

111TH CONGRESS
1ST SESSION

H. R. 629

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

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

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”.

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
11 to which broadband service capability is deployed and
12 available from a commercial provider or public provider
13 throughout each State.

14 (b) PUBLIC AVAILABILITY AND INTERACTIVITY.—
15 Not later than 2 years after the date of enactment of this
16 Act, the NTIA shall make the broadband inventory map
17 developed and maintained pursuant to this section acces-
18 sible by the public on a World Wide website of the NTIA
19 in a form that is interactive and searchable.

20 **SEC. 1002. WIRELESS AND BROADBAND DEPLOYMENT**
21 **GRANT PROGRAMS.**

22 (a) GRANTS AUTHORIZED.—

23 (1) IN GENERAL.—The National Telecommuni-
24 cations and Information Administration (“NTIA”)
25 is authorized to carry out a program to award

1 grants to eligible entities for the non-recurring costs
2 associated with the deployment of broadband infra-
3 structure in rural, suburban, and urban areas, in ac-
4 cordance with the requirements of this section.

5 (2) PROGRAM WEBSITE.—The NTIA shall de-
6 velop and maintain a website to make publicly avail-
7 able information about the program described in
8 paragraph (1), including—

9 (A) each prioritization report submitted by
10 a State under subsection (b);

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

14 (C) the status of each such application,
15 whether approved, denied, or pending.

16 (b) STATE PRIORITIES.—

17 (1) PRIORITIES REPORT SUBMISSION.—Not
18 later than 75 days after the date of enactment of
19 this section, each State intending to participate in
20 the program under this section shall submit to the
21 NTIA a report indicating the geographic areas of
22 the State which—

23 (A) for the purposes of determining the
24 need for Wireless Deployment Grants under

1 subsection (c), the State considers to have the
2 greatest priority for—

3 (i) wireless voice service in unserved
4 areas; and

5 (ii) advanced wireless broadband serv-
6 ice in underserved areas; and

7 (B) for the purposes of determining the
8 need for Broadband Deployment Grants under
9 subsection (d), the State considers to have the
10 greatest priority for—

11 (i) basic broadband service in
12 unserved areas; and

13 (ii) advanced broadband service in un-
14 derserved areas.

15 (2) LIMITATION.—The unserved and under-
16 served areas identified by a State in the report re-
17 quired by this subsection shall not represent, in the
18 aggregate, more than 20 percent of the population
19 or of the geographic area of such State.

20 (c) WIRELESS DEPLOYMENT GRANTS.—

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

1 provision of wireless voice service or advanced wire-
2 less broadband service to end users in designated
3 areas.

4 (2) GRANT DISTRIBUTION.—The NTIA shall
5 seek to distribute grants, to the extent possible, so
6 that 25 percent of the grants awarded under this
7 subsection shall be awarded to eligible entities for
8 providing wireless voice service to unserved areas
9 and 75 percent of grants awarded under this sub-
10 section shall be awarded to eligible entities for pro-
11 viding advanced wireless broadband service to under-
12 served areas.

13 (d) BROADBAND DEPLOYMENT GRANTS.—

14 (1) AUTHORIZED ACTIVITY.—The NTIA shall
15 award Broadband Deployment Grants in accordance
16 with this subsection from amounts authorized for
17 Broadband Deployment Grants by this subtitle to el-
18 ible entities to deploy necessary infrastructure for
19 the provision of basic broadband service or advanced
20 broadband service to end users in designated areas.

21 (2) GRANT DISTRIBUTION.—The NTIA shall
22 seek to distribute grants, to the extent possible, so
23 that 25 percent of the grants awarded under this
24 subsection shall be awarded to eligible entities for
25 providing basic broadband service to unserved areas

1 and 75 percent of grants awarded under this sub-
2 section shall be awarded to eligible entities for pro-
3 viding advanced broadband service to underserved
4 areas.

5 (e) GRANT REQUIREMENTS.—The NTLA shall—

6 (1) adopt rules to protect against unjust enrich-
7 ment; and

8 (2) ensure that grant recipients—

9 (A) meet buildout requirements;

10 (B) maximize use of the supported infra-
11 structure by the public;

12 (C) operate basic and advanced broadband
13 service networks on an open access basis;

14 (D) operate advanced wireless broadband
15 service on a wireless open access basis; and

16 (E) adhere to the principles contained in
17 the Federal Communications Commission’s
18 broadband policy statement (FCC 05–151,
19 adopted August 5, 2005).

20 (f) APPLICATIONS.—

21 (1) SUBMISSION.—To be considered for a grant
22 awarded under subsection (e) or (d), an eligible enti-
23 ty shall submit to the NTLA an application at such
24 time, in such manner, and containing such informa-

1 tion and assurances as the NTIA may require. Such
2 an application shall include—

3 (A) a cost-study estimate for serving the
4 particular geographic area to be served by the
5 entity;

6 (B) a proposed build-out schedule to resi-
7 dential households and small businesses in the
8 area;

9 (C) for applicants for Wireless Deployment
10 Grants under subsection (c), a build-out sched-
11 ule for geographic coverage of such areas; and

12 (D) any other requirements the NTIA
13 deems necessary.

14 (2) SELECTION.—

15 (A) NOTIFICATION.—The NTIA shall no-
16 tify each eligible entity that has submitted a
17 complete application whether the entity has
18 been approved or denied for a grant under this
19 section in a timely fashion.

20 (B) GRANT DISTRIBUTION CONSIDER-
21 ATIONS.—In awarding grants under this sec-
22 tion, the NTIA shall, to the extent practical—

23 (i) award not less than one grant in
24 each State;

1 (ii) give substantial weight to whether
2 an application is from an eligible entity to
3 deploy infrastructure in an area that is an
4 area—

5 (I) identified by a State in a re-
6 port submitted under subsection (b);
7 or

8 (II) in which the NTIA deter-
9 mines there will be a significant
10 amount of public safety or emergency
11 response use of the infrastructure;
12 and

13 (iii) consider whether an application
14 from an eligible entity to deploy infrastruc-
15 ture in an area—

16 (I) will, if approved, increase the
17 affordability of, or subscribership to,
18 service to the greatest population of
19 underserved users in the area;

20 (II) will, if approved, enhance
21 service for health care delivery, edu-
22 cation, or children to the greatest pop-
23 ulation of underserved users in the
24 area;

1 (III) contains concrete plans for
2 enhancing computer ownership or
3 computer literacy in the area;

4 (IV) is from a recipient of more
5 than 20 percent matching grants from
6 State, local, or private entities for
7 service in the area and the extent of
8 such commitment; and

9 (V) will, if approved, result in
10 unjust enrichment because the eligible
11 entity has applied for, or intends to
12 apply for, support for the non-recur-
13 ring costs through another Federal
14 program for service in the area.

15 (g) COORDINATION AND CONSULTATION.—The
16 NTIA shall coordinate with the Federal Communications
17 Commission and shall consult with other appropriate Fed-
18 eral agencies in implementing this section.

19 (h) REPORT REQUIRED.—The NTIA shall submit an
20 annual report to the Committee on Energy and Commerce
21 of the House of Representatives and the Committee on
22 Commerce, Science, and Transportation of the Senate for
23 5 years assessing the impact of the grants funded under
24 this section on the basis of the objectives and criteria de-
25 scribed in subsection (f)(2)(B)(iii).

1 (i) RULEMAKING AUTHORITY.—The NTIA shall have
2 the authority to prescribe such rules as necessary to carry
3 out the purposes of this section.

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

5 (1) the term “advanced broadband service”
6 means a service delivering data to the end user
7 transmitted at a speed of at least 45 megabits per
8 second downstream and at least 15 megabits per
9 second upstream;

10 (2) the term “advanced wireless broadband
11 service” means a wireless service delivering to the
12 end user data transmitted at a speed of at least 3
13 megabits per second downstream and at least 1
14 megabit per second upstream over an end-to-end
15 internet protocol wireless network;

16 (3) the term “basic broadband service” means
17 a service delivering data to the end user transmitted
18 at a speed of at least 5 megabits per second down-
19 stream and at least 1 megabit per second upstream;

20 (4) the term “eligible entity” means—

21 (A) a provider of wireless voice service, ad-
22 vanced wireless broadband service, basic
23 broadband service, or advanced broadband serv-
24 ice, including a satellite carrier that provides
25 any such service;

1 (B) a State or unit of local government, or
2 agency or instrumentality thereof, that is or in-
3 tends to be a provider of any such service; and

4 (C) any other entity, including construc-
5 tion companies, tower companies, backhaul
6 companies, or other service providers, that the
7 NTIA authorizes by rule to participate in the
8 programs under this section, if such other enti-
9 ty is required to provide access to the supported
10 infrastructure on a neutral, reasonable basis to
11 maximize use;

12 (5) the term “State” includes the District of
13 Columbia and the territories and possessions;

14 (6) the term “underserved area” shall be de-
15 fined by the Federal Communications Commission
16 not later than 45 days after the date of enactment
17 of this section;

18 (7) the term “unserved area” shall be defined
19 by the Federal Communications Commission not
20 later than 45 days after the date of enactment of
21 this section;

22 (8) the term “wireless voice service” means the
23 provision of two-way, real-time, voice communica-
24 tions using a mobile service;

1 (9) the term “open access” shall be defined by
2 the Federal Communications Commission not later
3 than 45 days after the date of enactment of this sec-
4 tion; and

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

9 **TITLE II—ENERGY**

10 **Subtitle A—Energy Provisions**

11 **SEC. 2001. TECHNICAL CORRECTIONS TO THE ENERGY**

12 **INDEPENDENCE AND SECURITY ACT OF 2007.**

13 (a) Section 543(a) of the Energy Independence and
14 Security Act of 2007 (42 U.S.C. 17153(a)) is amended—

15 (1) by redesignating paragraphs (2) through
16 (4) as paragraphs (3) through (5), respectively; and

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

19 “(1) 34 percent to eligible units of local govern-
20 ment—alternative 1, in accordance with subsection
21 (b);

22 “(2) 34 percent to eligible units of local govern-
23 ment—alternative 2, in accordance with subsection
24 (b);”.

1 (b) Section 543(b) of the Energy Independence and
2 Security Act of 2007 (42 U.S.C. 17153(b)) is amended
3 by striking “subsection (a)(1)” and inserting “subsection
4 (a)(1) or (2)”.

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

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

11 Title XIII of the Energy Independence and Security
12 Act of 2007 (42 U.S.C. 17381 and following) is amended
13 as follows:

14 (1) By amending subparagraph (A) of section
15 1304(b)(3) to read as follows:

16 “(A) IN GENERAL.—In carrying out the
17 initiative, the Secretary shall provide financial
18 support to smart grid demonstration projects in
19 urban, suburban, and rural areas, including
20 areas where electric system assets are controlled
21 by tax-exempt entities and areas where electric
22 system assets are controlled by investor-owned
23 utilities.”.

24 (2) By amending subparagraph (C) of section
25 1304(b)(3) to read as follows:

1 “(C) FEDERAL SHARE OF COST OF TECH-
2 NOLOGY INVESTMENTS.—The Secretary shall
3 provide to an electric utility described in sub-
4 paragraph (B) or to other parties financial as-
5 sistance for use in paying an amount equal to
6 not more than 50 percent of the cost of quali-
7 fying advanced grid technology investments
8 made by the electric utility or other party to
9 carry out a demonstration project.”.

10 (3) By inserting after section 1304(b)(3)(D)
11 the following new subparagraphs:

12 “(E) AVAILABILITY OF DATA.—The Sec-
13 retary shall establish and maintain a smart grid
14 information clearinghouse in a timely manner
15 which will make data from smart grid dem-
16 onstration projects and other sources available
17 to the public. As a condition of receiving finan-
18 cial assistance under this subsection, a utility or
19 other participant in a smart grid demonstration
20 project shall provide such information as the
21 Secretary may require to become available
22 through the smart grid information clearing-
23 house in the form and within the timeframes as
24 directed by the Secretary. The Secretary shall
25 assure that business proprietary information

1 and individual customer information is not in-
2 cluded in the information made available
3 through the clearinghouse.

4 “(F) OPEN INTERNET-BASED PROTOCOLS
5 AND STANDARDS.—The Secretary shall require
6 as a condition of receiving funding under this
7 subsection that demonstration projects utilize
8 open Internet-based protocols and standards if
9 available.”.

10 (4) By amending paragraph (2) of section
11 1304(e) to read as follows:

12 “(2) to carry out subsection (b), such sums as
13 may be necessary.”.

14 (5) By amending subsection (a) of section 1306
15 by striking “reimbursement of one-fifth (20 per-
16 cent)” and inserting “grants of up to one-half (50
17 percent)”.

18 (6) By striking the last sentence of subsection
19 (b)(9) of section 1306.

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

22 (8) By amending subsection (e) of section 1306
23 to read as follows:

24 “(e) PROCEDURES AND RULES.—The Secretary
25 shall—

1 “(1) establish within 60 days after the enact-
2 ment of the American Recovery and Reinvestment
3 Act of 2009 procedures by which applicants can ob-
4 tain grants of not more than one-half of their docu-
5 mented costs;

6 “(2) require as a condition of receiving a grant
7 under this section that grant recipients utilize open
8 Internet-based protocols and standards if available;

9 “(3) establish procedures to ensure that there is
10 no duplication or multiple payment or recovery for
11 the same investment or costs, that the grant goes to
12 the party making the actual expenditures for quali-
13 fying smart grid investments, and that the grants
14 made have significant effect in encouraging and fa-
15 cilitating the development of a smart grid;

16 “(4) maintain public records of grants made,
17 recipients, and qualifying smart grid investments
18 which have received grants;

19 “(5) establish procedures to provide advance
20 payment of moneys up to the full amount of the
21 grant award; and

22 “(6) have and exercise the discretion to deny
23 grants for investments that do not qualify in the
24 reasonable judgment of the Secretary.”.

1 **SEC. 2003. RENEWABLE ENERGY AND ELECTRIC POWER**
2 **TRANSMISSION LOAN GUARANTEE PROGRAM.**

3 (a) AMENDMENT.—Title XVII of the Energy Policy
4 Act of 2005 (42 U.S.C. 16511 et seq.) is amended by add-
5 ing the following at the end:

6 **“SEC. 1705. TEMPORARY PROGRAM FOR RAPID DEPLOY-**
7 **MENT OF RENEWABLE ENERGY AND ELEC-**
8 **TRIC POWER TRANSMISSION PROJECTS.**

9 “(a) IN GENERAL.—Notwithstanding section 1703,
10 the Secretary may make guarantees under this section
11 only for commercial technology projects under subsection
12 (b) that will commence construction not later than Sep-
13 tember 30, 2011.

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

16 “(1) Renewable energy systems that generate
17 electricity.

18 “(2) Electric power transmission systems, in-
19 cluding upgrading and reconductoring projects.

20 “(c) FACTORS RELATING TO ELECTRIC POWER
21 TRANSMISSION SYSTEMS.—In determining to make guar-
22 antees to projects described in subsection (b)(2), the Sec-
23 retary shall consider the following factors:

24 “(1) The viability of the project without guar-
25 antees.

1 “(2) The availability of other Federal and State
2 incentives.

3 “(3) The importance of the project in meeting
4 reliability needs.

5 “(4) The effect of the project in meeting a
6 State or region’s environment (including climate
7 change) and energy goals.

8 “(d) WAGE RATE REQUIREMENTS.—The Secretary
9 shall require that each recipient of support under this sec-
10 tion provide reasonable assurance that all laborers and
11 mechanics employed in the performance of the project for
12 which the assistance is provided, including those employed
13 by contractors or subcontractors, will be paid wages at
14 rates not less than those prevailing on similar work in the
15 locality as determined by the Secretary of Labor in accord-
16 ance with subchapter IV of chapter 31 of part A of subtitle
17 II of title 40, United States Code (commonly referred to
18 as the ‘Davis-Bacon Act’).

19 “(e) SUNSET.—The authority to enter into guaran-
20 tees under this section shall expire on September 30,
21 2011.”.

22 (b) TABLE OF CONTENTS AMENDMENT.—The table
23 of contents for the Energy Policy Act of 2005 is amended
24 by inserting after the item relating to section 1704 the
25 following new item:

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

1 **SEC. 2004. WEATHERIZATION ASSISTANCE PROGRAM**
2 **AMENDMENTS.**

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

7 (b) ASSISTANCE LEVEL PER DWELLING UNIT.—Sec-
8 tion 415(c)(1) of the Energy Conservation and Production
9 Act (42 U.S.C. 6865(c)(1)) is amended by striking
10 “\$2,500” and inserting “\$5,000”.

11 (c) EFFECTIVE USE OF FUNDS.—In providing funds
12 made available by this Act for the Weatherization Assist-
13 ance Program, the Secretary may encourage States to give
14 priority to using such funds for the most cost-effective ef-
15 ficiency activities, which may include insulation of attics,
16 if, in the Secretary’s view, such use of funds would in-
17 crease the effectiveness of the program.

18 **SEC. 2005. RENEWABLE ELECTRICITY TRANSMISSION**
19 **STUDY.**

20 In completing the 2009 National Electric Trans-
21 mission Congestion Study, the Secretary of Energy shall
22 include—

23 (1) an analysis of the significant potential
24 sources of renewable energy that are constrained in

1 accessing appropriate market areas by lack of ade-
2 quate transmission capacity;

3 (2) an analysis of the reasons for failure to de-
4 velop the adequate transmission capacity;

5 (3) recommendations for achieving adequate
6 transmission capacity; and

7 (4) an explanation of assumptions and projec-
8 tions made in the Study, including—

9 (A) assumptions and projections relating
10 to energy efficiency improvements in each load
11 center;

12 (B) assumptions and projections regarding
13 the location and type of projected new genera-
14 tion capacity; and

15 (C) assumptions and projections regarding
16 projected deployment of distributed generation
17 infrastructure.

18 **Subtitle B—Additional Energy** 19 **Provisions**

20 **SEC. 2101. ADDITIONAL STATE ENERGY GRANTS.**

21 (a) IN GENERAL.—Amounts appropriated for the
22 State Energy Program under American Recovery and Re-
23 investment Act of 2009 shall be available to the Secretary
24 of Energy for making additional grants under part D of
25 title III of the Energy Policy and Conservation Act (42

1 U.S.C. 6321 et seq.). The Secretary shall make grants
2 under this section in excess of the base allocation estab-
3 lished for a State under regulations issued pursuant to
4 the authorization provided in section 365(f) of such Act
5 only if the governor of the recipient State notifies the Sec-
6 retary of Energy that the governor will seek, to the extent
7 of his or her authority, to ensure that each of the following
8 will occur:

9 (1) The applicable State regulatory authority
10 will implement the following regulatory policies for
11 each electric and gas utility with respect to which
12 the State regulatory authority has ratemaking au-
13 thority:

14 (A) Policies that ensure that a utility's re-
15 covery of prudent fixed costs of service is timely
16 and independent of its retail sales, without in
17 the process shifting prudent costs from variable
18 to fixed charges. This cost shifting constraint
19 shall not apply to rate designs adopted prior to
20 the date of enactment of this Act.

21 (B) Cost recovery for prudent investments
22 by utilities in energy efficiency.

23 (C) An earnings opportunity for utilities
24 associated with cost-effective energy efficiency
25 savings.

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

4 (A) A building energy code (or codes) for
5 residential buildings that meets or exceeds the
6 most recently published International Energy
7 Conservation Code, or achieves equivalent or
8 greater energy savings.

9 (B) A building energy code (or codes) for
10 commercial buildings throughout the State that
11 meets or exceeds the ANSI/ASHRAE/IESNA
12 Standard 90.1–2007, or achieves equivalent or
13 greater energy savings.

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

23 (b) STATE MATCH.—The State cost share require-
24 ment under the item relating to “DEPARTMENT OF
25 ENERGY; energy conservation” in title II of the Depart-

1 ment of the Interior and Related Agencies Appropriations
2 Act, 1985 (42 U.S.C. 6323a; 98 Stat. 1861) shall not
3 apply to assistance provided under this section.

4 (c) EQUIPMENT AND MATERIALS FOR ENERGY EFFI-
5 CIENCY MEASURES.—No limitation on the percentage of
6 funding that may be used for the purchase and installation
7 of equipment and materials for energy efficiency measures
8 under grants provided under part D of title III of the En-
9 ergy Policy and Conservation Act (42 U.S.C. 6321 et seq.)
10 shall apply to assistance provided under this section.

11 **SEC. 2102. INAPPLICABILITY OF LIMITATION.**

12 The limitations in section 399A(f)(2), (3), and (4)
13 of the Energy Policy and Conservation Act (42 U.S.C.
14 6371h–1(f)(2), (3), and (4)) shall not apply to grants
15 funded with appropriations provided by this Act, except
16 that such grant funds shall be available for not more than
17 an amount equal to 80 percent of the costs of the project
18 for which the grant is provided.

1 **TITLE III—HEALTH INSURANCE**
 2 **ASSISTANCE FOR THE UNEM-**
 3 **EMPLOYED**

4 **SEC. 3001. SHORT TITLE AND TABLE OF CONTENTS OF**
 5 **TITLE.**

6 (a) SHORT TITLE OF TITLE.—This title may be cited
 7 as the “Health Insurance Assistance for the Unemployed
 8 Act of 2009”.

9 (b) TABLE OF CONTENTS OF TITLE.—The table of
 10 contents 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
 benefits for older or long-term employees.

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

11 **SEC. 3002. PREMIUM ASSISTANCE FOR COBRA BENEFITS**
 12 **AND EXTENSION OF COBRA BENEFITS FOR**
 13 **OLDER OR LONG-TERM EMPLOYEES.**

14 (a) PREMIUM ASSISTANCE FOR COBRA CONTINU-
 15 ATION COVERAGE FOR INDIVIDUALS AND THEIR FAMI-
 16 LIES.—

17 (1) PROVISION OF PREMIUM ASSISTANCE.—

18 (A) REDUCTION OF PREMIUMS PAY-
 19 ABLE.—In the case of any premium for a pe-
 20 riod of coverage beginning on or after the date
 21 of the enactment of this Act for COBRA con-
 22 tinuation coverage with respect to any assist-
 23 ance eligible individual, such individual shall be

1 treated for purposes of any COBRA continu-
2 ation provision as having paid the amount of
3 such premium if such individual pays 35 per-
4 cent of the amount of such premium (as deter-
5 mined without regard to this subsection).

6 (B) PREMIUM REIMBURSEMENT.—For pro-
7 visions providing the balance of such premium,
8 see section 6431 of the Internal Revenue Code
9 of 1986, as added by paragraph (12).

10 (2) LIMITATION OF PERIOD OF PREMIUM AS-
11 SISTANCE.—

12 (A) IN GENERAL.—Paragraph (1)(A) shall
13 not apply with respect to any assistance eligible
14 individual for months of coverage beginning on
15 or after the earlier of—

16 (i) the first date that such individual
17 is eligible for coverage under any other
18 group health plan (other than coverage
19 consisting of only dental, vision, coun-
20 seling, or referral services (or a combina-
21 tion thereof), coverage under a health re-
22 imbursement arrangement or a health
23 flexible spending arrangement, or coverage
24 of treatment that is furnished in an on-site
25 medical facility maintained by the em-

1 ployer and that consists primarily of first-
2 aid services, prevention and wellness care,
3 or similar care (or a combination thereof))
4 or is eligible for benefits under title XVIII
5 of the Social Security Act, or

6 (ii) the earliest of—

7 (I) the date which is 12 months
8 after the first day of first month that
9 paragraph (1)(A) applies with respect
10 to such individual,

11 (II) the date following the expira-
12 tion of the maximum period of con-
13 tinuation coverage required under the
14 applicable COBRA continuation cov-
15 erage provision, or

16 (III) the date following the expi-
17 ration of the period of continuation
18 coverage allowed under paragraph
19 (4)(B)(ii).

20 (B) TIMING OF ELIGIBILITY FOR ADDI-
21 TIONAL COVERAGE.—For purposes of subpara-
22 graph (A)(i), an individual shall not be treated
23 as eligible for coverage under a group health
24 plan before the first date on which such indi-
25 vidual could be covered under such plan.

1 (C) NOTIFICATION REQUIREMENT.—An
2 assistance eligible individual shall notify in writ-
3 ing the group health plan with respect to which
4 paragraph (1)(A) applies if such paragraph
5 ceases to apply by reason of subparagraph
6 (A)(i). Such notice shall be provided to the
7 group health plan in such time and manner as
8 may be specified by the Secretary of Labor.

9 (3) ASSISTANCE ELIGIBLE INDIVIDUAL.—For
10 purposes of this section, the term “assistance eligible
11 individual” means any qualified beneficiary if—

12 (A) at any time during the period that be-
13 gins with September 1, 2008, and ends with
14 December 31, 2009, such qualified beneficiary
15 is eligible for COBRA continuation coverage,

16 (B) such qualified beneficiary elects such
17 coverage, and

18 (C) the qualifying event with respect to the
19 COBRA continuation coverage consists of the
20 involuntary termination of the covered employ-
21 ee’s employment and occurred during such pe-
22 riod.

23 (4) EXTENSION OF ELECTION PERIOD AND EF-
24 FECT ON COVERAGE.—

1 (A) IN GENERAL.—Notwithstanding sec-
2 tion 605(a) of the Employee Retirement Income
3 Security Act of 1974, section 4980B(f)(5)(A) of
4 the Internal Revenue Code of 1986, section
5 2205(a) of the Public Health Service Act, and
6 section 8905a(c)(2) of title 5, United States
7 Code, in the case of an individual who is a
8 qualified beneficiary described in paragraph
9 (3)(A) as of the date of the enactment of this
10 Act and has not made the election referred to
11 in paragraph (3)(B) as of such date, such indi-
12 vidual may elect the COBRA continuation cov-
13 erage under the COBRA continuation coverage
14 provisions containing such sections during the
15 60-day period commencing with the date on
16 which the notification required under paragraph
17 (7)(C) is provided to such individual.

18 (B) COMMENCEMENT OF COVERAGE; NO
19 REACH-BACK.—Any COBRA continuation cov-
20 erage elected by a qualified beneficiary during
21 an extended election period under subparagraph
22 (A)—

23 (i) shall commence on the date of the
24 enactment of this Act, and

1 (ii) shall not extend beyond the period
2 of COBRA continuation coverage that
3 would have been required under the appli-
4 cable COBRA continuation coverage provi-
5 sion if the coverage had been elected as re-
6 quired under such provision.

7 (C) PREEXISTING CONDITIONS.—With re-
8 spect to a qualified beneficiary who elects
9 COBRA continuation coverage pursuant to sub-
10 paragraph (A), the period—

11 (i) beginning on the date of the quali-
12 fying event, and

13 (ii) ending with the day before the
14 date of the enactment of this Act,

15 shall be disregarded for purposes of deter-
16 mining the 63-day periods referred to in section
17 701(2) of the Employee Retirement Income
18 Security Act of 1974, section 9801(c)(2) of the
19 Internal Revenue Code of 1986, and section
20 2701(c)(2) of the Public Health Service Act.

21 (5) EXPEDITED REVIEW OF DENIALS OF PRE-
22 MIUM ASSISTANCE.—In any case in which an indi-
23 vidual requests treatment as an assistance eligible
24 individual and is denied such treatment by the group
25 health plan by reason of such individual's ineligi-

1 bility for COBRA continuation coverage, the Sec-
2 retary of Labor (or the Secretary of Health and
3 Human services in connection with COBRA continu-
4 ation coverage which is provided other than pursu-
5 ant to part 6 of subtitle B of title I of the Employee
6 Retirement Income Security Act of 1974), in con-
7 sultation with the Secretary of the Treasury, shall
8 provide for expedited review of such denial. An indi-
9 vidual shall be entitled to such review upon applica-
10 tion to such Secretary in such form and manner as
11 shall be provided by such Secretary. Such Secretary
12 shall make a determination regarding such individ-
13 ual's eligibility within 10 business days after receipt
14 of such individual's application for review under this
15 paragraph.

16 (6) DISREGARD OF SUBSIDIES FOR PURPOSES
17 OF FEDERAL AND STATE PROGRAMS.—Notwith-
18 standing any other provision of law, any premium
19 reduction with respect to an assistance eligible indi-
20 vidual under this subsection shall not be considered
21 income or resources in determining eligibility for, or
22 the amount of assistance or benefits provided under,
23 any other public benefit provided under Federal law
24 or the law of any State or political subdivision there-
25 of.

1 (7) NOTICES TO INDIVIDUALS.—

2 (A) GENERAL NOTICE.—

3 (i) IN GENERAL.—In the case of no-
4 tices provided under section 606(4) of the
5 Employee Retirement Income Security Act
6 of 1974 (29 U.S.C. 1166(4)), section
7 4980B(f)(6)(D) of the Internal Revenue
8 Code of 1986, section 2206(4) of the Pub-
9 lic Health Service Act (42 U.S.C. 300bb-
10 6(4)), or section 8905a(f)(2)(A) of title 5,
11 United States Code, with respect to indi-
12 viduals who, during the period described in
13 paragraph (3)(A), become entitled to elect
14 COBRA continuation coverage, such no-
15 tices shall include an additional notifica-
16 tion to the recipient of the availability of
17 premium reduction with respect to such
18 coverage under this subsection.

19 (ii) ALTERNATIVE NOTICE.—In the
20 case of COBRA continuation coverage to
21 which the notice provision under such sec-
22 tions does not apply, the Secretary of
23 Labor, in consultation with the Secretary
24 of the Treasury and the Secretary of
25 Health and Human Services, shall, in co-

1 ordination with administrators of the
2 group health plans (or other entities) that
3 provide or administer the COBRA continu-
4 ation coverage involved, provide rules re-
5 quiring the provision of such notice.

6 (iii) FORM.—The requirement of the
7 additional notification under this subpara-
8 graph may be met by amendment of exist-
9 ing notice forms or by inclusion of a sepa-
10 rate document with the notice otherwise
11 required.

12 (B) SPECIFIC REQUIREMENTS.—Each ad-
13 ditional notification under subparagraph (A)
14 shall include—

15 (i) the forms necessary for estab-
16 lishing eligibility for premium reduction
17 under this subsection,

18 (ii) the name, address, and telephone
19 number necessary to contact the plan ad-
20 ministrator and any other person main-
21 taining relevant information in connection
22 with such premium reduction,

23 (iii) a description of the extended elec-
24 tion period provided for in paragraph
25 (4)(A),

1 (iv) a description of the obligation of
2 the qualified beneficiary under paragraph
3 (2)(C) to notify the plan providing continu-
4 ation coverage of eligibility for subsequent
5 coverage under another group health plan
6 or eligibility for benefits under title XVIII
7 of the Social Security Act and the penalty
8 provided for failure to so notify the plan,
9 and

10 (v) a description, displayed in a
11 prominent manner, of the qualified bene-
12 ficiary's right to a reduced premium and
13 any conditions on entitlement to the re-
14 duced premium.

15 (C) NOTICE RELATING TO RETROACTIVE
16 COVERAGE.—In the case of an individual de-
17 scribed in paragraph (3)(A) who has elected
18 COBRA continuation coverage as of the date of
19 enactment of this Act or an individual described
20 in paragraph (4)(A), the administrator of the
21 group health plan (or other entity) involved
22 shall provide (within 60 days after the date of
23 enactment of this Act) for the additional notifi-
24 cation required to be provided under subpara-
25 graph (A).

1 (D) MODEL NOTICES.—Not later than 30
2 days after the date of enactment of this Act,
3 the Secretary of the Labor, in consultation with
4 the Secretary of the Treasury and the Secretary
5 of Health and Human Services, shall prescribe
6 models for the additional notification required
7 under this paragraph.

8 (8) SAFEGUARDS.—The Secretary of the Treas-
9 ury shall provide such rules, procedures, regulations,
10 and other guidance as may be necessary and appro-
11 priate to prevent fraud and abuse under this sub-
12 section.

13 (9) OUTREACH.—The Secretary of Labor, in
14 consultation with the Secretary of the Treasury and
15 the Secretary of Health and Human Services, shall
16 provide outreach consisting of public education and
17 enrollment assistance relating to premium reduction
18 provided under this subsection. Such outreach shall
19 target employers, group health plan administrators,
20 public assistance programs, States, insurers, and
21 other entities as determined appropriate by such
22 Secretaries. Such outreach shall include an initial
23 focus on those individuals electing continuation cov-
24 erage who are referred to in paragraph (7)(C). In-
25 formation on such premium reduction, including en-

1 rollment, shall also be made available on website of
2 the Departments of Labor, Treasury, and Health
3 and Human Services.

4 (10) DEFINITIONS.—For purposes of this sub-
5 section—

6 (A) ADMINISTRATOR.—The term “admin-
7 istrator” has the meaning given such term in
8 section 3(16) of the Employee Retirement In-
9 come Security Act of 1974.

