

112TH CONGRESS
2D SESSION

H. R. 6598

To amend certain requirements and penalties implemented under the Medicare and Medicaid programs by the HITECH Act of 2009, which would otherwise impede eligible professionals from adopting electronic health records to improve patient care.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 16, 2012

Mrs. BLACK (for herself, Mr. ROSKAM, Mr. CHABOT, and Mr. BROUN of Georgia) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend certain requirements and penalties implemented under the Medicare and Medicaid programs by the HITECH Act of 2009, which would otherwise impede eligible professionals from adopting electronic health records to improve patient care.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Electronic Health Records Improvement Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Exception for certain eligible professionals from application of Medicare payment adjustment for not demonstrating EHR meaningful use.
- Sec. 3. Shortening EHR reporting period for application of Medicare EHR payment adjustment to eligible professionals.
- Sec. 4. Additional exceptions to application of Medicare payment adjustment for certain Medicaid and hospital-based eligible professionals not demonstrating EHR meaningful use.
- Sec. 5. Certain specialty registry systems for purposes of eligible professionals satisfying meaningful use requirements under Medicare.
- Sec. 6. Enhancing Medicare EHR meaningful use among eligible professionals who are rural health care providers.
- Sec. 7. Improving EHR meaningful use under Medicare by ambulatory surgical centers.
- Sec. 8. Exemption from certain EHR meaningful use requirements for certain eligible professionals for purposes of Medicare payment adjustment.
- Sec. 9. Additional administrative provisions relating to Medicare eligible professionals' EHR incentives.
- Sec. 10. Non-application of provisions and amendments to eligible professional Medicare incentives for certain MA organizations and Medicaid incentives for adoption and meaningful use of certified EHR technology.

SEC. 2. EXCEPTION FOR CERTAIN ELIGIBLE PROFESSIONALS FROM APPLICATION OF MEDICARE PAYMENT ADJUSTMENT FOR NOT DEMONSTRATING EHR MEANINGFUL USE.

(a) EXCEPTION FOR CERTAIN SMALL PHYSICIAN PRACTICES.—Section 1848(a)(7) of the Social Security Act (42 U.S.C. 1395w–4(a)(7)) is amended—

(1) in subparagraph (A)(i), by striking “subparagraphs (B) and (D)” and inserting “subparagraphs (B), (D), and (F)”; and

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

1 “(F) 3-YEAR EXCEPTION FOR CERTAIN EL-
2 IGIBLE PROFESSIONALS.—

3 “(i) IN GENERAL.—The Secretary
4 shall exempt an eligible professional whom
5 the Secretary determines is described in
6 clause (ii) from the application of the pay-
7 ment adjustment under subparagraph (A)
8 for each of the payment years 2015
9 through 2017. The Secretary shall make a
10 determination under the previous sentence,
11 with respect to such an exemption for an
12 eligible professional, only if such eligible
13 professional submits a request for such ex-
14 emption. The Secretary shall determine
15 whether or not an eligible professional is
16 described in clause (ii) not later than 30
17 days after the date such eligible profes-
18 sional submits a request pursuant to the
19 previous sentence.

20 “(ii) ELIGIBLE PROFESSIONALS IN
21 SMALL PHYSICIAN PRACTICES.—An eligible
22 professional described in this clause is an
23 eligible professional furnishing covered pro-
24 fessional services during the EHR report-

1 ing period for 2015 in a physician practice
 2 that is a solo practice.”.

3 (b) EXCEPTION FOR CERTAIN PHYSICIANS NEAR RE-
 4 TIREMENT AGE.—Subparagraph (F) of section
 5 1848(a)(7) of the Social Security Act (42 U.S.C. 1395w-
 6 4(a)(7)), as added by subsection (a), is amended—

7 (1) in clause (i), in the first and third sen-
 8 tences, by striking “clause (ii)” and inserting
 9 “clause (ii) or (iii)”; and

10 (2) by adding at the end the following new
 11 clause:

12 “(iii) ELIGIBLE PROFESSIONALS AT
 13 OR NEAR RETIREMENT AGE.—An eligible
 14 professional described in this clause is an
 15 eligible professional who as of the last day
 16 of 2015 has attained early retirement age
 17 (as defined in section 216(l)(2)) or who
 18 will attain such age during the 5-year pe-
 19 riod following such day.”.

