report such rec-

ommendations for legislation or administration action as the Secretary determines appropriate.

SEC. 304. FQHCS INCLUDED IN ELECTRONIC HEALTH RECORDS DEMONSTRATION.

Effective as of the date of the enactment of this Act, in developing and implementing a demonstration initiative to foster the implementation and adoption of electronic health records and health information technology, the Centers of Medicare & Medicaid Services shall provide for the eligibility of Federally qualified health centers (as defined in section 1861(aa)(4) of the Social Security Act (42 U.S.C. 1395x(aa)(4)) to participate in such demonstration.

SEC. 305. INTEREST-FREE LOAN PROGRAM FOR HOSPITALS TO ADOPT HEALTH INFORMATION TECHNOLOGY.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall establish a loan program that provides loans to hospitals to purchase and implement health information technology products certified pursuant to section 101(c)(3)(B)(ii).

(b) APPLICATION.—No loan may be provided under this section to a hospital except pursuant to an application that is submitted and approved in a time, manner, and

form specified by the Secretary. A loan under this section shall be on such terms and conditions and meet such requirements as the Secretary determines appropriate, in accordance with the provisions of this section.

(c) PERMISSIBLE USE OF LOAN FUNDS.—A loan provided under this section shall be used only for the purchase and implementation of health information technology products certified pursuant to section 1019c)(3)(B)(ii).

(d) PREFERENCE.—In making loans under this section, the Secretary shall give preference to any applicant for such a loan that is a hospital receiving a high amount of disproportionate share hospital payments under section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)).

(e) REPAYMENT OF LOANS.—The Secretary shall establish a schedule for the repayment of loans provided under this section.

(f) NO INTEREST CHARGED.—The Secretary shall not charge or collect interest on any loan made under this section.

(g) PENALTIES.—The Secretary shall establish penalties to which a hospital receiving a loan under this section would be subject if such hospital is in violation of

any of the terms, conditions, or requirements specified by the Secretary under subsection (b) or under this section.

(h) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—For purposes of carrying out this section, there are authorized to be appropriated such sums as may be necessary for fiscal year 2009 and each succeeding fiscal year.

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

(3) REPAID LOAN AMOUNTS.—Any amount repaid by, or recovered from, a hospital under this section shall be credited to the appropriation account from which the loan amount involved was originally paid. Any amount so credited shall be available only for the purpose of carrying out the loan program under this section.

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