

114TH CONGRESS
2D SESSION

S. 3173

To amend title XVIII of the Social Security Act to provide for a 90-day EHR reporting period for the determination of whether an eligible professional or eligible hospital is a meaningful EHR user and to remove the all-or-nothing approach to meaningful use, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 13, 2016

Mr. THUNE (for himself, Mr. ALEXANDER, Mr. BURR, Mr. ENZI, Mr. ROBERTS, and Mr. CASSIDY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to provide for a 90-day EHR reporting period for the determination of whether an eligible professional or eligible hospital is a meaningful EHR user and to remove the all-or-nothing approach to meaningful use, and for other purposes.

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 “EHR Regulatory Relief
5 Act”.

1 **SEC. 2. 90-DAY EHR REPORTING PERIOD FOR DETERMINA-**
2 **TION OF WHETHER AN ELIGIBLE PROFES-**
3 **SIONAL OR ELIGIBLE HOSPITAL IS A MEAN-**
4 **INGFUL EHR USER.**

5 (a) FOR AN ELIGIBLE PROFESSIONAL FOR THE 2016
6 EHR REPORTING PERIOD FOR THE 2018 PAYMENT AD-
7 JUSTMENT.—Section 1848(a)(7)(E)(ii) of the Social Secu-
8 rity Act (42 U.S.C. 1395w–4(a)(7)(E)(ii)) is amended by
9 adding at the end the following new sentence: “For the
10 EHR reporting period with respect to 2018 or additional
11 years, such term shall also include a 90-day EHR report-
12 ing period, in addition to any period (or periods) specified
13 by the Secretary.”.

14 (b) CONTINUATION OF 90-DAY EHR REPORTING PE-
15 RIOD UNDER MIPS.—Section 1848(o)(5)(B) of the Social
16 Security Act (42 U.S.C. 1395w–4(o)(5)(B)) is amended
17 by adding at the end the following new sentence: “For
18 purposes of determining a performance period under sub-
19 section (q)(4) with respect to the performance category de-
20 scribed in subsection (q)(2)(A)(iv), and for purposes of the
21 performance period described in paragraph (2)(D), for
22 years as the Secretary determines appropriate, such term
23 shall also include a 90-day EHR performance period, in
24 addition to any period (or periods) specified by the Sec-
25 retary.”.

1 (c) FOR AN ELIGIBLE HOSPITAL FOR THE 2016
 2 EHR REPORTING PERIOD AND SUBSEQUENT REPORTING
 3 PERIODS AND PAYMENT ADJUSTMENTS FOR FISCAL
 4 YEAR 2018 AND SUBSEQUENT FISCAL YEARS.—Section
 5 1886(b)(3)(B)(ix)(IV) of the Social Security Act (42
 6 U.S.C. 1395ww(b)(3)(B)(ix)(IV)) is amended by adding at
 7 the end the following new sentence: “For the EHR report-
 8 ing period with respect to fiscal year 2018 and each subse-
 9 quent fiscal year, such term shall also include a 90-day
 10 EHR reporting period (or periods) specified by the Sec-
 11 retary.”.

12 **SEC. 3. REMOVING THE ALL-OR-NOTHING APPROACH TO**
 13 **MEANINGFUL USE.**

14 (a) FOR AN ELIGIBLE PROFESSIONAL.—Section
 15 1848(o)(2) of the Social Security Act (42 U.S.C. 1395w-
 16 4(o)(2)) is amended by adding at the end the following
 17 new subparagraph:

18 “(E) FLEXIBILITY FOR MEANINGFUL USE
 19 DETERMINATIONS FOR ELIGIBLE PROFES-
 20 SIONALS.—In applying clauses (i), (ii), and (iii)
 21 of subparagraph (A), the Secretary may deter-
 22 mine that an eligible professional is a meaning-
 23 ful EHR user for the EHR reporting period for
 24 2018 or additional years as determined by the
 25 Secretary if such eligible professional meets at

1 least 70 percent (or a portion between 50 and
2 70 percent) of the measures established by the
3 Secretary.”.

4 (b) FOR AN ELIGIBLE HOSPITAL.—Section
5 1886(n)(3) of the Social Security Act (42 U.S.C.
6 1395ww(n)(3)) is amended by adding at the end the fol-
7 lowing new paragraph:

8 “(D) FLEXIBILITY FOR MEANINGFUL USE
9 DETERMINATIONS FOR ELIGIBLE HOSPITALS.—
10 In applying clauses (i), (ii), and (iii) of sub-
11 paragraph (A), for purposes of subsection
12 (b)(3)(B)(ix) for an EHR reporting period
13 under such subsection with respect to fiscal
14 years after 2018, the Secretary shall determine
15 that an eligible hospital is a meaningful EHR
16 user for the EHR reporting period for such fis-
17 cal years using a methodology specified by the
18 Secretary through rulemaking based on per-
19 formance with respect to objectives and meas-
20 ures established by the Secretary that is met by
21 an eligible hospital. Such methodology shall
22 allow an eligible hospital to be a meaningful
23 EHR user if they achieve 70 percent (or a por-
24 tion between 50 and 70 percent) of such meas-
25 ures or if they achieve a composite score (as de-

1 terminated by the Secretary through rulemaking)
2 based on such measures.”.

3 (c) CONFORMING AMENDMENTS.—The last sentence
4 of each of sections 1848(o)(2)(A) and 1886(n)(3)(A) of
5 the Social Security Act (42 U.S.C. 1395w–4(o)(2)(A),
6 1395ww(n)(3)(A)) are amended by striking “by” and all
7 that follows before the period at the end.

8 **SEC. 4. EXTENDING FLEXIBILITY IN APPLYING HARDSHIP**
9 **EXCEPTION FOR MEANINGFUL USE.**

10 (a) FOR AN ELIGIBLE PROFESSIONAL FOR THE 2016
11 EHR REPORTING PERIOD FOR THE 2018 PAYMENT AD-
12 JUSTMENT.—Section 1848(a)(7)(B) of the Social Security
13 Act (42 U.S.C. 1395w–4(a)(7)(B)) is amended—

14 (1) by striking “EXCEPTION.—The Secretary”
15 and inserting “EXCEPTION.—

16 “(i) IN GENERAL.—The Secretary”;

17 (2) in the first sentence of clause (i), as added
18 by paragraph (1)—

19 (A) by striking “2017” and inserting
20 “each of 2017 and 2018”; and

21 (B) by striking “March 15, 2016” and in-
22 serting “the applicable date (as defined in
23 clause (ii))”; and

24 (3) by adding at the end the following new
25 clause:

1 “(ii) APPLICABLE DATE DEFINED.—

2 In this subparagraph, the term ‘applicable
3 date’ means—

4 “(I) with respect to the payment
5 adjustment under subparagraph (A)
6 for 2017, March 15, 2016; and

7 “(II) with respect to the payment
8 adjustment under subparagraph (A)
9 for 2018, March 15, 2017.”.

10 (b) FOR AN ELIGIBLE HOSPITAL FOR THE 2016 AND
11 2017 EHR REPORTING PERIODS AND PAYMENT ADJUST-
12 MENTS FOR FISCAL YEARS 2018 AND 2019.—Section
13 1886(b)(3)(B)(ix) of the Social Security Act (42 U.S.C.
14 1395ww(b)(3)(B)(ix)) is amended—

15 (1) in the first sentence of subclause (II)—

16 (A) by striking “fiscal year 2017” and in-
17 serting “each of fiscal years 2017 through
18 2019”; and

19 (B) by striking “April 1, 2016” and insert-
20 ing “the applicable date (as defined in sub-
21 clause (V))”; and

22 (2) by adding at the end the following new sub-
23 clause:

24 “(V) For purposes of this clause, the term ‘applicable
25 date’ means—

1 “(aa) with respect to the payment reduction
2 under subclause (I) for fiscal year 2017, April 1,
3 2016;

4 “(bb) with respect to the payment reduction
5 under subclause (I) for fiscal year 2018, April 1,
6 2017; and

7 “(cc) with respect to the payment reduction
8 under subclause (I) for fiscal year 2019, April 1,
9 2018.”.

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