20 (c) NOTIFICATION OF ELIGIBILITY FOR EXCEPTIONS
 21 FROM PAYMENT ADJUSTMENT.—Section 1848(a)(7) of
 22 the Social Security Act (42 U.S.C. 1395w-4(a)(7)), as
 23 amended by subsection (a), is further amended by adding
 24 at the end the following new subparagraph:

“(G) NOTIFICATION.—Not later than 30 days after the date on which the Secretary determines an eligible professional is exempt pursuant to subparagraph (F) from the application of the payment adjustment under subparagraph (A), the Secretary shall provide such eligible professional notice of such determination.”.

SEC. 3. SHORTENING EHR REPORTING PERIOD FOR APPLICATION OF MEDICARE EHR PAYMENT ADJUSTMENT TO ELIGIBLE PROFESSIONALS.

(a) IN GENERAL.—Section 1848(a)(7)(E)(ii) of the Social Security Act (42 U.S.C. 1395w–4(a)(7)(E)(ii)) is amended by inserting “, so long as all of such period (or periods) occurs during the year in which the corresponding adjustment, if any, under this paragraph would be applied to the eligible professional involved” after “a period (or periods) specified by the Secretary”.

(b) REBATES.—Section 1848(a)(7)(A) of the Social Security Act (42 U.S.C. 1395w–4(a)(7)(A)) is amended by adding at the end the following new clause:

“(iii) SPECIAL RULE.—The Secretary shall establish a process under which if for a calendar year, beginning with 2015, an adjustment is made under this paragraph with respect to covered professional serv-

1 ices furnished by an eligible professional
2 and then during such calendar year the eli-
3 gible professional meets the criteria for es-
4 tablishing meaningful use of certified EHR
5 technology, the Secretary shall provide to
6 the eligible professional a rebated amount
7 such that the total amount of payment
8 that the provider receives under this sub-
9 section for such services for such year is
10 the fee schedule amount that would other-
11 wise apply to such services under this sub-
12 section without application of this para-
13 graph.”.

14 (c) CONFORMING AMENDMENT.—Section
15 1848(o)(5)(B) of the Social Security Act is amended by
16 adding at the end the following new sentence: “Such term,
17 as used under this subsection with respect to subsection
18 (a)(7) and a year beginning with 2015, shall have the
19 meaning given such term under subsection (a)(7)(E)(ii).”.

1 **SEC. 4. ADDITIONAL EXCEPTIONS TO APPLICATION OF**
 2 **MEDICARE PAYMENT ADJUSTMENT FOR CER-**
 3 **TAIN MEDICAID AND HOSPITAL-BASED ELIGI-**
 4 **BLE PROFESSIONALS NOT DEMONSTRATING**
 5 **EHR MEANINGFUL USE.**

6 (a) ELIGIBLE PROFESSIONALS PARTICIPATING IN
 7 MEDICAID EHR INCENTIVE PROGRAM.—Section
 8 1848(a)(7) of the Social Security Act (42 U.S.C. 1395w–
 9 4(a)(7)), as amended by section 2, is further amended—

10 (1) in subparagraph (A)(i), by striking “(D),
 11 and (F)” and inserting “(D), (F), and (G)”;

12 (2) by redesignating subparagraph (G) as sub-
 13 paragraph (H); and

14 (3) by inserting after subparagraph (F) the fol-
 15 lowing new subparagraph:

16 “(G) ADDITIONAL EXCEPTIONS FOR CER-
 17 TAIN MEDICAID PROVIDERS PARTICIPATING IN
 18 MEDICAID EHR INCENTIVE PROGRAM.—In the
 19 case of an eligible professional who is a Med-
 20 icaid provider described in section
 21 1903(t)(2)(A), the Secretary shall exempt such
 22 eligible professional from the application of the
 23 Medicare payment adjustment under subpara-
 24 graph (A), with respect to a year, if such year
 25 is the first year that such professional received
 26 payment under section 1903(t).”.

