

## Union Calendar No. 3

111TH CONGRESS  
1ST SESSION

# H. R. 629

**[Report No. 111-7, Part I]**

To provide energy and commerce provisions of the American Recovery and Reinvestment Act of 2009.

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### IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 2009

Mr. WAXMAN introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, Education and Labor, and Science and Technology, 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

JANUARY 26, 2009

Reported from the Committee on Energy and Commerce with an amendment  
[Strike out all after the enacting clause and insert the part printed in *italic*]

JANUARY 27, 2009

The Committees on Ways and Means, Education and Labor, and Science and Technology discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on January 22, 2009]

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## A BILL

To provide energy and commerce provisions of the American Recovery and Reinvestment Act of 2009.

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 “Energy and Commerce*  
 5 *Recovery and Reinvestment Act”.*

6 **SEC. 2. TABLE OF CONTENTS.**

7        *The table of contents of this Act is as follows:*

*Sec. 1. Short title.*

*Sec. 2. Table of contents.*

**TITLE I—BROADBAND COMMUNICATIONS**

*Sec. 1001. Inventory of Broadband Service Capability and Availability.*

*Sec. 1002. Wireless and Broadband Deployment Grant Programs.*

*Sec. 1003. National broadband plan.*

**TITLE II—ENERGY**

*Sec. 2001. Technical corrections to the Energy Independence and Security Act of 2007.*

*Sec. 2002. Amendments to title XIII of the Energy Independence and Security Act of 2007.*

*Sec. 2003. Renewable energy and electric power transmission loan guarantee program.*

*Sec. 2004. Weatherization Assistance Program amendments.*

*Sec. 2005. Renewable electricity transmission study.*

*Sec. 2006. Additional State energy grants.*

*Sec. 2007. Inapplicability of limitation.*

**TITLE III—HEALTH INSURANCE ASSISTANCE FOR THE  
 UNEMPLOYED**

*Sec. 3001. Short title and table of contents of title.*

*Sec. 3002. Premium assistance for COBRA benefits and extension of COBRA benefits for older or long-term employees.*

*Sec. 3003. Temporary optional Medicaid coverage for the unemployed.*

**TITLE IV—HEALTH INFORMATION TECHNOLOGY**

*Sec. 4001. Short title; table of contents of title.*

**Subtitle A—Promotion of Health Information Technology**

**PART 1—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY**

*Sec. 4101. ONCHIT; standards development and adoption.*

*Sec. 4102. Technical amendment.*

*Sec. 4103. American technology required.*

*PART 2—APPLICATION AND USE OF ADOPTED HEALTH INFORMATION  
TECHNOLOGY STANDARDS; REPORTS*

- Sec. 4111. Coordination of Federal activities with adopted standards and implementation specifications.*
- Sec. 4112. Application to private entities.*
- Sec. 4113. Study and reports.*

*Subtitle B—Testing of Health Information Technology*

- Sec. 4201. National Institute for Standards and Technology testing.*
- Sec. 4202. Research and development programs.*

*Subtitle C—Incentives for the Use of Health Information Technology*

*PART I—GRANTS AND LOANS FUNDING*

- Sec. 4301. Grant, loan, and demonstration programs.*

*PART II—MEDICARE PROGRAM*

- Sec. 4311. Incentives for eligible professionals.*
- Sec. 4312. Incentives for hospitals.*
- Sec. 4313. Treatment of payments and savings; implementation funding.*
- Sec. 4314. Study on application of EHR payment incentives for providers not receiving other incentive payments.*

*PART III—MEDICAID FUNDING*

- Sec. 4321. Medicaid provider HIT adoption and operation payments; implementation funding.*

*Subtitle D—Privacy*

- Sec. 4400. Definitions.*

*PART I—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS*

- Sec. 4401. Application of security provisions and penalties to business associates of covered entities; annual guidance on security provisions.*
- Sec. 4402. Notification in the case of breach.*
- Sec. 4403. Education on Health Information Privacy.*
- Sec. 4404. Application of privacy provisions and penalties to business associates of covered entities.*
- Sec. 4405. Restrictions on certain disclosures and sales of health information; accounting of certain protected health information disclosures; access to certain information in electronic format.*
- Sec. 4406. Conditions on certain contacts as part of health care operations.*
- Sec. 4407. Temporary breach notification requirement for vendors of personal health records and other non-HIPAA covered entities.*
- Sec. 4408. Business associate contracts required for certain entities.*
- Sec. 4409. Clarification of application of wrongful disclosures criminal penalties.*
- Sec. 4410. Improved enforcement.*
- Sec. 4411. Audits.*
- Sec. 4412. Securing individually identifiable health information.*
- Sec. 4413. Special rule for information to reduce medication errors and improve patient safety.*

*PART II—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES;  
EFFECTIVE DATE; REPORTS*

- Sec. 4421. Relationship to other laws.*  
*Sec. 4422. Regulatory references.*  
*Sec. 4423. Effective date.*  
*Sec. 4424. Studies, reports, guidance.*

*TITLE V—MEDICAID PROVISIONS*

- Sec. 5000. Table of contents of title.*  
*Sec. 5001. Temporary increase of Medicaid FMAP.*  
*Sec. 5002. Moratoria on certain regulations.*  
*Sec. 5003. Transitional Medicaid assistance (TMA).*  
*Sec. 5004. State eligibility option for family planning services.*  
*Sec. 5005. Protections for Indians under Medicaid and CHIP.*  
*Sec. 5006. Consultation on Medicaid and CHIP.*  
*Sec. 5007. Temporary increase in DSH allotments during recession.*

1                    ***TITLE I—BROADBAND***  
 2                    ***COMMUNICATIONS***

3 ***SEC. 1001. INVENTORY OF BROADBAND SERVICE CAPA-***  
 4                    ***BILITY AND AVAILABILITY.***

5            (a) *ESTABLISHMENT.*—*To provide a comprehensive*  
 6 *nationwide inventory of existing broadband service capa-*  
 7 *bility and availability, the National Telecommunications*  
 8 *and Information Administration (“NTIA”) shall develop*  
 9 *and maintain a broadband inventory map of the United*  
 10 *States that identifies and depicts the geographic extent to*  
 11 *which broadband service capability is deployed and avail-*  
 12 *able from a commercial provider or public provider*  
 13 *throughout each State.*

14            (b) *PUBLIC AVAILABILITY AND INTERACTIVITY.*—*Not*  
 15 *later than 2 years after the date of enactment of this Act,*  
 16 *the NTIA shall make the broadband inventory map devel-*  
 17 *oped and maintained pursuant to this section accessible by*

1 *the public on a World Wide website of the NTIA in a form*  
2 *that is interactive and searchable.*

3 **SEC. 1002. WIRELESS AND BROADBAND DEPLOYMENT**  
4 **GRANT PROGRAMS.**

5 *(a) GRANTS AUTHORIZED.—*

6 *(1) IN GENERAL.—The National Telecommuni-*  
7 *cations and Information Administration (“NTIA”) is*  
8 *authorized to carry out a program to award grants*  
9 *to eligible entities for the non-recurring costs associ-*  
10 *ated with the deployment of broadband infrastructure*  
11 *in rural, suburban, and urban areas, in accordance*  
12 *with the requirements of this section.*

13 *(2) PROGRAM WEBSITE.—The NTIA shall de-*  
14 *velop and maintain a website to make publicly avail-*  
15 *able information about the program described in*  
16 *paragraph (1), including—*

17 *(A) each prioritization report submitted by*  
18 *a State under subsection (b);*

19 *(B) a list of eligible entities that have ap-*  
20 *plied for a grant under this section, and the area*  
21 *or areas the entity proposes to serve; and*

22 *(C) the status of each such application,*  
23 *whether approved, denied, or pending.*

24 *(b) STATE PRIORITIES.—*

1           (1) *PRIORITIES REPORT SUBMISSION.*—Not later  
2           than 75 days after the date of enactment of this sec-  
3           tion, each State intending to participate in the pro-  
4           gram under this section shall submit to the NTIA a  
5           report indicating the geographic areas of the State  
6           which—

7                   (A) for the purposes of determining the need  
8                   for Wireless Deployment Grants under subsection  
9                   (c), the State considers to have the greatest pri-  
10                  ority for—

11                          (i) wireless voice service in unserved  
12                          areas; and

13                          (ii) advanced wireless broadband serv-  
14                          ice in underserved areas; and

15                   (B) for the purposes of determining the need  
16                   for Broadband Deployment Grants under sub-  
17                   section (d), the State considers to have the great-  
18                  est priority for—

19                          (i) basic broadband service in unserved  
20                          areas; and

21                          (ii) advanced broadband service in un-  
22                          derserved areas.

23           (2) *LIMITATION.*—The unserved and underserved  
24           areas identified by a State in the report required by

1 *this subsection shall not represent, in the aggregate,*  
2 *more than 20 percent of the population of such State.*

3 *(c) WIRELESS DEPLOYMENT GRANTS.—*

4 *(1) AUTHORIZED ACTIVITY.—The NTIA shall*  
5 *award Wireless Deployment Grants in accordance*  
6 *with this subsection from amounts authorized for*  
7 *Wireless Deployment Grants by this subtitle to eligi-*  
8 *ble entities to deploy necessary infrastructure for the*  
9 *provision of wireless voice service or advanced wire-*  
10 *less broadband service to end users in designated*  
11 *areas.*

12 *(2) GRANT DISTRIBUTION.—The NTIA shall seek*  
13 *to distribute grants, to the extent possible, so that 25*  
14 *percent of the grants awarded under this subsection*  
15 *shall be awarded to eligible entities for providing*  
16 *wireless voice service to unserved areas and 75 per-*  
17 *cent of grants awarded under this subsection shall be*  
18 *awarded to eligible entities for providing advanced*  
19 *wireless broadband service to underserved areas.*

20 *(d) BROADBAND DEPLOYMENT GRANTS.—*

21 *(1) AUTHORIZED ACTIVITY.—The NTIA shall*  
22 *award Broadband Deployment Grants in accordance*  
23 *with this subsection from amounts authorized for*  
24 *Broadband Deployment Grants by this subtitle to eli-*  
25 *gible entities to deploy necessary infrastructure for*

1       *the provision of basic broadband service or advanced*  
2       *broadband service to end users in designated areas.*

3               (2) *GRANT DISTRIBUTION.—The NTIA shall seek*  
4       *to distribute grants, to the extent possible, so that 25*  
5       *percent of the grants awarded under this subsection*  
6       *shall be awarded to eligible entities for providing*  
7       *basic broadband service to unserved areas and 75 per-*  
8       *cent of grants awarded under this subsection shall be*  
9       *awarded to eligible entities for providing advanced*  
10       *broadband service to underserved areas.*

11       (e) *GRANT REQUIREMENTS.—The NTIA shall—*

12               (1) *adopt rules to protect against unjust enrich-*  
13       *ment; and*

14               (2) *ensure that grant recipients—*

15                       (A) *meet buildout requirements;*

16                       (B) *maximize use of the supported infra-*  
17       *structure by the public;*

18                       (C) *operate basic and advanced broadband*  
19       *service networks on an open access basis;*

20                       (D) *operate advanced wireless broadband*  
21       *service on a wireless open access basis; and*

22                       (E) *adhere to the principles contained in*  
23       *the Federal Communications Commission’s*  
24       *broadband policy statement (FCC 05–151,*  
25       *adopted August 5, 2005).*

1       (f) *APPLICATIONS.*—

2               (1) *SUBMISSION.*—*To be considered for a grant*  
3 *awarded under subsection (c) or (d), an eligible entity*  
4 *shall submit to the NTIA an application at such*  
5 *time, in such manner, and containing such informa-*  
6 *tion and assurances as the NTIA may require. Such*  
7 *an application shall include—*

8                       (A) *a cost-study estimate for serving the*  
9 *particular geographic area to be served by the*  
10 *entity;*

11                      (B) *a proposed build-out schedule to resi-*  
12 *dential households and small businesses in the*  
13 *area;*

14                      (C) *for applicants for Wireless Deployment*  
15 *Grants under subsection (c), a build-out schedule*  
16 *for geographic coverage of such areas; and*

17                      (D) *any other requirements the NTIA deems*  
18 *necessary.*

19       (2) *SELECTION.*—

20               (A) *NOTIFICATION.*—*The NTIA shall notify*  
21 *each eligible entity that has submitted a complete*  
22 *application whether the entity has been approved*  
23 *or denied for a grant under this section in a*  
24 *timely fashion.*

1           (B) *GRANT DISTRIBUTION CONSIDER-*  
2 *ATIONS.—In awarding grants under this section,*  
3 *the NTIA shall, to the extent practical—*

4           (i) *award not less than one grant in*  
5 *each State;*

6           (ii) *give substantial weight to whether*  
7 *an application is from an eligible entity to*  
8 *deploy infrastructure in an area that is an*  
9 *area—*

10           (I) *identified by a State in a re-*  
11 *port submitted under subsection (b); or*

12           (II) *in which the NTIA deter-*  
13 *mines there will be a significant*  
14 *amount of public safety or emergency*  
15 *response use of the infrastructure;*

16           (iii) *consider whether an application*  
17 *from an eligible entity to deploy infrastruc-*  
18 *ture in an area—*

19           (I) *will, if approved, increase the*  
20 *affordability of, or subscribership to,*  
21 *service to the greatest population of*  
22 *underserved users in the area;*

23           (II) *will, if approved, enhance*  
24 *service for health care delivery, edu-*  
25 *cation, or children to the greatest pop-*

1                    *ulation of underserved users in the*  
2                    *area;*

3                    *(III) contains concrete plans for*  
4                    *enhancing computer ownership or com-*  
5                    *puter literacy in the area;*

6                    *(IV) is from a recipient of more*  
7                    *than 20 percent matching grants from*  
8                    *State, local, or private entities for serv-*  
9                    *ice in the area and the extent of such*  
10                   *commitment;*

11                   *(V) will, if approved, result in*  
12                   *unjust enrichment because the eligible*  
13                   *entity has applied for, or intends to*  
14                   *apply for, support for the non-recur-*  
15                   *ring costs through another Federal pro-*  
16                   *gram for service in the area; and*

17                   *(VI) will, if approved, signifi-*  
18                   *cantly improve interoperable*  
19                   *broadband communications systems*  
20                   *available for use by public safety and*  
21                   *emergency response; and*

22                   *(iv) consider whether the eligible entity*  
23                   *is a socially and economically disadvan-*  
24                   *tagged small business concern, as defined*

1                    *under section 8(a) of the Small Business*  
2                    *Act (15 U.S.C. 637).*

3            *(g) COORDINATION AND CONSULTATION.—The NTIA*  
4            *shall coordinate with the Federal Communications Commis-*  
5            *sion and shall consult with other appropriate Federal agen-*  
6            *cies in implementing this section.*

7            *(h) REPORT REQUIRED.—The NTIA shall submit an*  
8            *annual report to the Committee on Energy and Commerce*  
9            *of the House of Representatives and the Committee on Com-*  
10           *merce, Science, and Transportation of the Senate for 5*  
11           *years assessing the impact of the grants funded under this*  
12           *section on the basis of the objectives and criteria described*  
13           *in subsection (f)(2)(B)(iii).*

14           *(i) RULEMAKING AUTHORITY.—The NTIA shall have*  
15           *the authority to prescribe such rules as necessary to carry*  
16           *out the purposes of this section.*

17           *(j) DEFINITIONS.—For the purpose of this section—*

18                    *(1) the term “advanced broadband service”*  
19                    *means a service delivering data to the end user trans-*  
20                    *mitted at a speed of at least 45 megabits per second*  
21                    *downstream and at least 15 megabits per second up-*  
22                    *stream;*

23                    *(2) the term “advanced wireless broadband serv-*  
24                    *ice” means a wireless service delivering to the end*  
25                    *user data transmitted at a speed of at least 3 mega-*

1 *bits per second downstream and at least 1 megabit*  
2 *per second upstream over an end-to-end internet pro-*  
3 *TOCOL wireless network;*

4 *(3) the term “basic broadband service” means a*  
5 *service delivering data to the end user transmitted at*  
6 *a speed of at least 5 megabits per second downstream*  
7 *and at least 1 megabit per second upstream;*

8 *(4) the term “eligible entity” means—*

9 *(A) a provider of wireless voice service, ad-*  
10 *vanced wireless broadband service, basic*  
11 *broadband service, or advanced broadband serv-*  
12 *ice, including a satellite carrier that provides*  
13 *any such service;*

14 *(B) a State or unit of local government, or*  
15 *agency or instrumentality thereof, that is or in-*  
16 *tends to be a provider of any such service; and*

17 *(C) any other entity, including construction*  
18 *companies, tower companies, backhaul compa-*  
19 *nies, or other service providers, that the NTIA*  
20 *authorizes by rule to participate in the programs*  
21 *under this section, if such other entity is re-*  
22 *quired to provide access to the supported infra-*  
23 *structure on a neutral, reasonable basis to maxi-*  
24 *mize use;*

1           (5) *the term “interoperable broadband commu-*  
2 *nications systems” means communications systems*  
3 *which enable public safety agencies to share informa-*  
4 *tion among local, State, Federal, and tribal public*  
5 *safety agencies in the same area using voice or data*  
6 *signals via advanced wireless broadband service;*

7           (6) *the term “open access” shall be defined by the*  
8 *Federal Communications Commission not later than*  
9 *45 days after the date of enactment of this section;*

10          (7) *the term “State” includes the District of Co-*  
11 *lumbia and the territories and possessions;*

12          (8) *the term “underserved area” shall be defined*  
13 *by the Federal Communications Commission not later*  
14 *than 45 days after the date of enactment of this sec-*  
15 *tion;*

16          (9) *the term “unserved area” shall be defined by*  
17 *the Federal Communications Commission not later*  
18 *than 45 days after the date of enactment of this sec-*  
19 *tion;*

20          (10) *the term “wireless open access” shall be de-*  
21 *finied by the Federal Communications Commission*  
22 *not later than 45 days after the date of enactment of*  
23 *this section; and*

1           (11) the term “wireless voice service” means the  
2           provision of two-way, real-time, voice communica-  
3           tions using a mobile service.

4           (k) *REVIEW OF DEFINITIONS.*—Not later than 3  
5           months after the date the NTIA makes a broadband inven-  
6           tory map of the United States accessible to the public pursu-  
7           ant to section 1001(b), the Federal Communications Com-  
8           mission shall review the definitions of “underserved area”  
9           and “unserved area”, as defined by the Commission within  
10          45 days after the date of enactment of this Act (as required  
11          by paragraphs (8) and (9) of subsection (j)), and shall re-  
12          vise such definitions based on the data used by the NTIA  
13          to develop and maintain such map.

14          **SEC. 1003. NATIONAL BROADBAND PLAN.**

15          (a) *REPORT REQUIRED.*—Not later than 1 year after  
16          the date of enactment of this section, the Federal Commu-  
17          nications Commission shall submit to the Committee on  
18          Energy and Commerce of the House of Representatives and  
19          the Committee on Commerce, Science, and Transportation  
20          of the Senate, a report containing a national broadband  
21          plan.

22          (b) *CONTENTS OF PLAN.*—The national broadband  
23          plan required by this section shall seek to ensure that all  
24          people of the United States have access to broadband capa-

1 *bility and shall establish benchmarks for meeting that goal.*

2 *The plan shall also include—*

3 *(1) an analysis of the most effective and efficient*  
4 *mechanisms for ensuring broadband access by all peo-*  
5 *ple of the United States;*

6 *(2) a detailed strategy for achieving affordability*  
7 *of such service and maximum utilization of*  
8 *broadband infrastructure and service by the public;*  
9 *and*

10 *(3) a plan for use of broadband infrastructure*  
11 *and services in advancing consumer welfare, civic*  
12 *participation, public safety and homeland security,*  
13 *community development, health care delivery, energy*  
14 *independence and efficiency, education, worker train-*  
15 *ing, private sector investment, entrepreneurial activ-*  
16 *ity, job creation and economic growth, and other na-*  
17 *tional purposes.*

18 ***TITLE II—ENERGY***

19 ***SEC. 2001. TECHNICAL CORRECTIONS TO THE ENERGY***  
20 ***INDEPENDENCE AND SECURITY ACT OF 2007.***

21 *(a) Section 543(a) of the Energy Independence and Se-*  
22 *curity Act of 2007 (42 U.S.C. 17153(a)) is amended—*

23 *(1) by redesignating paragraphs (2) through (4)*  
24 *as paragraphs (3) through (5), respectively; and*

1           (2) *by striking paragraph (1) and inserting the*  
2 *following:*

3           “(1) *34 percent to eligible units of local govern-*  
4 *ment—alternative 1, in accordance with subsection (b);*

5           “(2) *34 percent to eligible units of local govern-*  
6 *ment—alternative 2, in accordance with subsection*  
7 *(b);”.*

8           **(b)** *Section 543(b) of the Energy Independence and Se-*  
9 *curity Act of 2007 (42 U.S.C. 17153(b)) is amended by*  
10 *striking “subsection (a)(1)” and inserting “subsection*  
11 *(a)(1) or (2)”.*

12           **(c)** *Section 548(a)(1) of the Energy Independence and*  
13 *Security Act of 2007 (42 U.S.C. 17158(a)(1)) is amending*  
14 *by striking “; provided” and all that follows through*  
15 *“541(3)(B)”.*

16 **SEC. 2002. AMENDMENTS TO TITLE XIII OF THE ENERGY**  
17 **INDEPENDENCE AND SECURITY ACT OF 2007.**

18           *Title XIII of the Energy Independence and Security*  
19 *Act of 2007 (42 U.S.C. 17381 and following) is amended*  
20 *as follows:*

21           **(1)** *By amending subparagraph (A) of section*  
22 *1304(b)(3) to read as follows:*

23           “(A) *IN GENERAL.—In carrying out the ini-*  
24 *tiative, the Secretary shall provide financial sup-*  
25 *port to smart grid demonstration projects in*

1           *urban, suburban, and rural areas, including*  
2           *areas where electric system assets are controlled*  
3           *by tax-exempt entities and areas where electric*  
4           *system assets are controlled by investor-owned*  
5           *utilities.”.*

6           *(2) By amending subparagraph (C) of section*  
7           *1304(b)(3) to read as follows:*

8                   *“(C) FEDERAL SHARE OF COST OF TECH-*  
9                   *NOLOGY INVESTMENTS.—The Secretary shall pro-*  
10                   *vide to an electric utility described in subpara-*  
11                   *graph (B) or to other parties financial assistance*  
12                   *for use in paying an amount equal to not more*  
13                   *than 50 percent of the cost of qualifying ad-*  
14                   *vanced grid technology investments made by the*  
15                   *electric utility or other party to carry out a*  
16                   *demonstration project.”.*

17           *(3) By inserting after section 1304(b)(3)(D) the*  
18           *following new subparagraphs:*

19                   *“(E) AVAILABILITY OF DATA.—The Sec-*  
20                   *retary shall establish and maintain a smart grid*  
21                   *information clearinghouse in a timely manner*  
22                   *which will make data from smart grid dem-*  
23                   *onstration projects and other sources available to*  
24                   *the public. As a condition of receiving financial*  
25                   *assistance under this subsection, a utility or*

1           *other participant in a smart grid demonstration*  
2           *project shall provide such information as the*  
3           *Secretary may require to become available*  
4           *through the smart grid information clearing-*  
5           *house in the form and within the timeframes as*  
6           *directed by the Secretary. The Secretary shall as-*  
7           *sure that business proprietary information and*  
8           *individual customer information is not included*  
9           *in the information made available through the*  
10          *clearinghouse.*

11           “(F) *OPEN INTERNET-BASED PROTOCOLS*  
12          *AND STANDARDS.—The Secretary shall require as*  
13          *a condition of receiving funding under this sub-*  
14          *section that demonstration projects utilize open*  
15          *Internet-based protocols and standards if avail-*  
16          *able.”.*

17          (4) *By amending paragraph (2) of section*  
18          *1304(c) to read as follows:*

19                 “(2) *to carry out subsection (b), such sums as*  
20                 *may be necessary.”.*

21                 (5) *By amending subsection (a) of section 1306*  
22                 *by striking “reimbursement of one-fifth (20 percent)”*  
23                 *and inserting “grants of up to one-half (50 percent)”.*

24                 (6) *By striking the last sentence of subsection*  
25                 *(b)(9) of section 1306.*

1           (7) *By striking “are eligible for” in subsection*  
2           *(c)(1) of section 1306 and inserting “utilize”.*

3           (8) *By amending subsection (e) of section 1306*  
4           *to read as follows:*

5           “(e) *PROCEDURES AND RULES.—The Secretary*  
6           *shall—*

7                   “(1) *establish within 60 days after the enactment*  
8                   *of the Energy and Commerce Recovery and Reinvest-*  
9                   *ment Act procedures by which applicants can obtain*  
10                   *grants of not more than one-half of their documented*  
11                   *costs;*

12                   “(2) *require as a condition of receiving a grant*  
13                   *under this section that grant recipients utilize open*  
14                   *Internet-based protocols and standards if available;*

15                   “(3) *establish procedures to ensure that there is*  
16                   *no duplication or multiple payment or recovery for*  
17                   *the same investment or costs, that the grant goes to*  
18                   *the party making the actual expenditures for quali-*  
19                   *fying smart grid investments, and that the grants*  
20                   *made have significant effect in encouraging and fa-*  
21                   *cilitating the development of a smart grid;*

22                   “(4) *maintain public records of grants made, re-*  
23                   *ipients, and qualifying smart grid investments*  
24                   *which have received grants;*

1           “(5) *establish procedures to provide advance*  
2           *payment of moneys up to the full amount of the grant*  
3           *award; and*

4           “(6) *have and exercise the discretion to deny*  
5           *grants for investments that do not qualify in the rea-*  
6           *sonable judgment of the Secretary.”.*

7   **SEC. 2003. RENEWABLE ENERGY AND ELECTRIC POWER**  
8           **TRANSMISSION LOAN GUARANTEE PROGRAM.**

9           *(a) AMENDMENT.—Title XVII of the Energy Policy*  
10          *Act of 2005 (42 U.S.C. 16511 et seq.) is amended by adding*  
11          *the following at the end:*

12       **“SEC. 1705. TEMPORARY PROGRAM FOR RAPID DEPLOY-**  
13                **MENT OF RENEWABLE ENERGY AND ELEC-**  
14                **TRIC POWER TRANSMISSION PROJECTS.**

15           *“(a) IN GENERAL.—Notwithstanding section 1703, the*  
16          *Secretary may make guarantees under this section only for*  
17          *commercial technology projects under subsection (b) that*  
18          *will commence construction not later than September 30,*  
19          *2011.*

20           *“(b) CATEGORIES.—Projects from only the following*  
21          *categories shall be eligible for support under this section:*

22                *“(1) Renewable energy systems, including incre-*  
23                *mental hydropower, that generate electricity.*

24                *“(2) Electric power transmission systems, in-*  
25                *cluding upgrading and reconductoring projects.*

1           “(3) *Leading edge biofuel projects that will use*  
2           *technologies performing at the pilot or demonstration*  
3           *scale that the Secretary determines are likely to be-*  
4           *come commercial technologies and will produce trans-*  
5           *portation fuels that substantially reduce life-cycle*  
6           *greenhouse gas emissions compared to other transpor-*  
7           *tation fuels.*

8           “(c) *FACTORS RELATING TO ELECTRIC POWER TRANS-*  
9           *MISSION SYSTEMS.—In determining to make guarantees to*  
10          *projects described in subsection (b)(2), the Secretary shall*  
11          *consider the following factors:*

12                  “(1) *The viability of the project without guaran-*  
13                  *tees.*

14                  “(2) *The availability of other Federal and State*  
15                  *incentives.*

16                  “(3) *The importance of the project in meeting re-*  
17                  *liability needs.*

18                  “(4) *The effect of the project in meeting a State*  
19                  *or region’s environment (including climate change)*  
20                  *and energy goals.*

21           “(d) *WAGE RATE REQUIREMENTS.—The Secretary*  
22           *shall require that each recipient of support under this sec-*  
23           *tion provide reasonable assurance that all laborers and me-*  
24           *chanics employed in the performance of the project for*  
25           *which the assistance is provided, including those employed*

1 *by contractors or subcontractors, will be paid wages at rates*  
 2 *not less than those prevailing on similar work in the local-*  
 3 *ity as determined by the Secretary of Labor in accordance*  
 4 *with subchapter IV of chapter 31 of part A of subtitle II*  
 5 *of title 40, United States Code (commonly referred to as*  
 6 *the ‘Davis-Bacon Act’).*

7       “(e) *LIMITATION.—Funding under this section for*  
 8 *projects described in subsection (b)(3) shall not exceed*  
 9 *\$500,000,000.*

10       “(f) *SUNSET.—The authority to enter into guarantees*  
 11 *under this section shall expire on September 30, 2011.”.*

12       “(b) *TABLE OF CONTENTS AMENDMENT.—The table of*  
 13 *contents for the Energy Policy Act of 2005 is amended by*  
 14 *inserting after the item relating to section 1704 the fol-*  
 15 *lowing new item:*

*“Sec. 1705. Temporary program for rapid deployment of renewable energy and  
 electric power transmission projects.”.*

16 **SEC. 2004. WEATHERIZATION ASSISTANCE PROGRAM**  
 17 **AMENDMENTS.**

18       “(a) *INCOME LEVEL.—Section 412(7) of the Energy*  
 19 *Conservation and Production Act (42 U.S.C. 6862(7)) is*  
 20 *amended by striking “150 percent” both places it appears*  
 21 *and inserting “200 percent”.*

22       “(b) *ASSISTANCE LEVEL PER DWELLING UNIT.—Sec-*  
 23 *tion 415(c)(1) of the Energy Conservation and Production*

1 *Act (42 U.S.C. 6865(c)(1)) is amended by striking “\$2,500”*  
2 *and inserting “\$5,000”.*

3 *(c) EFFECTIVE USE OF FUNDS.—In providing funds*  
4 *made available by this Act for the Weatherization Assist-*  
5 *ance Program, the Secretary may encourage States to give*  
6 *priority to using such funds for the most cost-effective effi-*  
7 *ciency activities, which may include insulation of attics,*  
8 *if, in the Secretary’s view, such use of funds would increase*  
9 *the effectiveness of the program.*

10 **SEC. 2005. RENEWABLE ELECTRICITY TRANSMISSION**  
11 **STUDY.**

12 *In completing the 2009 National Electric Trans-*  
13 *mission Congestion Study, the Secretary of Energy shall*  
14 *include—*

15 *(1) an analysis of the significant potential*  
16 *sources of renewable energy that are constrained in*  
17 *accessing appropriate market areas by lack of ade-*  
18 *quate transmission capacity;*

19 *(2) an analysis of the reasons for failure to de-*  
20 *velop the adequate transmission capacity;*

21 *(3) recommendations for achieving adequate*  
22 *transmission capacity;*

23 *(4) an analysis of the extent to which legal chal-*  
24 *lenges filed at the State and Federal level are delay-*

1        *ing the construction of transmission necessary to ac-*  
2        *cess renewable energy; and*

3            *(5) an explanation of assumptions and projec-*  
4        *tions made in the Study, including—*

5            *(A) assumptions and projections relating to*  
6        *energy efficiency improvements in each load cen-*  
7        *ter;*

8            *(B) assumptions and projections regarding*  
9        *the location and type of projected new generation*  
10       *capacity; and*

11           *(C) assumptions and projections regarding*  
12       *projected deployment of distributed generation*  
13       *infrastructure.*

14    **SEC. 2006. ADDITIONAL STATE ENERGY GRANTS.**

15        *(a) IN GENERAL.—Amounts appropriated for the*  
16        *State Energy Program under the American Recovery and*  
17        *Reinvestment Act of 2009 shall be available to the Secretary*  
18        *of Energy for making additional grants under part D of*  
19        *title III of the Energy Policy and Conservation Act (42*  
20        *U.S.C. 6321 et seq.). The Secretary shall make grants under*  
21        *this section in excess of the base allocation established for*  
22        *a State under regulations issued pursuant to the authoriza-*  
23        *tion provided in section 365(f) of such Act only if the gov-*  
24        *ernor of the recipient State notifies the Secretary of Energy*

1 *that the governor will seek, to the extent of his or her author-*  
2 *ity, to ensure that each of the following will occur:*

3 *(1) The applicable State regulatory authority*  
4 *will implement the following regulatory policies for*  
5 *each electric and gas utility with respect to which the*  
6 *State regulatory authority has ratemaking authority:*

7 *(A) Policies that ensure that a utility's re-*  
8 *covery of prudent fixed costs of service is timely*  
9 *and independent of its retail sales, without in*  
10 *the process shifting prudent costs from variable*  
11 *to fixed charges. This cost shifting constraint*  
12 *shall not apply to rate designs adopted prior to*  
13 *the date of enactment of this Act.*

14 *(B) Cost recovery for prudent investments*  
15 *by utilities in energy efficiency.*

16 *(C) An earnings opportunity for utilities*  
17 *associated with cost-effective energy efficiency*  
18 *savings.*

19 *(2) The State, or the applicable units of local*  
20 *government that have authority to adopt building*  
21 *codes, will implement the following:*

22 *(A) A building energy code (or codes) for*  
23 *residential buildings that meets or exceeds the*  
24 *most recently published International Energy*

1           *Conservation Code, or achieves equivalent or*  
2           *greater energy savings.*

3           *(B) A building energy code (or codes) for*  
4           *commercial buildings throughout the State that*  
5           *meets or exceeds the ANSI/ASHRAE/IESNA*  
6           *Standard 90.1–2007, or achieves equivalent or*  
7           *greater energy savings.*

8           *(C) A plan for the jurisdiction achieving*  
9           *compliance with the building energy code or*  
10          *codes described in subparagraphs (A) and (B)*  
11          *within 8 years of the date of enactment of this*  
12          *Act in at least 90 percent of new and renovated*  
13          *residential and commercial building space. Such*  
14          *plan shall include active training and enforce-*  
15          *ment programs and measurement of the rate of*  
16          *compliance each year.*

17          *(3) The State will to the extent practicable*  
18          *prioritize the grants toward funding energy efficiency*  
19          *and renewable energy programs, including—*

20                 *(A) the expansion of existing energy effi-*  
21                 *ciency programs approved by the State or the*  
22                 *appropriate regulatory authority, including en-*  
23                 *ergy efficiency retrofits of buildings and indus-*  
24                 *trial facilities, that are funded—*

25                         *(i) by the State; or*

1                   (ii) through rates under the oversight  
2                   of the applicable regulatory authority, to  
3                   the extent applicable;

4                   (B) the expansion of existing programs, ap-  
5                   proved by the State or the appropriate regu-  
6                   latory authority, to support renewable energy  
7                   projects and deployment activities, including  
8                   programs operated by entities which have the au-  
9                   thority and capability to manage and distribute  
10                  grants, loans, performance incentives, and other  
11                  forms of financial assistance; and

12                  (C) cooperation and joint activities between  
13                  States to advance more efficient and effective use  
14                  of this funding to support the priorities described  
15                  in this paragraph.

16           (b) *STATE MATCH.*—The State cost share requirement  
17           under the item relating to “DEPARTMENT OF ENERGY;  
18           energy conservation” in title II of the Department of the  
19           Interior and Related Agencies Appropriations Act, 1985  
20           (42 U.S.C. 6323a; 98 Stat. 1861) shall not apply to assist-  
21           ance provided under this section.

22           (c) *EQUIPMENT AND MATERIALS FOR ENERGY EFFI-*  
23           *CIENCY MEASURES.*—No limitation on the percentage of  
24           funding that may be used for the purchase and installation  
25           of equipment and materials for energy efficiency measures

1 *under grants provided under part D of title III of the En-*  
 2 *ergy Policy and Conservation Act (42 U.S.C. 6321 et seq.)*  
 3 *shall apply to assistance provided under this section.*

4 **SEC. 2007. INAPPLICABILITY OF LIMITATION.**

5 *The limitations in section 399A(f)(2), (3), and (4) of*  
 6 *the Energy Policy and Conservation Act (42 U.S.C. 6371h–*  
 7 *1(f)(2), (3), and (4)) shall not apply to grants funded with*  
 8 *appropriations provided by this Act, except that such grant*  
 9 *funds shall be available for not more than an amount equal*  
 10 *to 80 percent of the costs of the project for which the grant*  
 11 *is provided.*

12 **TITLE III—HEALTH INSURANCE**  
 13 **ASSISTANCE FOR THE UNEM-**  
 14 **EMPLOYED**

15 **SEC. 3001. SHORT TITLE AND TABLE OF CONTENTS OF**  
 16 **TITLE.**

17 (a) *SHORT TITLE OF TITLE.—This title may be cited*  
 18 *as the “Health Insurance Assistance for the Unemployed*  
 19 *Act of 2009”.*

20 (b) *TABLE OF CONTENTS OF TITLE.—The table of con-*  
 21 *tents of this title is as follows:*

*Sec. 3001. Short title and table of contents of title.*

*Sec. 3002. Premium assistance for COBRA benefits and extension of COBRA ben-*  
*efits for older or long-term employees.*

*Sec. 3003. Temporary optional Medicaid coverage for the unemployed.*

1 **SEC. 3002. PREMIUM ASSISTANCE FOR COBRA BENEFITS**  
2 **AND EXTENSION OF COBRA BENEFITS FOR**  
3 **OLDER OR LONG-TERM EMPLOYEES.**

4 (a) *PREMIUM ASSISTANCE FOR COBRA CONTINU-*  
5 *ATION COVERAGE FOR INDIVIDUALS AND THEIR FAMI-*  
6 *LIES.—*

7 (1) *PROVISION OF PREMIUM ASSISTANCE.—*

8 (A) *REDUCTION OF PREMIUMS PAYABLE.—*

9 *In the case of any premium for a period of cov-*  
10 *erage beginning on or after the date of the enact-*  
11 *ment of this Act for COBRA continuation cov-*  
12 *erage with respect to any assistance eligible indi-*  
13 *vidual, such individual shall be treated for pur-*  
14 *poses of any COBRA continuation provision as*  
15 *having paid the amount of such premium if such*  
16 *individual pays 35 percent of the amount of such*  
17 *premium (as determined without regard to this*  
18 *subsection).*

19 (B) *PREMIUM REIMBURSEMENT.—For pro-*  
20 *visions providing the balance of such premium,*  
21 *see section 6431 of the Internal Revenue Code of*  
22 *1986, as added by paragraph (12).*

23 (2) *LIMITATION OF PERIOD OF PREMIUM ASSIST-*  
24 *ANCE.—*

25 (A) *IN GENERAL.—Paragraph (1)(A) shall*  
26 *not apply with respect to any assistance eligible*

1           *individual for months of coverage beginning on*  
2           *or after the earlier of—*

3                     *(i) the first date that such individual*  
4                     *is eligible for coverage under any other*  
5                     *group health plan (other than coverage con-*  
6                     *sisting of only dental, vision, counseling, or*  
7                     *referral services (or a combination thereof),*  
8                     *coverage under a health reimbursement ar-*  
9                     *rangement or a health flexible spending ar-*  
10                    *rangement, or coverage of treatment that is*  
11                    *furnished in an on-site medical facility*  
12                    *maintained by the employer and that con-*  
13                    *sists primarily of first-aid services, preven-*  
14                    *tion and wellness care, or similar care (or*  
15                    *a combination thereof)) or is eligible for*  
16                    *benefits under title XVIII of the Social Se-*  
17                    *curity Act, or*

18                    *(ii) the earliest of—*

19                             *(I) the date which is 12 months*  
20                             *after the first day of the first month*  
21                             *that paragraph (1)(A) applies with re-*  
22                             *spect to such individual,*

23                             *(II) the date following the expira-*  
24                             *tion of the maximum period of con-*  
25                             *tinuation coverage required under the*

1 applicable COBRA continuation cov-  
2 erage provision, or

3 (III) the date following the expi-  
4 ration of the period of continuation  
5 coverage allowed under paragraph  
6 (4)(B)(ii).

7 (B) *TIMING OF ELIGIBILITY FOR ADDI-*  
8 *TIONAL COVERAGE.*—For purposes of subpara-  
9 graph (A)(i), an individual shall not be treated  
10 as eligible for coverage under a group health  
11 plan before the first date on which such indi-  
12 vidual could be covered under such plan.

13 (C) *NOTIFICATION REQUIREMENT.*—An as-  
14 sistance eligible individual shall notify in writ-  
15 ing the group health plan with respect to which  
16 paragraph (1)(A) applies if such paragraph  
17 ceases to apply by reason of subparagraph  
18 (A)(i). Such notice shall be provided to the group  
19 health plan in such time and manner as may be  
20 specified by the Secretary of Labor.

21 (3) *ASSISTANCE ELIGIBLE INDIVIDUAL.*—For  
22 purposes of this section, the term “assistance eligible  
23 individual” means any qualified beneficiary if—

24 (A) at any time during the period that be-  
25 gins with September 1, 2008, and ends with De-

1            *ember 31, 2009, such qualified beneficiary is el-*  
2            *igible for COBRA continuation coverage,*

3            *(B) such qualified beneficiary elects such*  
4            *coverage,*

5            *(C) the qualifying event with respect to the*  
6            *COBRA continuation coverage consists of the in-*  
7            *voluntary termination of the covered employee's*  
8            *employment and occurred during such period,*  
9            *and*

10           *(D) at the time of the election such qualified*  
11           *beneficiary's annual income is less than*  
12           *\$1,000,000.*

13           *(4) EXTENSION OF ELECTION PERIOD AND EF-*  
14           *FECT ON COVERAGE.—*

15           *(A) IN GENERAL.—Notwithstanding section*  
16           *605(a) of the Employee Retirement Income Secu-*  
17           *rity Act of 1974, section 4980B(f)(5)(A) of the*  
18           *Internal Revenue Code of 1986, section 2205(a)*  
19           *of the Public Health Service Act, and section*  
20           *8905a(c)(2) of title 5, United States Code, in the*  
21           *case of an individual who is a qualified bene-*  
22           *ficiary described in paragraph (3)(A) as of the*  
23           *date of the enactment of this Act and has not*  
24           *made the election referred to in paragraph*  
25           *(3)(B) as of such date, such individual may elect*

1           the COBRA continuation coverage under the  
2           COBRA continuation coverage provisions con-  
3           taining such sections during the 60-day period  
4           commencing with the date on which the notifica-  
5           tion required under paragraph (7)(C) is pro-  
6           vided to such individual.