10 (B) COBRA CONTINUATION COVERAGE.—
11 The term “COBRA continuation coverage”
12 means continuation coverage provided pursuant
13 to part 6 of subtitle B of title I of the Em-
14 ployee Retirement Income Security Act of 1974
15 (other than under section 609), title XXII of
16 the Public Health Service Act, section 4980B of
17 the Internal Revenue Code of 1986 (other than
18 subsection (f)(1) of such section insofar as it
19 relates to pediatric vaccines), or section 8905a
20 of title 5, United States Code, or under a State
21 program that provides continuation coverage
22 comparable to such continuation coverage. Such
23 term does not include coverage under a health
24 flexible spending arrangement.

1 (C) COBRA CONTINUATION PROVISION.—
2 The term “COBRA continuation provision”
3 means the provisions of law described in sub-
4 paragraph (B).

5 (D) COVERED EMPLOYEE.—The term
6 “covered employee” has the meaning given such
7 term in section 607(2) of the Employee Retirement
8 Income Security Act of 1974.

9 (E) QUALIFIED BENEFICIARY.—The term
10 “qualified beneficiary” has the meaning given
11 such term in section 607(3) of the Employee
12 Retirement Income Security Act of 1974.

13 (F) GROUP HEALTH PLAN.—The term
14 “group health plan” has the meaning given
15 such term in section 607(1) of the Employee
16 Retirement Income Security Act of 1974.

17 (G) STATE.—The term “State” includes
18 the District of Columbia, the Commonwealth of
19 Puerto Rico, the Virgin Islands, Guam, Amer-
20 ican Samoa, and the Commonwealth of the
21 Northern Mariana Islands.

22 (11) REPORTS.—

23 (A) INTERIM REPORT.—The Secretary of
24 the Treasury shall submit an interim report to
25 the Committee on Education and Labor, the

1 Committee on Ways and Means, and the Com-
2 mittee on Energy and Commerce of the House
3 of Representatives and the Committee on
4 Health, Education, Labor, and Pensions and
5 the Committee on Finance of the Senate re-
6 garding the premium reduction provided under
7 this subsection that includes—

8 (i) the number of individuals provided
9 such assistance as of the date of the re-
10 port; and

11 (ii) the total amount of expenditures
12 incurred (with administrative expenditures
13 noted separately) in connection with such
14 assistance as of the date of the report.

15 (B) FINAL REPORT.—As soon as prac-
16 ticable after the last period of COBRA continu-
17 ation coverage for which premium reduction is
18 provided under this section, the Secretary of the
19 Treasury shall submit a final report to each
20 Committee referred to in subparagraph (A) that
21 includes—

22 (i) the number of individuals provided
23 premium reduction under this section;

1 (ii) the average dollar amount
2 (monthly and annually) of premium reduc-
3 tions provided to such individuals; and

4 (iii) the total amount of expenditures
5 incurred (with administrative expenditures
6 noted separately) in connection with pre-
7 mium reduction under this section.

8 (12) COBRA PREMIUM ASSISTANCE.—

9 (A) IN GENERAL.—Subchapter B of chap-
10 ter 65 of the Internal Revenue Code of 1986 is
11 amended by adding at the end the following
12 new section:

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

14 “(a) IN GENERAL.—The entity to whom premiums
15 are payable under COBRA continuation coverage shall be
16 reimbursed for the amount of premiums not paid by plan
17 beneficiaries by reason of section 3002(a) of the Health
18 Insurance Assistance for the Unemployed Act of 2009.
19 Such amount shall be treated as a credit against the re-
20 quirement of such entity to make deposits of payroll taxes.
21 To the extent that such amount exceeds the amount of
22 such taxes, the Secretary shall pay to such entity the
23 amount of such excess. No payment may be made under
24 this subsection to an entity with respect to any assistance
25 eligible individual until after such entity has received the

1 reduced premium from such individual required under sec-
2 tion 3002(a)(1)(A) of such Act.

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

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

8 “(2) amounts required to be deducted for the
9 payroll period under section 3102 (relating to FICA
10 employee taxes), and

11 “(3) amounts of the taxes imposed for the pay-
12 roll period under section 3111 (relating to FICA em-
13 ployer taxes).

14 “(c) TREATMENT OF CREDIT.—Except as otherwise
15 provided by the Secretary, the credit described in sub-
16 section (a) shall be applied as though the employer had
17 paid to the Secretary, on the day that the qualified bene-
18 ficiary’s premium payment is received, an amount equal
19 to such credit.

20 “(d) TREATMENT OF PAYMENT.—For purposes of
21 section 1324(b)(2) of title 31, United States Code, any
22 payment under this subsection shall be treated in the same
23 manner as a refund of the credit under section 35.

24 “(e) REPORTING.—

1 “(1) IN GENERAL.—Each entity entitled to re-
2 imbursement under subsection (a) for any period
3 shall submit such reports as the Secretary may re-
4 quire, including—

5 “(A) an attestation of involuntary termi-
6 nation of employment for each covered em-
7 ployee on the basis of whose termination entitle-
8 ment to reimbursement is claimed under sub-
9 section (a), and

10 “(B) a report of the amount of payroll
11 taxes offset under subsection (a) for the report-
12 ing period and the estimated offsets of such
13 taxes for the subsequent reporting period in
14 connection with reimbursements under sub-
15 section (a).

16 “(2) TIMING OF REPORTS RELATING TO
17 AMOUNT OF PAYROLL TAXES.—Reports required
18 under paragraph (1)(B) shall be submitted at the
19 same time as deposits of taxes imposed by chapters
20 21, 22, and 24 or at such time as is specified by the
21 Secretary.

22 “(f) REGULATIONS.—The Secretary may issue such
23 regulations or other guidance as may be necessary or ap-
24 propriate to carry out this section, including the require-
25 ment to report information or the establishment of other

1 methods for verifying the correct amounts of payments
2 and credits under this section.”.

3 (B) SOCIAL SECURITY TRUST FUNDS HELD
4 HARMLESS.—In determining any amount trans-
5 ferred or appropriated to any fund under the
6 Social Security Act, section 6431 of the Inter-
7 nal Revenue Code of 1986 shall not be taken
8 into account.

9 (C) CLERICAL AMENDMENT.—The table of
10 sections for subchapter B of chapter 65 of the
11 Internal Revenue Code of 1986 is amended by
12 adding at the end the following new item:

“Sec. 6431. COBRA premium assistance.”.

13 (D) EFFECTIVE DATE.—The amendments
14 made by this paragraph shall apply to pre-
15 miums to which subsection (a)(1)(A) applies.

16 (13) PENALTY FOR FAILURE TO NOTIFY
17 HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR
18 PREMIUM ASSISTANCE.—

19 (A) IN GENERAL.—Part I of subchapter B
20 of chapter 68 of the Internal Revenue Code of
21 1986 is amended by adding at the end the fol-
22 lowing new section:

1 **“SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH**
 2 **PLAN OF CESSATION OF ELIGIBILITY FOR**
 3 **COBRA PREMIUM ASSISTANCE.**

4 “(a) IN GENERAL.—Any person required to notify a
 5 group health plan under section 3002(a)(2)(C) of the
 6 Health Insurance Assistance for the Unemployed Act of
 7 2009 who fails to make such a notification at such time
 8 and in such manner as the Secretary of Labor may require
 9 shall pay a penalty of 110 percent of the premium reduc-
 10 tion provided under such section after termination of eligi-
 11 bility under such subsection.

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

16 (B) CLERICAL AMENDMENT.—The table of
 17 sections of part I of subchapter B of chapter 68
 18 of such Code is amended by adding at the end
 19 the following new item:

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

20 (C) EFFECTIVE DATE.—The amendments
 21 made by this paragraph shall apply to failures
 22 occurring after the date of the enactment of
 23 this Act.

24 (14) COORDINATION WITH HCTC.—

1 (A) IN GENERAL.—Subsection (g) of sec-
2 tion 35 of the Internal Revenue Code of 1986
3 is amended by redesignating paragraph (9) as
4 paragraph (10) and inserting after paragraph
5 (8) the following new paragraph:

6 “(9) COBRA PREMIUM ASSISTANCE.—In the
7 case of an assistance eligible individual who receives
8 premium reduction for COBRA continuation cov-
9 erage under section 3002(a) of the Health Insurance
10 Assistance for the Unemployed Act of 2009 for any
11 month during the taxable year, such individual shall
12 not be treated as an eligible individual, a certified
13 individual, or a qualifying family member for pur-
14 poses of this section or section 7527 with respect to
15 such month.”.

16 (B) EFFECTIVE DATE.—The amendment
17 made by subparagraph (A) shall apply to tax-
18 able years ending after the date of the enact-
19 ment of this Act.

20 (15) EXCLUSION OF COBRA PREMIUM ASSIST-
21 ANCE FROM GROSS INCOME.—

22 (A) IN GENERAL.—Part III of subchapter
23 B of chapter 1 of the Internal Revenue Code of
24 1986 is amended by inserting after section
25 139B the following new section:

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

2 “In the case of an assistance eligible individual (as
3 defined in section 3002 of the Health Insurance Assist-
4 ance for the Unemployed Act of 2009), gross income does
5 not include any premium reduction provided under sub-
6 section (a) of such section.”.

7 (B) CLERICAL AMENDMENT.—The table of
8 sections for part III of subchapter B of chapter
9 1 of such Code is amended by inserting after
10 the item relating to section 139B the following
11 new item:

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

12 (C) EFFECTIVE DATE.—The amendments
13 made by this paragraph shall apply to taxable
14 years ending after the date of the enactment of
15 this Act.

16 (b) EXTENSION OF COBRA BENEFITS FOR OLDER
17 OR LONG-TERM EMPLOYEES.—

18 (1) ERISA AMENDMENT.—Section 602(2)(A)
19 of the Employee Retirement Income Security Act of
20 1974 is amended by adding at the end the following
21 new clauses:

22 “(x) SPECIAL RULE FOR OLDER OR
23 LONG-TERM EMPLOYEES GENERALLY.—In
24 the case of a qualifying event described in
25 section 603(2) with respect to a covered

1 employee who (as of such qualifying event)
2 has attained age 55 or has completed 10
3 or more years of service with the entity
4 that is the employer at the time of the
5 qualifying event, clauses (i) and (ii) shall
6 not apply.

7 “(xi) YEAR OF SERVICE.—For pur-
8 poses of this subparagraph, the term ‘year
9 of service’ shall have the meaning provided
10 in section 202(a)(3).”.

11 (2) IRC AMENDMENT.—Clause (i) of section
12 4980B(f)(2)(B) of the Internal Revenue Code of
13 1986 is amended by adding at the end the following
14 new subclauses:

15 “(X) SPECIAL RULE FOR OLDER
16 OR LONG-TERM EMPLOYEES GEN-
17 ERALLY.—In the case of a qualifying
18 event described in paragraph (3)(B)
19 with respect to a covered employee
20 who (as of such qualifying event) has
21 attained age 55 or has completed 10
22 or more years of service with the enti-
23 ty that is the employer at the time of
24 the qualifying event, subclauses (I)
25 and (II) shall not apply.

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

7 (3) PHSA AMENDMENT.—Section 2202(2)(A)
8 of the Public Health Service Act is amended by add-
9 ing at the end the following new clauses:

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

20 “(ix) YEAR OF SERVICE.—For pur-
21 poses of this subparagraph, the term ‘year
22 of service’ shall have the meaning provided
23 in section 202(a)(3) of the Employee Re-
24 tirement Income Security Act of 1974.”.

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

6 **SEC. 3003. TEMPORARY OPTIONAL MEDICAID COVERAGE**
 7 **FOR THE UNEMPLOYED.**

8 (a) IN GENERAL.—Section 1902 of the Social Secu-
 9 rity Act (42 U.S.C. 1396b) is amended—

10 (1) in subsection (a)(10)(A)(ii)—

11 (A) by striking “or” at the end of sub-
 12 clause (XVIII);

13 (B) by adding “or” at the end of subclause
 14 (XIX); and

15 (C) by adding at the end the following new
 16 subclause:

17 “(XX) who are described in sub-
 18 section (dd)(1) (relating to certain un-
 19 employed individuals and their fami-
 20 lies);”; and

21 (2) by adding at the end the following new sub-
 22 section:

23 “(dd)(1) Individuals described in this paragraph
 24 are—

25 “(A) individuals who—

1 “(i) are within one or more of the cat-
2 egories described in paragraph (2), as elected
3 under the State plan; and

4 “(ii) meet the applicable requirements of
5 paragraph (3); and

6 “(B) individuals who—

7 “(i) are the spouse, or dependent child
8 under 19 years of age, of an individual de-
9 scribed in subparagraph (A); and

10 “(ii) meet the requirement of paragraph
11 (3)(B).

12 “(2) The categories of individuals described in this
13 paragraph are each of the following:

14 “(A)(i) Individuals who are receiving unemploy-
15 ment compensation benefits; and

16 “(ii) individuals who were receiving, but have
17 exhausted, unemployment compensation benefits on
18 or after July 1, 2008.

19 “(B) Individuals who are involuntarily unem-
20 ployed and were involuntarily separated from em-
21 ployment on or after September 1, 2008, and before
22 January 1, 2011, whose family gross income does
23 not exceed a percentage specified by the State (not
24 to exceed 200 percent) of the income official poverty
25 line (as defined by the Office of Management and

1 Budget, and revised annually in accordance with sec-
2 tion 673(2) of the Omnibus Budget Reconciliation
3 Act of 1981) applicable to a family of the size in-
4 volved, and who, but for subsection
5 (a)(10)(A)(ii)(XX), are not eligible for medical as-
6 sistance under this title or health assistance under
7 title XXI.

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

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

20 “(A) In the case of individuals within a cat-
21 egory described in subparagraph (A) of paragraph
22 (2), the individual was involuntarily separated from
23 employment on or after September 1, 2008, and be-
24 fore January 1, 2011, or meets such comparable re-
25 quirement as the Secretary specifies through rule,

1 guidance, or otherwise in the case of an individual
2 who was an independent contractor.

3 “(B) The individual is not otherwise covered
4 under creditable coverage, as defined in section
5 2701(e) of the Public Health Service Act (42 U.S.C.
6 300gg(e)), but applied without regard to paragraph
7 (1)(F) of such section and without regard to cov-
8 erage provided by reason of the application of sub-
9 section (a)(10)(A)(ii)(XX).

10 “(4)(A) No income or resources test shall be applied
11 with respect to any category of individuals described in
12 subparagraph (A) or (C) of paragraph (2) who are eligible
13 for medical assistance only by reason of the application
14 of subsection (a)(10)(A)(ii)(XX).

15 “(B) Nothing in this subsection shall be construed
16 to prevent a State from imposing a resource test for the
17 category of individuals described in paragraph (2)(B).

18 “(C) In the case of individuals described in paragraph
19 (2)(A) or (2)(C), the requirements of subsections (i)(22)
20 and (x) in section 1903 shall not apply.”.

21 (b) 100 PERCENT FEDERAL MATCHING RATE.—

22 (1) FMAP FOR TIME-LIMITED PERIOD.—The
23 third sentence of section 1905(b) of such Act (42
24 U.S.C. 1396d(b)) is amended by inserting before the
25 period at the end the following: “and for items and

1 services furnished on or after the date of enactment
2 of this Act and before January 1, 2011, to individ-
3 uals who are eligible for medical assistance only by
4 reason of the application of section
5 1902(a)(10)(A)(ii)(XX)”.

6 (2) CERTAIN ENROLLMENT-RELATED ADMINIS-
7 TRATIVE COSTS.—Notwithstanding any other provi-
8 sion of law, for purposes of applying section 1903(a)
9 of the Social Security Act (42 U.S.C. 1396b(a)),
10 with respect to expenditures incurred on or after the
11 date of the enactment of this Act and before Janu-
12 ary 1, 2011, for costs of administration (including
13 outreach and the modification and operation of eligi-
14 bility information systems) attributable to eligibility
15 determination and enrollment of individuals who are
16 eligible for medical assistance only by reason of the
17 application of section 1902(a)(10)(A)(ii)(XX) of
18 such Act, as added by subsection (a)(1), the Federal
19 matching percentage shall be 100 percent instead of
20 the matching percentage otherwise applicable.

21 (c) CONFORMING AMENDMENTS.—(1) Section
22 1903(f)(4) of such Act (42 U.S.C. 1396c(f)(4)) is amend-
23 ed by inserting “1902(a)(10)(A)(ii)(XX), or” after
24 “1902(a)(10)(A)(ii)(XIX),”.

1 (2) Section 1905(a) of such Act (42 U.S.C.
2 1396d(a)) is amended, in the matter preceding paragraph
3 (1)—

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

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

6 and

7 (C) by inserting after clause (xiii) the following
8 new clause:

9 “(xiv) individuals described in section
10 1902(dd)(1),”.

11 **TITLE IV—HEALTH**
12 **INFORMATION TECHNOLOGY**

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

14 (a) **SHORT TITLE.**—This title may be cited as the
15 “Health Information Technology for Economic and Clin-
16 ical Health Act” or the “HITECH Act”.

17 (b) **TABLE OF CONTENTS OF TITLE.**—The table of
18 contents 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
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 “Sec. 3000. Definitions.

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 “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.
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- “Sec. 3007. Federal health information technology.
- “Sec. 3008. Transitions.
- “Sec. 3009. Relation to HIPAA privacy and security law.
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PART II—APPLICATION AND USE OF ADOPTED HEALTH INFORMATION
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- Sec. 4111. Coordination of Federal activities with adopted standards and implementation specifications.
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Subtitle B—Testing of Health Information Technology

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

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 I—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
 8 seq.) is amended by adding at the end the following:

1 **“TITLE XXX—HEALTH INFORMA-**
2 **TION TECHNOLOGY AND**
3 **QUALITY**

4 **“SEC. 3000. DEFINITIONS.**

5 “In this title:

6 “(1) CERTIFIED EHR TECHNOLOGY.—The term
7 ‘certified EHR technology’ means a qualified elec-
8 tronic health record that is certified pursuant to sec-
9 tion 3001(c)(5) as meeting standards adopted under
10 section 3004 that are applicable to the type of
11 record involved (as determined by the Secretary,
12 such as an ambulatory electronic health record for
13 office-based physicians or an inpatient hospital elec-
14 tronic health record for hospitals).

15 “(2) ENTERPRISE INTEGRATION.—The term
16 ‘enterprise integration’ means the electronic linkage
17 of health care providers, health plans, the govern-
18 ment, and other interested parties, to enable the
19 electronic exchange and use of health information
20 among all the components in the health care infra-
21 structure in accordance with applicable law, and
22 such term includes related application protocols and
23 other related standards.

24 “(3) HEALTH CARE PROVIDER.—The term
25 ‘health care provider’ means a hospital, skilled nurs-

1 ing facility, nursing facility, home health entity or
2 other long term care facility, health care clinic, Fed-
3 erally qualified health center, group practice (as de-
4 fined in section 1877(h)(4) of the Social Security
5 Act), a pharmacist, a pharmacy, a laboratory, a phy-
6 sician (as defined in section 1861(r) of the Social
7 Security Act), a practitioner (as described in section
8 1842(b)(18)(C) of the Social Security Act), a pro-
9 vider operated by, or under contract with, the Indian
10 Health Service or by an Indian tribe (as defined in
11 the Indian Self-Determination and Education Assist-
12 ance Act), tribal organization, or urban Indian orga-
13 nization (as defined in section 4 of the Indian
14 Health Care Improvement Act), a rural health clinic,
15 a covered entity under section 340B, an ambulatory
16 surgical center described in section 1833(i) of the
17 Social Security Act, and any other category of facil-
18 ity or clinician determined appropriate by the Sec-
19 retary.

20 “(4) HEALTH INFORMATION.—The term ‘health
21 information’ has the meaning given such term in
22 section 1171(4) of the Social Security Act.

23 “(5) HEALTH INFORMATION TECHNOLOGY.—
24 The term ‘health information technology’ means
25 hardware, software, integrated technologies and re-

1 lated licenses, intellectual property, upgrades, and
2 packaged solutions sold as services that are specifi-
3 cally designed for use by health care entities for the
4 electronic creation, maintenance, or exchange of
5 health information.

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

9 “(7) HIT POLICY COMMITTEE.—The term ‘HIT
10 Policy Committee’ means such Committee estab-
11 lished under section 3002(a).

12 “(8) HIT STANDARDS COMMITTEE.—The term
13 ‘HIT Standards Committee’ means such Committee
14 established under section 3003(a).

15 “(9) INDIVIDUALLY IDENTIFIABLE HEALTH IN-
16 FORMATION.—The term ‘individually identifiable
17 health information’ has the meaning given such term
18 in section 1171(6) of the Social Security Act.

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

21 “(11) NATIONAL COORDINATOR.—The term
22 ‘National Coordinator’ means the head of the Office
23 of the National Coordinator for Health Information
24 Technology established under section 3001(a).

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

4 “(13) QUALIFIED ELECTRONIC HEALTH
5 RECORD.—The term ‘qualified electronic health
6 record’ means an electronic record of health-related
7 information on an individual that—

8 “(A) includes patient demographic and
9 clinical health information, such as medical his-
10 tory and problem lists; and

11 “(B) has the capacity—

12 “(i) to provide clinical decision sup-
13 port;

14 “(ii) to support physician order entry;

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

17 “(iv) to exchange electronic health in-
18 formation with, and integrate such infor-
19 mation from other sources.

20 “(14) STATE.—The term ‘State’ means each of
21 the several States, the District of Columbia, Puerto
22 Rico, the Virgin Islands, Guam, American Samoa,
23 and the Northern Mariana Islands.

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

3 **“SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR**
4 **HEALTH INFORMATION TECHNOLOGY.**

5 “(a) ESTABLISHMENT.—There is established within
6 the Department of Health and Human Services an Office
7 of the National Coordinator for Health Information Tech-
8 nology (referred to in this section as the ‘Office’). The Of-
9 fice shall be headed by a National Coordinator who shall
10 be appointed by the Secretary and shall report directly to
11 the Secretary.

12 “(b) PURPOSE.—The National Coordinator shall per-
13 form the duties under subsection (c) in a manner con-
14 sistent with the development of a nationwide health infor-
15 mation technology infrastructure that allows for the elec-
16 tronic use and exchange of information and that—

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

20 “(2) improves health care quality, reduces med-
21 ical errors, and advances the delivery of patient-cen-
22 tered medical care;

23 “(3) reduces health care costs resulting from
24 inefficiency, medical errors, inappropriate care, du-
25 plicative care, and incomplete information;

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

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

6 “(6) improves the coordination of care and in-
7 formation among hospitals, laboratories, physician
8 offices, and other entities through an effective infra-
9 structure for the secure and authorized exchange of
10 health care information;

11 “(7) improves public health activities and facili-
12 tates the early identification and rapid response to
13 public health threats and emergencies, including bio-
14 terror events and infectious disease outbreaks;

15 “(8) facilitates health and clinical research and
16 health care quality;

17 “(9) promotes prevention of chronic diseases;

18 “(10) promotes a more effective marketplace,
19 greater competition, greater systems analysis, in-
20 creased consumer choice, and improved outcomes in
21 health care services; and

22 “(11) improves efforts to reduce health dispari-
23 ties.

24 “(c) DUTIES OF THE NATIONAL COORDINATOR.—

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

12 “(2) HIT POLICY COORDINATION.—

13 “(A) IN GENERAL.—The National Coordi-
14 nator shall coordinate health information tech-
15 nology policy and programs of the Department
16 with those of other relevant executive branch
17 agencies with a goal of avoiding duplication of
18 efforts and of helping to ensure that each agen-
19 cy undertakes health information technology ac-
20 tivities primarily within the areas of its greatest
21 expertise and technical capability and in a man-
22 ner towards a coordinated national goal.

23 “(B) HIT POLICY AND STANDARDS COM-
24 MITTEES.—The National Coordinator shall be a
25 leading member in the establishment and oper-

1 ations of the HIT Policy Committee and the
2 HIT Standards Committee and shall serve as a
3 liaison among those two Committees and the
4 Federal Government.

5 “(3) STRATEGIC PLAN.—

6 “(A) IN GENERAL.—The National Coordi-
7 nator shall, in consultation with other appro-
8 priate Federal agencies (including the National
9 Institute of Standards and Technology), update
10 the Federal Health IT Strategic Plan (devel-
11 oped as of June 3, 2008) to include specific ob-
12 jectives, milestones, and metrics with respect to
13 the following:

14 “(i) The electronic exchange and use
15 of health information and the enterprise
16 integration of such information.

17 “(ii) The utilization of an electronic
18 health record for each person in the United
19 States by 2014.

20 “(iii) The incorporation of privacy and
21 security protections for the electronic ex-
22 change of an individual’s individually iden-
23 tifiable health information.

24 “(iv) Ensuring security methods to
25 ensure appropriate authorization and elec-

1 tronic authentication of health information
2 and specifying technologies or methodolo-
3 gies for rendering health information unus-
4 able, unreadable, or indecipherable.

5 “(v) Specifying a framework for co-
6 ordination and flow of recommendations
7 and policies under this subtitle among the
8 Secretary, the National Coordinator, the
9 HIT Policy Committee, the HIT Standards
10 Committee, and other health information
11 exchanges and other relevant entities.

12 “(vi) Methods to foster the public un-
13 derstanding of health information tech-
14 nology.

15 “(vii) Strategies to enhance the use of
16 health information technology in improving
17 the quality of health care, reducing medical
18 errors, reducing health disparities, improv-
19 ing public health, and improving the con-
20 tinuity of care among health care settings.

21 “(B) COLLABORATION.—The strategic
22 plan shall be updated through collaboration of
23 public and private entities.

1 “(C) MEASURABLE OUTCOME GOALS.—
2 The strategic plan update shall include measur-
3 able outcome goals.

4 “(D) PUBLICATION.—The National Coor-
5 dinator shall republish the strategic plan, in-
6 cluding all updates.

7 “(4) WEBSITE.—The National Coordinator
8 shall maintain and frequently update an Internet
9 website on which there is posted information on the
10 work, schedules, reports, recommendations, and
11 other information to ensure transparency in pro-
12 motion of a nationwide health information tech-
13 nology infrastructure.

14 “(5) CERTIFICATION.—

15 “(A) IN GENERAL.—The National Coordi-
16 nator, in consultation with the Director of the
17 National Institute of Standards and Tech-
18 nology, shall develop a program (either directly
19 or by contract) for the voluntary certification of
20 health information technology as being in com-
21 pliance with applicable certification criteria
22 adopted under this subtitle. Such program shall
23 include testing of the technology in accordance
24 with section 4201(b) of the HITECH Act.

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

8 “(6) REPORTS AND PUBLICATIONS.—

9 “(A) REPORT ON ADDITIONAL FUNDING
10 OR AUTHORITY NEEDED.—Not later than 12
11 months after the date of the enactment of this
12 title, the National Coordinator shall submit to
13 the appropriate committees of jurisdiction of
14 the House of Representatives and the Senate a
15 report on any additional funding or authority
16 the Coordinator or the HIT Policy Committee
17 or HIT Standards Committee requires to evalu-
18 ate and develop standards, implementation
19 specifications, and certification criteria, or to
20 achieve full participation of stakeholders in the
21 adoption of a nationwide health information
22 technology infrastructure that allows for the
23 electronic use and exchange of health informa-
24 tion.

1 “(B) IMPLEMENTATION REPORT.—The
2 National Coordinator shall prepare a report
3 that identifies lessons learned from major pub-
4 lic and private health care systems in their im-
5 plementation of health information technology,
6 including information on whether the tech-
7 nologies and practices developed by such sys-
8 tems may be applicable to and usable in whole
9 or in part by other health care providers.

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

23 “(D) EVALUATION OF BENEFITS AND
24 COSTS OF THE ELECTRONIC USE AND EX-
25 CHANGE OF HEALTH INFORMATION.—The Na-

1 tional Coordinator shall evaluate and publish
2 evidence on the benefits and costs of the elec-
3 tronic use and exchange of health information
4 and assess to whom these benefits and costs ac-
5 crue.

6 “(E) RESOURCE REQUIREMENTS.—The
7 National Coordinator shall estimate and publish
8 resources required annually to reach the goal of
9 utilization of an electronic health record for
10 each person in the United States by 2014, in-
11 cluding the required level of Federal funding,
12 expectations for regional, State, and private in-
13 vestment, and the expected contributions by vol-
14 unteers to activities for the utilization of such
15 records.

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

23 “(8) GOVERNANCE FOR NATIONWIDE HEALTH
24 INFORMATION NETWORK.—The National Coordi-

1 nator shall establish a governance mechanism for the
2 nationwide health information network.

3 “(d) DETAIL OF FEDERAL EMPLOYEES.—

4 “(1) IN GENERAL.—Upon the request of the
5 National Coordinator, the head of any Federal agen-
6 cy is authorized to detail, with or without reimburse-
7 ment from the Office, any of the personnel of such
8 agency to the Office to assist it in carrying out its
9 duties 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
16 the Department employed by the National Co-
17 ordinator.

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

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

1 Secretary shall appoint a Chief Privacy Officer of the Of-
2 fice of the National Coordinator, whose duty it shall be
3 to advise the National Coordinator on privacy, security,
4 and data stewardship of electronic health information and
5 to coordinate with other Federal agencies (and similar pri-
6 vacy officers in such agencies), with State and regional
7 efforts, and with foreign countries with regard to the pri-
8 vacy, security, and data stewardship of electronic individ-
9 ually identifiable health 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
16 in section 3001(e)(3).

17 “(b) DUTIES.—

18 “(1) RECOMMENDATIONS ON HEALTH INFOR-
19 MATION TECHNOLOGY INFRASTRUCTURE.—The HIT
20 Policy Committee shall recommend a policy frame-
21 work for the development and adoption of a nation-
22 wide health information technology infrastructure
23 that permits the electronic exchange and use of
24 health information as is consistent with the strategic
25 plan under section 3001(e)(3) and that includes the

1 recommendations under paragraph (2). The Com-
2 mittee shall update such recommendations and make
3 new recommendations 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 elec-
10 tronic exchange and use of health information
11 for purposes of adoption under section 3004
12 and shall recommend an order of priority for
13 the development, harmonization, and recogni-
14 tion of such standards, specifications, and cer-
15 tification criteria among the areas so rec-
16 ommended. Such standards and implementation
17 specifications shall include named standards,
18 architectures, and software schemes for the au-
19 thentication and security of individually identifi-
20 able health information and other information
21 as needed to ensure the reproducible develop-
22 ment of common solutions across disparate en-
23 tities.

24 “(B) AREAS REQUIRED FOR CONSIDER-
25 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 vacy 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 in-
15 formation.

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

20 “(iii) The utilization of a certified
21 electronic health record for each person in
22 the 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

1 covered entity (as defined for purposes of
2 regulations promulgated under section
3 264(e) of the Health Insurance Portability
4 and Accountability Act of 1996) for pur-
5 poses of treatment, payment, and health
6 care operations (as such terms are defined
7 for purposes 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
13 care providers, by reducing medical errors,
14 by improving population health, and by ad-
15 vancing research and education.

16 “(C) OTHER AREAS FOR CONSIDER-
17 ATION.—In making recommendations under
18 subparagraph (A), the HIT Policy Committee
19 may consider the following additional areas:

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

23 “(I) the collection of quality data
24 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
16 medical errors.

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

19 “(vii) Technologies that meet the
20 needs 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
3 specific expertise in policies relating to the matters
4 described 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
10 HIT Policy Committee shall at least reflect pro-
11 viders, ancillary healthcare workers, consumers, pur-
12 chasers, health plans, technology vendors, research-
13 ers, relevant Federal agencies, and individuals with
14 technical expertise on health care quality, privacy
15 and security, and on the electronic exchange and use
16 of health information.

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

22 “(d) APPLICATION OF FACCA.—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
17 the HIT Policy Committee.

18 “(b) DUTIES.—

19 “(1) STANDARDS DEVELOPMENT.—

20 “(A) IN GENERAL.—The HIT Standards
21 Committee shall recommend to the National
22 Coordinator standards, implementation speci-
23 fications, and certification criteria described in
24 subsection (a) that have been developed, har-
25 monized, or recognized by the HIT Standards

1 Committee. The HIT Standards Committee
2 shall update such recommendations and make
3 new recommendations as appropriate, including
4 in response to a notification sent under section
5 3004(b)(2). Such recommendations shall be
6 consistent with the latest recommendations
7 made by 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,
12 the HIT Standards Committee shall, as appro-
13 priate, provide for the testing of such standards
14 and specifications by the National Institute for
15 Standards and Technology under section 4201
16 of the HITECH Act.

17 “(C) CONSISTENCY.—The standards, im-
18 plementation specifications, and certification
19 criteria recommended under this subsection
20 shall be consistent with the standards for infor-
21 mation transactions and data elements adopted
22 pursuant to section 1173 of the Social Security
23 Act.

24 “(2) FORUM.—The HIT Standards Committee
25 shall serve as a forum for the participation of a

1 broad range of stakeholders to provide input on the
2 development, harmonization, and recognition of
3 standards, implementation specifications, and certifi-
4 cation criteria necessary for the development and
5 adoption of a nationwide health information tech-
6 nology infrastructure that allows for the electronic
7 use and exchange of health information.

