

111TH CONGRESS  
1ST SESSION

# S. 444

To provide for the establishment of a health information technology and privacy system.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 13, 2009

Mr. WHITEHOUSE introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To provide for the establishment of a health information technology and privacy system.

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 “National Health Infor-  
5       mation Technology and Privacy Advancement Act of  
6       2009”.

7       **SEC. 2. POLICY AND PURPOSES.**

8       (a) **POLICY.**—Congress declares that it is the policy  
9       of the United States to establish, as expeditiously as prac-

1 ticable, a health information technology and privacy sys-  
2 tem, which should—

3 (1) be responsive to public needs and national  
4 objectives;

5 (2) serve the health care needs of the United  
6 States; and

7 (3) contribute to improved health care quality  
8 and lower costs.

9 (b) PURPOSES.—It is the purpose of this Act to—

10 (1) provide for the establishment of a health in-  
11 formation technology and privacy system through  
12 which new and expanded health care information  
13 services will be made available as promptly as pos-  
14 sible in a manner that provides national coverage at  
15 the earliest practicable date;

16 (2) in carrying out the system described in  
17 paragraph (1), provide technology services to eco-  
18 nomically less developed areas as well as those more  
19 highly developed, and provide for the efficient and  
20 economical use of health care information and pro-  
21 tect the confidentiality and security of information  
22 within this new technology;

23 (3) in order to facilitate the development of the  
24 system and provide for the widest possible participa-  
25 tion by private enterprise in the system, establish a

1 private nonprofit corporation, subject to appropriate  
2 Federal regulation, to administer the system; and

3 (4) ensure that—

4 (A) all authorized users of the system have  
5 nondiscriminatory access to the system;

6 (B) effective competition be maintained in  
7 the provision of equipment and services utilized  
8 by the system;

9 (C) the corporation established under this  
10 Act is organized and operated so as to maintain  
11 and strengthen competition in the provision of  
12 health information services to the public; and

13 (D) the activities of the corporation and of  
14 the persons or companies participating in the  
15 ownership of the corporation is consistent with  
16 the Federal antitrust laws.

17 (e) LIMITATION.—Congress declares that it is not the  
18 policy of this Act to preclude the private development of  
19 health information technologies.

20 **SEC. 3. DEFINITIONS.**

21 In this Act:

22 (1) AUTHORIZED HEALTH INSURERS.—The  
23 term “authorized health insurers” means health in-  
24 surance issuers (as defined in section 2791 of the  
25 Public Health Service Act) and includes payors for

1 services provided under titles XVIII and XIX of the  
2 Social Security Act (42 U.S.C. 1395 and 1396 et  
3 seq.).

4 (2) AUTHORIZED PROVIDERS.—The term “au-  
5 thORIZED providers” means duly licensed or certified  
6 health care providers.

7 (3) CORPORATION.—The term “corporation”  
8 means the corporation authorized by section 5.

9 (4) SECRETARY.—The term “Secretary” means  
10 the Secretary of Health and Human Services.

11 (5) SYSTEM.—The term “system” means the  
12 system of health information and technology estab-  
13 lished under this Act, with secure retention and  
14 sharing among authorized providers, who have ac-  
15 cess to analytic support to identify and enhance  
16 areas where improved quality of care may lower cost,  
17 and result in reimbursement rates that can better  
18 reflect optimal health care delivery.

19 **SEC. 4. FEDERAL COORDINATION, PLANNING, AND REGU-**  
20 **LATION.**

21 (a) ACTIONS BY THE SECRETARY.—In order to  
22 achieve the policy and carry out the purposes of this Act,  
23 the Secretary shall—

24 (1) provide Federal governmental assistance in  
25 the planning and development, and provide for the

1 implementation of, a national program for the estab-  
2 lishment and operation, as expeditiously as possible,  
3 of a national health information technology and pri-  
4 vacy system;

5 (2) provide for the continuous review of all  
6 phases of the development and operation of the sys-  
7 tem, including the activities of the corporation;

8 (3) provide for the coordination of the activities  
9 of Federal agencies with responsibilities relating to  
10 health care information technology, so as to ensure  
11 that there is a full and effective compliance at all  
12 times with the policies and procedures established  
13 under this Act;

14 (4) exercise such supervision over the relation-  
15 ship of the corporation with State and local entities  
16 or other entities as may be appropriate to ensure  
17 that such relationships shall be consistent with the  
18 national interest and policy of the United States as  
19 expressed in this Act;

20 (5) ensure that timely arrangements are made  
21 under which there can be national participation in  
22 the establishment and use of the system; and

23 (6) provide for incentives for the adoption and  
24 use of health information technology that improves  
25 the quality and efficiency of patient care.