7           (B) COMMENCEMENT OF COVERAGE; NO  
8           REACH-BACK.—Any COBRA continuation cov-  
9           erage elected by a qualified beneficiary during  
10          an extended election period under subparagraph  
11          (A)—

12                   (i) shall commence on the date of the  
13                   enactment of this Act, and

14                   (ii) shall not extend beyond the period  
15                   of COBRA continuation coverage that  
16                   would have been required under the applica-  
17                   ble COBRA continuation coverage provision  
18                   if the coverage had been elected as required  
19                   under such provision.

20          (C) PREEXISTING CONDITIONS.—With re-  
21          spect to a qualified beneficiary who elects  
22          COBRA continuation coverage pursuant to sub-  
23          paragraph (A), the period—

24                   (i) beginning on the date of the quali-  
25                   fying event, and

1                   (ii) ending with the day before the date  
2                   of the enactment of this Act,  
3                   shall be disregarded for purposes of determining  
4                   the 63-day periods referred to in section 701(2)  
5                   of the Employee Retirement Income Security Act  
6                   of 1974, section 9801(c)(2) of the Internal Rev-  
7                   enue Code of 1986, and section 2701(c)(2) of the  
8                   Public Health Service Act.

9                   (5) *EXPEDITED REVIEW OF DENIALS OF PRE-*  
10                  *MIUM ASSISTANCE.*—*In any case in which an indi-*  
11                  *vidual requests treatment as an assistance eligible in-*  
12                  *dividual and is denied such treatment by the group*  
13                  *health plan by reason of such individual’s ineligi-*  
14                  *bility for COBRA continuation coverage, the Sec-*  
15                  *retary of Labor (or the Secretary of Health and*  
16                  *Human services in connection with COBRA continu-*  
17                  *ation coverage which is provided other than pursuant*  
18                  *to part 6 of subtitle B of title I of the Employee Re-*  
19                  *irement Income Security Act of 1974), in consulta-*  
20                  *tion with the Secretary of the Treasury, shall provide*  
21                  *for expedited review of such denial. An individual*  
22                  *shall be entitled to such review upon application to*  
23                  *such Secretary in such form and manner as shall be*  
24                  *provided by such Secretary. Such Secretary shall*  
25                  *make a determination regarding such individual’s eli-*

1        *gibility within 10 business days after receipt of such*  
2        *individual's application for review under this para-*  
3        *graph.*

4            (6) *DISREGARD OF SUBSIDIES FOR PURPOSES OF*  
5        *FEDERAL AND STATE PROGRAMS.—Notwithstanding*  
6        *any other provision of law, any premium reduction*  
7        *with respect to an assistance eligible individual under*  
8        *this subsection shall not be considered income or re-*  
9        *sources in determining eligibility for, or the amount*  
10       *of assistance or benefits provided under, any other*  
11       *public benefit provided under Federal law or the law*  
12       *of any State or political subdivision thereof.*

13            (7) *NOTICES TO INDIVIDUALS.—*

14            (A) *GENERAL NOTICE.—*

15            (i) *IN GENERAL.—In the case of notices*  
16        *provided under section 606(4) of the Em-*  
17        *ployee Retirement Income Security Act of*  
18        *1974 (29 U.S.C. 1166(4)), section*  
19        *4980B(f)(6)(D) of the Internal Revenue*  
20        *Code of 1986, section 2206(4) of the Public*  
21        *Health Service Act (42 U.S.C. 300bb–6(4)),*  
22        *or section 8905a(f)(2)(A) of title 5, United*  
23        *States Code, with respect to individuals*  
24        *who, during the period described in para-*  
25        *graph (3)(A), become entitled to elect*

1           *COBRA continuation coverage, such notices*  
2           *shall include an additional notification to*  
3           *the recipient of the availability of premium*  
4           *reduction with respect to such coverage*  
5           *under this subsection.*

6           (ii) *ALTERNATIVE NOTICE.—In the*  
7           *case of COBRA continuation coverage to*  
8           *which the notice provision under such sec-*  
9           *tions does not apply, the Secretary of*  
10          *Labor, in consultation with the Secretary of*  
11          *the Treasury and the Secretary of Health*  
12          *and Human Services, shall, in coordination*  
13          *with administrators of the group health*  
14          *plans (or other entities) that provide or ad-*  
15          *minister the COBRA continuation coverage*  
16          *involved, provide rules requiring the provi-*  
17          *sion of such notice.*

18          (iii) *FORM.—The requirement of the*  
19          *additional notification under this subpara-*  
20          *graph may be met by amendment of exist-*  
21          *ing notice forms or by inclusion of a sepa-*  
22          *rate document with the notice otherwise re-*  
23          *quired.*

1                   (B) *SPECIFIC REQUIREMENTS.*—Each addi-  
2                   tional notification under subparagraph (A) shall  
3                   include—

4                   (i) the forms necessary for establishing  
5                   eligibility for premium reduction under this  
6                   subsection,

7                   (ii) the name, address, and telephone  
8                   number necessary to contact the plan ad-  
9                   ministrators and any other person main-  
10                  taining relevant information in connection  
11                  with such premium reduction,

12                  (iii) a description of the extended elec-  
13                  tion period provided for in paragraph  
14                  (4)(A),

15                  (iv) a description of the obligation of  
16                  the qualified beneficiary under paragraph  
17                  (2)(C) to notify the plan providing continu-  
18                  ation coverage of eligibility for subsequent  
19                  coverage under another group health plan  
20                  or eligibility for benefits under title XVIII  
21                  of the Social Security Act and the penalty  
22                  provided for failure to so notify the plan,  
23                  and

24                  (v) a description, displayed in a  
25                  prominent manner, of the qualified bene-

1           *ficiary's right to a reduced premium and*  
2           *any conditions on entitlement to the re-*  
3           *duced premium.*

4           (C) *NOTICE RELATING TO RETROACTIVE*  
5           *COVERAGE.—In the case of an individual de-*  
6           *scribed in paragraph (3)(A) who has elected*  
7           *COBRA continuation coverage as of the date of*  
8           *enactment of this Act or an individual described*  
9           *in paragraph (4)(A), the administrator of the*  
10          *group health plan (or other entity) involved shall*  
11          *provide (within 60 days after the date of enact-*  
12          *ment of this Act) for the additional notification*  
13          *required to be provided under subparagraph (A).*

14          (D) *MODEL NOTICES.—Not later than 30*  
15          *days after the date of enactment of this Act, the*  
16          *Secretary of the Labor, in consultation with the*  
17          *Secretary of the Treasury and the Secretary of*  
18          *Health and Human Services, shall prescribe*  
19          *models for the additional notification required*  
20          *under this paragraph.*

21          (8) *SAFEGUARDS.—The Secretary of the Treas-*  
22          *ury shall provide such rules, procedures, regulations,*  
23          *and other guidance as may be necessary and appro-*  
24          *priate to prevent fraud and abuse under this sub-*  
25          *section.*

1           (9) *OUTREACH.*—*The Secretary of Labor, in con-*  
2           *sultation with the Secretary of the Treasury and the*  
3           *Secretary of Health and Human Services, shall pro-*  
4           *vide outreach consisting of public education and en-*  
5           *rollment assistance relating to premium reduction*  
6           *provided under this subsection. Such outreach shall*  
7           *target employers, group health plan administrators,*  
8           *public assistance programs, States, insurers, and*  
9           *other entities as determined appropriate by such Sec-*  
10          *retaries. Such outreach shall include an initial focus*  
11          *on those individuals electing continuation coverage*  
12          *who are referred to in paragraph (7)(C). Information*  
13          *on such premium reduction, including enrollment,*  
14          *shall also be made available on website of the Depart-*  
15          *ments of Labor, Treasury, and Health and Human*  
16          *Services.*

17          (10) *DEFINITIONS.*—*For purposes of this sub-*  
18          *section—*

19                  (A) *ADMINISTRATOR.*—*The term “adminis-*  
20                  *trator” has the meaning given such term in sec-*  
21                  *tion 3(16) of the Employee Retirement Income*  
22                  *Security Act of 1974.*

23                  (B) *COBRA CONTINUATION COVERAGE.*—  
24                  *The term “COBRA continuation coverage”*  
25                  *means continuation coverage provided pursuant*

1           to part 6 of subtitle B of title I of the Employee  
2           Retirement Income Security Act of 1974 (other  
3           than under section 609), title XXII of the Public  
4           Health Service Act, section 4980B of the Internal  
5           Revenue Code of 1986 (other than subsection  
6           (f)(1) of such section insofar as it relates to pedi-  
7           atric vaccines), or section 8905a of title 5,  
8           United States Code, or under a State program  
9           that provides continuation coverage comparable  
10          to such continuation coverage. Such term does  
11          not include coverage under a health flexible  
12          spending arrangement.

13           (C) *COBRA CONTINUATION PROVISION.*—  
14          The term “COBRA continuation provision”  
15          means the provisions of law described in sub-  
16          paragraph (B).

17           (D) *COVERED EMPLOYEE.*—The term “cov-  
18          ered employee” has the meaning given such term  
19          in section 607(2) of the Employee Retirement In-  
20          come Security Act of 1974.

21           (E) *QUALIFIED BENEFICIARY.*—The term  
22          “qualified beneficiary” has the meaning given  
23          such term in section 607(3) of the Employee Re-  
24          tirement Income Security Act of 1974.

1           (F) *GROUP HEALTH PLAN.*—The term  
2           “group health plan” has the meaning given such  
3           term in section 607(1) of the *Employee Retirement*  
4           *Income Security Act of 1974.*

5           (G) *STATE.*—The term “State” includes the  
6           *District of Columbia, the Commonwealth of*  
7           *Puerto Rico, the Virgin Islands, Guam, Amer-*  
8           *ican Samoa, and the Commonwealth of the*  
9           *Northern Mariana Islands.*

10          (11) *REPORTS.*—

11           (A) *INTERIM REPORT.*—The Secretary of the  
12           *Treasury shall submit an interim report to the*  
13           *Committee on Education and Labor, the Com-*  
14           *mittee on Ways and Means, and the Committee*  
15           *on Energy and Commerce of the House of Rep-*  
16           *resentatives and the Committee on Health, Edu-*  
17           *cation, Labor, and Pensions and the Committee*  
18           *on Finance of the Senate regarding the premium*  
19           *reduction provided under this subsection that in-*  
20           *cludes—*

21                   (i) *the number of individuals provided*  
22                   *such assistance as of the date of the report;*  
23                   *and*

24                   (ii) *the total amount of expenditures*  
25                   *incurred (with administrative expenditures*

1           *noted separately) in connection with such*  
2           *assistance as of the date of the report.*

3           *(B) FINAL REPORT.—As soon as practicable*  
4           *after the last period of COBRA continuation cov-*  
5           *erage for which premium reduction is provided*  
6           *under this section, the Secretary of the Treasury*  
7           *shall submit a final report to each Committee re-*  
8           *ferred to in subparagraph (A) that includes—*

9                     *(i) the number of individuals provided*  
10                    *premium reduction under this section;*

11                    *(ii) the average dollar amount (month-*  
12                    *ly and annually) of premium reductions*  
13                    *provided to such individuals; and*

14                    *(iii) the total amount of expenditures*  
15                    *incurred (with administrative expenditures*  
16                    *noted separately) in connection with pre-*  
17                    *mium reduction under this section.*

18           *(12) COBRA PREMIUM ASSISTANCE.—*

19                    *(A) IN GENERAL.—Subchapter B of chapter*  
20                    *65 of the Internal Revenue Code of 1986 is*  
21                    *amended by adding at the end the following new*  
22                    *section:*

23           **“SEC. 6431. COBRA PREMIUM ASSISTANCE.**

24                    **“(a) IN GENERAL.—The entity to whom premiums are**  
25                    **payable under COBRA continuation coverage shall be reim-**

1 bursed for the amount of premiums not paid by plan bene-  
2 ficiaries by reason of section 3002(a) of the Health Insur-  
3 ance Assistance for the Unemployed Act of 2009. Such  
4 amount shall be treated as a credit against the requirement  
5 of such entity to make deposits of payroll taxes. To the ex-  
6 tent that such amount exceeds the amount of such taxes,  
7 the Secretary shall pay to such entity the amount of such  
8 excess. No payment may be made under this subsection to  
9 an entity with respect to any assistance eligible individual  
10 until after such entity has received the reduced premium  
11 from such individual required under section 3002(a)(1)(A)  
12 of such Act.

13       “(b) *PAYROLL TAXES.*—For purposes of this section,  
14 the term ‘payroll taxes’ means—

15               “(1) amounts required to be deducted and with-  
16 held for the payroll period under section 3401 (relat-  
17 ing to wage withholding),

18               “(2) amounts required to be deducted for the  
19 payroll period under section 3102 (relating to FICA  
20 employee taxes), and

21               “(3) amounts of the taxes imposed for the payroll  
22 period under section 3111 (relating to FICA employer  
23 taxes).

24       “(c) *TREATMENT OF CREDIT.*—Except as otherwise  
25 provided by the Secretary, the credit described in subsection

1 (a) shall be applied as though the employer had paid to  
2 the Secretary, on the day that the qualified beneficiary's  
3 premium payment is received, an amount equal to such  
4 credit.

5 “(d) *TREATMENT OF PAYMENT.*—For purposes of sec-  
6 tion 1324(b)(2) of title 31, United States Code, any pay-  
7 ment under this section shall be treated in the same manner  
8 as a refund of the credit under section 35.

9 “(e) *REPORTING.*—

10 “(1) *IN GENERAL.*—Each entity entitled to reim-  
11 bursement under subsection (a) for any period shall  
12 submit such reports as the Secretary may require, in-  
13 cluding—

14 “(A) an attestation of involuntary termi-  
15 nation of employment for each covered employee  
16 on the basis of whose termination entitlement to  
17 reimbursement is claimed under subsection (a),  
18 and

19 “(B) a report of the amount of payroll taxes  
20 offset under subsection (a) for the reporting pe-  
21 riod and the estimated offsets of such taxes for  
22 the subsequent reporting period in connection  
23 with reimbursements under subsection (a).

24 “(2) *TIMING OF REPORTS RELATING TO AMOUNT*  
25 *OF PAYROLL TAXES.*—Reports required under para-

1        *graph (1)(B) shall be submitted at the same time as*  
 2        *deposits of taxes imposed by chapters 21, 22, and 24*  
 3        *or at such time as is specified by the Secretary.*

4        “(f) *REGULATIONS.—The Secretary may issue such*  
 5        *regulations or other guidance as may be necessary or appro-*  
 6        *priate to carry out this section, including the requirement*  
 7        *to report information or the establishment of other methods*  
 8        *for verifying the correct amounts of payments and credits*  
 9        *under this section.”.*

10                    (B) *SOCIAL SECURITY TRUST FUNDS HELD*  
 11                    *HARMLESS.—In determining any amount trans-*  
 12                    *ferred or appropriated to any fund under the So-*  
 13                    *cial Security Act, section 6431 of the Internal*  
 14                    *Revenue Code of 1986 shall not be taken into ac-*  
 15                    *count.*

16                    (C) *CLERICAL AMENDMENT.—The table of*  
 17                    *sections for subchapter B of chapter 65 of the In-*  
 18                    *ternal Revenue Code of 1986 is amended by add-*  
 19                    *ing at the end the following new item:*

“Sec. 6431. *COBRA premium assistance.*”.

20                    (D) *EFFECTIVE DATE.—The amendments*  
 21                    *made by this paragraph shall apply to pre-*  
 22                    *miums to which subsection (a)(1)(A) applies.*

23                    (13) *PENALTY FOR FAILURE TO NOTIFY HEALTH*  
 24                    *PLAN OF CESSATION OF ELIGIBILITY FOR PREMIUM*  
 25                    *ASSISTANCE.—*

1           (A) *IN GENERAL.*—Part I of subchapter B  
2           of chapter 68 of the Internal Revenue Code of  
3           1986 is amended by adding at the end the fol-  
4           lowing new section:

5           **“SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH**  
6                           **PLAN OF CESSATION OF ELIGIBILITY FOR**  
7                           **COBRA PREMIUM ASSISTANCE.**

8           “(a) *IN GENERAL.*—Any person required to notify a  
9           group health plan under section 3002(a)(2)(C) of the  
10           Health Insurance Assistance for the Unemployed Act of  
11           2009 who fails to make such a notification at such time  
12           and in such manner as the Secretary of Labor may require  
13           shall pay a penalty of 110 percent of the premium reduction  
14           provided under such section after termination of eligibility  
15           under such subsection.

16           “(b) *REASONABLE CAUSE EXCEPTION.*—No penalty  
17           shall be imposed under subsection (a) with respect to any  
18           failure if it is shown that such failure is due to reasonable  
19           cause and not to willful neglect.”.

20           (B) *CLERICAL AMENDMENT.*—The table of  
21           sections of part I of subchapter B of chapter 68  
22           of such Code is amended by adding at the end  
23           the following new item:

          “Sec. 6720C. Penalty for failure to notify health plan of cessation of eligibility  
          for COBRA premium assistance.”.

1           (C) *EFFECTIVE DATE.*—*The amendments*  
2           *made by this paragraph shall apply to failures*  
3           *occurring after the date of the enactment of this*  
4           *Act.*

5           (14) *COORDINATION WITH HCTC.*—

6           (A) *IN GENERAL.*—*Subsection (g) of section*  
7           *35 of the Internal Revenue Code of 1986 is*  
8           *amended by redesignating paragraph (9) as*  
9           *paragraph (10) and inserting after paragraph*  
10           *(8) the following new paragraph:*

11           “(9) *COBRA PREMIUM ASSISTANCE.*—*In the*  
12           *case of an assistance eligible individual who receives*  
13           *premium reduction for COBRA continuation coverage*  
14           *under section 3002(a) of the Health Insurance Assist-*  
15           *ance for the Unemployed Act of 2009 for any month*  
16           *during the taxable year, such individual shall not be*  
17           *treated as an eligible individual, a certified indi-*  
18           *vidual, or a qualifying family member for purposes*  
19           *of this section or section 7527 with respect to such*  
20           *month.”.*

21           (B) *EFFECTIVE DATE.*—*The amendment*  
22           *made by subparagraph (A) shall apply to tax-*  
23           *able years ending after the date of the enactment*  
24           *of this Act.*

1           (15) *EXCLUSION OF COBRA PREMIUM ASSIST-*  
2           *ANCE FROM GROSS INCOME.—*

3                   (A) *IN GENERAL.—Part III of subchapter B*  
4                   *of chapter 1 of the Internal Revenue Code of*  
5                   *1986 is amended by inserting after section 139B*  
6                   *the following new section:*

7           **“SEC. 139C. COBRA PREMIUM ASSISTANCE.**

8                   *“In the case of an assistance eligible individual (as*  
9                   *defined in section 3002 of the Health Insurance Assistance*  
10                   *for the Unemployed Act of 2009), gross income does not in-*  
11                   *clude any premium reduction provided under subsection (a)*  
12                   *of such section.”.*

13                   (B) *CLERICAL AMENDMENT.—The table of*  
14                   *sections for part III of subchapter B of chapter*  
15                   *1 of such Code is amended by inserting after the*  
16                   *item relating to section 139B the following new*  
17                   *item:*

*“Sec. 139C. COBRA premium assistance.”.*

18                   (C) *EFFECTIVE DATE.—The amendments*  
19                   *made by this paragraph shall apply to taxable*  
20                   *years ending after the date of the enactment of*  
21                   *this Act.*

22           (b) *EXTENSION OF COBRA BENEFITS FOR OLDER OR*  
23           *LONG-TERM EMPLOYEES.—*

24                   (1) *ERISA AMENDMENT.—Section 602(2)(A) of*  
25                   *the Employee Retirement Income Security Act of*

1       1974 is amended by adding at the end the following  
2       new clauses:

3                   “(x) *SPECIAL RULE FOR OLDER OR*  
4                   *LONG-TERM EMPLOYEES GENERALLY.*—*In*  
5                   *the case of a qualifying event described in*  
6                   *section 603(2) with respect to a covered em-*  
7                   *ployee who (as of such qualifying event) has*  
8                   *attained age 55 or has completed 10 or*  
9                   *more years of service with the entity that is*  
10                   *the employer at the time of the qualifying*  
11                   *event, clauses (i) and (ii) shall not apply.*

12                   “(xi) *YEAR OF SERVICE.*—*For pur-*  
13                   *poses of this subparagraph, the term ‘year*  
14                   *of service’ shall have the meaning provided*  
15                   *in section 202(a)(3).”.*

16                   (2) *IRC AMENDMENT.*—*Clause (i) of section*  
17                   *4980B(f)(2)(B) of the Internal Revenue Code of 1986*  
18                   *is amended by adding at the end the following new*  
19                   *subclauses:*

20                               “(X) *SPECIAL RULE FOR OLDER*  
21                               *OR LONG-TERM EMPLOYEES GEN-*  
22                               *ERALLY.*—*In the case of a qualifying*  
23                               *event described in paragraph (3)(B)*  
24                               *with respect to a covered employee who*  
25                               *(as of such qualifying event) has at-*

1            *tained age 55 or has completed 10 or*  
2            *more years of service with the entity*  
3            *that is the employer at the time of the*  
4            *qualifying event, subclauses (I) and*  
5            *(II) shall not apply.*

6            *“(XI) YEAR OF SERVICE.— For*  
7            *purposes of this clause, the term ‘year*  
8            *of service’ shall have the meaning pro-*  
9            *vided in section 202(a)(3) of the Em-*  
10           *ployee Retirement Income Security Act*  
11           *of 1974.”.*

12           *(3) PHSA AMENDMENT.—Section 2202(2)(A) of*  
13           *the Public Health Service Act is amended by adding*  
14           *at the end the following new clauses:*

15           *“(viii) SPECIAL RULE FOR OLDER OR*  
16           *LONG-TERM EMPLOYEES GENERALLY.—In*  
17           *the case of a qualifying event described in*  
18           *section 2203(2) with respect to a covered*  
19           *employee who (as of such qualifying event)*  
20           *has attained age 55 or has completed 10 or*  
21           *more years of service with the entity that is*  
22           *the employer at the time of the qualifying*  
23           *event, clauses (i) and (ii) shall not apply.*

24           *“(ix) YEAR OF SERVICE.— For pur-*  
25           *poses of this subparagraph, the term ‘year*

1                   of service' shall have the meaning provided  
 2                   in section 202(a)(3) of the *Employee Retirement*  
 3                   *Income Security Act of 1974.*"

4                   (4) *EFFECTIVE DATE OF AMENDMENTS.*—*The*  
 5                   *amendments made by this subsection shall apply to*  
 6                   *periods of coverage which would (without regard to*  
 7                   *the amendments made by this section) end on or after*  
 8                   *the date of the enactment of this Act.*

9   **SEC. 3003. TEMPORARY OPTIONAL MEDICAID COVERAGE**  
 10                   **FOR THE UNEMPLOYED.**

11                   (a) *IN GENERAL.*—*Section 1902 of the Social Security*  
 12                   *Act (42 U.S.C. 1396b) is amended—*

13                   (1) *in subsection (a)(10)(A)(ii)—*

14                               (A) *by striking "or" at the end of subclause*  
 15                               *(XVIII);*

16                               (B) *by adding "or" at the end of subclause*  
 17                               *(XIX); and*

18                               (C) *by adding at the end the following new*  
 19                               *subclause:*

20   *"(XX) who are described in sub-*  
 21   *section (dd)(1) (relating to certain un-*  
 22   *employed individuals and their fami-*  
 23   *lies);"; and*

24                               (2) *by adding at the end the following new sub-*  
 25                               *section:*

1       “(dd)(1) *Individuals described in this paragraph*  
2 *are—*

3       “(A) *individuals who—*

4             “(i) *are within one or more of the categories de-*  
5 *scribed in paragraph (2), as elected under the State*  
6 *plan; and*

7             “(ii) *meet the applicable requirements of para-*  
8 *graph (3); and*

9       “(B) *individuals who—*

10            “(i) *are the spouse, or dependent child under 19*  
11 *years of age, of an individual described in subpara-*  
12 *graph (A); and*

13            “(ii) *meet the requirement of paragraph (3)(B).*

14       “(2) *The categories of individuals described in this*  
15 *paragraph are each of the following:*

16            “(A) *Individuals who are receiving unemploy-*  
17 *ment compensation benefits.*

18            “(B) *Individuals who were receiving, but have*  
19 *exhausted, unemployment compensation benefits on or*  
20 *after July 1, 2008.*

21            “(C) *Individuals who are involuntarily unem-*  
22 *ployed and were involuntarily separated from em-*  
23 *ployment on or after September 1, 2008, and before*  
24 *January 1, 2011, whose family gross income does not*  
25 *exceed a percentage specified by the State (not to ex-*

1       ceed 200 percent) of the income official poverty line  
2       (as defined by the Office of Management and Budget,  
3       and revised annually in accordance with section  
4       673(2) of the Omnibus Budget Reconciliation Act of  
5       1981) applicable to a family of the size involved, and  
6       who, but for subsection (a)(10)(A)(ii)(XX), are not el-  
7       igible for medical assistance under this title or health  
8       assistance under title XXI.

9               “(D) Individuals who are involuntarily unem-  
10       ployed and were involuntarily separated from em-  
11       ployment on or after September 1, 2008, and before  
12       January 1, 2011, who are members of households par-  
13       ticipating in the supplemental nutrition assistance  
14       program established under the Food and Nutrition  
15       Act of 2008 (7 U.S.C. 2011 et seq), and who, but for  
16       subsection (a)(10)(A)(ii)(XX), are not eligible for  
17       medical assistance under this title or health assistance  
18       under title XXI.

19       A State plan may elect one or more of the categories de-  
20       scribed in this paragraph but may not elect the category  
21       described in subparagraph (B) unless the State plan also  
22       elects the category described in subparagraph (A).

23               “(3) The requirements of this paragraph with respect  
24       to an individual are the following:

1           “(A) *In the case of individuals within a category*  
2           *described in subparagraph (A) or (B) of paragraph*  
3           *(2), the individual was involuntarily separated from*  
4           *employment on or after September 1, 2008, and before*  
5           *January 1, 2011, or meets such comparable require-*  
6           *ment as the Secretary specifies through rule, guid-*  
7           *ance, or otherwise in the case of an individual who*  
8           *was an independent contractor.*

9           “(B) *The individual is not otherwise covered*  
10          *under creditable coverage, as defined in section*  
11          *2701(c) of the Public Health Service Act (42 U.S.C.*  
12          *300gg(c)), but applied without regard to paragraph*  
13          *(1)(F) of such section and without regard to coverage*  
14          *provided by reason of the application of subsection*  
15          *(a)(10)(A)(i)(XX).*

16          “(4)(A) *No income or resources test shall be applied*  
17          *with respect to any category of individuals described in sub-*  
18          *paragraph (A), (B), or (D) of paragraph (2) who are eligi-*  
19          *ble for medical assistance only by reason of the application*  
20          *of subsection (a)(10)(A)(i)(XX).*

21          “(B) *Nothing in this subsection shall be construed to*  
22          *prevent a State from imposing a resource test for the cat-*  
23          *egory of individuals described in paragraph (2)(C)).*

24          “(C) *In the case of individuals provided medical as-*  
25          *sistance by reason of the application of subsection*

1 *(a)(10)(A)(ii)(XX), the requirements of subsections (i)(22)*  
2 *and (x) shall not apply.”.*

3 *(b) 100 PERCENT FEDERAL MATCHING RATE.—*

4 *(1) FMAP FOR TIME-LIMITED PERIOD.—The*  
5 *third sentence of section 1905(b) of such Act (42*  
6 *U.S.C. 1396d(b)) is amended by inserting before the*  
7 *period at the end the following: “and for items and*  
8 *services furnished on or after the date of enactment of*  
9 *this Act and before January 1, 2011, to individuals*  
10 *who are eligible for medical assistance only by reason*  
11 *of the application of section 1902(a)(10)(A)(ii)(XX)”.*

12 *(2) CERTAIN ENROLLMENT-RELATED ADMINIS-*  
13 *TRATIVE COSTS.—Notwithstanding any other provi-*  
14 *sion of law, for purposes of applying section 1903(a)*  
15 *of the Social Security Act (42 U.S.C. 1396b(a)), with*  
16 *respect to expenditures incurred on or after the date*  
17 *of the enactment of this Act and before January 1,*  
18 *2011, for costs of administration (including outreach*  
19 *and the modification and operation of eligibility in-*  
20 *formation systems) attributable to eligibility deter-*  
21 *mination and enrollment of individuals who are eligi-*  
22 *ble for medical assistance only by reason of the appli-*  
23 *cation of section 1902(a)(10)(A)(ii)(XX) of such Act,*  
24 *as added by subsection (a)(1), the Federal matching*

1       percentage shall be 100 percent instead of the match-  
2       ing percentage otherwise applicable.

3       (c) *CONFORMING AMENDMENTS.*—(1) Section  
4 1903(f)(4) of such Act (42 U.S.C. 1396c(f)(4)) is amended  
5 by inserting “1902(a)(10)(A)(ii)(XX), or” after  
6 “1902(a)(10)(A)(ii)(XIX),”.

7       (2) Section 1905(a) of such Act (42 U.S.C. 1396d(a))  
8 is amended, in the matter preceding paragraph (1)—

9               (A) by striking “or” at the end of clause (xii);

10              (B) by adding “or” at the end of clause (xiii);

11       and

12              (C) by inserting after clause (xiii) the following  
13 new clause:

14                               “(xiv) individuals described in section  
15 1902(dd)(1),”.

16                               **TITLE IV—HEALTH**  
17                               **INFORMATION TECHNOLOGY**

18 **SEC. 4001. SHORT TITLE; TABLE OF CONTENTS OF TITLE.**

19       (a) *SHORT TITLE.*—This title may be cited as the  
20 “Health Information Technology for Economic and Clinical  
21 Health Act” or the “HITECH Act”.

22       (b) *TABLE OF CONTENTS OF TITLE.*—The table of con-  
23 tents of this title is as follows:

*Sec. 4001. Short title; table of contents of title.*

*Subtitle A—Promotion of Health Information Technology**PART I—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY*

*Sec. 4101. ONCHIT; standards development and adoption.*

*“TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND QUALITY*

*“Sec. 3000. Definitions.*

*“Subtitle A—Promotion of Health Information Technology*

*“Sec. 3001. Office of the National Coordinator for Health Information Technology.*

*“Sec. 3002. HIT Policy Committee.*

*“Sec. 3003. HIT Standards Committee.*

*“Sec. 3004. Process for adoption of endorsed recommendations; adoption of initial set of standards, implementation specifications, and certification criteria.*

*“Sec. 3005. Application and use of adopted standards and implementation specifications by Federal agencies.*

*“Sec. 3006. Voluntary application and use of adopted standards and implementation specifications by private entities.*

*“Sec. 3007. Federal health information technology.*

*“Sec. 3008. Transitions.*

*“Sec. 3009. Relation to HIPAA privacy and security law.*

*“Sec. 3010. Authorization for appropriations.*

*Sec. 4102. Technical amendment.*

*Sec. 4103. American technology required.*

*PART II—APPLICATION AND USE OF ADOPTED HEALTH INFORMATION TECHNOLOGY STANDARDS; REPORTS*

*Sec. 4111. Coordination of Federal activities with adopted standards and implementation specifications.*

*Sec. 4112. Application to private entities.*

*Sec. 4113. Study and reports.*

*Subtitle B—Testing of Health Information Technology*

*Sec. 4201. National Institute for Standards and Technology testing.*

*Sec. 4202. Research and development programs.*

*Subtitle C—Incentives for the Use of Health Information Technology**PART I—GRANTS AND LOANS FUNDING*

*Sec. 4301. Grant, loan, and demonstration programs.*

*“Subtitle B—Incentives for the Use of Health Information Technology*

*“Sec. 3011. Immediate funding to strengthen the health information technology infrastructure.*

*“Sec. 3012. Health information technology implementation assistance.*

*“Sec. 3013. State grants to promote health information technology.*

*“Sec. 3014. Competitive grants to States and Indian tribes for the development of loan programs to facilitate the widespread adoption of certified EHR technology.*

*“Sec. 3015. Demonstration program to integrate information technology into clinical education.*

*“Sec. 3016. Information technology professionals on health care.*

*“Sec. 3017. General grant and loan provisions.*

*“Sec. 3018. Authorization for appropriations.*

*PART II—MEDICARE PROGRAM*

*Sec. 4311. Incentives for eligible professionals.*

*Sec. 4312. Incentives for hospitals.*

*Sec. 4313. Treatment of payments and savings; implementation funding.*

*Sec. 4314. Study on application of EHR payment incentives for providers not receiving other incentive payments.*

*PART III—MEDICAID FUNDING*

*Sec. 4321. Medicaid provider HIT adoption and operation payments; implementation funding.*

*Subtitle D—Privacy*

*Sec. 4400. Definitions.*

*PART I—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS*

*Sec. 4401. Application of security provisions and penalties to business associates of covered entities; annual guidance on security provisions.*

*Sec. 4402. Notification in the case of breach.*

*Sec. 4403. Education on Health Information Privacy.*

*Sec. 4404. Application of privacy provisions and penalties to business associates of covered entities.*

*Sec. 4405. Restrictions on certain disclosures and sales of health information; accounting of certain protected health information disclosures; access to certain information in electronic format.*

*Sec. 4406. Conditions on certain contacts as part of health care operations.*

*Sec. 4407. Temporary breach notification requirement for vendors of personal health records and other non-HIPAA covered entities.*

*Sec. 4408. Business associate contracts required for certain entities.*

*Sec. 4409. Clarification of application of wrongful disclosures criminal penalties.*

*Sec. 4410. Improved enforcement.*

*Sec. 4411. Audits.*

*Sec. 4412. Securing individually identifiable health information.*

*Sec. 4413. Special rule for information to reduce medication errors and improve patient safety.*

*PART II—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES; EFFECTIVE DATE; REPORTS*

*Sec. 4421. Relationship to other laws.*

*Sec. 4422. Regulatory references.*

*Sec. 4423. Effective date.*

*Sec. 4424. Studies, reports, guidance.*

1     **Subtitle A—Promotion of Health**  
2             **Information Technology**

3     **PART 1—IMPROVING HEALTH CARE QUALITY,**  
4             **SAFETY, AND EFFICIENCY**

5     **SEC. 4101. ONCHIT; STANDARDS DEVELOPMENT AND ADOPTI-**  
6             **ON.**

7             *The Public Health Service Act (42 U.S.C. 201 et seq.)*

8     *is amended by adding at the end the following:*

9     **“TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND**  
10            **QUALITY**

12    **“SEC. 3000. DEFINITIONS.**

13            *“In this title:*

14                    *“(1) CERTIFIED EHR TECHNOLOGY.—The term*  
15                    *‘certified EHR technology’ means a qualified elec-*  
16                    *tronic health record that is certified pursuant to sec-*  
17                    *tion 3001(c)(5) as meeting standards adopted under*  
18                    *section 3004 that are applicable to the type of record*  
19                    *involved (as determined by the Secretary, such as an*  
20                    *ambulatory electronic health record for office-based*  
21                    *physicians or an inpatient hospital electronic health*  
22                    *record for hospitals).*

23                    *“(2) ENTERPRISE INTEGRATION.—The term ‘en-*  
24                    *terprise integration’ means the electronic linkage of*  
25                    *health care providers, health plans, the government,*

1        *and other interested parties, to enable the electronic*  
2        *exchange and use of health information among all the*  
3        *components in the health care infrastructure in ac-*  
4        *cordance with applicable law, and such term includes*  
5        *related application protocols and other related stand-*  
6        *ards.*

7            “(3) *HEALTH CARE PROVIDER.*—*The term*  
8        *‘health care provider’ means a hospital, skilled nurs-*  
9        *ing facility, nursing facility, home health entity or*  
10        *other long term care facility, health care clinic, Feder-*  
11        *ally qualified health center, group practice (as defined*  
12        *in section 1877(h)(4) of the Social Security Act), a*  
13        *pharmacist, a pharmacy, a laboratory, a physician*  
14        *(as defined in section 1861(r) of the Social Security*  
15        *Act), a practitioner (as described in section*  
16        *1842(b)(18)(C) of the Social Security Act), a provider*  
17        *operated by, or under contract with, the Indian*  
18        *Health Service or by an Indian tribe (as defined in*  
19        *the Indian Self-Determination and Education Assist-*  
20        *ance Act), tribal organization, or urban Indian orga-*  
21        *nization (as defined in section 4 of the Indian Health*  
22        *Care Improvement Act), a rural health clinic, a cov-*  
23        *ered entity under section 340B, an ambulatory sur-*  
24        *gical center described in section 1833(i) of the Social*

1       *Security Act, and any other category of facility or*  
2       *clinician determined appropriate by the Secretary.*

3               “(4) *HEALTH INFORMATION.*—*The term ‘health*  
4       *information’ has the meaning given such term in sec-*  
5       *tion 1171(4) of the Social Security Act.*

6               “(5) *HEALTH INFORMATION TECHNOLOGY.*—*The*  
7       *term ‘health information technology’ means hardware,*  
8       *software, integrated technologies and related licenses,*  
9       *intellectual property, upgrades, and packaged solu-*  
10       *tions sold as services that are specifically designed for*  
11       *use by health care entities for the electronic creation,*  
12       *maintenance, or exchange of health information.*

13               “(6) *HEALTH PLAN.*—*The term ‘health plan’ has*  
14       *the meaning given such term in section 1171(5) of the*  
15       *Social Security Act.*

16               “(7) *HIT POLICY COMMITTEE.*—*The term ‘HIT*  
17       *Policy Committee’ means such Committee established*  
18       *under section 3002(a).*

19               “(8) *HIT STANDARDS COMMITTEE.*—*The term*  
20       *‘HIT Standards Committee’ means such Committee*  
21       *established under section 3003(a).*

22               “(9) *INDIVIDUALLY IDENTIFIABLE HEALTH IN-*  
23       *FORMATION.*—*The term ‘individually identifiable*  
24       *health information’ has the meaning given such term*  
25       *in section 1171(6) of the Social Security Act.*

1           “(10) *LABORATORY*.—The term ‘laboratory’ has  
2           the meaning given such term in section 353(a).

3           “(11) *NATIONAL COORDINATOR*.—The term ‘Na-  
4           tional Coordinator’ means the head of the Office of the  
5           National Coordinator for Health Information Tech-  
6           nology established under section 3001(a).

7           “(12) *PHARMACIST*.—The term ‘pharmacist’ has  
8           the meaning given such term in section 804(2) of the  
9           Federal Food, Drug, and Cosmetic Act.

10          “(13) *QUALIFIED ELECTRONIC HEALTH*  
11          *RECORD*.—The term ‘qualified electronic health  
12          record’ means an electronic record of health-related  
13          information on an individual that—

14               “(A) includes patient demographic and  
15               clinical health information, such as medical his-  
16               tory and problem lists; and

17               “(B) has the capacity—

18                       “(i) to provide clinical decision sup-  
19                       port;

20                       “(ii) to support physician order entry;

21                       “(iii) to capture and query informa-  
22                       tion relevant to health care quality; and

23                       “(iv) to exchange electronic health in-  
24                       formation with, and integrate such infor-  
25                       mation from other sources.

1           “(14) *STATE*.—The term ‘State’ means each of  
2           the several States, the District of Columbia, Puerto  
3           Rico, the Virgin Islands, Guam, American Samoa,  
4           and the Northern Mariana Islands.

5           **“Subtitle A—Promotion of Health**  
6           **Information Technology**

7           **“SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR**  
8           **HEALTH INFORMATION TECHNOLOGY.**

9           “(a) *ESTABLISHMENT*.—There is established within  
10          the Department of Health and Human Services an Office  
11          of the National Coordinator for Health Information Tech-  
12          nology (referred to in this section as the ‘Office’). The Office  
13          shall be headed by a National Coordinator who shall be ap-  
14          pointed by the Secretary and shall report directly to the  
15          Secretary.