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

16 “(4) PUBLIC INPUT.—The HIT Standards
17 Committee shall conduct open public meetings and
18 develop a process to allow for public comment on the
19 schedule described in paragraph (3) and rec-
20 ommendations described in this subsection. Under
21 such process comments shall be submitted in a time-
22 ly manner after the date of publication of a rec-
23 ommendation under this subsection.

24 “(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
5 HIT Standards Committee shall at least reflect pro-
6 viders, ancillary healthcare workers, consumers, pur-
7 chasers, health plans, technology vendors, research-
8 ers, relevant Federal agencies, and individuals with
9 technical expertise on health care quality, privacy
10 and security, and on the electronic exchange and use
11 of health information.

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

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

1 “(d) APPLICATION OF FACCA.—The Federal Advisory
2 Committee Act (5 U.S.C. App.), other than section 14,
3 shall 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 recommenda-
8 tions made by the HIT Standards Committee under this
9 section.

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

14 “(a) PROCESS FOR ADOPTION OF ENDORSED REC-
15 OMMENDATIONS.—

16 “(1) REVIEW OF ENDORSED STANDARDS, IM-
17 PLEMENTATION SPECIFICATIONS, AND CERTIFI-
18 CATION CRITERIA.—Not later than 90 days after the
19 date of receipt of standards, implementation speci-
20 fications, or certification criteria endorsed under sec-
21 tion 3001(c), the Secretary, in consultation with rep-
22 resentatives of other relevant Federal agencies, shall
23 jointly review such standards, implementation speci-
24 fications, or certification criteria and shall determine
25 whether or not to propose adoption of such stand-

1 ards, implementation specifications, or certification
2 criteria.

3 “(2) DETERMINATION TO ADOPT STANDARDS,
4 IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-
5 CATION CRITERIA.—If the Secretary determines—

6 “(A) to propose adoption of any grouping
7 of such standards, implementation specifica-
8 tions, or certification criteria, the Secretary
9 shall, by regulation, determine whether or not
10 to adopt such grouping of standards, implemen-
11 tation specifications, or certification criteria; or

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

19 “(3) PUBLICATION.—The Secretary shall pro-
20 vide for publication in the Federal Register of all de-
21 terminations made by the Secretary under para-
22 graph (1).

23 “(b) ADOPTION OF INITIAL SET OF STANDARDS, IM-
24 PLEMENTATION SPECIFICATIONS, AND CERTIFICATION
25 CRITERIA.—

1 “(1) IN GENERAL.—Not later than December
2 31, 2009, the Secretary shall, through the rule-
3 making process described in section 3003, adopt an
4 initial set of standards, implementation specifica-
5 tions, and certification criteria for the areas required
6 for consideration under section 3002(b)(2)(B).

7 “(2) APPLICATION OF CURRENT STANDARDS,
8 IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-
9 CATION CRITERIA.—The standards, implementation
10 specifications, and certification criteria adopted be-
11 fore the date of the enactment of this title through
12 the process existing through the Office of the Na-
13 tional Coordinator for Health Information Tech-
14 nology may be applied towards meeting the require-
15 ment of paragraph (1).

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

19 “For requirements relating to the application and use
20 by Federal agencies of the standards and implementation
21 specifications adopted under section 3004, see section
22 4111 of the HITECH Act.

1 **“SEC. 3006. VOLUNTARY APPLICATION AND USE OF ADOPT-**
2 **ED STANDARDS AND IMPLEMENTATION**
3 **SPECIFICATIONS BY PRIVATE ENTITIES.**

4 “(a) IN GENERAL.—Except as provided under section
5 4112 of the HITECH Act, any standard or implementa-
6 tion specification adopted under section 3004 shall be vol-
7 untary with respect to private entities.

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

14 **“SEC. 3007. FEDERAL HEALTH INFORMATION TECH-**
15 **NOLOGY.**

16 “(a) IN GENERAL.—The National Coordinator shall
17 support the development, routine updating, and provision
18 of qualified EHR technology (as defined in section 3000)
19 consistent with subsections (b) and (c) unless the Sec-
20 retary determines that the needs and demands of pro-
21 viders are being substantially and adequately met through
22 the marketplace.

23 “(b) CERTIFICATION.—In making such EHR tech-
24 nology publicly available, the National Coordinator shall
25 ensure that the qualified EHR technology described in
26 subsection (a) is certified under the program developed

1 under section 3001(c)(3) to be in compliance with applica-
2 ble standards adopted under section 3003(a).

3 “(c) **AUTHORIZATION TO CHARGE A NOMINAL**
4 **FEE.**—The National Coordinator may impose a nominal
5 fee for the adoption by a health care provider of the health
6 information technology system developed or approved
7 under subsection (a) and (b). Such fee shall take into ac-
8 count the financial circumstances of smaller providers, low
9 income providers, and providers located in rural or other
10 medically underserved areas.

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

15 **“SEC. 3008. TRANSITIONS.**

16 “(a) **ONCHIT.**—To the extent consistent with sec-
17 tion 3001, all functions, personnel, assets, liabilities, and
18 administrative actions applicable to the National Coordi-
19 nator for Health Information Technology appointed under
20 Executive Order 13335 or the Office of such National Co-
21 ordinator on the date before the date of the enactment
22 of this title shall be transferred to the National Coordi-
23 nator appointed under section 3001(a) and the Office of
24 such National Coordinator as of the date of the enactment
25 of this title.

1 “(b) AHIC.—

2 “(1) To the extent consistent with sections
3 3002 and 3003, all functions, personnel, assets, and
4 liabilities applicable to the AHIC Successor, Inc.
5 doing business as the National eHealth Collaborative
6 as of the day before the date of the enactment of
7 this title shall be transferred to the HIT Policy
8 Committee or the HIT Standards Committee, estab-
9 lished under section 3002(a) or 3003(a), as appro-
10 priate, as of the date of the enactment of this title.

11 “(2) In carrying out section 3003(b)(1)(A),
12 until recommendations are made by the HIT Policy
13 Committee, recommendations of the HIT Standards
14 Committee shall be consistent with the most recent
15 recommendations made by such AHIC Successor,
16 Inc.

17 “(c) RULES OF CONSTRUCTION.—

18 “(1) ONCHIT.—Nothing in section 3001 or
19 subsection (a) shall be construed as requiring the
20 creation of a new entity to the extent that the Office
21 of the National Coordinator for Health Information
22 Technology established pursuant to Executive Order
23 13335 is consistent with the provisions of section
24 3001.

1 “(2) AHIC.—Nothing in sections 3002 or 3003
2 or subsection (b) shall be construed as prohibiting
3 the AHIC Successor, Inc. doing business as the Na-
4 tional eHealth Collaborative from modifying its char-
5 ter, duties, membership, and any other structure or
6 function required to be consistent with section 3002
7 and 3003 in a manner that would permit the Sec-
8 retary to choose to recognize such AHIC Successor,
9 Inc. as the HIT Policy Committee or the HIT
10 Standards Committee.

11 **“SEC. 3009. RELATION TO HIPAA PRIVACY AND SECURITY**

12 **LAW.**

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

15 “(1) This title may not be construed as having
16 any effect on the authorities of the Secretary under
17 HIPAA privacy and security law.

18 “(2) The purposes of this title include ensuring
19 that the health information technology standards
20 and implementation specifications adopted under
21 section 3004 take into account the requirements of
22 HIPAA privacy and security law.

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

1 “(1) the provisions of part C of title XI of the
2 Social Security Act, section 264 of the Health Insur-
3 ance Portability and Accountability Act of 1996, and
4 subtitle D of title IV of the HITECH Act; and

5 “(2) regulations under such provisions.

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

7 “‘There is authorized to be appropriated to the Office
8 of the National Coordinator for Health Information Tech-
9 nology to carry out this subtitle \$250,000,000 for fiscal
10 year 2009.’”.

11 **SEC. 4102. TECHNICAL AMENDMENT.**

12 Section 1171(5) of the Social Security Act (42 U.S.C.
13 1320d) is amended by striking “or C” and inserting “C,
14 or D”.

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

18 **SEC. 4111. COORDINATION OF FEDERAL ACTIVITIES WITH**
19 **ADOPTED STANDARDS AND IMPLEMENTA-**
20 **TION SPECIFICATIONS.**

21 (a) SPENDING ON HEALTH INFORMATION TECH-
22 NOLOGY SYSTEMS.—As each agency (as defined in the Ex-
23 ecutive Order issued on August 22, 2006, relating to pro-
24 moting quality and efficient health care in Federal govern-
25 ment administered or sponsored health care programs) im-

1 plements, acquires, or upgrades health information tech-
2 nology systems used for the direct exchange of individually
3 identifiable health information between agencies and with
4 non-Federal entities, it shall utilize, where available,
5 health information technology systems and products that
6 meet standards and implementation specifications adopted
7 under section 3004 of the Public Health Service Act, as
8 added by section 4101.

9 (b) FEDERAL INFORMATION COLLECTION ACTIVI-
10 TIES.—With respect to a standard or implementation
11 specification adopted under section 3004 of the Public
12 Health Service Act, as added by section 4101, the Presi-
13 dent shall take measures to ensure that Federal activities
14 involving the broad collection and submission of health in-
15 formation are consistent with such standard or implemen-
16 tation specification, respectively, within three years after
17 the date of such adoption.

18 (c) APPLICATION OF DEFINITIONS.—The definitions
19 contained in section 3000 of the Public Health Service
20 Act, as added by section 4101, shall apply for purposes
21 of this part.

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

23 Each agency (as defined in such Executive Order
24 issued on August 22, 2006, relating to promoting quality
25 and efficient health care in Federal government adminis-

1 tered or sponsored health care programs) shall require in
2 contracts or agreements with health care providers, health
3 plans, or health insurance issuers that as each provider,
4 plan, or issuer implements, acquires, or upgrades health
5 information technology systems, it shall utilize, where
6 available, health information technology systems and prod-
7 ucts that meet standards and implementation specifica-
8 tions adopted under section 3004 of the Public Health
9 Service Act, as added by section 4101.

10 **SEC. 4113. STUDY AND REPORTS.**

11 (a) REPORT ON ADOPTION OF NATIONWIDE SYS-
12 TEM.—Not later than 2 years after the date of the enact-
13 ment of this Act and annually thereafter, the Secretary
14 of Health and Human Services shall submit to the appro-
15 priate committees of jurisdiction of the House of Rep-
16 resentatives and the Senate a report that—

17 (1) describes the specific actions that have been
18 taken by the Federal Government and private enti-
19 ties to facilitate the adoption of a nationwide system
20 for the electronic use and exchange of health infor-
21 mation;

22 (2) describes barriers to the adoption of such a
23 nationwide system; and

24 (3) contains recommendations to achieve full
25 implementation of such a nationwide system.

1 (b) REIMBURSEMENT INCENTIVE STUDY AND RE-
2 PORT.—

3 (1) STUDY.—The Secretary of Health and
4 Human Services shall carry out, or contract with a
5 private entity to carry out, a study that examines
6 methods to create efficient reimbursement incentives
7 for improving health care quality in Federally quali-
8 fied health centers, rural health clinics, and free
9 clinics.

10 (2) REPORT.—Not later than 2 years after the
11 date of the enactment of this Act, the Secretary of
12 Health and Human Services shall submit to the ap-
13 propriate committees of jurisdiction of the House of
14 Representatives and the Senate a report on the
15 study carried out under paragraph (1).

16 (c) AGING SERVICES TECHNOLOGY STUDY AND RE-
17 PORT.—

18 (1) IN GENERAL.—The Secretary of Health and
19 Human Services shall carry out, or contract with a
20 private entity to carry out, a study of matters relat-
21 ing to the potential use of new aging services tech-
22 nology to assist seniors, individuals with disabilities,
23 and their caregivers throughout the aging process.

24 (2) MATTERS TO BE STUDIED.—The study
25 under paragraph (1) shall include—

1 (A) an evaluation of—

2 (i) methods for identifying current,
3 emerging, and future health technology
4 that can be used to meet the needs of sen-
5 iors and individuals with disabilities and
6 their caregivers across all aging services
7 settings, as specified by the Secretary;

8 (ii) methods for fostering scientific in-
9 novation with respect to aging services
10 technology within the business and aca-
11 demic communities; and

12 (iii) developments in aging services
13 technology in other countries that may be
14 applied in the United States; and

15 (B) identification of—

16 (i) barriers to innovation in aging
17 services technology and devising strategies
18 for removing such barriers; and

19 (ii) barriers to the adoption of aging
20 services technology by health care pro-
21 viders and consumers and devising strate-
22 gies to removing such barriers.

23 (3) REPORT.—Not later than 24 months after
24 the date of the enactment of this Act, the Secretary
25 shall submit to the appropriate committees of juris-

1 diction of the House of Representatives and of the
2 Senate a report on the study carried out under para-
3 graph (1).

4 (4) DEFINITIONS.—For purposes of this sub-
5 section:

6 (A) AGING SERVICES TECHNOLOGY.—The
7 term “aging services technology” means health
8 technology that meets the health care needs of
9 seniors, individuals with disabilities, and the
10 caregivers of such seniors and individuals.

11 (B) SENIOR.—The term “senior” has such
12 meaning as specified by the Secretary.

13 **Subtitle B—Testing of Health**
14 **Information Technology**

15 **SEC. 4201. NATIONAL INSTITUTE FOR STANDARDS AND**
16 **TECHNOLOGY TESTING.**

17 (a) PILOT TESTING OF STANDARDS AND IMPLEMEN-
18 TATION SPECIFICATIONS.—In coordination with the HIT
19 Standards Committee established under section 3003 of
20 the Public Health Service Act, as added by section 4101,
21 with respect to the development of standards and imple-
22 mentation specifications under such section, the Director
23 of the National Institute for Standards and Technology
24 shall test such standards and implementation specifica-
25 tions, as appropriate, in order to assure the efficient im-

1 plementation and use of such standards and implementa-
2 tion specifications.

3 (b) VOLUNTARY TESTING PROGRAM.—In coordina-
4 tion with the HIT Standards Committee established under
5 section 3003 of the Public Health Service Act, as added
6 by section 4101, with respect to the development of stand-
7 ards and implementation specifications under such sec-
8 tion, the Director of the National Institute of Standards
9 and Technology shall support the establishment of a con-
10 formance testing infrastructure, including the develop-
11 ment of technical test beds. The development of this con-
12 formance testing infrastructure may include a program to
13 accredit independent, non-Federal laboratories to perform
14 testing.

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

16 (a) HEALTH CARE INFORMATION ENTERPRISE INTE-
17 GRATION RESEARCH CENTERS.—

18 (1) IN GENERAL.—The Director of the National
19 Institute of Standards and Technology, in consulta-
20 tion with the Director of the National Science Foun-
21 dation and other appropriate Federal agencies, shall
22 establish a program of assistance to institutions of
23 higher education (or consortia thereof which may in-
24 clude nonprofit entities and Federal Government

1 laboratories) to establish multidisciplinary Centers
2 for Health Care Information Enterprise Integration.

3 (2) REVIEW; COMPETITION.—Grants shall be
4 awarded under this subsection on a merit-reviewed,
5 competitive basis.

6 (3) PURPOSE.—The purposes of the Centers de-
7 scribed in paragraph (1) shall be—

8 (A) to generate innovative approaches to
9 health care information enterprise integration
10 by conducting cutting-edge, multidisciplinary
11 research on the systems challenges to health
12 care delivery; and

13 (B) the development and use of health in-
14 formation technologies and other complemen-
15 tary fields.

16 (4) RESEARCH AREAS.—Research areas may in-
17 clude—

18 (A) interfaces between human information
19 and communications technology systems;

20 (B) voice-recognition systems;

21 (C) software that improves interoperability
22 and connectivity among health information sys-
23 tems;

24 (D) software dependability in systems crit-
25 ical to health care delivery;

1 (E) measurement of the impact of informa-
2 tion technologies on the quality and productivity
3 of health care;

4 (F) health information enterprise manage-
5 ment;

6 (G) health information technology security
7 and integrity; and

8 (H) relevant health information technology
9 to reduce medical errors.

10 (5) APPLICATIONS.—An institution of higher
11 education (or a consortium thereof) seeking funding
12 under this subsection shall submit an application to
13 the Director of the National Institute of Standards
14 and Technology at such time, in such manner, and
15 containing such information as the Director may re-
16 quire. The application shall include, at a minimum,
17 a description of—

18 (A) the research projects that will be un-
19 dertaken by the Center established pursuant to
20 assistance under paragraph (1) and the respec-
21 tive contributions of the participating entities;

22 (B) how the Center will promote active col-
23 laboration among scientists and engineers from
24 different disciplines, such as information tech-

1 nology, biologic sciences, management, social
2 sciences, and other appropriate disciplines;

3 (C) technology transfer activities to dem-
4 onstrate and diffuse the research results, tech-
5 nologies, and knowledge; and

6 (D) how the Center will contribute to the
7 education and training of researchers and other
8 professionals in fields relevant to health infor-
9 mation enterprise integration.

10 (b) NATIONAL INFORMATION TECHNOLOGY RE-
11 SEARCH AND DEVELOPMENT PROGRAM.—The National
12 High-Performance Computing Program established by
13 section 101 of the High-Performance Computing Act of
14 1991 (15 U.S.C. 5511) shall coordinate Federal research
15 and development programs related to the development and
16 deployment of health information technology, including ac-
17 tivities related to—

18 (1) computer infrastructure;

19 (2) data security;

20 (3) development of large-scale, distributed, reli-
21 able computing systems;

22 (4) wired, wireless, and hybrid high-speed net-
23 working;

24 (5) development of software and software-inten-
25 sive systems;

1 (6) human-computer interaction and informa-
2 tion management technologies; and

3 (7) the social and economic implications of in-
4 formation technology.

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

7 **PART I—GRANTS AND LOANS FUNDING**

8 **SEC. 4301. GRANT, LOAN, AND DEMONSTRATION PRO-**
9 **GRAMS.**

10 Title XXX of the Public Health Service Act, as added
11 by section 4101, is amended by adding at the end the fol-
12 lowing new subtitle:

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

15 **“SEC. 3011. IMMEDIATE FUNDING TO STRENGTHEN THE**
16 **HEALTH INFORMATION TECHNOLOGY INFRA-**
17 **STRUCTURE.**

18 “(a) IN GENERAL.—The Secretary shall, using
19 amounts appropriated under section 3018, invest in the
20 infrastructure necessary to allow for and promote the elec-
21 tronic exchange and use of health information for each
22 individual in the United States consistent with the goals
23 outlined in the strategic plan developed by the National
24 Coordinator (and as available) under section 3001. To the
25 greatest extent practicable, the Secretary shall ensure that

1 any funds so appropriated shall be used for the acquisition
2 of health information technology that meets standards and
3 certification criteria adopted before the date of the enact-
4 ment of this title until such date as the standards are
5 adopted under section 3004. The Secretary shall invest
6 funds through the different agencies with expertise in such
7 goals, such as the Office of the National Coordinator for
8 Health Information Technology, the Health Resources and
9 Services Administration, the Agency for Healthcare Re-
10 search and Quality, the Centers of Medicare & Medicaid
11 Services, the Centers for Disease Control and Prevention,
12 and the Indian Health Service to support the following:

13 “(1) Health information technology architecture
14 that will support the nationwide electronic exchange
15 and use of health information in a secure, private,
16 and accurate manner, including connecting health
17 information exchanges, and which may include up-
18 dating and implementing the infrastructure nec-
19 essary within different agencies of the Department
20 of Health and Human Services to support the elec-
21 tronic use and exchange of health information.

22 “(2) Development and adoption of appropriate
23 certified electronic health records for categories of
24 providers, as defined in section 3000, not eligible for

1 support under title XVIII or XIX of the Social Secu-
2 rity Act for the adoption of such records.

3 “(3) Training on and dissemination of informa-
4 tion on best practices to integrate health information
5 technology, including electronic health records, into
6 a provider’s delivery of care, consistent with best
7 practices learned from the Health Information Tech-
8 nology Research Center developed under section
9 3012(b), including community health centers receiv-
10 ing assistance under section 330, covered entities
11 under section 340B, and providers participating in
12 one or more of the programs under titles XVIII,
13 XIX, and XXI of the Social Security Act (relating
14 to Medicare, Medicaid, and the State Children’s
15 Health Insurance Program).

16 “(4) Infrastructure and tools for the promotion
17 of telemedicine, including coordination among Fed-
18 eral agencies in the promotion of telemedicine.

19 “(5) Promotion of the interoperability of clinical
20 data repositories or registries.

21 “(6) Promotion of technologies and best prac-
22 tices that enhance the protection of health informa-
23 tion by all holders of individually identifiable health
24 information.

1 The National Coordinator shall consult with other Federal
2 agencies with demonstrated experience and expertise in in-
3 formation technology services, such as the National Insti-
4 tute of Standards and Technology, in developing and im-
5 plementing this program.

6 “(b) HEALTH INFORMATION TECHNOLOGY RE-
7 SEARCH CENTER.—

8 “(1) IN GENERAL.—The Secretary shall create
9 a Health Information Technology Research Center
10 (in this section referred to as the ‘Center’) to pro-
11 vide technical assistance and develop or recognize
12 best practices to support and accelerate efforts to
13 adopt, implement, and effectively utilize health infor-
14 mation technology that allows for the electronic ex-
15 change and use of information in compliance with
16 standards, implementation specifications, and certifi-
17 cation criteria adopted under section 3004.

18 “(2) INPUT.—The Center shall incorporate
19 input from—

20 “(A) other Federal agencies with dem-
21 onstrated experience and expertise in informa-
22 tion technology services such as the National
23 Institute of Standards and Technology;

24 “(B) users of health information tech-
25 nology, such as providers and their support and

1 clerical staff and others involved in the care and
2 care coordination of patients, from the health
3 care and health information technology indus-
4 try; and

5 “(C) others as appropriate.

6 “(3) PURPOSES.—The purposes of the Center
7 are to—

8 “(A) provide a forum for the exchange of
9 knowledge and experience;

10 “(B) accelerate the transfer of lessons
11 learned from existing public and private sector
12 initiatives, including those currently receiving
13 Federal financial support;

14 “(C) assemble, analyze, and widely dis-
15 seminate evidence and experience related to the
16 adoption, implementation, and effective use of
17 health information technology that allows for
18 the electronic exchange and use of information
19 including through the regional centers described
20 in subsection (c);

21 “(D) provide technical assistance for the
22 establishment and evaluation of regional and
23 local health information networks to facilitate
24 the electronic exchange of information across

1 health care settings and improve the quality of
2 health care;

3 “(E) provide technical assistance for the
4 development and dissemination of solutions to
5 barriers to the exchange of electronic health in-
6 formation; and

7 “(F) learn about effective strategies to
8 adopt and utilize health information technology
9 in medically underserved communities.

10 “(c) HEALTH INFORMATION TECHNOLOGY RE-
11 GIONAL EXTENSION CENTERS.—

12 “(1) IN GENERAL.—The Secretary shall provide
13 assistance for the creation and support of regional
14 centers (in this subsection referred to as ‘regional
15 centers’) to provide technical assistance and dissemi-
16 nate best practices and other information learned
17 from the Center to support and accelerate efforts to
18 adopt, implement, and effectively utilize health infor-
19 mation technology that allows for the electronic ex-
20 change and use of information in compliance with
21 standards, implementation specifications, and certifi-
22 cation criteria adopted under section 3004. Activities
23 conducted under this subsection shall be consistent
24 with the strategic plan developed by the National
25 Coordinator, (and, as available) under section 3001.

1 “(2) AFFILIATION.—Regional centers shall be
2 affiliated with any United States-based nonprofit in-
3 stitution or organization, or group thereof, that ap-
4 plies and is awarded financial assistance under this
5 section. Individual awards shall be decided on the
6 basis of merit.

7 “(3) OBJECTIVE.—The objective of the regional
8 centers is to enhance and promote the adoption of
9 health information technology through—

10 “(A) assistance with the implementation,
11 effective use, upgrading, and ongoing mainte-
12 nance of health information technology, includ-
13 ing electronic health records, to healthcare pro-
14 viders nationwide;

15 “(B) broad participation of individuals
16 from industry, universities, and State govern-
17 ments;

18 “(C) active dissemination of best practices
19 and research on the implementation, effective
20 use, upgrading, and ongoing maintenance of
21 health information technology, including elec-
22 tronic health records, to health care providers
23 in order to improve the quality of healthcare
24 and protect the privacy and security of health
25 information;

1 “(D) participation, to the extent prac-
2 ticable, in health information exchanges;

3 “(E) utilization, when appropriate, of the
4 expertise and capability that exists in Federal
5 agencies other than the Department; and

6 “(F) integration of health information
7 technology, including electronic health records,
8 into the initial and ongoing training of health
9 professionals and others in the healthcare in-
10 dustry that would be instrumental to improving
11 the quality of healthcare through the smooth
12 and accurate electronic use and exchange of
13 health information.

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

18 “(A) Public or not-for-profit hospitals or
19 critical access hospitals.

20 “(B) Federally qualified health centers (as
21 defined in section 1861(aa)(4) of the Social Se-
22 curity Act).

23 “(C) Entities that are located in rural and
24 other areas that serve uninsured, underinsured,

1 and medically underserved individuals (regard-
2 less of whether such area is urban or rural).

3 “(D) Individual or small group practices
4 (or a consortium thereof) that are primarily fo-
5 cused on primary care.

6 “(5) FINANCIAL SUPPORT.—The Secretary may
7 provide financial support to any regional center cre-
8 ated under this subsection for a period not to exceed
9 four years. The Secretary may not provide more
10 than 50 percent of the capital and annual operating
11 and maintenance funds required to create and main-
12 tain such a center, except in an instance of national
13 economic conditions which would render this cost-
14 share requirement detrimental to the program and
15 upon notification to Congress as to the justification
16 to waive the cost-share requirement.

17 “(6) NOTICE OF PROGRAM DESCRIPTION AND
18 AVAILABILITY OF FUNDS.—The Secretary shall pub-
19 lish in the Federal Register, not later than 90 days
20 after the date of the enactment of this title, a draft
21 description of the program for establishing regional
22 centers under this subsection. Such description shall
23 include the following:

24 “(A) A detailed explanation of the program
25 and the programs goals.

1 “(B) Procedures to be followed by the ap-
2 plicants.

3 “(C) Criteria for determining qualified ap-
4 plicants.

5 “(D) Maximum support levels expected to
6 be available to centers under the program.

7 “(7) APPLICATION REVIEW.—The Secretary
8 shall subject each application under this subsection
9 to merit review. In making a decision whether to ap-
10 prove such application and provide financial support,
11 the Secretary shall consider at a minimum the mer-
12 its of the application, including those portions of the
13 application regarding—

14 “(A) the ability of the applicant to provide
15 assistance under this subsection and utilization
16 of health information technology appropriate to
17 the needs of particular categories of health care
18 providers;

19 “(B) the types of service to be provided to
20 health care providers;

21 “(C) geographical diversity and extent of
22 service area; and

23 “(D) the percentage of funding and
24 amount of in-kind commitment from other
25 sources.

1 “(8) BIENNIAL EVALUATION.—Each regional
2 center which receives financial assistance under this
3 subsection shall be evaluated biennially by an evalua-
4 tion panel appointed by the Secretary. Each evalua-
5 tion panel shall be composed of private experts, none
6 of whom shall be connected with the center involved,
7 and of Federal officials. Each evaluation panel shall
8 measure the involved center’s performance against
9 the objective specified in paragraph (3). The Sec-
10 retary shall not continue to provide funding to a re-
11 gional center unless its evaluation is overall positive.

12 “(9) CONTINUING SUPPORT.—After the second
13 year of assistance under this subsection, a regional
14 center may receive additional support under this
15 subsection if it has received positive evaluations and
16 a finding by the Secretary that continuation of Fed-
17 eral funding to the center was in the best interest
18 of provision of health information technology exten-
19 sion services.

20 **“SEC. 3013. STATE GRANTS TO PROMOTE HEALTH INFOR-**
21 **MATION TECHNOLOGY.**

22 “(a) IN GENERAL.—The Secretary, acting through
23 the National Coordinator, shall establish a program in ac-
24 cordance with this section to facilitate and expand the
25 electronic movement and use of health information among

1 organizations according to nationally recognized stand-
2 ards.

3 “(b) PLANNING GRANTS.—The Secretary may award
4 a grant to a State or qualified State-designated entity (as
5 described in subsection (f)) that submits an application
6 to the Secretary at such time, in such manner, and con-
7 taining such information as the Secretary may specify, for
8 the purpose of planning activities described in subsection
9 (d).

10 “(c) IMPLEMENTATION GRANTS.—The Secretary
11 may award a grant to a State or qualified State designated
12 entity that—

13 “(1) has submitted, and the Secretary has ap-
14 proved, a plan described in subsection (e) (regardless
15 of whether such plan was prepared using amounts
16 awarded under subsection (b)); and

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

20 “(d) USE OF FUNDS.—Amounts received under a
21 grant under subsection (c) shall be used to conduct activi-
22 ties to facilitate and expand the electronic movement and
23 use of health information among organizations according
24 to nationally recognized standards through activities that
25 include—

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

4 “(2) identifying State or local resources avail-
5 able towards a nationwide effort to promote health
6 information technology;

7 “(3) complementing other Federal grants, pro-
8 grams, and efforts towards the promotion of health
9 information technology;

10 “(4) providing technical assistance for the de-
11 velopment and dissemination of solutions to barriers
12 to the exchange of electronic health information;

13 “(5) promoting effective strategies to adopt and
14 utilize health information technology in medically
15 underserved communities;

16 “(6) assisting patients in utilizing health infor-
17 mation technology;

18 “(7) encouraging clinicians to work with Health
19 Information Technology Regional Extension Centers
20 as described in section 3012, to the extent they are
21 available and valuable;

22 “(8) supporting public health agencies’ author-
23 ized use of and access to electronic health informa-
24 tion;

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

4 “(10) such other activities as the Secretary may
5 specify.

6 “(e) PLAN.—

7 “(1) IN GENERAL.—A plan described in this
8 subsection is a plan that describes the activities to
9 be carried out by a State or by the qualified State-
10 designated entity within such State to facilitate and
11 expand the electronic movement and use of health
12 information among organizations according to na-
13 tionally recognized standards and implementation
14 specifications.

15 “(2) REQUIRED ELEMENTS.—A plan described
16 in paragraph (1) shall—

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

18 “(B) be consistent with the strategic plan
19 developed by the National Coordinator, (and, as
20 available) under section 3001;

21 “(C) include a description of the ways the
22 State or qualified State-designated entity will
23 carry out the activities described in subsection
24 (b); and

1 “(D) contain such elements as the Sec-
2 retary may require.

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

6 “(1) be designated by the State as eligible to
7 receive awards under this section;

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

10 “(3) demonstrate that one of its principal goals
11 is to use information technology to improve health
12 care quality and efficiency through the authorized
13 and secure electronic exchange and use of health in-
14 formation;

15 “(4) adopt nondiscrimination and conflict of in-
16 terest policies that demonstrate a commitment to
17 open, fair, and nondiscriminatory participation by
18 stakeholders; and

19 “(5) conform to such other requirements as the
20 Secretary may establish.

21 “(g) REQUIRED CONSULTATION.—In carrying out
22 activities described in subsections (b) and (c), a State or
23 qualified State-designated entity shall consult with and
24 consider the recommendations of—

1 “(1) health care providers (including providers
2 that provide services to low income and underserved
3 populations);

4 “(2) health plans;

5 “(3) patient or consumer organizations that
6 represent the population to be served;

7 “(4) health information technology vendors;

8 “(5) health care purchasers and employers;

9 “(6) public health agencies;

10 “(7) health professions schools, universities and
11 colleges;

12 “(8) clinical researchers;

13 “(9) other users of health information tech-
14 nology such as the support and clerical staff of pro-
15 viders and others involved in the care and care co-
16 ordination of patients; and

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

19 “(h) CONTINUOUS IMPROVEMENT.—The Secretary
20 shall annually evaluate the activities conducted under this
21 section and shall, in awarding grants under this section,
22 implement the lessons learned from such evaluation in a
23 manner so that awards made subsequent to each such
24 evaluation are made in a manner that, in the determina-
25 tion of the Secretary, will lead towards the greatest im-

1 improvement in quality of care, decrease in costs, and the
2 most effective authorized and secure electronic exchange
3 of health information.