1 (b) OTHER FEDERAL AGENCIES.—The Adminis-  
2 trator of the Centers for Medicare & Medicaid Services,  
3 the National Coordinator for Health Information Tech-  
4 nology, the Director of the National Institutes of Health,  
5 the chief executive officer of the Veterans Health Adminis-  
6 tration, and the heads of other relevant Federal agencies,  
7 shall, upon request of the corporation—

8 (1) provide advice to the corporation concerning  
9 the technical characteristics of the system;

10 (2) provide assistance to the corporation in the  
11 conduct of research and development activities relat-  
12 ing to the system, including by furnishing to the cor-  
13 poration, upon request, on a reimbursable basis,  
14 such services as determined necessary for the most  
15 expeditious and economical development of the sys-  
16 tem; and

17 (3) to the extent feasible, furnish other services,  
18 on a reimbursable basis, to the corporation in con-  
19 nection with the establishment and operation of the  
20 system.

21 (c) ACTIONS BY THE CORPORATION.—The corpora-  
22 tion shall—

23 (1) develop plans for the technical specifications  
24 of all elements of the system, pursuant to the activi-  
25 ties described under section 5(f);

1           (2) ensure effective competition, including the  
2 use of competitive bidding where appropriate, in the  
3 procurement by the corporation of apparatus, equip-  
4 ment, and services required for the establishment  
5 and operation of the system;

6           (3) ensure that eligible health care providers  
7 have equitable and nondiscriminatory access to—

8                 (A) the system in a manner that provides  
9 for the payment of reasonable assessment for  
10 such use consistent with the ability to pay and  
11 the savings and benefits to be anticipated;

12                (B) relevant classifications, practices, regu-  
13 lations, and other terms and conditions relating  
14 to the use of the system; and

15                (C) available facilities of the system pursu-  
16 ant to regulations relating to the allocation of  
17 such facilities among the users thereof;

18           (4) ensure that the facilities of the system are  
19 technically compatible and operationally inter-  
20 connected with each other and facilitate interoper-  
21 ability among health information systems;

22           (5) prescribe such accounting regulations and  
23 systems and, after public hearing and deliberation,  
24 engage in such ratemaking procedures as will ensure  
25 that any savings made possible by the system are

1 appropriately reflected in rates for access to system  
2 services, by license or otherwise for those who utilize  
3 or benefit from the system, including the health in-  
4 surance industry;

5 (6) obtain the approval of the Secretary for the  
6 implementation of technical and privacy protection  
7 characteristics relating to the operation of the sys-  
8 tem;

9 (7) authorize, construct, and operate such sys-  
10 tem facilities, networks, and programs as will best  
11 serve the public interest, convenience, and necessity,  
12 as determined after consultation with the Secretary;  
13 and

14 (8) to the extent feasible, ensure that the sys-  
15 tem is compatible and interoperable with pre-existing  
16 health information technology equipment and sys-  
17 tems.

18 (d) OFFICE OF THE NATIONAL COORDINATOR FOR  
19 HEALTH INFORMATION TECHNOLOGY.—

20 (1) IN GENERAL.—There is established within  
21 the Office of the Secretary of Health and Human  
22 Services an Office of the National Coordinator for  
23 Health Information Technology. The Office shall be  
24 headed by a National Coordinator appointed by the  
25 President, in consultation with the Secretary of



1 Health and Human Services. The National Coordi-  
2 nator shall report directly to the Secretary.

3 (2) RULE OF CONSTRUCTION.—Nothing in this  
4 subsection shall be construed as requiring the dupli-  
5 cation of Federal efforts with respect to the estab-  
6 lishment of the Office of the National Coordinator  
7 for Health Information Technology, regardless of  
8 whether such efforts are carried out before or after  
9 the date of the enactment of this Act.

10 **SEC. 5. NATIONAL CORPORATION FOR HEALTH INFORMA-**  
11 **TION TECHNOLOGY AND PRIVACY.**

12 (a) ESTABLISHMENT.—There is authorized to be es-  
13 tablished a nonprofit national health information tech-  
14 nology and privacy corporation which shall not be an agen-  
15 cy or establishment of the United States. The corporation  
16 shall be subject to the provisions of this Act.

17 (b) INCORPORATION.—Not later than 180 days after  
18 the date of enactment of this Act, the President, by and  
19 with the advice and consent of the Senate, shall appoint  
20 9 incorporators of the corporation who shall serve as the  
21 initial board of directors until their successors are elected  
22 in accordance with subsection (c). Such incorporators shall  
23 take whatever actions are necessary to establish the cor-  
24 poration, including the filing of articles of incorporation,  
25 as approved by the President.

1 (c) BOARD OF DIRECTORS.—

2 (1) IN GENERAL.—The corporation shall have a  
3 bipartisan board of directors that shall consist of 9  
4 individuals who shall be citizens of the United States  
5 and be appointed by the President, by and with the  
6 advice and consent of the Senate.

7 (2) TERMS.—The terms of service of the mem-  
8 bers of the board of directors shall be 3 years or  
9 until such time as their successors have been ap-  
10 pointed, except that of the first 9 members of the  
11 board appointed under subsection (b), 3 each shall  
12 serve for terms of 3, 4, and 5 years, respectively as  
13 designated by the President. Any member of the  
14 board appointed to fill a vacancy shall be appointed  
15 only for the unexpired term of the member which he  
16 or she is succeeding. A member may not serve con-  
17 secutive terms.

18 (3) CHAIRPERSON.—The members of the board  
19 of directors of the corporation shall at its first meet-  
20 ing and annually thereafter elect a member to serve  
21 as the chairperson of the board.

22 (d) CHIEF PRIVACY OFFICER AND OTHER OFFI-  
23 CERS.—

24 (1) CHIEF PRIVACY OFFICER.—

1 (A) IN GENERAL.—The president of the  
2 Corporation, in consultation with the board of  
3 directors, shall appoint a chief privacy officer of  
4 the corporation to ensure the confidentiality  
5 and security of patient medical records.

6 (B) DUTIES.—The chief privacy officer of  
7 the corporation shall—

8 (i) ensure that the use of technologies  
9 by the corporation sustain, and do not  
10 erode, privacy protections relating to the  
11 use, collection, and disclosure of personal  
12 information;

13 (ii) ensure that personal information  
14 contained in any records maintained as  
15 part of the technology and privacy system  
16 is maintained in full compliance with fair  
17 information practices as contained in the  
18 Privacy Act of 1974;

19 (iii) evaluate legislative and regulatory  
20 proposals involving the collection, use, and  
21 disclosure of personal information by the  
22 Federal Government;

23 (iv) Conduct a privacy impact assess-  
24 ment of proposed rules and procedures of  
25 the corporation on the privacy of personal

1 information, including the type of personal  
2 information collected and the number of  
3 individuals affected; and

4 (v) submit annually to Congress a re-  
5 port on activities of the corporation that  
6 affect privacy.

7 (2) OTHER OFFICERS.—The corporation shall  
8 have a president, and such other officers as may be  
9 appointed by the board of directors, who shall be  
10 compensated at rates fixed by the board and serve  
11 at the pleasure of the board. No officer of the cor-  
12 poration shall receive any salary from any source  
13 other than the corporation during the period of em-  
14 ployment by the corporation.

15 (e) FINANCING.—The corporation is authorized to  
16 issue bonds, debentures, and such other financings or cer-  
17 tificates of indebtedness as the board of directors deter-  
18 mines appropriate to carry out its duties under this Act.

19 (f) AUTHORIZED ACTIVITIES.—

20 (1) GENERAL ACTIVITIES.—In order to achieve  
21 the objectives and to carry out the purposes of this  
22 Act, the corporation is authorized to—

23 (A) plan, initiate, construct, own, manage,  
24 and operate itself or in conjunction with State  
25 and local governments or business entities, a

1 national health information technology and pri-  
2 vacy system;

3 (B) furnish, for fees where appropriate and  
4 subject to licenses and confidentiality and secu-  
5 rity requirements, access to individuals, and to  
6 authorized providers and payers of health care  
7 services;

8 (C) specify rules for allowing access (in ac-  
9 cordance with applicable privacy laws) to non-  
10 identifiable health care data for public health  
11 and research purposes; and

12 (D) own and operate such facilities as may  
13 be required to achieve the purposes of this Act.

14 (2) OTHER ACTIVITIES.—In addition to the ac-  
15 tivities authorized under paragraph (1), the corpora-  
16 tion, to accomplish the purposes of this Act, may—

17 (A) conduct, or enter into contracts for the  
18 conduct of, research and development activities  
19 related to the mission of the corporation;

20 (B) acquire the physical facilities, equip-  
21 ment, and devices necessary for the operations  
22 of the corporation, including health information  
23 technologies and associated equipment and fa-  
24 cilities, whether by construction, purchase, or  
25 gift;

1 (C) purchase or otherwise acquire health  
2 information and related services from the  
3 United States Government; and

4 (D) enter into contracts with authorized  
5 users of health information, including the  
6 United States Government, for the use of the  
7 services of the system.

8 (g) AMERICAN HEALTH INFORMATION COMMU-  
9 NITY.—Nothing in this section shall be construed to pro-  
10 hibit the American Health Information Community (or  
11 any successor entity) from serving as the corporation  
12 under this section.

13 (h) TERMINATION.—The corporation shall terminate  
14 on the date that is 10 years after the date of enactment  
15 of this Act.

16 **SEC. 6. BUSINESS PLAN AND ANNUAL REPORT.**

17 (a) BUSINESS PLAN.—Not later than 6 months after  
18 the date on which the corporation is incorporated under  
19 section 5, the corporation shall file with the President and  
20 Congress its initial business plan.

21 (b) ANNUAL REPORT.—Not later than 1 year after  
22 the date on which the corporation is incorporated under  
23 section 5, and each January 1 thereafter, the corporation  
24 shall prepare and submit to Congress a report that shall  
25 include a comprehensive description of the activities and

1 accomplishments during the year for which the report is  
2 prepared under this Act, together with an evaluation of  
3 such activities and accomplishments in terms of the at-  
4 tainment of the purposes of this Act. Each such report  
5 shall include any recommendations of the corporation for  
6 additional legislative or other action which the corporation  
7 may consider necessary or desirable for the attainment of  
8 such objectives.

9 (c) AUDITS.—The corporation shall be subject to  
10 such external audits as may be determined appropriate by  
11 the Secretary.

12 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

13 There are authorized to be appropriated such sums  
14 as may be necessary to carry out this Act for each of fiscal  
15 years 2010 through 2019.

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