16          “(b) *PURPOSE*.—The National Coordinator shall per-  
17          form the duties under subsection (c) in a manner consistent  
18          with the development of a nationwide health information  
19          technology infrastructure that allows for the electronic use  
20          and exchange of information and that—

21                  “(1) ensures that each patient’s health informa-  
22                  tion is secure and protected, in accordance with ap-  
23                  plicable law;

1           “(2) improves health care quality, reduces med-  
2           ical errors, reduces health disparities, and advances  
3           the delivery of patient-centered medical care;

4           “(3) reduces health care costs resulting from ineff-  
5           ficiency, medical errors, inappropriate care, duplica-  
6           tive care, and incomplete information;

7           “(4) provides appropriate information to help  
8           guide medical decisions at the time and place of care;

9           “(5) ensures the inclusion of meaningful public  
10          input in such development of such infrastructure;

11          “(6) improves the coordination of care and infor-  
12          mation among hospitals, laboratories, physician of-  
13          fices, and other entities through an effective infra-  
14          structure for the secure and authorized exchange of  
15          health care information;

16          “(7) improves public health activities and facili-  
17          tates the early identification and rapid response to  
18          public health threats and emergencies, including bio-  
19          terror events and infectious disease outbreaks;

20          “(8) facilitates health and clinical research and  
21          health care quality;

22          “(9) promotes prevention of chronic diseases;

23          “(10) promotes a more effective marketplace,  
24          greater competition, greater systems analysis, in-

1        *creased consumer choice, and improved outcomes in*  
2        *health care services; and*

3                *“(11) improves efforts to reduce health dispari-*  
4        *ties.*

5        *“(c) DUTIES OF THE NATIONAL COORDINATOR.—*

6                *“(1) STANDARDS.—The National Coordinator*  
7        *shall review and determine whether to endorse each*  
8        *standard, implementation specification, and certifi-*  
9        *cation criterion for the electronic exchange and use of*  
10       *health information that is recommended by the HIT*  
11       *Standards Committee under section 3003 for purposes*  
12       *of adoption under section 3004. The Coordinator shall*  
13       *make such determination, and report to the Secretary*  
14       *such determination, not later than 45 days after the*  
15       *date the recommendation is received by the Coordi-*  
16       *nator.*

17                *“(2) HIT POLICY COORDINATION.—*

18                *“(A) IN GENERAL.—The National Coordi-*  
19        *nator shall coordinate health information tech-*  
20        *nology policy and programs of the Department*  
21        *with those of other relevant executive branch*  
22        *agencies with a goal of avoiding duplication of*  
23        *efforts and of helping to ensure that each agency*  
24        *undertakes health information technology activi-*  
25        *ties primarily within the areas of its greatest ex-*

1           *expertise and technical capability and in a man-*  
2           *ner towards a coordinated national goal.*

3           “(B) *HIT POLICY AND STANDARDS COMMIT-*  
4           *TEES.—The National Coordinator shall be a*  
5           *leading member in the establishment and oper-*  
6           *ations of the HIT Policy Committee and the*  
7           *HIT Standards Committee and shall serve as a*  
8           *liaison among those two Committees and the*  
9           *Federal Government.*

10          “(3) *STRATEGIC PLAN.—*

11           “(A) *IN GENERAL.—The National Coordi-*  
12           *nator shall, in consultation with other appro-*  
13           *priate Federal agencies (including the National*  
14           *Institute of Standards and Technology), update*  
15           *the Federal Health IT Strategic Plan (developed*  
16           *as of June 3, 2008) to include specific objectives,*  
17           *milestones, and metrics with respect to the fol-*  
18           *lowing:*

19                   “(i) *The electronic exchange and use of*  
20                   *health information and the enterprise inte-*  
21                   *gration of such information.*

22                   “(ii) *The utilization of an electronic*  
23                   *health record for each person in the United*  
24                   *States by 2014.*

1           “(iii) *The incorporation of privacy*  
2           *and security protections for the electronic*  
3           *exchange of an individual’s individually*  
4           *identifiable health information.*

5           “(iv) *Ensuring security methods to en-*  
6           *sure appropriate authorization and elec-*  
7           *tronic authentication of health information*  
8           *and specifying technologies or methodologies*  
9           *for rendering health information unusable,*  
10           *unreadable, or indecipherable.*

11           “(v) *Specifying a framework for co-*  
12           *ordination and flow of recommendations*  
13           *and policies under this subtitle among the*  
14           *Secretary, the National Coordinator, the*  
15           *HIT Policy Committee, the HIT Standards*  
16           *Committee, and other health information*  
17           *exchanges and other relevant entities.*

18           “(vi) *Methods to foster the public un-*  
19           *derstanding of health information tech-*  
20           *nology.*

21           “(vii) *Strategies to enhance the use of*  
22           *health information technology in improving*  
23           *the quality of health care, reducing medical*  
24           *errors, reducing health disparities, improv-*

1            *ing public health, and improving the con-*  
2            *tinuity of care among health care settings.*

3            *“(B) COLLABORATION.—The strategic plan*  
4            *shall be updated through collaboration of public*  
5            *and private entities.*

6            *“(C) MEASURABLE OUTCOME GOALS.—The*  
7            *strategic plan update shall include measurable*  
8            *outcome goals.*

9            *“(D) PUBLICATION.—The National Coordi-*  
10           *nator shall republish the strategic plan, includ-*  
11           *ing all updates.*

12           *“(4) WEBSITE.—The National Coordinator shall*  
13           *maintain and frequently update an Internet website*  
14           *on which there is posted information on the work,*  
15           *schedules, reports, recommendations, and other infor-*  
16           *mation to ensure transparency in promotion of a na-*  
17           *tionwide health information technology infrastruc-*  
18           *ture.*

19           *“(5) CERTIFICATION.—*

20           *“(A) IN GENERAL.—The National Coordi-*  
21           *nator, in consultation with the Director of the*  
22           *National Institute of Standards and Technology,*  
23           *shall develop a program (either directly or by*  
24           *contract) for the voluntary certification of health*  
25           *information technology as being in compliance*

1           *with applicable certification criteria adopted*  
2           *under this subtitle. Such program shall include*  
3           *testing of the technology in accordance with sec-*  
4           *tion 4201(b) of the HITECH Act.*

5           “(B)    *CERTIFICATION    CRITERIA    DE-*  
6           *SCRIBED.—In this title, the term ‘certification*  
7           *criteria’ means, with respect to standards and*  
8           *implementation specifications for health infor-*  
9           *mation technology, criteria to establish that the*  
10           *technology meets such standards and implemen-*  
11           *tation specifications.*

12           “(6) *REPORTS AND PUBLICATIONS.—*

13           “(A) *REPORT ON ADDITIONAL FUNDING OR*  
14           *AUTHORITY NEEDED.—Not later than 12 months*  
15           *after the date of the enactment of this title, the*  
16           *National Coordinator shall submit to the appro-*  
17           *priate committees of jurisdiction of the House of*  
18           *Representatives and the Senate a report on any*  
19           *additional funding or authority the Coordinator*  
20           *or the HIT Policy Committee or HIT Standards*  
21           *Committee requires to evaluate and develop*  
22           *standards, implementation specifications, and*  
23           *certification criteria, or to achieve full participa-*  
24           *tion of stakeholders in the adoption of a nation-*  
25           *wide health information technology infrastruc-*

1           *ture that allows for the electronic use and ex-*  
2           *change of health information.*

3           “(B) *IMPLEMENTATION REPORT.*—*The Na-*  
4           *tional Coordinator shall prepare a report that*  
5           *identifies lessons learned from major public and*  
6           *private health care systems in their implementa-*  
7           *tion of health information technology, including*  
8           *information on whether the technologies and*  
9           *practices developed by such systems may be ap-*  
10          *plicable to and usable in whole or in part by*  
11          *other health care providers.*

12          “(C) *ASSESSMENT OF IMPACT OF HIT ON*  
13          *COMMUNITIES WITH HEALTH DISPARITIES AND*  
14          *UNINSURED, UNDERINSURED, AND MEDICALLY*  
15          *UNDERSERVED AREAS.*—*The National Coordi-*  
16          *nator shall assess and publish the impact of*  
17          *health information technology in communities*  
18          *with health disparities and in areas with a high*  
19          *proportion of individuals who are uninsured,*  
20          *underinsured, and medically underserved indi-*  
21          *viduals (including urban and rural areas) and*  
22          *identify practices to increase the adoption of*  
23          *such technology by health care providers in such*  
24          *communities.*

1           “(D) *EVALUATION OF BENEFITS AND COSTS*  
2           *OF THE ELECTRONIC USE AND EXCHANGE OF*  
3           *HEALTH INFORMATION.—The National Coordi-*  
4           *nator shall evaluate and publish evidence on the*  
5           *benefits and costs of the electronic use and ex-*  
6           *change of health information and assess to whom*  
7           *these benefits and costs accrue.*

8           “(E) *RESOURCE REQUIREMENTS.—The Na-*  
9           *tional Coordinator shall estimate and publish re-*  
10          *sources required annually to reach the goal of*  
11          *utilization of an electronic health record for each*  
12          *person in the United States by 2014, including*  
13          *the required level of Federal funding, expecta-*  
14          *tions for regional, State, and private investment,*  
15          *and the expected contributions by volunteers to*  
16          *activities for the utilization of such records.*

17          “(7) *ASSISTANCE.—The National Coordinator*  
18          *may provide financial assistance to consumer advo-*  
19          *cacy groups and not-for-profit entities that work in*  
20          *the public interest for purposes of defraying the cost*  
21          *to such groups and entities to participate under,*  
22          *whether in whole or in part, the National Technology*  
23          *Transfer Act of 1995 (15 U.S.C. 272 note).*

24          “(8) *GOVERNANCE FOR NATIONWIDE HEALTH IN-*  
25          *FORMATION NETWORK.—The National Coordinator*

1       *shall establish a governance mechanism for the na-*  
2       *tionwide health information network.*

3       “(d) *DETAIL OF FEDERAL EMPLOYEES.—*

4               “(1) *IN GENERAL.—Upon the request of the Na-*  
5       *tional Coordinator, the head of any Federal agency is*  
6       *authorized to detail, with or without reimbursement*  
7       *from the Office, any of the personnel of such agency*  
8       *to the Office to assist it in carrying out its duties*  
9       *under this section.*

10              “(2) *EFFECT OF DETAIL.—Any detail of per-*  
11       *sonnel under paragraph (1) shall—*

12                      “(A) *not interrupt or otherwise affect the*  
13       *civil service status or privileges of the Federal*  
14       *employee; and*

15                      “(B) *be in addition to any other staff of the*  
16       *Department employed by the National Coordi-*  
17       *nator.*

18              “(3) *ACCEPTANCE OF DETAILEES.—Notwith-*  
19       *standing any other provision of law, the Office may*  
20       *accept detailed personnel from other Federal agencies*  
21       *without regard to whether the agency described under*  
22       *paragraph (1) is reimbursed.*

23       “(e) *CHIEF PRIVACY OFFICER OF THE OFFICE OF THE*  
24       *NATIONAL COORDINATOR.—Not later than 12 months after*  
25       *the date of the enactment of this title, the Secretary shall*

1 *appoint a Chief Privacy Officer of the Office of the National*  
2 *Coordinator, whose duty it shall be to advise the National*  
3 *Coordinator on privacy, security, and data stewardship of*  
4 *electronic health information and to coordinate with other*  
5 *Federal agencies (and similar privacy officers in such agen-*  
6 *cies), with State and regional efforts, and with foreign*  
7 *countries with regard to the privacy, security, and data*  
8 *stewardship of electronic individually identifiable health*  
9 *information.*

10 **“SEC. 3002. HIT POLICY COMMITTEE.**

11 *“(a) ESTABLISHMENT.—There is established a HIT*  
12 *Policy Committee to make policy recommendations to the*  
13 *National Coordinator relating to the implementation of a*  
14 *nationwide health information technology infrastructure,*  
15 *including implementation of the strategic plan described in*  
16 *section 3001(c)(3).*

17 *“(b) DUTIES.—*

18 *“(1) RECOMMENDATIONS ON HEALTH INFORMA-*  
19 *TION TECHNOLOGY INFRASTRUCTURE.—The HIT Pol-*  
20 *icy Committee shall recommend a policy framework*  
21 *for the development and adoption of a nationwide*  
22 *health information technology infrastructure that per-*  
23 *mits the electronic exchange and use of health infor-*  
24 *mation as is consistent with the strategic plan under*  
25 *section 3001(c)(3) and that includes the recommenda-*

1        *tions under paragraph (2). The Committee shall up-*  
2        *date such recommendations and make new rec-*  
3        *ommendations as appropriate.*

4                *“(2) SPECIFIC AREAS OF STANDARD DEVELOP-*  
5        *MENT.—*

6                *“(A) IN GENERAL.—The HIT Policy Com-*  
7        *mittee shall recommend the areas in which*  
8        *standards, implementation specifications, and*  
9        *certification criteria are needed for the electronic*  
10       *exchange and use of health information for pur-*  
11       *poses of adoption under section 3004 and shall*  
12       *recommend an order of priority for the develop-*  
13       *ment, harmonization, and recognition of such*  
14       *standards, specifications, and certification cri-*  
15       *teria among the areas so recommended. Such*  
16       *standards and implementation specifications*  
17       *shall include named standards, architectures,*  
18       *and software schemes for the authentication and*  
19       *security of individually identifiable health infor-*  
20       *mation and other information as needed to en-*  
21       *sure the reproducible development of common so-*  
22       *lutions across disparate entities.*

23                *“(B) AREAS REQUIRED FOR CONSIDER-*  
24       *ATION.—For purposes of subparagraph (A), the*

1            *HIT Policy Committee shall make recommenda-*  
2            *tions for at least the following areas:*

3                    *“(i) Technologies that protect the pri-*  
4                    *vacancy of health information and promote se-*  
5                    *curity in a qualified electronic health*  
6                    *record, including for the segmentation and*  
7                    *protection from disclosure of specific and*  
8                    *sensitive individually identifiable health in-*  
9                    *formation with the goal of minimizing the*  
10                   *reluctance of patients to seek care (or dis-*  
11                   *close information about a condition) be-*  
12                   *cause of privacy concerns, in accordance*  
13                   *with applicable law, and for the use and*  
14                   *disclosure of limited data sets of such infor-*  
15                   *mation.*

16                   *“(ii) A nationwide health information*  
17                   *technology infrastructure that allows for the*  
18                   *electronic use and accurate exchange of*  
19                   *health information.*

20                   *“(iii) The utilization of a certified elec-*  
21                   *tronic health record for each person in the*  
22                   *United States by 2014.*

23                   *“(iv) Technologies that as a part of a*  
24                   *qualified electronic health record allow for*  
25                   *an accounting of disclosures made by a cov-*

1            *ered entity (as defined for purposes of regu-*  
2            *lations promulgated under section 264(c) of*  
3            *the Health Insurance Portability and Ac-*  
4            *countability Act of 1996) for purposes of*  
5            *treatment, payment, and health care oper-*  
6            *ations (as such terms are defined for pur-*  
7            *poses of such regulations).*

8            *“(v) The use of certified electronic*  
9            *health records to improve the quality of*  
10           *health care, such as by promoting the co-*  
11           *ordination of health care and improving*  
12           *continuity of health care among health care*  
13           *providers, by reducing medical errors, by*  
14           *improving population health, by reducing*  
15           *health disparities, and by advancing re-*  
16           *search and education.*

17           *“(C) OTHER AREAS FOR CONSIDERATION.—*  
18           *In making recommendations under subpara-*  
19           *graph (A), the HIT Policy Committee may con-*  
20           *sider the following additional areas:*

21           *“(i) The appropriate uses of a nation-*  
22           *wide health information infrastructure, in-*  
23           *cluding for purposes of—*

24           *“(I) the collection of quality data*  
25           *and public reporting;*

1                   “(II) biosurveillance and public  
2                   health;

3                   “(III) medical and clinical re-  
4                   search; and

5                   “(IV) drug safety.

6                   “(ii) Self-service technologies that fa-  
7                   cilitate the use and exchange of patient in-  
8                   formation and reduce wait times.

9                   “(iii) Telemedicine technologies, in  
10                  order to reduce travel requirements for pa-  
11                  tients in remote areas.

12                  “(iv) Technologies that facilitate home  
13                  health care and the monitoring of patients  
14                  recuperating at home.

15                  “(v) Technologies that help reduce med-  
16                  ical errors.

17                  “(vi) Technologies that facilitate the  
18                  continuity of care among health settings.

19                  “(vii) Technologies that meet the needs  
20                  of diverse populations.

21                  “(viii) Any other technology that the  
22                  HIT Policy Committee finds to be among  
23                  the technologies with the greatest potential  
24                  to improve the quality and efficiency of  
25                  health care.

1           “(3) *FORUM.*—*The HIT Policy Committee shall*  
2           *serve as a forum for broad stakeholder input with spe-*  
3           *cific expertise in policies relating to the matters de-*  
4           *scribed in paragraphs (1) and (2).*

5           “(c) *MEMBERSHIP AND OPERATIONS.*—

6           “(1) *IN GENERAL.*—*The National Coordinator*  
7           *shall provide leadership in the establishment and op-*  
8           *erations of the HIT Policy Committee.*

9           “(2) *MEMBERSHIP.*—*The membership of the HIT*  
10          *Policy Committee shall at least reflect providers, an-*  
11          *cillary healthcare workers, consumers, purchasers,*  
12          *health plans, technology vendors, researchers, relevant*  
13          *Federal agencies, and individuals with technical ex-*  
14          *pertise on health care quality, privacy and security,*  
15          *and on the electronic exchange and use of health in-*  
16          *formation.*

17          “(3) *CONSIDERATION.*—*The National Coordi-*  
18          *nator shall ensure that the relevant recommendations*  
19          *and comments from the National Committee on Vital*  
20          *and Health Statistics are considered in the develop-*  
21          *ment of policies.*

22          “(d) *APPLICATION OF FACA.*—*The Federal Advisory*  
23          *Committee Act (5 U.S.C. App.), other than section 14 of*  
24          *such Act, shall apply to the HIT Policy Committee.*

1       “(e) *PUBLICATION.*—*The Secretary shall provide for*  
2 *publication in the Federal Register and the posting on the*  
3 *Internet website of the Office of the National Coordinator*  
4 *for Health Information Technology of all policy rec-*  
5 *ommendations made by the HIT Policy Committee under*  
6 *this section.*

7       “**SEC. 3003. HIT STANDARDS COMMITTEE.**

8       “(a) *ESTABLISHMENT.*—*There is established a com-*  
9 *mittee to be known as the HIT Standards Committee to*  
10 *recommend to the National Coordinator standards, imple-*  
11 *mentation specifications, and certification criteria for the*  
12 *electronic exchange and use of health information for pur-*  
13 *poses of adoption under section 3004, consistent with the*  
14 *implementation of the strategic plan described in section*  
15 *3001(c)(3) and beginning with the areas listed in section*  
16 *3002(b)(2)(B) in accordance with policies developed by the*  
17 *HIT Policy Committee.*

18       “(b) *DUTIES.*—

19               “(1) *STANDARDS DEVELOPMENT.*—

20                       “(A) *IN GENERAL.*—*The HIT Standards*  
21 *Committee shall recommend to the National Co-*  
22 *ordinator standards, implementation specifica-*  
23 *tions, and certification criteria described in sub-*  
24 *section (a) that have been developed, harmonized,*  
25 *or recognized by the HIT Standards Committee.*

1           *The HIT Standards Committee shall update*  
2           *such recommendations and make new rec-*  
3           *ommendations as appropriate, including in re-*  
4           *sponse to a notification sent under section*  
5           *3004(b)(2). Such recommendations shall be con-*  
6           *sistent with the latest recommendations made by*  
7           *the HIT Policy Committee.*

8           “(B) *PILOT TESTING OF STANDARDS AND*  
9           *IMPLEMENTATION SPECIFICATIONS.—In the de-*  
10          *velopment, harmonization, or recognition of*  
11          *standards and implementation specifications, the*  
12          *HIT Standards Committee shall, as appropriate,*  
13          *provide for the testing of such standards and*  
14          *specifications by the National Institute for*  
15          *Standards and Technology under section 4201 of*  
16          *the HITECH Act.*

17          “(C) *CONSISTENCY.—The standards, imple-*  
18          *mentation specifications, and certification cri-*  
19          *teria recommended under this subsection shall be*  
20          *consistent with the standards for information*  
21          *transactions and data elements adopted pursu-*  
22          *ant to section 1173 of the Social Security Act.*

23          “(2) *FORUM.—The HIT Standards Committee*  
24          *shall serve as a forum for the participation of a broad*  
25          *range of stakeholders to provide input on the develop-*

1 *ment, harmonization, and recognition of standards,*  
2 *implementation specifications, and certification cri-*  
3 *teria necessary for the development and adoption of*  
4 *a nationwide health information technology infra-*  
5 *structure that allows for the electronic use and ex-*  
6 *change of health information.*

7       “(3) *SCHEDULE.*—Not later than 90 days after  
8 *the date of the enactment of this title, the HIT Stand-*  
9 *ards Committee shall develop a schedule for the assess-*  
10 *ment of policy recommendations developed by the*  
11 *HIT Policy Committee under section 3002. The HIT*  
12 *Standards Committee shall update such schedule an-*  
13 *nually. The Secretary shall publish such schedule in*  
14 *the Federal Register.*

15       “(4) *PUBLIC INPUT.*—The HIT Standards Com-  
16 *mittee shall conduct open public meetings and develop*  
17 *a process to allow for public comment on the schedule*  
18 *described in paragraph (3) and recommendations de-*  
19 *scribed in this subsection. Under such process com-*  
20 *ments shall be submitted in a timely manner after the*  
21 *date of publication of a recommendation under this*  
22 *subsection.*

23       “(c) *MEMBERSHIP AND OPERATIONS.*—

1           “(1) *IN GENERAL.*—*The National Coordinator*  
2           *shall provide leadership in the establishment and op-*  
3           *erations of the HIT Standards Committee.*

4           “(2) *MEMBERSHIP.*—*The membership of the HIT*  
5           *Standards Committee shall at least reflect providers,*  
6           *ancillary healthcare workers, consumers, purchasers,*  
7           *health plans, technology vendors, researchers, relevant*  
8           *Federal agencies, and individuals with technical ex-*  
9           *pertise on health care quality, privacy and security,*  
10           *and on the electronic exchange and use of health in-*  
11           *formation.*

12           “(3) *CONSIDERATION.*—*The National Coordi-*  
13           *nator shall ensure that the relevant recommendations*  
14           *and comments from the National Committee on Vital*  
15           *and Health Statistics are considered in the develop-*  
16           *ment of standards.*

17           “(4) *ASSISTANCE.*—*For the purposes of carrying*  
18           *out this section, the Secretary may provide or ensure*  
19           *that financial assistance is provided by the HIT*  
20           *Standards Committee to defray in whole or in part*  
21           *any membership fees or dues charged by such Com-*  
22           *mittee to those consumer advocacy groups and not for*  
23           *profit entities that work in the public interest as a*  
24           *part of their mission.*

1       “(d) *APPLICATION OF FACA.*—*The Federal Advisory*  
2 *Committee Act (5 U.S.C. App.), other than section 14, shall*  
3 *apply to the HIT Standards Committee.*

4       “(e) *PUBLICATION.*—*The Secretary shall provide for*  
5 *publication in the Federal Register and the posting on the*  
6 *Internet website of the Office of the National Coordinator*  
7 *for Health Information Technology of all recommendations*  
8 *made by the HIT Standards Committee under this section.*

9       “**SEC. 3004. PROCESS FOR ADOPTION OF ENDORSED REC-**  
10                               **COMMENDATIONS; ADOPTION OF INITIAL SET**  
11                               **OF STANDARDS, IMPLEMENTATION SPECI-**  
12                               **FICATIONS, AND CERTIFICATION CRITERIA.**

13       “(a) *PROCESS FOR ADOPTION OF ENDORSED REC-*  
14 *COMMENDATIONS.*—

15               “(1) *REVIEW OF ENDORSED STANDARDS, IMPL-*  
16 *EMENTATION SPECIFICATIONS, AND CERTIFICATION CRI-*  
17 *TERIA.*—*Not later than 90 days after the date of re-*  
18 *ceipt of standards, implementation specifications, or*  
19 *certification criteria endorsed under section 3001(c),*  
20 *the Secretary, in consultation with representatives of*  
21 *other relevant Federal agencies, shall jointly review*  
22 *such standards, implementation specifications, or cer-*  
23 *tification criteria and shall determine whether or not*  
24 *to propose adoption of such standards, implementa-*  
25 *tion specifications, or certification criteria.*

1           “(2) *DETERMINATION TO ADOPT STANDARDS, IM-*  
2           *PLEMENTATION SPECIFICATIONS, AND CERTIFICATION*  
3           *CRITERIA.—If the Secretary determines—*

4                   “(A) *to propose adoption of any grouping of*  
5                   *such standards, implementation specifications,*  
6                   *or certification criteria, the Secretary shall, by*  
7                   *regulation, determine whether or not to adopt*  
8                   *such grouping of standards, implementation*  
9                   *specifications, or certification criteria; or*

10                   “(B) *not to propose adoption of any group-*  
11                   *ing of standards, implementation specifications,*  
12                   *or certification criteria, the Secretary shall no-*  
13                   *tify the National Coordinator and the HIT*  
14                   *Standards Committee in writing of such deter-*  
15                   *mination and the reasons for not proposing the*  
16                   *adoption of such recommendation.*

17           “(3) *PUBLICATION.—The Secretary shall provide*  
18           *for publication in the Federal Register of all deter-*  
19           *minations made by the Secretary under paragraph*  
20           *(1).*

21           “(b) *ADOPTION OF INITIAL SET OF STANDARDS, IM-*  
22           *PLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRI-*  
23           *TERIA.—*

24                   “(1) *IN GENERAL.—Not later than December 31,*  
25                   *2009, the Secretary shall, through the rulemaking*

1 *process described in section 3003, adopt an initial set*  
2 *of standards, implementation specifications, and cer-*  
3 *tification criteria for the areas required for consider-*  
4 *ation under section 3002(b)(2)(B).*

5 *“(2) APPLICATION OF CURRENT STANDARDS, IM-*  
6 *PLEMENTATION SPECIFICATIONS, AND CERTIFICATION*  
7 *CRITERIA.—The standards, implementation specifica-*  
8 *tions, and certification criteria adopted before the*  
9 *date of the enactment of this title through the process*  
10 *existing through the Office of the National Coordi-*  
11 *nator for Health Information Technology may be ap-*  
12 *plied towards meeting the requirement of paragraph*  
13 *(1).*

14 **“SEC. 3005. APPLICATION AND USE OF ADOPTED STAND-**  
15 **ARDS AND IMPLEMENTATION SPECIFICA-**  
16 **TIONS BY FEDERAL AGENCIES.**

17 *“For requirements relating to the application and use*  
18 *by Federal agencies of the standards and implementation*  
19 *specifications adopted under section 3004, see section 4111*  
20 *of the HITECH Act.*

21 **“SEC. 3006. VOLUNTARY APPLICATION AND USE OF ADOPT-**  
22 **ED STANDARDS AND IMPLEMENTATION SPEC-**  
23 **IFICATIONS BY PRIVATE ENTITIES.**

24 *“(a) IN GENERAL.—Except as provided under section*  
25 *4112 of the HITECH Act, any standard or implementation*

1 *specification adopted under section 3004 shall be voluntary*  
2 *with respect to private entities.*

3       “(b) *RULE OF CONSTRUCTION.*—*Nothing in this sub-*  
4 *title shall be construed to require that a private entity that*  
5 *enters into a contract with the Federal Government apply*  
6 *or use the standards and implementation specifications*  
7 *adopted under section 3004 with respect to activities not*  
8 *related to the contract.*

9       “**SEC. 3007. FEDERAL HEALTH INFORMATION TECHNOLOGY.**

10       “(a) *IN GENERAL.*—*The National Coordinator shall*  
11 *support the development, routine updating, and provision*  
12 *of qualified EHR technology (as defined in section 3000)*  
13 *consistent with subsections (b) and (c) unless the Secretary*  
14 *determines that the needs and demands of providers are*  
15 *being substantially and adequately met through the market-*  
16 *place.*

17       “(b) *CERTIFICATION.*—*In making such EHR tech-*  
18 *nology publicly available, the National Coordinator shall*  
19 *ensure that the qualified EHR technology described in sub-*  
20 *section (a) is certified under the program developed under*  
21 *section 3001(c)(3) to be in compliance with applicable*  
22 *standards adopted under section 3003(a).*

23       “(c) *AUTHORIZATION TO CHARGE A NOMINAL FEE.*—  
24 *The National Coordinator may impose a nominal fee for*  
25 *the adoption by a health care provider of the health infor-*

1 *mation technology system developed or approved under sub-*  
2 *section (a) and (b). Such fee shall take into account the*  
3 *financial circumstances of smaller providers, low income*  
4 *providers, and providers located in rural or other medically*  
5 *underserved areas.*

6 “(d) *RULE OF CONSTRUCTION.*—*Nothing in this sec-*  
7 *tion shall be construed to require that a private or govern-*  
8 *ment entity adopt or use the technology provided under this*  
9 *section.*

10 **“SEC. 3008. TRANSITIONS.**

11 “(a) *ONCHIT.*—*To the extent consistent with section*  
12 *3001, all functions, personnel, assets, liabilities, and ad-*  
13 *ministrative actions applicable to the National Coordinator*  
14 *for Health Information Technology appointed under Execu-*  
15 *tive Order 13335 or the Office of such National Coordinator*  
16 *on the date before the date of the enactment of this title*  
17 *shall be transferred to the National Coordinator appointed*  
18 *under section 3001(a) and the Office of such National Coor-*  
19 *dinator as of the date of the enactment of this title.*

20 “(b) *AHIC.*—

21 “(1) *To the extent consistent with sections 3002*  
22 *and 3003, all functions, personnel, assets, and liabil-*  
23 *ities applicable to the AHIC Successor, Inc. doing*  
24 *business as the National eHealth Collaborative as of*  
25 *the day before the date of the enactment of this title*

1       *shall be transferred to the HIT Policy Committee or*  
2       *the HIT Standards Committee, established under sec-*  
3       *tion 3002(a) or 3003(a), as appropriate, as of the*  
4       *date of the enactment of this title.*

5               “(2) *In carrying out section 3003(b)(1)(A), until*  
6       *recommendations are made by the HIT Policy Com-*  
7       *mittee, recommendations of the HIT Standards Com-*  
8       *mittee shall be consistent with the most recent rec-*  
9       *ommendations made by such AHIC Successor, Inc.*

10       “(c) *RULES OF CONSTRUCTION.—*

11               “(1) *ONCHIT.—Nothing in section 3001 or sub-*  
12       *section (a) shall be construed as requiring the cre-*  
13       *ation of a new entity to the extent that the Office of*  
14       *the National Coordinator for Health Information*  
15       *Technology established pursuant to Executive Order*  
16       *13335 is consistent with the provisions of section*  
17       *3001.*

18               “(2) *AHIC.—Nothing in sections 3002 or 3003*  
19       *or subsection (b) shall be construed as prohibiting the*  
20       *AHIC Successor, Inc. doing business as the National*  
21       *eHealth Collaborative from modifying its charter, du-*  
22       *ties, membership, and any other structure or function*  
23       *required to be consistent with section 3002 and 3003*  
24       *in a manner that would permit the Secretary to*  
25       *choose to recognize such AHIC Successor, Inc. as the*

1 *HIT Policy Committee or the HIT Standards Com-*  
2 *mittee.*

3 **“SEC. 3009. RELATION TO HIPAA PRIVACY AND SECURITY**  
4 **LAW.**

5 *“(a) IN GENERAL.—With respect to the relation of this*  
6 *title to HIPAA privacy and security law:*

7 *“(1) This title may not be construed as having*  
8 *any effect on the authorities of the Secretary under*  
9 *HIPAA privacy and security law.*

10 *“(2) The purposes of this title include ensuring*  
11 *that the health information technology standards and*  
12 *implementation specifications adopted under section*  
13 *3004 take into account the requirements of HIPAA*  
14 *privacy and security law.*

15 *“(b) DEFINITION.—For purposes of this section, the*  
16 *term ‘HIPAA privacy and security law’ means—*

17 *“(1) the provisions of part C of title XI of the*  
18 *Social Security Act, section 264 of the Health Insur-*  
19 *ance Portability and Accountability Act of 1996, and*  
20 *subtitle D of title IV of the HITECH Act; and*

21 *“(2) regulations under such provisions.*

22 **“SEC. 3010. AUTHORIZATION FOR APPROPRIATIONS.**

23 *“There is authorized to be appropriated to the Office*  
24 *of the National Coordinator for Health Information Tech-*

1 nology to carry out this subtitle \$250,000,000 for fiscal year  
2 2009.”.

3 **SEC. 4102. TECHNICAL AMENDMENT.**

4 Section 1171(5) of the Social Security Act (42 U.S.C.  
5 1320d) is amended by striking “or C” and inserting “C,  
6 or D”.

7 **SEC. 4103. AMERICAN TECHNOLOGY REQUIRED.**

8 (a) *REQUIREMENT.*—Any funds made available to  
9 carry out this title and the amendments made by this title  
10 (including through grants, contracts, loans, payments  
11 under title XVIII or XIX of the Social Security Act, or other  
12 assistance) may be used to purchase health information  
13 technology only if such technology is manufactured, includ-  
14 ing the engineering and programming of any software, in  
15 the United States substantially all from articles, materials,  
16 or supplies mined, produced, or manufactured, as the case  
17 may be, in the United States.

18 (b) *DEFINITION.*—In this section, the term “health in-  
19 formation technology” has the meaning given to that term  
20 in section 3000 of the Public Health Service Act, as added  
21 by section 4101.

1 **PART 2—APPLICATION AND USE OF ADOPTED**  
2 **HEALTH INFORMATION TECHNOLOGY**  
3 **STANDARDS; REPORTS**

4 **SEC. 4111. COORDINATION OF FEDERAL ACTIVITIES WITH**  
5 **ADOPTED STANDARDS AND IMPLEMENTA-**  
6 **TION SPECIFICATIONS.**

7 (a) *SPENDING ON HEALTH INFORMATION TECH-*  
8 *NOLOGY SYSTEMS.—As each agency (as defined in the Exec-*  
9 *utive Order issued on August 22, 2006, relating to pro-*  
10 *moting quality and efficient health care in Federal govern-*  
11 *ment administered or sponsored health care programs) im-*  
12 *plements, acquires, or upgrades health information tech-*  
13 *nology systems used for the direct exchange of individually*  
14 *identifiable health information between agencies and with*  
15 *non-Federal entities, it shall utilize, where available, health*  
16 *information technology systems and products that meet*  
17 *standards and implementation specifications adopted under*  
18 *section 3004 of the Public Health Service Act, as added by*  
19 *section 4101.*

20 (b) *FEDERAL INFORMATION COLLECTION ACTIVI-*  
21 *TIES.—With respect to a standard or implementation speci-*  
22 *fication adopted under section 3004 of the Public Health*  
23 *Service Act, as added by section 4101, the President shall*  
24 *take measures to ensure that Federal activities involving*  
25 *the broad collection and submission of health information*  
26 *are consistent with such standard or implementation speci-*

1 *fication, respectively, within three years after the date of*  
2 *such adoption.*

3 (c) *APPLICATION OF DEFINITIONS.*—*The definitions*  
4 *contained in section 3000 of the Public Health Service Act,*  
5 *as added by section 4101, shall apply for purposes of this*  
6 *part.*

7 **SEC. 4112. APPLICATION TO PRIVATE ENTITIES.**

8 *Each agency (as defined in such Executive Order*  
9 *issued on August 22, 2006, relating to promoting quality*  
10 *and efficient health care in Federal government adminis-*  
11 *tered or sponsored health care programs) shall require in*  
12 *contracts or agreements with health care providers, health*  
13 *plans, or health insurance issuers that as each provider,*  
14 *plan, or issuer implements, acquires, or upgrades health in-*  
15 *formation technology systems, it shall utilize, where avail-*  
16 *able, health information technology systems and products*  
17 *that meet standards and implementation specifications*  
18 *adopted under section 3004 of the Public Health Service*  
19 *Act, as added by section 4101.*

20 **SEC. 4113. STUDY AND REPORTS.**

21 (a) *REPORT ON ADOPTION OF NATIONWIDE SYSTEM.*—  
22 *Not later than 2 years after the date of the enactment of*  
23 *this Act and annually thereafter, the Secretary of Health*  
24 *and Human Services shall submit to the appropriate com-*

1 *mittees of jurisdiction of the House of Representatives and*  
2 *the Senate a report that—*

3           (1) *describes the specific actions that have been*  
4 *taken by the Federal Government and private entities*  
5 *to facilitate the adoption of a nationwide system for*  
6 *the electronic use and exchange of health information;*

7           (2) *describes barriers to the adoption of such a*  
8 *nationwide system; and*

9           (3) *contains recommendations to achieve full im-*  
10 *plementation of such a nationwide system.*

11       (b) *REIMBURSEMENT INCENTIVE STUDY AND RE-*  
12 *PORT.—*

13           (1) *STUDY.—The Secretary of Health and*  
14 *Human Services shall carry out, or contract with a*  
15 *private entity to carry out, a study that examines*  
16 *methods to create efficient reimbursement incentives*  
17 *for improving health care quality in Federally quali-*  
18 *fied health centers, rural health clinics, and free clin-*  
19 *ics.*

20           (2) *REPORT.—Not later than 2 years after the*  
21 *date of the enactment of this Act, the Secretary of*  
22 *Health and Human Services shall submit to the ap-*  
23 *propriate committees of jurisdiction of the House of*  
24 *Representatives and the Senate a report on the study*  
25 *carried out under paragraph (1).*

1       (c) *AGING SERVICES TECHNOLOGY STUDY AND RE-*  
2 *PORT.*—

3           (1) *IN GENERAL.*—*The Secretary of Health and*  
4 *Human Services shall carry out, or contract with a*  
5 *private entity to carry out, a study of matters relat-*  
6 *ing to the potential use of new aging services tech-*  
7 *nology to assist seniors, individuals with disabilities,*  
8 *and their caregivers throughout the aging process.*

9           (2) *MATTERS TO BE STUDIED.*—*The study under*  
10 *paragraph (1) shall include—*

11           (A) *an evaluation of—*

12               (i) *methods for identifying current,*  
13 *emerging, and future health technology that*  
14 *can be used to meet the needs of seniors and*  
15 *individuals with disabilities and their care-*  
16 *givers across all aging services settings, as*  
17 *specified by the Secretary;*

18               (ii) *methods for fostering scientific in-*  
19 *novation with respect to aging services tech-*  
20 *nology within the business and academic*  
21 *communities; and*

22               (iii) *developments in aging services*  
23 *technology in other countries that may be*  
24 *applied in the United States; and*

25           (B) *identification of—*

1                   (i) *barriers to innovation in aging*  
2                   *services technology and devising strategies*  
3                   *for removing such barriers; and*

4                   (ii) *barriers to the adoption of aging*  
5                   *services technology by health care providers*  
6                   *and consumers and devising strategies to re-*  
7                   *moving such barriers.*

8                   (3) *REPORT.*—*Not later than 24 months after the*  
9                   *date of the enactment of this Act, the Secretary shall*  
10                  *submit to the appropriate committees of jurisdiction*  
11                  *of the House of Representatives and of the Senate a*  
12                  *report on the study carried out under paragraph (1).*

13                  (4) *DEFINITIONS.*—*For purposes of this sub-*  
14                  *section:*

15                  (A) *AGING SERVICES TECHNOLOGY.*—*The*  
16                  *term “aging services technology” means health*  
17                  *technology that meets the health care needs of*  
18                  *seniors, individuals with disabilities, and the*  
19                  *caregivers of such seniors and individuals.*

20                  (B) *SENIOR.*—*The term “senior” has such*  
21                  *meaning as specified by the Secretary.*

1           **Subtitle B—Testing of Health**  
2           **Information Technology**

3   **SEC. 4201. NATIONAL INSTITUTE FOR STANDARDS AND**  
4           **TECHNOLOGY TESTING.**

5           (a) *PILOT TESTING OF STANDARDS AND IMPLEMENTA-*  
6   *TION SPECIFICATIONS.*—*In coordination with the HIT*  
7   *Standards Committee established under section 3003 of the*  
8   *Public Health Service Act, as added by section 4101, with*  
9   *respect to the development of standards and implementation*  
10   *specifications under such section, the Director of the Na-*  
11   *tional Institute for Standards and Technology shall test*  
12   *such standards and implementation specifications, as ap-*  
13   *propriate, in order to assure the efficient implementation*  
14   *and use of such standards and implementation specifica-*  
15   *tions.*

16           (b) *VOLUNTARY TESTING PROGRAM.*—*In coordination*  
17   *with the HIT Standards Committee established under sec-*  
18   *tion 3003 of the Public Health Service Act, as added by*  
19   *section 4101, with respect to the development of standards*  
20   *and implementation specifications under such section, the*  
21   *Director of the National Institute of Standards and Tech-*  
22   *nology shall support the establishment of a conformance*  
23   *testing infrastructure, including the development of tech-*  
24   *nical test beds. The development of this conformance testing*

1 *infrastructure may include a program to accredit inde-*  
2 *pendent, non-Federal laboratories to perform testing.*

3 **SEC. 4202. RESEARCH AND DEVELOPMENT PROGRAMS.**

4 *(a) HEALTH CARE INFORMATION ENTERPRISE INTE-*  
5 *GRATION RESEARCH CENTERS.—*

6 *(1) IN GENERAL.—The Director of the National*  
7 *Institute of Standards and Technology, in consulta-*  
8 *tion with the Director of the National Science Foun-*  
9 *dation and other appropriate Federal agencies, shall*  
10 *establish a program of assistance to institutions of*  
11 *higher education (or consortia thereof which may in-*  
12 *clude nonprofit entities and Federal Government lab-*  
13 *oratories) to establish multidisciplinary Centers for*  
14 *Health Care Information Enterprise Integration.*

15 *(2) REVIEW; COMPETITION.—Grants shall be*  
16 *awarded under this subsection on a merit-reviewed,*  
17 *competitive basis.*

18 *(3) PURPOSE.—The purposes of the Centers de-*  
19 *scribed in paragraph (1) shall be—*

20 *(A) to generate innovative approaches to*  
21 *health care information enterprise integration by*  
22 *conducting cutting-edge, multidisciplinary re-*  
23 *search on the systems challenges to health care*  
24 *delivery; and*

1           (B) the development and use of health infor-  
2           mation technologies and other complementary  
3           fields.

4           (4) *RESEARCH AREAS.*—Research areas may in-  
5           clude—

6           (A) interfaces between human information  
7           and communications technology systems;

8           (B) voice-recognition systems;

9           (C) software that improves interoperability  
10          and connectivity among health information sys-  
11          tems;

12          (D) software dependability in systems crit-  
13          ical to health care delivery;

14          (E) measurement of the impact of informa-  
15          tion technologies on the quality and productivity  
16          of health care;

17          (F) health information enterprise manage-  
18          ment;

19          (G) health information technology security  
20          and integrity; and

21          (H) relevant health information technology  
22          to reduce medical errors.

23          (5) *APPLICATIONS.*—An institution of higher  
24          education (or a consortium thereof) seeking funding  
25          under this subsection shall submit an application to

1 *the Director of the National Institute of Standards*  
2 *and Technology at such time, in such manner, and*  
3 *containing such information as the Director may re-*  
4 *quire. The application shall include, at a minimum,*  
5 *a description of—*

6 *(A) the research projects that will be under-*  
7 *taken by the Center established pursuant to as-*  
8 *sistance under paragraph (1) and the respective*  
9 *contributions of the participating entities;*

10 *(B) how the Center will promote active col-*  
11 *laboration among scientists and engineers from*  
12 *different disciplines, such as information tech-*  
13 *nology, biologic sciences, management, social*  
14 *sciences, and other appropriate disciplines;*

15 *(C) technology transfer activities to dem-*  
16 *onstrate and diffuse the research results, tech-*  
17 *nologies, and knowledge; and*

18 *(D) how the Center will contribute to the*  
19 *education and training of researchers and other*  
20 *professionals in fields relevant to health informa-*  
21 *tion enterprise integration.*

22 *(b) NATIONAL INFORMATION TECHNOLOGY RESEARCH*  
23 *AND DEVELOPMENT PROGRAM.—The National High-Per-*  
24 *formance Computing Program established by section 101 of*  
25 *the High-Performance Computing Act of 1991 (15 U.S.C.*

1 5511) shall coordinate Federal research and development  
2 programs related to the development and deployment of  
3 health information technology, including activities related  
4 to—

- 5 (1) computer infrastructure;
- 6 (2) data security;
- 7 (3) development of large-scale, distributed, reli-  
8 able computing systems;
- 9 (4) wired, wireless, and hybrid high-speed net-  
10 working;
- 11 (5) development of software and software-inten-  
12 sive systems;
- 13 (6) human-computer interaction and informa-  
14 tion management technologies; and
- 15 (7) the social and economic implications of in-  
16 formation technology.