4 “(i) REQUIRED MATCH.—

5 “(1) IN GENERAL.—For a fiscal year (begin-
6 ning with fiscal year 2011), the Secretary may not
7 make a grant under this section to a State unless
8 the State agrees to make available non-Federal con-
9 tributions (which may include in-kind contributions)
10 toward the costs of a grant awarded under sub-
11 section (c) in an amount equal to—

12 “(A) for fiscal year 2011, not less than \$1
13 for each \$10 of Federal funds provided under
14 the grant;

15 “(B) for fiscal year 2012, not less than \$1
16 for each \$7 of Federal funds provided under
17 the grant; and

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

21 “(2) AUTHORITY TO REQUIRE STATE MATCH
22 FOR FISCAL YEARS BEFORE FISCAL YEAR 2011.—For
23 any fiscal year during the grant program under this
24 section before fiscal year 2011, the Secretary may
25 determine the extent to which there shall be required

1 a non-Federal contribution from a State receiving a
2 grant under this section.

3 **“SEC. 3014. COMPETITIVE GRANTS TO STATES AND INDIAN**
4 **TRIBES FOR THE DEVELOPMENT OF LOAN**
5 **PROGRAMS TO FACILITATE THE WIDE-**
6 **SPREAD ADOPTION OF CERTIFIED EHR TECH-**
7 **NOLOGY.**

8 “(a) IN GENERAL.—The National Coordinator may
9 award competitive grants to eligible entities for the estab-
10 lishment of programs for loans to health care providers
11 to conduct the activities described in subsection (e).

12 “(b) ELIGIBLE ENTITY DEFINED.—For purposes of
13 this subsection, the term ‘eligible entity’ means a State
14 or Indian tribe (as defined in the Indian Self-Determina-
15 tion and Education Assistance Act) that—

16 “(1) submits to the National Coordinator an
17 application at such time, in such manner, and con-
18 taining such information as the National Coordi-
19 nator may require;

20 “(2) submits to the National Coordinator a
21 strategic plan in accordance with subsection (d) and
22 provides to the National Coordinator assurances that
23 the entity will update such plan annually in accord-
24 ance with such subsection;

1 “(3) provides assurances to the National Coor-
2 dinator that the entity will establish a Loan Fund
3 in accordance with subsection (c);

4 “(4) provides assurances to the National Coor-
5 dinator that the entity will not provide a loan from
6 the Loan Fund to a health care provider unless the
7 provider agrees to—

8 “(A) submit reports on quality measures
9 adopted by the Federal Government (by not
10 later than 90 days after the date on which such
11 measures are adopted), to—

12 “(i) the Administrator of the Centers
13 for Medicare & Medicaid Services (or his
14 or her designee), in the case of an entity
15 participating in the Medicare program
16 under title XVIII of the Social Security
17 Act or the Medicaid program under title
18 XIX of such Act; or

19 “(ii) the Secretary in the case of other
20 entities;

21 “(B) demonstrate to the satisfaction of the
22 Secretary (through criteria established by the
23 Secretary) that any certified EHR technology
24 purchased, improved, or otherwise financially
25 supported under a loan under this section is

1 used to exchange health information in a man-
2 ner that, in accordance with law and standards
3 (as adopted under section 3004) applicable to
4 the exchange of information, improves the qual-
5 ity of health care, such as promoting care co-
6 ordination;

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

9 “(D) include a plan on how health care
10 providers involved intend to maintain and sup-
11 port the certified EHR technology over time;
12 and

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

20 “(5) agrees to provide matching funds in ac-
21 cordance with subsection (h).

22 “(c) ESTABLISHMENT OF FUND.—For purposes of
23 subsection (b)(3), an eligible entity shall establish a cer-
24 tified EHR technology loan fund (referred to in this sub-
25 section as a ‘Loan Fund’) and comply with the other re-

1 requirements contained in this section. A grant to an eligible
2 entity under this section shall be deposited in the Loan
3 Fund established by the eligible entity. No funds author-
4 ized by other provisions of this title to be used for other
5 purposes specified in this title shall be deposited in any
6 Loan Fund.

7 “(d) STRATEGIC PLAN.—

8 “(1) IN GENERAL.—For purposes of subsection
9 (b)(2), a strategic plan of an eligible entity under
10 this subsection shall identify the intended uses of
11 amounts available to the Loan Fund of such entity.

12 “(2) CONTENTS.—A strategic plan under para-
13 graph (1), with respect to a Loan Fund of an eligi-
14 ble entity, shall include for a year the following:

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

17 “(B) A description of the criteria and
18 methods established for the distribution of
19 funds from the Loan Fund during the year.

20 “(C) A description of the financial status
21 of the Loan Fund as of the date of submission
22 of the plan.

23 “(D) The short-term and long-term goals
24 of the Loan Fund.

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

10 “(1) facilitate the purchase of certified EHR
11 technology;

12 “(2) enhance the utilization of certified EHR
13 technology;

14 “(3) train personnel in the use of such tech-
15 nology; or

16 “(4) improve the secure electronic exchange of
17 health information.

18 “(f) TYPES OF ASSISTANCE.—Except as otherwise
19 limited by applicable State law, amounts deposited into a
20 Loan Fund under this section may only be used for the
21 following:

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

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

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

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

9 “(2) To guarantee, or purchase insurance for,
10 a local obligation (all of the proceeds of which fi-
11 nance a project eligible for assistance under this
12 subsection) if the guarantee or purchase would im-
13 prove credit market access or reduce the interest
14 rate applicable to the obligation involved.

15 “(3) As a source of revenue or security for the
16 payment of principal and interest on revenue or gen-
17 eral obligation bonds issued by the eligible entity if
18 the proceeds of the sale of the bonds will be depos-
19 ited into the Loan Fund.

20 “(4) To earn interest on the amounts deposited
21 into the Loan Fund.

22 “(5) To make reimbursements described in sub-
23 section (g)(4)(A).

24 “(g) ADMINISTRATION OF LOAN FUNDS.—

1 “(1) COMBINED FINANCIAL ADMINISTRATION.—
2 An eligible entity may (as a convenience and to
3 avoid unnecessary administrative costs) combine, in
4 accordance with applicable State law, the financial
5 administration of a Loan Fund established under
6 this subsection with the financial administration of
7 any other revolving fund established by the entity if
8 otherwise not prohibited by the law under which the
9 Loan Fund was established.

10 “(2) COST OF ADMINISTERING FUND.—Each el-
11 igible entity may annually use not to exceed 4 per-
12 cent of the funds provided to the entity under a
13 grant under this section to pay the reasonable costs
14 of the administration of the programs under this
15 section, including the recovery of reasonable costs
16 expended to establish a Loan Fund which are in-
17 curred after the date of the enactment of this title.

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

22 “(A) provisions to ensure that each eligible
23 entity commits and expends funds allotted to
24 the entity under this section as efficiently as

1 possible in accordance with this title and appli-
2 cable State laws; and

3 “(B) guidance to prevent waste, fraud, and
4 abuse.

5 “(4) PRIVATE SECTOR CONTRIBUTIONS.—

6 “(A) IN GENERAL.—A Loan Fund estab-
7 lished under this section may accept contribu-
8 tions from private sector entities, except that
9 such entities may not specify the recipient or
10 recipients of any loan issued under this sub-
11 section. An eligible entity may agree to reim-
12 burse a private sector entity for any contribu-
13 tion made under this subparagraph, except that
14 the amount of such reimbursement may not be
15 greater than the principal amount of the con-
16 tribution made.

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

24 “(h) MATCHING REQUIREMENTS.—

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

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

17 “(i) EFFECTIVE DATE.—The Secretary may not
18 make an award under this section prior to January 1,
19 2010.

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

23 “(a) IN GENERAL.—The Secretary may award grants
24 under this section to carry out demonstration projects to
25 develop academic curricula integrating certified EHR

1 technology in the clinical education of health professionals.
2 Such awards shall be made on a competitive basis and
3 pursuant to peer review.

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

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

9 “(2) submit to the Secretary a strategic plan
10 for integrating certified EHR technology in the clin-
11 ical education of health professionals to reduce med-
12 ical errors and enhance health care quality;

13 “(3) be—

14 “(A) a school of medicine, osteopathic
15 medicine, dentistry, or pharmacy, a graduate
16 program in behavioral or mental health, or any
17 other graduate health professions school;

18 “(B) a graduate school of nursing or phy-
19 sician assistant studies;

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

22 “(D) an institution with a graduate med-
23 ical education program in medicine, osteopathic
24 medicine, dentistry, pharmacy, nursing, or phy-
25 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
4 patients, the efficiency of health care delivery, and
5 in increasing the likelihood that graduates of the
6 grantee will adopt and incorporate certified EHR
7 technology, in the delivery of health care services;
8 and

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

11 “(c) USE OF FUNDS.—

12 “(1) IN GENERAL.—With respect to a grant
13 under subsection (a), an eligible entity shall—

14 “(A) use grant funds in collaboration with
15 2 or more disciplines; and

16 “(B) use grant funds to integrate certified
17 EHR technology into community-based clinical
18 education.

19 “(2) LIMITATION.—An eligible entity shall not
20 use amounts received under a grant under sub-
21 section (a) to purchase hardware, software, or serv-
22 ices.

23 “(d) FINANCIAL SUPPORT.—The Secretary may not
24 provide more than 50 percent of the costs of any activity
25 for which assistance is provided under subsection (a), ex-

1 cept in an instance of national economic conditions which
2 would render the cost-share requirement under this sub-
3 section detrimental to the program and upon notification
4 to Congress as to the justification to waive the cost-share
5 requirement.

6 “(e) EVALUATION.—The Secretary shall take such
7 action as may be necessary to evaluate the projects funded
8 under this section and publish, make available, and dis-
9 seminate the results of such evaluations on as wide a basis
10 as is practicable.

11 “(f) REPORTS.—Not later than 1 year after the date
12 of enactment of this title, and annually thereafter, the Sec-
13 retary shall submit to the Committee on Health, Edu-
14 cation, Labor, and Pensions and the Committee on Fi-
15 nance of the Senate, and the Committee on Energy and
16 Commerce of the House of Representatives a report
17 that—

18 “(1) describes the specific projects established
19 under this section; and

20 “(2) contains recommendations for Congress
21 based on the evaluation conducted under subsection
22 (e).

1 **“SEC. 3016. INFORMATION TECHNOLOGY PROFESSIONALS**
2 **ON HEALTH CARE.**

3 “(a) IN GENERAL.—The Secretary, in consultation
4 with the Director of the National Science Foundation,
5 shall provide assistance to institutions of higher education
6 (or consortia thereof) to establish or expand medical
7 health informatics education programs, including certifi-
8 cation, undergraduate, and masters degree programs, for
9 both health care and information technology students to
10 ensure the rapid and effective utilization and development
11 of health information technologies (in the United States
12 health care infrastructure).

13 “(b) ACTIVITIES.—Activities for which assistance
14 may be provided under subsection (a) may include the fol-
15 lowing:

16 “(1) Developing and revising curricula in med-
17 ical health informatics and related disciplines.

18 “(2) Recruiting and retaining students to the
19 program involved.

20 “(3) Acquiring equipment necessary for student
21 instruction in these programs, including the installa-
22 tion of testbed networks for student use.

23 “(4) Establishing or enhancing bridge programs
24 in the health informatics fields between community
25 colleges and universities.

1 “(c) PRIORITY.—In providing assistance under sub-
2 section (a), the Secretary shall give preference to the fol-
3 lowing:

4 “(1) Existing education and training programs.

5 “(2) Programs designed to be completed in less
6 than six months.

7 “(d) FINANCIAL SUPPORT.—The Secretary may not
8 provide more than 50 percent of the costs of any activity
9 for which assistance is provided under subsection (a), ex-
10 cept in an instance of national economic conditions which
11 would render the cost-share requirement under this sub-
12 section detrimental to the program and upon notification
13 to Congress as to the justification to waive the cost-share
14 requirement.

15 **“SEC. 3017. GENERAL GRANT AND LOAN PROVISIONS.**

16 “(a) REPORTS.—The Secretary may require that an
17 entity receiving assistance under this subtitle shall submit
18 to the Secretary, not later than the date that is 1 year
19 after the date of receipt of such assistance, a report that
20 includes—

21 “(1) an analysis of the effectiveness of the ac-
22 tivities for which the entity receives such assistance,
23 as compared to the goals for such activities; and

24 “(2) an analysis of the impact of the project on
25 health care quality and safety.

1 “(b) REQUIREMENT TO IMPROVE QUALITY OF CARE
 2 AND DECREASE IN COSTS.—The National Coordinator
 3 shall annually evaluate the activities conducted under this
 4 subtitle and shall, in awarding grants, implement the les-
 5 sons learned from such evaluation in a manner so that
 6 awards made subsequent to each such evaluation are made
 7 in a manner that, in the determination of the National
 8 Coordinator, will result in the greatest improvement in the
 9 quality and efficiency of health care.

10 **“SEC. 3018. AUTHORIZATION FOR APPROPRIATIONS.**

11 “For the purposes of carrying out this subtitle, there
 12 is authorized to be appropriated such sums as may be nec-
 13 essary for each of the fiscal years 2009 through 2013.
 14 Amounts so appropriated shall remain available until ex-
 15 pended.”.

16 **PART II—MEDICARE PROGRAM**

17 **SEC. 4311. INCENTIVES FOR ELIGIBLE PROFESSIONALS.**

18 (a) INCENTIVE PAYMENTS.—Section 1848 of the So-
 19 cial Security Act (42 U.S.C. 1395w-4) is amended by add-
 20 ing at the end the following new subsection:

21 “(o) INCENTIVES FOR ADOPTION AND MEANINGFUL
 22 USE OF CERTIFIED EHR TECHNOLOGY.—

23 “(1) INCENTIVE PAYMENTS.—

24 “(A) IN GENERAL.—Subject to the suc-
 25 ceeding subparagraphs of this paragraph, with

1 respect to covered professional services fur-
2 nished by an eligible professional during a pay-
3 ment year (as defined in subparagraph (E)), if
4 the eligible professional is a meaningful EHR
5 user (as determined under paragraph (2)) for
6 the reporting period with respect to such year,
7 in addition to the amount otherwise paid under
8 this part, there also shall be paid to the eligible
9 professional (or to an employer or facility in the
10 cases described in clause (A) of section
11 1842(b)(6)), from the Federal Supplementary
12 Medical Insurance Trust Fund established
13 under section 1841 an amount equal to 75 per-
14 cent of the Secretary's estimate (based on
15 claims submitted not later than 2 months after
16 the end of the payment year) of the allowed
17 charges under this part for all such covered
18 professional services furnished by the eligible
19 professional during such year.

20 “(B) LIMITATIONS ON AMOUNTS OF IN-
21 CENTIVE PAYMENTS.—

22 “(i) IN GENERAL.—In no case shall
23 the amount of the incentive payment pro-
24 vided under this paragraph for an eligible
25 professional for a payment year exceed the

1 applicable amount specified under this sub-
2 paragraph with respect to such eligible
3 professional and such year.

4 “(ii) AMOUNT.—Subject to clause
5 (iii), the applicable amount specified in this
6 subparagraph for an eligible professional is
7 as follows:

8 “(I) For the first payment year
9 for such professional, \$15,000.

10 “(II) For the second payment
11 year for such professional, \$12,000.

12 “(III) For the third payment
13 year for such professional, \$8,000.

14 “(IV) For the fourth payment
15 year for such professional, \$4,000.

16 “(V) For the fifth payment year
17 for such professional, \$2,000.

18 “(VI) For any succeeding pay-
19 ment year for such professional, \$0.

20 “(iii) PHASE DOWN FOR ELIGIBLE
21 PROFESSIONALS FIRST ADOPTING EHR
22 AFTER 2013.—If the first payment year for
23 an eligible professional is after 2013, then
24 the amount specified in this subparagraph
25 for a payment year for such professional is

1 the same as the amount specified in clause
2 (ii) for such payment year for an eligible
3 professional whose first payment year is
4 2013. If the first payment year for an eli-
5 gible professional is after 2015 then the
6 applicable amount specified in this sub-
7 paragraph for such professional for such
8 year and any subsequent year shall be \$0.

9 “(C) NON-APPLICATION TO HOSPITAL-
10 BASED ELIGIBLE PROFESSIONALS.—

11 “(i) IN GENERAL.—No incentive pay-
12 ment may be made under this paragraph
13 in the case of a hospital-based eligible pro-
14 fessional.

15 “(ii) HOSPITAL-BASED ELIGIBLE PRO-
16 FESSIONAL.—For purposes of clause (i),
17 the term ‘hospital-based eligible profes-
18 sional’ means, with respect to covered pro-
19 fessional services furnished by an eligible
20 professional during the reporting period for
21 a payment year, an eligible professional,
22 such as a pathologist, anesthesiologist, or
23 emergency physician, who furnishes sub-
24 stantially all of such services in a hospital
25 setting (whether inpatient or outpatient)

1 and through the use of the facilities and
2 equipment, including computer equipment,
3 of the hospital.

4 “(D) PAYMENT.—

5 “(i) FORM OF PAYMENT.—The pay-
6 ment under this paragraph may be in the
7 form of a single consolidated payment or
8 in the form of such periodic installments
9 as the Secretary may specify.

10 “(ii) COORDINATION OF APPLICATION
11 OF LIMITATION FOR PROFESSIONALS IN
12 DIFFERENT PRACTICES.—In the case of an
13 eligible professional furnishing covered pro-
14 fessional services in more than one practice
15 (as specified by the Secretary), the Sec-
16 retary shall establish rules to coordinate
17 the incentive payments, including the ap-
18 plication of the limitation on amounts of
19 such incentive payments under this para-
20 graph, among such practices.

21 “(iii) COORDINATION WITH MED-
22 ICAID.—The Secretary shall seek, to the
23 maximum extent practicable, to avoid du-
24 plicative requirements from Federal and
25 State Governments to demonstrate mean-

1 ingful use of certified EHR technology
2 under this title and title XIX. In doing so,
3 the Secretary may deem satisfaction of
4 State requirements for such meaningful
5 use for a payment year under title XIX to
6 be sufficient to qualify as meaningful use
7 under this subsection and subsection (a)(7)
8 and vice versa. The Secretary may also ad-
9 just the reporting periods under such title
10 and such subsections in order to carry out
11 this clause.

12 “(E) PAYMENT YEAR DEFINED.—

13 “(i) IN GENERAL.—For purposes of
14 this subsection, the term ‘payment year’
15 means a year beginning with 2011.

16 “(ii) FIRST, SECOND, ETC. PAYMENT
17 YEAR.—The term ‘first payment year’
18 means, with respect to covered professional
19 services furnished by an eligible profes-
20 sional, the first year for which an incentive
21 payment is made for such services under
22 this subsection. The terms ‘second pay-
23 ment year’, ‘third payment year’, ‘fourth
24 payment year’, and ‘fifth payment year’
25 mean, with respect to covered professional

1 services furnished by such eligible profes-
2 sional, each successive year immediately
3 following the first payment year for such
4 professional.

5 “(2) MEANINGFUL EHR USER.—

6 “(A) IN GENERAL.—For purposes of para-
7 graph (1), an eligible professional shall be
8 treated as a meaningful EHR user for a report-
9 ing period for a payment year (or, for purposes
10 of subsection (a)(7), for a reporting period
11 under such subsection for a year) if each of the
12 following requirements is met:

13 “(i) MEANINGFUL USE OF CERTIFIED
14 EHR TECHNOLOGY.—The eligible profes-
15 sional demonstrates to the satisfaction of
16 the Secretary, in accordance with subpara-
17 graph (C)(i), that during such period the
18 professional is using certified EHR tech-
19 nology in a meaningful manner, which
20 shall include the use of electronic pre-
21 scribing as determined to be appropriate
22 by the Secretary.

23 “(ii) INFORMATION EXCHANGE.—The
24 eligible professional demonstrates to the
25 satisfaction of the Secretary, in accordance

1 with subparagraph (C)(i), that during such
2 period such certified EHR technology is
3 connected in a manner that provides, in
4 accordance with law and standards appli-
5 cable to the exchange of information, for
6 the electronic exchange of health informa-
7 tion to improve the quality of health care,
8 such as promoting care coordination.

9 “(iii) REPORTING ON MEASURES
10 USING EHR.—Subject to subparagraph
11 (B)(ii) and using such certified EHR tech-
12 nology, the eligible professional submits in-
13 formation for such period, in a form and
14 manner specified by the Secretary, on such
15 clinical quality measures and such other
16 measures as selected by the Secretary
17 under subparagraph (B)(i).

18 The Secretary may provide for the use of alter-
19 native means for meeting the requirements of
20 clauses (i), (ii), and (iii) in the case of an eligi-
21 ble professional furnishing covered professional
22 services in a group practice (as defined by the
23 Secretary). The Secretary shall seek to improve
24 the use of electronic health records and health
25 care quality over time by requiring more strin-

1 gent measures of meaningful use selected under
2 this paragraph.

3 “(B) REPORTING ON MEASURES.—

4 “(i) SELECTION.—The Secretary shall
5 select measures for purposes of subpara-
6 graph (A)(iii) but only consistent with the
7 following:

8 “(I) The Secretary shall provide
9 preference to clinical quality measures
10 that have been endorsed by the entity
11 with a contract with the Secretary
12 under section 1890(a).

13 “(II) Prior to any measure being
14 selected under this subparagraph, the
15 Secretary shall publish in the Federal
16 Register such measure and provide for
17 a period of public comment on such
18 measure.

19 “(ii) LIMITATION.—The Secretary
20 may not require the electronic reporting of
21 information on clinical quality measures
22 under subparagraph (A)(iii) unless the
23 Secretary has the capacity to accept the in-
24 formation electronically, which may be on
25 a pilot basis.

1 “(iii) COORDINATION OF REPORTING
2 OF INFORMATION.—In selecting such
3 measures, and in establishing the form and
4 manner for reporting measures under sub-
5 paragraph (A)(iii), the Secretary shall seek
6 to avoid redundant or duplicative reporting
7 otherwise required, including reporting
8 under subsection (k)(2)(C).

9 “(C) DEMONSTRATION OF MEANINGFUL
10 USE OF CERTIFIED EHR TECHNOLOGY AND IN-
11 FORMATION EXCHANGE.—

12 “(i) IN GENERAL.—A professional
13 may satisfy the demonstration requirement
14 of clauses (i) and (ii) of subparagraph (A)
15 through means specified by the Secretary,
16 which may include—

17 “(I) an attestation;

18 “(II) the submission of claims
19 with appropriate coding (such as a
20 code indicating that a patient encoun-
21 ter was documented using certified
22 EHR technology);

23 “(III) a survey response;

24 “(IV) reporting under subpara-
25 graph (A)(iii); and

1 “(V) other means specified by the
2 Secretary.

3 “(ii) USE OF PART D DATA.—Not-
4 withstanding sections 1860D–15(d)(2)(B)
5 and 1860D–15(f)(2), the Secretary may
6 use data regarding drug claims submitted
7 for purposes of section 1860D–15 that are
8 necessary for purposes of subparagraph
9 (A).

10 “(3) APPLICATION.—

11 “(A) PHYSICIAN REPORTING SYSTEM
12 RULES.—Paragraphs (5), (6), and (8) of sub-
13 section (k) shall apply for purposes of this sub-
14 section in the same manner as they apply for
15 purposes of such subsection.

16 “(B) COORDINATION WITH OTHER PAY-
17 MENTS.—The provisions of this subsection shall
18 not be taken into account in applying the provi-
19 sions of subsection (m) of this section and of
20 section 1833(m) and any payment under such
21 provisions shall not be taken into account in
22 computing allowable charges under this sub-
23 section.

24 “(C) LIMITATIONS ON REVIEW.—There
25 shall be no administrative or judicial review

1 under section 1869, section 1878, or otherwise
2 of the determination of any incentive payment
3 under this subsection and the payment adjust-
4 ment under subsection (a)(7), including the de-
5 termination of a meaningful EHR user under
6 paragraph (2), a limitation under paragraph
7 (1)(B), and the exception under subsection
8 (a)(7)(B).

9 “(D) POSTING ON WEBSITE.—The Sec-
10 retary shall post on the Internet website of the
11 Centers for Medicare & Medicaid Services, in an
12 easily understandable format, a list of the
13 names, business addresses, and business phone
14 numbers of the eligible professionals who are
15 meaningful EHR users and, as determined ap-
16 propriate by the Secretary, of group practices
17 receiving incentive payments under paragraph
18 (1).

19 “(4) CERTIFIED EHR TECHNOLOGY DEFINED.—
20 For purposes of this section, the term ‘certified
21 EHR technology’ means a qualified electronic health
22 record (as defined in 3000(13) of the Public Health
23 Service Act) that is certified pursuant to section
24 3001(c)(5) of such Act as meeting standards adopt-
25 ed under section 3004 of such Act that are applica-

1 ble to the type of record involved (as determined by
2 the Secretary, such as an ambulatory electronic
3 health record for office-based physicians or an inpa-
4 tient hospital electronic health record for hospitals).

5 “(5) DEFINITIONS.—For purposes of this sub-
6 section:

7 “(A) COVERED PROFESSIONAL SERV-
8 ICES.—The term ‘covered professional services’
9 has the meaning given such term in subsection
10 (k)(3).

11 “(B) ELIGIBLE PROFESSIONAL.—The term
12 ‘eligible professional’ means a physician, as de-
13 fined in section 1861(r).

14 “(C) REPORTING PERIOD.—The term ‘re-
15 porting period’ means any period (or periods),
16 with respect to a payment year, as specified by
17 the Secretary.”.

18 (b) INCENTIVE PAYMENT ADJUSTMENT.—Section
19 1848(a) of the Social Security Act (42 U.S.C. 1395w-
20 4(a)) is amended by adding at the end the following new
21 paragraph:

22 “(7) INCENTIVES FOR MEANINGFUL USE OF
23 CERTIFIED EHR TECHNOLOGY.—

24 “(A) ADJUSTMENT.—

1 “(i) IN GENERAL.—Subject to sub-
2 paragraphs (B) and (D), with respect to
3 covered professional services furnished by
4 an eligible professional during 2016 or any
5 subsequent payment year, if the eligible
6 professional is not a meaningful EHR user
7 (as determined under subsection (o)(2)) for
8 a reporting period for the year, the fee
9 schedule amount for such services fur-
10 nished by such professional during the year
11 (including the fee schedule amount for pur-
12 poses of determining a payment based on
13 such amount) shall be equal to the applica-
14 ble percent of the fee schedule amount that
15 would otherwise apply to such services
16 under this subsection (determined after ap-
17 plication of paragraph (3) but without re-
18 gard to this paragraph).

19 “(ii) APPLICABLE PERCENT.—Subject
20 to clause (iii), for purposes of clause (i),
21 the term ‘applicable percent’ means—

22 “(I) for 2016, 99 percent;

23 “(II) for 2017, 98 percent; and

24 “(III) for 2018 and each subse-
25 quent year, 97 percent.

1 “(iii) AUTHORITY TO DECREASE AP-
2 PLICABLE PERCENTAGE FOR 2019 AND
3 SUBSEQUENT YEARS.—For 2019 and each
4 subsequent year, if the Secretary finds that
5 the proportion of eligible professionals who
6 are meaningful EHR users (as determined
7 under subsection (o)(2)) is less than 75
8 percent, the applicable percent shall be de-
9 creased by 1 percentage point from the ap-
10 plicable percent in the preceding year, but
11 in no case shall the applicable percent be
12 less than 95 percent.

13 “(B) SIGNIFICANT HARDSHIP EXCEP-
14 TION.—The Secretary may, on a case-by-case
15 basis, exempt an eligible professional from the
16 application of the payment adjustment under
17 subparagraph (A) if the Secretary determines,
18 subject to annual renewal, that compliance with
19 the requirement for being a meaningful EHR
20 user would result in a significant hardship, such
21 as in the case of an eligible professional who
22 practices in a rural area without sufficient
23 Internet access. In no case may an eligible pro-
24 fessional be granted an exemption under this
25 subparagraph for more than 5 years.

1 “(C) APPLICATION OF PHYSICIAN REPORT-
2 ING SYSTEM RULES.—Paragraphs (5), (6), and
3 (8) of subsection (k) shall apply for purposes of
4 this paragraph in the same manner as they
5 apply for purposes of such subsection.

6 “(D) NON-APPLICATION TO HOSPITAL-
7 BASED ELIGIBLE PROFESSIONALS.—No pay-
8 ment adjustment may be made under subpara-
9 graph (A) in the case of hospital-based eligible
10 professionals (as defined in subsection
11 (o)(1)(C)(ii)).

12 “(E) DEFINITIONS.—For purposes of this
13 paragraph:

14 “(i) COVERED PROFESSIONAL SERV-
15 ICES.—The term ‘covered professional
16 services’ has the meaning given such term
17 in subsection (k)(3).

18 “(ii) ELIGIBLE PROFESSIONAL.—The
19 term ‘eligible professional’ means a physi-
20 cian, as defined in section 1861(r).

21 “(iii) REPORTING PERIOD.—The term
22 ‘reporting period’ means, with respect to a
23 year, a period specified by the Secretary.”.

24 (c) APPLICATION TO CERTAIN HMO-AFFILIATED
25 ELIGIBLE PROFESSIONALS.—Section 1853 of the Social

1 Security Act (42 U.S.C. 1395w–23) is amended by adding
2 at the end the following new subsection:

3 “(l) APPLICATION OF ELIGIBLE PROFESSIONAL IN-
4 CENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOP-
5 TION AND MEANINGFUL USE OF CERTIFIED EHR TECH-
6 NOLOGY.—

7 “(1) IN GENERAL.—Subject to paragraphs (3)
8 and (4), in the case of a qualifying MA organization,
9 the provisions of sections 1848(o) and 1848(a)(7)
10 shall apply with respect to eligible professionals de-
11 scribed in paragraph (2) of the organization who the
12 organization attests under paragraph (6) to be
13 meaningful EHR users in a similar manner as they
14 apply to eligible professionals under such sections.
15 Incentive payments under paragraph (3) shall be
16 made to and payment adjustments under paragraph
17 (4) shall apply to such qualifying organizations.

18 “(2) ELIGIBLE PROFESSIONAL DESCRIBED.—
19 With respect to a qualifying MA organization, an eli-
20 gible professional described in this paragraph is an
21 eligible professional (as defined for purposes of sec-
22 tion 1848(o)) who—

23 “(A)(i) is employed by the organization; or

24 “(ii)(I) is employed by, or is a partner of,

25 an entity that through contract with the organi-

1 zation furnishes at least 80 percent of the enti-
2 ty’s patient care services to enrollees of such or-
3 ganization; and

4 “(II) furnishes at least 75 percent of the
5 professional services of the eligible professional
6 to enrollees of the organization; and

7 “(B) furnishes, on average, at least 20
8 hours per week of patient care services.

9 “(3) ELIGIBLE PROFESSIONAL INCENTIVE PAY-
10 MENTS.—

11 “(A) IN GENERAL.—In applying section
12 1848(o) under paragraph (1), instead of the ad-
13 ditional payment amount under section
14 1848(o)(1)(A) and subject to subparagraph
15 (B), the Secretary may substitute an amount
16 determined by the Secretary to the extent fea-
17 sible and practical to be similar to the esti-
18 mated amount in the aggregate that would be
19 payable if payment for services furnished by
20 such professionals was payable under part B in-
21 stead of this part.

22 “(B) AVOIDING DUPLICATION OF PAY-
23 MENTS.—

24 “(i) IN GENERAL.—If an eligible pro-
25 fessional described in paragraph (2) is eli-

1 gible for the maximum incentive payment
2 under section 1848(o)(1)(A) for the same
3 payment period, the payment incentive
4 shall be made only under such section and
5 not under this subsection.

6 “(ii) METHODS.—In the case of an el-
7 igible professional described in paragraph
8 (2) who is eligible for an incentive payment
9 under section 1848(o)(1)(A) but is not de-
10 scribed in clause (i) for the same payment
11 period, the Secretary shall develop a proc-
12 ess—

13 “(I) to ensure that duplicate pay-
14 ments are not made with respect to
15 an eligible professional both under
16 this subsection and under section
17 1848(o)(1)(A); and

18 “(II) to collect data from Medi-
19 care Advantage organizations to en-
20 sure against such duplicate payments.

21 “(C) FIXED SCHEDULE FOR APPLICATION
22 OF LIMITATION ON INCENTIVE PAYMENTS FOR
23 ALL ELIGIBLE PROFESSIONALS.—In applying
24 section 1848(o)(1)(B)(ii) under subparagraph
25 (A), in accordance with rules specified by the

1 Secretary, a qualifying MA organization shall
2 specify a year (not earlier than 2011) that shall
3 be treated as the first payment year for all eli-
4 gible professionals with respect to such organi-
5 zation.

6 “(4) PAYMENT ADJUSTMENT.—

7 “(A) IN GENERAL.—In applying section
8 1848(a)(7) under paragraph (1), instead of the
9 payment adjustment being an applicable per-
10 cent of the fee schedule amount for a year
11 under such section, subject to subparagraph
12 (D), the payment adjustment under paragraph
13 (1) shall be equal to the percent specified in
14 subparagraph (B) for such year of the payment
15 amount otherwise provided under this section
16 for such year.