1 (b) HOSPITAL-BASED ELIGIBLE PROFESSIONALS.—
 2 Section 1848(a)(7)(D) of the Social Security Act (42
 3 U.S.C. 1395w-4(a)(7)(D)) is amended by adding at the
 4 end the following new sentence: “In applying the definition
 5 under subsection (o)(1)(C)(ii) for purposes of the previous
 6 sentence, the reference to ‘substantially all’ under such
 7 subsection shall mean 90 percent or more and a deter-
 8 mination described in such subsection, with respect to an
 9 eligible professional, may only be made by the Secretary
 10 pursuant to a request of the professional that is submitted
 11 to the Secretary before 2015, and shall be effective for
 12 such professional for 2015 and each subsequent year.”.

13 (c) APPLICATION OF NOTIFICATION REQUIRE-
 14 MENT.—Subparagraph (H) of section 1848(a)(7) of the
 15 Social Security Act (42 U.S.C. 1395w-4(a)(7)), as added
 16 by section 2(c) and redesignated by subsection (a)(2), is
 17 amended by striking “subparagraph (F)” and inserting
 18 “subparagraph (B), (D), (F), or (G)”.

19 **SEC. 5. CERTAIN SPECIALTY REGISTRY SYSTEMS FOR PUR-**
 20 **POSES OF ELIGIBLE PROFESSIONALS SATIS-**
 21 **FYING MEANINGFUL USE REQUIREMENTS**
 22 **UNDER MEDICARE.**

23 (a) MEANINGFUL USE OF CERTIFIED REGISTRIES
 24 TREATED AS MEANINGFUL USE OF CERTIFIED EHR

1 TECHNOLOGY.—Section 1848(o)(2) of the Social Security
2 Act (42 U.S.C. 1395w–4(o)(2)) is amended—

3 (1) in subparagraph (A), in the matter pre-
4 ceding clause (i), by inserting “and subject to sub-
5 paragraph (D)” after “paragraph (1)”; and

6 (2) by adding at the end the following new sub-
7 paragraph:

8 “(D) MEANINGFUL USE OF CERTIFIED NA-
9 TIONAL SPECIALTY REGISTRIES.—

10 “(i) In applying paragraph (1) for
11 purposes of subsection (a)(7), an eligible
12 professional shall be treated as a meaning-
13 ful EHR user for an EHR reporting pe-
14 riod for a year if, in lieu of the require-
15 ments under subparagraph (A), the eligible
16 professional demonstrates to the satisfac-
17 tion of the Secretary, in accordance with
18 such criteria specified by the Secretary,
19 that during such period the professional is
20 using a certified national specialty registry
21 system (as defined in clause (iv)) in a
22 meaningful manner, including by submit-
23 ting clinical data through such system to
24 measure quality improvement and patient
25 safety.

1 “(ii) By not later than January 1,
 2 2015, for purposes of clause (i), the Sec-
 3 retary shall pursuant to rulemaking specify
 4 measures for determining meaningful use
 5 of a certified national specialty registry
 6 system.

7 “(iii) Not later than January 1, 2015,
 8 the Secretary shall certify registry systems
 9 as certified national specialty registry sys-
 10 tems for specialties of eligible profes-
 11 sionals.

12 “(iv) For purposes clause (i), the term
 13 ‘certified national specialty registry system’
 14 means, with respect to a specialty of eligi-
 15 ble professionals, an electronic health
 16 record system certified for such specialty
 17 by the Secretary under clause (iii).”.