17 **Subtitle C—Incentives for the Use of**  
18 **Health Information Technology**

19 **PART I—GRANTS AND LOANS FUNDING**

20 **SEC. 4301. GRANT, LOAN, AND DEMONSTRATION PRO-**  
21 **GRAMS.**

22 *Title XXX of the Public Health Service Act, as added*  
23 *by section 4101, is amended by adding at the end the fol-*  
24 *lowing new subtitle:*

1    **“Subtitle B—Incentives for the Use**  
2    **of Health Information Technology**

3    **“SEC. 3011. IMMEDIATE FUNDING TO STRENGTHEN THE**  
4                    **HEALTH INFORMATION TECHNOLOGY INFRA-**  
5                    **STRUCTURE.**

6            “(a) *IN GENERAL.—The Secretary shall, using*  
7    *amounts appropriated under section 3018, invest in the in-*  
8    *frastructure necessary to allow for and promote the elec-*  
9    *tronic exchange and use of health information for each indi-*  
10   *vidual in the United States consistent with the goals out-*  
11   *lined in the strategic plan developed by the National Coor-*  
12   *dinator (and as available) under section 3001. To the great-*  
13   *est extent practicable, the Secretary shall ensure that any*  
14   *funds so appropriated shall be used for the acquisition of*  
15   *health information technology that meets standards and*  
16   *certification criteria adopted before the date of the enact-*  
17   *ment of this title until such date as the standards are adopt-*  
18   *ed under section 3004. The Secretary shall invest funds*  
19   *through the different agencies with expertise in such goals,*  
20   *such as the Office of the National Coordinator for Health*  
21   *Information Technology, the Health Resources and Services*  
22   *Administration, the Agency for Healthcare Research and*  
23   *Quality, the Centers of Medicare & Medicaid Services, the*  
24   *Centers for Disease Control and Prevention, and the Indian*  
25   *Health Service to support the following:*

1           “(1) *Health information technology architecture*  
2           *that will support the nationwide electronic exchange*  
3           *and use of health information in a secure, private,*  
4           *and accurate manner, including connecting health in-*  
5           *formation exchanges, and which may include updat-*  
6           *ing and implementing the infrastructure necessary*  
7           *within different agencies of the Department of Health*  
8           *and Human Services to support the electronic use*  
9           *and exchange of health information.*

10           “(2) *Development and adoption of appropriate*  
11           *certified electronic health records for categories of pro-*  
12           *viders, as defined in section 3000, not eligible for sup-*  
13           *port under title XVIII or XIX of the Social Security*  
14           *Act for the adoption of such records.*

15           “(3) *Training on and dissemination of informa-*  
16           *tion on best practices to integrate health information*  
17           *technology, including electronic health records, into a*  
18           *provider’s delivery of care, consistent with best prac-*  
19           *tices learned from the Health Information Technology*  
20           *Research Center developed under section 3012(b), in-*  
21           *cluding community health centers receiving assistance*  
22           *under section 330, covered entities under section*  
23           *340B, and providers participating in one or more of*  
24           *the programs under titles XVIII, XIX, and XXI of the*

1       *Social Security Act (relating to Medicare, Medicaid,*  
2       *and the State Children’s Health Insurance Program).*

3               “(4) *Infrastructure and tools for the promotion*  
4       *of telemedicine, including coordination among Fed-*  
5       *eral agencies in the promotion of telemedicine.*

6               “(5) *Promotion of the interoperability of clinical*  
7       *data repositories or registries.*

8               “(6) *Promotion of technologies and best practices*  
9       *that enhance the protection of health information by*  
10       *all holders of individually identifiable health informa-*  
11       *tion.*

12               “(7) *Improvement and expansion of the use of*  
13       *health information technology by public health de-*  
14       *partments.*

15               “(8) *Provision of \$300 million to support re-*  
16       *gional or sub-national efforts towards health informa-*  
17       *tion exchange.*

18       “(b) *COORDINATION.—The Secretary shall ensure*  
19       *funds under this section are used in a coordinated manner*  
20       *with other health information promotion activities.*

21       “(c) *ADDITIONAL USE OF FUNDS.—In addition to*  
22       *using funds as provided in subsection (a), the Secretary*  
23       *may use amounts appropriated under section 3018 to carry*  
24       *out health information technology activities that are pro-*

1 *vided for under laws in effect on the date of the enactment*  
2 *of this title.*

3 **“SEC. 3012. HEALTH INFORMATION TECHNOLOGY IMPLE-**  
4 **MENTATION ASSISTANCE.**

5 *“(a) HEALTH INFORMATION TECHNOLOGY EXTENSION*  
6 *PROGRAM.—To assist health care providers to adopt, imple-*  
7 *ment, and effectively use certified EHR technology that al-*  
8 *lows for the electronic exchange and use of health informa-*  
9 *tion, the Secretary, acting through the Office of the National*  
10 *Coordinator, shall establish a health information technology*  
11 *extension program to provide health information technology*  
12 *assistance services to be carried out through the Department*  
13 *of Health and Human Services. The National Coordinator*  
14 *shall consult with other Federal agencies with demonstrated*  
15 *experience and expertise in information technology services,*  
16 *such as the National Institute of Standards and Tech-*  
17 *nology, in developing and implementing this program.*

18 *“(b) HEALTH INFORMATION TECHNOLOGY RESEARCH*  
19 *CENTER.—*

20 *“(1) IN GENERAL.—The Secretary shall create a*  
21 *Health Information Technology Research Center (in*  
22 *this section referred to as the ‘Center’) to provide tech-*  
23 *nical assistance and develop or recognize best prac-*  
24 *tices to support and accelerate efforts to adopt, imple-*  
25 *ment, and effectively utilize health information tech-*

1        *nology that allows for the electronic exchange and use*  
2        *of information in compliance with standards, imple-*  
3        *mentation specifications, and certification criteria*  
4        *adopted under section 3004.*

5            *“(2) INPUT.—The Center shall incorporate input*  
6        *from—*

7            *“(A) other Federal agencies with dem-*  
8        *onstrated experience and expertise in informa-*  
9        *tion technology services such as the National In-*  
10       *stitute of Standards and Technology;*

11           *“(B) users of health information technology,*  
12       *such as providers and their support and clerical*  
13       *staff and others involved in the care and care co-*  
14       *ordination of patients, from the health care and*  
15       *health information technology industry; and*

16           *“(C) others as appropriate.*

17           *“(3) PURPOSES.—The purposes of the Center are*  
18       *to—*

19           *“(A) provide a forum for the exchange of*  
20       *knowledge and experience;*

21           *“(B) accelerate the transfer of lessons*  
22       *learned from existing public and private sector*  
23       *initiatives, including those currently receiving*  
24       *Federal financial support;*

1           “(C) assemble, analyze, and widely dissemi-  
2           nate evidence and experience related to the adop-  
3           tion, implementation, and effective use of health  
4           information technology that allows for the elec-  
5           tronic exchange and use of information includ-  
6           ing through the regional centers described in sub-  
7           section (c);

8           “(D) provide technical assistance for the es-  
9           tablishment and evaluation of regional and local  
10          health information networks to facilitate the elec-  
11          tronic exchange of information across health care  
12          settings and improve the quality of health care;

13          “(E) provide technical assistance for the de-  
14          velopment and dissemination of solutions to bar-  
15          riers to the exchange of electronic health informa-  
16          tion; and

17          “(F) learn about effective strategies to adopt  
18          and utilize health information technology in  
19          medically underserved communities.

20          “(c) *HEALTH INFORMATION TECHNOLOGY REGIONAL*  
21          *EXTENSION CENTERS.*—

22                 “(1) *IN GENERAL.*—*The Secretary shall provide*  
23                 *assistance for the creation and support of regional*  
24                 *centers (in this subsection referred to as ‘regional cen-*  
25                 *ters’) to provide technical assistance and disseminate*

1 *best practices and other information learned from the*  
2 *Center to support and accelerate efforts to adopt, im-*  
3 *plement, and effectively utilize health information*  
4 *technology that allows for the electronic exchange and*  
5 *use of information in compliance with standards, im-*  
6 *plementation specifications, and certification criteria*  
7 *adopted under section 3004. Activities conducted*  
8 *under this subsection shall be consistent with the stra-*  
9 *tegic plan developed by the National Coordinator,*  
10 *(and, as available) under section 3001.*

11 *“(2) AFFILIATION.—Regional centers shall be af-*  
12 *filiated with any United States-based nonprofit insti-*  
13 *tution or organization, or group thereof, that applies*  
14 *and is awarded financial assistance under this sec-*  
15 *tion. Individual awards shall be decided on the basis*  
16 *of merit.*

17 *“(3) OBJECTIVE.—The objective of the regional*  
18 *centers is to enhance and promote the adoption of*  
19 *health information technology through—*

20 *“(A) assistance with the implementation, ef-*  
21 *fective use, upgrading, and ongoing maintenance*  
22 *of health information technology, including elec-*  
23 *tronic health records, to healthcare providers na-*  
24 *tionwide;*

1           “(B) broad participation of individuals  
2 from industry, universities, and State govern-  
3 ments;

4           “(C) active dissemination of best practices  
5 and research on the implementation, effective  
6 use, upgrading, and ongoing maintenance of  
7 health information technology, including elec-  
8 tronic health records, to health care providers in  
9 order to improve the quality of healthcare and  
10 protect the privacy and security of health infor-  
11 mation;

12           “(D) participation, to the extent prac-  
13 ticable, in health information exchanges; and

14           “(E) utilization, when appropriate, of the  
15 expertise and capability that exists in Federal  
16 agencies other than the Department; and

17           “(F) integration of health information tech-  
18 nology, including electronic health records, into  
19 the initial and ongoing training of health profes-  
20 sionals and others in the healthcare industry  
21 that would be instrumental to improving the  
22 quality of healthcare through the smooth and ac-  
23 curate electronic use and exchange of health in-  
24 formation.

1           “(4) *REGIONAL ASSISTANCE.*—*Each regional*  
2           *center shall aim to provide assistance and education*  
3           *to all providers in a region, but shall prioritize any*  
4           *direct assistance first to the following:*

5                     “(A) *Public or not-for-profit hospitals or*  
6                     *critical access hospitals.*

7                     “(B) *Federally qualified health centers (as*  
8                     *defined in section 1861(aa)(4) of the Social Se-*  
9                     *curity Act).*

10                    “(C) *Entities that are located in rural and*  
11                    *other areas that serve uninsured, underinsured,*  
12                    *and medically underserved individuals (regard-*  
13                    *less of whether such area is urban or rural).*

14                    “(D) *Individual or small group practices*  
15                    *(or a consortium thereof) that are primarily fo-*  
16                    *cused on primary care.*

17           “(5) *FINANCIAL SUPPORT.*—*The Secretary may*  
18           *provide financial support to any regional center cre-*  
19           *ated under this subsection for a period not to exceed*  
20           *four years. The Secretary may not provide more than*  
21           *50 percent of the capital and annual operating and*  
22           *maintenance funds required to create and maintain*  
23           *such a center, except in an instance of national eco-*  
24           *nomical conditions which would render this cost-share*  
25           *requirement detrimental to the program and upon no-*

1       *tification to Congress as to the justification to waive*  
2       *the cost-share requirement.*

3               “(6) *NOTICE OF PROGRAM DESCRIPTION AND*  
4       *AVAILABILITY OF FUNDS.—The Secretary shall pub-*  
5       *lish in the Federal Register, not later than 90 days*  
6       *after the date of the enactment of this title, a draft*  
7       *description of the program for establishing regional*  
8       *centers under this subsection. Such description shall*  
9       *include the following:*

10               “(A) *A detailed explanation of the program*  
11               *and the programs goals.*

12               “(B) *Procedures to be followed by the appli-*  
13               *cants.*

14               “(C) *Criteria for determining qualified ap-*  
15               *plicants.*

16               “(D) *Maximum support levels expected to be*  
17               *available to centers under the program.*

18               “(7) *APPLICATION REVIEW.—The Secretary shall*  
19       *subject each application under this subsection to*  
20       *merit review. In making a decision whether to ap-*  
21       *prove such application and provide financial support,*  
22       *the Secretary shall consider at a minimum the merits*  
23       *of the application, including those portions of the ap-*  
24       *plication regarding—*

1           “(A) *the ability of the applicant to provide*  
2           *assistance under this subsection and utilization*  
3           *of health information technology appropriate to*  
4           *the needs of particular categories of health care*  
5           *providers;*

6           “(B) *the types of service to be provided to*  
7           *health care providers;*

8           “(C) *geographical diversity and extent of*  
9           *service area; and*

10          “(D) *the percentage of funding and amount*  
11          *of in-kind commitment from other sources.*

12          “(8) *BIENNIAL EVALUATION.—Each regional cen-*  
13          *ter which receives financial assistance under this sub-*  
14          *section shall be evaluated biennially by an evaluation*  
15          *panel appointed by the Secretary. Each evaluation*  
16          *panel shall be composed of private experts, none of*  
17          *whom shall be connected with the center involved, and*  
18          *of Federal officials. Each evaluation panel shall meas-*  
19          *ure the involved center’s performance against the ob-*  
20          *jective specified in paragraph (3). The Secretary shall*  
21          *not continue to provide funding to a regional center*  
22          *unless its evaluation is overall positive.*

23          “(9) *CONTINUING SUPPORT.—After the second*  
24          *year of assistance under this subsection, a regional*  
25          *center may receive additional support under this sub-*



1           “(2) submits an application at such time, in  
2           such manner, and containing such information as the  
3           Secretary may specify.

4           “(d) *USE OF FUNDS.*—Amounts received under a  
5           grant under subsection (c) shall be used to conduct activities  
6           to facilitate and expand the electronic movement and use  
7           of health information among organizations according to na-  
8           tionally recognized standards through activities that in-  
9           clude—

10           “(1) enhancing broad and varied participation  
11           in the authorized and secure nationwide electronic use  
12           and exchange of health information;

13           “(2) identifying State or local resources available  
14           towards a nationwide effort to promote health infor-  
15           mation technology;

16           “(3) complementing other Federal grants, pro-  
17           grams, and efforts towards the promotion of health  
18           information technology;

19           “(4) providing technical assistance for the devel-  
20           opment and dissemination of solutions to barriers to  
21           the exchange of electronic health information;

22           “(5) promoting effective strategies to adopt and  
23           utilize health information technology in medically un-  
24           derserved communities;

1           “(6) assisting patients in utilizing health infor-  
2           mation technology;

3           “(7) encouraging clinicians to work with Health  
4           Information Technology Regional Extension Centers  
5           as described in section 3012, to the extent they are  
6           available and valuable;

7           “(8) supporting public health agencies’ author-  
8           ized use of and access to electronic health information;

9           “(9) promoting the use of electronic health  
10          records for quality improvement including through  
11          quality measures reporting; and

12          “(10) such other activities as the Secretary may  
13          specify.

14          “(e) PLAN.—

15                 “(1) IN GENERAL.—A plan described in this sub-  
16                 section is a plan that describes the activities to be  
17                 carried out by a State or by the qualified State-des-  
18                 ignated entity within such State to facilitate and ex-  
19                 pand the electronic movement and use of health infor-  
20                 mation among organizations according to nationally  
21                 recognized standards and implementation specifica-  
22                 tions.

23                 “(2) REQUIRED ELEMENTS.—A plan described  
24                 in paragraph (1) shall—

25                         “(A) be pursued in the public interest;

1           “(B) be consistent with the strategic plan  
2 developed by the National Coordinator, (and, as  
3 available) under section 3001;

4           “(C) include a description of the ways the  
5 State or qualified State-designated entity will  
6 carry out the activities described in subsection  
7 (b); and

8           “(D) contain such elements as the Secretary  
9 may require.

10       “(f) *QUALIFIED STATE-DESIGNATED ENTITY.*—For  
11 purposes of this section, to be a qualified State-designated  
12 entity, with respect to a State, an entity shall—

13           “(1) be designated by the State as eligible to re-  
14 ceive awards under this section;

15           “(2) be a not-for-profit entity with broad stake-  
16 holder representation on its governing board;

17           “(3) demonstrate that one of its principal goals  
18 is to use information technology to improve health  
19 care quality and efficiency through the authorized  
20 and secure electronic exchange and use of health in-  
21 formation;

22           “(4) adopt nondiscrimination and conflict of in-  
23 terest policies that demonstrate a commitment to  
24 open, fair, and nondiscriminatory participation by  
25 stakeholders; and

1           “(5) conform to such other requirements as the  
2       Secretary may establish.

3           “(g) *REQUIRED CONSULTATION.*—*In carrying out ac-*  
4 *tivities described in subsections (b) and (c), a State or*  
5 *qualified State-designated entity shall consult with and*  
6 *consider the recommendations of—*

7           “(1) health care providers (including providers  
8       that provide services to low income and underserved  
9       populations);

10          “(2) health plans;

11          “(3) patient or consumer organizations that rep-  
12       resent the population to be served;

13          “(4) health information technology vendors;

14          “(5) health care purchasers and employers;

15          “(6) public health agencies;

16          “(7) health professions schools, universities and  
17       colleges;

18          “(8) clinical researchers;

19          “(9) other users of health information technology  
20       such as the support and clerical staff of providers and  
21       others involved in the care and care coordination of  
22       patients; and

23          “(10) such other entities, as may be determined  
24       appropriate by the Secretary.

1       “(h) *CONTINUOUS IMPROVEMENT.*—*The Secretary*  
2 *shall annually evaluate the activities conducted under this*  
3 *section and shall, in awarding grants under this section,*  
4 *implement the lessons learned from such evaluation in a*  
5 *manner so that awards made subsequent to each such eval-*  
6 *uation are made in a manner that, in the determination*  
7 *of the Secretary, will lead towards the greatest improvement*  
8 *in quality of care, decrease in costs, and the most effective*  
9 *authorized and secure electronic exchange of health informa-*  
10 *tion.*

11       “(i) *REQUIRED MATCH.*—

12               “(1) *IN GENERAL.*—*For a fiscal year (beginning*  
13 *with fiscal year 2011), the Secretary may not make*  
14 *a grant under this section to a State unless the State*  
15 *agrees to make available non-Federal contributions*  
16 *(which may include in-kind contributions) toward the*  
17 *costs of a grant awarded under subsection (c) in an*  
18 *amount equal to—*

19                       “(A) *for fiscal year 2011, not less than \$1*  
20 *for each \$10 of Federal funds provided under the*  
21 *grant;*

22                       “(B) *for fiscal year 2012, not less than \$1*  
23 *for each \$7 of Federal funds provided under the*  
24 *grant; and*

1           “(C) for fiscal year 2013 and each subse-  
2           quent fiscal year, not less than \$1 for each \$3 of  
3           Federal funds provided under the grant.

4           “(2) *AUTHORITY TO REQUIRE STATE MATCH FOR*  
5           *FISCAL YEARS BEFORE FISCAL YEAR 2011.*—For any  
6           fiscal year during the grant program under this sec-  
7           tion before fiscal year 2011, the Secretary may deter-  
8           mine the extent to which there shall be required a  
9           non-Federal contribution from a State receiving a  
10          grant under this section.

11       **“SEC. 3014. COMPETITIVE GRANTS TO STATES AND INDIAN**  
12                       **TRIBES FOR THE DEVELOPMENT OF LOAN**  
13                       **PROGRAMS TO FACILITATE THE WIDESPREAD**  
14                       **ADOPTION OF CERTIFIED EHR TECHNOLOGY.**

15          “(a) *IN GENERAL.*—The National Coordinator may  
16          award competitive grants to eligible entities for the estab-  
17          lishment of programs for loans to health care providers to  
18          conduct the activities described in subsection (e).

19          “(b) *ELIGIBLE ENTITY DEFINED.*—For purposes of  
20          this subsection, the term ‘eligible entity’ means a State or  
21          Indian tribe (as defined in the Indian Self-Determination  
22          and Education Assistance Act) that—

23               “(1) submits to the National Coordinator an ap-  
24               plication at such time, in such manner, and con-

1        *taining such information as the National Coordinator*  
2        *may require;*

3            *“(2) submits to the National Coordinator a stra-*  
4        *tegic plan in accordance with subsection (d) and pro-*  
5        *vides to the National Coordinator assurances that the*  
6        *entity will update such plan annually in accordance*  
7        *with such subsection;*

8            *“(3) provides assurances to the National Coordi-*  
9        *nator that the entity will establish a Loan Fund in*  
10       *accordance with subsection (c);*

11           *“(4) provides assurances to the National Coordi-*  
12       *nator that the entity will not provide a loan from the*  
13       *Loan Fund to a health care provider unless the pro-*  
14       *vider agrees to—*

15           *“(A) submit reports on quality measures*  
16       *adopted by the Federal Government (by not later*  
17       *than 90 days after the date on which such meas-*  
18       *ures are adopted), to—*

19           *“(i) the Administrator of the Centers*  
20       *for Medicare & Medicaid Services (or his or*  
21       *her designee), in the case of an entity par-*  
22       *ticipating in the Medicare program under*  
23       *title XVIII of the Social Security Act or the*  
24       *Medicaid program under title XIX of such*  
25       *Act; or*

1                   “(ii) the Secretary in the case of other  
2                   entities;

3                   “(B) demonstrate to the satisfaction of the  
4                   Secretary (through criteria established by the  
5                   Secretary) that any certified EHR technology  
6                   purchased, improved, or otherwise financially  
7                   supported under a loan under this section is  
8                   used to exchange health information in a man-  
9                   ner that, in accordance with law and standards  
10                  (as adopted under section 3004) applicable to the  
11                  exchange of information, improves the quality of  
12                  health care, such as promoting care coordination;

13                  “(C) comply with such other requirements  
14                  as the entity or the Secretary may require;

15                  “(D) include a plan on how health care pro-  
16                  viders involved intend to maintain and support  
17                  the certified EHR technology over time; and

18                  “(E) include a plan on how the health care  
19                  providers involved intend to maintain and sup-  
20                  port the certified EHR technology that would be  
21                  purchased with such loan, including the type of  
22                  resources expected to be involved and any such  
23                  other information as the State or Indian Tribe,  
24                  respectively, may require; and

1           “(5) agrees to provide matching funds in accord-  
2           ance with subsection (h).

3           “(c) *ESTABLISHMENT OF FUND.*—For purposes of sub-  
4           section (b)(3), an eligible entity shall establish a certified  
5           EHR technology loan fund (referred to in this subsection  
6           as a ‘Loan Fund’) and comply with the other requirements  
7           contained in this section. A grant to an eligible entity under  
8           this section shall be deposited in the Loan Fund established  
9           by the eligible entity. No funds authorized by other provi-  
10          sions of this title to be used for other purposes specified in  
11          this title shall be deposited in any Loan Fund.

12          “(d) *STRATEGIC PLAN.*—

13                 “(1) *IN GENERAL.*—For purposes of subsection  
14                 (b)(2), a strategic plan of an eligible entity under this  
15                 subsection shall identify the intended uses of amounts  
16                 available to the Loan Fund of such entity.

17                 “(2) *CONTENTS.*—A strategic plan under para-  
18                 graph (1), with respect to a Loan Fund of an eligible  
19                 entity, shall include for a year the following:

20                         “(A) A list of the projects to be assisted  
21                         through the Loan Fund during such year.

22                         “(B) A description of the criteria and meth-  
23                         ods established for the distribution of funds from  
24                         the Loan Fund during the year.

1                   “(C) *A description of the financial status of*  
2                   *the Loan Fund as of the date of submission of*  
3                   *the plan.*

4                   “(D) *The short-term and long-term goals of*  
5                   *the Loan Fund.*

6                   “(e) *USE OF FUNDS.—Amounts deposited in a Loan*  
7                   *Fund, including loan repayments and interest earned on*  
8                   *such amounts, shall be used only for awarding loans or loan*  
9                   *guarantees, making reimbursements described in subsection*  
10                  *(g)(4)(A), or as a source of reserve and security for lever-*  
11                  *aged loans, the proceeds of which are deposited in the Loan*  
12                  *Fund established under subsection (c). Loans under this sec-*  
13                  *tion may be used by a health care provider to—*

14                  “(1) *facilitate the purchase of certified EHR*  
15                  *technology;*

16                  “(2) *enhance the utilization of certified EHR*  
17                  *technology;*

18                  “(3) *train personnel in the use of such tech-*  
19                  *nology; or*

20                  “(4) *improve the secure electronic exchange of*  
21                  *health information.*

22                  “(f) *TYPES OF ASSISTANCE.—Except as otherwise lim-*  
23                  *ited by applicable State law, amounts deposited into a*  
24                  *Loan Fund under this section may only be used for the fol-*  
25                  *lowing:*

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

3                   “(A) The interest rate for each loan shall  
4                   not exceed the market interest rate.

5                   “(B) The principal and interest payments  
6                   on each loan shall commence not later than 1  
7                   year after the date the loan was awarded, and  
8                   each loan shall be fully amortized not later than  
9                   10 years after the date of the loan.

10                   “(C) The Loan Fund shall be credited with  
11                   all payments of principal and interest on each  
12                   loan awarded from the Loan Fund.

13                   “(2) To guarantee, or purchase insurance for, a  
14                   local obligation (all of the proceeds of which finance  
15                   a project eligible for assistance under this subsection)  
16                   if the guarantee or purchase would improve credit  
17                   market access or reduce the interest rate applicable to  
18                   the obligation involved.

19                   “(3) As a source of revenue or security for the  
20                   payment of principal and interest on revenue or gen-  
21                   eral obligation bonds issued by the eligible entity if  
22                   the proceeds of the sale of the bonds will be deposited  
23                   into the Loan Fund.

24                   “(4) To earn interest on the amounts deposited  
25                   into the Loan Fund.

1           “(5) *To make reimbursements described in sub-*  
2           *section (g)(4)(A).*

3           “(g) *ADMINISTRATION OF LOAN FUNDS.—*

4           “(1) *COMBINED FINANCIAL ADMINISTRATION.—*  
5           *An eligible entity may (as a convenience and to avoid*  
6           *unnecessary administrative costs) combine, in accord-*  
7           *ance with applicable State law, the financial admin-*  
8           *istration of a Loan Fund established under this sub-*  
9           *section with the financial administration of any other*  
10           *revolving fund established by the entity if otherwise*  
11           *not prohibited by the law under which the Loan Fund*  
12           *was established.*

13           “(2) *COST OF ADMINISTERING FUND.—Each eli-*  
14           *gible entity may annually use not to exceed 4 percent*  
15           *of the funds provided to the entity under a grant*  
16           *under this section to pay the reasonable costs of the*  
17           *administration of the programs under this section, in-*  
18           *cluding the recovery of reasonable costs expended to*  
19           *establish a Loan Fund which are incurred after the*  
20           *date of the enactment of this title.*

21           “(3) *GUIDANCE AND REGULATIONS.—The Na-*  
22           *tional Coordinator shall publish guidance and pro-*  
23           *mulgate regulations as may be necessary to carry out*  
24           *the provisions of this section, including—*

1           “(A) provisions to ensure that each eligible  
2           entity commits and expends funds allotted to the  
3           entity under this section as efficiently as possible  
4           in accordance with this title and applicable  
5           State laws; and

6           “(B) guidance to prevent waste, fraud, and  
7           abuse.

8           “(4) PRIVATE SECTOR CONTRIBUTIONS.—

9           “(A) IN GENERAL.—A Loan Fund estab-  
10          lished under this section may accept contribu-  
11          tions from private sector entities, except that  
12          such entities may not specify the recipient or re-  
13          cipients of any loan issued under this subsection.  
14          An eligible entity may agree to reimburse a pri-  
15          vate sector entity for any contribution made  
16          under this subparagraph, except that the amount  
17          of such reimbursement may not be greater than  
18          the principal amount of the contribution made.

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

1       “(h) *MATCHING REQUIREMENTS.*—

2               “(1) *IN GENERAL.*—*The National Coordinator*  
3       *may not make a grant under subsection (a) to an eli-*  
4       *gible entity unless the entity agrees to make available*  
5       *(directly or through donations from public or private*  
6       *entities) non-Federal contributions in cash to the costs*  
7       *of carrying out the activities for which the grant is*  
8       *awarded in an amount equal to not less than \$1 for*  
9       *each \$5 of Federal funds provided under the grant.*

10              “(2) *DETERMINATION OF AMOUNT OF NON-FED-*  
11       *ERAL CONTRIBUTION.*—*In determining the amount of*  
12       *non-Federal contributions that an eligible entity has*  
13       *provided pursuant to subparagraph (A), the National*  
14       *Coordinator may not include any amounts provided*  
15       *to the entity by the Federal Government.*

16              “(i) *EFFECTIVE DATE.*—*The Secretary may not make*  
17       *an award under this section prior to January 1, 2010.*

18       **“SEC. 3015. DEMONSTRATION PROGRAM TO INTEGRATE IN-**  
19                       **FORMATION TECHNOLOGY INTO CLINICAL**  
20                       **EDUCATION.**

21              “(a) *IN GENERAL.*—*The Secretary may award grants*  
22       *under this section to carry out demonstration projects to*  
23       *develop academic curricula integrating certified EHR tech-*  
24       *nology in the clinical education of health professionals.*

1 *Such awards shall be made on a competitive basis and pur-*  
2 *suant to peer review.*

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

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

8 “(2) *submit to the Secretary a strategic plan for*  
9 *integrating certified EHR technology in the clinical*  
10 *education of health professionals to reduce medical er-*  
11 *rors and enhance health care quality;*

12 “(3) *be—*

13 “(A) *a school of medicine, osteopathic medi-*  
14 *cine, dentistry, or pharmacy, a graduate pro-*  
15 *gram in behavioral or mental health, or any*  
16 *other graduate health professions school;*

17 “(B) *a graduate school of nursing or physi-*  
18 *cian assistant studies;*

19 “(C) *a consortium of two or more schools*  
20 *described in subparagraph (A) or (B); or*

21 “(D) *an institution with a graduate med-*  
22 *ical education program in medicine, osteopathic*  
23 *medicine, dentistry, pharmacy, nursing, or phy-*  
24 *sician assistance studies;*

1           “(4) provide for the collection of data regarding  
2           the effectiveness of the demonstration project to be  
3           funded under the grant in improving the safety of pa-  
4           tients, the efficiency of health care delivery, and in  
5           increasing the likelihood that graduates of the grantee  
6           will adopt and incorporate certified EHR technology,  
7           in the delivery of health care services; and

8           “(5) provide matching funds in accordance with  
9           subsection (d).

10          “(c) *USE OF FUNDS.*—

11           “(1) *IN GENERAL.*—With respect to a grant  
12           under subsection (a), an eligible entity shall—

13                   “(A) use grant funds in collaboration with  
14                   2 or more disciplines; and

15                   “(B) use grant funds to integrate certified  
16                   EHR technology into community-based clinical  
17                   education.

18           “(2) *LIMITATION.*—An eligible entity shall not  
19           use amounts received under a grant under subsection  
20           (a) to purchase hardware, software, or services.

21          “(d) *FINANCIAL SUPPORT.*—The Secretary may not  
22           provide more than 50 percent of the costs of any activity  
23           for which assistance is provided under subsection (a), except  
24           in an instance of national economic conditions which would  
25           render the cost-share requirement under this subsection det-

1 *rimental to the program and upon notification to Congress*  
2 *as to the justification to waive the cost-share requirement.*

3       “(e) *EVALUATION.*—*The Secretary shall take such ac-*  
4 *tion as may be necessary to evaluate the projects funded*  
5 *under this section and publish, make available, and dis-*  
6 *seminate the results of such evaluations on as wide a basis*  
7 *as is practicable.*

8       “(f) *REPORTS.*—*Not later than 1 year after the date*  
9 *of enactment of this title, and annually thereafter, the Sec-*  
10 *retary shall submit to the Committee on Health, Education,*  
11 *Labor, and Pensions and the Committee on Finance of the*  
12 *Senate, and the Committee on Energy and Commerce of*  
13 *the House of Representatives a report that—*

14               “(1) *describes the specific projects established*  
15 *under this section; and*

16               “(2) *contains recommendations for Congress*  
17 *based on the evaluation conducted under subsection*  
18 *(e).*

19 **“SEC. 3016. INFORMATION TECHNOLOGY PROFESSIONALS**  
20 **ON HEALTH CARE.**

21       “(a) *IN GENERAL.*—*The Secretary, in consultation*  
22 *with the Director of the National Science Foundation, shall*  
23 *provide assistance to institutions of higher education (or*  
24 *consortia thereof) to establish or expand medical health*  
25 *informatics education programs, including certification,*

1 *undergraduate, and masters degree programs, for both*  
2 *health care and information technology students to ensure*  
3 *the rapid and effective utilization and development of*  
4 *health information technologies (in the United States health*  
5 *care infrastructure).*

6       “(b) *ACTIVITIES.*—*Activities for which assistance may*  
7 *be provided under subsection (a) may include the following:*

8               “(1) *Developing and revising curricula in med-*  
9 *ical health informatics and related disciplines.*

10              “(2) *Recruiting and retaining students to the*  
11 *program involved.*

12              “(3) *Acquiring equipment necessary for student*  
13 *instruction in these programs, including the installa-*  
14 *tion of testbed networks for student use.*

15              “(4) *Establishing or enhancing bridge programs*  
16 *in the health informatics fields between community*  
17 *colleges and universities.*

18       “(c) *PRIORITY.*—*In providing assistance under sub-*  
19 *section (a), the Secretary shall give preference to the fol-*  
20 *lowing:*

21              “(1) *Existing education and training programs.*

22              “(2) *Programs designed to be completed in less*  
23 *than six months.*

24       “(d) *FINANCIAL SUPPORT.*—*The Secretary may not*  
25 *provide more than 50 percent of the costs of any activity*

1 *for which assistance is provided under subsection (a), except*  
2 *in an instance of national economic conditions which would*  
3 *render the cost-share requirement under this subsection det-*  
4 *rimonial to the program and upon notification to Congress*  
5 *as to the justification to waive the cost-share requirement.*

6 **“SEC. 3017. GENERAL GRANT AND LOAN PROVISIONS.**

7       “(a) *REPORTS.—The Secretary may require that an*  
8 *entity receiving assistance under this subtitle shall submit*  
9 *to the Secretary, not later than the date that is 1 year after*  
10 *the date of receipt of such assistance, a report that in-*  
11 *cludes—*

12               “(1) *an analysis of the effectiveness of the activi-*  
13 *ties for which the entity receives such assistance, as*  
14 *compared to the goals for such activities; and*

15               “(2) *an analysis of the impact of the project on*  
16 *health care quality and safety.*

17       “(b) *REQUIREMENT TO IMPROVE QUALITY OF CARE*  
18 *AND DECREASE IN COSTS.—The National Coordinator shall*  
19 *annually evaluate the activities conducted under this sub-*  
20 *title and shall, in awarding grants, implement the lessons*  
21 *learned from such evaluation in a manner so that awards*  
22 *made subsequent to each such evaluation are made in a*  
23 *manner that, in the determination of the National Coordi-*  
24 *nator, will result in the greatest improvement in the quality*  
25 *and efficiency of health care.*

1 **“SEC. 3018. AUTHORIZATION FOR APPROPRIATIONS.**

2       *“For the purposes of carrying out this subtitle, there*  
 3 *is authorized to be appropriated such sums as may be nec-*  
 4 *essary for each of the fiscal years 2009 through 2013.*  
 5 *Amounts so appropriated shall remain available until ex-*  
 6 *pended.”.*

7                   **PART II—MEDICARE PROGRAM**

8 **SEC. 4311. INCENTIVES FOR ELIGIBLE PROFESSIONALS.**

9       *(a) INCENTIVE PAYMENTS.—Section 1848 of the Social*  
 10 *Security Act (42 U.S.C. 1395w–4) is amended by adding*  
 11 *at the end the following new subsection:*

12       *“(o) INCENTIVES FOR ADOPTION AND MEANINGFUL*  
 13 *USE OF CERTIFIED EHR TECHNOLOGY.—*

14                   *“(1) INCENTIVE PAYMENTS.—*

15                           *“(A) IN GENERAL.—Subject to the suc-*  
 16 *ceeding subparagraphs of this paragraph, with*  
 17 *respect to covered professional services furnished*  
 18 *by an eligible professional during a payment*  
 19 *year (as defined in subparagraph (E)), if the eli-*  
 20 *gible professional is a meaningful EHR user (as*  
 21 *determined under paragraph (2)) for the report-*  
 22 *ing period with respect to such year, in addition*  
 23 *to the amount otherwise paid under this part,*  
 24 *there also shall be paid to the eligible profes-*  
 25 *sional (or to an employer or facility in the cases*  
 26 *described in clause (A) of section 1842(b)(6)),*

1           *from the Federal Supplementary Medical Insur-*  
2           *ance Trust Fund established under section 1841*  
3           *an amount equal to 75 percent of the Secretary's*  
4           *estimate (based on claims submitted not later*  
5           *than 2 months after the end of the payment*  
6           *year) of the allowed charges under this part for*  
7           *all such covered professional services furnished*  
8           *by the eligible professional during such year.*

9           “(B) *LIMITATIONS ON AMOUNTS OF INCEN-*  
10          *TIVE PAYMENTS.—*

11           “(i) *IN GENERAL.—In no case shall the*  
12           *amount of the incentive payment provided*  
13           *under this paragraph for an eligible profes-*  
14           *sional for a payment year exceed the appli-*  
15           *cable amount specified under this subpara-*  
16           *graph with respect to such eligible profes-*  
17           *sional and such year.*

18           “(ii) *AMOUNT.—Subject to clause (iii),*  
19           *the applicable amount specified in this sub-*  
20           *paragraph for an eligible professional is as*  
21           *follows:*

22           “(I) *For the first payment year*  
23           *for such professional, \$15,000.*

24           “(II) *For the second payment*  
25           *year for such professional, \$12,000.*

1                   “(III) For the third payment year  
2                   for such professional, \$8,000.

3                   “(IV) For the fourth payment  
4                   year for such professional, \$4,000.

5                   “(V) For the fifth payment year  
6                   for such professional, \$2,000.

7                   “(VI) For any succeeding pay-  
8                   ment year for such professional, \$0.

9                   “(iii) PHASE DOWN FOR ELIGIBLE  
10                  PROFESSIONALS FIRST ADOPTING EHR  
11                  AFTER 2013.—If the first payment year for  
12                  an eligible professional is after 2013, then  
13                  the amount specified in this subparagraph  
14                  for a payment year for such professional is  
15                  the same as the amount specified in clause  
16                  (ii) for such payment year for an eligible  
17                  professional whose first payment year is  
18                  2013. If the first payment year for an eligi-  
19                  ble professional is after 2015 then the appli-  
20                  cable amount specified in this subparagraph  
21                  for such professional for such year and any  
22                  subsequent year shall be \$0.

23                  “(C) NON-APPLICATION TO HOSPITAL-BASED  
24                  ELIGIBLE PROFESSIONALS.—

1           “(i) *IN GENERAL.*—*No incentive pay-*  
2           *ment may be made under this paragraph in*  
3           *the case of a hospital-based eligible profes-*  
4           *sional.*

5           “(ii) *HOSPITAL-BASED ELIGIBLE PRO-*  
6           *FSSIONAL.*—*For purposes of clause (i), the*  
7           *term ‘hospital-based eligible professional’*  
8           *means, with respect to covered professional*  
9           *services furnished by an eligible professional*  
10           *during the reporting period for a payment*  
11           *year, an eligible professional, such as a pa-*  
12           *thologist, anesthesiologist, or emergency*  
13           *physician, who furnishes substantially all of*  
14           *such services in a hospital setting (whether*  
15           *inpatient or outpatient) and through the*  
16           *use of the facilities and equipment, includ-*  
17           *ing computer equipment, of the hospital.*

18           “(D) *PAYMENT.*—

19           “(i) *FORM OF PAYMENT.*—*The pay-*  
20           *ment under this paragraph may be in the*  
21           *form of a single consolidated payment or in*  
22           *the form of such periodic installments as the*  
23           *Secretary may specify.*

24           “(ii) *COORDINATION OF APPLICATION*  
25           *OF LIMITATION FOR PROFESSIONALS IN DIF-*

1            *FERENT PRACTICES.—In the case of an eli-*  
2            *gible professional furnishing covered profes-*  
3            *sional services in more than one practice*  
4            *(as specified by the Secretary), the Sec-*  
5            *retary shall establish rules to coordinate the*  
6            *incentive payments, including the applica-*  
7            *tion of the limitation on amounts of such*  
8            *incentive payments under this paragraph,*  
9            *among such practices.*

10            *“(iii) COORDINATION WITH MED-*  
11            *ICAID.—The Secretary shall seek, to the*  
12            *maximum extent practicable, to avoid du-*  
13            *plicative requirements from Federal and*  
14            *State Governments to demonstrate meaning-*  
15            *ful use of certified EHR technology under*  
16            *this title and title XIX. In doing so, the*  
17            *Secretary may deem satisfaction of State*  
18            *requirements for such meaningful use for a*  
19            *payment year under title XIX to be suffi-*  
20            *cient to qualify as meaningful use under*  
21            *this subsection and subsection (a)(7) and*  
22            *vice versa. The Secretary may also adjust*  
23            *the reporting periods under such title and*  
24            *such subsections in order to carry out this*  
25            *clause.*

1           “(E) *PAYMENT YEAR DEFINED.*—

2                   “(i) *IN GENERAL.*—*For purposes of*  
3                   *this subsection, the term ‘payment year’*  
4                   *means a year beginning with 2011.*

5                   “(ii) *FIRST, SECOND, ETC. PAYMENT*  
6                   *YEAR.*—*The term ‘first payment year’*  
7                   *means, with respect to covered professional*  
8                   *services furnished by an eligible profes-*  
9                   *sional, the first year for which an incentive*  
10                   *payment is made for such services under*  
11                   *this subsection. The terms ‘second payment*  
12                   *year’, ‘third payment year’, ‘fourth pay-*  
13                   *ment year’, and ‘fifth payment year’ mean,*  
14                   *with respect to covered professional services*  
15                   *furnished by such eligible professional, each*  
16                   *successive year immediately following the*  
17                   *first payment year for such professional.*

18           “(2) *MEANINGFUL EHR USER.*—

19                   “(A) *IN GENERAL.*—*For purposes of para-*  
20                   *graph (1), an eligible professional shall be treat-*  
21                   *ed as a meaningful EHR user for a reporting*  
22                   *period for a payment year (or, for purposes of*  
23                   *subsection (a)(7), for a reporting period under*  
24                   *such subsection for a year) if each of the fol-*  
25                   *lowing requirements is met:*

1           “(i) *MEANINGFUL USE OF CERTIFIED*  
2           *EHR TECHNOLOGY.*—*The eligible profes-*  
3           *sional demonstrates to the satisfaction of the*  
4           *Secretary, in accordance with subparagraph*  
5           *(C)(i), that during such period the profes-*  
6           *sional is using certified EHR technology in*  
7           *a meaningful manner, which shall include*  
8           *the use of electronic prescribing as deter-*  
9           *mined to be appropriate by the Secretary.*

10           “(ii) *INFORMATION EXCHANGE.*—*The*  
11           *eligible professional demonstrates to the sat-*  
12           *isfaction of the Secretary, in accordance*  
13           *with subparagraph (C)(i), that during such*  
14           *period such certified EHR technology is*  
15           *connected in a manner that provides, in ac-*  
16           *cordance with law and standards applicable*  
17           *to the exchange of information, for the elec-*  
18           *tronic exchange of health information to im-*  
19           *prove the quality of health care, such as*  
20           *promoting care coordination.*

21           “(iii) *REPORTING ON MEASURES USING*  
22           *EHR.*—*Subject to subparagraph (B)(ii) and*  
23           *using such certified EHR technology, the el-*  
24           *igible professional submits information for*  
25           *such period, in a form and manner speci-*

1           *fied by the Secretary, on such clinical qual-*  
2           *ity measures and such other measures as se-*  
3           *lected by the Secretary under subparagraph*  
4           *(B)(i).*

5           *The Secretary may provide for the use of alter-*  
6           *native means for meeting the requirements of*  
7           *clauses (i), (ii), and (iii) in the case of an eligi-*  
8           *ble professional furnishing covered professional*  
9           *services in a group practice (as defined by the*  
10          *Secretary). The Secretary shall seek to improve*  
11          *the use of electronic health records and health*  
12          *care quality over time by requiring more strin-*  
13          *gent measures of meaningful use selected under*  
14          *this paragraph.*

15           “(B) *REPORTING ON MEASURES.*—

16                   “(i) *SELECTION.*—*The Secretary shall*  
17                   *select measures for purposes of subpara-*  
18                   *graph (A)(iii) but only consistent with the*  
19                   *following:*

20                           “(I) *The Secretary shall provide*  
21                           *preference to clinical quality measures*  
22                           *that have been endorsed by the entity*  
23                           *with a contract with the Secretary*  
24                           *under section 1890(a).*

1                   “(II) *Prior to any measure being*  
2                   *selected under this subparagraph, the*  
3                   *Secretary shall publish in the Federal*  
4                   *Register such measure and provide for*  
5                   *a period of public comment on such*  
6                   *measure.*

7                   “(ii) *LIMITATION.—The Secretary may*  
8                   *not require the electronic reporting of infor-*  
9                   *mation on clinical quality measures under*  
10                  *subparagraph (A)(iii) unless the Secretary*  
11                  *has the capacity to accept the information*  
12                  *electronically, which may be on a pilot*  
13                  *basis.*

14                  “(iii) *COORDINATION OF REPORTING*  
15                  *OF INFORMATION.—In selecting such meas-*  
16                  *ures, and in establishing the form and man-*  
17                  *ner for reporting measures under subpara-*  
18                  *graph (A)(iii), the Secretary shall seek to*  
19                  *avoid redundant or duplicative reporting*  
20                  *otherwise required, including reporting*  
21                  *under subsection (k)(2)(C).*

22                  “(C) *DEMONSTRATION OF MEANINGFUL USE*  
23                  *OF CERTIFIED EHR TECHNOLOGY AND INFORMA-*  
24                  *TION EXCHANGE.—*

1           “(i) *IN GENERAL.*—A professional may  
2           satisfy the demonstration requirement of  
3           clauses (i) and (ii) of subparagraph (A)  
4           through means specified by the Secretary,  
5           which may include—

6                     “(I) an attestation;

7                     “(II) the submission of claims  
8                     with appropriate coding (such as a  
9                     code indicating that a patient encoun-  
10                    ter was documented using certified  
11                    EHR technology);

12                    “(III) a survey response;

13                    “(IV) reporting under subpara-  
14                    graph (A)(iii); and

15                    “(V) other means specified by the  
16                    Secretary.