17 “(B) SPECIFIED PERCENT.—The percent
18 specified under this subparagraph for a year is
19 100 percent minus a number of percentage
20 points equal to the product of—

21 “(i) the number of percentage points
22 by which the applicable percent (under sec-
23 tion 1848(a)(7)(A)(ii)) for the year is less
24 than 100 percent; and

1 “(ii) the Medicare physician expendi-
2 ture proportion specified in subparagraph
3 (C) for the year.

4 “(C) MEDICARE PHYSICIAN EXPENDITURE
5 PROPORTION.—The Medicare physician expend-
6 iture proportion under this subparagraph for a
7 year is the Secretary’s estimate of the propor-
8 tion, of the expenditures under parts A and B
9 that are not attributable to this part, that are
10 attributable to expenditures for physicians’
11 services.

12 “(D) APPLICATION OF PAYMENT ADJUST-
13 MENT.—In the case that a qualifying MA orga-
14 nization attests that not all eligible profes-
15 sionals are meaningful EHR users with respect
16 to a year, the Secretary shall apply the payment
17 adjustment under this paragraph based on the
18 proportion of such eligible professionals that are
19 not meaningful EHR users for such year.

20 “(5) QUALIFYING MA ORGANIZATION DE-
21 FINED.—In this subsection and subsection (m), the
22 term ‘qualifying MA organization’ means a Medicare
23 Advantage organization that is organized as a health
24 maintenance organization (as defined in section
25 2791(b)(3) of the Public Health Service Act).

1 “(6) MEANINGFUL EHR USER ATTESTATION.—
2 For purposes of this subsection and subsection (m),
3 a qualifying MA organization shall submit an attes-
4 tation, in a form and manner specified by the Sec-
5 retary which may include the submission of such at-
6 testation as part of submission of the initial bid
7 under section 1854(a)(1)(A)(iv), identifying—

8 “(A) whether each eligible professional de-
9 scribed in paragraph (2), with respect to such
10 organization is a meaningful EHR user (as de-
11 fined in section 1848(o)(2)) for a year specified
12 by the Secretary; and

13 “(B) whether each eligible hospital de-
14 scribed in subsection (m)(1), with respect to
15 such organization, is a meaningful EHR user
16 (as defined in section 1886(n)(3)) for an appli-
17 cable period specified by the Secretary.”.

18 (d) CONFORMING AMENDMENTS.—Section 1853 of
19 the Social Security Act (42 U.S.C. 1395w–23) is amend-
20 ed—

21 (1) in subsection (a)(1)(A), by striking “and
22 (i)” and inserting “(i), and (l)”;

23 (2) in subsection (c)—

1 (A) in paragraph (1)(D)(i), by striking
2 “section 1886(h)” and inserting “sections
3 1848(o) and 1886(h)”; and

4 (B) in paragraph (6)(A), by inserting after
5 “under part B,” the following: “excluding ex-
6 penditures attributable to subsections (a)(7)
7 and (o) of section 1848,”; and

8 (3) in subsection (f), by inserting “and for pay-
9 ments under subsection (l)” after “with the organi-
10 zation”.

11 (e) CONFORMING AMENDMENTS TO E-PRE-
12 SCRIBING.—

13 (1) Section 1848(a)(5)(A) of the Social Security
14 Act (42 U.S.C. 1395w-4(a)(5)(A)) is amended—

15 (A) in clause (i), by striking “or any sub-
16 sequent year” and inserting “, 2013, 2014, or
17 2015”; and

18 (B) in clause (ii), by striking “and each
19 subsequent year” and inserting “and 2015”.

20 (2) Section 1848(m)(2) of such Act (42 U.S.C.
21 1395w-4(m)(2)) is amended—

22 (A) in subparagraph (A), by striking “For
23 2009” and inserting “Subject to subparagraph
24 (D), for 2009”; and

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

3 “(D) LIMITATION WITH RESPECT TO EHR
4 INCENTIVE PAYMENTS.—The provisions of this
5 paragraph shall not apply to an eligible profes-
6 sional (or, in the case of a group practice under
7 paragraph (3)(C), to the group practice) if, for
8 the reporting period the eligible professional (or
9 group practice) receives an incentive payment
10 under subsection (o)(1)(A) with respect to a
11 certified EHR technology (as defined in sub-
12 section (o)(4)) that has the capability of elec-
13 tronic prescribing.”.

14 **SEC. 4312. INCENTIVES FOR HOSPITALS.**

15 (a) INCENTIVE PAYMENT.—Section 1886 of the So-
16 cial Security Act (42 U.S.C. 1395ww) is amended by add-
17 ing at the end the following new subsection:

18 “(n) INCENTIVES FOR ADOPTION AND MEANINGFUL
19 USE OF CERTIFIED EHR TECHNOLOGY.—

20 “(1) IN GENERAL.—Subject to the succeeding
21 provisions of this subsection, with respect to inpa-
22 tient hospital services furnished by an eligible hos-
23 pital during a payment year (as defined in para-
24 graph (2)(G)), if the eligible hospital is a meaningful
25 EHR user (as determined under paragraph (3)) for

1 the reporting period with respect to such year, in ad-
2 dition to the amount otherwise paid under this sec-
3 tion, there also shall be paid to the eligible hospital,
4 from the Federal Hospital Insurance Trust Fund es-
5 tablished under section 1817, an amount equal to
6 the applicable amount specified in paragraph (2)(A)
7 for the hospital for such payment year.

8 “(2) PAYMENT AMOUNT.—

9 “(A) IN GENERAL.—Subject to the suc-
10 ceeding subparagraphs of this paragraph, the
11 applicable amount specified in this subpara-
12 graph for an eligible hospital for a payment
13 year is equal to the product of the following:

14 “(i) INITIAL AMOUNT.—The sum of—

15 “(I) the base amount specified in
16 subparagraph (B); plus

17 “(II) the discharge related
18 amount specified in subparagraph (C)
19 for a 12-month period selected by the
20 Secretary with respect to such pay-
21 ment year.

22 “(ii) MEDICARE SHARE.—The Medi-
23 care share as specified in subparagraph
24 (D) for the hospital for a period selected

1 by the Secretary with respect to such pay-
2 ment year.

3 “(iii) TRANSITION FACTOR.—The
4 transition factor specified in subparagraph
5 (E) for the hospital for the payment year.

6 “(B) BASE AMOUNT.—The base amount
7 specified in this subparagraph is \$2,000,000.

8 “(C) DISCHARGE RELATED AMOUNT.—The
9 discharge related amount specified in this sub-
10 paragraph for a 12-month period selected by
11 the Secretary shall be determined as the sum of
12 the amount, based upon total discharges (re-
13 gardless of any source of payment) for the pe-
14 riod, for each discharge up to the 23,000th dis-
15 charge as follows:

16 “(i) For the 1,150th through the
17 9,200th discharge, \$200.

18 “(ii) For the 9,201st through the
19 13,800th discharge, 50 percent of the
20 amount specified in clause (i).

21 “(iii) For the 13,801st through the
22 23,000th discharge, 30 percent of the
23 amount specified in clause (i).

24 “(D) MEDICARE SHARE.—The Medicare
25 share specified under this subparagraph for a

1 hospital for a period selected by the Secretary
2 for a payment year is equal to the fraction—

3 “(i) the numerator of which is the
4 sum (for such period and with respect to
5 the hospital) of—

6 “(I) the number of inpatient-bed-
7 days (as established by the Secretary)
8 which are attributable to individuals
9 with respect to whom payment may be
10 made under part A; and

11 “(II) the number of inpatient-
12 bed-days (as so established) which are
13 attributable to individuals who are en-
14 rolled with a Medicare Advantage or-
15 ganization under part C; and

16 “(ii) the denominator of which is the
17 product of—

18 “(I) the total number of inpa-
19 tient-bed-days with respect to the hos-
20 pital during such period; and

21 “(II) the total amount of the hos-
22 pital’s charges during such period, not
23 including any charges that are attrib-
24 utable to charity care (as such term is
25 used for purposes of hospital cost re-

1 porting under this title), divided by
2 the total amount of the hospital's
3 charges during such period.

4 Insofar as the Secretary determines that data
5 are not available on charity care necessary to
6 calculate the portion of the formula specified in
7 clause (ii)(II), the Secretary shall use data on
8 uncompensated care and may adjust such data
9 so as to be an appropriate proxy for charity
10 care including a downward adjustment to elimi-
11 nate bad debt data from uncompensated care
12 data. In the absence of the data necessary, with
13 respect to a hospital, for the Secretary to com-
14 pute the amount described in clause (ii)(II), the
15 amount under such clause shall be deemed to
16 be 1. In the absence of data, with respect to a
17 hospital, necessary to compute the amount de-
18 scribed in clause (i)(II), the amount under such
19 clause shall be deemed to be 0.

20 “(E) TRANSITION FACTOR SPECIFIED.—

21 “(i) IN GENERAL.—Subject to clause
22 (ii), the transition factor specified in this
23 subparagraph for an eligible hospital for a
24 payment year is as follows:

1 “(I) For the first payment year
2 for such hospital, 1.

3 “(II) For the second payment
4 year for such hospital, $\frac{3}{4}$.

5 “(III) For the third payment
6 year for such hospital, $\frac{1}{2}$.

7 “(IV) For the fourth payment
8 year for such hospital, $\frac{1}{4}$.

9 “(V) For any succeeding pay-
10 ment year for such hospital, 0.

11 “(ii) PHASE DOWN FOR ELIGIBLE
12 HOSPITALS FIRST ADOPTING EHR AFTER
13 2013.—If the first payment year for an eli-
14 gible hospital is after 2013, then the tran-
15 sition factor specified in this subparagraph
16 for a payment year for such hospital is the
17 same as the amount specified in clause (i)
18 for such payment year for an eligible hos-
19 pital for which the first payment year is
20 2013. If the first payment year for an eli-
21 gible hospital is after 2015 then the transi-
22 tion factor specified in this subparagraph
23 for such hospital and for such year and
24 any subsequent year shall be 0.

1 “(F) FORM OF PAYMENT.—The payment
2 under this subsection for a payment year may
3 be in the form of a single consolidated payment
4 or in the form of such periodic installments as
5 the Secretary may specify.

6 “(G) PAYMENT YEAR DEFINED.—

7 “(i) IN GENERAL.—For purposes of
8 this subsection, the term ‘payment year’
9 means a fiscal year beginning with fiscal
10 year 2011.

11 “(ii) FIRST, SECOND, ETC. PAYMENT
12 YEAR.—The term ‘first payment year’
13 means, with respect to inpatient hospital
14 services furnished by an eligible hospital,
15 the first fiscal year for which an incentive
16 payment is made for such services under
17 this subsection. The terms ‘second pay-
18 ment year’, ‘third payment year’, and
19 ‘fourth payment year’ mean, with respect
20 to an eligible hospital, each successive year
21 immediately following the first payment
22 year for that hospital.

23 “(3) MEANINGFUL EHR USER.—

24 “(A) IN GENERAL.—For purposes of para-
25 graph (1), an eligible hospital shall be treated

1 as a meaningful EHR user for a reporting pe-
2 riod for a payment year (or, for purposes of
3 subsection (b)(3)(B)(ix), for a reporting period
4 under such subsection for a fiscal year) if each
5 of the following requirements are met:

6 “(i) MEANINGFUL USE OF CERTIFIED
7 EHR TECHNOLOGY.—The eligible hospital
8 demonstrates to the satisfaction of the Sec-
9 retary, in accordance with subparagraph
10 (C)(i), that during such period the hospital
11 is using certified EHR technology in a
12 meaningful manner.

13 “(ii) INFORMATION EXCHANGE.—The
14 eligible hospital demonstrates to the satis-
15 faction of the Secretary, in accordance
16 with subparagraph (C)(i), that during such
17 period such certified EHR technology is
18 connected in a manner that provides, in
19 accordance with law and standards appli-
20 cable to the exchange of information, for
21 the electronic exchange of health informa-
22 tion to improve the quality of health care,
23 such as promoting care coordination.

24 “(iii) REPORTING ON MEASURES
25 USING EHR.—Subject to subparagraph

1 (B)(ii) and using such certified EHR tech-
2 nology, the eligible hospital submits infor-
3 mation for such period, in a form and
4 manner specified by the Secretary, on such
5 clinical quality measures and such other
6 measures as selected by the Secretary
7 under subparagraph (B)(i).

8 The Secretary shall seek to improve the use of
9 electronic health records and health care quality
10 over time by requiring more stringent measures
11 of meaningful use selected under this para-
12 graph.

13 “(B) REPORTING ON MEASURES.—

14 “(i) SELECTION.—The Secretary shall
15 select measures for purposes of subpara-
16 graph (A)(iii) but only consistent with the
17 following:

18 “(I) The Secretary shall provide
19 preference to clinical quality measures
20 that have been selected for purposes
21 of applying subsection (b)(3)(B)(viii)
22 or that have been endorsed by the en-
23 tity with a contract with the Secretary
24 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 ap-
4 plying subsection (b)(3)(B)(viii))
5 being selected under this subpara-
6 graph, the Secretary shall publish in
7 the Federal Register such measure
8 and provide for a period of public
9 comment on such 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
14 Secretary has the capacity to accept the in-
15 formation electronically, which may be on
16 a pilot basis.

17 “(iii) COORDINATION OF REPORTING
18 OF INFORMATION.—In selecting such
19 measures, and in establishing the form and
20 manner for reporting measures under sub-
21 paragraph (A)(iii), the Secretary shall seek
22 to avoid redundant or duplicative reporting
23 with reporting otherwise required, includ-
24 ing reporting under subsection
25 (b)(3)(B)(viii).

1 “(C) DEMONSTRATION OF MEANINGFUL
2 USE OF CERTIFIED EHR TECHNOLOGY AND IN-
3 FORMATION 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.—Not-
21 withstanding sections 1860D–15(d)(2)(B)
22 and 1860D–15(f)(2), the Secretary may
23 use data regarding drug claims submitted
24 for purposes of section 1860D–15 that are

1 necessary for purposes of subparagraph
2 (A).

3 “(4) APPLICATION.—

4 “(A) LIMITATIONS ON REVIEW.—There
5 shall be no administrative or judicial review
6 under section 1869, section 1878, or otherwise
7 of the determination of any incentive payment
8 under this subsection and the payment adjust-
9 ment under subsection (b)(3)(B)(ix), including
10 the determination of a meaningful EHR user
11 under paragraph (3), determination of meas-
12 ures applicable to services furnished by eligible
13 hospitals under this subsection, and the excep-
14 tion under subsection (b)(3)(B)(ix)(II).

15 “(B) POSTING ON WEBSITE.—The Sec-
16 retary shall post on the Internet website of the
17 Centers for Medicare & Medicaid Services, in an
18 easily understandable format, a list of the
19 names of the eligible hospitals that are mean-
20 ingful EHR users under this subsection or sub-
21 section (b)(3)(B)(ix) and other relevant data as
22 determined appropriate by the Secretary. The
23 Secretary shall ensure that a hospital has the
24 opportunity to review the other relevant data

1 that are to be made public with respect to the
2 hospital prior to such data being made public.

3 “(5) CERTIFIED EHR TECHNOLOGY DEFINED.—

4 The term ‘certified EHR technology’ has the mean-
5 ing given such term in section 1848(o)(4).

6 “(6) DEFINITIONS.—For purposes of this sub-
7 section:

8 “(A) ELIGIBLE HOSPITAL.—The term ‘eli-
9 gible hospital’ means a subsection (d) hospital.

10 “(B) REPORTING PERIOD.—The term ‘re-
11 porting period’ means any period (or periods),
12 with respect to a payment year, as specified by
13 the Secretary.”.

14 (b) INCENTIVE MARKET BASKET ADJUSTMENT.—
15 Section 1886(b)(3)(B) of the Social Security Act (42
16 U.S.C. 1395ww(b)(3)(B)) is amended—

17 (1) in clause (viii)(I), by inserting “(or, begin-
18 ning with fiscal year 2016, by one-quarter)” after
19 “2.0 percentage points”; and

20 (2) by adding at the end the following new
21 clause:

22 “(ix)(I) For purposes of clause (i) for fiscal year
23 2016 and each subsequent fiscal year, in the case of an
24 eligible hospital (as defined in subsection (n)(6)(A)) that
25 is not a meaningful EHR user (as defined in subsection

1 (n)(3)) for the reporting period for such fiscal year, three-
2 quarters of the applicable percentage increase otherwise
3 applicable under clause (i) for such fiscal year shall be
4 reduced by $33\frac{1}{3}$ percent for fiscal year 2016, $66\frac{2}{3}$ per-
5 cent for fiscal year 2017, and 100 percent for fiscal year
6 2018 and each subsequent fiscal year. Such reduction
7 shall apply only with respect to the fiscal year involved
8 and the Secretary shall not take into account such reduc-
9 tion in computing the applicable percentage increase under
10 clause (i) for a subsequent fiscal year.

11 “(II) The Secretary may, on a case-by-case basis, ex-
12 empt a subsection (d) hospital from the application of sub-
13 clause (I) with respect to a fiscal year if the Secretary
14 determines, subject to annual renewal, that requiring such
15 hospital to be a meaningful EHR user during such fiscal
16 year would result in a significant hardship, such as in the
17 case of a hospital in a rural area without sufficient Inter-
18 net access. In no case may a hospital be granted an ex-
19 emption under this subclause for more than 5 years.

20 “(III) For fiscal year 2016 and each subsequent fis-
21 cal year, a State in which hospitals are paid for services
22 under section 1814(b)(3) shall adjust the payments to
23 each subsection (d) hospital in the State that is not a
24 meaningful EHR user (as defined in subsection (n)(3))
25 in a manner that is designed to result in an aggregate

1 reduction in payments to hospitals in the State that is
2 equivalent to the aggregate reduction that would have oc-
3 curred if payments had been reduced to each subsection
4 (d) hospital in the State in a manner comparable to the
5 reduction under the previous provisions of this clause. The
6 State shall report to the Secretary the methodology it will
7 use to make the payment adjustment under the previous
8 sentence.

9 “(IV) For purposes of this clause, the term ‘reporting
10 period’ means, with respect to a fiscal year, any period
11 (or periods), with respect to the fiscal year, as specified
12 by the Secretary.”.

13 (c) APPLICATION TO CERTAIN HMO-AFFILIATED
14 ELIGIBLE HOSPITALS.—Section 1853 of the Social Secu-
15 rity Act (42 U.S.C. 1395w–23), as amended by section
16 4311(c), is further amended by adding at the end the fol-
17 lowing new subsection:

18 “(m) APPLICATION OF ELIGIBLE HOSPITAL INCEN-
19 TIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION
20 AND MEANINGFUL USE OF CERTIFIED EHR TECH-
21 NOLOGY.—

22 “(1) APPLICATION.—Subject to paragraphs (3)
23 and (4), in the case of a qualifying MA organization,
24 the provisions of sections 1886(n) and
25 1886(b)(3)(B)(ix) shall apply with respect to eligible

1 hospitals described in paragraph (2) of the organiza-
2 tion which the organization attests under subsection
3 (1)(6) to be meaningful EHR users in a similar man-
4 ner as they apply to eligible hospitals under such
5 sections. Incentive payments under paragraph (3)
6 shall be made to and payment adjustments under
7 paragraph (4) shall apply to such qualifying organi-
8 zations.

9 “(2) ELIGIBLE HOSPITAL DESCRIBED.—With
10 respect to a qualifying MA organization, an eligible
11 hospital described in this paragraph is an eligible
12 hospital that is under common corporate governance
13 with such organization and serves individuals en-
14 rolled under an MA plan offered by such organiza-
15 tion.

16 “(3) ELIGIBLE HOSPITAL INCENTIVE PAY-
17 MENTS.—

18 “(A) IN GENERAL.—In applying section
19 1886(n)(2) under paragraph (1), instead of the
20 additional payment amount under section
21 1886(n)(2), there shall be substituted an
22 amount determined by the Secretary to be simi-
23 lar to the estimated amount in the aggregate
24 that would be payable if payment for services
25 furnished by such hospitals was payable under

1 part A instead of this part. In implementing the
2 previous sentence, the Secretary—

3 “(i) shall, insofar as data to deter-
4 mine the discharge related amount under
5 section 1886(n)(2)(C) for an eligible hos-
6 pital are not available to the Secretary, use
7 such alternative data and methodology to
8 estimate such discharge related amount as
9 the Secretary determines appropriate; and

10 “(ii) shall, insofar as data to deter-
11 mine the medicare share described in sec-
12 tion 1886(n)(2)(D) for an eligible hospital
13 are not available to the Secretary, use such
14 alternative data and methodology to esti-
15 mate such share, which data and method-
16 ology may include use of the inpatient bed
17 days (or discharges) with respect to an eli-
18 gible hospital during the appropriate pe-
19 riod which are attributable to both individ-
20 uals for whom payment may be made
21 under part A or individuals enrolled in an
22 MA plan under a Medicare Advantage or-
23 ganization under this part as a proportion
24 of the total number of patient-bed-days (or

1 discharges) with respect to such hospital
2 during such period.

3 “(B) AVOIDING DUPLICATION OF PAY-
4 MENTS.—

5 “(i) IN GENERAL.—In the case of a
6 hospital that for a payment year is an eli-
7 gible hospital described in paragraph (2),
8 is an eligible hospital under section
9 1886(n), and for which at least one-third
10 of their discharges (or bed-days) of Medi-
11 care patients for the year are covered
12 under part A, payment for the payment
13 year shall be made only under section
14 1886(n) and not under this subsection.

15 “(ii) METHODS.—In the case of a
16 hospital that is an eligible hospital de-
17 scribed in paragraph (2) and also is eligi-
18 ble for an incentive payment under section
19 1886(n) but is not described in clause (i)
20 for the same payment period, the Secretary
21 shall develop a process—

22 “(I) to ensure that duplicate pay-
23 ments are not made with respect to
24 an eligible hospital both under this

1 subsection and under section 1886(n);
2 and

3 “(II) to collect data from Medi-
4 care Advantage organizations to en-
5 sure against such duplicate payments.

6 “(4) PAYMENT ADJUSTMENT.—

7 “(A) Subject to paragraph (3), in the case
8 of a qualifying MA organization (as defined in
9 section 1853(l)(5)), if, according to the attesta-
10 tion of the organization submitted under sub-
11 section (l)(6) for an applicable period, one or
12 more eligible hospitals (as defined in section
13 1886(n)(6)(A)) that are under common cor-
14 porate governance with such organization and
15 that serve individuals enrolled under a plan of-
16 fered by such organization are not meaningful
17 EHR users (as defined in section 1886(n)(3))
18 with respect to a period, the payment amount
19 payable under this section for such organization
20 for such period shall be the percent specified in
21 subparagraph (B) for such period of the pay-
22 ment amount otherwise provided under this sec-
23 tion for such period.

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 the percentage
4 point reduction effected under section
5 1886(b)(3)(B)(ix)(I) for the period; and

6 “(ii) the Medicare hospital expendi-
7 ture proportion specified in subparagraph
8 (C) for the year.

9 “(C) MEDICARE HOSPITAL EXPENDITURE
10 PROPORTION.—The Medicare hospital expendi-
11 ture proportion under this subparagraph for a
12 year is the Secretary’s estimate of the propor-
13 tion, of the expenditures under parts A and B
14 that are not attributable to this part, that are
15 attributable to expenditures for inpatient hos-
16 pital services.

17 “(D) APPLICATION OF PAYMENT ADJUST-
18 MENT.—In the case that a qualifying MA orga-
19 nization attests that not all eligible hospitals
20 are meaningful EHR users with respect to an
21 applicable period, the Secretary shall apply the
22 payment adjustment under this paragraph
23 based on a methodology specified by the Sec-
24 retary, taking into account the proportion of
25 such eligible hospitals, or discharges from such

1 hospitals, that are not meaningful EHR users
2 for such period.”.

3 (d) CONFORMING AMENDMENTS.—

4 (1) Section 1814(b) of the Social Security Act
5 (42 U.S.C. 1395f(b)) is amended—

6 (A) in paragraph (3), in the matter pre-
7 ceding subparagraph (A), by inserting “, sub-
8 ject to section 1886(d)(3)(B)(ix)(III),” after
9 “then”; and

10 (B) by adding at the end the following:
11 “For purposes of applying paragraph (3), there
12 shall be taken into account incentive payments,
13 and payment adjustments under subsection
14 (b)(3)(B)(ix) or (n) of section 1886.”.

15 (2) Section 1851(i)(1) of the Social Security
16 Act (42 U.S.C. 1395w–21(i)(1)) is amended by
17 striking “and 1886(h)(3)(D)” and inserting
18 “1886(h)(3)(D), and 1853(m)”.

19 (3) Section 1853 of the Social Security Act (42
20 U.S.C. 1395w–23), as amended by section
21 4311(d)(1), is amended—

22 (A) in subsection (c)—

23 (i) in paragraph (1)(D)(i), by striking
24 “1848(o)” and inserting “, 1848(o), and
25 1886(n)”; and

1 (ii) in paragraph (6)(A), by inserting
2 “and subsections (b)(3)(B)(ix) and (n) of
3 section 1886” after “section 1848”; and
4 (B) in subsection (f), by inserting “and
5 subsection (m)” after “under subsection (l)”.

6 **SEC. 4313. TREATMENT OF PAYMENTS AND SAVINGS; IM-**
7 **PLEMENTATION FUNDING.**

8 (a) PREMIUM HOLD HARMLESS.—

9 (1) IN GENERAL.—Section 1839(a)(1) of the
10 Social Security Act (42 U.S.C. 1395r(a)(1)) is
11 amended by adding at the end the following: “In ap-
12 plying this paragraph there shall not be taken into
13 account additional payments under section 1848(o)
14 and section 1853(l)(3) and the Government con-
15 tribution under section 1844(a)(3).”.

16 (2) PAYMENT.—Section 1844(a) of such Act
17 (42 U.S.C. 1395w(a)) is amended—

18 (A) in paragraph (2), by striking the pe-
19 riod at the end and inserting “; plus”; and

20 (B) by adding at the end the following new
21 paragraph:

22 “(3) a Government contribution equal to the
23 amount of payment incentives payable under sec-
24 tions 1848(o) and 1853(l)(3).”.

1 (b) MEDICARE IMPROVEMENT FUND.—Section 1898
2 of the Social Security Act (42 U.S.C. 1395iii), as added
3 by section 7002(a) of the Supplemental Appropriations
4 Act, 2008 (Public Law 110–252) and as amended by sec-
5 tion 188(a)(2) of the Medicare Improvements for Patients
6 and Providers Act of 2008 (Public Law 110–275; 122
7 Stat. 2589) and by section 6 of the QI Program Supple-
8 mental Funding Act of 2008, is amended—

9 (1) in subsection (a)—

10 (A) by inserting “medicare” before “fee-
11 for-service”; and

12 (B) by inserting before the period at the
13 end the following: “including, but not limited
14 to, an increase in the conversion factor under
15 section 1848(d) to address, in whole or in part,
16 any projected shortfall in the conversion factor
17 for 2014 relative to the conversion factor for
18 2008 and adjustments to payments for items
19 and services furnished by providers of services
20 and suppliers under such original medicare fee-
21 for-service program”; and

22 (2) in subsection (b)—

23 (A) in paragraph (1), by striking “during
24 fiscal year 2014,” and all that follows and in-
25 serting the following: “during—

1 “(A) fiscal year 2014, \$22,290,000,000;
2 and

3 “(B) fiscal year 2020 and each subsequent
4 fiscal year, the Secretary’s estimate, as of July
5 1 of the fiscal year, of the aggregate reduction
6 in expenditures under this title during the pre-
7 ceding fiscal year directly resulting from the re-
8 duction in payment amounts under sections
9 1848(a)(7), 1853(l)(4), 1853(m)(4), and
10 1886(b)(3)(B)(ix).”; and

11 (B) by adding at the end the following new
12 paragraph:

13 “(4) NO EFFECT ON PAYMENTS IN SUBSE-
14 QUENT YEARS.—In the case that expenditures from
15 the Fund are applied to, or otherwise affect, a pay-
16 ment rate for an item or service under this title for
17 a year, the payment rate for such item or service
18 shall be computed for a subsequent year as if such
19 application or effect had never occurred.”.

20 (c) IMPLEMENTATION FUNDING.—In addition to
21 funds otherwise available, out of any funds in the Treas-
22 ury not otherwise appropriated, there are appropriated to
23 the Secretary of Health and Human Services for the Cen-
24 ter for Medicare & Medicaid Services Program Manage-
25 ment Account, \$60,000,000 for each of fiscal years 2009

1 through 2015 and \$30,000,000 for each succeeding fiscal
2 year through fiscal year 2019, which shall be available for
3 purposes of carrying out the provisions of (and amend-
4 ments made by) this part. Amounts appropriated under
5 this subsection for a fiscal year shall be available until ex-
6 pended.

7 **SEC. 4314. STUDY ON APPLICATION OF EHR PAYMENT IN-**
8 **CENTIVES FOR PROVIDERS NOT RECEIVING**
9 **OTHER INCENTIVE PAYMENTS.**

10 (a) STUDY.—

11 (1) IN GENERAL.—The Secretary of Health and
12 Human Services shall conduct a study to determine
13 the extent to which and manner in which payment
14 incentives (such as under title XVIII or XIX of the
15 Social Security Act) and other funding for purposes
16 of implementing and using certified EHR technology
17 (as defined in section 3000 of the Public Health
18 Service Act) should be made available to health care
19 providers who are receiving minimal or no payment
20 incentives or other funding under this Act, under
21 title XVIII or XIX of the Social Security Act, or
22 otherwise, for such purposes.

23 (2) DETAILS OF STUDY.—Such study shall in-
24 clude an examination of—

1 (A) the adoption rates of certified EHR
2 technology by such health care providers;

3 (B) the clinical utility of such technology
4 by such health care providers;

5 (C) whether the services furnished by such
6 health care providers are appropriate for or
7 would benefit from the use of such technology;

8 (D) the extent to which such health care
9 providers work in settings that might otherwise
10 receive an incentive payment or other funding
11 under this Act, title XVIII or XIX of the Social
12 Security Act, or otherwise;

13 (E) the potential costs and the potential
14 benefits of making payment incentives and
15 other funding available to such health care pro-
16 viders; and

17 (F) any other issues the Secretary deems
18 to be appropriate.

19 (b) REPORT.—Not later than June 30, 2010, the
20 Secretary shall submit to Congress a report on the find-
21 ings and conclusions of the study conducted under sub-
22 section (a).

PART III—MEDICAID FUNDING**SEC. 4321. MEDICAID PROVIDER HIT ADOPTION AND OPERATION PAYMENTS; IMPLEMENTATION FUNDING.**

(a) IN GENERAL.—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended—

(1) in subsection (a)(3)—

(A) by striking “and” at the end of subparagraph (D);

(B) by striking “plus” at the end of subparagraph (E) and inserting “and”; and

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

“(F)(i) 100 percent of so much of the sums expended during such quarter as are attributable to payments for certified EHR technology (and support services including maintenance and training that is for, or is necessary for the adoption and operation of, such technology) by Medicaid providers described in subsection (t)(1); and

“(ii) 90 percent of so much of the sums expended during such quarter as are attributable to payments for reasonable administrative expenses related to the administration of payments described in clause (i) if the State meets

1 the condition described in subsection (t)(9);
2 plus”; and

3 (2) by inserting after subsection (s) the fol-
4 lowing new subsection:

5 “(t)(1) For purposes of subsection (a)(3)(F), the pay-
6 ments for certified EHR technology (and support services
7 including maintenance that is for, or is necessary for the
8 operation of, such technology) by Medicaid providers de-
9 scribed in this paragraph are payments made by the State
10 in accordance with this subsection of 85 percent of the
11 net allowable costs of Medicaid providers (as defined in
12 paragraph (2)) for such technology (and support services).

13 “(2) In this subsection and subsection (a)(3)(F), the
14 term ‘Medicaid provider’ means—

15 “(A) an eligible professional (as defined in
16 paragraph (3)(B)) who is not hospital-based and has
17 at least 30 percent of the professional’s patient vol-
18 ume (as estimated in accordance with standards es-
19 tablished by the Secretary) attributable to individ-
20 uals who are receiving medical assistance under this
21 title; and

22 “(B) (i) a children’s hospital, (ii) an acute-care
23 hospital that is not described in clause (i) and that
24 has at least 10 percent of the hospital’s patient vol-
25 ume (as estimated in accordance with standards es-

1 established by the Secretary) attributable to individ-
2 uals who are receiving medical assistance under this
3 title, or (iii) a Federally-qualified health center or
4 rural health clinic that has at least 30 percent of the
5 center's or clinic's patient volume (as estimated in
6 accordance with standards established by the Sec-
7 retary) attributable to individuals who are receiving
8 medical assistance under this title.

9 An eligible professional shall not qualify as a Medicaid
10 provider under this subsection unless the eligible profes-
11 sional has waived, in a manner specified by the Secretary,
12 any right to payment under section 1848(o) with respect
13 to the adoption or support of certified EHR technology
14 by the professional. In applying clauses (ii) and (iii) of
15 subparagraph (B), the standards established by the Sec-
16 retary for patient volume shall include individuals enrolled
17 in a Medicaid managed care plan (under section 1903(m)
18 or section 1932).