18 (b) CONFORMING AMENDMENTS.—

19 (1) Section 1848(m)(2)(D) of the Social Secu-
 20 rity Act (42 U.S.C. 1395w–4(m)(2)(D)), as amend-
 21 ed by section 5(b), is further amended by striking
 22 “subsection (o)(4)” and inserting “subsection
 23 (o)(4)(A)”.

24 (2) Section 1886(n)(5) of the Social Security
 25 Act (42 U.S.C. 1395ww(n)(5)), as amended by sec-

1 tion 5(b), is further amended by striking “section
2 1848(o)(4)” and inserting “section 1848(o)(4)(A)”.

3 **SEC. 6. ENHANCING MEDICARE EHR MEANINGFUL USE**
4 **AMONG ELIGIBLE PROFESSIONALS WHO ARE**
5 **RURAL HEALTH CARE PROVIDERS.**

6 (a) EXTENSION OF MEDICARE EHR INCENTIVES TO
7 ELIGIBLE PROFESSIONALS PRACTICING IN RURAL
8 HEALTH CLINICS.—

9 (1) EHR PAYMENT ADJUSTMENT.—Section
10 1848(a)(7)(E)(i) of the Social Security Act (42
11 U.S.C. 1395w–4(a)(7)(E)(i)) is amended by insert-
12 ing before the period at the end the following: “and,
13 with respect to payment years after 2014, includes
14 rural health clinic services (as defined in section
15 1861(aa)(1)) furnished by an eligible professional”.

16 (2) EHR INCREASED PAYMENTS.—Section
17 1848(o)(5)(A) of the Social Security Act (42 U.S.C.
18 1395w–4(o)(5)(A)) is amended by inserting before
19 the period at the end the following: “and, with re-
20 spect to payment years after 2014, includes rural
21 health clinic services (as defined in section
22 1861(aa)(1)) furnished by an eligible professional”.

23 (b) EXTENSION OF MEDICARE ERX AND QUALITY
24 REPORTING INCENTIVES TO RURAL HEALTH CLINICS.—
25 Section 1848(m)(6)(A) of the Social Security Act (42

1 U.S.C. 1395w-4(m)(6)(A)) is amended by inserting before
 2 the period at the end the following: “except that the term
 3 ‘covered professional services’ shall, with respect to report-
 4 ing periods for 2015 or a subsequent year, include rural
 5 health clinic services (as defined in section 1861(aa)(1))
 6 furnished by an eligible professional”.

7 **SEC. 7. IMPROVING EHR MEANINGFUL USE UNDER MEDI-**
 8 **CARE BY AMBULATORY SURGICAL CENTERS.**

9 (a) 3-YEAR EXEMPTION FROM ENCOUNTERS CAL-
 10 CULATION TO DEMONSTRATE EHR MEANINGFUL USE
 11 FOR PURPOSES OF PAYMENT ADJUSTMENT.—Section
 12 1848(o)(2) of the Social Security Act (42 U.S.C. 1395w-
 13 4(o)(2)) is amended by adding at the end the following
 14 new subparagraph:

15 “(D) TREATMENT OF PATIENT ENCOUN-
 16 TERS AT AMBULATORY SURGICAL CENTERS.—

17 “(i) IN GENERAL.—Subject to clause
 18 (ii), in applying this paragraph for pur-
 19 poses of subsection (a)(7), any patient en-
 20 counter of an eligible professional occur-
 21 ring during the performance years for the
 22 2015, 2016, or 2017 payment determina-
 23 tions at an ambulatory surgical center
 24 shall not be treated as a patient encounter

1 in determining whether an eligible profes-
2 sional qualifies as a meaningful EHR user.

3 “(ii) RULE OF CONSTRUCTION.—
4 Nothing in clause (i) shall prohibit an eli-
5 gible professional from receiving an addi-
6 tional payment under paragraph (1) with
7 respect to covered professional services fur-
8 nished in a payment year if the eligible
9 professional is determined to be a mean-
10 ingful EHR user under this paragraph for
11 the reporting period for such year.