17           “(ii) *USE OF PART D DATA.*—Notwith-  
18           standing sections 1860D–15(d)(2)(B) and  
19           1860D–15(f)(2), the Secretary may use data  
20           regarding drug claims submitted for pur-  
21           poses of section 1860D–15 that are nec-  
22           essary for purposes of subparagraph (A).

23           “(3) *APPLICATION.*—

24                    “(A) *PHYSICIAN REPORTING SYSTEM*  
25                    *RULES.*—Paragraphs (5), (6), and (8) of sub-

1           *section (k) shall apply for purposes of this sub-*  
2           *section in the same manner as they apply for*  
3           *purposes of such subsection.*

4           “(B) *COORDINATION WITH OTHER PAY-*  
5           *MENTS.—The provisions of this subsection shall*  
6           *not be taken into account in applying the provi-*  
7           *sions of subsection (m) of this section and of sec-*  
8           *tion 1833(m) and any payment under such pro-*  
9           *visions shall not be taken into account in com-*  
10          *puting allowable charges under this subsection.*

11          “(C) *LIMITATIONS ON REVIEW.—There shall*  
12          *be no administrative or judicial review under*  
13          *section 1869, section 1878, or otherwise of the de-*  
14          *termination of any incentive payment under this*  
15          *subsection and the payment adjustment under*  
16          *subsection (a)(7), including the determination of*  
17          *a meaningful EHR user under paragraph (2), a*  
18          *limitation under paragraph (1)(B), and the ex-*  
19          *ception under subsection (a)(7)(B).*

20          “(D) *POSTING ON WEBSITE.—The Secretary*  
21          *shall post on the Internet website of the Centers*  
22          *for Medicare & Medicaid Services, in an easily*  
23          *understandable format, a list of the names, busi-*  
24          *ness addresses, and business phone numbers of*  
25          *the eligible professionals who are meaningful*

1           *EHR users and, as determined appropriate by*  
2           *the Secretary, of group practices receiving incen-*  
3           *tive payments under paragraph (1).*

4           “(4) *CERTIFIED EHR TECHNOLOGY DEFINED.*—  
5           *For purposes of this section, the term ‘certified EHR*  
6           *technology’ means a qualified electronic health record*  
7           *(as defined in 3000(13) of the Public Health Service*  
8           *Act) that is certified pursuant to section 3001(c)(5) of*  
9           *such Act as meeting standards adopted under section*  
10           *3004 of such Act that are applicable to the type of*  
11           *record involved (as determined by the Secretary, such*  
12           *as an ambulatory electronic health record for office-*  
13           *based physicians or an inpatient hospital electronic*  
14           *health record for hospitals).*

15           “(5) *DEFINITIONS.*—*For purposes of this sub-*  
16           *section:*

17           “(A) *COVERED PROFESSIONAL SERVICES.*—  
18           *The term ‘covered professional services’ has the*  
19           *meaning given such term in subsection (k)(3).*

20           “(B) *ELIGIBLE PROFESSIONAL.*—*The term*  
21           *‘eligible professional’ means a physician, as de-*  
22           *finied in section 1861(r).*

23           “(C) *REPORTING PERIOD.*—*The term ‘re-*  
24           *porting period’ means any period (or periods),*

1           *with respect to a payment year, as specified by*  
2           *the Secretary.”.*

3           **(b) INCENTIVE PAYMENT ADJUSTMENT.**—*Section*  
4 *1848(a) of the Social Security Act (42 U.S.C. 1395w–4(a))*  
5 *is amended by adding at the end the following new para-*  
6 *graph:*

7                   **“(7) INCENTIVES FOR MEANINGFUL USE OF CER-**  
8                   **TIFIED EHR TECHNOLOGY.**—

9                           **“(A) ADJUSTMENT.**—

10                                   **“(i) IN GENERAL.**—*Subject to subpara-*  
11 *graphs (B) and (D), with respect to covered*  
12 *professional services furnished by an eligible*  
13 *professional during 2016 or any subsequent*  
14 *payment year, if the eligible professional is*  
15 *not a meaningful EHR user (as determined*  
16 *under subsection (o)(2)) for a reporting pe-*  
17 *riod for the year, the fee schedule amount*  
18 *for such services furnished by such profes-*  
19 *sional during the year (including the fee*  
20 *schedule amount for purposes of deter-*  
21 *mining a payment based on such amount)*  
22 *shall be equal to the applicable percent of*  
23 *the fee schedule amount that would other-*  
24 *wise apply to such services under this sub-*  
25 *section (determined after application of*

1 paragraph (3) but without regard to this  
2 paragraph).

3 “(ii) *APPLICABLE PERCENT.*—Subject  
4 to clause (iii), for purposes of clause (i), the  
5 term ‘applicable percent’ means—

6 “(I) for 2016, 99 percent;

7 “(II) for 2017, 98 percent; and

8 “(III) for 2018 and each subse-  
9 quent year, 97 percent.

10 “(iii) *AUTHORITY TO DECREASE AP-*  
11 *PLICABLE PERCENTAGE FOR 2019 AND SUB-*  
12 *SEQUENT YEARS.*—For 2019 and each sub-  
13 sequent year, if the Secretary finds that the  
14 proportion of eligible professionals who are  
15 meaningful EHR users (as determined  
16 under subsection (o)(2)) is less than 75 per-  
17 cent, the applicable percent shall be de-  
18 creased by 1 percentage point from the ap-  
19 plicable percent in the preceding year, but  
20 in no case shall the applicable percent be  
21 less than 95 percent.

22 “(B) *SIGNIFICANT HARDSHIP EXCEPTION.*—

23 *The Secretary may, on a case-by-case basis, ex-*  
24 *empt an eligible professional from the applica-*  
25 *tion of the payment adjustment under subpara-*

1           *graph (A) if the Secretary determines, subject to*  
2           *annual renewal, that compliance with the re-*  
3           *quirement for being a meaningful EHR user*  
4           *would result in a significant hardship, such as*  
5           *in the case of an eligible professional who prac-*  
6           *tices in a rural area without sufficient Internet*  
7           *access. In no case may an eligible professional be*  
8           *granted an exemption under this subparagraph*  
9           *for more than 5 years.*

10           “(C) *APPLICATION OF PHYSICIAN REPORT-*  
11           *ING SYSTEM RULES.—Paragraphs (5), (6), and*  
12           *(8) of subsection (k) shall apply for purposes of*  
13           *this paragraph in the same manner as they*  
14           *apply for purposes of such subsection.*

15           “(D) *NON-APPLICATION TO HOSPITAL-*  
16           *BASED ELIGIBLE PROFESSIONALS.—No payment*  
17           *adjustment may be made under subparagraph*  
18           *(A) in the case of hospital-based eligible profes-*  
19           *sionals (as defined in subsection (o)(1)(C)(ii)).*

20           “(E) *DEFINITIONS.—For purposes of this*  
21           *paragraph:*

22           “(i) *COVERED PROFESSIONAL SERV-*  
23           *ICES.—The term ‘covered professional serv-*  
24           *ices’ has the meaning given such term in*  
25           *subsection (k)(3).*

1                   “(ii) *ELIGIBLE PROFESSIONAL.*—The  
2                   term ‘eligible professional’ means a physi-  
3                   cian, as defined in section 1861(r).

4                   “(iii) *REPORTING PERIOD.*—The term  
5                   ‘reporting period’ means, with respect to a  
6                   year, a period specified by the Secretary.”.

7                   (c) *APPLICATION TO CERTAIN HMO-AFFILIATED ELI-*  
8                   *GIBLE PROFESSIONALS.*—Section 1853 of the Social Secu-  
9                   rity Act (42 U.S.C. 1395w–23) is amended by adding at  
10                  the end the following new subsection:

11                 “(l) *APPLICATION OF ELIGIBLE PROFESSIONAL INCEN-*  
12                 *TIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION*  
13                 *AND MEANINGFUL USE OF CERTIFIED EHR TECH-*  
14                 *NOLOGY.*—

15                 “(1) *IN GENERAL.*—Subject to paragraphs (3)  
16                 and (4), in the case of a qualifying MA organization,  
17                 the provisions of sections 1848(o) and 1848(a)(7)  
18                 shall apply with respect to eligible professionals de-  
19                 scribed in paragraph (2) of the organization who the  
20                 organization attests under paragraph (6) to be mean-  
21                 ingful EHR users in a similar manner as they apply  
22                 to eligible professionals under such sections. Incentive  
23                 payments under paragraph (3) shall be made to and  
24                 payment adjustments under paragraph (4) shall  
25                 apply to such qualifying organizations.

1           “(2) *ELIGIBLE PROFESSIONAL DESCRIBED.*—  
2           *With respect to a qualifying MA organization, an eli-*  
3           *gible professional described in this paragraph is an*  
4           *eligible professional (as defined for purposes of section*  
5           *1848(o)) who—*

6                     “(A)(i) *is employed by the organization; or*  
7                     “(ii)(I) *is employed by, or is a partner of,*  
8                     *an entity that through contract with the organi-*  
9                     *zation furnishes at least 80 percent of the enti-*  
10                    *ty’s patient care services to enrollees of such or-*  
11                    *ganization; and*

12                    “(II) *furnishes at least 75 percent of the*  
13                    *professional services of the eligible professional to*  
14                    *enrollees of the organization; and*

15                    “(B) *furnishes, on average, at least 20 hours*  
16                    *per week of patient care services.*

17           “(3) *ELIGIBLE PROFESSIONAL INCENTIVE PAY-*  
18           *MENTS.*—

19                    “(A) *IN GENERAL.*—*In applying section*  
20                    *1848(o) under paragraph (1), instead of the ad-*  
21                    *ditional payment amount under section*  
22                    *1848(o)(1)(A) and subject to subparagraph (B),*  
23                    *the Secretary may substitute an amount deter-*  
24                    *mined by the Secretary to the extent feasible and*  
25                    *practical to be similar to the estimated amount*

1           *in the aggregate that would be payable if pay-*  
2           *ment for services furnished by such professionals*  
3           *was payable under part B instead of this part.*

4           “(B) *AVOIDING DUPLICATION OF PAY-*  
5           *MENTS.—*

6                   “(i) *IN GENERAL.—If an eligible pro-*  
7                   *fessional described in paragraph (2) is eligi-*  
8                   *ble for the maximum incentive payment*  
9                   *under section 1848(o)(1)(A) for the same*  
10                  *payment period, the payment incentive*  
11                  *shall be made only under such section and*  
12                  *not under this subsection.*

13                  “(ii) *METHODS.—In the case of an eli-*  
14                  *gible professional described in paragraph*  
15                  *(2) who is eligible for an incentive payment*  
16                  *under section 1848(o)(1)(A) but is not de-*  
17                  *scribed in clause (i) for the same payment*  
18                  *period, the Secretary shall develop a proc-*  
19                  *ess—*

20                           “(I) *to ensure that duplicate pay-*  
21                           *ments are not made with respect to an*  
22                           *eligible professional both under this*  
23                           *subsection and under section*  
24                           *1848(o)(1)(A); and*

1                   “(II) to collect data from Medi-  
2                   care Advantage organizations to ensure  
3                   against such duplicate payments.

4                   “(C) *FIXED SCHEDULE FOR APPLICATION*  
5                   *OF LIMITATION ON INCENTIVE PAYMENTS FOR*  
6                   *ALL ELIGIBLE PROFESSIONALS.—In applying*  
7                   *section 1848(o)(1)(B)(ii) under subparagraph*  
8                   *(A), in accordance with rules specified by the*  
9                   *Secretary, a qualifying MA organization shall*  
10                   *specify a year (not earlier than 2011) that shall*  
11                   *be treated as the first payment year for all eligi-*  
12                   *ble professionals with respect to such organiza-*  
13                   *tion.*

14                   “(4) *PAYMENT ADJUSTMENT.—*

15                   “(A) *IN GENERAL.—In applying section*  
16                   *1848(a)(7) under paragraph (1), instead of the*  
17                   *payment adjustment being an applicable percent*  
18                   *of the fee schedule amount for a year under such*  
19                   *section, subject to subparagraph (D), the pay-*  
20                   *ment adjustment under paragraph (1) shall be*  
21                   *equal to the percent specified in subparagraph*  
22                   *(B) for such year of the payment amount other-*  
23                   *wise provided under this section for such year.*

24                   “(B) *SPECIFIED PERCENT.—The percent*  
25                   *specified under this subparagraph for a year is*

1           100 percent minus a number of percentage  
2           points equal to the product of—

3                   “(i) the number of percentage points by  
4                   which the applicable percent (under section  
5                   1848(a)(7)(A)(ii)) for the year is less than  
6                   100 percent; and

7                   “(ii) the Medicare physician expendi-  
8                   ture proportion specified in subparagraph  
9                   (C) for the year.

10                   “(C) *MEDICARE PHYSICIAN EXPENDITURE*  
11                   *PROPORTION.*—The Medicare physician expendi-  
12                   ture proportion under this subparagraph for a  
13                   year is the Secretary’s estimate of the propor-  
14                   tion, of the expenditures under parts A and B  
15                   that are not attributable to this part, that are  
16                   attributable to expenditures for physicians’ serv-  
17                   ices.

18                   “(D) *APPLICATION OF PAYMENT ADJUST-*  
19                   *MENT.*—In the case that a qualifying MA orga-  
20                   nization attests that not all eligible professionals  
21                   are meaningful EHR users with respect to a  
22                   year, the Secretary shall apply the payment ad-  
23                   justment under this paragraph based on the pro-  
24                   portion of such eligible professionals that are not  
25                   meaningful EHR users for such year.

1           “(5) *QUALIFYING MA ORGANIZATION DEFINED.*—  
2           *In this subsection and subsection (m), the term ‘quali-*  
3           *fying MA organization’ means a Medicare Advantage*  
4           *organization that is organized as a health mainte-*  
5           *nance organization (as defined in section 2791(b)(3)*  
6           *of the Public Health Service Act).*

7           “(6) *MEANINGFUL EHR USER ATTESTATION.*—  
8           *For purposes of this subsection and subsection (m), a*  
9           *qualifying MA organization shall submit an attesta-*  
10           *tion, in a form and manner specified by the Secretary*  
11           *which may include the submission of such attestation*  
12           *as part of submission of the initial bid under section*  
13           *1854(a)(1)(A)(iv), identifying—*

14                   “(A) *whether each eligible professional de-*  
15                   *scribed in paragraph (2), with respect to such*  
16                   *organization is a meaningful EHR user (as de-*  
17                   *fined in section 1848(o)(2)) for a year specified*  
18                   *by the Secretary; and*

19                   “(B) *whether each eligible hospital described*  
20                   *in subsection (m)(1), with respect to such organi-*  
21                   *zation, is a meaningful EHR user (as defined in*  
22                   *section 1886(n)(3)) for an applicable period*  
23                   *specified by the Secretary.”.*

24           “(d) *CONFORMING AMENDMENTS.*—*Section 1853 of the*  
25           *Social Security Act (42 U.S.C. 1395w-23) is amended—*

1           (1) in subsection (a)(1)(A), by striking “and (i)”  
2           and inserting “(i), and (l)”;

3           (2) in subsection (c)—

4                 (A) in paragraph (1)(D)(i), by striking  
5                 “section 1886(h)” and inserting “sections  
6                 1848(o) and 1886(h)”;

7                 (B) in paragraph (6)(A), by inserting after  
8                 “under part B,” the following: “excluding ex-  
9                 penditures attributable to subsections (a)(7) and  
10                 (o) of section 1848,”; and

11           (3) in subsection (f), by inserting “and for pay-  
12           ments under subsection (l)” after “with the organiza-  
13           tion”.

14           (e) *CONFORMING AMENDMENTS TO E-PRESCRIBING.*—

15                 (1) Section 1848(a)(5)(A) of the Social Security  
16                 Act (42 U.S.C. 1395w-4(a)(5)(A)) is amended—

17                         (A) in clause (i), by striking “or any subse-  
18                         quent year” and inserting “; 2013, 2014, or  
19                         2015”; and

20                         (B) in clause (ii), by striking “and each  
21                         subsequent year” and inserting “and 2015”.

22                 (2) Section 1848(m)(2) of such Act (42 U.S.C.  
23                 1395w-4(m)(2)) is amended—

1           (A) in subparagraph (A), by striking “For  
2           2009” and inserting “Subject to subparagraph  
3           (D), for 2009”; and

4           (B) by adding at the end the following new  
5           subparagraph:

6           “(D) *LIMITATION WITH RESPECT TO EHR*  
7           *INCENTIVE PAYMENTS.—The provisions of this*  
8           *paragraph shall not apply to an eligible profes-*  
9           *sional (or, in the case of a group practice under*  
10           *paragraph (3)(C), to the group practice) if, for*  
11           *the reporting period the eligible professional (or*  
12           *group practice) receives an incentive payment*  
13           *under subsection (o)(1)(A) with respect to a cer-*  
14           *tified EHR technology (as defined in subsection*  
15           *(o)(4)) that has the capability of electronic pre-*  
16           *scribing.”.*

17 **SEC. 4312. INCENTIVES FOR HOSPITALS.**

18           (a) *INCENTIVE PAYMENT.—Section 1886 of the Social*  
19           *Security Act (42 U.S.C. 1395ww) is amended by adding*  
20           *at the end the following new subsection:*

21           “(n) *INCENTIVES FOR ADOPTION AND MEANINGFUL*  
22           *USE OF CERTIFIED EHR TECHNOLOGY.—*

23           “(1) *IN GENERAL.—Subject to the succeeding*  
24           *provisions of this subsection, with respect to inpatient*  
25           *hospital services furnished by an eligible hospital dur-*

1        *ing a payment year (as defined in paragraph*  
2        *(2)(G)), if the eligible hospital is a meaningful EHR*  
3        *user (as determined under paragraph (3)) for the re-*  
4        *porting period with respect to such year, in addition*  
5        *to the amount otherwise paid under this section, there*  
6        *also shall be paid to the eligible hospital, from the*  
7        *Federal Hospital Insurance Trust Fund established*  
8        *under section 1817, an amount equal to the applica-*  
9        *ble amount specified in paragraph (2)(A) for the hos-*  
10       *pital for such payment year.*

11            *“(2) PAYMENT AMOUNT.—*

12                    *“(A) IN GENERAL.—Subject to the suc-*  
13                    *ceeding subparagraphs of this paragraph, the ap-*  
14                    *plicable amount specified in this subparagraph*  
15                    *for an eligible hospital for a payment year is*  
16                    *equal to the product of the following:*

17                            *“(i) INITIAL AMOUNT.—The sum of—*

18                                    *“(I) the base amount specified in*  
19                                    *subparagraph (B); plus*

20                                    *“(II) the discharge related amount*  
21                                    *specified in subparagraph (C) for a 12-*  
22                                    *month period selected by the Secretary*  
23                                    *with respect to such payment year.*

24                            *“(ii) MEDICARE SHARE.—The Medi-*  
25                            *care share as specified in subparagraph (D)*

1           for the hospital for a period selected by the  
2           Secretary with respect to such payment  
3           year.

4           “(iii) *TRANSITION FACTOR.*—The tran-  
5           sition factor specified in subparagraph (E)  
6           for the hospital for the payment year.

7           “(B) *BASE AMOUNT.*—The base amount  
8           specified in this subparagraph is \$2,000,000.

9           “(C) *DISCHARGE RELATED AMOUNT.*—The  
10          discharge related amount specified in this sub-  
11          paragraph for a 12-month period selected by the  
12          Secretary shall be determined as the sum of the  
13          amount, based upon total discharges (regardless  
14          of any source of payment) for the period, for  
15          each discharge up to the 23,000th discharge as  
16          follows:

17               “(i) For the 1,150th through the  
18               9,200th discharge, \$200.

19               “(ii) For the 9,201st through the  
20               13,800th discharge, 50 percent of the  
21               amount specified in clause (i).

22               “(iii) For the 13,801st through the  
23               23,000th discharge, 30 percent of the  
24               amount specified in clause (i).

1           “(D) *MEDICARE SHARE.*—*The Medicare*  
2           *share specified under this subparagraph for a*  
3           *hospital for a period selected by the Secretary for*  
4           *a payment year is equal to the fraction—*

5                     “(i) *the numerator of which is the sum*  
6                     *(for such period and with respect to the hos-*  
7                     *pital) of—*

8                             “(I) *the number of inpatient-bed-*  
9                             *days (as established by the Secretary)*  
10                            *which are attributable to individuals*  
11                            *with respect to whom payment may be*  
12                            *made under part A; and*

13                            “(II) *the number of inpatient-bed-*  
14                            *days (as so established) which are at-*  
15                            *tributable to individuals who are en-*  
16                            *rolled with a Medicare Advantage or-*  
17                            *ganization under part C; and*

18                     “(ii) *the denominator of which is the*  
19                     *product of—*

20                            “(I) *the total number of inpa-*  
21                            *tient-bed-days with respect to the hos-*  
22                            *pital during such period; and*

23                            “(II) *the total amount of the hos-*  
24                            *pital’s charges during such period, not*  
25                            *including any charges that are attrib-*

1                    *utable to charity care (as such term is*  
2                    *used for purposes of hospital cost re-*  
3                    *porting under this title), divided by the*  
4                    *total amount of the hospital's charges*  
5                    *during such period.*

6                    *Insofar as the Secretary determines that data are*  
7                    *not available on charity care necessary to cal-*  
8                    *culate the portion of the formula specified in*  
9                    *clause (ii)(II), the Secretary shall use data on*  
10                   *uncompensated care and may adjust such data*  
11                   *so as to be an appropriate proxy for charity care*  
12                   *including a downward adjustment to eliminate*  
13                   *bad debt data from uncompensated care data. In*  
14                   *the absence of the data necessary, with respect to*  
15                   *a hospital, for the Secretary to compute the*  
16                   *amount described in clause (ii)(II), the amount*  
17                   *under such clause shall be deemed to be 1. In the*  
18                   *absence of data, with respect to a hospital, nec-*  
19                   *essary to compute the amount described in clause*  
20                   *(i)(II), the amount under such clause shall be*  
21                   *deemed to be 0.*

22                   *“(E) TRANSITION FACTOR SPECIFIED.—*

23                   *“(i) IN GENERAL.—Subject to clause*  
24                   *(ii), the transition factor specified in this*

1                    *subparagraph for an eligible hospital for a*  
2                    *payment year is as follows:*

3                    *“(I) For the first payment year*  
4                    *for such hospital, 1.*

5                    *“(II) For the second payment*  
6                    *year for such hospital,  $\frac{3}{4}$ .*

7                    *“(III) For the third payment year*  
8                    *for such hospital,  $\frac{1}{2}$ .*

9                    *“(IV) For the fourth payment*  
10                    *year for such hospital,  $\frac{1}{4}$ .*

11                    *“(V) For any succeeding payment*  
12                    *year for such hospital, 0.*

13                    *“(ii) PHASE DOWN FOR ELIGIBLE HOS-*  
14                    *PITALS FIRST ADOPTING EHR AFTER 2013.—*

15                    *If the first payment year for an eligible hos-*  
16                    *pital is after 2013, then the transition fac-*

17                    *tor specified in this subparagraph for a*  
18                    *payment year for such hospital is the same*

19                    *as the amount specified in clause (i) for*  
20                    *such payment year for an eligible hospital*

21                    *for which the first payment year is 2013. If*  
22                    *the first payment year for an eligible hos-*

23                    *pital is after 2015 then the transition factor*  
24                    *specified in this subparagraph for such hos-*

1            *pital and for such year and any subsequent*  
2            *year shall be 0.*

3            “(F) *FORM OF PAYMENT.*—*The payment*  
4            *under this subsection for a payment year may be*  
5            *in the form of a single consolidated payment or*  
6            *in the form of such periodic installments as the*  
7            *Secretary may specify.*

8            “(G) *PAYMENT YEAR DEFINED.*—

9            “(i) *IN GENERAL.*—*For purposes of*  
10           *this subsection, the term ‘payment year’*  
11           *means a fiscal year beginning with fiscal*  
12           *year 2011.*

13           “(ii) *FIRST, SECOND, ETC. PAYMENT*  
14           *YEAR.*—*The term ‘first payment year’*  
15           *means, with respect to inpatient hospital*  
16           *services furnished by an eligible hospital,*  
17           *the first fiscal year for which an incentive*  
18           *payment is made for such services under*  
19           *this subsection. The terms ‘second payment*  
20           *year’, ‘third payment year’, and ‘fourth*  
21           *payment year’ mean, with respect to an eli-*  
22           *gible hospital, each successive year imme-*  
23           *diately following the first payment year for*  
24           *that hospital.*

25           “(3) *MEANINGFUL EHR USER.*—

1           “(A) *IN GENERAL.*—For purposes of para-  
2 graph (1), an eligible hospital shall be treated as  
3 a meaningful EHR user for a reporting period  
4 for a payment year (or, for purposes of sub-  
5 section (b)(3)(B)(ix), for a reporting period  
6 under such subsection for a fiscal year) if each  
7 of the following requirements are met:

8           “(i) *MEANINGFUL USE OF CERTIFIED*  
9 *EHR TECHNOLOGY.*—The eligible hospital  
10 demonstrates to the satisfaction of the Sec-  
11 retary, in accordance with subparagraph  
12 (C)(i), that during such period the hospital  
13 is using certified EHR technology in a  
14 meaningful manner.

15           “(ii) *INFORMATION EXCHANGE.*—The  
16 eligible hospital demonstrates to the satis-  
17 faction of the Secretary, in accordance with  
18 subparagraph (C)(i), that during such pe-  
19 riod such certified EHR technology is con-  
20 nected in a manner that provides, in ac-  
21 cordance with law and standards applicable  
22 to the exchange of information, for the elec-  
23 tronic exchange of health information to im-  
24 prove the quality of health care, such as  
25 promoting care coordination.

1           “(iii) *REPORTING ON MEASURES USING*  
2           *EHR.—Subject to subparagraph (B)(ii) and*  
3           *using such certified EHR technology, the el-*  
4           *igible hospital submits information for such*  
5           *period, in a form and manner specified by*  
6           *the Secretary, on such clinical quality*  
7           *measures and such other measures as se-*  
8           *lected by the Secretary under subparagraph*  
9           *(B)(i).*

10           *The Secretary shall seek to improve the use of*  
11           *electronic health records and health care quality*  
12           *over time by requiring more stringent measures*  
13           *of meaningful use selected under this paragraph.*

14           “(B) *REPORTING ON MEASURES.—*

15           “(i) *SELECTION.—The Secretary shall*  
16           *select measures for purposes of subpara-*  
17           *graph (A)(iii) but only consistent with the*  
18           *following:*

19                   “(I) *The Secretary shall provide*  
20                   *preference to clinical quality measures*  
21                   *that have been selected for purposes of*  
22                   *applying subsection (b)(3)(B)(viii) or*  
23                   *that have been endorsed by the entity*  
24                   *with a contract with the Secretary*  
25                   *under section 1890(a).*

1           “(II) *Prior to any measure (other*  
2           *than a clinical quality measure that*  
3           *has been selected for purposes of apply-*  
4           *ing subsection (b)(3)(B)(viii)) being se-*  
5           *lected under this subparagraph, the*  
6           *Secretary shall publish in the Federal*  
7           *Register such measure and provide for*  
8           *a period of public comment on such*  
9           *measure.*

10           “(ii) *LIMITATIONS.—The Secretary*  
11           *may not require the electronic reporting of*  
12           *information on clinical quality measures*  
13           *under subparagraph (A)(iii) unless the Sec-*  
14           *retary has the capacity to accept the infor-*  
15           *mation electronically, which may be on a*  
16           *pilot basis.*

17           “(iii) *COORDINATION OF REPORTING*  
18           *OF INFORMATION.—In selecting such meas-*  
19           *ures, and in establishing the form and man-*  
20           *ner for reporting measures under subpara-*  
21           *graph (A)(iii), the Secretary shall seek to*  
22           *avoid redundant or duplicative reporting*  
23           *with reporting otherwise required, including*  
24           *reporting under subsection (b)(3)(B)(viii).*

1           “(C) *DEMONSTRATION OF MEANINGFUL USE*  
2           *OF CERTIFIED EHR TECHNOLOGY AND INFORMA-*  
3           *TION EXCHANGE.—*

4           “(i) *IN GENERAL.—A hospital may*  
5           *satisfy the demonstration requirement of*  
6           *clauses (i) and (ii) of subparagraph (A)*  
7           *through means specified by the Secretary,*  
8           *which may include—*

9           “(I) *an attestation;*

10          “(II) *the submission of claims*  
11          *with appropriate coding (such as a*  
12          *code indicating that inpatient care*  
13          *was documented using certified EHR*  
14          *technology);*

15          “(III) *a survey response;*

16          “(IV) *reporting under subpara-*  
17          *graph (A)(iii); and*

18          “(V) *other means specified by the*  
19          *Secretary.*

20          “(ii) *USE OF PART D DATA.—Notwith-*  
21          *standing sections 1860D–15(d)(2)(B) and*  
22          *1860D–15(f)(2), the Secretary may use data*  
23          *regarding drug claims submitted for pur-*  
24          *poses of section 1860D–15 that are nec-*  
25          *essary for purposes of subparagraph (A).*

1           “(4) *APPLICATION.*—

2                   “(A) *LIMITATIONS ON REVIEW.*—*There shall*  
3           *be no administrative or judicial review under*  
4           *section 1869, section 1878, or otherwise of the de-*  
5           *termination of any incentive payment under this*  
6           *subsection and the payment adjustment under*  
7           *subsection (b)(3)(B)(ix), including the deter-*  
8           *mination of a meaningful EHR user under*  
9           *paragraph (3), determination of measures appli-*  
10           *cable to services furnished by eligible hospitals*  
11           *under this subsection, and the exception under*  
12           *subsection (b)(3)(B)(ix)(II).*

13                   “(B) *POSTING ON WEBSITE.*—*The Secretary*  
14           *shall post on the Internet website of the Centers*  
15           *for Medicare & Medicaid Services, in an easily*  
16           *understandable format, a list of the names of the*  
17           *eligible hospitals that are meaningful EHR users*  
18           *under this subsection or subsection (b)(3)(B)(ix)*  
19           *and other relevant data as determined appro-*  
20           *priate by the Secretary. The Secretary shall en-*  
21           *sure that a hospital has the opportunity to re-*  
22           *view the other relevant data that are to be made*  
23           *public with respect to the hospital prior to such*  
24           *data being made public.*

1           “(5) *CERTIFIED EHR TECHNOLOGY DEFINED.*—  
2           *The term ‘certified EHR technology’ has the meaning*  
3           *given such term in section 1848(o)(4).*

4           “(6) *DEFINITIONS.*—*For purposes of this sub-*  
5           *section:*

6                   “(A) *ELIGIBLE HOSPITAL.*—*The term ‘eligi-*  
7                   *ble hospital’ means a subsection (d) hospital.*

8                   “(B) *REPORTING PERIOD.*—*The term ‘re-*  
9                   *porting period’ means any period (or periods),*  
10                   *with respect to a payment year, as specified by*  
11                   *the Secretary.”.*

12           (b) *INCENTIVE MARKET BASKET ADJUSTMENT.*—*Sec-*  
13           *tion 1886(b)(3)(B) of the Social Security Act (42 U.S.C.*  
14           *1395ww(b)(3)(B)) is amended—*

15                   (1) *in clause (viii)(I), by inserting “(or, begin-*  
16                   *ning with fiscal year 2016, by one-quarter)” after*  
17                   *“2.0 percentage points”; and*

18                   (2) *by adding at the end the following new*  
19                   *clause:*

20                   “(ix)(I) *For purposes of clause (i) for fiscal year 2016*  
21                   *and each subsequent fiscal year, in the case of an eligible*  
22                   *hospital (as defined in subsection (n)(6)(A)) that is not a*  
23                   *meaningful EHR user (as defined in subsection (n)(3)) for*  
24                   *the reporting period for such fiscal year, three-quarters of*  
25                   *the applicable percentage increase otherwise applicable*

1 *under clause (i) for such fiscal year shall be reduced by*  
2 *33<sup>1</sup>/<sub>3</sub> percent for fiscal year 2016, 66<sup>2</sup>/<sub>3</sub> percent for fiscal*  
3 *year 2017, and 100 percent for fiscal year 2018 and each*  
4 *subsequent fiscal year. Such reduction shall apply only with*  
5 *respect to the fiscal year involved and the Secretary shall*  
6 *not take into account such reduction in computing the ap-*  
7 *plicable percentage increase under clause (i) for a subse-*  
8 *quent fiscal year.*

9       *“(II) The Secretary may, on a case-by-case basis, ex-*  
10 *empt a subsection (d) hospital from the application of sub-*  
11 *clause (I) with respect to a fiscal year if the Secretary deter-*  
12 *mines, subject to annual renewal, that requiring such hos-*  
13 *pital to be a meaningful EHR user during such fiscal year*  
14 *would result in a significant hardship, such as in the case*  
15 *of a hospital in a rural area without sufficient Internet ac-*  
16 *cess. In no case may a hospital be granted an exemption*  
17 *under this subclause for more than 5 years.*

18       *“(III) For fiscal year 2016 and each subsequent fiscal*  
19 *year, a State in which hospitals are paid for services under*  
20 *section 1814(b)(3) shall adjust the payments to each sub-*  
21 *section (d) hospital in the State that is not a meaningful*  
22 *EHR user (as defined in subsection (n)(3)) in a manner*  
23 *that is designed to result in an aggregate reduction in pay-*  
24 *ments to hospitals in the State that is equivalent to the ag-*  
25 *gregate reduction that would have occurred if payments had*

1 *been reduced to each subsection (d) hospital in the State*  
2 *in a manner comparable to the reduction under the pre-*  
3 *vious provisions of this clause. The State shall report to*  
4 *the Secretary the methodology it will use to make the pay-*  
5 *ment adjustment under the previous sentence.*

6 “(IV) *For purposes of this clause, the term ‘reporting*  
7 *period’ means, with respect to a fiscal year, any period (or*  
8 *periods), with respect to the fiscal year, as specified by the*  
9 *Secretary.’”.*

10 (c) *APPLICATION TO CERTAIN HMO-AFFILIATED ELI-*  
11 *GIBLE HOSPITALS.—Section 1853 of the Social Security*  
12 *Act (42 U.S.C. 1395w–23), as amended by section 4311(c),*  
13 *is further amended by adding at the end the following new*  
14 *subsection:*

15 “(m) *APPLICATION OF ELIGIBLE HOSPITAL INCEN-*  
16 *TIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION*  
17 *AND MEANINGFUL USE OF CERTIFIED EHR TECH-*  
18 *NOLOGY.—*

19 “(1) *APPLICATION.—Subject to paragraphs (3)*  
20 *and (4), in the case of a qualifying MA organization,*  
21 *the provisions of sections 1886(n) and*  
22 *1886(b)(3)(B)(ix) shall apply with respect to eligible*  
23 *hospitals described in paragraph (2) of the organiza-*  
24 *tion which the organization attests under subsection*  
25 *(l)(6) to be meaningful EHR users in a similar man-*

1 *ner as they apply to eligible hospitals under such sec-*  
2 *tions. Incentive payments under paragraph (3) shall*  
3 *be made to and payment adjustments under para-*  
4 *graph (4) shall apply to such qualifying organiza-*  
5 *tions.*

6 “(2) *ELIGIBLE HOSPITAL DESCRIBED.*—*With re-*  
7 *spect to a qualifying MA organization, an eligible*  
8 *hospital described in this paragraph is an eligible*  
9 *hospital that is under common corporate governance*  
10 *with such organization and serves individuals en-*  
11 *rolled under an MA plan offered by such organiza-*  
12 *tion.*

13 “(3) *ELIGIBLE HOSPITAL INCENTIVE PAY-*  
14 *MENTS.*—

15 “(A) *IN GENERAL.*—*In applying section*  
16 *1886(n)(2) under paragraph (1), instead of the*  
17 *additional payment amount under section*  
18 *1886(n)(2), there shall be substituted an amount*  
19 *determined by the Secretary to be similar to the*  
20 *estimated amount in the aggregate that would be*  
21 *payable if payment for services furnished by*  
22 *such hospitals was payable under part A instead*  
23 *of this part. In implementing the previous sen-*  
24 *tence, the Secretary—*

1           “(i) shall, insofar as data to determine  
2           the discharge related amount under section  
3           1886(n)(2)(C) for an eligible hospital are  
4           not available to the Secretary, use such al-  
5           ternative data and methodology to estimate  
6           such discharge related amount as the Sec-  
7           retary determines appropriate; and

8           “(ii) shall, insofar as data to deter-  
9           mine the medicare share described in sec-  
10          tion 1886(n)(2)(D) for an eligible hospital  
11          are not available to the Secretary, use such  
12          alternative data and methodology to esti-  
13          mate such share, which data and method-  
14          ology may include use of the inpatient bed  
15          days (or discharges) with respect to an eli-  
16          gible hospital during the appropriate period  
17          which are attributable to both individuals  
18          for whom payment may be made under  
19          part A or individuals enrolled in an MA  
20          plan under a Medicare Advantage organiza-  
21          tion under this part as a proportion of the  
22          total number of patient-bed-days (or dis-  
23          charges) with respect to such hospital dur-  
24          ing such period.

1                   “(B) *AVOIDING DUPLICATION OF PAY-*  
2                   *MENTS.—*

3                   “(i) *IN GENERAL.—In the case of a*  
4                   *hospital that for a payment year is an eli-*  
5                   *gible hospital described in paragraph (2), is*  
6                   *an eligible hospital under section 1886(n),*  
7                   *and for which at least one-third of their dis-*  
8                   *charges (or bed-days) of Medicare patients*  
9                   *for the year are covered under part A, pay-*  
10                   *ment for the payment year shall be made*  
11                   *only under section 1886(n) and not under*  
12                   *this subsection.*

13                   “(ii) *METHODS.—In the case of a hos-*  
14                   *pital that is an eligible hospital described*  
15                   *in paragraph (2) and also is eligible for an*  
16                   *incentive payment under section 1886(n)*  
17                   *but is not described in clause (i) for the*  
18                   *same payment period, the Secretary shall*  
19                   *develop a process—*

20                   “(I) *to ensure that duplicate pay-*  
21                   *ments are not made with respect to an*  
22                   *eligible hospital both under this sub-*  
23                   *section and under section 1886(n); and*

1                   “(II) to collect data from Medi-  
2                   care Advantage organizations to ensure  
3                   against such duplicate payments.

