

(4) Rule of construction

Nothing in this subsection shall be construed to preempt State laws applicable to patient consent for the access of information through a health information exchange (or other relevant platform) that provide protections to patients that are greater than the protections otherwise provided for under applicable Federal law.

(d) Efforts to promote access to health information

The National Coordinator and the Office for Civil Rights of the Department of Health and Human Services shall jointly promote patient access to health information in a manner that would ensure that such information is available in a form convenient for the patient, in a reasonable manner, without burdening the health care provider involved.

(e) Accessibility of patient records**(1) Accessibility and updating of information****(A) In general**

The Secretary, in consultation with the National Coordinator, shall promote policies that ensure that a patient's electronic health information is accessible to that patient and the patient's designees, in a manner that facilitates communication with the patient's health care providers and other individuals, including researchers, consistent with such patient's consent.

(B) Updating education on accessing and exchanging personal health information

To promote awareness that an individual has a right of access to inspect, obtain a copy of, and transmit to a third party a copy of such individual's protected health information pursuant to the Health Information Portability and Accountability Act, Privacy Rule (subpart E of part 164 of title 45, Code of Federal Regulations), the Director of the Office for Civil Rights, in consultation with the National Coordinator, shall assist individuals and health care providers in understanding a patient's rights to access and protect personal health information under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), including providing best practices for requesting personal health information in a computable format, including using patient portals or third-party applications and common cases when a provider is permitted to exchange and provide access to health information.²

(2) Certifying usability for patients

In carrying out certification programs under section 300jj-11(c)(5) of this title, the National Coordinator may require that—

(A) the certification criteria support—

(i) patient access to their electronic health information, including in a single longitudinal format that is easy to understand, secure, and may be updated automatically;

(ii) the patient's ability to electronically communicate patient-reported information (such as family history and medical history); and

(iii) patient access to their personal electronic health information for research at the option of the patient; and

(B) the HIT Advisory Committee develop and prioritize standards, implementation specifications, and certification criteria required to help support patient access to electronic health information, patient usability, and support for technologies that offer patients access to their electronic health information in a single, longitudinal format that is easy to understand, secure, and may be updated automatically.

(July 1, 1944, ch. 373, title XXX, §3009, as added Pub. L. 111-5, div. A, title XIII, §13101, Feb. 17, 2009, 123 Stat. 242; amended Pub. L. 114-255, div. A, title IV, §4006(a), Dec. 13, 2016, 130 Stat. 1181.)

Editorial Notes

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part C of title XI of the Act is classified generally to part C (§1320d et seq.) of subchapter XI of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Health Insurance Portability and Accountability Act of 1996, referred to in subsecs. (a)(2)(A) and (e)(1)(B), is Pub. L. 104-191, Aug. 21, 1996, 110 Stat. 1936. Section 264 of the Act is set out as a note under section 1320d-2 of this title. For complete classification of this Act to the Code, see Short Title of 1996 Amendments note set out under section 201 of this title and Tables.

The Health Information Technology for Economic and Clinical Health Act, referred to in subsec. (a)(2)(A), is title XIII of div. A and title IV of div. B of Pub. L. 111-5, Feb. 17, 2009, 123 Stat. 226, 467, also known as the HITECH Act. Subtitle D of title IV of the Act probably means subtitle D of title XIII of div. A of the Act, which is classified generally to subchapter III (§17921 et seq.) of chapter 156 of this title. Title IV of div. B of the Act does not contain a subtitle D. For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 201 of this title and Tables.

AMENDMENTS

2016—Subsecs. (c) to (e). Pub. L. 114-255 added subsecs. (c) to (e).

§ 300jj-19a. Electronic health record reporting program**(a) Reporting criteria****(1) Convening of stakeholders**

Not later than 1 year after December 13, 2016, the Secretary shall convene stakeholders, as described in paragraph (2), for the purpose of developing the reporting criteria in accordance with paragraph (3).