12 “(iii) LIMITATION OF PAYMENT AD-
13 JUSTMENT.—In applying clause (i) for
14 purposes of subsection (a)(7) and a year,
15 if an eligible professional is not a meaning-
16 ful EHR user pursuant to such clause for
17 an EHR reporting period for the year, any
18 adjustment under such subsection shall not
19 apply to the fee schedule amount for cov-
20 ered professional services furnished by
21 such eligible professional during the year
22 in an ambulatory surgical center.”.

23 (b) REINSTATEMENT OF BATCHING PROCESS.—Sub-
24 paragraph (D) of section 1848(o)(2) of the Social Security
25 Act (42 U.S.C. 1395w–4(o)(2)), as added by subsection

1 (a), is amended by adding at the end the following new
 2 clause:

3 “(iv) USE OF BATCHING PROCESS.—
 4 In applying this paragraph for purposes of
 5 subsection (a)(7) and with respect to a pa-
 6 tient encounter occurring at an ambulatory
 7 surgical center, if an eligible professional
 8 creates a record of such patient encounter
 9 without using certified EHR technology at
 10 the ambulatory surgical center and subse-
 11 quently inputs the information of such
 12 record of such encounter into certified
 13 EHR technology at a different location,
 14 certified EHR technology shall be treated
 15 as being available at such patient encoun-
 16 ter.”.

17 **SEC. 8. EXEMPTION FROM CERTAIN EHR MEANINGFUL USE**
 18 **REQUIREMENTS FOR CERTAIN ELIGIBLE**
 19 **PROFESSIONALS FOR PURPOSES OF MEDI-**
 20 **CARE PAYMENT ADJUSTMENT.**

21 Section 1848(o)(2) of the Social Security Act (42
 22 U.S.C. 1395w-4(o)(2)), as amended by section 8, is fur-
 23 ther amended by adding at the end the following new sub-
 24 paragraph:

1 “(E) EXCEPTIONS FOR CERTAIN ELIGIBLE
2 PROFESSIONALS.—In applying this paragraph
3 for purposes of subsection (a)(7), the following
4 shall apply:

5 “(i) In the case of an eligible profes-
6 sional who is an anesthesiologist or physi-
7 cian of any other specialty or subspecialty
8 identified through rulemaking as not con-
9 ducting traditional office visits, in order to
10 be treated as a meaningful EHR user for
11 an EHR reporting period under such sub-
12 section for a year such eligible professional
13 shall not be required to—

14 “(I) provide clinical summaries to
15 patients; or

16 “(II) provide patients, upon re-
17 quest, with an electronic copy of the
18 health information of such patients
19 (including diagnostic test results,
20 problem lists, medication lists, and
21 medication allergies).

22 “(ii) In the case of an eligible profes-
23 sional who is an anesthesiologist or physi-
24 cian of any other specialty that does not
25 traditionally order prescription drugs be-

fore administration of such drugs, as specified through rulemaking, in order to be treated as a meaningful EHR user for an EHR reporting period under such subsection for a year such eligible professional shall not be required to utilize EHR technology that provides for checks on prescription drug interactions until—

“(I) EHR technology is available to accommodate checks on interactions between prescription drugs administered in operating rooms or other anesthetizing locations.

The Secretary shall provide notice to each eligible professional to whom clause (i) or (ii) applies of such application.”.

SEC. 9. ADDITIONAL ADMINISTRATIVE PROVISIONS RELATING TO MEDICARE ELIGIBLE PROFESSIONALS’ EHR INCENTIVES.

(a) APPEALS PROCESS.—Section 1848(o)(3) of the Social Security Act (42 U.S.C. 1395w-4(o)(3)) is amended—

(1) in subparagraph (C), by striking “There shall be no” and inserting “Except as provided under subparagraph (E), there shall be no”; and

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

3 “(E) APPEALS PROCESS BEFORE APPLICA-
4 TION OF PENALTIES.—The Secretary shall, by
5 not later than January 1, 2015, establish and
6 have in place a process for eligible professionals
7 to seek, before application of a payment adjust-
8 ment under subsection (a)(7)(A) with respect to
9 such an eligible professional, a review of the de-
10 termination that the eligible professional did
11 not qualify as a meaningful EHR user under
12 paragraph (2).”.

13 (b) SEMI-ANNUAL PROGRESS REPORT.—

14 (1) IN GENERAL.—Not later than six months
15 after the date of the enactment of this Act and every
16 six months thereafter until the date specified in
17 paragraph (2), the Secretary of Health and Human
18 Services, through the Administrator of the Centers
19 for Medicare & Medicaid Services, shall submit to
20 Congress a report that contains the following infor-
21 mation:

22 (A) Improvements in streamlining require-
23 ments among various programs under the Medi-
24 care program under title XVIII of the Social
25 Security Act regarding similar information

1 (such as for purposes of meaningful use of cer-
2 tified EHR technology, physician quality report-
3 ing, and electronic prescribing).

4 (B) Improvements certified EHR tech-
5 nology vendors have made in interoperability.

6 (C) The progress of the adoption of cer-
7 tified EHR technology by physician specialty
8 groups and the percentage of eligible profes-
9 sionals (as defined in section 1848(a)(7)(E))
10 who are eligible for incentive payments under
11 the Medicare program for meaningful use of
12 certified EHR technology.

13 (D) The reporting capabilities of certified
14 national specialty reporting systems (as defined
15 in section 1848(o)(4)(B) of the Social Security
16 Act, as added by section 5) and recommenda-
17 tions for making such registries more inter-
18 active with EHR technology.

19 (2) DATE SPECIFIED.—For purposes of para-
20 graph (1), the date specified in this paragraph is the
21 date on which 75 percent of all eligible professionals
22 (as defined in section 1848(o)(5) of the Social Secu-
23 rity Act) have satisfied the requirements of stage 2
24 of meaningful use of certified EHR technology (as

1 defined by the Secretary of Health and Human
2 Services).

3 **SEC. 10. NON-APPLICATION OF PROVISIONS AND AMEND-**
4 **MENTS TO ELIGIBLE PROFESSIONAL MEDI-**
5 **CARE INCENTIVES FOR CERTAIN MA ORGANI-**
6 **ZATIONS AND MEDICAID INCENTIVES FOR**
7 **ADOPTION AND MEANINGFUL USE OF CER-**
8 **TIFIED EHR TECHNOLOGY.**

9 (a) ELIGIBLE PROFESSIONAL MEDICARE INCEN-
10 TIVES FOR CERTAIN MA ORGANIZATIONS.—Section
11 1853(l) of the Social Security Act (42 U.S.C. 1395w-
12 23(l)) is amended—

13 (1) in paragraph (1), by striking “paragraphs
14 (3) and (4)” and inserting “paragraphs (3), (4), and
15 (9)”; and

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

18 “(9) NON-APPLICATION OF PROVISIONS OF
19 ELECTRONIC HEALTH RECORDS IMPROVEMENT
20 ACT.—The provisions of, including the amendments
21 made by, the Electronic Health Records Improve-
22 ment Act (other than sections 7 and 11 of such Act)
23 shall not apply for purposes of this subsection to
24 qualifying MA organizations or eligible professionals
25 described in paragraph (2) of such organizations.”.

1 (b) MEDICAID INCENTIVES FOR ELIGIBLE INCEN-
2 TIVES.—Section 1903(t) of the Social Security Act is
3 amended by adding at the end the following new para-
4 graph:

5 “(11) The provisions of, including the amendments
6 made by, the Electronic Health Records Improvement Act
7 (other than section 11 of such Act) shall not apply for
8 purposes of this subsection or subsection (a)(3)(F).”.

○