4                   “(4) PAYMENT ADJUSTMENT.—

5                   “(A) Subject to paragraph (3), in the case  
6                   of a qualifying MA organization (as defined in  
7                   section 1853(l)(5)), if, according to the attesta-  
8                   tion of the organization submitted under sub-  
9                   section (l)(6) for an applicable period, one or  
10                  more eligible hospitals (as defined in section  
11                  1886(n)(6)(A)) that are under common corporate  
12                  governance with such organization and that  
13                  serve individuals enrolled under a plan offered  
14                  by such organization are not meaningful EHR  
15                  users (as defined in section 1886(n)(3)) with re-  
16                  spect to a period, the payment amount payable  
17                  under this section for such organization for such  
18                  period shall be the percent specified in subpara-  
19                  graph (B) for such period of the payment  
20                  amount otherwise provided under this section for  
21                  such period.

22                  “(B) SPECIFIED PERCENT.—The percent  
23                  specified under this subparagraph for a year is  
24                  100 percent minus a number of percentage  
25                  points equal to the product of—

1                   “(i) the number of the percentage point  
2                   reduction effected under section  
3                   1886(b)(3)(B)(ix)(I) for the period; and

4                   “(ii) the Medicare hospital expenditure  
5                   proportion specified in subparagraph (C)  
6                   for the year.

7                   “(C) *MEDICARE HOSPITAL EXPENDITURE*  
8                   *PROPORTION.*—The Medicare hospital expendi-  
9                   ture proportion under this subparagraph for a  
10                  year is the Secretary’s estimate of the propor-  
11                  tion, of the expenditures under parts A and B  
12                  that are not attributable to this part, that are  
13                  attributable to expenditures for inpatient hos-  
14                  pital services.

15                  “(D) *APPLICATION OF PAYMENT ADJUST-*  
16                  *MENT.*—In the case that a qualifying MA orga-  
17                  nization attests that not all eligible hospitals are  
18                  meaningful EHR users with respect to an appli-  
19                  cable period, the Secretary shall apply the pay-  
20                  ment adjustment under this paragraph based on  
21                  a methodology specified by the Secretary, taking  
22                  into account the proportion of such eligible hos-  
23                  pitals, or discharges from such hospitals, that are  
24                  not meaningful EHR users for such period.”.

25                  (d) *CONFORMING AMENDMENTS.*—

1           (1) *Section 1814(b) of the Social Security Act*  
2 *(42 U.S.C. 1395f(b)) is amended—*

3           (A) *in paragraph (3), in the matter pre-*  
4 *ceding subparagraph (A), by inserting “, subject*  
5 *to section 1886(d)(3)(B)(ix)(III),” after “then”;*  
6 *and*

7           (B) *by adding at the end the following:*  
8 *“For purposes of applying paragraph (3), there*  
9 *shall be taken into account incentive payments,*  
10 *and payment adjustments under subsection*  
11 *(b)(3)(B)(ix) or (n) of section 1886.”.*

12           (2) *Section 1851(i)(1) of the Social Security Act*  
13 *(42 U.S.C. 1395w–21(i)(1)) is amended by striking*  
14 *“and 1886(h)(3)(D)” and inserting “1886(h)(3)(D),*  
15 *and 1853(m)”.*

16           (3) *Section 1853 of the Social Security Act (42*  
17 *U.S.C. 1395w–23), as amended by section 4311(d)(1),*  
18 *is amended—*

19           (A) *in subsection (c)—*

20           (i) *in paragraph (1)(D)(i), by striking*  
21 *“1848(o)” and inserting “, 1848(o), and*  
22 *1886(n)”;* *and*

23           (ii) *in paragraph (6)(A), by inserting*  
24 *“and subsections (b)(3)(B)(ix) and (n) of*  
25 *section 1886” after “section 1848”; and*

1                   (B) in subsection (f), by inserting “and sub-  
2                   section (m)” after “under subsection (l)”.

3 **SEC. 4313. TREATMENT OF PAYMENTS AND SAVINGS; IMPLI-**  
4 **MENTATION FUNDING.**

5           (a) *PREMIUM HOLD HARMLESS.*—

6                   (1) *IN GENERAL.*—Section 1839(a)(1) of the So-  
7                   cial Security Act (42 U.S.C. 1395r(a)(1)) is amended  
8                   by adding at the end the following: “In applying this  
9                   paragraph there shall not be taken into account addi-  
10                  tional payments under section 1848(o) and section  
11                  1853(l)(3) and the Government contribution under  
12                  section 1844(a)(3).”.

13                  (2) *PAYMENT.*—Section 1844(a) of such Act (42  
14                  U.S.C. 1395w(a)) is amended—

15                           (A) in paragraph (2), by striking the period  
16                           at the end and inserting “; plus”; and

17                           (B) by adding at the end the following new  
18                           paragraph:

19                                   “(3) a Government contribution equal to the  
20                                   amount of payment incentives payable under sections  
21                                   1848(o) and 1853(l)(3).”.

22           (b) *MEDICARE IMPROVEMENT FUND.*—Section 1898 of  
23           the Social Security Act (42 U.S.C. 1395iii), as added by  
24           section 7002(a) of the Supplemental Appropriations Act,  
25           2008 (Public Law 110–252) and as amended by section

1 188(a)(2) of the Medicare Improvements for Patients and  
2 Providers Act of 2008 (Public Law 110–275; 122 Stat.  
3 2589) and by section 6 of the QI Program Supplemental  
4 Funding Act of 2008, is amended—

5 (1) in subsection (a)—

6 (A) by inserting “medicare” before “fee-for-  
7 service”; and

8 (B) by inserting before the period at the end  
9 the following: “including, but not limited to, an  
10 increase in the conversion factor under section  
11 1848(d) to address, in whole or in part, any pro-  
12 jected shortfall in the conversion factor for 2014  
13 relative to the conversion factor for 2008 and ad-  
14 justments to payments for items and services fur-  
15 nished by providers of services and suppliers  
16 under such original medicare fee-for-service pro-  
17 gram”; and

18 (2) in subsection (b)—

19 (A) in paragraph (1), by striking “during  
20 fiscal year 2014,” and all that follows and in-  
21 serting the following: “during—

22 “(A) fiscal year 2014, \$22,290,000,000; and

23 “(B) fiscal year 2020 and each subsequent  
24 fiscal year, the Secretary’s estimate, as of July  
25 1 of the fiscal year, of the aggregate reduction in

1           *expenditures under this title during the pre-*  
2           *ceding fiscal year directly resulting from the re-*  
3           *duction in payment amounts under sections*  
4           *1848(a)(7), 1853(l)(4), 1853(m)(4), and*  
5           *1886(b)(3)(B)(ix).”; and*

6                     *(B) by adding at the end the following new*  
7           *paragraph:*

8                     *“(4) NO EFFECT ON PAYMENTS IN SUBSEQUENT*  
9           *YEARS.—In the case that expenditures from the Fund*  
10          *are applied to, or otherwise affect, a payment rate for*  
11          *an item or service under this title for a year, the pay-*  
12          *ment rate for such item or service shall be computed*  
13          *for a subsequent year as if such application or effect*  
14          *had never occurred.”.*

15          *(c) IMPLEMENTATION FUNDING.—In addition to funds*  
16          *otherwise available, out of any funds in the Treasury not*  
17          *otherwise appropriated, there are appropriated to the Sec-*  
18          *retary of Health and Human Services for the Center for*  
19          *Medicare & Medicaid Services Program Management Ac-*  
20          *count, \$60,000,000 for each of fiscal years 2009 through*  
21          *2015 and \$30,000,000 for each succeeding fiscal year*  
22          *through fiscal year 2019, which shall be available for pur-*  
23          *poses of carrying out the provisions of (and amendments*  
24          *made by) this part. Amounts appropriated under this sub-*  
25          *section for a fiscal year shall be available until expended.*

1 **SEC. 4314. STUDY ON APPLICATION OF EHR PAYMENT IN-**  
2 **CENTIVES FOR PROVIDERS NOT RECEIVING**  
3 **OTHER INCENTIVE PAYMENTS.**

4 (a) *STUDY.*—

5 (1) *IN GENERAL.*—*The Secretary of Health and*  
6 *Human Services shall conduct a study to determine*  
7 *the extent to which and manner in which payment*  
8 *incentives (such as under title XVIII or XIX of the*  
9 *Social Security Act) and other funding for purposes*  
10 *of implementing and using certified EHR technology*  
11 *(as defined in section 3000 of the Public Health Serv-*  
12 *ice Act) should be made available to health care pro-*  
13 *viders who are receiving minimal or no payment in-*  
14 *centives or other funding under this Act, under title*  
15 *XVIII or XIX of the Social Security Act, or otherwise,*  
16 *for such purposes.*

17 (2) *DETAILS OF STUDY.*—*Such study shall in-*  
18 *clude an examination of—*

19 (A) *the adoption rates of certified EHR*  
20 *technology by such health care providers;*

21 (B) *the clinical utility of such technology by*  
22 *such health care providers;*

23 (C) *whether the services furnished by such*  
24 *health care providers are appropriate for or*  
25 *would benefit from the use of such technology;*

1           (D) the extent to which such health care  
2 providers work in settings that might otherwise  
3 receive an incentive payment or other funding  
4 under this Act, title XVIII or XIX of the Social  
5 Security Act, or otherwise;

6           (E) the potential costs and the potential  
7 benefits of making payment incentives and other  
8 funding available to such health care providers;  
9 and

10           (F) any other issues the Secretary deems to  
11 be appropriate.

12           (b) *REPORT*.—Not later than June 30, 2010, the Sec-  
13 retary shall submit to Congress a report on the findings  
14 and conclusions of the study conducted under subsection (a).

15           **PART III—MEDICAID FUNDING**

16           **SEC. 4321. MEDICAID PROVIDER HIT ADOPTION AND OPER-**  
17           **ATION PAYMENTS; IMPLEMENTATION FUND-**  
18           **ING.**

19           (a) *IN GENERAL*.—Section 1903 of the Social Security  
20 Act (42 U.S.C. 1396b) is amended—

21           (1) in subsection (a)(3)—

22           (A) by striking “and” at the end of sub-  
23 paragraph (D);

24           (B) by striking “plus” at the end of sub-  
25 paragraph (E) and inserting “and”; and

1           (C) by adding at the end the following new  
2           subparagraph:

3           “(F)(i) 100 percent of so much of the sums  
4           expended during such quarter as are attributable  
5           to payments for certified EHR technology (and  
6           support services including maintenance and  
7           training that is for, or is necessary for the adop-  
8           tion and operation of, such technology) by Med-  
9           icaid providers described in subsection (t)(1);  
10          and

11          “(i) 90 percent of so much of the sums ex-  
12          pended during such quarter as are attributable  
13          to payments for reasonable administrative ex-  
14          penses related to the administration of payments  
15          described in clause (i) if the State meets the con-  
16          dition described in subsection (t)(9); plus”; and  
17          (2) by inserting after subsection (s) the following  
18          new subsection:

19          “(t)(1) For purposes of subsection (a)(3)(F), the pay-  
20          ments for certified EHR technology (and support services  
21          including maintenance that is for, or is necessary for the  
22          operation of, such technology) by Medicaid providers de-  
23          scribed in this paragraph are payments made by the State  
24          in accordance with this subsection of 85 percent of the net

1 *allowable costs of Medicaid providers (as defined in para-*  
2 *graph (2)) for such technology (and support services).*

3 “(2) *In this subsection and subsection (a)(3)(F), the*  
4 *term ‘Medicaid provider’ means—*

5 “(A) *an eligible professional (as defined in para-*  
6 *graph (3)(B)) who is not hospital-based and has at*  
7 *least 30 percent of the professional’s patient volume*  
8 *(as estimated in accordance with standards estab-*  
9 *lished by the Secretary) attributable to individuals*  
10 *who are receiving medical assistance under this title;*  
11 *and*

12 “(B)(i) *a children’s hospital, (ii) an acute-care*  
13 *hospital that is not described in clause (i) and that*  
14 *has at least 10 percent of the hospital’s patient vol-*  
15 *ume (as estimated in accordance with standards es-*  
16 *tablished by the Secretary) attributable to individuals*  
17 *who are receiving medical assistance under this title,*  
18 *or (iii) a Federally-qualified health center or rural*  
19 *health clinic that has at least 30 percent of the cen-*  
20 *ter’s or clinic’s patient volume (as estimated in ac-*  
21 *cordance with standards established by the Secretary)*  
22 *attributable to individuals who are receiving medical*  
23 *assistance under this title.*

24 *An eligible professional shall not qualify as a Medicaid pro-*  
25 *vider under this subsection unless the eligible professional*

1 *has waived, in a manner specified by the Secretary, any*  
2 *right to payment under section 1848(o) with respect to the*  
3 *adoption or support of certified EHR technology by the pro-*  
4 *fessional. In applying clauses (ii) and (iii) of subparagraph*  
5 *(B), the standards established by the Secretary for patient*  
6 *volume shall include individuals enrolled in a Medicaid*  
7 *managed care plan (under section 1903(m) or section*  
8 *1932).*

9       “(3) *In this subsection and subsection (a)(3)(F):*

10           “(A) *The term ‘certified EHR technology’ means*  
11 *a qualified electronic health record (as defined in*  
12 *3000(13) of the Public Health Service Act) that is cer-*  
13 *tified pursuant to section 3001(c)(5) of such Act as*  
14 *meeting standards adopted under section 3004 of such*  
15 *Act that are applicable to the type of record involved*  
16 *(as determined by the Secretary, such as an ambula-*  
17 *tory electronic health record for office-based physi-*  
18 *cians or an inpatient hospital electronic health record*  
19 *for hospitals).*

20           “(B) *The term ‘eligible professional’ means a*  
21 *physician as defined in paragraphs (1) and (2) of*  
22 *section 1861(r), and includes a nurse mid-wife and a*  
23 *nurse practitioner.*

24           “(C) *The term ‘hospital-based’ means, with re-*  
25 *spect to an eligible professional, a professional (such*

1       *as a pathologist, anesthesiologist, or emergency physi-*  
2       *cian) who furnishes substantially all of the individ-*  
3       *ual's professional services in a hospital setting*  
4       *(whether inpatient or outpatient) and through the use*  
5       *of the facilities and equipment, including computer*  
6       *equipment, of the hospital.*

7       “(4)(A) *The term ‘allowable costs’ means, with respect*  
8       *to certified EHR technology of a Medicaid provider, costs*  
9       *of such technology (and support services including mainte-*  
10       *nance and training that is for, or is necessary for the adop-*  
11       *tion and operation of, such technology) as determined by*  
12       *the Secretary to be reasonable.*

13       “(B) *The term ‘net allowable costs’ means allowable*  
14       *costs reduced by any payment that is made to the Medicaid*  
15       *provider involved from any other source that is directly at-*  
16       *tributable to payment for certified EHR technology or serv-*  
17       *ices described in subparagraph (A).*

18       “(C) *In no case shall—*

19               “(i) *the aggregate allowable costs under this sub-*  
20               *section (covering one or more years) with respect to*  
21               *a Medicaid provider described in paragraph (2)(A)*  
22               *for purchase and initial implementation of certified*  
23               *EHR technology (and services described in subpara-*  
24               *graph (A)) exceed \$25,000 or include costs over a pe-*  
25               *riod of longer than 5 years;*

1           “(ii) for costs not described in clause (i) relating  
2           to the operation, maintenance, or use of certified  
3           EHR technology, the annual allowable costs under  
4           this subsection with respect to such a Medicaid pro-  
5           vider for costs not described in clause (i) for any year  
6           exceed \$10,000;

7           “(iii) payment described in paragraph (1) for  
8           costs described in clause (ii) be made with respect to  
9           such a Medicaid provider over a period of more than  
10          5 years;

11          “(iv) the aggregate allowable costs under this  
12          subsection with respect to such a Medicaid provider  
13          for all costs exceed \$75,000; or

14          “(v) the allowable costs, whether for purchase  
15          and initial implementation, maintenance, or other-  
16          wise, for a Medicaid provider described in paragraph  
17          (2)(B) exceed such aggregate or annual limitation as  
18          the Secretary shall establish, based on an amount de-  
19          termined by the Secretary as being adequate to adopt  
20          and maintain certified EHR technology, consistent  
21          with paragraph (6).

22          “(5) Payments described in paragraph (1) are not in  
23          accordance with this subsection unless the following require-  
24          ments are met:

1           “(A) *The State provides assurances satisfactory*  
2 *to the Secretary that amounts received under sub-*  
3 *section (a)(3)(F) with respect to costs of a Medicaid*  
4 *provider are paid directly to such provider without*  
5 *any deduction or rebate.*

6           “(B) *Such Medicaid provider is responsible for*  
7 *payment of the costs described in such paragraph that*  
8 *are not provided under this title.*

9           “(C) *With respect to payments to such Medicaid*  
10 *provider for costs other than costs related to the ini-*  
11 *tial adoption of certified EHR technology, the Med-*  
12 *icaid provider demonstrates meaningful use of cer-*  
13 *tified EHR technology through a means that is ap-*  
14 *proved by the State and acceptable to the Secretary,*  
15 *and that may be based upon the methodologies ap-*  
16 *plied under section 1848(o) or 1886(n).*

17           “(D) *To the extent specified by the Secretary, the*  
18 *certified EHR technology is compatible with State or*  
19 *Federal administrative management systems.*

20           “(6)(A) *In no case shall the payments described in*  
21 *paragraph (1), with respect to a hospital, exceed in the ag-*  
22 *gregate the product of—*

23           “(i) *the overall hospital EHR amount for the*  
24 *hospital computed under subparagraph (B); and*

1           “(ii) the Medicaid share for such hospital com-  
2           puted under subparagraph (C).

3           “(B) For purposes of this paragraph, the overall hos-  
4           pital EHR amount, with respect to a hospital, is the sum  
5           of the applicable amounts specified in section 1886(n)(2)(A)  
6           for such hospital for the first 4 payment years (as estimated  
7           by the Secretary) determined as if the Medicare share speci-  
8           fied in clause (ii) of such section were 1. The Secretary shall  
9           publish in the Federal Register the overall hospital EHR  
10          amount for each hospital eligible for payments under this  
11          subsection. In computing amounts under clause (ii) for  
12          payment years after the first payment year, the Secretary  
13          shall assume that in subsequent payment years discharges  
14          increase at the average annual rate of growth of the most  
15          recent 3 years for which discharge data are available per  
16          year.

17          “(C) The Medicaid share computed under this sub-  
18          paragraph, for a hospital for a period specified by the Sec-  
19          retary, shall be calculated in the same manner as the Medi-  
20          care share under section 1886(n)(2)(D) for such a hospital  
21          and period, except that there shall be substituted for the nu-  
22          merator under clause (i) of such section the amount that  
23          is equal to the number of inpatient-bed-days (as established  
24          by the Secretary) which are attributable to individuals who  
25          are receiving medical assistance under this title and who

1 *are not described in section 1886(n)(2)(D)(i). In computing*  
2 *inpatient-bed-days under the previous sentence, the Sec-*  
3 *retary shall take into account inpatient-bed-days attrib-*  
4 *utable to inpatient-bed-days that are paid for individuals*  
5 *enrolled in a Medicaid managed care plan (under section*  
6 *1903(m) or section 1932).*

7       “(7) *With respect to health care providers other than*  
8 *hospitals, the Secretary shall ensure coordination of the dif-*  
9 *ferent programs for payment of such health care providers*  
10 *for adoption or use of health information technology (in-*  
11 *cluding certified EHR technology), as well as payments for*  
12 *such health care providers provided under this title or title*  
13 *XVIII, to assure no duplication of funding.*

14       “(8) *In carrying out paragraph (5)(C), the State and*  
15 *Secretary shall seek, to the maximum extent practicable, to*  
16 *avoid duplicative requirements from Federal and State*  
17 *Governments to demonstrate meaningful use of certified*  
18 *EHR technology under this title and title XVIII. In doing*  
19 *so, the Secretary may deem satisfaction of requirements for*  
20 *such meaningful use for a payment year under title XVIII*  
21 *to be sufficient to qualify as meaningful use under this sub-*  
22 *section. The Secretary may also specify the reporting peri-*  
23 *ods under this subsection in order to carry out this para-*  
24 *graph.*

1       “(9) *In order to be provided Federal financial partici-*  
2 *pation under subsection (a)(3)(F)(ii), a State must dem-*  
3 *onstrate to the satisfaction of the Secretary, that the State—*

4               “(A) *is using the funds provided for the purposes*  
5 *of administering payments under this subsection, in-*  
6 *cluding tracking of meaningful use by Medicaid pro-*  
7 *viders;*

8               “(B) *is conducting adequate oversight of the pro-*  
9 *gram under this subsection, including routine track-*  
10 *ing of meaningful use attestations and reporting*  
11 *mechanisms; and*

12               “(C) *is pursuing initiatives to encourage the*  
13 *adoption of certified EHR technology to promote*  
14 *health care quality and the exchange of health care*  
15 *information under this title, subject to applicable*  
16 *laws and regulations governing such exchange.*

17       “(10) *The Secretary shall periodically submit reports*  
18 *to the Committee on Energy and Commerce of the House*  
19 *of Representatives and the Committee on Finance of the*  
20 *Senate on status, progress, and oversight of payments under*  
21 *paragraph (1).”.*

22       (b) *IMPLEMENTATION FUNDING.—In addition to funds*  
23 *otherwise available, out of any funds in the Treasury not*  
24 *otherwise appropriated, there are appropriated to the Sec-*  
25 *retary of Health and Human Services for the Center for*

1 *Medicare & Medicaid Services Program Management Ac-*  
2 *count, \$40,000,000 for each of fiscal years 2009 through*  
3 *2015 and \$20,000,000 for each succeeding fiscal year*  
4 *through fiscal year 2019, which shall be available for pur-*  
5 *poses of carrying out the provisions of (and the amendments*  
6 *made by) this part. Amounts appropriated under this sub-*  
7 *section for a fiscal year shall be available until expended.*

## 8 ***Subtitle D—Privacy***

### 9 ***SEC. 4400. DEFINITIONS.***

10 *In this subtitle, except as specified otherwise:*

11 (1) *BREACH.—The term “breach” means the un-*  
12 *authorized acquisition, access, use, or disclosure of*  
13 *protected health information which compromises the*  
14 *security, privacy, or integrity of protected health in-*  
15 *formation maintained by or on behalf of a person.*

16 *Such term does not include any unintentional acqui-*  
17 *sition, access, use, or disclosure of such information*  
18 *by an employee or agent of the covered entity or busi-*  
19 *ness associate involved if such acquisition, access, use,*  
20 *or disclosure, respectively, was made in good faith*  
21 *and within the course and scope of the employment*  
22 *or other contractual relationship of such employee or*  
23 *agent, respectively, with the covered entity or business*  
24 *associate and if such information is not further ac-*

1        *quired, accessed, used, or disclosed by such employee*  
2        *or agent.*

3            (2) *BUSINESS ASSOCIATE.*—*The term “business*  
4        *associate” has the meaning given such term in section*  
5        *160.103 of title 45, Code of Federal Regulations.*

6            (3) *COVERED ENTITY.*—*The term “covered enti-*  
7        *ty” has the meaning given such term in section*  
8        *160.103 of title 45, Code of Federal Regulations.*

9            (4) *DISCLOSE.*—*The terms “disclose” and “dis-*  
10        *closure” have the meaning given the term “disclosure”*  
11        *in section 160.103 of title 45, Code of Federal Regula-*  
12        *tions.*

13            (5) *ELECTRONIC HEALTH RECORD.*—*The term*  
14        *“electronic health record” means an electronic record*  
15        *of health-related information on an individual that is*  
16        *created, gathered, managed, and consulted by author-*  
17        *ized health care clinicians and staff.*

18            (6) *HEALTH CARE OPERATIONS.*—*The term*  
19        *“health care operation” has the meaning given such*  
20        *term in section 164.501 of title 45, Code of Federal*  
21        *Regulations.*

22            (7) *HEALTH CARE PROVIDER.*—*The term “health*  
23        *care provider” has the meaning given such term in*  
24        *section 160.103 of title 45, Code of Federal Regula-*  
25        *tions.*

1           (8) *HEALTH PLAN*.—The term “health plan” has  
2           the meaning given such term in section 1171(5) of the  
3           *Social Security Act*.

4           (9) *NATIONAL COORDINATOR*.—The term “Na-  
5           tional Coordinator” means the head of the Office of  
6           the National Coordinator for Health Information  
7           Technology established under section 3001(a) of the  
8           *Public Health Service Act*, as added by section 4101.

9           (10) *PAYMENT*.—The term “payment” has the  
10          meaning given such term in section 164.501 of title  
11          45, *Code of Federal Regulations*.

12          (11) *PERSONAL HEALTH RECORD*.—The term  
13          “personal health record” means an electronic record of  
14          individually identifiable health information on an in-  
15          dividual that can be drawn from multiple sources and  
16          that is managed, shared, and controlled by or for the  
17          individual.

18          (12) *PROTECTED HEALTH INFORMATION*.—The  
19          term “protected health information” has the meaning  
20          given such term in section 160.103 of title 45, *Code*  
21          *of Federal Regulations*.

22          (13) *SECRETARY*.—The term “Secretary” means  
23          the Secretary of Health and Human Services.

1           (14) *SECURITY.*—The term “security” has the  
2           meaning given such term in section 164.304 of title  
3           45, Code of Federal Regulations.

4           (15) *STATE.*—The term “State” means each of  
5           the several States, the District of Columbia, Puerto  
6           Rico, the Virgin Islands, Guam, American Samoa,  
7           and the Northern Mariana Islands.

8           (16) *TREATMENT.*—The term “treatment” has  
9           the meaning given such term in section 164.501 of  
10          title 45, Code of Federal Regulations.

11          (17) *USE.*—The term “use” has the meaning  
12          given such term in section 160.103 of title 45, Code  
13          of Federal Regulations.

14          (18)    *VENDOR    OF    PERSONAL    HEALTH*  
15          *RECORDS.*—The term “vendor of personal health  
16          records” means an entity, other than a covered entity  
17          (as defined in paragraph (3)), that offers or main-  
18          tains a personal health record.

1     **PART I—IMPROVED PRIVACY PROVISIONS AND**  
2                             **SECURITY PROVISIONS**

3     **SEC. 4401. APPLICATION OF SECURITY PROVISIONS AND**  
4                             **PENALTIES TO BUSINESS ASSOCIATES OF**  
5                             **COVERED ENTITIES; ANNUAL GUIDANCE ON**  
6                             **SECURITY PROVISIONS.**

7             (a) *APPLICATION OF SECURITY PROVISIONS.*—Sections  
8     164.308, 164.310, 164.312, and 164.316 of title 45, Code  
9     of Federal Regulations, shall apply to a business associate  
10    of a covered entity in the same manner that such sections  
11    apply to the covered entity. The additional requirements of  
12    this title that relate to security and that are made applica-  
13    ble with respect to covered entities shall also be applicable  
14    to such a business associate and shall be incorporated into  
15    the business associate agreement between the business asso-  
16    ciate and the covered entity.

17            (b) *APPLICATION OF CIVIL AND CRIMINAL PEN-*  
18    *ALTIES.*—In the case of a business associate that violates  
19    any security provision specified in subsection (a), sections  
20    1176 and 1177 of the Social Security Act (42 U.S.C.  
21    1320d–5, 1320d–6) shall apply to the business associate  
22    with respect to such violation in the same manner such sec-  
23    tions apply to a covered entity that violates such security  
24    provision.

25            (c) *ANNUAL GUIDANCE.*—For the first year beginning  
26    after the date of the enactment of this Act and annually

1 *thereafter, the Secretary of Health and Human Services*  
2 *shall, in consultation with industry stakeholders, annually*  
3 *issue guidance on the most effective and appropriate tech-*  
4 *nical safeguards for use in carrying out the sections referred*  
5 *to in subsection (a) and the security standards in subpart*  
6 *C of part 164 of title 45, Code of Federal Regulations, as*  
7 *such provisions are in effect as of the date before the enact-*  
8 *ment of this Act.*

9 **SEC. 4402. NOTIFICATION IN THE CASE OF BREACH.**

10 (a) *IN GENERAL.*—*A covered entity that accesses,*  
11 *maintains, retains, modifies, records, stores, destroys, or*  
12 *otherwise holds, uses, or discloses unsecured protected health*  
13 *information (as defined in subsection (h)(1)) shall, in the*  
14 *case of a breach of such information that is discovered by*  
15 *the covered entity, notify each individual whose unsecured*  
16 *protected health information has been, or is reasonably be-*  
17 *lieved by the covered entity to have been, accessed, acquired,*  
18 *or disclosed as a result of such breach.*

19 (b) *NOTIFICATION OF COVERED ENTITY BY BUSINESS*  
20 *ASSOCIATE.*—*A business associate of a covered entity that*  
21 *accesses, maintains, retains, modifies, records, stores, de-*  
22 *stroys, or otherwise holds, uses, or discloses unsecured pro-*  
23 *tected health information shall, following the discovery of*  
24 *a breach of such information, notify the covered entity of*  
25 *such breach. Such notice shall include the identification of*

1 *each individual whose unsecured protected health informa-*  
2 *tion has been, or is reasonably believed by the business asso-*  
3 *ciate to have been, accessed, acquired, or disclosed during*  
4 *such breach.*

5 *(c) BREACHES TREATED AS DISCOVERED.—For pur-*  
6 *poses of this section, a breach shall be treated as discovered*  
7 *by a covered entity or by a business associate as of the first*  
8 *day on which such breach is known to such entity or asso-*  
9 *ciate, respectively, (including any person, other than the in-*  
10 *dividual committing the breach, that is an employee, officer,*  
11 *or other agent of such entity or associate, respectively) or*  
12 *should reasonably have been known to such entity or asso-*  
13 *ciate (or person) to have occurred.*

14 *(d) TIMELINESS OF NOTIFICATION.—*

15 *(1) IN GENERAL.—Subject to subsection (g), all*  
16 *notifications required under this section shall be made*  
17 *without unreasonable delay and in no case later than*  
18 *60 calendar days after the discovery of a breach by*  
19 *the covered entity involved (or business associate in-*  
20 *volved in the case of a notification required under*  
21 *subsection (b)).*

22 *(2) BURDEN OF PROOF.—The covered entity in-*  
23 *volved (or business associate involved in the case of a*  
24 *notification required under subsection (b)), shall have*  
25 *the burden of demonstrating that all notifications*

1        *were made as required under this part, including evi-*  
2        *dence demonstrating the necessity of any delay.*

3        *(e) METHODS OF NOTICE.—*

4            *(1) INDIVIDUAL NOTICE.—Notice required under*  
5        *this section to be provided to an individual, with re-*  
6        *spect to a breach, shall be provided promptly and in*  
7        *the following form:*

8            *(A) Written notification by first-class mail*  
9        *to the individual (or the next of kin of the indi-*  
10       *vidual if the individual is deceased) at the last*  
11       *known address of the individual or the next of*  
12       *kin, respectively, or, if specified as a preference*  
13       *by the individual, by electronic mail. The notifi-*  
14       *cation may be provided in one or more mailings*  
15       *as information is available.*

16           *(B) In the case in which there is insuffi-*  
17       *cient, or out-of-date contact information (includ-*  
18       *ing a phone number, email address, or any other*  
19       *form of appropriate communication) that pre-*  
20       *cludes direct written (or, if specified by the indi-*  
21       *vidual under subparagraph (A), electronic) noti-*  
22       *fication to the individual, a substitute form of*  
23       *notice shall be provided, including, in the case*  
24       *that there are 10 or more individuals for which*  
25       *there is insufficient or out-of-date contact infor-*

1            *mation, a conspicuous posting for a period deter-*  
2            *mined by the Secretary on the home page of the*  
3            *website of the covered entity involved or notice in*  
4            *major print or broadcast media, including major*  
5            *media in geographic areas where the individuals*  
6            *affected by the breach likely reside. Such a notice*  
7            *in media or web posting will include a toll-free*  
8            *phone number where an individual can learn*  
9            *whether or not the individual's unsecured pro-*  
10           *ected health information is possibly included in*  
11           *the breach.*

12            *(C) In any case deemed by the covered enti-*  
13            *ty involved to require urgency because of possible*  
14            *imminent misuse of unsecured protected health*  
15            *information, the covered entity, in addition to*  
16            *notice provided under subparagraph (A), may*  
17            *provide information to individuals by telephone*  
18            *or other means, as appropriate.*

19            *(2) MEDIA NOTICE.—Notice shall be provided to*  
20            *prominent media outlets serving a State or jurisdic-*  
21            *tion, following the discovery of a breach described in*  
22            *subsection (a), if the unsecured protected health infor-*  
23            *mation of more than 500 residents of such State or*  
24            *jurisdiction is, or is reasonably believed to have been,*  
25            *accessed, acquired, or disclosed during such breach.*

1           (3) *NOTICE TO SECRETARY.*—Notice shall be pro-  
2           vided to the Secretary by covered entities of unsecured  
3           protected health information that has been acquired  
4           or disclosed in a breach. If the breach was with re-  
5           spect to 500 or more individuals than such notice  
6           must be provided immediately. If the breach was with  
7           respect to less than 500 individuals, the covered entity  
8           involved may maintain a log of any such breach oc-  
9           curring and annually submit such a log to the Sec-  
10          retary documenting such breaches occurring during  
11          the year involved.

12          (4) *POSTING ON HHS PUBLIC WEBSITE.*—The  
13          Secretary shall make available to the public on the  
14          Internet website of the Department of Health and  
15          Human Services a list that identifies each covered en-  
16          tity involved in a breach described in subsection (a)  
17          in which the unsecured protected health information  
18          of more than 500 individuals is acquired or disclosed.

19          (f) *CONTENT OF NOTIFICATION.*—Regardless of the  
20          method by which notice is provided to individuals under  
21          this section, notice of a breach shall include, to the extent  
22          possible, the following:

23                 (1) A brief description of what happened, includ-  
24                 ing the date of the breach and the date of the dis-  
25                 covery of the breach, if known.

1           (2) *A description of the types of unsecured pro-*  
2 *ected health information that were involved in the*  
3 *breach (such as full name, Social Security number,*  
4 *date of birth, home address, account number, or dis-*  
5 *ability code).*

6           (3) *The steps individuals should take to protect*  
7 *themselves from potential harm resulting from the*  
8 *breach.*

9           (4) *A brief description of what the covered entity*  
10 *involved is doing to investigate the breach, to mitigate*  
11 *losses, and to protect against any further breaches.*

12           (5) *Contact procedures for individuals to ask*  
13 *questions or learn additional information, which shall*  
14 *include a toll-free telephone number, an e-mail ad-*  
15 *dress, website, or postal address.*

16           (g) *DELAY OF NOTIFICATION AUTHORIZED FOR LAW*  
17 *ENFORCEMENT PURPOSES.—If a law enforcement official*  
18 *determines that a notification, notice, or posting required*  
19 *under this section would impede a criminal investigation*  
20 *or cause damage to national security, such notification, no-*  
21 *tice, or posting shall be delayed in the same manner as pro-*  
22 *vided under section 164.528(a)(2) of title 45, Code of Fed-*  
23 *eral Regulations, in the case of a disclosure covered under*  
24 *such section.*

1       (h) *UNSECURED PROTECTED HEALTH INFORMA-*  
2 *TION.—*

3           (1) *DEFINITION.—*

4                   (A) *IN GENERAL.—Subject to subparagraph*  
5 *(B), for purposes of this section, the term “unse-*  
6 *cured protected health information” means pro-*  
7 *ected health information that is not secured*  
8 *through the use of a technology or methodology*  
9 *specified by the Secretary in the guidance issued*  
10 *under paragraph (2).*

11                   (B) *EXCEPTION IN CASE TIMELY GUIDANCE*  
12 *NOT ISSUED.—In the case that the Secretary does*  
13 *not issue guidance under paragraph (2) by the*  
14 *date specified in such paragraph, for purposes of*  
15 *this section, the term “unsecured protected health*  
16 *information” shall mean protected health infor-*  
17 *mation that is not secured by a technology*  
18 *standard that renders protected health informa-*  
19 *tion unusable, unreadable, or indecipherable to*  
20 *unauthorized individuals and is developed or en-*  
21 *dorsed by a standards developing organization*  
22 *that is accredited by the American National*  
23 *Standards Institute.*

24                   (2) *GUIDANCE.—For purposes of paragraph (1)*  
25 *and section 407(f)(3), not later than the date that is*

1       60 days after the date of the enactment of this Act,  
2       the Secretary shall, after consultation with stake-  
3       holders, issue (and annually update) guidance speci-  
4       fying the technologies and methodologies that render  
5       protected health information unusable, unreadable, or  
6       indecipherable to unauthorized individuals.

7       (i) *REPORT TO CONGRESS ON BREACHES.*—

8               (1) *IN GENERAL.*—Not later than 12 months  
9       after the date of the enactment of this Act and annu-  
10       ally thereafter, the Secretary shall prepare and sub-  
11       mit to the Committee on Finance and the Committee  
12       on Health, Education, Labor, and Pensions of the  
13       Senate and the Committee on Ways and Means and  
14       the Committee on Energy and Commerce of the House  
15       of Representatives a report containing the informa-  
16       tion described in paragraph (2) regarding breaches  
17       for which notice was provided to the Secretary under  
18       subsection (e)(3).

19               (2) *INFORMATION.*—The information described  
20       in this paragraph regarding breaches specified in  
21       paragraph (1) shall include—

22                       (A) the number and nature of such breaches;

23                       and

24                       (B) actions taken in response to such  
25       breaches.