(2) Development of reporting criteria

The reporting criteria under this subsection shall be developed through a public, transparent process that reflects input from relevant stakeholders, including—

(A) health care providers, including primary care and specialty care health care professionals;

² So in original.

- (B) hospitals and hospital systems;
- (C) health information technology developers;
- (D) patients, consumers, and their advocates;
- (E) data sharing networks, such as health information exchanges;
- (F) authorized certification bodies and testing laboratories;
- (G) security experts;
- (H) relevant manufacturers of medical devices;
- (I) experts in health information technology market economics;
- (J) public and private entities engaged in the evaluation of health information technology performance;
- (K) quality organizations, including the consensus based entity described in section 1395aaa of this title;
- (L) experts in human factors engineering and the measurement of user-centered design; and
- (M) other entities or individuals, as the Secretary determines appropriate.

(3) Considerations for reporting criteria

The reporting criteria developed under this subsection—

- (A) shall include measures that reflect categories including—
 - (i) security;
 - (ii) usability and user-centered design;
 - (iii) interoperability;
 - (iv) conformance to certification testing; and
 - (v) other categories, as appropriate to measure the performance of electronic health record technology;
- (B) may include categories such as—
 - (i) enabling the user to order and view the results of laboratory tests, imaging tests, and other diagnostic tests;
 - (ii) submitting, editing, and retrieving data from registries such as clinician-led clinical data registries;
 - (iii) accessing and exchanging information and data from and through health information exchanges;
 - (iv) accessing and exchanging information and data from medical devices;
 - (v) accessing and exchanging information and data held by Federal, State, and local agencies and other applicable entities useful to a health care provider or other applicable user in the furtherance of patient care;
 - (vi) accessing and exchanging information from other health care providers or applicable users;
 - (vii) accessing and exchanging patient generated information;
 - (viii) providing the patient or an authorized designee with a complete copy of their health information from an electronic record in a computable format;
 - (ix) providing accurate patient information for the correct patient, including exchanging such information, and avoiding the duplication of patients records; and

- (x) other categories regarding performance, accessibility,¹ as the Secretary determines appropriate; and

(C) shall be designed to ensure that small and startup health information technology developers are not unduly disadvantaged by the reporting criteria.

(4) Modifications

After the reporting criteria have been developed under paragraph (3), the Secretary may convene stakeholders and conduct a public comment period for the purpose of modifying the reporting criteria developed under such paragraph.

(b) Participation

As a condition of maintaining certification under section 300jj-11(c)(5)(D) of this title, a developer of certified electronic health records shall submit to an appropriate recipient of a grant, contract, or agreement under subsection (c)(1) responses to the criteria developed under subsection (a), with respect to all certified technology offered by such developer.

(c) Reporting program

(1) In general

Not later than 1 year after December 13, 2016, the Secretary shall award grants, contracts, or agreements to independent entities on a competitive basis to support the convening of stakeholders as described in subsection (a)(2), collect the information required to be reported in accordance with the criteria established as described subsection (a)(3), and develop and implement a process in accordance with paragraph (5) and report such information to the Secretary.

(2) Applications

An independent entity that seeks a grant, contract, or agreement under this subsection shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require, including a description of—

(A) the proposed method for reviewing and summarizing information gathered based on reporting criteria established under subsection (a);

(B) if applicable, the intended focus on a specific subset of certified electronic health record technology users, such as health care providers, including primary care, specialty care, and care provided in rural settings; hospitals and hospital systems; and patients, consumers, and patients and consumer advocates;

(C) the plan for widely distributing reports described in paragraph (6);

(D) the period for which the grant, contract, or agreement is requested, which may be up to 2 years; and

(E) the budget for reporting program participation, and whether the eligible independent entity intends to continue participation after the period of the grant, contract, or agreement.

¹So in original. Probably should be "performance or accessibility,".

(3) Considerations for independent entities

In awarding grants, contracts, and agreements under paragraph (1), the Secretary shall give priority to independent entities with appropriate expertise in health information technology usability, interoperability, and security (especially entities with such expertise in electronic health records) with respect to—

- (A) health care providers, including primary care, specialty care, and care provided in rural settings;
- (B) hospitals and hospital systems; and
- (C) patients, consumers, and patient and consumer advocates.

(4) Limitations**(A) Assessment and redetermination**

Not later than 4 years after December 13, 2016, and every 2 years thereafter, the Secretary, in consultation with stakeholders, shall—

- (i) assess performance of the recipients of the grants, contracts, and agreements under paragraph (1) based on quality and usability of reports described in paragraph (6); and
- (ii) re-determine grants, contracts, and agreements as necessary.

(B) Prohibitions on participation

The Secretary may not award a grant, contract, or cooperative agreement under paragraph (1) to—

- (i) a proprietor of certified health information technology or a business affiliate of such a proprietor;
- (ii) a developer of certified health information technology; or
- (iii) a State or local government agency.

(5) Feedback

Based on reporting criteria established under subsection (a), the recipients of grants, contracts, and agreements under paragraph (1) shall develop and implement a process to collect and verify confidential feedback on such criteria from—

- (A) health care providers, patients, and other users of certified electronic health record technology; and
- (B) developers of certified electronic health record technology.

(6) Reports**(A) Development of reports**

Each recipient of a grant, contract, or agreement under paragraph (1) shall report on the information reported to such recipient pursuant to subsection (a) and the user feedback collected under paragraph (5) by preparing summary reports and detailed reports of such information.

(B) Distribution of reports

Each recipient of a grant, contract, or agreement under paragraph (1) shall submit the reports prepared under subparagraph (A) to the Secretary for public distribution in accordance with subsection (d).

(d) Publication

The Secretary shall distribute widely, as appropriate, and publish, on the Internet website of the Office of the National Coordinator—

(1) the reporting criteria developed under subsection (a); and

(2) the summary and detailed reports under subsection (c)(6).

(e) Review

Each recipient of a grant, contract, or agreement under paragraph (1) shall develop and implement a process through which participating electronic health record technology developers may review and recommend changes to the reports created under subsection (c)(6) for products developed by such developer prior to the publication of such report under subsection (d).

(f) Additional resources

The Secretary may provide additional resources on the Internet website of the Office of the National Coordinator to better inform consumers of health information technology. Such reports may be carried out through partnerships with private organizations with appropriate expertise.

(July 1, 1944, ch. 373, title XXX, § 3009A, as added Pub. L. 114-255, div. A, title IV, § 4002(c), Dec. 13, 2016, 130 Stat. 1161.)

PART B—INCENTIVES FOR THE USE OF HEALTH INFORMATION TECHNOLOGY

§ 300jj-31. Immediate funding to strengthen the health information technology infrastructure**(a) In general**

The Secretary shall, using amounts appropriated under section 300jj-38 of this title, invest in the infrastructure necessary to allow for and promote the electronic exchange and use of health information for each individual in the United States consistent with the goals outlined in the strategic plan developed by the National Coordinator (and as available) under section 300jj-11 of this title. The Secretary shall invest funds through the different agencies with expertise in such goals, such as the Office of the National Coordinator for Health Information Technology, the Health Resources and Services Administration, the Agency for Healthcare Research and Quality, the Centers for Medicare & Medicaid Services, the Centers for Disease Control and Prevention, and the Indian Health Service to support the following:

(1) Health information technology architecture that will support the nationwide electronic exchange and use of health information in a secure, private, and accurate manner, including connecting health information exchanges, and which may include updating and implementing the infrastructure necessary within different agencies of the Department of Health and Human Services to support the electronic use and exchange of health information.

(2) Development and adoption of appropriate certified electronic health records for categories of health care providers not eligible for support under title XVIII or XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.] for the adoption of such records.

(3) Training on and dissemination of information on best practices to integrate health information technology, including electronic