19 “(3) In this subsection and subsection (a)(3)(F):

20 “(A) The term ‘certified EHR technology’
21 means a qualified electronic health record (as de-
22 fined in 3000(13) of the Public Health Service Act)
23 that is certified pursuant to section 3001(c)(5) of
24 such Act as meeting standards adopted under sec-
25 tion 3004 of such Act that are applicable to the type

1 of record involved (as determined by the Secretary,
2 such as an ambulatory electronic health record for
3 office-based physicians or an inpatient hospital elec-
4 tronic health record for hospitals).

5 “(B) The term ‘eligible professional’ means a
6 physician as defined in paragraphs (1) and (2) of
7 section 1861(r), and includes a nurse mid-wife and
8 a nurse practitioner.

9 “(C) The term ‘hospital-based’ means, with re-
10 spect to an eligible professional, a professional (such
11 as a pathologist, anesthesiologist, or emergency phy-
12 sician) who furnishes substantially all of the individ-
13 ual’s professional services in a hospital setting
14 (whether inpatient or outpatient) and through the
15 use of the facilities and equipment, including com-
16 puter equipment, of the hospital.

17 “(4)(A) The term ‘allowable costs’ means, with re-
18 spect to certified EHR technology of a Medicaid provider,
19 costs of such technology (and support services including
20 maintenance and training that is for, or is necessary for
21 the adoption and operation of, such technology) as deter-
22 mined by the Secretary to be reasonable.

23 “(B) The term ‘net allowable costs’ means allowable
24 costs reduced by any payment that is made to the Med-
25 icaid provider involved from any other source that is di-

1 rectly attributable to payment for certified EHR tech-
2 nology or services described in subparagraph (A).

3 “(C) In no case shall—

4 “(i) the aggregate allowable costs under this
5 subsection (covering one or more years) with respect
6 to a Medicaid provider described in paragraph
7 (2)(A) for purchase and initial implementation of
8 certified EHR technology (and services described in
9 subparagraph (A)) exceed \$25,000 or include costs
10 over a period of longer than 5 years;

11 “(ii) for costs not described in clause (i) relat-
12 ing to the operation, maintenance, or use of certified
13 EHR technology, the annual allowable costs under
14 this subsection with respect to such a Medicaid pro-
15 vider for costs not described in clause (i) for any
16 year exceed \$10,000;

17 “(iii) payment described in paragraph (1) for
18 costs described in clause (ii) be made with respect
19 to such a Medicaid provider over a period of more
20 than 5 years;

21 “(iv) the aggregate allowable costs under this
22 subsection with respect to such a Medicaid provider
23 for all costs exceed \$75,000; or

24 “(v) the allowable costs, whether for purchase
25 and initial implementation, maintenance, or other-

1 wise, for a Medicaid provider described in paragraph
2 (2)(B) exceed such aggregate or annual limitation as
3 the Secretary shall establish, based on an amount
4 determined by the Secretary as being adequate to
5 adopt and maintain certified EHR technology, con-
6 sistent with paragraph (6).

7 “(5) Payments described in paragraph (1) are not in
8 accordance with this subsection unless the following re-
9 quirements are met:

10 “(A) The State provides assurances satisfactory
11 to the Secretary that amounts received under sub-
12 section (a)(3)(F) with respect to costs of a Medicaid
13 provider are paid directly to such provider without
14 any deduction or rebate.

15 “(B) Such Medicaid provider is responsible for
16 payment of the costs described in such paragraph
17 that are not provided under this title.

18 “(C) With respect to payments to such Med-
19 icaid provider for costs other than costs related to
20 the initial adoption of certified EHR technology, the
21 Medicaid provider demonstrates meaningful use of
22 certified EHR technology through a means that is
23 approved by the State and acceptable to the Sec-
24 retary, and that may be based upon the methodolo-
25 gies applied under section 1848(o) or 1886(n).

1 “(D) To the extent specified by the Secretary,
2 the certified EHR technology is compatible with
3 State or Federal administrative management sys-
4 tems.

5 “(6)(A) In no case shall the payments described in
6 paragraph (1), with respect to a hospital, exceed in the
7 aggregate the product of—

8 “(i) the overall hospital EHR amount for the
9 hospital computed under subparagraph (B); and

10 “(ii) the Medicaid share for such hospital com-
11 puted under subparagraph (C).

12 “(B) For purposes of this paragraph, the overall hos-
13 pital EHR amount, with respect to a hospital, is the sum
14 of the applicable amounts specified in section
15 1886(n)(2)(A) for such hospital for the first 4 payment
16 years (as estimated by the Secretary) determined as if the
17 Medicare share specified in clause (ii) of such section were
18 1. The Secretary shall publish in the Federal Register the
19 overall hospital EHR amount for each hospital eligible for
20 payments under this subsection. In computing amounts
21 under clause (ii) for payment years after the first payment
22 year, the Secretary shall assume that in subsequent pay-
23 ment years discharges increase at the average annual rate
24 of growth of the most recent 3 years for which discharge
25 data are available per year.

1 “(C) The Medicaid share computed under this sub-
2 paragraph, for a hospital for a period specified by the Sec-
3 retary, shall be calculated in the same manner as the
4 Medicare share under section 1886(n)(2)(D) for such a
5 hospital and period, except that there shall be substituted
6 for the numerator under clause (i) of such section the
7 amount that is equal to the number of inpatient-bed-days
8 (as established by the Secretary) which are attributable
9 to individuals who are receiving medical assistance under
10 this title and who are not described in section
11 1886(n)(2)(D)(i). In computing inpatient-bed-days under
12 the previous sentence, the Secretary shall take into ac-
13 count inpatient-bed-days attributable to inpatient-bed-
14 days that are paid for individuals enrolled in a Medicaid
15 managed care plan (under section 1903(m) or section
16 1932).

17 “(7) With respect to health care providers other than
18 hospitals, the Secretary shall ensure coordination of the
19 different programs for payment of such health care pro-
20 viders for adoption or use of health information technology
21 (including certified EHR technology), as well as payments
22 for such health care providers provided under this title or
23 title XVIII, to assure no duplication of funding.

24 “(8) In carrying out paragraph (5)(C), the State and
25 Secretary shall seek, to the maximum extent practicable,

1 to avoid duplicative requirements from Federal and State
2 Governments to demonstrate meaningful use of certified
3 EHR technology under this title and title XVIII. In doing
4 so, the Secretary may deem satisfaction of requirements
5 for such meaningful use for a payment year under title
6 XVIII to be sufficient to qualify as meaningful use under
7 this subsection. The Secretary may also specify the report-
8 ing periods under this subsection in order to carry out this
9 paragraph.

10 “(9) In order to be provided Federal financial partici-
11 pation under subsection (a)(3)(F)(ii), a State must dem-
12 onstrate to the satisfaction of the Secretary, that the
13 State—

14 “(A) is using the funds provided for the pur-
15 poses of administering payments under this sub-
16 section, including tracking of meaningful use by
17 Medicaid providers;

18 “(B) is conducting adequate oversight of the
19 program under this subsection, including routine
20 tracking of meaningful use attestations and report-
21 ing mechanisms; and

22 “(C) is pursuing initiatives to encourage the
23 adoption of certified EHR technology to promote
24 health care quality and the exchange of health care

1 information under this title, subject to applicable
2 laws and regulations governing such exchange.

3 “(10) The Secretary shall periodically submit reports
4 to the Committee on Energy and Commerce of the House
5 of Representatives and the Committee on Finance of the
6 Senate on status, progress, and oversight of payments
7 under paragraph (1).”.

8 (b) IMPLEMENTATION FUNDING.—In addition to
9 funds otherwise available, out of any funds in the Treas-
10 ury not otherwise appropriated, there are appropriated to
11 the Secretary of Health and Human Services for the Cen-
12 ter for Medicare & Medicaid Services Program Manage-
13 ment Account, \$40,000,000 for each of fiscal years 2009
14 through 2015 and \$20,000,000 for each succeeding fiscal
15 year through fiscal year 2019, which shall be available for
16 purposes of carrying out the provisions of (and the amend-
17 ments made by) this part. Amounts appropriated under
18 this subsection for a fiscal year shall be available until ex-
19 pended.

20 **Subtitle D—Privacy**

21 **SEC. 4400. DEFINITIONS.**

22 In this subtitle, except as specified otherwise:

23 (1) BREACH.—The term “breach” means the
24 unauthorized acquisition, access, use, or disclosure
25 of protected health information which compromises

1 the security, privacy, or integrity of protected health
2 information maintained by or on behalf of a person.
3 Such term does not include any unintentional acqui-
4 sition, access, use, or disclosure of such information
5 by an employee or agent of the covered entity or
6 business associate involved if such acquisition, ac-
7 cess, use, or disclosure, respectively, was made in
8 good faith and within the course and scope of the
9 employment or other contractual relationship of such
10 employee or agent, respectively, with the covered en-
11 tity or business associate and if such information is
12 not further acquired, accessed, used, or disclosed by
13 such employee or agent.

14 (2) BUSINESS ASSOCIATE.—The term “business
15 associate” has the meaning given such term in sec-
16 tion 160.103 of title 45, Code of Federal Regula-
17 tions.

18 (3) COVERED ENTITY.—The term “covered en-
19 tity” has the meaning given such term in section
20 160.103 of title 45, Code of Federal Regulations.

21 (4) DISCLOSE.—The terms “disclose” and “dis-
22 closure” have the meaning given the term “disclo-
23 sure” in section 160.103 of title 45, Code of Federal
24 Regulations.

1 (5) ELECTRONIC HEALTH RECORD.—The term
2 “electronic health record” means an electronic
3 record of health-related information on an individual
4 that is created, gathered, managed, and consulted by
5 authorized health care clinicians and staff.

6 (6) HEALTH CARE OPERATIONS.—The term
7 “health care operation” has the meaning given such
8 term in section 164.501 of title 45, Code of Federal
9 Regulations.

10 (7) HEALTH CARE PROVIDER.—The term
11 “health care provider” has the meaning given such
12 term in section 160.103 of title 45, Code of Federal
13 Regulations.

14 (8) HEALTH PLAN.—The term “health plan”
15 has the meaning given such term in section 1171(5)
16 of the Social Security Act.

17 (9) NATIONAL COORDINATOR.—The term “Na-
18 tional Coordinator” means the head of the Office of
19 the National Coordinator for Health Information
20 Technology established under section 3001(a) of the
21 Public Health Service Act, as added by section
22 4101.

23 (10) PAYMENT.—The term “payment” has the
24 meaning given such term in section 164.501 of title
25 45, Code of Federal Regulations.

1 (11) PERSONAL HEALTH RECORD.—The term
2 “personal health record” means an electronic record
3 of individually identifiable health information on an
4 individual that can be drawn from multiple sources
5 and that is managed, shared, and controlled by or
6 for the individual.

7 (12) PROTECTED HEALTH INFORMATION.—The
8 term “protected health information” has the mean-
9 ing given such term in section 160.103 of title 45,
10 Code of Federal Regulations.

11 (13) SECRETARY.—The term “Secretary”
12 means the Secretary of Health and Human Services.

13 (14) SECURITY.—The term “security” has the
14 meaning given such term in section 164.304 of title
15 45, Code of Federal Regulations.

16 (15) STATE.—The term “State” means each of
17 the several States, the District of Columbia, Puerto
18 Rico, the Virgin Islands, Guam, American Samoa,
19 and the Northern Mariana Islands.

20 (16) TREATMENT.—The term “treatment” has
21 the meaning given such term in section 164.501 of
22 title 45, Code of Federal Regulations.

23 (17) USE.—The term “use” has the meaning
24 given such term in section 160.103 of title 45, Code
25 of Federal Regulations.

1 1320d–5, 1320d–6) shall apply to the business associate
2 with respect to such violation in the same manner such
3 sections apply to a covered entity that violates such secu-
4 rity provision.

5 (c) ANNUAL GUIDANCE.—For the first year begin-
6 ning after the date of the enactment of this Act and annu-
7 ally thereafter, the Secretary of Health and Human Serv-
8 ices shall, in consultation with industry stakeholders, an-
9 nually issue guidance on the most effective and appro-
10 priate technical safeguards for use in carrying out the sec-
11 tions referred to in subsection (a) and the security stand-
12 ards in subpart C of part 164 of title 45, Code of Federal
13 Regulations, as such provisions are in effect as of the date
14 before the enactment of this Act.

15 **SEC. 4402. NOTIFICATION IN THE CASE OF BREACH.**

16 (a) IN GENERAL.—A covered entity that accesses,
17 maintains, retains, modifies, records, stores, destroys, or
18 otherwise holds, uses, or discloses unsecured protected
19 health information (as defined in subsection (h)(1)) shall,
20 in the case of a breach of such information that is discov-
21 ered by the covered entity, notify each individual whose
22 unsecured protected health information has been, or is
23 reasonably believed by the covered entity to have been,
24 accessed, acquired, or disclosed as a result of such breach.

1 (b) NOTIFICATION OF COVERED ENTITY BY BUSI-
2 NESS ASSOCIATE.—A business associate of a covered enti-
3 ty that accesses, maintains, retains, modifies, records,
4 stores, destroys, or otherwise holds, uses, or discloses un-
5 secured protected health information shall, following the
6 discovery of a breach of such information, notify the cov-
7 ered entity of such breach. Such notice shall include the
8 identification of each individual whose unsecured protected
9 health information has been, or is reasonably believed by
10 the business associate to have been, accessed, acquired,
11 or disclosed during such breach.

12 (c) BREACHES TREATED AS DISCOVERED.—For pur-
13 poses of this section, a breach shall be treated as discov-
14 ered by a covered entity or by a business associate as of
15 the first day on which such breach is known to such entity
16 or associate, respectively (including any person, other than
17 the individual committing the breach, that is an employee,
18 officer, or other agent of such entity or associate, respec-
19 tively), or should reasonably have been known to such enti-
20 ty or associate (or person) to have occurred.

21 (d) TIMELINESS OF NOTIFICATION.—

22 (1) IN GENERAL.—Subject to subsection (g), all
23 notifications required under this section shall be
24 made without unreasonable delay and in no case
25 later than 60 calendar days after the discovery of a

1 breach by the covered entity involved (or business
2 associate involved in the case of a notification re-
3 quired under subsection (b)).

4 (2) BURDEN OF PROOF.—The covered entity in-
5 volved (or business associate involved in the case of
6 a notification required under subsection (b)), shall
7 have the burden of demonstrating that all notifica-
8 tions were made as required under this part, includ-
9 ing evidence demonstrating the necessity of any
10 delay.

11 (e) METHODS OF NOTICE.—

12 (1) INDIVIDUAL NOTICE.—Notice required
13 under this section to be provided to an individual,
14 with respect to a breach, shall be provided promptly
15 and in the following form:

16 (A) Written notification by first-class mail
17 to the individual (or the next of kin of the indi-
18 vidual if the individual is deceased) at the last
19 known address of the individual or the next of
20 kin, respectively, or, if specified as a preference
21 by the individual, by electronic mail. The notifi-
22 cation may be provided in one or more mailings
23 as information is available.

24 (B) In the case in which there is insuffi-
25 cient, or out-of-date contact information (in-

1 including a phone number, email address, or any
2 other form of appropriate communication) that
3 precludes direct written (or, if specified by the
4 individual under subparagraph (A), electronic)
5 notification to the individual, a substitute form
6 of notice shall be provided, including, in the
7 case that there are 10 or more individuals for
8 which there is insufficient or out-of-date contact
9 information, a conspicuous posting for a period
10 determined by the Secretary on the home page
11 of the website of the covered entity involved or
12 notice in major print or broadcast media, in-
13 cluding major media in geographic areas where
14 the individuals affected by the breach likely re-
15 side. Such a notice in media or web posting will
16 include a toll-free phone number where an indi-
17 vidual can learn whether or not the individual's
18 unsecured protected health information is pos-
19 sibly included in the breach.

20 (C) In any case deemed by the covered en-
21 tity involved to require urgency because of pos-
22 sible imminent misuse of unsecured protected
23 health information, the covered entity, in addi-
24 tion to notice provided under subparagraph (A),

1 may provide information to individuals by tele-
2 phone or other means, as appropriate.

3 (2) MEDIA NOTICE.—Notice shall be provided
4 to prominent media outlets serving a State or juris-
5 diction, following the discovery of a breach described
6 in subsection (a), if the unsecured protected health
7 information of more than 500 residents of such
8 State or jurisdiction is, or is reasonably believed to
9 have been, accessed, acquired, or disclosed during
10 such breach.

11 (3) NOTICE TO SECRETARY.—Notice shall be
12 provided to the Secretary by covered entities of un-
13 secured protected health information that has been
14 acquired or disclosed in a breach. If the breach was
15 with respect to 500 or more individuals than such
16 notice must be provided immediately. If the breach
17 was with respect to less than 500 individuals, the
18 covered entity involved may maintain a log of any
19 such breach occurring and annually submit such a
20 log to the Secretary documenting such breaches oc-
21 curring during the year involved.

22 (4) POSTING ON HHS PUBLIC WEBSITE.—The
23 Secretary shall make available to the public on the
24 Internet website of the Department of Health and
25 Human Services a list that identifies each covered

1 entity involved in a breach described in subsection
2 (a) in which the unsecured protected health informa-
3 tion of more than 500 individuals is acquired or dis-
4 closed.

5 (f) CONTENT OF NOTIFICATION.—Regardless of the
6 method by which notice is provided to individuals under
7 this section, notice of a breach shall include, to the extent
8 possible, the following:

9 (1) A brief description of what happened, in-
10 cluding the date of the breach and the date of the
11 discovery of the breach, if known.

12 (2) A description of the types of unsecured pro-
13 tected health information that were involved in the
14 breach (such as full name, Social Security number,
15 date of birth, home address, account number, or dis-
16 ability code).

17 (3) The steps individuals should take to protect
18 themselves from potential harm resulting from the
19 breach.

20 (4) A brief description of what the covered enti-
21 ty involved is doing to investigate the breach, to
22 mitigate losses, and to protect against any further
23 breaches.

24 (5) Contact procedures for individuals to ask
25 questions or learn additional information, which

1 shall include a toll-free telephone number, an e-mail
2 address, website, or postal address.

3 (g) DELAY OF NOTIFICATION AUTHORIZED FOR LAW
4 ENFORCEMENT PURPOSES.—If a law enforcement official
5 determines that a notification, notice, or posting required
6 under this section would impede a criminal investigation
7 or cause damage to national security, such notification,
8 notice, or posting shall be delayed in the same manner
9 as provided under section 164.528(a)(2) of title 45, Code
10 of Federal Regulations, in the case of a disclosure covered
11 under such section.

12 (h) UNSECURED PROTECTED HEALTH INFORMA-
13 TION.—

14 (1) DEFINITION.—

15 (A) IN GENERAL.—Subject to subpara-
16 graph (B), for purposes of this section, the
17 term “unsecured protected health information”
18 means protected health information that is not
19 secured through the use of a technology or
20 methodology specified by the Secretary in the
21 guidance issued under paragraph (2).

22 (B) EXCEPTION IN CASE TIMELY GUID-
23 ANCE NOT ISSUED.—In the case that the Sec-
24 retary does not issue guidance under paragraph
25 (2) by the date specified in such paragraph, for

1 purposes of this section, the term “unsecured
2 protected health information” shall mean pro-
3 tected health information that is not secured by
4 a technology standard that renders protected
5 health information unusable, unreadable, or in-
6 decipherable to unauthorized individuals and is
7 developed or endorsed by a standards devel-
8 oping organization that is accredited by the
9 American National Standards Institute.

10 (2) GUIDANCE.—For purposes of paragraph (1)
11 and section 407(f)(3), not later than the date that
12 is 60 days after the date of the enactment of this
13 Act, the Secretary shall, after consultation with
14 stakeholders, issue (and annually update) guidance
15 specifying the technologies and methodologies that
16 render protected health information unusable,
17 unreadable, or indecipherable to unauthorized indi-
18 viduals.

19 (i) REPORT TO CONGRESS ON BREACHES.—

20 (1) IN GENERAL.—Not later than 12 months
21 after the date of the enactment of this Act and an-
22 nually thereafter, the Secretary shall prepare and
23 submit to the Committee on Finance and the Com-
24 mittee on Health, Education, Labor, and Pensions
25 of the Senate and the Committee on Ways and

1 Means and the Committee on Energy and Commerce
2 of the House of Representatives a report containing
3 the information described in paragraph (2) regard-
4 ing breaches for which notice was provided to the
5 Secretary under subsection (e)(3).

6 (2) INFORMATION.—The information described
7 in this paragraph regarding breaches specified in
8 paragraph (1) shall include—

9 (A) the number and nature of such
10 breaches; and

11 (B) actions taken in response to such
12 breaches.

13 (j) REGULATIONS; EFFECTIVE DATE.—To carry out
14 this section, the Secretary of Health and Human Services
15 shall promulgate interim final regulations by not later
16 than the date that is 180 days after the date of the enact-
17 ment of this title. The provisions of this section shall apply
18 to breaches that are discovered on or after the date that
19 is 30 days after the date of publication of such interim
20 final regulations.

21 **SEC. 4403. EDUCATION ON HEALTH INFORMATION PRI-**
22 **VACY.**

23 (a) REGIONAL OFFICE PRIVACY ADVISORS.—Not
24 later than 6 months after the date of the enactment of
25 this Act, the Secretary shall designate an individual in

1 each regional office of the Department of Health and
2 Human Services to offer guidance and education to cov-
3 ered entities, business associates, and individuals on their
4 rights and responsibilities related to Federal privacy and
5 security requirements for protected health information.

6 (b) EDUCATION INITIATIVE ON USES OF HEALTH IN-
7 FORMATION.—Not later than 12 months after the date of
8 the enactment of this Act, the Office for Civil Rights with-
9 in the Department of Health and Human Services shall
10 develop and maintain a multi-faceted national education
11 initiative to enhance public transparency regarding the
12 uses of protected health information, including programs
13 to educate individuals about the potential uses of their
14 protected health information, the effects of such uses, and
15 the rights of individuals with respect to such uses. Such
16 programs shall be conducted in a variety of languages and
17 present information in a clear and understandable man-
18 ner.

19 **SEC. 4404. APPLICATION OF PRIVACY PROVISIONS AND**
20 **PENALTIES TO BUSINESS ASSOCIATES OF**
21 **COVERED ENTITIES.**

22 (a) APPLICATION OF CONTRACT REQUIREMENTS.—
23 In the case of a business associate of a covered entity that
24 obtains or creates protected health information pursuant
25 to a written contract (or other written arrangement) de-

1 scribed in section 164.502(e)(2) of title 45, Code of Fed-
2 eral Regulations, with such covered entity, the business
3 associate may use and disclose such protected health infor-
4 mation only if such use or disclosure, respectively, is in
5 compliance with each applicable requirement of section
6 164.504(e) of such title. The additional requirements of
7 this subtitle that relate to privacy and that are made ap-
8 plicable with respect to covered entities shall also be appli-
9 cable to such a business associate and shall be incor-
10 porated into the business associate agreement between the
11 business associate and the covered entity.

12 (b) APPLICATION OF KNOWLEDGE ELEMENTS ASSO-
13 CIATED WITH CONTRACTS.—Section 164.504(e)(1)(ii) of
14 title 45, Code of Federal Regulations, shall apply to a
15 business associate described in subsection (a), with respect
16 to compliance with such subsection, in the same manner
17 that such section applies to a covered entity, with respect
18 to compliance with the standards in sections 164.502(e)
19 and 164.504(e) of such title, except that in applying such
20 section 164.504(e)(1)(ii) each reference to the business as-
21 sociate, with respect to a contract, shall be treated as a
22 reference to the covered entity involved in such contract.

23 (c) APPLICATION OF CIVIL AND CRIMINAL PEN-
24 ALTIES.—In the case of a business associate that violates
25 any provision of subsection (a) or (b), the provisions of

1 sections 1176 and 1177 of the Social Security Act (42
2 U.S.C. 1320d–5, 1320d–6) shall apply to the business as-
3 sociate with respect to such violation in the same manner
4 as such provisions apply to a person who violates a provi-
5 sion of part C of title XI of such Act.

6 **SEC. 4405. RESTRICTIONS ON CERTAIN DISCLOSURES AND**
7 **SALES OF HEALTH INFORMATION; ACCOUNT-**
8 **ING OF CERTAIN PROTECTED HEALTH IN-**
9 **FORMATION DISCLOSURES; ACCESS TO CER-**
10 **TAIN INFORMATION IN ELECTRONIC FOR-**
11 **MAT.**

12 (a) REQUESTED RESTRICTIONS ON CERTAIN DIS-
13 CLOSURES OF HEALTH INFORMATION.—In the case that
14 an individual requests under paragraph (a)(1)(i)(A) of
15 section 164.522 of title 45, Code of Federal Regulations,
16 that a covered entity restrict the disclosure of the pro-
17 tected health information of the individual, notwith-
18 standing paragraph (a)(1)(ii) of such section, the covered
19 entity must comply with the requested restriction if—

20 (1) except as otherwise required by law, the dis-
21 closure is to a health plan for purposes of carrying
22 out payment or health care operations (and is not
23 for purposes of carrying out treatment); and

24 (2) the protected health information pertains
25 solely to a health care item or service for which the

1 health care provider involved has been paid out of
2 pocket in full.

3 (b) DISCLOSURES REQUIRED TO BE LIMITED TO
4 THE LIMITED DATA SET OR THE MINIMUM NEC-
5 ESSARY.—

6 (1) IN GENERAL.—

7 (A) IN GENERAL.—Subject to subpara-
8 graph (B), a covered entity shall be treated as
9 being in compliance with section 164.502(b)(1)
10 of title 45, Code of Federal Regulations, with
11 respect to the use, disclosure, or request of pro-
12 tected health information described in such sec-
13 tion, only if the covered entity limits such pro-
14 tected health information, to the extent prac-
15 ticable, to the limited data set (as defined in
16 section 164.514(e)(2) of such title) or, if needed
17 by such entity, to the minimum necessary to ac-
18 complish the intended purpose of such use, dis-
19 closure, or request, respectively.

20 (B) GUIDANCE.—Not later than 18
21 months after the date of the enactment of this
22 section, the Secretary shall issue guidance on
23 what constitutes “minimum necessary” for pur-
24 poses of subpart E of part 164 of title 45, Code
25 of Federal Regulation. In issuing such guidance

1 the Secretary shall take into consideration the
2 guidance under section 4424(c).

3 (C) SUNSET.—Subparagraph (A) shall not
4 apply on and after the effective date on which
5 the Secretary issues the guidance under sub-
6 paragraph (B).

7 (2) DETERMINATION OF MINIMUM NEC-
8 CESSARY.—For purposes of paragraph (1), in the
9 case of the disclosure of protected health informa-
10 tion, the covered entity or business associate dis-
11 closing such information shall determine what con-
12 stitutes the minimum necessary to accomplish the
13 intended purpose of such disclosure.

14 (3) APPLICATION OF EXCEPTIONS.—The excep-
15 tions described in section 164.502(b)(2) of title 45,
16 Code of Federal Regulations, shall apply to the re-
17 quirement under paragraph (1) as of the effective
18 date described in section 4423 in the same manner
19 that such exceptions apply to section 164.502(b)(1)
20 of such title before such date.

21 (4) RULE OF CONSTRUCTION.—Nothing in this
22 subsection shall be construed as affecting the use,
23 disclosure, or request of protected health information
24 that has been de-identified.

1 (c) ACCOUNTING OF CERTAIN PROTECTED HEALTH
2 INFORMATION DISCLOSURES REQUIRED IF COVERED EN-
3 TITY USES ELECTRONIC HEALTH RECORD.—

4 (1) IN GENERAL.—In applying section 164.528
5 of title 45, Code of Federal Regulations, in the case
6 that a covered entity uses or maintains an electronic
7 health record with respect to protected health infor-
8 mation—

9 (A) the exception under paragraph
10 (a)(1)(i) of such section shall not apply to dis-
11 closures through an electronic health record
12 made by such entity of such information; and

13 (B) an individual shall have a right to re-
14 ceive an accounting of disclosures described in
15 such paragraph of such information made by
16 such covered entity during only the three years
17 prior to the date on which the accounting is re-
18 quested.

19 (2) REGULATIONS.—The Secretary shall pro-
20 mulgate regulations on what information shall be
21 collected about each disclosure referred to in para-
22 graph (1)(A) not later than 18 months after the
23 date on which the Secretary adopts standards on ac-
24 counting for disclosure described in the section
25 3002(b)(2)(B)(iv) of the Public Health Service Act,

1 as added by section 4101. Such regulations shall
2 only require such information to be collected through
3 an electronic health record in a manner that takes
4 into account the interests of individuals in learning
5 the circumstances under which their protected health
6 information is being disclosed and takes into account
7 the administrative burden of accounting for such
8 disclosures.

9 (3) CONSTRUCTION.—Nothing in this sub-
10 section shall be construed as requiring a covered en-
11 tity to account for disclosures of protected health in-
12 formation that are not made by such covered entity
13 or by a business associate acting on behalf of the
14 covered entity.

15 (4) EFFECTIVE DATE.—

16 (A) CURRENT USERS OF ELECTRONIC
17 RECORDS.—In the case of a covered entity inso-
18 far as it acquired an electronic health record as
19 of January 1, 2009, paragraph (1) shall apply
20 to disclosures, with respect to protected health
21 information, made by the covered entity from
22 such a record on and after January 1, 2014.

23 (B) OTHERS.—In the case of a covered en-
24 tity insofar as it acquires an electronic health
25 record after January 1, 2009, paragraph (1)

1 shall apply to disclosures, with respect to pro-
2 tected health information, made by the covered
3 entity from such record on and after the later
4 of the following:

5 (i) January 1, 2011; or

6 (ii) the date that it acquires an elec-
7 tronic health record.

8 (d) REVIEW OF HEALTH CARE OPERATIONS.—Not
9 later than 18 months after the date of the enactment of
10 this title, the Secretary shall promulgate regulations to
11 eliminate from the definition of health care operations
12 under section 164.501 of title 45, Code of Federal Regula-
13 tions, those activities that can reasonably and efficiently
14 be conducted through the use of information that is de-
15 identified (in accordance with the requirements of section
16 164.514(b) of such title) or that should require a valid
17 authorization for use or disclosure. In promulgating such
18 regulations, the Secretary may choose to narrow or clarify
19 activities that the Secretary chooses to retain in the defini-
20 tion of health care operations and the Secretary shall take
21 into account the report under section 424(d). In such reg-
22 ulations the Secretary shall specify the date on which such
23 regulations shall apply to disclosures made by a covered
24 entity, but in no case would such date be sooner than the

1 date that is 24 months after the date of the enactment
2 of this section.

3 (e) PROHIBITION ON SALE OF ELECTRONIC HEALTH
4 RECORDS OR PROTECTED HEALTH INFORMATION.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (2), a covered entity or business associate
7 shall not directly or indirectly receive remuneration
8 in exchange for any protected health information of
9 an individual unless the covered entity obtained from
10 the individual, in accordance with section 164.508 of
11 title 45, Code of Federal Regulations, a valid au-
12 thorization that includes, in accordance with such
13 section, a specification of whether the protected
14 health information can be further exchanged for re-
15 munerated by the entity receiving protected health
16 information of that individual.

17 (2) EXCEPTIONS.—Paragraph (1) shall not
18 apply in the following cases:

19 (A) The purpose of the exchange is for re-
20 search or public health activities (as described
21 in sections 164.501, 164.512(i), and 164.512(b)
22 of title 45, Code of Federal Regulations) and
23 the price charged reflects the costs of prepara-
24 tion and transmittal of the data for such pur-
25 pose.

1 (B) The purpose of the exchange is for the
2 treatment of the individual and the price
3 charges reflects not more than the costs of
4 preparation and transmittal of the data for
5 such purpose.

6 (C) The purpose of the exchange is the
7 health care operation specifically described in
8 subparagraph (iv) of paragraph (6) of the defi-
9 nition of health care operations in section
10 164.501 of title 45, Code of Federal Regula-
11 tions.

12 (D) The purpose of the exchange is for re-
13 munerated that is provided by a covered entity
14 to a business associate for activities involving
15 the exchange of protected health information
16 that the business associate undertakes on behalf
17 of and at the specific request of the covered en-
18 tity pursuant to a business associate agreement.

19 (E) The purpose of the exchange is to pro-
20 vide an individual with a copy of the individ-
21 ual's protected health information pursuant to
22 section 164.524 of title 45, Code of Federal
23 Regulations.

24 (F) The purpose of the exchange is other-
25 wise determined by the Secretary in regulations

1 to be similarly necessary and appropriate as the
2 exceptions provided in subparagraphs (A)
3 through (E).

4 (3) REGULATIONS.—The Secretary shall pro-
5 mulgate regulations to carry out paragraph (this
6 subsection, including exceptions described in para-
7 graph (2), not later than 18 months after the date
8 of the enactment of this title.

9 (4) EFFECTIVE DATE.—Paragraph (1) shall
10 apply to exchanges occurring on or after the date
11 that is 6 months after the date of the promulgation
12 of final regulations implementing this subsection.

13 (f) ACCESS TO CERTAIN INFORMATION IN ELEC-
14 TRONIC FORMAT.—In applying section 164.524 of title
15 45, Code of Federal Regulations, in the case that a cov-
16 ered entity uses or maintains an electronic health record
17 with respect to protected health information of an indi-
18 vidual—

19 (1) the individual shall have a right to obtain
20 from such covered entity a copy of such information
21 in an electronic format; and

22 (2) notwithstanding paragraph (c)(4) of such
23 section, any fee that the covered entity may impose
24 for providing such individual with a copy of such in-
25 formation (or a summary or explanation of such in-

1 formation) if such copy (or summary or explanation)
2 is in an electronic form shall not be greater than the
3 entity's labor costs in responding to the request for
4 the copy (or summary or explanation).

5 **SEC. 4406. CONDITIONS ON CERTAIN CONTACTS AS PART**
6 **OF HEALTH CARE OPERATIONS.**

7 (a) **MARKETING.**—

8 (1) **IN GENERAL.**—A communication by a cov-
9 ered entity or business associate that is about a
10 product or service and that encourages recipients of
11 the communication to purchase or use the product
12 or service shall not be considered a health care oper-
13 ation for purposes of subpart E of part 164 of title
14 45, Code of Federal Regulations, unless the commu-
15 nication is made as described in subparagraph (i),
16 (ii), or (iii) of paragraph (1) of the definition of
17 marketing in section 164.501 of such title.

18 (2) **PAYMENT FOR CERTAIN COMMUNICA-**
19 **TIONS.**—A covered entity or business associate may
20 not receive direct or indirect payment in exchange
21 for making any communication described in sub-
22 paragraph (i), (ii), or (iii) of paragraph (1) of the
23 definition of marketing in section 164.501 of title
24 45, Code of Federal Regulations, except—

1 (A) a business associate of a covered entity
2 may receive payment from the covered entity
3 for making any such communication on behalf
4 of the covered entity that is consistent with the
5 written contract (or other written arrangement)
6 described in section 164.502(e)(2) of such title
7 between such business associate and covered en-
8 tity; or

9 (B) a covered entity may receive payment
10 in exchange for making any such communica-
11 tion if the entity obtains from the recipient of
12 the communication, in accordance with section
13 164.508 of title 45, Code of Federal Regula-
14 tions, a valid authorization (as described in
15 paragraph (b) of such section) with respect to
16 such communication.

17 (b) FUNDRAISING.—Fundraising for the benefit of a
18 covered entity shall not be considered a health care oper-
19 ation for purposes of section 164.501 of title 45, Code of
20 Federal Regulations.

21 (c) EFFECTIVE DATE.—This section shall apply to
22 contracting occurring on or after the effective date speci-
23 fied under section 4423.

1 **SEC. 4407. TEMPORARY BREACH NOTIFICATION REQUIRE-**
2 **MENT FOR VENDORS OF PERSONAL HEALTH**
3 **RECORDS AND OTHER NON-HIPAA COVERED**
4 **ENTITIES.**

5 (a) IN GENERAL.—In accordance with subsection (c),
6 each vendor of personal health records, following the dis-
7 covery of a breach of security of unsecured PHR identifi-
8 able health information that is in a personal health record
9 maintained or offered by such vendor, and each entity de-
10 scribed in clause (ii) or (iii) of section 4424(b)(1)(A), fol-
11 lowing the discovery of a breach of security of such infor-
12 mation that is obtained through a product or service pro-
13 vided by such entity, shall—

14 (1) notify each individual who is a citizen or
15 resident of the United States whose unsecured PHR
16 identifiable health information was acquired by an
17 unauthorized person as a result of such a breach of
18 security; and

19 (2) notify the Federal Trade Commission.

20 (b) NOTIFICATION BY THIRD PARTY SERVICE PRO-
21 VIDERS.—A third party service provider that provides
22 services to a vendor of personal health records or to an
23 entity described in clause (ii) or (iii) of section
24 4424(b)(1)(A) in connection with the offering or mainte-
25 nance of a personal health record or a related product or
26 service and that accesses, maintains, retains, modifies,

1 records, stores, destroys, or otherwise holds, uses, or dis-
2 closes unsecured PHR identifiable health information in
3 such a record as a result of such services shall, following
4 the discovery of a breach of security of such information,
5 notify such vendor or entity, respectively, of such breach.
6 Such notice shall include the identification of each indi-
7 vidual whose unsecured PHR identifiable health informa-
8 tion has been, or is reasonably believed to have been,
9 accessed, acquired, or disclosed during such breach.

10 (c) APPLICATION OF REQUIREMENTS FOR TIMELI-
11 NESS, METHOD, AND CONTENT OF NOTIFICATIONS.—
12 Subsections (c), (d), (e), and (f) of section 402 shall apply
13 to a notification required under subsection (a) and a ven-
14 dor of personal health records, an entity described in sub-
15 section (a) and a third party service provider described
16 in subsection (b), with respect to a breach of security
17 under subsection (a) of unsecured PHR identifiable health
18 information in such records maintained or offered by such
19 vendor, in a manner specified by the Federal Trade Com-
20 mission.

21 (d) NOTIFICATION OF THE SECRETARY.—Upon re-
22 ceipt of a notification of a breach of security under sub-
23 section (a)(2), the Federal Trade Commission shall notify
24 the Secretary of such breach.

1 (e) ENFORCEMENT.—A violation of subsection (a) or
2 (b) shall be treated as an unfair and deceptive act or prac-
3 tice in violation of a regulation under section 18(a)(1)(B)
4 of the Federal Trade Commission Act (15 U.S.C.
5 57a(a)(1)(B)) regarding unfair or deceptive acts or prac-
6 tices.

7 (f) DEFINITIONS.—For purposes of this section:

8 (1) BREACH OF SECURITY.—The term “breach
9 of security” means, with respect to unsecured PHR
10 identifiable health information of an individual in a
11 personal health record, acquisition of such informa-
12 tion without the authorization of the individual.

13 (2) PHR IDENTIFIABLE HEALTH INFORMA-
14 TION.—The term “PHR identifiable health informa-
15 tion” means individually identifiable health informa-
16 tion, as defined in section 1171(6) of the Social Se-
17 curity Act (42 U.S.C. 1320d(6)), and includes, with
18 respect to an individual, information—

19 (A) that is provided by or on behalf of the
20 individual; and

21 (B) that identifies the individual or with
22 respect to which there is a reasonable basis to
23 believe that the information can be used to
24 identify the individual.

1 (3) UNSECURED PHR IDENTIFIABLE HEALTH
2 INFORMATION.—

3 (A) IN GENERAL.—Subject to subpara-
4 graph (B), the term “unsecured PHR identifi-
5 able health information” means PHR identifi-
6 able health information that is not protected
7 through the use of a technology or methodology
8 specified by the Secretary in the guidance
9 issued under section 4402(h)(2).

10 (B) EXCEPTION IN CASE TIMELY GUID-
11 ANCE NOT ISSUED.—In the case that the Sec-
12 retary does not issue guidance under section
13 4402(h)(2) by the date specified in such sec-
14 tion, for purposes of this section, the term “un-
15 secured PHR identifiable health information”
16 shall mean PHR identifiable health information
17 that is not secured by a technology standard
18 that renders protected health information unus-
19 able, unreadable, or indecipherable to unauthor-
20 ized individuals and that is developed or en-
21 dored by a standards developing organization
22 that is accredited by the American National
23 Standards Institute.

24 (g) REGULATIONS; EFFECTIVE DATE; SUNSET.—

1 (1) REGULATIONS; EFFECTIVE DATE.—To
2 carry out this section, the Secretary of Health and
3 Human Services shall promulgate interim final regu-
4 lations by not later than the date that is 180 days
5 after the date of the enactment of this section. The
6 provisions of this section shall apply to breaches of
7 security that are discovered on or after the date that
8 is 30 days after the date of publication of such in-
9 terim final regulations.

10 (2) SUNSET.—The provisions of this section
11 shall not apply to breaches of security occurring on
12 or after the earlier of the following the dates:

13 (A) The date on which a standard relating
14 to requirements for entities that are not covered
15 entities that includes requirements relating to
16 breach notification has been promulgated by the
17 Secretary.

18 (B) The date on which a standard relating
19 to requirements for entities that are not covered
20 entities that includes requirements relating to
21 breach notification has been promulgated by the
22 Federal Trade Commission and has taken ef-
23 fect.

1 **SEC. 4408. BUSINESS ASSOCIATE CONTRACTS REQUIRED**
2 **FOR CERTAIN ENTITIES.**

3 Each organization, with respect to a covered entity,
4 that provides data transmission of protected health infor-
5 mation to such entity (or its business associate) and that
6 requires access on a routine basis to such protected health
7 information, such as a Health Information Exchange Or-
8 ganization, Regional Health Information Organization, E-
9 prescribing Gateway, or each vendor that contracts with
10 a covered entity to allow that covered entity to offer a per-
11 sonal health record to patients as part of its electronic
12 health record, is required to enter into a written contract
13 (or other written arrangement) described in section
14 164.502(e)(2) of title 45, Code of Federal Regulations and
15 a written contract (or other arrangement) described in
16 section 164.308(b) of such title, with such entity and shall
17 be treated as a business associate of the covered entity
18 for purposes of the provisions of this subtitle and subparts
19 C and E of part 164 of title 45, Code of Federal Regula-
20 tions, as such provisions are in effect as of the date of
21 enactment of this title.

22 **SEC. 4409. CLARIFICATION OF APPLICATION OF WRONGFUL**
23 **DISCLOSURES CRIMINAL PENALTIES.**

24 Section 1177(a) of the Social Security Act (42 U.S.C.
25 1320d-6(a)) is amended by adding at the end the fol-
26 lowing new sentence: “For purposes of the previous sen-

1 tence, a person (including an employee or other individual)
2 shall be considered to have obtained or disclosed individ-
3 ually identifiable health information in violation of this
4 part if the information is maintained by a covered entity
5 (as defined in the HIPAA privacy regulation described in
6 section 1180(b)(3)) and the individual obtained or dis-
7 closed such information without authorization.”.

8 **SEC. 4410. IMPROVED ENFORCEMENT.**

9 (a) IN GENERAL.—Section 1176 of the Social Secu-
10 rity Act (42 U.S.C. 1320d–5) is amended—

11 (1) in subsection (b)(1), by striking “the act
12 constitutes an offense punishable under section
13 1177” and inserting “a penalty has been imposed
14 under section 1177 with respect to such act”; and

15 (2) by adding at the end the following new sub-
16 section:

17 “(c) NONCOMPLIANCE DUE TO WILLFUL NE-
18 GLECT.—

19 “(1) IN GENERAL.—A violation of a provision
20 of this part due to willful neglect is a violation for
21 which the Secretary is required to impose a penalty
22 under subsection (a)(1).

23 “(2) REQUIRED INVESTIGATION.—For purposes
24 of paragraph (1), the Secretary shall formally inves-
25 tigate any complaint of a violation of a provision of

1 this part if a preliminary investigation of the facts
2 of the complaint indicate such a possible violation
3 due to willful neglect.”.

4 (b) EFFECTIVE DATE; REGULATIONS.—

5 (1) The amendments made by subsection (a)
6 shall apply to penalties imposed on or after the date
7 that is 24 months after the date of the enactment
8 of this title.

9 (2) Not later than 18 months after the date of
10 the enactment of this title, the Secretary of Health
11 and Human Services shall promulgate regulations to
12 implement such amendments.

13 (c) DISTRIBUTION OF CERTAIN CIVIL MONETARY
14 PENALTIES COLLECTED.—

15 (1) IN GENERAL.—Subject to the regulation
16 promulgated pursuant to paragraph (3), any civil
17 monetary penalty or monetary settlement collected
18 with respect to an offense punishable under this sub-
19 title or section 1176 of the Social Security Act (42
20 U.S.C. 1320d–5) insofar as such section relates to
21 privacy or security shall be transferred to the Office
22 of Civil Rights of the Department of Health and
23 Human Services to be used for purposes of enforcing
24 the provisions of this subtitle and subparts C and E
25 of part 164 of title 45, Code of Federal Regulations,

1 as such provisions are in effect as of the date of en-
2 actment of this Act.

3 (2) GAO REPORT.—Not later than 18 months
4 after the date of the enactment of this title, the
5 Comptroller General shall submit to the Secretary a
6 report including recommendations for a methodology
7 under which an individual who is harmed by an act
8 that constitutes an offense referred to in paragraph
9 (1) may receive a percentage of any civil monetary
10 penalty or monetary settlement collected with re-
11 spect to such offense.

12 (3) ESTABLISHMENT OF METHODOLOGY TO
13 DISTRIBUTE PERCENTAGE OF CMPS COLLECTED TO
14 HARMED INDIVIDUALS.—Not later than 3 years
15 after the date of the enactment of this title, the Sec-
16 retary shall establish by regulation and based on the
17 recommendations submitted under paragraph (2), a
18 methodology under which an individual who is
19 harmed by an act that constitutes an offense re-
20 ferred to in paragraph (1) may receive a percentage
21 of any civil monetary penalty or monetary settlement
22 collected with respect to such offense.

23 (4) APPLICATION OF METHODOLOGY.—The
24 methodology under paragraph (3) shall be applied
25 with respect to civil monetary penalties or monetary

1 settlements imposed on or after the effective date of
2 the regulation.

3 (d) TIERED INCREASE IN AMOUNT OF CIVIL MONE-
4 TARY PENALTIES.—

5 (1) IN GENERAL.—Section 1176(a)(1) of the
6 Social Security Act (42 U.S.C. 1320d–5(a)(1)) is
7 amended by striking “who violates a provision of
8 this part a penalty of not more than” and all that
9 follows and inserting the following: “who violates a
10 provision of this part—

11 “(A) in the case of a violation of such pro-
12 vision in which it is established that the person
13 did not know (and by exercising reasonable dili-
14 gence would not have known) that such person
15 violated such provision, a penalty for each such
16 violation of an amount that is at least the
17 amount described in paragraph (3)(A) but not
18 to exceed the amount described in paragraph
19 (3)(D);

20 “(B) in the case of a violation of such pro-
21 vision in which it is established that the viola-
22 tion was due to reasonable cause and not to
23 willful neglect, a penalty for each such violation
24 of an amount that is at least the amount de-

1 scribed in paragraph (3)(B) but not to exceed
2 the amount described in paragraph (3)(D); and

3 “(C) in the case of a violation of such pro-
4 vision in which it is established that the viola-
5 tion was due to willful neglect—

6 “(i) if the violation is corrected as de-
7 scribed in subsection (b)(3)(A), a penalty
8 in an amount that is at least the amount
9 described in paragraph (3)(C) but not to
10 exceed the amount described in paragraph
11 (3)(D); and

12 “(ii) if the violation is not corrected
13 as described in such subsection, a penalty
14 in an amount that is at least the amount
15 described in paragraph (3)(D).

16 In determining the amount of a penalty under
17 this section for a violation, the Secretary shall
18 base such determination on the nature and ex-
19 tent of the violation and the nature and extent
20 of the harm resulting from such violation.”.

21 (2) TIERS OF PENALTIES DESCRIBED.—Section
22 1176(a) of such Act (42 U.S.C. 1320d–5(a)) is fur-
23 ther amended by adding at the end the following
24 new paragraph:

1 “(3) TIERS OF PENALTIES DESCRIBED.—For
2 purposes of paragraph (1), with respect to a viola-
3 tion by a person of a provision of this part—

4 “(A) the amount described in this subpara-
5 graph is \$100 for each such violation, except
6 that the total amount imposed on the person
7 for all such violations of an identical require-
8 ment or prohibition during a calendar year may
9 not exceed \$25,000;

10 “(B) the amount described in this subpara-
11 graph is \$1,000 for each such violation, except
12 that the total amount imposed on the person
13 for all such violations of an identical require-
14 ment or prohibition during a calendar year may
15 not exceed \$100,000;

16 “(C) the amount described in this subpara-
17 graph is \$10,000 for each such violation, except
18 that the total amount imposed on the person
19 for all such violations of an identical require-
20 ment or prohibition during a calendar year may
21 not exceed \$250,000; and

22 “(D) the amount described in this sub-
23 paragraph is \$50,000 for each such violation,
24 except that the total amount imposed on the
25 person for all such violations of an identical re-

1 requirement or prohibition during a calendar year
2 may not exceed \$1,500,000.”.

3 (3) CONFORMING AMENDMENTS.—Section
4 1176(b) of such Act (42 U.S.C. 1320d–5(b)) is
5 amended—

6 (A) by striking paragraph (2) and redesignig-
7 nating paragraphs (3) and (4) as paragraphs
8 (2) and (3), respectively; and

9 (B) in paragraph (2), as so redesignated—

10 (i) in subparagraph (A), by striking
11 “in subparagraph (B), a penalty may not
12 be imposed under subsection (a) if” and all
13 that follows through “the failure to comply
14 is corrected” and inserting “in subpara-
15 graph (B) or subsection (a)(1)(C), a pen-
16 alty may not be imposed under subsection
17 (a) if the failure to comply is corrected”;
18 and

19 (ii) in subparagraph (B), by striking
20 “(A)(ii)” and inserting “(A)” each place it
21 appears.

22 (4) EFFECTIVE DATE.—The amendments made
23 by this subsection shall apply to violations occurring
24 after the date of the enactment of this title.

1 (e) ENFORCEMENT THROUGH STATE ATTORNEYS

2 GENERAL.—

3 (1) IN GENERAL.—Section 1176 of the Social
4 Security Act (42 U.S.C. 1320d–5) is amended by
5 adding at the end the following new subsection:

6 “(c) ENFORCEMENT BY STATE ATTORNEYS GEN-
7 ERAL.—

8 “(1) CIVIL ACTION.—Except as provided in
9 subsection (b), in any case in which the attorney
10 general of a State has reason to believe that an in-
11 terest of one or more of the residents of that State
12 has been or is threatened or adversely affected by
13 any person who violates a provision of this part, the
14 attorney general of the State, as *parens patriae*, may
15 bring a civil action on behalf of such residents of the
16 State in a district court of the United States of ap-
17 propriate jurisdiction—

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
22 the 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

1 this paragraph is the amount calculated by mul-
2 tipling 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
5 violations shall be determined consistent with
6 the HIPAA privacy regulations (as defined in
7 section 1180(b)(3)) for violations of subsection
8 (a).

9 “(B) LIMITATION.—The total amount of
10 damages imposed on the person for all viola-
11 tions of an identical requirement or prohibition
12 during a calendar year may not exceed \$25,000.

13 “(C) REDUCTION OF DAMAGES.—In as-
14 sessing damages under subparagraph (A), the
15 court may consider the factors the Secretary
16 may consider in determining the amount of a
17 civil money penalty under subsection (a) under
18 the HIPAA privacy regulations.

19 “(3) ATTORNEY FEES.—In the case of any suc-
20 cessful action under paragraph (1), the court, in its
21 discretion, may award the costs of the action and
22 reasonable attorney fees to the State.

23 “(4) NOTICE TO SECRETARY.—The State shall
24 serve prior written notice of any action under para-
25 graph (1) upon the Secretary and provide the Sec-

1 retary with a copy of its complaint, except in any
2 case in which such prior notice is not feasible, in
3 which case the State shall serve such notice imme-
4 diately upon instituting such action. The Secretary
5 shall have the right—

6 “(A) to intervene in the action;

7 “(B) upon so intervening, to be heard on
8 all matters arising therein; and

9 “(C) to file petitions for appeal.

10 “(5) CONSTRUCTION.—For purposes of bring-
11 ing any civil action under paragraph (1), nothing in
12 this section shall be construed to prevent an attor-
13 ney general of a State from exercising the powers
14 conferred on the attorney general by the laws of that
15 State.

16 “(6) VENUE; SERVICE OF PROCESS.—

17 “(A) VENUE.—Any action brought under
18 paragraph (1) may be brought in the district
19 court of the United States that meets applicable
20 requirements relating to venue under section
21 1391 of title 28, United States Code.

22 “(B) SERVICE OF PROCESS.—In an action
23 brought under paragraph (1), process may be
24 served in any district in which the defendant—

25 “(i) is an inhabitant; or

1 “(ii) maintains a physical place of
2 business.

3 “(7) LIMITATION ON STATE ACTION WHILE
4 FEDERAL ACTION IS PENDING.—If the Secretary has
5 instituted an action against a person under sub-
6 section (a) with respect to a specific violation of this
7 part, no State attorney general may bring an action
8 under this subsection against the person with re-
9 spect to such violation during the pendency of that
10 action.

11 “(8) APPLICATION OF CMP STATUTE OF LIM-
12 TATION.—A civil action may not be instituted with
13 respect to a violation of this part unless an action
14 to impose a civil money penalty may be instituted
15 under subsection (a) with respect to such violation
16 consistent with the second sentence of section
17 1128A(c)(1).”.

18 (2) CONFORMING AMENDMENTS.—Subsection
19 (b) of such section, as amended by subsection (d)(3),
20 is amended—

21 (A) in paragraph (1), by striking “A pen-
22 alty may not be imposed under subsection (a)”
23 and inserting “No penalty may be imposed
24 under subsection (a) and no damages obtained
25 under subsection (c)”;

1 (B) in paragraph (2)(A)—

2 (i) in the matter before clause (i), by
3 striking “a penalty may not be imposed
4 under subsection (a)” and inserting “no
5 penalty may be imposed under subsection
6 (a) and no damages obtained under sub-
7 section (c)”;

8 (ii) in clause (ii), by inserting “or
9 damages” after “the penalty”;

10 (C) in paragraph (2)(B)(i), by striking
11 “The period” and inserting “With respect to
12 the imposition of a penalty by the Secretary
13 under subsection (a), the period”;

14 (D) in paragraph (3), by inserting “and
15 any damages under subsection (c)” after “any
16 penalty under subsection (a)”.

17 (3) EFFECTIVE DATE.—The amendments made
18 by this subsection shall apply to violations occurring
19 after the date of the enactment of this Act.

20 (f) ALLOWING CONTINUED USE OF CORRECTIVE AC-
21 TION.—Such section is further amended by adding at the
22 end the following new subsection:

23 “(d) ALLOWING CONTINUED USE OF CORRECTIVE
24 ACTION.—Nothing in this section shall be construed as
25 preventing the Office of Civil Rights of the Department

1 of Health and Human Services from continuing, in its dis-
2 cretion, to use corrective action without a penalty in cases
3 where the person did not know (and by exercising reason-
4 able diligence would not have known) of the violation in-
5 volved.”.

6 **SEC. 4411. AUDITS.**

7 The Secretary shall provide for periodic audits to en-
8 sure that covered entities and business associates that are
9 subject to the requirements of this subtitle and subparts
10 C and E of part 164 of title 45, Code of Federal Regula-
11 tions, as such provisions are in effect as of the date of
12 enactment of this Act, comply with such requirements.

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.
19 1320d–7) shall apply to a provision or requirement under
20 this subtitle in the same manner that such section applies
21 to a provision or requirement under part C of title XI of
22 such Act or a standard or implementation specification
23 adopted or established under sections 1172 through 1174
24 of such Act.

1 (b) HEALTH INSURANCE PORTABILITY AND AC-
2 COUNTABILITY ACT.—The standards governing the pri-
3 vacy and security of individually identifiable health infor-
4 mation promulgated by the Secretary under sections
5 262(a) and 264 of the Health Insurance Portability and
6 Accountability Act of 1996 shall remain in effect to the
7 extent that they are consistent with this subtitle. The Sec-
8 retary shall by rule amend such Federal regulations as re-
9 quired to make such regulations consistent with this sub-
10 title.

11 **SEC. 4422. REGULATORY REFERENCES.**

12 Each reference in this subtitle to a provision of the
13 Code of Federal Regulations refers to such provision as
14 in effect on the date of the enactment of this title (or to
15 the most recent update of such provision).

16 **SEC. 4423. EFFECTIVE DATE.**

17 Except as otherwise specifically provided, the provi-
18 sions of part I shall take effect on the date that is 12
19 months after the date of the enactment of this title.

20 **SEC. 4424. STUDIES, REPORTS, GUIDANCE.**

21 (a) REPORT ON COMPLIANCE.—

22 (1) IN GENERAL.—For the first year beginning
23 after the date of the enactment of this Act and an-
24 nually thereafter, the Secretary shall prepare and
25 submit to the Committee on Health, Education,

1 Labor, and Pensions of the Senate and the Com-
2 mittee on Ways and Means and the Committee on
3 Energy and Commerce of the House of Representa-
4 tives a report concerning complaints of alleged viola-
5 tions of law, including the provisions of this subtitle
6 as well as the provisions of subparts C and E of part
7 164 of title 45, Code of Federal Regulations (as
8 such provisions are in effect as of the date of enact-
9 ment of this Act), relating to privacy and security of
10 health information that are received by the Secretary
11 during the year for which the report is being pre-
12 pared. Each such report shall include, with respect
13 to such complaints received during the year—

14 (A) the number of such complaints;

15 (B) the number of such complaints re-
16 solved informally, a summary of the types of
17 such complaints so resolved, and the number of
18 covered entities that received technical assist-
19 ance from the Secretary during such year in
20 order to achieve compliance with such provi-
21 sions and the types of such technical assistance
22 provided;

23 (C) the number of such complaints that
24 have resulted in the imposition of civil monetary
25 penalties or have been resolved through mone-

1 tary settlements, including the nature of the
2 complaints involved and the amount paid in
3 each penalty or settlement;

4 (D) the number of compliance reviews con-
5 ducted and the outcome of each such review;

6 (E) the number of subpoenas or inquiries
7 issued;

8 (F) the Secretary's plan for improving
9 compliance with and enforcement of such provi-
10 sions for the following year; and

11 (G) the number of audits performed and a
12 summary of audit findings pursuant to section
13 4411.

14 (2) AVAILABILITY TO PUBLIC.—Each report
15 under paragraph (1) shall be made available to the
16 public on the Internet website of the Department of
17 Health and Human Services.

18 (b) STUDY AND REPORT ON APPLICATION OF PRI-
19 VACY AND SECURITY REQUIREMENTS TO NON-HIPAA
20 COVERED ENTITIES.—

21 (1) STUDY.—Not later than one year after the
22 date of the enactment of this title, the Secretary, in
23 consultation with the Federal Trade Commission,
24 shall conduct a study, and submit a report under
25 paragraph (2), on privacy and security requirements

1 for entities that are not covered entities or business
2 associates as of the date of the enactment of this
3 title, including—

4 (A) requirements relating to security, pri-
5 vacy, and notification in the case of a breach of
6 security or privacy (including the applicability
7 of an exemption to notification in the case of
8 individually identifiable health information that
9 has been rendered unusable, unreadable, or in-
10 decipherable through technologies or methodolo-
11 gies recognized by appropriate professional or-
12 ganization or standard setting bodies to provide
13 effective security for the information) that
14 should be applied to—

15 (i) vendors of personal health records;

16 (ii) entities that offer products or
17 services through the website of a vendor of
18 personal health records;

19 (iii) entities that are not covered enti-
20 ties and that offer products or services
21 through the websites of covered entities
22 that offer individuals personal health
23 records;

24 (iv) entities that are not covered enti-
25 ties and that access information in a per-

1 sonal health record or send information to
2 a personal health record; and

3 (v) third party service providers used
4 by a vendor or entity described in clause
5 (i), (ii), (iii), or (iv) to assist in providing
6 personal health record products or services;

7 (B) a determination of which Federal gov-
8 ernment agency is best equipped to enforce
9 such requirements recommended to be applied
10 to such vendors, entities, and service providers
11 under subparagraph (A); and

12 (C) a timeframe for implementing regula-
13 tions based on such findings.

14 (2) REPORT.—The Secretary shall submit to
15 the Committee on Finance, the Committee on
16 Health, Education, Labor, and Pensions, and the
17 Committee on Commerce of the Senate and the
18 Committee on Ways and Means and the Committee
19 on Energy and Commerce of the House of Rep-
20 resentatives a report on the findings of the study
21 under paragraph (1) and shall include in such report
22 recommendations on the privacy and security re-
23 quirements described in such paragraph.

24 (c) GUIDANCE ON IMPLEMENTATION SPECIFICATION
25 TO DE-IDENTIFY PROTECTED HEALTH INFORMATION.—

1 Not later than 12 months after the date of the enactment
2 of this title, the Secretary shall, in consultation with stake-
3 holders, issue guidance on how best to implement the re-
4 quirements for the de-identification of protected health in-
5 formation under section 164.514(b) of title 45, Code of
6 Federal Regulations.

7 (d) GAO REPORT ON TREATMENT DISCLOSURES.—
8 Not later than one year after the date of the enactment
9 of this title, the Comptroller General of the United States
10 shall submit to the Committee on Health, Education,
11 Labor, and Pensions of the Senate and the Committee on
12 Ways and Means and the Committee on Energy and Com-
13 merce of the House of Representatives a report on the
14 best practices related to the disclosure among health care
15 providers of protected health information of an individual
16 for purposes of treatment of such individual. Such report
17 shall include an examination of the best practices imple-
18 mented by States and by other entities, such as health
19 information exchanges and regional health information or-
20 ganizations, an examination of the extent to which such
21 best practices are successful with respect to the quality
22 of the resulting health care provided to the individual and
23 with respect to the ability of the health care provider to
24 manage such best practices, and an examination of the
25 use of electronic informed consent for disclosing protected

1 health information for treatment, payment, and health
 2 care operations.

3 **TITLE V—MEDICAID**
 4 **PROVISIONS**

5 **SEC. 5000. TABLE OF CONTENTS OF TITLE.**

6 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.

7 **SEC. 5001. TEMPORARY INCREASE OF MEDICAID FMAP.**

8 (a) PERMITTING MAINTENANCE OF FMAP.—Subject
 9 to subsections (e), (f), and (g), if the FMAP determined
 10 without regard to this section for a State for—

11 (1) fiscal year 2009 is less than the FMAP as
 12 so determined for fiscal year 2008, the FMAP for
 13 the State for fiscal year 2008 shall be substituted
 14 for the State’s FMAP for fiscal year 2009, before
 15 the application of this section;

16 (2) fiscal year 2010 is less than the FMAP as
 17 so determined for fiscal year 2008 or fiscal year
 18 2009 (after the application of paragraph (1)), the
 19 greater of such FMAP for the State for fiscal year
 20 2008 or fiscal year 2009 shall be substituted for the

1 State's FMAP for fiscal year 2010, before the appli-
2 cation of this section; and

3 (3) fiscal year 2011 is less than the FMAP as
4 so determined for fiscal year 2008, fiscal year 2009
5 (after the application of paragraph (1)), or fiscal
6 year 2010 (after the application of paragraph (2)),
7 the greatest of such FMAP for the State for fiscal
8 year 2008, fiscal year 2009, or fiscal year 2010 shall
9 be substituted for the State's FMAP for fiscal year
10 2011, before the application of this section, but only
11 for the first calendar quarter in fiscal year 2011.

12 (b) GENERAL 4.9 PERCENTAGE POINT INCREASE.—

13 (1) IN GENERAL.—Subject to subsections (e),
14 (f), and (g) and paragraph (2), for each State for
15 calendar quarters during the recession adjustment
16 period (as defined in subsection (h)(2)), the FMAP
17 (after the application of subsection (a)) shall be in-
18 creased (without regard to any limitation otherwise
19 specified in section 1905(b) of the Social Security
20 Act) by 4.9 percentage points.

21 (2) SPECIAL ELECTION FOR TERRITORIES.—In
22 the case of a State that is not one of the 50 States
23 or the District of Columbia, paragraph (1) shall only
24 apply if the State makes a one-time election, in a
25 form and manner specified by the Secretary and for

1 the entire recession adjustment period, to apply the
2 increase in FMAP under paragraph (1) and a 10
3 percent increase under subsection (d) instead of ap-
4 plying a 20 percent increase under subsection (d).

5 (c) ADDITIONAL ADJUSTMENT TO REFLECT IN-
6 CREASE IN UNEMPLOYMENT.—

7 (1) IN GENERAL.—Subject to subsections (e),
8 (f), and (g), in the case of a State that is a high
9 unemployment State (as defined in paragraph (2))
10 for a calendar quarter during the recession adjust-
11 ment period, the FMAP (taking into account the ap-
12 plication of subsections (a) and (b)) for such quarter
13 shall be further increased by the high unemployment
14 percentage point adjustment specified in paragraph
15 (3) for the State for the quarter.

16 (2) HIGH UNEMPLOYMENT STATE.—

17 (A) IN GENERAL.—In this subsection, sub-
18 ject to subparagraph (B), the term “high unem-
19 ployment State” means, with respect to a cal-
20 endar quarter in the recession adjustment pe-
21 riod, a State that is 1 of the 50 States or the
22 District of Columbia and for which the State
23 unemployment increase percentage (as com-
24 puted under paragraph (5)) for the quarter is
25 not less than 1.5 percentage points.

1 (B) MAINTENANCE OF STATUS.—If a
2 State is a high unemployment State for a cal-
3 endar quarter, it shall remain a high unemploy-
4 ment State for each subsequent calendar quar-
5 ter ending before July 1, 2010.

6 (3) HIGH UNEMPLOYMENT PERCENTAGE POINT
7 ADJUSTMENT.—

8 (A) IN GENERAL.—The high unemploy-
9 ment percentage point adjustment specified in
10 this paragraph for a high unemployment State
11 for a quarter is equal to the product of—

12 (i) the SMAP for such State and
13 quarter (determined after the application
14 of subsection (a) and before the application
15 of subsection (b)); and

16 (ii) subject to subparagraph (B), the
17 State unemployment reduction factor spec-
18 ified in paragraph (4) for the State and
19 quarter.

20 (B) MAINTENANCE OF ADJUSTMENT
21 LEVEL FOR CERTAIN QUARTERS.—In no case
22 shall the State unemployment reduction factor
23 applied under subparagraph (A)(ii) for a State
24 for a quarter (beginning on or after January 1,
25 2009, and ending before July 1, 2010) be less

1 than the State unemployment reduction factor
2 applied to the State for the previous quarter
3 (taking into account the application of this sub-
4 paragraph).

5 (4) STATE UNEMPLOYMENT REDUCTION FAC-
6 TOR.—In the case of a high unemployment State for
7 which the State unemployment increase percentage
8 (as computed under paragraph (5)) with respect to
9 a calendar quarter is—

10 (A) not less than 1.5, but is less than 2.5,
11 percentage points, the State unemployment re-
12 duction factor for the State and quarter is 6
13 percent;

14 (B) not less than 2.5, but is less than 3.5,
15 percentage points, the State unemployment re-
16 duction factor for the State and quarter is 12
17 percent; or

18 (C) not less than 3.5 percentage points,
19 the State unemployment reduction factor for
20 the State and quarter is 14 percent.

21 (5) COMPUTATION OF STATE UNEMPLOYMENT
22 INCREASE PERCENTAGE.—

23 (A) IN GENERAL.—In this subsection, the
24 “State unemployment increase percentage” for
25 a State for a calendar quarter is equal to the

1 number of percentage points (if any) by
2 which—

3 (i) the average monthly unemployment
4 rate for the State for months in the most
5 recent previous 3-consecutive-month period
6 for which data are available, subject to
7 subparagraph (C); exceeds

8 (ii) the lowest average monthly unem-
9 ployment rate for the State for any 3-con-
10 secutive-month period preceding the period
11 described in clause (i) and beginning on or
12 after January 1, 2006.

13 (B) AVERAGE MONTHLY UNEMPLOYMENT
14 RATE DEFINED.—In this paragraph, the term
15 “average monthly unemployment rate” means
16 the average of the monthly number unemployed,
17 divided by the average of the monthly civilian
18 labor force, seasonally adjusted, as determined
19 based on the most recent monthly publications
20 of the Bureau of Labor Statistics of the De-
21 partment of Labor.

22 (C) SPECIAL RULE.—With respect to—

23 (i) the first 2 calendar quarters of the
24 recession adjustment period, the most re-
25 cent previous 3-consecutive-month period

1 described in subparagraph (A)(i) shall be
2 the 3-consecutive-month period beginning
3 with October 2008; and

4 (ii) the last 2 calendar quarters of the
5 recession adjustment period, the most re-
6 cent previous 3-consecutive-month period
7 described in such subparagraph shall be
8 the 3-consecutive-month period beginning
9 with December 2009.

10 (d) INCREASE IN CAP ON MEDICAID PAYMENTS TO
11 TERRITORIES.—Subject to subsections (f) and (g) , with
12 respect to entire fiscal years occurring during the reces-
13 sion adjustment period and with respect to fiscal years
14 only a portion of which occurs during such period (and
15 in proportion to the portion of the fiscal year that occurs
16 during such period), the amounts otherwise determined for
17 Puerto Rico, the Virgin Islands, Guam, the Northern Mar-
18 iana Islands, and American Samoa under subsections (f)
19 and (g) of section 1108 of the Social Security Act (42
20 U.S.C. 1308) shall each be increased by 20 percent (or,
21 in the case of an election under subsection (b)(2), 10 per-
22 cent).

23 (e) SCOPE OF APPLICATION.—The increases in the
24 FMAP for a State under this section shall apply for pur-
25 poses of title XIX of the Social Security Act and—

1 (1) the increases applied under subsections (a),
2 (b), and (c) shall not apply with respect—

3 (A) to payments under parts A, B, and D
4 of title IV or title XXI of such Act (42 U.S.C.
5 601 et seq. and 1397aa et seq.);

6 (B) to payments under title XIX of such
7 Act that are based on the enhanced FMAP de-
8 scribed in section 2105(b) of such Act (42
9 U.S.C. 1397ee(b)); and

10 (C) to payments for disproportionate share
11 hospital (DSH) payment adjustments under
12 section 1923 of such Act (42 U.S.C. 1396r-4);
13 and

14 (2) the increase provided under subsection (c)
15 shall not apply with respect to payments under part
16 E of title IV of such Act.

17 (f) STATE INELIGIBILITY AND LIMITATION.—

18 (1) IN GENERAL.—Subject to paragraphs (2)
19 and (3), a State is not eligible for an increase in its
20 FMAP under subsection (a), (b), or (c), or an in-
21 crease in a cap amount under subsection (d), if eligi-
22 bility standards, methodologies, or procedures under
23 its State plan under title XIX of the Social Security
24 Act (including any waiver under such title or under
25 section 1115 of such Act (42 U.S.C. 1315)) are

1 more restrictive than the eligibility standards, meth-
2 odologies, or procedures, respectively, under such
3 plan (or waiver) as in effect on July 1, 2008.

4 (2) STATE REINSTATEMENT OF ELIGIBILITY
5 PERMITTED.—Subject to paragraph (3), a State that
6 has restricted eligibility standards, methodologies, or
7 procedures under its State plan under title XIX of
8 the Social Security Act (including any waiver under
9 such title or under section 1115 of such Act (42
10 U.S.C. 1315)) after July 1, 2008, is no longer ineli-
11 gible under paragraph (1) beginning with the first
12 calendar quarter in which the State has reinstated
13 eligibility standards, methodologies, or procedures
14 that are no more restrictive than the eligibility
15 standards, methodologies, or procedures, respec-
16 tively, under such plan (or waiver) as in effect on
17 July 1, 2008.

18 (3) SPECIAL RULES.—A State shall not be in-
19 eligible under paragraph (1)—

20 (A) before July 1, 2009, on the basis of a
21 restriction that was applied after July 1, 2008,
22 and before the date of the enactment of this
23 Act; or

24 (B) on the basis of a restriction that was
25 effective under State law as of July 1, 2008,

1 and would have been in effect as of such date,
2 but for a delay (of not longer than 1 calendar
3 quarter) in the approval of a request for a new
4 waiver under section 1115 of such Act with re-
5 spect to such restriction.

6 (4) STATE'S APPLICATION TOWARD RAINY DAY
7 FUND.—A State is not eligible for an increase in its
8 FMAP under subsection (b) or (c), or an increase in
9 a cap amount under subsection (d), if any amounts
10 attributable (directly or indirectly) to such increase
11 are deposited or credited into any reserve or rainy
12 day fund of the State.

13 (5) RULE OF CONSTRUCTION.—Nothing in
14 paragraph (1) or (2) shall be construed as affecting
15 a State's flexibility with respect to benefits offered
16 under the State Medicaid program under title XIX
17 of the Social Security Act (42 U.S.C. 1396 et seq.)
18 (including any waiver under such title or under sec-
19 tion 1115 of such Act (42 U.S.C. 1315)).

20 (6) NO WAIVER AUTHORITY.—The Secretary
21 may not waive the application of this subsection or
22 subsection (g) under section 1115 of the Social Se-
23 curity Act or otherwise.

24 (g) REQUIREMENT FOR CERTAIN STATES.—In the
25 case of a State that requires political subdivisions within

1 the State to contribute toward the non-Federal share of
2 expenditures under the State Medicaid plan required
3 under section 1902(a)(2) of the Social Security Act (42
4 U.S.C. 1396a(a)(2)), the State is not eligible for an in-
5 crease in its FMAP under subsection (a), (b), or (c), or
6 an increase in a cap amount under subsection (d), if it
7 requires that such political subdivisions pay a greater per-
8 centage of the non-Federal share of such expenditures for
9 quarters during the recession adjustment period, than the
10 percentage that would have been required by the State
11 under such plan on September 30, 2008, prior to applica-
12 tion of this section.

13 (h) DEFINITIONS.—In this section, except as other-
14 wise provided:

15 (1) FMAP.—The term “FMAP” means the
16 Federal medical assistance percentage, as defined in
17 section 1905(b) of the Social Security Act (42
18 U.S.C. 1396d(b)), as determined without regard to
19 this section except as otherwise specified.

20 (2) RECESSION ADJUSTMENT PERIOD.—The
21 term “recession adjustment period” means the pe-
22 riod beginning on October 1, 2008, and ending on
23 December 31, 2010.

24 (3) SECRETARY.—The term “Secretary” means
25 the Secretary of Health and Human Services.

1 (4) SMAP.—The term “SMAP” means, for a
2 State, 100 percent minus the Federal medical assist-
3 ance percentage.

4 (5) STATE.—The term “State” has the mean-
5 ing given such term in section 1101(a)(1) of the So-
6 cial Security Act (42 U.S.C. 1301(a)(1)) for pur-
7 poses of title XIX of the Social Security Act (42
8 U.S.C. 1396 et seq.).

9 (i) SUNSET.—This section shall not apply to items
10 and services furnished after the end of the recession ad-
11 justment period.

12 **SEC. 5002. MORATORIA ON CERTAIN REGULATIONS.**

13 (a) EXTENSION OF MORATORIA ON CERTAIN MED-
14 ICAID REGULATIONS.—The following sections are each
15 amended by striking “April 1, 2009” and inserting “July
16 1, 2009”:

17 (1) Section 7002(a)(1) of the U.S. Troop Read-
18 iness, Veterans’ Care, Katrina Recovery, and Iraq
19 Accountability Appropriations Act, 2007 (Public
20 Law 110–28), as amended by section 7001(a)(1) of
21 the Supplemental Appropriations Act, 2008 (Public
22 Law 110–252).

23 (2) Section 206 of the Medicare, Medicaid, and
24 SCHIP Extension Act of 2007 (Public Law 110–
25 173), as amended by section 7001(a)(2) of the Sup-

1 plemental Appropriations Act, 2008 (Public Law
2 110–252).

3 (3) Section 7001(a)(3)(A) of the Supplemental
4 Appropriations Act, 2008 (Public Law 110–252).

5 (b) **ADDITIONAL MEDICAID MORATORIUM.**—Not-
6 withstanding any other provision of law, with respect to
7 expenditures for services furnished during the period be-
8 ginning on December 8, 2008 and ending on June 30,
9 2009, the Secretary of Health and Human Services shall
10 not take any action (through promulgation of regulation,
11 issuance of regulatory guidance, use of Federal payment
12 audit procedures, or other administrative action, policy, or
13 practice, including a Medical Assistance Manual trans-
14 mittal or letter to State Medicaid directors) to implement
15 the final regulation relating to clarification of the defini-
16 tion of outpatient hospital facility services under the Med-
17 icaid program published on November 7, 2008 (73 Federal
18 Register 66187).

19 **SEC. 5003. TRANSITIONAL MEDICAID ASSISTANCE (TMA).**

20 (a) **18-MONTH EXTENSION.**—

21 (1) **IN GENERAL.**—Sections 1902(e)(1)(B) and
22 1925(f) of the Social Security Act (42 U.S.C.
23 1396a(e)(1)(B), 1396r–6(f)) are each amended by
24 striking “September 30, 2003” and inserting “De-
25 cember 31, 2010”.

1 (2) EFFECTIVE DATE.—The amendments made
2 by this subsection shall take effect on July 1, 2009.

3 (b) STATE OPTION OF INITIAL 12-MONTH ELIGI-
4 BILITY.—Section 1925 of the Social Security Act (42
5 U.S.C. 1396r-6) is amended—

6 (1) in subsection (a)(1), by inserting “but sub-
7 ject to paragraph (5)” after “Notwithstanding any
8 other provision of this title”;

9 (2) by adding at the end of subsection (a) the
10 following:

11 “(5) OPTION OF 12-MONTH INITIAL ELIGIBILITY
12 PERIOD.—A State may elect to treat any reference
13 in this subsection to a 6-month period (or 6 months)
14 as a reference to a 12-month period (or 12 months).
15 In the case of such an election, subsection (b) shall
16 not apply.”; and

17 (3) in subsection (b)(1), by inserting “but sub-
18 ject to subsection (a)(5)” after “Notwithstanding
19 any other provision of this title”.

20 (c) REMOVAL OF REQUIREMENT FOR PREVIOUS RE-
21 CEIPT OF MEDICAL ASSISTANCE.—Section 1925(a)(1) of
22 such Act (42 U.S.C. 1396r-6(a)(1)), as amended by sub-
23 section (b)(1), is further amended—

24 (1) by inserting “subparagraph (B) and” before
25 “paragraph (5)”;

1 (2) by redesignating the matter after “RE-
2 QUIREMENT.—” as a subparagraph (A) with the
3 heading “IN GENERAL.—” and with the same inden-
4 tation as subparagraph (B) (as added by paragraph
5 (3)); and

6 (3) by adding at the end the following:

7 “(B) STATE OPTION TO WAIVE REQUIRE-
8 MENT FOR 3 MONTHS BEFORE RECEIPT OF
9 MEDICAL ASSISTANCE.—A State may, at its op-
10 tion, elect also to apply subparagraph (A) in
11 the case of a family that was receiving such aid
12 for fewer than three months or that had applied
13 for and was eligible for such aid for fewer than
14 3 months during the 6 immediately preceding
15 months described in such subparagraph.”.

16 (d) CMS REPORT ON ENROLLMENT AND PARTICIPA-
17 TION RATES UNDER TMA.—Section 1925 of such Act (42
18 U.S.C. 1396r-6), as amended by this section, is further
19 amended by adding at the end the following new sub-
20 section:

21 “(g) COLLECTION AND REPORTING OF PARTICIPA-
22 TION INFORMATION.—

23 “(1) COLLECTION OF INFORMATION FROM
24 STATES.—Each State shall collect and submit to the
25 Secretary (and make publicly available), in a format

1 specified by the Secretary, information on average
2 monthly enrollment and average monthly participa-
3 tion rates for adults and children under this section
4 and of the number and percentage of children who
5 become ineligible for medical assistance under this
6 section whose medical assistance is continued under
7 another eligibility category or who are enrolled under
8 the State's child health plan under title XXI. Such
9 information shall be submitted at the same time and
10 frequency in which other enrollment information
11 under this title is submitted to the Secretary.

12 “(2) ANNUAL REPORTS TO CONGRESS.—Using
13 the information submitted under paragraph (1), the
14 Secretary shall submit to Congress annual reports
15 concerning enrollment and participation rates de-
16 scribed in such paragraph.”

17 (e) EFFECTIVE DATE.—The amendments made by
18 subsections (b) through (d) shall take effect on July 1,
19 2009.

20 **SEC. 5004. STATE ELIGIBILITY OPTION FOR FAMILY PLAN-**
21 **NING SERVICES.**

22 (a) COVERAGE AS OPTIONAL CATEGORICALLY
23 NEEDY GROUP.—

24 (1) IN GENERAL.—Section 1902(a)(10)(A)(ii)
25 of the Social Security Act (42 U.S.C.

1 1396a(a)(10)(A)(ii)), as amended by section 3003(a)
2 of the Health Insurance Assistance for the Unem-
3 ployed Act of 2009, is amended—

4 (A) in subclause (XIX), by striking “or” at
5 the end;

6 (B) in subclause (XX), by adding “or” at
7 the end; and

8 (C) by adding at the end the following new
9 subclause:

10 “(XXI) who are described in subsection (ee)
11 (relating to individuals who meet certain income
12 standards);”.

13 (2) GROUP DESCRIBED.—Section 1902 of such
14 Act (42 U.S.C. 1396a), as amended by section
15 3003(a) of the Health Insurance Assistance for the
16 Unemployed Act of 2009, is amended by adding at
17 the end the following new subsection:

18 “(ee)(1) Individuals described in this subsection are
19 individuals—

20 “(A) whose income does not exceed an in-
21 come eligibility level established by the State
22 that does not exceed the highest income eligi-
23 bility level established under the State plan
24 under this title (or under its State child health
25 plan under title XXI) for pregnant women; and

1 “(B) who are not pregnant.

2 “(2) At the option of a State, individuals de-
3 scribed in this subsection may include individuals
4 who, had individuals applied on or before January 1,
5 2007, would have been made eligible pursuant to the
6 standards and processes imposed by that State for
7 benefits described in clause (XV) of the matter fol-
8 lowing subparagraph (G) of section subsection
9 (a)(10) pursuant to a waiver granted under section
10 1115.

11 “(3) At the option of a State, for purposes of
12 subsection (a)(17)(B), in determining eligibility for
13 services under this subsection, the State may con-
14 sider only the income of the applicant or recipient.”.

15 (3) LIMITATION ON BENEFITS.—Section
16 1902(a)(10) of the Social Security Act (42 U.S.C.
17 1396a(a)(10)) is amended in the matter following
18 subparagraph (G)—

19 (A) by striking “and (XIV)” and inserting
20 “(XIV)”; and

21 (B) by inserting “, and (XV) the medical
22 assistance made available to an individual de-
23 scribed in subsection (ee) shall be limited to
24 family planning services and supplies described
25 in section 1905(a)(4)(C) including medical di-

1 ical assistance available to an individual described in sec-
2 tion 1902(ee) (relating to individuals who meet certain in-
3 come eligibility standard) during a presumptive eligibility
4 period. In the case of an individual described in section
5 1902(ee), such medical assistance shall be limited to fam-
6 ily planning services and supplies described in
7 1905(a)(4)(C) and, at the State’s option, medical diag-
8 nosis and treatment services that are provided in conjunc-
9 tion with a family planning service in a family planning
10 setting.

11 “(b) DEFINITIONS.—For purposes of this section:

12 “(1) PRESUMPTIVE ELIGIBILITY PERIOD.—The
13 term ‘presumptive eligibility period’ means, with re-
14 spect to an individual described in subsection (a),
15 the period that—

16 “(A) begins with the date on which a
17 qualified entity determines, on the basis of pre-
18 liminary information, that the individual is de-
19 scribed in section 1902(ee); and

20 “(B) ends with (and includes) the earlier
21 of—

22 “(i) the day on which a determination
23 is made with respect to the eligibility of
24 such individual for services under the State
25 plan; or

1 “(ii) in the case of such an individual
2 who does not file an application by the last
3 day of the month following the month dur-
4 ing which the entity makes the determina-
5 tion referred to in subparagraph (A), such
6 last day.

7 “(2) QUALIFIED ENTITY.—

8 “(A) IN GENERAL.—Subject to subpara-
9 graph (B), the term ‘qualified entity’ means
10 any entity that—

11 “(i) is eligible for payments under a
12 State plan approved under this title; and

13 “(ii) is determined by the State agen-
14 cy to be capable of making determinations
15 of the type described in paragraph (1)(A).

16 “(B) RULE OF CONSTRUCTION.—Nothing
17 in this paragraph shall be construed as pre-
18 venting a State from limiting the classes of en-
19 tities that may become qualified entities in
20 order to prevent fraud and abuse.

21 “(c) ADMINISTRATION.—

22 “(1) IN GENERAL.—The State agency shall pro-
23 vide qualified entities with—

24 “(A) such forms as are necessary for an
25 application to be made by an individual de-

1 scribed in subsection (a) for medical assistance
2 under the State plan; and

3 “(B) information on how to assist such in-
4 dividuals in completing and filing such forms.

5 “(2) NOTIFICATION REQUIREMENTS.—A quali-
6 fied entity that determines under subsection
7 (b)(1)(A) that an individual described in subsection
8 (a) is presumptively eligible for medical assistance
9 under a State plan shall—

10 “(A) notify the State agency of the deter-
11 mination within 5 working days after the date
12 on which determination is made; and

13 “(B) inform such individual at the time
14 the determination is made that an application
15 for medical assistance is required to be made by
16 not later than the last day of the month fol-
17 lowing the month during which the determina-
18 tion is made.

19 “(3) APPLICATION FOR MEDICAL ASSIST-
20 ANCE.—In the case of an individual described in
21 subsection (a) who is determined by a qualified enti-
22 ty to be presumptively eligible for medical assistance
23 under a State plan, the individual shall apply for
24 medical assistance by not later than the last day of

1 the month following the month during which the de-
2 termination is made.

3 “(d) PAYMENT.—Notwithstanding any other provi-
4 sion of law, medical assistance that—

5 “(1) is furnished to an individual described in
6 subsection (a)—

7 “(A) during a presumptive eligibility pe-
8 riod; and

9 “(B) by a entity that is eligible for pay-
10 ments under the State plan; and

11 “(2) is included in the care and services covered
12 by the State plan,

13 shall be treated as medical assistance provided by such
14 plan for purposes of clause (4) of the first sentence of
15 section 1905(b).”.

16 (2) CONFORMING AMENDMENTS.—

17 (A) Section 1902(a)(47) of the Social Se-
18 curity Act (42 U.S.C. 1396a(a)(47)) is amend-
19 ed by inserting before the semicolon at the end
20 the following: “and provide for making medical
21 assistance available to individuals described in
22 subsection (a) of section 1920C during a pre-
23 sumptive eligibility period in accordance with
24 such section”.

1 (B) Section 1903(u)(1)(D)(v) of such Act
2 (42 U.S.C. 1396b(u)(1)(D)(v)) is amended—

3 (i) by striking “or for” and inserting
4 “for”; and

5 (ii) by inserting before the period the
6 following: “, or for medical assistance pro-
7 vided to an individual described in sub-
8 section (a) of section 1920C during a pre-
9 sumptive eligibility period under such sec-
10 tion”.

11 (c) CLARIFICATION OF COVERAGE OF FAMILY PLAN-
12 NING SERVICES AND SUPPLIES.—Section 1937(b) of the
13 Social Security Act (42 U.S.C. 1396u–7(b)) is amended
14 by adding at the end the following:

15 “(5) COVERAGE OF FAMILY PLANNING SERV-
16 ICES AND SUPPLIES.—Notwithstanding the previous
17 provisions of this section, a State may not provide
18 for medical assistance through enrollment of an indi-
19 vidual with benchmark coverage or benchmark-equiv-
20 alent coverage under this section unless such cov-
21 erage includes for any individual described in section
22 1905(a)(4)(C), medical assistance for family plan-
23 ning services and supplies in accordance with such
24 section.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section take effect on the date of the enactment of
3 this Act and shall apply to items and services furnished
4 on or after such date.

5 **SEC. 5005. PROTECTIONS FOR INDIANS UNDER MEDICAID**
6 **AND CHIP.**

7 (a) PREMIUMS AND COST SHARING PROTECTION
8 UNDER MEDICAID.—

9 (1) IN GENERAL.—Section 1916 of the Social
10 Security Act (42 U.S.C. 1396o) is amended—

11 (A) in subsection (a), in the matter pre-
12 ceding paragraph (1), by striking “and (i)” and
13 inserting “, (i), and (j)”; and

14 (B) by adding at the end the following new
15 subsection:

16 “(j) NO PREMIUMS OR COST SHARING FOR INDIANS
17 FURNISHED ITEMS OR SERVICES DIRECTLY BY INDIAN
18 HEALTH PROGRAMS OR THROUGH REFERRAL UNDER
19 CONTRACT HEALTH SERVICES.—

20 “(1) NO COST SHARING FOR ITEMS OR SERV-
21 ICES FURNISHED TO INDIANS THROUGH INDIAN
22 HEALTH PROGRAMS.—

23 “(A) IN GENERAL.—No enrollment fee,
24 premium, or similar charge, and no deduction,
25 copayment, cost sharing, or similar charge shall

1 be imposed against an Indian who is furnished
2 an item or service directly by the Indian Health
3 Service, an Indian Tribe, Tribal Organization,
4 or Urban Indian Organization or through refer-
5 ral under contract health services for which
6 payment may be made under this title.

7 “(B) NO REDUCTION IN AMOUNT OF PAY-
8 MENT TO INDIAN HEALTH PROVIDERS.—Pay-
9 ment due under this title to the Indian Health
10 Service, an Indian Tribe, Tribal Organization,
11 or Urban Indian Organization, or a health care
12 provider through referral under contract health
13 services for the furnishing of an item or service
14 to an Indian who is eligible for assistance under
15 such title, may not be reduced by the amount
16 of any enrollment fee, premium, or similar
17 charge, or any deduction, copayment, cost shar-
18 ing, or similar charge that would be due from
19 the Indian but for the operation of subpara-
20 graph (A).

21 “(2) RULE OF CONSTRUCTION.—Nothing in
22 this subsection shall be construed as restricting the
23 application of any other limitations on the imposi-
24 tion of premiums or cost sharing that may apply to

1 an individual receiving medical assistance under this
2 title who is an Indian.”.

3 (2) CONFORMING AMENDMENT.—Section
4 1916A(b)(3) of such Act (42 U.S.C. 1396o–1(b)(3))
5 is amended—

6 (A) in subparagraph (A), by adding at the
7 end the following new clause:

8 “(vi) An Indian who is furnished an
9 item or service directly by the Indian
10 Health Service, an Indian Tribe, Tribal
11 Organization or Urban Indian Organiza-
12 tion or through referral under contract
13 health services.”; and

14 (B) in subparagraph (B), by adding at the
15 end the following new clause:

16 “(ix) Items and services furnished to
17 an Indian directly by the Indian Health
18 Service, an Indian Tribe, Tribal Organiza-
19 tion or Urban Indian Organization or
20 through referral under contract health
21 services.”.

22 (3) EFFECTIVE DATE.—The amendments made
23 by this subsection shall take effect on October 1,
24 2009.

1 (b) TREATMENT OF CERTAIN PROPERTY FROM RE-
2 SOURCES FOR MEDICAID AND CHIP ELIGIBILITY.—

3 (1) MEDICAID.—Section 1902 of the Social Se-
4 curity Act (42 U.S.C. 1396a), as amended by sec-
5 tion 3003(a) of the Health Insurance Assistance for
6 the Unemployed Act of 2009 and section 5004, is
7 amended by adding at the end the following new
8 subsection:

9 “(ff) Notwithstanding any other requirement of this
10 title or any other provision of Federal or State law, a State
11 shall disregard the following property from resources for
12 purposes of determining the eligibility of an individual who
13 is an Indian for medical assistance under this title:

14 “(1) Property, including real property and im-
15 provements, that is held in trust, subject to Federal
16 restrictions, or otherwise under the supervision of
17 the Secretary of the Interior, located on a reserva-
18 tion, including any federally recognized Indian
19 Tribe’s reservation, pueblo, or colony, including
20 former reservations in Oklahoma, Alaska Native re-
21 gions established by the Alaska Native Claims Set-
22 tlement Act, and Indian allotments on or near a res-
23 ervation as designated and approved by the Bureau
24 of Indian Affairs of the Department of the Interior.

1 “(2) For any federally recognized Tribe not de-
2 scribed in paragraph (1), property located within the
3 most recent boundaries of a prior Federal reserva-
4 tion.

5 “(3) Ownership interests in rents, leases, royalti-
6 ties, or usage rights related to natural resources (in-
7 cluding extraction of natural resources or harvesting
8 of timber, other plants and plant products, animals,
9 fish, and shellfish) resulting from the exercise of fed-
10 erally protected rights.

11 “(4) Ownership interests in or usage rights to
12 items not covered by paragraphs (1) through (3)
13 that have unique religious, spiritual, traditional, or
14 cultural significance or rights that support subsist-
15 ence or a traditional lifestyle according to applicable
16 tribal law or custom.”.

17 (2) APPLICATION TO CHIP.—Section 2107(e)(1)
18 of such Act (42 U.S.C. 1397gg(e)(1)) is amended by
19 adding at the end the following new subparagraph:

20 “(E) Section 1902(ff) (relating to dis-
21 regard of certain property for purposes of mak-
22 ing eligibility determinations).”.

23 (c) CONTINUATION OF CURRENT LAW PROTECTIONS
24 OF CERTAIN INDIAN PROPERTY FROM MEDICAID ESTATE

1 RECOVERY.—Section 1917(b)(3) of the Social Security
2 Act (42 U.S.C. 1396p(b)(3)) is amended—

3 (1) by inserting “(A)” after “(3)”; and

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

6 “(B) The standards specified by the Sec-
7 retary under subparagraph (A) shall require
8 that the procedures established by the State
9 agency under subparagraph (A) exempt income,
10 resources, and property that are exempt from
11 the application of this subsection as of April 1,
12 2003, under manual instructions issued to carry
13 out this subsection (as in effect on such date)
14 because of the Federal responsibility for Indian
15 Tribes and Alaska Native Villages. Nothing in
16 this subparagraph shall be construed as pre-
17 venting the Secretary from providing additional
18 estate recovery exemptions under this title for
19 Indians.”.

20 **SEC. 5006. CONSULTATION ON MEDICAID AND CHIP.**

21 (a) IN GENERAL.—Section 1139 of the Social Secu-
22 rity Act (42 U.S.C. 1320b–9) is amended to read as fol-
23 lows:

24 “CONSULTATION WITH TRIBAL TECHNICAL ADVISORY
25 GROUP (TTAG)

26 “SEC. 1139.

1 “The Secretary shall maintain within the Centers for
2 Medicaid & Medicare Services (CMS) a Tribal Technical
3 Advisory Group, which was first established in accordance
4 with requirements of the charter dated September 30,
5 2003, and the Secretary shall include in such Group a rep-
6 resentative of the Urban Indian Organizations and the
7 Service. The representative of the Urban Indian Organiza-
8 tion shall be deemed to be an elected officer of a tribal
9 government for purposes of applying section 204(b) of the
10 Unfunded Mandates Reform Act of 1995 (2 U.S.C.
11 1534(b)).”.

12 (b) SOLICITATION OF ADVICE UNDER MEDICAID AND
13 CHIP.—

14 (1) MEDICAID STATE PLAN AMENDMENT.—Sec-
15 tion 1902(a) of the Social Security Act (42 U.S.C.
16 1396a(a)) is amended—

17 (A) in paragraph (70), by striking “and”
18 at the end;

19 (B) in paragraph (71), by striking the pe-
20 riod at the end and inserting “; and”; and

21 (C) by inserting after paragraph (71), the
22 following new paragraph:

23 “(72) in the case of any State in which 1 or
24 more Indian Health Programs or Urban Indian Or-
25 ganizations furnishes health care services, provide

1 for a process under which the State seeks advice on
2 a regular, ongoing basis from designees of such In-
3 dian Health Programs and Urban Indian Organiza-
4 tions on matters relating to the application of this
5 title that are likely to have a direct effect on such
6 Indian Health Programs and Urban Indian Organi-
7 zations and that—

8 “(A) shall include solicitation of advice
9 prior to submission of any plan amendments,
10 waiver requests, and proposals for demonstra-
11 tion projects likely to have a direct effect on In-
12 dians, Indian Health Programs, or Urban In-
13 dian Organizations; and

14 “(B) may include appointment of an advi-
15 sory committee and of a designee of such In-
16 dian Health Programs and Urban Indian Orga-
17 nizations to the medical care advisory com-
18 mittee advising the State on its State plan
19 under this title.”.

20 (2) APPLICATION TO CHIP.—Section 2107(e)(1)
21 of such Act (42 U.S.C. 1397gg(e)(1)), as amended
22 by section 5005(b), is amended by adding at the end
23 the following new subparagraph:

24 “(F) Section 1902(a)(72) (relating to re-
25 quiring certain States to seek advice from des-

1 year 2009 without application of this
2 subparagraph, notwithstanding sub-
3 paragraph (B);

4 “(II) for fiscal year 2010 is equal
5 to 102.5 percent of the the DSH al-
6 lotment for the State for fiscal year
7 2009, as determined under subclause
8 (I); and

9 “(III) for each succeeding fiscal
10 year is equal to the DSH allotment
11 for the State under this paragraph de-
12 termined without applying subclauses
13 (I) and (II).

14 “(ii) APPLICATION.—Clause (i) shall
15 not apply to a State for a year in the case
16 that the DSH allotment for such State for
17 such year under this paragraph determined
18 without applying clause (i) would grow
19 higher than the DSH allotment specified
20 under clause (i) for the State for such
21 year.”.

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