1           (j) *REGULATIONS; EFFECTIVE DATE.*—To carry out  
2 *this section, the Secretary of Health and Human Services*  
3 *shall promulgate interim final regulations by not later than*  
4 *the date that is 180 days after the date of the enactment*  
5 *of this title. The provisions of this section shall apply to*  
6 *breaches that are discovered on or after the date that is 30*  
7 *days after the date of publication of such interim final regu-*  
8 *lations.*

9 **SEC. 4403. EDUCATION ON HEALTH INFORMATION PRIVACY.**

10           (a) *REGIONAL OFFICE PRIVACY ADVISORS.*—Not later  
11 *than 6 months after the date of the enactment of this Act,*  
12 *the Secretary shall designate an individual in each regional*  
13 *office of the Department of Health and Human Services to*  
14 *offer guidance and education to covered entities, business*  
15 *associates, and individuals on their rights and responsibil-*  
16 *ities related to Federal privacy and security requirements*  
17 *for protected health information.*

18           (b) *EDUCATION INITIATIVE ON USES OF HEALTH IN-*  
19 *FORMATION.*—Not later than 12 months after the date of  
20 *the enactment of this Act, the Office for Civil Rights within*  
21 *the Department of Health and Human Services shall de-*  
22 *velop and maintain a multi-faceted national education ini-*  
23 *tiative to enhance public transparency regarding the uses*  
24 *of protected health information, including programs to edu-*  
25 *cate individuals about the potential uses of their protected*

1 *health information, the effects of such uses, and the rights*  
2 *of individuals with respect to such uses. Such programs*  
3 *shall be conducted in a variety of languages and present*  
4 *information in a clear and understandable manner.*

5 **SEC. 4404. APPLICATION OF PRIVACY PROVISIONS AND**  
6 **PENALTIES TO BUSINESS ASSOCIATES OF**  
7 **COVERED ENTITIES.**

8 (a) *APPLICATION OF CONTRACT REQUIREMENTS.—In*  
9 *the case of a business associate of a covered entity that ob-*  
10 *tains or creates protected health information pursuant to*  
11 *a written contract (or other written arrangement) described*  
12 *in section 164.502(e)(2) of title 45, Code of Federal Regula-*  
13 *tions, with such covered entity, the business associate may*  
14 *use and disclose such protected health information only if*  
15 *such use or disclosure, respectively, is in compliance with*  
16 *each applicable requirement of section 164.504(e) of such*  
17 *title. The additional requirements of this subtitle that relate*  
18 *to privacy and that are made applicable with respect to*  
19 *covered entities shall also be applicable to such a business*  
20 *associate and shall be incorporated into the business asso-*  
21 *ciate agreement between the business associate and the cov-*  
22 *ered entity.*

23 (b) *APPLICATION OF KNOWLEDGE ELEMENTS ASSOCI-*  
24 *ATED WITH CONTRACTS.—Section 164.504(e)(1)(ii) of title*  
25 *45, Code of Federal Regulations, shall apply to a business*

1 *associate described in subsection (a), with respect to compli-*  
2 *ance with such subsection, in the same manner that such*  
3 *section applies to a covered entity, with respect to compli-*  
4 *ance with the standards in sections 164.502(e) and*  
5 *164.504(e) of such title, except that in applying such section*  
6 *164.504(e)(1)(ii) each reference to the business associate,*  
7 *with respect to a contract, shall be treated as a reference*  
8 *to the covered entity involved in such contract.*

9 (c) *APPLICATION OF CIVIL AND CRIMINAL PEN-*  
10 *ALTIES.—In the case of a business associate that violates*  
11 *any provision of subsection (a) or (b), the provisions of sec-*  
12 *tions 1176 and 1177 of the Social Security Act (42 U.S.C.*  
13 *1320d–5, 1320d–6) shall apply to the business associate*  
14 *with respect to such violation in the same manner as such*  
15 *provisions apply to a person who violates a provision of*  
16 *part C of title XI of such Act.*

17 **SEC. 4405. RESTRICTIONS ON CERTAIN DISCLOSURES AND**  
18 **SALES OF HEALTH INFORMATION; ACCOUNT-**  
19 **ING OF CERTAIN PROTECTED HEALTH INFOR-**  
20 **MATION DISCLOSURES; ACCESS TO CERTAIN**  
21 **INFORMATION IN ELECTRONIC FORMAT.**

22 (a) *REQUESTED RESTRICTIONS ON CERTAIN DISCLO-*  
23 *SURES OF HEALTH INFORMATION.—In the case that an in-*  
24 *dividual requests under paragraph (a)(1)(i)(A) of section*  
25 *164.522 of title 45, Code of Federal Regulations, that a cov-*

1 *ered entity restrict the disclosure of the protected health in-*  
2 *formation of the individual, notwithstanding paragraph*  
3 *(a)(1)(ii) of such section, the covered entity must comply*  
4 *with the requested restriction if—*

5 *(1) except as otherwise required by law, the dis-*  
6 *closure is to a health plan for purposes of carrying*  
7 *out payment or health care operations (and is not for*  
8 *purposes of carrying out treatment); and*

9 *(2) the protected health information pertains*  
10 *solely to a health care item or service for which the*  
11 *health care provider involved has been paid out of*  
12 *pocket in full.*

13 *(b) DISCLOSURES REQUIRED TO BE LIMITED TO THE*  
14 *LIMITED DATA SET OR THE MINIMUM NECESSARY.—*

15 *(1) IN GENERAL.—*

16 *(A) IN GENERAL.—Subject to subparagraph*  
17 *(B), a covered entity shall be treated as being in*  
18 *compliance with section 164.502(b)(1) of title 45,*  
19 *Code of Federal Regulations, with respect to the*  
20 *use, disclosure, or request of protected health in-*  
21 *formation described in such section, only if the*  
22 *covered entity limits such protected health infor-*  
23 *mation, to the extent practicable, to the limited*  
24 *data set (as defined in section 164.514(e)(2) of*  
25 *such title) or, if needed by such entity, to the*

1           *minimum necessary to accomplish the intended*  
2           *purpose of such use, disclosure, or request, re-*  
3           *spectively.*

4           (B) *GUIDANCE.*—*Not later than 18 months*  
5           *after the date of the enactment of this section, the*  
6           *Secretary shall issue guidance on what con-*  
7           *stitutes “minimum necessary” for purposes of*  
8           *subpart E of part 164 of title 45, Code of Fed-*  
9           *eral Regulation. In issuing such guidance the*  
10           *Secretary shall take into consideration the guid-*  
11           *ance under section 4424(c).*

12           (C) *SUNSET.*—*Subparagraph (A) shall not*  
13           *apply on and after the effective date on which*  
14           *the Secretary issues the guidance under subpara-*  
15           *graph (B).*

16           (2) *DETERMINATION OF MINIMUM NECESSARY.*—  
17           *For purposes of paragraph (1), in the case of the dis-*  
18           *closure of protected health information, the covered*  
19           *entity or business associate disclosing such informa-*  
20           *tion shall determine what constitutes the minimum*  
21           *necessary to accomplish the intended purpose of such*  
22           *disclosure.*

23           (3) *APPLICATION OF EXCEPTIONS.*—*The excep-*  
24           *tions described in section 164.502(b)(2) of title 45,*  
25           *Code of Federal Regulations, shall apply to the re-*

1        *quirement under paragraph (1) as of the effective date*  
2        *described in section 4423 in the same manner that*  
3        *such exceptions apply to section 164.502(b)(1) of such*  
4        *title before such date.*

5            (4) *RULE OF CONSTRUCTION.—Nothing in this*  
6        *subsection shall be construed as affecting the use, dis-*  
7        *closure, or request of protected health information*  
8        *that has been de-identified.*

9            (c) *ACCOUNTING OF CERTAIN PROTECTED HEALTH IN-*  
10        *FORMATION DISCLOSURES REQUIRED IF COVERED ENTITY*  
11        *USES ELECTRONIC HEALTH RECORD.—*

12            (1) *IN GENERAL.—In applying section 164.528*  
13        *of title 45, Code of Federal Regulations, in the case*  
14        *that a covered entity uses or maintains an electronic*  
15        *health record with respect to protected health informa-*  
16        *tion—*

17            (A) *the exception under paragraph (a)(1)(i)*  
18        *of such section shall not apply to disclosures*  
19        *through an electronic health record made by such*  
20        *entity of such information; and*

21            (B) *an individual shall have a right to re-*  
22        *ceive an accounting of disclosures described in*  
23        *such paragraph of such information made by*  
24        *such covered entity during only the three years*

1           *prior to the date on which the accounting is re-*  
2           *quested.*

3           (2) *REGULATIONS.*—*The Secretary shall promul-*  
4           *gate regulations on what information shall be col-*  
5           *lected about each disclosure referred to in paragraph*  
6           *(1)(A) not later than 18 months after the date on*  
7           *which the Secretary adopts standards on accounting*  
8           *for disclosure described in the section*  
9           *3002(b)(2)(B)(iv) of the Public Health Service Act, as*  
10          *added by section 4101. Such regulations shall only re-*  
11          *quire such information to be collected through an elec-*  
12          *tronic health record in a manner that takes into ac-*  
13          *count the interests of individuals in learning the cir-*  
14          *cumstances under which their protected health infor-*  
15          *mation is being disclosed and takes into account the*  
16          *administrative burden of accounting for such disclo-*  
17          *sures.*

18          (3) *CONSTRUCTION.*—*Nothing in this subsection*  
19          *shall be construed as requiring a covered entity to ac-*  
20          *count for disclosures of protected health information*  
21          *that are not made by such covered entity or by a*  
22          *business associate acting on behalf of the covered enti-*  
23          *ty.*

24          (4) *EFFECTIVE DATE.*—

1           (A) *CURRENT USERS OF ELECTRONIC*  
2           *RECORDS.*—*In the case of a covered entity inso-*  
3           *far as it acquired an electronic health record as*  
4           *of January 1, 2009, paragraph (1) shall apply*  
5           *to disclosures, with respect to protected health in-*  
6           *formation, made by the covered entity from such*  
7           *a record on and after January 1, 2014.*

8           (B) *OTHERS.*—*In the case of a covered enti-*  
9           *ty insofar as it acquires an electronic health*  
10          *record after January 1, 2009, paragraph (1)*  
11          *shall apply to disclosures, with respect to pro-*  
12          *TECTED HEALTH INFORMATION, made by the covered*  
13          *entity from such record on and after the later of*  
14          *the following:*

15                   (i) *January 1, 2011; or*

16                   (ii) *the date that it acquires an elec-*  
17                   *tronic health record.*

18          (d) *REVIEW OF HEALTH CARE OPERATIONS.*—*Not*  
19          *later than 18 months after the date of the enactment of this*  
20          *title, the Secretary shall promulgate regulations to elimi-*  
21          *nate from the definition of health care operations under sec-*  
22          *tion 164.501 of title 45, Code of Federal Regulations, those*  
23          *activities that can reasonably and efficiently be conducted*  
24          *through the use of information that is de-identified (in ac-*  
25          *cordance with the requirements of section 164.514(b) of such*

1 *title) or that should require a valid authorization for use*  
2 *or disclosure. In promulgating such regulations, the Sec-*  
3 *retary may choose to narrow or clarify activities that the*  
4 *Secretary chooses to retain in the definition of health care*  
5 *operations and the Secretary shall take into account the re-*  
6 *port under section 424(d). In such regulations the Secretary*  
7 *shall specify the date on which such regulations shall apply*  
8 *to disclosures made by a covered entity, but in no case*  
9 *would such date be sooner than the date that is 24 months*  
10 *after the date of the enactment of this section.*

11 *(e) PROHIBITION ON SALE OF ELECTRONIC HEALTH*  
12 *RECORDS OR PROTECTED HEALTH INFORMATION.—*

13 *(1) IN GENERAL.—Except as provided in para-*  
14 *graph (2), a covered entity or business associate shall*  
15 *not directly or indirectly receive remuneration in ex-*  
16 *change for any protected health information of an in-*  
17 *dividual unless the covered entity obtained from the*  
18 *individual, in accordance with section 164.508 of title*  
19 *45, Code of Federal Regulations, a valid authoriza-*  
20 *tion that includes, in accordance with such section, a*  
21 *specification of whether the protected health informa-*  
22 *tion can be further exchanged for remuneration by the*  
23 *entity receiving protected health information of that*  
24 *individual.*

1           (2) *EXCEPTIONS.—Paragraph (1) shall not*  
2 *apply in the following cases:*

3           (A) *The purpose of the exchange is for re-*  
4 *search or public health activities (as described in*  
5 *sections 164.501, 164.512(i), and 164.512(b) of*  
6 *title 45, Code of Federal Regulations) and the*  
7 *price charged reflects the costs of preparation*  
8 *and transmittal of the data for such purpose.*

9           (B) *The purpose of the exchange is for the*  
10 *treatment of the individual and the price charges*  
11 *reflects not more than the costs of preparation*  
12 *and transmittal of the data for such purpose.*

13           (C) *The purpose of the exchange is the*  
14 *health care operation specifically described in*  
15 *subparagraph (iv) of paragraph (6) of the defini-*  
16 *tion of health care operations in section 164.501*  
17 *of title 45, Code of Federal Regulations.*

18           (D) *The purpose of the exchange is for re-*  
19 *muneration that is provided by a covered entity*  
20 *to a business associate for activities involving the*  
21 *exchange of protected health information that the*  
22 *business associate undertakes on behalf of and at*  
23 *the specific request of the covered entity pursuant*  
24 *to a business associate agreement.*

1           (E) *The purpose of the exchange is to pro-*  
2           *vide an individual with a copy of the individ-*  
3           *ual's protected health information pursuant to*  
4           *section 164.524 of title 45, Code of Federal Regu-*  
5           *lations.*

6           (F) *The purpose of the exchange is otherwise*  
7           *determined by the Secretary in regulations to be*  
8           *similarly necessary and appropriate as the ex-*  
9           *ceptions provided in subparagraphs (A) through*  
10          *(E).*

11          (3) *REGULATIONS.—The Secretary shall promul-*  
12          *gate regulations to carry out paragraph (this sub-*  
13          *section, including exceptions described in paragraph*  
14          *(2), not later than 18 months after the date of the en-*  
15          *actment of this title.*

16          (4) *EFFECTIVE DATE.—Paragraph (1) shall*  
17          *apply to exchanges occurring on or after the date that*  
18          *is 6 months after the date of the promulgation of final*  
19          *regulations implementing this subsection.*

20          (f) *ACCESS TO CERTAIN INFORMATION IN ELECTRONIC*  
21          *FORMAT.—In applying section 164.524 of title 45, Code of*  
22          *Federal Regulations, in the case that a covered entity uses*  
23          *or maintains an electronic health record with respect to*  
24          *protected health information of an individual—*

1           (1) *the individual shall have a right to obtain*  
2 *from such covered entity a copy of such information*  
3 *in an electronic format; and*

4           (2) *notwithstanding paragraph (c)(4) of such*  
5 *section, any fee that the covered entity may impose*  
6 *for providing such individual with a copy of such in-*  
7 *formation (or a summary or explanation of such in-*  
8 *formation) if such copy (or summary or explanation)*  
9 *is in an electronic form shall not be greater than the*  
10 *entity's labor costs in responding to the request for the*  
11 *copy (or summary or explanation).*

12 **SEC. 4406. CONDITIONS ON CERTAIN CONTACTS AS PART**  
13 **OF HEALTH CARE OPERATIONS.**

14 (a) *MARKETING.—*

15           (1) *IN GENERAL.—A communication by a cov-*  
16 *ered entity or business associate that is about a prod-*  
17 *uct or service and that encourages recipients of the*  
18 *communication to purchase or use the product or*  
19 *service shall not be considered a health care operation*  
20 *for purposes of subpart E of part 164 of title 45, Code*  
21 *of Federal Regulations, unless the communication is*  
22 *made as described in subparagraph (i), (ii), or (iii)*  
23 *of paragraph (1) of the definition of marketing in sec-*  
24 *tion 164.501 of such title.*

1           (2) *PAYMENT FOR CERTAIN COMMUNICATIONS.*—

2           *A covered entity or business associate may not receive*  
3           *direct or indirect payment in exchange for making*  
4           *any communication described in subparagraph (i),*  
5           *(ii), or (iii) of paragraph (1) of the definition of mar-*  
6           *keting in section 164.501 of title 45, Code of Federal*  
7           *Regulations, except—*

8                   (A) *a business associate of a covered entity*  
9                   *may receive payment from the covered entity for*  
10                  *making any such communication on behalf of the*  
11                  *covered entity that is consistent with the written*  
12                  *contract (or other written arrangement) de-*  
13                  *scribed in section 164.502(e)(2) of such title be-*  
14                  *tween such business associate and covered entity;*  
15                  *or*

16                   (B) *a covered entity may receive payment*  
17                  *in exchange for making any such communication*  
18                  *if the entity obtains from the recipient of the*  
19                  *communication, in accordance with section*  
20                  *164.508 of title 45, Code of Federal Regulations,*  
21                  *a valid authorization (as described in paragraph*  
22                  *(b) of such section) with respect to such commu-*  
23                  *nication.*

24           (b) *FUNDRAISING.*—*Fundraising for the benefit of a*  
25 *covered entity shall not be considered a health care oper-*

1 *ation for purposes of section 164.501 of title 45, Code of*  
2 *Federal Regulations.*

3 *(c) EFFECTIVE DATE.—This section shall apply to*  
4 *contracting occurring on or after the effective date specified*  
5 *under section 4423.*

6 **SEC. 4407. TEMPORARY BREACH NOTIFICATION REQUIRE-**  
7 **MENT FOR VENDORS OF PERSONAL HEALTH**  
8 **RECORDS AND OTHER NON-HIPAA COVERED**  
9 **ENTITIES.**

10 *(a) IN GENERAL.—In accordance with subsection (c),*  
11 *each vendor of personal health records, following the dis-*  
12 *covery of a breach of security of unsecured PHR identifiable*  
13 *health information that is in a personal health record*  
14 *maintained or offered by such vendor, and each entity de-*  
15 *scribed in clause (ii) or (iii) of section 4424(b)(1)(A), fol-*  
16 *lowing the discovery of a breach of security of such informa-*  
17 *tion that is obtained through a product or service provided*  
18 *by such entity, shall—*

19 *(1) notify each individual who is a citizen or*  
20 *resident of the United States whose unsecured PHR*  
21 *identifiable health information was acquired by an*  
22 *unauthorized person as a result of such a breach of*  
23 *security; and*

24 *(2) notify the Federal Trade Commission.*

1           **(b) NOTIFICATION BY THIRD PARTY SERVICE PRO-**  
2 **VIDERS.**—*A third party service provider that provides serv-*  
3 *ices to a vendor of personal health records or to an entity*  
4 *described in clause (ii) or (iii) of section 4424(b)(1)(A) in*  
5 *connection with the offering or maintenance of a personal*  
6 *health record or a related product or service and that ac-*  
7 *cesses, maintains, retains, modifies, records, stores, destroys,*  
8 *or otherwise holds, uses, or discloses unsecured PHR identi-*  
9 *fiable health information in such a record as a result of*  
10 *such services shall, following the discovery of a breach of*  
11 *security of such information, notify such vendor or entity,*  
12 *respectively, of such breach. Such notice shall include the*  
13 *identification of each individual whose unsecured PHR*  
14 *identifiable health information has been, or is reasonably*  
15 *believed to have been, accessed, acquired, or disclosed during*  
16 *such breach.*

17           **(c) APPLICATION OF REQUIREMENTS FOR TIMELINESS,**  
18 **METHOD, AND CONTENT OF NOTIFICATIONS.**—*Subsections*  
19 *(c), (d), (e), and (f) of section 402 shall apply to a notifica-*  
20 *tion required under subsection (a) and a vendor of personal*  
21 *health records, an entity described in subsection (a) and*  
22 *a third party service provider described in subsection (b),*  
23 *with respect to a breach of security under subsection (a)*  
24 *of unsecured PHR identifiable health information in such*

1 records maintained or offered by such vendor, in a manner  
2 specified by the Federal Trade Commission.

3 (d) *NOTIFICATION OF THE SECRETARY.*—Upon receipt  
4 of a notification of a breach of security under subsection  
5 (a)(2), the Federal Trade Commission shall notify the Sec-  
6 retary of such breach.

7 (e) *ENFORCEMENT.*—A violation of subsection (a) or  
8 (b) shall be treated as an unfair and deceptive act or prac-  
9 tice in violation of a regulation under section 18(a)(1)(B)  
10 of the Federal Trade Commission Act (15 U.S.C.  
11 57a(a)(1)(B)) regarding unfair or deceptive acts or prac-  
12 tices.

13 (f) *DEFINITIONS.*—For purposes of this section:

14 (1) *BREACH OF SECURITY.*—The term “breach of  
15 security” means, with respect to unsecured PHR  
16 identifiable health information of an individual in a  
17 personal health record, acquisition of such informa-  
18 tion without the authorization of the individual.

19 (2) *PHR IDENTIFIABLE HEALTH INFORMA-*  
20 *TION.*—The term “PHR identifiable health informa-  
21 tion” means individually identifiable health informa-  
22 tion, as defined in section 1171(6) of the Social Secu-  
23 rity Act (42 U.S.C. 1320d(6)), and includes, with re-  
24 spect to an individual, information—

1           (A) that is provided by or on behalf of the  
2           individual; and

3           (B) that identifies the individual or with  
4           respect to which there is a reasonable basis to be-  
5           lieve that the information can be used to identify  
6           the individual.

7           (3) *UNSECURED PHR IDENTIFIABLE HEALTH IN-*  
8           *FORMATION.—*

9           (A) *IN GENERAL.—*Subject to subparagraph  
10          (B), the term “unsecured PHR identifiable  
11          health information” means PHR identifiable  
12          health information that is not protected through  
13          the use of a technology or methodology specified  
14          by the Secretary in the guidance issued under  
15          section 4402(h)(2).

16          (B) *EXCEPTION IN CASE TIMELY GUIDANCE*  
17          *NOT ISSUED.—*In the case that the Secretary does  
18          not issue guidance under section 4402(h)(2) by  
19          the date specified in such section, for purposes of  
20          this section, the term “unsecured PHR identifi-  
21          able health information” shall mean PHR iden-  
22          tifiable health information that is not secured by  
23          a technology standard that renders protected  
24          health information unusable, unreadable, or in-  
25          decipherable to unauthorized individuals and

1           *that is developed or endorsed by a standards de-*  
2           *veloping organization that is accredited by the*  
3           *American National Standards Institute.*

4           *(g) REGULATIONS; EFFECTIVE DATE; SUNSET.—*

5           *(1) REGULATIONS; EFFECTIVE DATE.—To carry*  
6           *out this section, the Secretary of Health and Human*  
7           *Services shall promulgate interim final regulations by*  
8           *not later than the date that is 180 days after the date*  
9           *of the enactment of this section. The provisions of this*  
10          *section shall apply to breaches of security that are*  
11          *discovered on or after the date that is 30 days after*  
12          *the date of publication of such interim final regula-*  
13          *tions.*

14          *(2) SUNSET.—The provisions of this section shall*  
15          *not apply to breaches of security occurring on or after*  
16          *the earlier of the following the dates:*

17                  *(A) The date on which a standard relating*  
18                  *to requirements for entities that are not covered*  
19                  *entities that includes requirements relating to*  
20                  *breach notification has been promulgated by the*  
21                  *Secretary.*

22                  *(B) The date on which a standard relating*  
23                  *to requirements for entities that are not covered*  
24                  *entities that includes requirements relating to*

1           *breach notification has been promulgated by the*  
2           *Federal Trade Commission and has taken effect.*

3 **SEC. 4408. BUSINESS ASSOCIATE CONTRACTS REQUIRED**  
4           **FOR CERTAIN ENTITIES.**

5           *Each organization, with respect to a covered entity,*  
6 *that provides data transmission of protected health infor-*  
7 *mation to such entity (or its business associate) and that*  
8 *requires access on a routine basis to such protected health*  
9 *information, such as a Health Information Exchange Orga-*  
10 *nization, Regional Health Information Organization, E-*  
11 *prescribing Gateway, or each vendor that contracts with a*  
12 *covered entity to allow that covered entity to offer a per-*  
13 *sonal health record to patients as part of its electronic*  
14 *health record, is required to enter into a written contract*  
15 *(or other written arrangement) described in section*  
16 *164.502(e)(2) of title 45, Code of Federal Regulations and*  
17 *a written contract (or other arrangement) described in sec-*  
18 *tion 164.308(b) of such title, with such entity and shall be*  
19 *treated as a business associate of the covered entity for pur-*  
20 *poses of the provisions of this subtitle and subparts C and*  
21 *E of part 164 of title 45, Code of Federal Regulations, as*  
22 *such provisions are in effect as of the date of enactment*  
23 *of this title.*

1 **SEC. 4409. CLARIFICATION OF APPLICATION OF WRONGFUL**  
2 **DISCLOSURES CRIMINAL PENALTIES.**

3 *Section 1177(a) of the Social Security Act (42 U.S.C.*  
4 *1320d–6(a)) is amended by adding at the end the following*  
5 *new sentence: “For purposes of the previous sentence, a per-*  
6 *son (including an employee or other individual) shall be*  
7 *considered to have obtained or disclosed individually identi-*  
8 *fiable health information in violation of this part if the in-*  
9 *formation is maintained by a covered entity (as defined in*  
10 *the HIPAA privacy regulation described in section*  
11 *1180(b)(3)) and the individual obtained or disclosed such*  
12 *information without authorization.”.*

13 **SEC. 4410. IMPROVED ENFORCEMENT.**

14 *(a) IN GENERAL.—Section 1176 of the Social Security*  
15 *Act (42 U.S.C. 1320d–5) is amended—*

16 *(1) in subsection (b)(1), by striking “the act con-*  
17 *stitutes an offense punishable under section 1177”*  
18 *and inserting “a penalty has been imposed under sec-*  
19 *tion 1177 with respect to such act”; and*

20 *(2) by adding at the end the following new sub-*  
21 *section:*

22 *“(c) NONCOMPLIANCE DUE TO WILLFUL NEGLIGENCE.—*

23 *“(1) IN GENERAL.—A violation of a provision of*  
24 *this part due to willful neglect is a violation for*  
25 *which the Secretary is required to impose a penalty*  
26 *under subsection (a)(1).*

1           “(2) *REQUIRED INVESTIGATION.*—For purposes  
2 of paragraph (1), the Secretary shall formally inves-  
3 tigate any complaint of a violation of a provision of  
4 this part if a preliminary investigation of the facts  
5 of the complaint indicate such a possible violation  
6 due to willful neglect.”.

7           **(b) *EFFECTIVE DATE; REGULATIONS.***—

8           (1) *The amendments made by subsection (a)*  
9 *shall apply to penalties imposed on or after the date*  
10 *that is 24 months after the date of the enactment of*  
11 *this title.*

12           (2) *Not later than 18 months after the date of the*  
13 *enactment of this title, the Secretary of Health and*  
14 *Human Services shall promulgate regulations to im-*  
15 *plement such amendments.*

16           **(c) *DISTRIBUTION OF CERTAIN CIVIL MONETARY PEN-***  
17 ***ALTIES COLLECTED.***—

18           (1) *IN GENERAL.*—Subject to the regulation pro-  
19 mulgated pursuant to paragraph (3), any civil mone-  
20 tary penalty or monetary settlement collected with re-  
21 spect to an offense punishable under this subtitle or  
22 section 1176 of the Social Security Act (42 U.S.C.  
23 1320d–5) insofar as such section relates to privacy or  
24 security shall be transferred to the Office of Civil  
25 Rights of the Department of Health and Human

1        *Services to be used for purposes of enforcing the pro-*  
2        *visions of this subtitle and subparts C and E of part*  
3        *164 of title 45, Code of Federal Regulations, as such*  
4        *provisions are in effect as of the date of enactment of*  
5        *this Act.*

6            (2) *GAO REPORT.—Not later than 18 months*  
7        *after the date of the enactment of this title, the Comp-*  
8        *troller General shall submit to the Secretary a report*  
9        *including recommendations for a methodology under*  
10       *which an individual who is harmed by an act that*  
11       *constitutes an offense referred to in paragraph (1)*  
12       *may receive a percentage of any civil monetary pen-*  
13       *alty or monetary settlement collected with respect to*  
14       *such offense.*

15           (3) *ESTABLISHMENT OF METHODOLOGY TO DIS-*  
16        *TRIBUTE PERCENTAGE OF CMPS COLLECTED TO*  
17        *HARMED INDIVIDUALS.—Not later than 3 years after*  
18        *the date of the enactment of this title, the Secretary*  
19        *shall establish by regulation and based on the rec-*  
20        *ommendations submitted under paragraph (2), a*  
21        *methodology under which an individual who is*  
22        *harmed by an act that constitutes an offense referred*  
23        *to in paragraph (1) may receive a percentage of any*  
24        *civil monetary penalty or monetary settlement col-*  
25        *lected with respect to such offense.*

1           (4) *APPLICATION OF METHODOLOGY.*—*The meth-*  
2 *odology under paragraph (3) shall be applied with re-*  
3 *spect to civil monetary penalties or monetary settle-*  
4 *ments imposed on or after the effective date of the reg-*  
5 *ulation.*

6           (d) *TIERED INCREASE IN AMOUNT OF CIVIL MONE-*  
7 *TARY PENALTIES.*—

8           (1) *IN GENERAL.*—*Section 1176(a)(1) of the So-*  
9 *cial Security Act (42 U.S.C. 1320d-5(a)(1)) is*  
10 *amended by striking “who violates a provision of this*  
11 *part a penalty of not more than” and all that follows*  
12 *and inserting the following: “who violates a provision*  
13 *of this part—*

14                   *“(A) in the case of a violation of such pro-*  
15 *vision in which it is established that the person*  
16 *did not know (and by exercising reasonable dili-*  
17 *gence would not have known) that such person*  
18 *violated such provision, a penalty for each such*  
19 *violation of an amount that is at least the*  
20 *amount described in paragraph (3)(A) but not to*  
21 *exceed the amount described in paragraph*  
22 *(3)(D);*

23                   *“(B) in the case of a violation of such pro-*  
24 *vision in which it is established that the viola-*  
25 *tion was due to reasonable cause and not to will-*

1        *ful neglect, a penalty for each such violation of*  
2        *an amount that is at least the amount described*  
3        *in paragraph (3)(B) but not to exceed the*  
4        *amount described in paragraph (3)(D); and*

5                *“(C) in the case of a violation of such provi-*  
6        *sion in which it is established that the violation*  
7        *was due to willful neglect—*

8                *“(i) if the violation is corrected as de-*  
9        *scribed in subsection (b)(3)(A), a penalty in*  
10        *an amount that is at least the amount de-*  
11        *scribed in paragraph (3)(C) but not to ex-*  
12        *ceed the amount described in paragraph*  
13        *(3)(D); and*

14                *“(ii) if the violation is not corrected as*  
15        *described in such subsection, a penalty in*  
16        *an amount that is at least the amount de-*  
17        *scribed in paragraph (3)(D).*

18        *In determining the amount of a penalty under*  
19        *this section for a violation, the Secretary shall*  
20        *base such determination on the nature and ex-*  
21        *tent of the violation and the nature and extent*  
22        *of the harm resulting from such violation.”.*

23                *(2) TIERS OF PENALTIES DESCRIBED.—Section*  
24        *1176(a) of such Act (42 U.S.C. 1320d–5(a)) is further*

1        *amended by adding at the end the following new*  
2        *paragraph:*

3                *“(3) TIERS OF PENALTIES DESCRIBED.—For*  
4        *purposes of paragraph (1), with respect to a violation*  
5        *by a person of a provision of this part—*

6                *“(A) the amount described in this subpara-*  
7        *graph is \$100 for each such violation, except that*  
8        *the total amount imposed on the person for all*  
9        *such violations of an identical requirement or*  
10       *prohibition during a calendar year may not ex-*  
11       *ceed \$25,000;*

12               *“(B) the amount described in this subpara-*  
13       *graph is \$1,000 for each such violation, except*  
14       *that the total amount imposed on the person for*  
15       *all such violations of an identical requirement or*  
16       *prohibition during a calendar year may not ex-*  
17       *ceed \$100,000;*

18               *“(C) the amount described in this subpara-*  
19       *graph is \$10,000 for each such violation, except*  
20       *that the total amount imposed on the person for*  
21       *all such violations of an identical requirement or*  
22       *prohibition during a calendar year may not ex-*  
23       *ceed \$250,000; and*

24               *“(D) the amount described in this subpara-*  
25       *graph is \$50,000 for each such violation, except*

1           that the total amount imposed on the person for  
2           all such violations of an identical requirement or  
3           prohibition during a calendar year may not ex-  
4           ceed \$1,500,000.”.

5           (3)     CONFORMING     AMENDMENTS.—Section  
6           1176(b) of such Act (42 U.S.C. 1320d–5(b)) is amend-  
7           ed—

8                     (A) by striking paragraph (2) and redesign-  
9                     ating paragraphs (3) and (4) as paragraphs  
10                    (2) and (3), respectively; and

11                   (B) in paragraph (2), as so redesignated—

12                             (i) in subparagraph (A), by striking  
13                             “in subparagraph (B), a penalty may not  
14                             be imposed under subsection (a) if” and all  
15                             that follows through “the failure to comply  
16                             is corrected” and inserting “in subpara-  
17                             graph (B) or subsection (a)(1)(C), a penalty  
18                             may not be imposed under subsection (a) if  
19                             the failure to comply is corrected”; and

20                            (ii) in subparagraph (B), by striking  
21                            “(A)(ii)” and inserting “(A)” each place it  
22                            appears.

23           (4)     EFFECTIVE DATE.—The amendments made  
24           by this subsection shall apply to violations occurring  
25           after the date of the enactment of this title.

1           (e) *ENFORCEMENT THROUGH STATE ATTORNEYS GEN-*  
2 *ERAL.*—

3           (1) *IN GENERAL.*—*Section 1176 of the Social Se-*  
4 *curity Act (42 U.S.C. 1320d-5) is amended by add-*  
5 *ing at the end the following new subsection:*

6           “(c) *ENFORCEMENT BY STATE ATTORNEYS GEN-*  
7 *ERAL.*—

8           “(1) *CIVIL ACTION.*—*Except as provided in sub-*  
9 *section (b), in any case in which the attorney general*  
10 *of a State has reason to believe that an interest of one*  
11 *or more of the residents of that State has been or is*  
12 *threatened or adversely affected by any person who*  
13 *violates a provision of this part, the attorney general*  
14 *of the State, as parens patriae, may bring a civil ac-*  
15 *tion on behalf of such residents of the State in a dis-*  
16 *trict court of the United States of appropriate juris-*  
17 *isdiction—*

18           “(A) *to enjoin further such violation by the*  
19 *defendant; or*

20           “(B) *to obtain damages on behalf of such*  
21 *residents of the State, in an amount equal to the*  
22 *amount determined under paragraph (2).*

23           “(2) *STATUTORY DAMAGES.*—

24           “(A) *IN GENERAL.*—*For purposes of para-*  
25 *graph (1)(B), the amount determined under this*

1 paragraph is the amount calculated by multi-  
2 plying the number of violations by up to \$100.  
3 For purposes of the preceding sentence, in the  
4 case of a continuing violation, the number of vio-  
5 lations shall be determined consistent with the  
6 HIPAA privacy regulations (as defined in sec-  
7 tion 1180(b)(3)) for violations of subsection (a).

8 “(B) LIMITATION.—The total amount of  
9 damages imposed on the person for all violations  
10 of an identical requirement or prohibition dur-  
11 ing a calendar year may not exceed \$25,000.

12 “(C) REDUCTION OF DAMAGES.—In assess-  
13 ing damages under subparagraph (A), the court  
14 may consider the factors the Secretary may con-  
15 sider in determining the amount of a civil  
16 money penalty under subsection (a) under the  
17 HIPAA privacy regulations.

18 “(3) ATTORNEY FEES.—In the case of any suc-  
19 cessful action under paragraph (1), the court, in its  
20 discretion, may award the costs of the action and rea-  
21 sonable attorney fees to the State.

22 “(4) NOTICE TO SECRETARY.—The State shall  
23 serve prior written notice of any action under para-  
24 graph (1) upon the Secretary and provide the Sec-  
25 retary with a copy of its complaint, except in any

1 *case in which such prior notice is not feasible, in*  
2 *which case the State shall serve such notice imme-*  
3 *diately upon instituting such action. The Secretary*  
4 *shall have the right—*

5 *“(A) to intervene in the action;*

6 *“(B) upon so intervening, to be heard on all*  
7 *matters arising therein; and*

8 *“(C) to file petitions for appeal.*

9 *“(5) CONSTRUCTION.—For purposes of bringing*  
10 *any civil action under paragraph (1), nothing in this*  
11 *section shall be construed to prevent an attorney gen-*  
12 *eral of a State from exercising the powers conferred*  
13 *on the attorney general by the laws of that State.*

14 *“(6) VENUE; SERVICE OF PROCESS.—*

15 *“(A) VENUE.—Any action brought under*  
16 *paragraph (1) may be brought in the district*  
17 *court of the United States that meets applicable*  
18 *requirements relating to venue under section*  
19 *1391 of title 28, United States Code.*

20 *“(B) SERVICE OF PROCESS.—In an action*  
21 *brought under paragraph (1), process may be*  
22 *served in any district in which the defendant—*

23 *“(i) is an inhabitant; or*

24 *“(ii) maintains a physical place of*  
25 *business.*

1           “(7) *LIMITATION ON STATE ACTION WHILE FED-*  
2           *ERAL ACTION IS PENDING.*—*If the Secretary has insti-*  
3           *tuted an action against a person under subsection (a)*  
4           *with respect to a specific violation of this part, no*  
5           *State attorney general may bring an action under*  
6           *this subsection against the person with respect to such*  
7           *violation during the pendency of that action.*

8           “(8) *APPLICATION OF CMP STATUTE OF LIMITA-*  
9           *TION.*—*A civil action may not be instituted with re-*  
10           *spect to a violation of this part unless an action to*  
11           *impose a civil money penalty may be instituted*  
12           *under subsection (a) with respect to such violation*  
13           *consistent with the second sentence of section*  
14           *1128A(c)(1).”.*

15           (2) *CONFORMING AMENDMENTS.*—*Subsection (b)*  
16           *of such section, as amended by subsection (d)(3), is*  
17           *amended—*

18                   (A) *in paragraph (1), by striking “A pen-*  
19                   *alty may not be imposed under subsection (a)”*  
20                   *and inserting “No penalty may be imposed*  
21                   *under subsection (a) and no damages obtained*  
22                   *under subsection (c)”;*

23                   (B) *in paragraph (2)(A)—*

24                           (i) *in the matter before clause (i), by*  
25                           *striking “a penalty may not be imposed*

1           under subsection (a)” and inserting “no  
2           penalty may be imposed under subsection  
3           (a) and no damages obtained under sub-  
4           section (c)”;

5                   (ii) in clause (ii), by inserting “or  
6           damages” after “the penalty”;

7           (C) in paragraph (2)(B)(i), by striking  
8           “The period” and inserting “With respect to the  
9           imposition of a penalty by the Secretary under  
10          subsection (a), the period”; and

11                   (D) in paragraph (3), by inserting “and  
12          any damages under subsection (c)” after “any  
13          penalty under subsection (a)”.

14          (3) *EFFECTIVE DATE.*—The amendments made  
15          by this subsection shall apply to violations occurring  
16          after the date of the enactment of this Act.

17          (f) *ALLOWING CONTINUED USE OF CORRECTIVE AC-*  
18          *TION.*—Such section is further amended by adding at the  
19          end the following new subsection:

20               “(d) *ALLOWING CONTINUED USE OF CORRECTIVE AC-*  
21          *TION.*—Nothing in this section shall be construed as pre-  
22          venting the Office of Civil Rights of the Department of  
23          Health and Human Services from continuing, in its discre-  
24          tion, to use corrective action without a penalty in cases  
25          where the person did not know (and by exercising reason-

1 able diligence would not have known) of the violation in-  
2 volved.”.

3 **SEC. 4411. AUDITS.**

4 *The Secretary shall provide for periodic audits to en-  
5 sure that covered entities and business associates that are  
6 subject to the requirements of this subtitle and subparts C  
7 and E of part 164 of title 45, Code of Federal Regulations,  
8 as such provisions are in effect as of the date of enactment  
9 of this Act, comply with such requirements.*

10 **SEC. 4412. SECURING INDIVIDUALLY IDENTIFIABLE**  
11 **HEALTH INFORMATION.**

12 *Notwithstanding the previous provisions of this title,  
13 a covered entity or business associate must use a technology  
14 standard that renders protected health information unus-  
15 able, unreadable, or indecipherable to unauthorized individ-  
16 uals and is developed or endorsed by a standards developing  
17 organization that is accredited by the American National  
18 Standards Institute to secure individually identifiable  
19 health information that is transmitted in the nationwide  
20 health information network supported in this title or phys-  
21 ically transported outside of a covered entity’s or business  
22 associate’s secured, physical perimeter, including informa-  
23 tion transported on removable media and on portable de-  
24 vices. The Secretary may establish implementation criteria  
25 such that smaller covered entities with fewer resources are*

1 *granted a longer period of time to comply with these re-*  
2 *quirements.*

3 **SEC. 4413. SPECIAL RULE FOR INFORMATION TO REDUCE**  
4 **MEDICATION ERRORS AND IMPROVE PATIENT**  
5 **SAFETY.**

6 *Nothing under this subtitle shall prevent a pharmacist*  
7 *from collecting and sharing information with patients in*  
8 *order to reduce medication errors and improve patient safe-*  
9 *ty as long as any remuneration received for making such*  
10 *communication is reasonable and cost-based. Within 180*  
11 *days of the date of the enactment of this Act, the Secretary*  
12 *shall promulgate regulations implementing this section.*

13 **PART II—RELATIONSHIP TO OTHER LAWS; REGU-**  
14 **LATORY REFERENCES; EFFECTIVE DATE; RE-**  
15 **PORTS**

16 **SEC. 4421. RELATIONSHIP TO OTHER LAWS.**

17 *(a) APPLICATION OF HIPAA STATE PREEMPTION.—*  
18 *Section 1178 of the Social Security Act (42 U.S.C. 1320d-*  
19 *7) shall apply to a provision or requirement under this sub-*  
20 *title in the same manner that such section applies to a pro-*  
21 *vision or requirement under part C of title XI of such Act*  
22 *or a standard or implementation specification adopted or*  
23 *established under sections 1172 through 1174 of such Act.*

24 *(b) HEALTH INSURANCE PORTABILITY AND ACCOUNT-*  
25 *ABILITY ACT.—The standards governing the privacy and*

1 *security of individually identifiable health information pro-*  
2 *mulgated by the Secretary under sections 262(a) and 264*  
3 *of the Health Insurance Portability and Accountability Act*  
4 *of 1996 shall remain in effect to the extent that they are*  
5 *consistent with this subtitle. The Secretary shall by rule*  
6 *amend such Federal regulations as required to make such*  
7 *regulations consistent with this subtitle.*

8 **SEC. 4422. REGULATORY REFERENCES.**

9 *Each reference in this subtitle to a provision of the*  
10 *Code of Federal Regulations refers to such provision as in*  
11 *effect on the date of the enactment of this title (or to the*  
12 *most recent update of such provision).*

13 **SEC. 4423. EFFECTIVE DATE.**

14 *Except as otherwise specifically provided, the provi-*  
15 *sions of part I shall take effect on the date that is 12 months*  
16 *after the date of the enactment of this title.*

17 **SEC. 4424. STUDIES, REPORTS, GUIDANCE.**

18 *(a) REPORT ON COMPLIANCE.—*

19 *(1) IN GENERAL.—For the first year beginning*  
20 *after the date of the enactment of this Act and annu-*  
21 *ally thereafter, the Secretary shall prepare and sub-*  
22 *mit to the Committee on Health, Education, Labor,*  
23 *and Pensions of the Senate and the Committee on*  
24 *Ways and Means and the Committee on Energy and*  
25 *Commerce of the House of Representatives a report*

1        *concerning complaints of alleged violations of law, in-*  
2        *cluding the provisions of this subtitle as well as the*  
3        *provisions of subparts C and E of part 164 of title*  
4        *45, Code of Federal Regulations, (as such provisions*  
5        *are in effect as of the date of enactment of this Act)*  
6        *relating to privacy and security of health information*  
7        *that are received by the Secretary during the year for*  
8        *which the report is being prepared. Each such report*  
9        *shall include, with respect to such complaints received*  
10       *during the year—*

11                *(A) the number of such complaints;*

12                *(B) the number of such complaints resolved*  
13        *informally, a summary of the types of such com-*  
14        *plaints so resolved, and the number of covered*  
15        *entities that received technical assistance from*  
16        *the Secretary during such year in order to*  
17        *achieve compliance with such provisions and the*  
18        *types of such technical assistance provided;*

19                *(C) the number of such complaints that*  
20        *have resulted in the imposition of civil monetary*  
21        *penalties or have been resolved through monetary*  
22        *settlements, including the nature of the com-*  
23        *plaints involved and the amount paid in each*  
24        *penalty or settlement;*

1           (D) the number of compliance reviews con-  
2           ducted and the outcome of each such review;

3           (E) the number of subpoenas or inquiries  
4           issued;

5           (F) the Secretary's plan for improving com-  
6           pliance with and enforcement of such provisions  
7           for the following year; and

8           (G) the number of audits performed and a  
9           summary of audit findings pursuant to section  
10          4411.

11          (2) AVAILABILITY TO PUBLIC.—Each report  
12          under paragraph (1) shall be made available to the  
13          public on the Internet website of the Department of  
14          Health and Human Services.

15          (b) STUDY AND REPORT ON APPLICATION OF PRIVACY  
16          AND SECURITY REQUIREMENTS TO NON-HIPAA COVERED  
17          ENTITIES.—

18                 (1) STUDY.—Not later than one year after the  
19                 date of the enactment of this title, the Secretary, in  
20                 consultation with the Federal Trade Commission,  
21                 shall conduct a study, and submit a report under  
22                 paragraph (2), on privacy and security requirements  
23                 for entities that are not covered entities or business  
24                 associates as of the date of the enactment of this title,  
25                 including—

1           (A) requirements relating to security, pri-  
2           vacy, and notification in the case of a breach of  
3           security or privacy (including the applicability  
4           of an exemption to notification in the case of in-  
5           dividually identifiable health information that  
6           has been rendered unusable, unreadable, or inde-  
7           cipherable through technologies or methodologies  
8           recognized by appropriate professional organiza-  
9           tion or standard setting bodies to provide effec-  
10          tive security for the information) that should be  
11          applied to—

12                   (i) vendors of personal health records;

13                   (ii) entities that offer products or serv-  
14                   ices through the website of a vendor of per-  
15                   sonal health records;

16                   (iii) entities that are not covered enti-  
17                   ties and that offer products or services  
18                   through the websites of covered entities that  
19                   offer individuals personal health records;

20                   (iv) entities that are not covered enti-  
21                   ties and that access information in a per-  
22                   sonal health record or send information to  
23                   a personal health record; and

24                   (v) third party service providers used  
25                   by a vendor or entity described in clause

1           (i), (ii), (iii), or (iv) to assist in providing  
2           personal health record products or services;

3           (B) a determination of which Federal gov-  
4           ernment agency is best equipped to enforce such  
5           requirements recommended to be applied to such  
6           vendors, entities, and service providers under  
7           subparagraph (A); and

8           (C) a timeframe for implementing regula-  
9           tions based on such findings.

10          (2) *REPORT.*—The Secretary shall submit to the  
11          Committee on Finance, the Committee on Health,  
12          Education, Labor, and Pensions, and the Committee  
13          on Commerce of the Senate and the Committee on  
14          Ways and Means and the Committee on Energy and  
15          Commerce of the House of Representatives a report on  
16          the findings of the study under paragraph (1) and  
17          shall include in such report recommendations on the  
18          privacy and security requirements described in such  
19          paragraph.

20          (c) *GUIDANCE ON IMPLEMENTATION SPECIFICATION*  
21          *TO DE-IDENTIFY PROTECTED HEALTH INFORMATION.*—  
22          Not later than 12 months after the date of the enactment  
23          of this title, the Secretary shall, in consultation with stake-  
24          holders, issue guidance on how best to implement the re-  
25          quirements for the de-identification of protected health in-

1 *formation under section 164.514(b) of title 45, Code of Fed-*  
2 *eral Regulations.*

3       (d) *GAO REPORT ON TREATMENT DISCLOSURES.—*  
4 *Not later than one year after the date of the enactment of*  
5 *this title, the Comptroller General of the United States shall*  
6 *submit to the Committee on Health, Education, Labor, and*  
7 *Pensions of the Senate and the Committee on Ways and*  
8 *Means and the Committee on Energy and Commerce of the*  
9 *House of Representatives a report on the best practices re-*  
10 *lated to the disclosure among health care providers of pro-*  
11 *tected health information of an individual for purposes of*  
12 *treatment of such individual. Such report shall include an*  
13 *examination of the best practices implemented by States*  
14 *and by other entities, such as health information exchanges*  
15 *and regional health information organizations, an exam-*  
16 *ination of the extent to which such best practices are suc-*  
17 *cessful with respect to the quality of the resulting health*  
18 *care provided to the individual and with respect to the abil-*  
19 *ity of the health care provider to manage such best prac-*  
20 *tices, and an examination of the use of electronic informed*  
21 *consent for disclosing protected health information for treat-*  
22 *ment, payment, and health care operations.*

## 23 **TITLE V—MEDICAID PROVISIONS**

### 24 **SEC. 5000. TABLE OF CONTENTS OF TITLE.**

25       *The table of contents of this title is as follows:*

*Sec. 5000. Table of contents of title.*

*Sec. 5001. Temporary increase of Medicaid FMAP.*

*Sec. 5002. Moratoria on certain regulations.*

*Sec. 5003. Transitional Medicaid assistance (TMA).*

*Sec. 5004. State eligibility option for family planning services.*

*Sec. 5005. Protections for Indians under Medicaid and CHIP.*

*Sec. 5006. Consultation on Medicaid and CHIP.*

*Sec. 5007. Temporary increase in DSH allotments during recession.*

1 **SEC. 5001. TEMPORARY INCREASE OF MEDICAID FMAP.**

2 (a) *PERMITTING MAINTENANCE OF FMAP.*—Subject to  
3 subsections (e), (f), and (g), if the FMAP determined with-  
4 out regard to this section for a State for—

5 (1) *fiscal year 2009 is less than the FMAP as so*  
6 *determined for fiscal year 2008, the FMAP for the*  
7 *State for fiscal year 2008 shall be substituted for the*  
8 *State’s FMAP for fiscal year 2009, before the applica-*  
9 *tion of this section;*

10 (2) *fiscal year 2010 is less than the FMAP as so*  
11 *determined for fiscal year 2008 or fiscal year 2009*  
12 *(after the application of paragraph (1)), the greater*  
13 *of such FMAP for the State for fiscal year 2008 or*  
14 *fiscal year 2009 shall be substituted for the State’s*  
15 *FMAP for fiscal year 2010, before the application of*  
16 *this section; and*

17 (3) *fiscal year 2011 is less than the FMAP as so*  
18 *determined for fiscal year 2008, fiscal year 2009*  
19 *(after the application of paragraph (1)), or fiscal*  
20 *year 2010 (after the application of paragraph (2)),*  
21 *the greatest of such FMAP for the State for fiscal year*  
22 *2008, fiscal year 2009, or fiscal year 2010 shall be*

1       *substituted for the State's FMAP for fiscal year 2011,*  
2       *before the application of this section, but only for the*  
3       *first calendar quarter in fiscal year 2011.*

4       ***(b) GENERAL 4.9 PERCENTAGE POINT INCREASE.—***

5           ***(1) IN GENERAL.—****Subject to subsections (e), (f),*  
6       *and (g) and paragraph (2), for each State for cal-*  
7       *endar quarters during the recession adjustment period*  
8       *(as defined in subsection (h)(2)), the FMAP (after the*  
9       *application of subsection (a)) shall be increased*  
10       *(without regard to any limitation otherwise specified*  
11       *in section 1905(b) of the Social Security Act) by 4.9*  
12       *percentage points.*

13           ***(2) SPECIAL ELECTION FOR TERRITORIES.—****In*  
14       *the case of a State that is not one of the 50 States*  
15       *or the District of Columbia, paragraph (1) shall only*  
16       *apply if the State makes a one-time election, in a*  
17       *form and manner specified by the Secretary and for*  
18       *the entire recession adjustment period, to apply the*  
19       *increase in FMAP under paragraph (1) and a 10*  
20       *percent increase under subsection (d) instead of ap-*  
21       *plying a 20 percent increase under subsection (d).*

22       ***(c) ADDITIONAL ADJUSTMENT TO REFLECT INCREASE***  
23       ***IN UNEMPLOYMENT.—***

24           ***(1) IN GENERAL.—****Subject to subsections (e), (f),*  
25       *and (g), in the case of a State that is a high unem-*

1        *ployment State (as defined in paragraph (2)) for a*  
2        *calendar quarter during the recession adjustment pe-*  
3        *riod, the FMAP (taking into account the application*  
4        *of subsections (a) and (b)) for such quarter shall be*  
5        *further increased by the high unemployment percent-*  
6        *age point adjustment specified in paragraph (3) for*  
7        *the State for the quarter.*

8                (2) *HIGH UNEMPLOYMENT STATE.—*

9                        (A) *IN GENERAL.—In this subsection, sub-*  
10                        *ject to subparagraph (B), the term “high unem-*  
11                        *ployment State” means, with respect to a cal-*  
12                        *endar quarter in the recession adjustment period,*  
13                        *a State that is 1 of the 50 States or the District*  
14                        *of Columbia and for which the State unemploy-*  
15                        *ment increase percentage (as computed under*  
16                        *paragraph (5)) for the quarter is not less than*  
17                        *1.5 percentage points.*

18                        (B) *MAINTENANCE OF STATUS.—If a State*  
19                        *is a high unemployment State for a calendar*  
20                        *quarter, it shall remain a high unemployment*  
21                        *State for each subsequent calendar quarter end-*  
22                        *ing before July 1, 2010.*

23                (3) *HIGH UNEMPLOYMENT PERCENTAGE POINT*  
24        *ADJUSTMENT.—*

1           (A) *IN GENERAL.*—*The high unemployment*  
2           *percentage point adjustment specified in this*  
3           *paragraph for a high unemployment State for a*  
4           *quarter is equal to the product of—*

5                   (i) *the SMAP for such State and quar-*  
6                   *ter (determined after the application of sub-*  
7                   *section (a) and before the application of*  
8                   *subsection (b)); and*

9                   (ii) *subject to subparagraph (B), the*  
10                  *State unemployment reduction factor speci-*  
11                  *fied in paragraph (4) for the State and*  
12                  *quarter.*

13           (B) *MAINTENANCE OF ADJUSTMENT LEVEL*  
14           *FOR CERTAIN QUARTERS.*—*In no case shall the*  
15           *State unemployment reduction factor applied*  
16           *under subparagraph (A)(ii) for a State for a*  
17           *quarter (beginning on or after January 1, 2009,*  
18           *and ending before July 1, 2010) be less than the*  
19           *State unemployment reduction factor applied to*  
20           *the State for the previous quarter (taking into*  
21           *account the application of this subparagraph).*

22           (4) *STATE UNEMPLOYMENT REDUCTION FAC-*  
23           *TOR.*—*In the case of a high unemployment State for*  
24           *which the State unemployment increase percentage*

1       *(as computed under paragraph (5)) with respect to a*  
2       *calendar quarter is—*

3               *(A) not less than 1.5, but is less than 2.5,*  
4               *percentage points, the State unemployment re-*  
5               *duction factor for the State and quarter is 6 per-*  
6               *cent;*

7               *(B) not less than 2.5, but is less than 3.5,*  
8               *percentage points, the State unemployment re-*  
9               *duction factor for the State and quarter is 12*  
10              *percent; or*

11              *(C) not less than 3.5 percentage points, the*  
12              *State unemployment reduction factor for the*  
13              *State and quarter is 14 percent.*

14       (5) *COMPUTATION OF STATE UNEMPLOYMENT IN-*  
15       *CREASE PERCENTAGE.—*

16              *(A) IN GENERAL.—In this subsection, the*  
17              *“State unemployment increase percentage” for a*  
18              *State for a calendar quarter is equal to the num-*  
19              *ber of percentage points (if any) by which—*

20                      *(i) the average monthly unemployment*  
21                      *rate for the State for months in the most re-*  
22                      *cent previous 3-consecutive-month period for*  
23                      *which data are available, subject to sub-*  
24                      *paragraph (C); exceeds*

1           (ii) the lowest average monthly unem-  
2           ployment rate for the State for any 3-con-  
3           secutive-month period preceding the period  
4           described in clause (i) and beginning on or  
5           after January 1, 2006.

6           (B) *AVERAGE MONTHLY UNEMPLOYMENT*  
7           *RATE DEFINED.*—In this paragraph, the term  
8           “average monthly unemployment rate” means  
9           the average of the monthly number unemployed,  
10          divided by the average of the monthly civilian  
11          labor force, seasonally adjusted, as determined  
12          based on the most recent monthly publications of  
13          the Bureau of Labor Statistics of the Department  
14          of Labor.

15          (C) *SPECIAL RULE.*—With respect to—

16               (i) the first 2 calendar quarters of the  
17               recession adjustment period, the most recent  
18               previous 3-consecutive-month period de-  
19               scribed in subparagraph (A)(i) shall be the  
20               3-consecutive-month period beginning with  
21               October 2008; and

22               (ii) the last 2 calendar quarters of the  
23               recession adjustment period, the most recent  
24               previous 3-consecutive-month period de-  
25               scribed in such subparagraph shall be the 3-

1                    *consecutive-month period beginning with*  
2                    *December 2009.*

3            *(d) INCREASE IN CAP ON MEDICAID PAYMENTS TO*  
4 *TERRITORIES.—Subject to subsections (f) and (g) , with re-*  
5 *spect to entire fiscal years occurring during the recession*  
6 *adjustment period and with respect to fiscal years only a*  
7 *portion of which occurs during such period (and in propor-*  
8 *tion to the portion of the fiscal year that occurs during such*  
9 *period), the amounts otherwise determined for Puerto Rico,*  
10 *the Virgin Islands, Guam, the Northern Mariana Islands,*  
11 *and American Samoa under subsections (f) and (g) of sec-*  
12 *tion 1108 of the Social Security Act (42 U.S.C. 1308) shall*  
13 *each be increased by 20 percent (or, in the case of an elec-*  
14 *tion under subsection (b)(2), 10 percent).*

15            *(e) SCOPE OF APPLICATION.—The increases in the*  
16 *FMAP for a State under this section shall apply for pur-*  
17 *poses of title XIX of the Social Security Act and—*

18                    *(1) the increases applied under subsections (a),*  
19                    *(b), and (c) shall not apply with respect—*

20                            *(A) to payments under parts A, B, and D*  
21                            *of title IV or title XXI of such Act (42 U.S.C.*  
22                            *601 et seq. and 1397aa et seq.);*

23                            *(B) to payments under title XIX of such Act*  
24                            *that are based on the enhanced FMAP described*

1           in section 2105(b) of such Act (42 U.S.C.  
2           1397ee(b)); and

3           (C) to payments for disproportionate share  
4           hospital (DSH) payment adjustments under sec-  
5           tion 1923 of such Act (42 U.S.C. 1396r-4); and

6           (2) the increase provided under subsection (c)  
7           shall not apply with respect to payments under part  
8           E of title IV of such Act.

9           (f) *STATE INELIGIBILITY AND LIMITATION.*—

10           (1) *IN GENERAL.*—Subject to paragraphs (2) and  
11           (3), a State is not eligible for an increase in its  
12           FMAP under subsection (a), (b), or (c), or an increase  
13           in a cap amount under subsection (d), if eligibility  
14           standards, methodologies, or procedures under its  
15           State plan under title XIX of the Social Security Act  
16           (including any waiver under such title or under sec-  
17           tion 1115 of such Act (42 U.S.C. 1315)) are more re-  
18           strictive than the eligibility standards, methodologies,  
19           or procedures, respectively, under such plan (or waiv-  
20           er) as in effect on July 1, 2008.

21           (2) *STATE REINSTATEMENT OF ELIGIBILITY PER-*  
22           *MITTED.*—Subject to paragraph (3), a State that has  
23           restricted eligibility standards, methodologies, or pro-  
24           cedures under its State plan under title XIX of the  
25           Social Security Act (including any waiver under such

1 *title or under section 1115 of such Act (42 U.S.C.*  
2 *1315)) after July 1, 2008, is no longer ineligible*  
3 *under paragraph (1) beginning with the first cal-*  
4 *endar quarter in which the State has reinstated eligi-*  
5 *bility standards, methodologies, or procedures that are*  
6 *no more restrictive than the eligibility standards,*  
7 *methodologies, or procedures, respectively, under such*  
8 *plan (or waiver) as in effect on July 1, 2008.*

9 (3) *SPECIAL RULES.—A State shall not be ineli-*  
10 *gible under paragraph (1)—*

11 (A) *before July 1, 2009, on the basis of a*  
12 *restriction that was applied after July 1, 2008,*  
13 *and before the date of the enactment of this Act;*  
14 *or*

15 (B) *on the basis of a restriction that was ef-*  
16 *fective under State law as of July 1, 2008, and*  
17 *would have been in effect as of such date, but for*  
18 *a delay (of not longer than 1 calendar quarter)*  
19 *in the approval of a request for a new waiver*  
20 *under section 1115 of such Act with respect to*  
21 *such restriction.*

22 (4) *STATE’S APPLICATION TOWARD RAINY DAY*  
23 *FUND.—A State is not eligible for an increase in its*  
24 *FMAP under subsection (b) or (c), or an increase in*  
25 *a cap amount under subsection (d), if any amounts*

1        *attributable (directly or indirectly) to such increase*  
2        *are deposited or credited into any reserve or rainy*  
3        *day fund of the State.*

4            (5) *RULE OF CONSTRUCTION.*—*Nothing in para-*  
5        *graph (1) or (2) shall be construed as affecting a*  
6        *State’s flexibility with respect to benefits offered*  
7        *under the State Medicaid program under title XIX of*  
8        *the Social Security Act (42 U.S.C. 1396 et seq.) (in-*  
9        *cluding any waiver under such title or under section*  
10       *1115 of such Act (42 U.S.C. 1315)).*

11           (6) *NO WAIVER AUTHORITY.*—*The Secretary may*  
12        *not waive the application of this subsection or sub-*  
13        *section (g) under section 1115 of the Social Security*  
14        *Act or otherwise.*

15           (g) *REQUIREMENT FOR CERTAIN STATES.*—*In the case*  
16        *of a State that requires political subdivisions within the*  
17        *State to contribute toward the non-Federal share of expend-*  
18        *itures under the State Medicaid plan required under section*  
19        *1902(a)(2) of the Social Security Act (42 U.S.C.*  
20        *1396a(a)(2)), the State is not eligible for an increase in*  
21        *its FMAP under subsection (a), (b), or (c), or an increase*  
22        *in a cap amount under subsection (d), if it requires that*  
23        *such political subdivisions pay a greater percentage of the*  
24        *non-Federal share of such expenditures for quarters during*  
25        *the recession adjustment period, than the percentage that*

1 *would have been required by the State under such plan on*  
2 *September 30, 2008, prior to application of this section.*

3 *(h) DEFINITIONS.—In this section, except as otherwise*  
4 *provided:*

5 *(1) FMAP.—The term “FMAP” means the Fed-*  
6 *eral medical assistance percentage, as defined in sec-*  
7 *tion 1905(b) of the Social Security Act (42 U.S.C.*  
8 *1396d(b)), as determined without regard to this sec-*  
9 *tion except as otherwise specified.*

10 *(2) RECESSION ADJUSTMENT PERIOD.—The term*  
11 *“recession adjustment period” means the period be-*  
12 *ginning on October 1, 2008, and ending on December*  
13 *31, 2010.*

14 *(3) SECRETARY.—The term “Secretary” means*  
15 *the Secretary of Health and Human Services.*

16 *(4) SMAP.—The term “SMAP” means, for a*  
17 *State, 100 percent minus the Federal medical assist-*  
18 *ance percentage.*

19 *(5) STATE.—The term “State” has the meaning*  
20 *given such term in section 1101(a)(1) of the Social*  
21 *Security Act (42 U.S.C. 1301(a)(1)) for purposes of*  
22 *title XIX of the Social Security Act (42 U.S.C. 1396*  
23 *et seq.).*

1           (i) *SUNSET.*—*This section shall not apply to items and*  
2 *services furnished after the end of the recession adjustment*  
3 *period.*

4 **SEC. 5002. MORATORIA ON CERTAIN REGULATIONS.**

5           (a) *EXTENSION OF MORATORIA ON CERTAIN MEDICAID*  
6 *REGULATIONS.*—*The following sections are each amended*  
7 *by striking “April 1, 2009” and inserting “July 1, 2009”:*

8               (1) *Section 7002(a)(1) of the U.S. Troop Readiness,*  
9 *Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Public Law*  
10 *110–28), as amended by section 7001(a)(1) of the*  
11 *Supplemental Appropriations Act, 2008 (Public Law*  
12 *110–252).*

13  
14               (2) *Section 206 of the Medicare, Medicaid, and*  
15 *SCHIP Extension Act of 2007 (Public Law 110–173),*  
16 *as amended by section 7001(a)(2) of the Supplemental*  
17 *Appropriations Act, 2008 (Public Law 110–*  
18 *252).*

19               (3) *Section 7001(a)(3)(A) of the Supplemental*  
20 *Appropriations Act, 2008 (Public Law 110–252).*

21           (b) *ADDITIONAL MEDICAID MORATORIUM.*—*Notwith-*  
22 *standing any other provision of law, with respect to expend-*  
23 *itures for services furnished during the period beginning on*  
24 *December 8, 2008 and ending on June 30, 2009, the Sec-*  
25 *retary of Health and Human Services shall not take any*

1 *action (through promulgation of regulation, issuance of reg-*  
2 *ulatory guidance, use of Federal payment audit procedures,*  
3 *or other administrative action, policy, or practice, includ-*  
4 *ing a Medical Assistance Manual transmittal or letter to*  
5 *State Medicaid directors) to implement the final regulation*  
6 *relating to clarification of the definition of outpatient hos-*  
7 *pital facility services under the Medicaid program pub-*  
8 *lished on November 7, 2008 (73 Federal Register 66187).*

9 **SEC. 5003. TRANSITIONAL MEDICAID ASSISTANCE (TMA).**

10 (a) 18-MONTH EXTENSION.—

11 (1) *IN GENERAL.*—Sections 1902(e)(1)(B) and  
12 1925(f) of the Social Security Act (42 U.S.C.  
13 1396a(e)(1)(B), 1396r–6(f)) are each amended by  
14 striking “September 30, 2003” and inserting “Decem-  
15 ber 31, 2010”.

16 (2) *EFFECTIVE DATE.*—The amendments made  
17 by this subsection shall take effect on July 1, 2009.

18 (b) *STATE OPTION OF INITIAL 12-MONTH ELIGI-*  
19 *BILITY.*—Section 1925 of the Social Security Act (42 U.S.C.  
20 1396r–6) is amended—

21 (1) *in subsection (a)(1), by inserting “but subject*  
22 *to paragraph (5)” after “Notwithstanding any other*  
23 *provision of this title”;*

24 (2) *by adding at the end of subsection (a) the fol-*  
25 *lowing:*

1           “(5) *OPTION OF 12-MONTH INITIAL ELIGIBILITY*  
2           *PERIOD.*—A State may elect to treat any reference in  
3           this subsection to a 6-month period (or 6 months) as  
4           a reference to a 12-month period (or 12 months). In  
5           the case of such an election, subsection (b) shall not  
6           apply.”; and

7           (3) in subsection (b)(1), by inserting “but subject  
8           to subsection (a)(5)” after “Notwithstanding any  
9           other provision of this title”.

10          (c) *REMOVAL OF REQUIREMENT FOR PREVIOUS RE-*  
11          *CEIPT OF MEDICAL ASSISTANCE.*—Section 1925(a)(1) of  
12          such Act (42 U.S.C. 1396r–6(a)(1)), as amended by sub-  
13          section (b)(1), is further amended—

14                 (1) by inserting “subparagraph (B) and” before  
15                 “paragraph (5)”; and

16                 (2) by redesignating the matter after “*REQUIRE-*  
17                 *MENT.*—” as a subparagraph (A) with the heading  
18                 “*IN GENERAL.*—” and with the same indentation as  
19                 subparagraph (B) (as added by paragraph (3)); and

20                 (3) by adding at the end the following:

21                         “(B) *STATE OPTION TO WAIVE REQUIRE-*  
22                         *MENT FOR 3 MONTHS BEFORE RECEIPT OF MED-*  
23                         *ICAL ASSISTANCE.*—A State may, at its option,  
24                         elect also to apply subparagraph (A) in the case  
25                         of a family that was receiving such aid for fewer

1           *than three months or that had applied for and*  
2           *was eligible for such aid for fewer than 3 months*  
3           *during the 6 immediately preceding months de-*  
4           *scribed in such subparagraph.”.*

5           *(d) CMS REPORT ON ENROLLMENT AND PARTICIPA-*  
6           *TION RATES UNDER TMA.—Section 1925 of such Act (42*  
7           *U.S.C. 1396r–6), as amended by this section, is further*  
8           *amended by adding at the end the following new subsection:*

9           *“(g) COLLECTION AND REPORTING OF PARTICIPATION*  
10          *INFORMATION.—*

11           *“(1) COLLECTION OF INFORMATION FROM*  
12          *STATES.—Each State shall collect and submit to the*  
13          *Secretary (and make publicly available), in a format*  
14          *specified by the Secretary, information on average*  
15          *monthly enrollment and average monthly participa-*  
16          *tion rates for adults and children under this section*  
17          *and of the number and percentage of children who be-*  
18          *come ineligible for medical assistance under this sec-*  
19          *tion whose medical assistance is continued under an-*  
20          *other eligibility category or who are enrolled under*  
21          *the State’s child health plan under title XXI. Such*  
22          *information shall be submitted at the same time and*  
23          *frequency in which other enrollment information*  
24          *under this title is submitted to the Secretary.*



1           (2) *GROUP DESCRIBED.*—Section 1902 of such  
2     *Act* (42 U.S.C. 1396a), as amended by section  
3     3003(a) of the *Health Insurance Assistance for the*  
4     *Unemployed Act of 2009*, is amended by adding at  
5     the end the following new subsection:

6           “(ee)(1) *Individuals described in this subsection are*  
7     *individuals—*

8                     “(A) *whose income does not exceed an in-*  
9                     *come eligibility level established by the State that*  
10                    *does not exceed the highest income eligibility*  
11                    *level established under the State plan under this*  
12                    *title (or under its State child health plan under*  
13                    *title XXI) for pregnant women; and*

14                    “(B) *who are not pregnant.*

15           “(2) *At the option of a State, individuals de-*  
16     *scribed in this subsection may include individuals*  
17     *who, had individuals applied on or before January 1,*  
18     *2007, would have been made eligible pursuant to the*  
19     *standards and processes imposed by that State for*  
20     *benefits described in clause (XV) of the matter fol-*  
21     *lowing subparagraph (G) of section subsection (a)(10)*  
22     *pursuant to a waiver granted under section 1115.*

23           “(3) *At the option of a State, for purposes of*  
24     *subsection (a)(17)(B), in determining eligibility for*

1 *services under this subsection, the State may consider*  
2 *only the income of the applicant or recipient.”.*

3 (3) *LIMITATION ON BENEFITS.*—Section  
4 *1902(a)(10) of the Social Security Act (42 U.S.C.*  
5 *1396a(a)(10)) is amended in the matter following*  
6 *subparagraph (G)—*

7 (A) *by striking “and (XIV)” and inserting*  
8 *“(XIV)”;* and

9 (B) *by inserting “, and (XV) the medical*  
10 *assistance made available to an individual de-*  
11 *scribed in subsection (ee) shall be limited to fam-*  
12 *ily planning services and supplies described in*  
13 *section 1905(a)(4)(C) including medical diag-*  
14 *nosis and treatment services that are provided*  
15 *pursuant to a family planning service in a fam-*  
16 *ily planning setting” after “cervical cancer”.*

17 (4) *CONFORMING AMENDMENTS.*—Section  
18 *1905(a) of the Social Security Act (42 U.S.C.*  
19 *1396d(a)), as amended by section 3003(c)(2) of the*  
20 *Health Insurance Assistance for the Unemployed Act*  
21 *of 2009, is amended in the matter preceding para-*  
22 *graph (1)—*

23 (A) *in clause (xiii), by striking “or” at the*  
24 *end;*



1       *spect to an individual described in subsection (a), the*  
2       *period that—*

3               *“(A) begins with the date on which a quali-*  
4               *fied entity determines, on the basis of prelimi-*  
5               *nary information, that the individual is de-*  
6               *scribed in section 1902(ee); and*

7               *“(B) ends with (and includes) the earlier*  
8               *of—*

9                       *“(i) the day on which a determination*  
10                      *is made with respect to the eligibility of*  
11                      *such individual for services under the State*  
12                      *plan; or*

13                      *“(ii) in the case of such an individual*  
14                      *who does not file an application by the last*  
15                      *day of the month following the month dur-*  
16                      *ing which the entity makes the determina-*  
17                      *tion referred to in subparagraph (A), such*  
18                      *last day.*

19       “(2) *QUALIFIED ENTITY.—*

20               *“(A) IN GENERAL.—Subject to subpara-*  
21               *graph (B), the term ‘qualified entity’ means any*  
22               *entity that—*

23                      *“(i) is eligible for payments under a*  
24                      *State plan approved under this title; and*

1                   “(ii) is determined by the State agency  
2                   to be capable of making determinations of  
3                   the type described in paragraph (1)(A).

4                   “(B) *RULE OF CONSTRUCTION.*—Nothing in  
5                   this paragraph shall be construed as preventing  
6                   a State from limiting the classes of entities that  
7                   may become qualified entities in order to prevent  
8                   fraud and abuse.

9                   “(c) *ADMINISTRATION.*—

10                  “(1) *IN GENERAL.*—The State agency shall pro-  
11                  vide qualified entities with—

12                   “(A) such forms as are necessary for an ap-  
13                   plication to be made by an individual described  
14                   in subsection (a) for medical assistance under  
15                   the State plan; and

16                   “(B) information on how to assist such in-  
17                   dividuals in completing and filing such forms.

18                  “(2) *NOTIFICATION REQUIREMENTS.*—A quali-  
19                  fied entity that determines under subsection (b)(1)(A)  
20                  that an individual described in subsection (a) is pre-  
21                  sumptively eligible for medical assistance under a  
22                  State plan shall—

23                   “(A) notify the State agency of the deter-  
24                   mination within 5 working days after the date  
25                   on which determination is made; and

1           “(B) inform such individual at the time the  
2           determination is made that an application for  
3           medical assistance is required to be made by not  
4           later than the last day of the month following the  
5           month during which the determination is made.

6           “(3) *APPLICATION FOR MEDICAL ASSISTANCE.*—  
7           *In the case of an individual described in subsection*  
8           *(a) who is determined by a qualified entity to be pre-*  
9           *sumptively eligible for medical assistance under a*  
10          *State plan, the individual shall apply for medical as-*  
11          *istance by not later than the last day of the month*  
12          *following the month during which the determination*  
13          *is made.*

14          “(d) *PAYMENT.*—*Notwithstanding any other provision*  
15          *of law, medical assistance that—*

16                  “(1) *is furnished to an individual described in*  
17                  *subsection (a)—*

18                          “(A) *during a presumptive eligibility pe-*  
19                          *riod; and*

20                          “(B) *by a entity that is eligible for pay-*  
21                          *ments under the State plan; and*

22                  “(2) *is included in the care and services covered*  
23          *by the State plan,*

1 *shall be treated as medical assistance provided by such plan*  
2 *for purposes of clause (4) of the first sentence of section*  
3 *1905(b).”.*

4 (2) *CONFORMING AMENDMENTS.—*

5 (A) *Section 1902(a)(47) of the Social Secu-*  
6 *urity Act (42 U.S.C. 1396a(a)(47)) is amended by*  
7 *inserting before the semicolon at the end the fol-*  
8 *lowing: “and provide for making medical assist-*  
9 *ance available to individuals described in sub-*  
10 *section (a) of section 1920C during a presump-*  
11 *tive eligibility period in accordance with such*  
12 *section”.*

13 (B) *Section 1903(u)(1)(D)(v) of such Act*  
14 *(42 U.S.C. 1396b(u)(1)(D)(v)) is amended—*

15 (i) *by striking “or for” and inserting*  
16 *“for”; and*

17 (ii) *by inserting before the period the*  
18 *following: “, or for medical assistance pro-*  
19 *vided to an individual described in sub-*  
20 *section (a) of section 1920C during a pre-*  
21 *sumptive eligibility period under such sec-*  
22 *tion”.*

23 (c) *CLARIFICATION OF COVERAGE OF FAMILY PLAN-*  
24 *NING SERVICES AND SUPPLIES.—Section 1937(b) of the So-*

1 *cial Security Act (42 U.S.C. 1396u-7(b)) is amended by*  
2 *adding at the end the following:*

3           “(5) *COVERAGE OF FAMILY PLANNING SERVICES*  
4 *AND SUPPLIES.—Notwithstanding the previous provi-*  
5 *sions of this section, a State may not provide for*  
6 *medical assistance through enrollment of an indi-*  
7 *vidual with benchmark coverage or benchmark-equiva-*  
8 *lent coverage under this section unless such coverage*  
9 *includes for any individual described in section*  
10 *1905(a)(4)(C), medical assistance for family planning*  
11 *services and supplies in accordance with such sec-*  
12 *tion.”.*

13           *(d) EFFECTIVE DATE.—The amendments made by this*  
14 *section take effect on the date of the enactment of this Act*  
15 *and shall apply to items and services furnished on or after*  
16 *such date.*

17 **SEC. 5005. PROTECTIONS FOR INDIANS UNDER MEDICAID**  
18 **AND CHIP.**

19           *(a) PREMIUMS AND COST SHARING PROTECTION*  
20 *UNDER MEDICAID.—*

21           *(1) IN GENERAL.—Section 1916 of the Social Se-*  
22 *curity Act (42 U.S.C. 1396o) is amended—*

23                   *(A) in subsection (a), in the matter pre-*  
24 *ceding paragraph (1), by striking “and (i)” and*  
25 *inserting “, (i), and (j)”;* and

1                   (B) by adding at the end the following new  
2                   subsection:

3                   “(j) NO PREMIUMS OR COST SHARING FOR INDIANS  
4 FURNISHED ITEMS OR SERVICES DIRECTLY BY INDIAN  
5 HEALTH PROGRAMS OR THROUGH REFERRAL UNDER CON-  
6 TRACT HEALTH SERVICES.—

7                   “(1) NO COST SHARING FOR ITEMS OR SERVICES  
8 FURNISHED TO INDIANS THROUGH INDIAN HEALTH  
9 PROGRAMS.—

10                   “(A) IN GENERAL.—No enrollment fee, pre-  
11 mium, or similar charge, and no deduction, co-  
12 payment, cost sharing, or similar charge shall be  
13 imposed against an Indian who is furnished an  
14 item or service directly by the Indian Health  
15 Service, an Indian Tribe, Tribal Organization,  
16 or Urban Indian Organization or through refer-  
17 ral under contract health services for which pay-  
18 ment may be made under this title.

19                   “(B) NO REDUCTION IN AMOUNT OF PAY-  
20 MENT TO INDIAN HEALTH PROVIDERS.—Payment  
21 due under this title to the Indian Health Service,  
22 an Indian Tribe, Tribal Organization, or Urban  
23 Indian Organization, or a health care provider  
24 through referral under contract health services  
25 for the furnishing of an item or service to an In-

1            *dian who is eligible for assistance under such*  
2            *title, may not be reduced by the amount of any*  
3            *enrollment fee, premium, or similar charge, or*  
4            *any deduction, copayment, cost sharing, or simi-*  
5            *lar charge that would be due from the Indian but*  
6            *for the operation of subparagraph (A).*

7            “(2) *RULE OF CONSTRUCTION.*—*Nothing in this*  
8            *subsection shall be construed as restricting the appli-*  
9            *cation of any other limitations on the imposition of*  
10           *premiums or cost sharing that may apply to an indi-*  
11           *vidual receiving medical assistance under this title*  
12           *who is an Indian.”.*

13           (2)        *CONFORMING        AMENDMENT.*—*Section*  
14           *1916A(b)(3) of such Act (42 U.S.C. 1396o–1(b)(3)) is*  
15           *amended—*

16                    (A) *in subparagraph (A), by adding at the*  
17                    *end the following new clause:*

18                            “(vi) *An Indian who is furnished an*  
19                            *item or service directly by the Indian*  
20                            *Health Service, an Indian Tribe, Tribal Or-*  
21                            *ganization or Urban Indian Organization*  
22                            *or through referral under contract health*  
23                            *services.”; and*

24                    (B) *in subparagraph (B), by adding at the*  
25                    *end the following new clause:*

1                   “(ix) *Items and services furnished to*  
2                   *an Indian directly by the Indian Health*  
3                   *Service, an Indian Tribe, Tribal Organiza-*  
4                   *tion or Urban Indian Organization or*  
5                   *through referral under contract health serv-*  
6                   *ices.*”.

7                   (3) *EFFECTIVE DATE.*—*The amendments made*  
8                   *by this subsection shall take effect on October 1, 2009.*

9                   (b) *TREATMENT OF CERTAIN PROPERTY FROM RE-*  
10 *SOURCES FOR MEDICAID AND CHIP ELIGIBILITY.*—

11                   (1) *MEDICAID.*—*Section 1902 of the Social Secu-*  
12                   *rity Act (42 U.S.C. 1396a), as amended by section*  
13                   *3003(a) of the Health Insurance Assistance for the*  
14                   *Unemployed Act of 2009 and section 5004, is amend-*  
15                   *ed by adding at the end the following new subsection:*

16                   “(ff) *Notwithstanding any other requirement of this*  
17                   *title or any other provision of Federal or State law, a State*  
18                   *shall disregard the following property from resources for*  
19                   *purposes of determining the eligibility of an individual who*  
20                   *is an Indian for medical assistance under this title:*

21                   “(1) *Property, including real property and im-*  
22                   *provements, that is held in trust, subject to Federal*  
23                   *restrictions, or otherwise under the supervision of the*  
24                   *Secretary of the Interior, located on a reservation, in-*  
25                   *cluding any federally recognized Indian Tribe’s res-*

1        *ervation, pueblo, or colony, including former reserva-*  
2        *tions in Oklahoma, Alaska Native regions established*  
3        *by the Alaska Native Claims Settlement Act, and In-*  
4        *Indian allotments on or near a reservation as des-*  
5        *ignated and approved by the Bureau of Indian Af-*  
6        *airs of the Department of the Interior.*

7                *“(2) For any federally recognized Tribe not de-*  
8        *scribed in paragraph (1), property located within the*  
9        *most recent boundaries of a prior Federal reservation.*

10                *“(3) Ownership interests in rents, leases, royalti-*  
11        *es, or usage rights related to natural resources (in-*  
12        *cluding extraction of natural resources or harvesting*  
13        *of timber, other plants and plant products, animals,*  
14        *fish, and shellfish) resulting from the exercise of feder-*  
15        *ally protected rights.*

16                *“(4) Ownership interests in or usage rights to*  
17        *items not covered by paragraphs (1) through (3) that*  
18        *have unique religious, spiritual, traditional, or cul-*  
19        *tural significance or rights that support subsistence or*  
20        *a traditional lifestyle according to applicable tribal*  
21        *law or custom.”.*

22                *(2) APPLICATION TO CHIP.—Section 2107(e)(1)*  
23        *of such Act (42 U.S.C. 1397gg(e)(1)) is amended by*  
24        *adding at the end the following new subparagraph:*

1           “(E) Section 1902(ff) (relating to disregard  
2           of certain property for purposes of making eligi-  
3           bility determinations).”.

4           (c) CONTINUATION OF CURRENT LAW PROTECTIONS OF  
5   CERTAIN INDIAN PROPERTY FROM MEDICAID ESTATE RE-  
6   COVERY.—Section 1917(b)(3) of the Social Security Act (42  
7   U.S.C. 1396p(b)(3)) is amended—

8           (1) by inserting “(A)” after “(3)”; and  
9           (2) by adding at the end the following new sub-  
10   paragraph:

11           “(B) The standards specified by the Sec-  
12   retary under subparagraph (A) shall require that  
13   the procedures established by the State agency  
14   under subparagraph (A) exempt income, re-  
15   sources, and property that are exempt from the  
16   application of this subsection as of April 1,  
17   2003, under manual instructions issued to carry  
18   out this subsection (as in effect on such date) be-  
19   cause of the Federal responsibility for Indian  
20   Tribes and Alaska Native Villages. Nothing in  
21   this subparagraph shall be construed as pre-  
22   venting the Secretary from providing additional  
23   estate recovery exemptions under this title for In-  
24   dians.”.

1 **SEC. 5006. CONSULTATION ON MEDICAID AND CHIP.**

2 (a) *IN GENERAL.*—Section 1139 of the Social Security  
3 Act (42 U.S.C. 1320b–9) is amended to read as follows:

4 “CONSULTATION WITH TRIBAL TECHNICAL ADVISORY  
5 GROUP (TTAG)

6 “SEC. 1139.

7 “The Secretary shall maintain within the Centers for  
8 Medicaid & Medicare Services (CMS) a Tribal Technical  
9 Advisory Group, which was first established in accordance  
10 with requirements of the charter dated September 30, 2003,  
11 and the Secretary shall include in such Group a representa-  
12 tive of the Urban Indian Organizations and the Service.  
13 The representative of the Urban Indian Organization shall  
14 be deemed to be an elected officer of a tribal government  
15 for purposes of applying section 204(b) of the Unfunded  
16 Mandates Reform Act of 1995 (2 U.S.C. 1534(b)).”.

17 (b) *SOLICITATION OF ADVICE UNDER MEDICAID AND*  
18 *CHIP.*—

19 (1) *MEDICAID STATE PLAN AMENDMENT.*—Sec-  
20 tion 1902(a) of the Social Security Act (42 U.S.C.  
21 1396a(a)) is amended—

22 (A) in paragraph (70), by striking “and”  
23 at the end;

24 (B) in paragraph (71), by striking the pe-  
25 riod at the end and inserting “; and”; and

1           (C) by inserting after paragraph (71), the  
2           following new paragraph:

3           “(72) in the case of any State in which 1 or  
4           more Indian Health Programs or Urban Indian Or-  
5           ganizations furnishes health care services, provide for  
6           a process under which the State seeks advice on a reg-  
7           ular, ongoing basis from designees of such Indian  
8           Health Programs and Urban Indian Organizations  
9           on matters relating to the application of this title  
10          that are likely to have a direct effect on such Indian  
11          Health Programs and Urban Indian Organizations  
12          and that—

13                 “(A) shall include solicitation of advice  
14                 prior to submission of any plan amendments,  
15                 waiver requests, and proposals for demonstration  
16                 projects likely to have a direct effect on Indians,  
17                 Indian Health Programs, or Urban Indian Or-  
18                 ganizations; and

19                 “(B) may include appointment of an advi-  
20                 sory committee and of a designee of such Indian  
21                 Health Programs and Urban Indian Organiza-  
22                 tions to the medical care advisory committee ad-  
23                 vising the State on its State plan under this  
24                 title.”.

1           (2) *APPLICATION TO CHIP.*—Section 2107(e)(1)  
 2           of such Act (42 U.S.C. 1397gg(e)(1)), as amended by  
 3           section 5005(b), is amended by adding at the end the  
 4           following new subparagraph:

5                     “(F) Section 1902(a)(72) (relating to re-  
 6                     quiring certain States to seek advice from des-  
 7                     ignees of Indian Health Programs and Urban  
 8                     Indian Organizations).”.

9           (c) *RULE OF CONSTRUCTION.*—Nothing in the amend-  
 10          ments made by this section shall be construed as super-  
 11          seding existing advisory committees, working groups, guid-  
 12          ance, or other advisory procedures established by the Sec-  
 13          retary of Health and Human Services or by any State with  
 14          respect to the provision of health care to Indians.

15       **SEC. 5007. TEMPORARY INCREASE IN DSH ALLOTMENTS**  
 16                               **DURING RECESSION.**

17          Section 1923(f)(3) of the Social Security Act (42  
 18          U.S.C. 1396r-4(f)(3)) is amended—

19                     (1) in subparagraph (A), by striking “paragraph  
 20                     (6)” and inserting “paragraph (6) and subparagraph  
 21                     (E)”; and

22                     (2) by adding at the end the following new sub-  
 23          paragraph:

24                               “(E) *TEMPORARY INCREASE IN ALLOT-*  
 25                               *MENTS DURING RECESSION.*—

1           “(i) *IN GENERAL.*—Subject to clause  
2           (ii), the DSH allotment for any State—

3                   “(I) for fiscal year 2009 is equal  
4                   to 102.5 percent of the DSH allotment  
5                   that would be determined under this  
6                   paragraph for the State for fiscal year  
7                   2009 without application of this sub-  
8                   paragraph, notwithstanding subpara-  
9                   graph (B);

10                   “(II) for fiscal year 2010 is equal  
11                   to 102.5 percent of the the DSH allot-  
12                   ment for the State for fiscal year 2009,  
13                   as determined under subclause (I); and

14                   “(III) for each succeeding fiscal  
15                   year is equal to the DSH allotment for  
16                   the State under this paragraph deter-  
17                   mined without applying subclauses (I)  
18                   and (II).

19           “(ii) *APPLICATION.*—Clause (i) shall  
20           not apply to a State for a year in the case  
21           that the DSH allotment for such State for  
22           such year under this paragraph determined  
23           without applying clause (i) would grow  
24           higher than the DSH allotment specified

1                    *under clause (i) for the State for such*  
2                    *year.”.*

Union Calendar No. 3

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**H. R. 629**

[Report No. 111-7, Part I]

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**A BILL**

To provide energy and commerce provisions of the American Recovery and Reinvestment Act of 2009.

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JANUARY 27, 2009

The Committees on Ways and Means, Education and Labor, and Science and Technology discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed