

Union Calendar No. 347

109TH CONGRESS
2D SESSION

H. R. 4157

[Report No. 109–601, Parts I and II]

To amend the Social Security Act to encourage the dissemination, security, confidentiality, and usefulness of health information technology.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 27, 2005

Mrs. JOHNSON of Connecticut (for herself, Mr. DEAL of Georgia, Mr. BLUNT, Mr. CANTOR, Mr. MCCRERY, Mr. SAM JOHNSON of Texas, Mr. CAMP, Mr. RAMSTAD, Mr. ENGLISH of Pennsylvania, Mr. HAYWORTH, Mr. HULSHOF, Mr. HERGER, Mr. LEWIS of Kentucky, Mr. WELLER, Mr. RYAN of Wisconsin, Mr. BEAUPREZ, Mr. UPTON, Mrs. WILSON of New Mexico, Mr. BASS, Mr. TERRY, Mr. MURPHY, Mr. BRADLEY of New Hampshire, Mr. BOEHLERT, Mr. CASTLE, Mrs. EMERSON, Mr. GERLACH, Mr. HOBSON, Mrs. KELLY, Mr. JINDAL, Mr. SCHWARZ of Michigan, Mr. SHAYS, and Mr. SIMMONS) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JULY 26, 2005

Additional sponsors: Mr. GILLMOR, Ms. HART, Mr. ROGERS of Michigan, Mr. EHLERS, Mrs. DRAKE, Mr. KENNEDY of Minnesota, Mr. MCHUGH, Mr. MCCOTTER, Mr. HASTINGS of Washington, Mr. PORTER, Mr. KUHL of New York, Mr. LEACH, Miss MCMORRIS, Mr. CAMPBELL of California, Mr. LUCAS, Mr. COLE of Oklahoma, Mr. KIRK, Mrs. MILLER of Michigan, Mr. MARCHANT, Mr. FORTUÑO, Mr. BOUSTANY, Mr. FITZPATRICK of Pennsylvania, Mrs. BIGGERT, Mr. NUNES, Mrs. BLACKBURN, Mr. HEFLEY, and Ms. GRANGER

Deleted sponsors: Ms. JACKSON-LEE of Texas (added November 2, 2005; deleted June 27, 2006), and Ms. ESHOO (added December 15, 2005; deleted June 16, 2006)

JUNE 26, 2006

Reported from the Committee on Energy and Commerce with amendments

[Strike out all after the enacting clause and insert the part printed in *italie*]

JULY 26, 2006

Reported from the Committee on Ways and Means with an amendment; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in boldface roman]

[For text of introduced bill, see copy of bill as introduced on October 27, 2005]

A BILL

To amend the Social Security Act to encourage the dissemination, security, confidentiality, and usefulness of health information technology.

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 AND TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the “Bet-*
 5 *ter Health Information System Act of 2006”.*

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

Sec. 1. Short title and table of contents.

Sec. 2. Preserving privacy and security laws.

**TITLE I—COORDINATION FOR, PLANNING FOR, AND
 INTEROPERABILITY OF HEALTH INFORMATION TECHNOLOGY**

Sec. 101. Office of the National Coordinator for Health Information Technology.

Sec. 102. Report on the American Health Information Community.

Sec. 103. Interoperability planning process; Federal information collection activities.

Sec. 104. Ensuring health care providers may maintain health information in electronic form.

Sec. 105. Study and report on State, regional, and community health information exchanges.

Sec. 106. *Grants to integrated health systems to promote health information technologies to improve coordination of care for the uninsured, underinsured, and medically underserved.*

Sec. 107. *Demonstration program.*

TITLE II—EXPEDITED MODIFICATION PROCEDURES FOR AND ADOPTION OF TRANSACTIONAL STANDARDS AND CODES

Sec. 201. *Procedures to ensure timely updating of standards that enable electronic exchanges.*

Sec. 202. *Upgrading ASC X12 and NCPDP standards.*

Sec. 203. *Coding and documentation of non-medical information.*

TITLE III—PROMOTING THE USE OF HEALTH INFORMATION TECHNOLOGY TO BETTER COORDINATE HEALTH CARE

Sec. 301. *Safe harbors to antikickback civil penalties and criminal penalties for provision of health information technology and training services.*

Sec. 302. *Exception to limitation on certain physician referrals (under Stark) for provision of health information technology and training services to health care professionals.*

1 **SEC. 2. PRESERVING PRIVACY AND SECURITY LAWS.**

2 *Nothing in this Act (or the amendments made by this*
 3 *Act) shall be construed to affect the scope, substance, or ap-*
 4 *plicability of section 264(c) of the Health Insurance Port-*
 5 *ability and Accountability Act of 1996 and any regulation*
 6 *issued pursuant to such section.*

7 **TITLE I—COORDINATION FOR,**
 8 **PLANNING FOR, AND INTER-**
 9 **OPERABILITY OF HEALTH IN-**
 10 **FORMATION TECHNOLOGY**

11 **SEC. 101. OFFICE OF THE NATIONAL COORDINATOR FOR**
 12 **HEALTH INFORMATION TECHNOLOGY.**

13 *(a) IN GENERAL.—Title II of the Public Health Serv-*
 14 *ice Act is amended by adding at the end the following new*
 15 *part:*

1 **“PART D—HEALTH INFORMATION TECHNOLOGY**
2 **“SEC. 271. OFFICE OF THE NATIONAL COORDINATOR FOR**
3 **HEALTH INFORMATION TECHNOLOGY.**

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

11 *The National Coordinator shall be paid at a rate equal to*
12 *the rate of basic pay for level IV of the Executive Schedule.*

13 “(b) *GOALS OF NATIONWIDE INTEROPERABLE*
14 *HEALTH INFORMATION TECHNOLOGY INFRASTRUCTURE.*—
15 *The National Coordinator shall perform the duties under*
16 *subsection (c) in a manner consistent with the development*
17 *of a nationwide interoperable health information technology*
18 *infrastructure that—*

19 “(1) *improves health care quality, promotes data*
20 *accuracy, reduces medical errors, increases the effi-*
21 *ciency of care, and advances the delivery of appro-*
22 *priate, evidence-based health care services;*

23 “(2) *promotes wellness, disease prevention, and*
24 *management of chronic illnesses by increasing the*
25 *availability and transparency of information related*

1 *to the health care needs of an individual for such in-*
2 *dividual;*

3 *“(3) promotes the availability of appropriate*
4 *and accurate information necessary to make medical*
5 *decisions in a usable form at the time and in the lo-*
6 *cation that the medical service involved is provided;*

7 *“(4) produces greater value for health care ex-*
8 *penditures by reducing health care costs that result*
9 *from inefficiency, medical errors, inappropriate care,*
10 *and incomplete or inaccurate information;*

11 *“(5) promotes a more effective marketplace,*
12 *greater competition, greater systems analysis, in-*
13 *creased consumer choice, enhanced quality, and im-*
14 *proved outcomes in health care services;*

15 *“(6) with respect to health information of con-*
16 *sumers, advances the portability of such information*
17 *and the ability of such consumers to share and use*
18 *such information to assist in the management of their*
19 *health care;*

20 *“(7) improves the coordination of information*
21 *and the provision of such services through an effective*
22 *infrastructure for the secure and authorized exchange*
23 *and use of health care information;*

24 *“(8) is consistent with legally applicable require-*
25 *ments with respect to securing and protecting the con-*

1 *fidentiality of individually identifiable health infor-*
2 *mation of a patient;*

3 *“(9) promotes the creation and maintenance of*
4 *transportable, secure, Internet-based personal health*
5 *records, including promoting the efforts of health care*
6 *payers and health plan administrators for a health*
7 *plan, such as Federal agencies, private health plans,*
8 *and third party administrators, to provide for such*
9 *records on behalf of members of such a plan;*

10 *“(10) promotes access to and review of the elec-*
11 *tronic health record of a patient by such patient;*

12 *“(11) promotes health research and health care*
13 *quality research and assessment; and*

14 *“(12) promotes the efficient and streamlined de-*
15 *velopment, submission, and maintenance of electronic*
16 *health care clinical trial data.*

17 *“(c) DUTIES OF THE NATIONAL COORDINATOR.—*

18 *“(1) STRATEGIC PLANNER FOR INTEROPERABLE*
19 *HEALTH INFORMATION TECHNOLOGY.—The National*
20 *Coordinator shall provide for a strategic plan for the*
21 *nationwide implementation of interoperable health*
22 *information technology in both the public and private*
23 *health care sectors consistent with subsection (b).*

24 *“(2) PRINCIPAL ADVISOR TO THE SECRETARY.—*
25 *The National Coordinator shall serve as the principal*

1 *advisor to the Secretary on the development, applica-*
2 *tion, and use of health information technology, and*
3 *shall coordinate the policies and programs of the De-*
4 *partment of Health and Human Services for pro-*
5 *moting the use of health information technology.*

6 *“(3) INTRAGOVERNMENTAL COORDINATOR.—The*
7 *National Coordinator shall ensure that health infor-*
8 *mation technology policies and programs of the De-*
9 *partment of Health and Human Services are coordi-*
10 *nated with those of relevant executive branch agencies*
11 *and departments with a goal to avoid duplication of*
12 *effort, to align the health information architecture of*
13 *each agency or department toward a common ap-*
14 *proach, to ensure that each agency or department con-*
15 *ducts programs within the areas of its greatest exper-*
16 *tise and its mission in order to create a national*
17 *interoperable health information system capable of*
18 *meeting national public health needs effectively and*
19 *efficiently, and to assist Federal agencies and depart-*
20 *ments in security programs, policies, and protections*
21 *to prevent unauthorized access to individually identi-*
22 *fiable health information created, maintained, or in*
23 *the temporary possession of that agency or depart-*
24 *ment. The coordination authority provided to the Na-*
25 *tional Coordinator under the previous sentence shall*

1 *supercede any such authority otherwise provided to*
2 *any other official of the Department of Health and*
3 *Human Services. For the purposes of this paragraph,*
4 *the term ‘unauthorized access’ means access that is*
5 *not authorized by that agency or department includ-*
6 *ing unauthorized employee access.*

7 “(4) *ADVISOR TO OMB.—The National Coordi-*
8 *nator shall provide to the Director of the Office of*
9 *Management and Budget comments and advice with*
10 *respect to specific Federal health information tech-*
11 *nology programs.*

12 “(5) *PROMOTER OF HEALTH INFORMATION*
13 *TECHNOLOGY IN MEDICALLY UNDERSERVED COMMU-*
14 *NITIES.—The National Coordinator shall—*

15 “(A) *identify sources of funds that will be*
16 *made available to promote and support the plan-*
17 *ning and adoption of health information tech-*
18 *nology in medically underserved communities,*
19 *including in urban and rural areas, either*
20 *through grants or technical assistance;*

21 “(B) *coordinate with the funding sources to*
22 *help such communities connect to identified*
23 *funding; and*

24 “(C) *collaborate with the Agency for*
25 *Healthcare Research and Quality and the Health*

1 *Services Resources Administration and other*
2 *Federal agencies to support technical assistance,*
3 *knowledge dissemination, and resource develop-*
4 *ment, to medically underserved communities*
5 *seeking to plan for and adopt technology and es-*
6 *tablish electronic health information networks*
7 *across providers.”.*

8 **(b) TREATMENT OF EXECUTIVE ORDER 13335.**—*Exec-*
9 *utive Order 13335 shall not have any force or effect after*
10 *the date of the enactment of this Act.*

11 **(c) TRANSITION FROM ONCHIT UNDER EXECUTIVE**
12 **ORDER.**—

13 **(1) IN GENERAL.**—*All functions, personnel, as-*
14 *sets, liabilities, administrative actions, and statutory*
15 *reporting requirements applicable to the old National*
16 *Coordinator or the Office of the old National Coordi-*
17 *nator on the date before the date of the enactment of*
18 *this Act shall be transferred, and applied in the same*
19 *manner and under the same terms and conditions, to*
20 *the new National Coordinator and the Office of the*
21 *new National Coordinator as of the date of the enact-*
22 *ment of this Act.*

23 **(2) RULE OF CONSTRUCTION.**—*Nothing in this*
24 *section or the amendment made by this section shall*
25 *be construed as requiring the duplication of Federal*

1 *efforts with respect to the establishment of the Office*
2 *of the National Coordinator for Health Information*
3 *Technology, regardless of whether such efforts are car-*
4 *ried out before or after the date of the enactment of*
5 *this Act.*

6 (3) *ACTING NATIONAL COORDINATOR.*—*Before the*
7 *appointment of the new National Coordinator, the old*
8 *National Coordinator shall act as the National Coor-*
9 *dinator for Health Information Technology until the*
10 *office is filled as provided in section 271(a) of the*
11 *Public Health Service Act, as added by subsection (a).*
12 *The Secretary of Health and Human Services may*
13 *appoint the old National Coordinator as the new Na-*
14 *tional Coordinator.*

15 (4) *DEFINITIONS.*—*For purposes of this sub-*
16 *section:*

17 (A) *NEW NATIONAL COORDINATOR.*—*The*
18 *term “new National Coordinator” means the Na-*
19 *tional Coordinator for Health Information Tech-*
20 *nology appointed under section 271(a) of the*
21 *Public Health Service Act, as added by sub-*
22 *section (a).*

23 (B) *OLD NATIONAL COORDINATOR.*—*The*
24 *term “old National Coordinator” means the Na-*

1 *tional Coordinator for Health Information Tech-*
2 *nology appointed under Executive Order 13335.*

3 **SEC. 102. REPORT ON THE AMERICAN HEALTH INFORMA-**
4 **TION COMMUNITY.**

5 *Not later than one year after the date of the enactment*
6 *of this Act, the Secretary of Health and Human Services*
7 *shall submit to Congress a report on the work conducted*
8 *by the American Health Information Community (in this*
9 *section referred to as “AHIC”), as established by the Sec-*
10 *retary. Such report shall include the following:*

11 (1) *A description of the accomplishments of*
12 *AHIC, with respect to the promotion of the develop-*
13 *ment of national guidelines, the development of a na-*
14 *tionwide health information network, and the in-*
15 *creased adoption of health information technology.*

16 (2) *Information on how model privacy and secu-*
17 *rity policies may be used to protect confidentiality of*
18 *health information, and an assessment of how existing*
19 *policies compare to such model policies.*

20 (3) *Information on the progress in—*

21 (A) *establishing uniform industry-wide*
22 *health information technology standards;*

23 (B) *achieving an internet-based nationwide*
24 *health information network; and*

1 (C) achieving interoperable electronic health
2 record adoption across health care providers.

3 (4) Recommendations for the transition of AHIC
4 to a longer-term advisory and facilitation entity, in-
5 cluding—

6 (A) a schedule for such transition;

7 (B) options for structuring the entity as ei-
8 ther a public-private or private sector entity;

9 (C) the role of the Federal Government in
10 the entity;

11 (D) steps for—

12 (i) continued leadership in the facilita-
13 tion of guidelines or standards;

14 (ii) the alignment of financial incen-
15 tives; and

16 (iii) the long-term plan for health care
17 transformation through information tech-
18 nology; and

19 (E) the elimination or revision of the func-
20 tions of AHIC during the development of the na-
21 tionwide health information network.

1 **SEC. 103. INTEROPERABILITY PLANNING PROCESS; FED-**
2 **ERAL INFORMATION COLLECTION ACTIVI-**
3 **TIES.**

4 *Part D of title II of the Public Health Service Act,*
5 *as added by section 101, is amended by adding at the end*
6 *the following new section:*

7 **“SEC. 272. INTEROPERABILITY PLANNING PROCESS; FED-**
8 **ERAL INFORMATION COLLECTION ACTIVI-**
9 **TIES.**

10 *“(a) STRATEGIC INTEROPERABILITY PLANNING PROC-*
11 *ESS.—*

12 *“(1) ASSESSMENT AND ENDORSEMENT OF CORE*
13 *STRATEGIC GUIDELINES.—*

14 *“(A) IN GENERAL.—Not later than Decem-*
15 *ber 31, 2006, the National Coordinator shall*
16 *publish a strategic plan, including a schedule,*
17 *for the assessment and the endorsement of core*
18 *interoperability guidelines for significant use*
19 *cases consistent with this subsection. The Na-*
20 *tional Coordinator may update such plan from*
21 *time to time.*

22 *“(B) ENDORSEMENT.—*

23 *“(i) IN GENERAL.—Consistent with the*
24 *schedule under this paragraph and not later*
25 *than one year after the publication of such*
26 *schedule, the National Coordinator shall en-*

1 *dorse a subset of core interoperability guide-*
2 *lines for significant use cases. The National*
3 *Coordinator shall continue to endorse sub-*
4 *sets of core interoperability guidelines for*
5 *significant use cases annually consistent*
6 *with the schedule published pursuant to this*
7 *paragraph, with endorsement of all such*
8 *guidelines completed not later than August*
9 *31, 2009.*

10 *“(ii) CONSULTATION.—All such en-*
11 *dorsements shall be in consultation with the*
12 *American Health Information Community*
13 *and other appropriate entities.*

14 *“(iii) VOLUNTARY COMPLIANCE.—Com-*
15 *pliance with such guidelines shall be vol-*
16 *untary, subject to subsection (b)(1).*

17 *“(C) CONSULTATION WITH OTHER PAR-*
18 *TIES.—The National Coordinator shall develop*
19 *and implement such strategic plan in consulta-*
20 *tion with the American Health Information*
21 *Community and other appropriate entities.*

22 *“(D) DEFINITIONS.—For purposes of this*
23 *section:*

24 *“(i) INTEROPERABILITY GUIDELINE.—*
25 *The term ‘interoperability guideline’ means*

1 *a guideline to improve and promote the*
2 *interoperability of health information tech-*
3 *nology for purposes of electronically access-*
4 *ing and exchanging health information.*
5 *Such term includes named standards, archi-*
6 *tectures, software schemes for identification,*
7 *authentication, and security, and other in-*
8 *formation needed to ensure the reproducible*
9 *development of common solutions across dis-*
10 *parate entities.*

11 “(ii) *CORE INTEROPERABILITY GUIDE-*
12 *LINE.—The term ‘core interoperability*
13 *guideline’ means an interoperability guide-*
14 *line that the National Coordinator deter-*
15 *mines is essential and necessary for pur-*
16 *poses described in clause (i).*

17 “(iii) *SIGNIFICANT USE CASE.—The*
18 *term ‘significant use case’ means a category*
19 *(as specified by the National Coordinator)*
20 *that identifies a significant use or purpose*
21 *for the interoperability of health informa-*
22 *tion technology, such as for the exchange of*
23 *laboratory information, drug prescribing,*
24 *clinical research, and electronic health*
25 *records.*

1 “(2) *NATIONAL SURVEY.*—

2 “(A) *IN GENERAL.*—*Not later than August*
3 *31, 2008, the National Coordinator shall conduct*
4 *one or more surveys designed to measure the ca-*
5 *pability of entities (including Federal agencies,*
6 *State and local government agencies, and private*
7 *sector entities) to exchange electronic health in-*
8 *formation by appropriate significant use case.*
9 *Such surveys shall identify the extent to which*
10 *the type of health information, the use for such*
11 *information, or any other appropriate character-*
12 *ization of such information may relate to the ca-*
13 *pability of such entities to exchange health infor-*
14 *mation in a manner that is consistent with*
15 *methods to improve the interoperability of health*
16 *information and with core interoperability*
17 *guidelines.*

18 “(B) *DISSEMINATION OF SURVEY RE-*
19 *SULTS.*—*The National Coordinator shall dis-*
20 *seminate the results of such surveys in a manner*
21 *so as to—*

22 “(i) *inform the public on the capabili-*
23 *ties of entities to exchange electronic health*
24 *information;*

1 “(ii) assist in establishing a more
2 interoperable information architecture; and
3 “(iii) identify the status of health in-
4 formation systems used in Federal agencies
5 and the status of such systems with respect
6 to interoperability guidelines.

7 “(b) *FEDERAL HEALTH INFORMATION COLLECTION*
8 *ACTIVITIES.*—

9 “(1) *REQUIREMENTS.*—With respect to a core
10 interoperability guideline endorsed under subsection
11 (a)(1)(B) for a significant use case, the President
12 shall take measures to ensure that Federal activities
13 involving the broad collection and submission of
14 health information are consistent with such guideline
15 within three years after the date of such endorsement.

16 “(2) *PROMOTING USE OF NON-IDENTIFIABLE*
17 *HEALTH INFORMATION TO IMPROVE HEALTH RE-*
18 *SEARCH AND HEALTH CARE QUALITY.*—

19 “(A) *IN GENERAL.*—Where feasible, and
20 consistent with applicable privacy or security or
21 other laws, the President, in consultation with
22 the Secretary, shall take measures to allow time-
23 ly access to useful categories of non-identifiable
24 health information in records maintained by the
25 Federal government, or maintained by entities

1 *under contract with the Federal government, to*
2 *advance health care quality and health research*
3 *where such information is in a form that can be*
4 *used in such research. The President shall con-*
5 *sult with appropriate Federal agencies, and so-*
6 *licit public comment, on useful categories of in-*
7 *formation, and appropriate measures to take.*
8 *The President may consider the administrative*
9 *burden and the potential for improvements in*
10 *health care quality in determining such appro-*
11 *priate measures. In addition, the President, in*
12 *consultation with the Secretary, shall encourage*
13 *voluntary private and public sector efforts to*
14 *allow access to such useful categories of non-iden-*
15 *tifiable health information to advance health*
16 *care quality and health research.*

17 “(B) *NON-IDENTIFIABLE HEALTH INFORMA-*
18 *TION DEFINED.—For purposes of this paragraph,*
19 *the term ‘non-identifiable health information’*
20 *means information that is not individually iden-*
21 *tifiable health information as defined in rules*
22 *promulgated pursuant to section 264(c) of the*
23 *Health Insurance Portability and Accountability*
24 *Act of 1996 (42 U.S.C. 1320d–2 note), and in-*
25 *cludes information that has been de-identified so*

1 *that it is no longer individually identifiable*
2 *health information, as defined in such rules.*

3 “(3) *ANNUAL REVIEW AND REPORT.*—*For each*
4 *year during the five-year period following the date of*
5 *the enactment of this section, the National Coordi-*
6 *nator shall review the operation of health information*
7 *collection by and submission to the Federal govern-*
8 *ment and the purchases (and planned purchases) of*
9 *health information technology by the Federal govern-*
10 *ment. For each such year and based on the review for*
11 *such year, the National Coordinator shall submit to*
12 *the President and Congress recommendations on*
13 *methods to—*

14 “(A) *streamline (and eliminate redundancy*
15 *in) Federal systems used for the collection and*
16 *submission of health information;*

17 “(B) *improve efficiency in such collection*
18 *and submission;*

19 “(C) *increase the ability to assess health*
20 *care quality; and*

21 “(D) *reduce health care costs.*”.

1 **SEC. 104. ENSURING HEALTH CARE PROVIDERS MAY MAIN-**
2 **TAIN HEALTH INFORMATION IN ELECTRONIC**
3 **FORM.**

4 *Part D of title II of the Public Health Service Act,*
5 *as added by section 101(a) and amended by section 103,*
6 *is amended by adding at the end the following new section:*

7 **“SEC. 273. ENSURING HEALTH CARE PROVIDERS MAY MAIN-**
8 **TAIN HEALTH INFORMATION IN ELECTRONIC**
9 **FORM.**

10 *“(a) IN GENERAL.—Any health care provider that*
11 *participates in a health care program that receives Federal*
12 *funds shall be deemed as meeting any requirement for the*
13 *maintenance of data in paper form under such program*
14 *(whether or not for purposes of management, billing, report-*
15 *ing, reimbursement, or otherwise) if the required data is*
16 *maintained in an electronic form.*

17 *“(b) RELATION TO STATE LAWS.—Beginning on the*
18 *date that is one year after the date of the enactment of this*
19 *section, subsection (a) shall supersede any contrary provi-*
20 *sion of State law.*

21 *“(c) CONSTRUCTION.—Nothing in this section shall be*
22 *construed as—*

23 *“(1) requiring health care providers to maintain*
24 *or submit data in electronic form;*

1 “(2) preventing a State from permitting health
2 care providers to maintain or submit data in paper
3 form; or

4 “(3) preventing a State from requiring health
5 care providers to maintain or submit data in elec-
6 tronic form.”.

7 **SEC. 105. STUDY AND REPORT ON STATE, REGIONAL, AND**
8 **COMMUNITY HEALTH INFORMATION EX-**
9 **CHANGES.**

10 (a) *STUDY.*—The Secretary of Health and Human
11 Services shall conduct a study on issues related to the devel-
12 opment, operation, and implementation of State, regional,
13 and community health information exchanges. Such study
14 shall include the following, with respect to such health infor-
15 mation exchanges:

16 (1) *Profiles detailing the current stages of such*
17 *health information exchanges with respect to the pro-*
18 *gression of the development, operation, implementa-*
19 *tion, organization, and governance of such exchanges.*

20 (2) *The impact of such exchanges on healthcare*
21 *quality, safety, and efficiency, including—*

22 (A) *any impact on the coordination of*
23 *health information and services across healthcare*
24 *providers and other organizations relevant to*
25 *health care;*

1 (B) any impact on the availability of health
2 information at the point-of-care to make timely
3 medical decisions;

4 (C) any benefits with respect to the pro-
5 motion of wellness, disease prevention, and
6 chronic disease management;

7 (D) any improvement with respect to public
8 health preparedness and response;

9 (E) any impact on the widespread adoption
10 of interoperable health information technology,
11 including electronic health records;

12 (F) any contributions to achieving an
13 Internet-based national health information net-
14 work;

15 (G) any contribution of health information
16 exchanges to consumer access and to consumers'
17 use of their health information; and

18 (H) any impact on the operation of—

19 (i) the Medicaid program;

20 (ii) the State Children's Health Insur-
21 ance Program (SCHIP);

22 (iii) disproportionate share hospitals
23 described in section 1923 of the Social Secu-
24 rity Act;

1 (iv) *Federally-qualified health centers;*

2 *or*

3 (v) *managed care plans, if a signifi-*
4 *cant number of the plan's enrollees are bene-*
5 *ficiaries in the Medicaid program or*
6 *SCHIP.*

7 (3) *Best practice models for financing,*
8 *incentivizing, and sustaining such health information*
9 *exchanges.*

10 (4) *Information identifying the common prin-*
11 *ciples, policies, tools, and standards used (or pro-*
12 *posed) in the public and private sectors to support the*
13 *development, operation, and implementation of such*
14 *health information exchanges.*

15 (5) *A description of any areas in which Federal*
16 *government leadership is needed to support growth*
17 *and sustainability of such health information ex-*
18 *changes.*

19 (b) *REPORT.—Not later than one year after the date*
20 *of enactment of this Act, the Secretary of Health and*
21 *Human Services shall submit to Congress a report on the*
22 *study described in subsection (a), including such rec-*
23 *ommendations as the Secretary determines appropriate to*
24 *facilitate the development, operation, and implementation*
25 *of health information exchanges.*

1 **SEC. 106. GRANTS TO INTEGRATED HEALTH SYSTEMS TO**
2 **PROMOTE HEALTH INFORMATION TECH-**
3 **NOLOGIES TO IMPROVE COORDINATION OF**
4 **CARE FOR THE UNINSURED, UNDERINSURED,**
5 **AND MEDICALLY UNDERSERVED.**

6 *Subpart I of part D of title III of the Public Health*
7 *Service Act (42 U.S.C. 254b et seq.) is amended by adding*
8 *at the end the following:*

9 **“SEC. 330M. GRANTS FOR IMPROVEMENT OF THE COORDI-**
10 **NATION OF CARE FOR THE UNINSURED,**
11 **UNDERINSURED, AND MEDICALLY UNDER-**
12 **SERVED.**

13 *“(a) IN GENERAL.—The Secretary may make grants*
14 *to integrated health care systems, in accordance with this*
15 *section, for projects to better coordinate the provision of*
16 *health care through the adoption of new health information*
17 *technology, or the significant improvement of existing*
18 *health information technology, to improve the provision of*
19 *health care to uninsured, underinsured, and medically un-*
20 *derserved individuals (including in urban and rural areas)*
21 *through health-related information about such individuals,*
22 *throughout such a system and at the point of service.*

23 *“(b) ELIGIBILITY.—*

24 *“(1) APPLICATION.—To be eligible to receive a*
25 *grant under this section, an integrated health care*
26 *system shall prepare and submit to the Secretary an*

1 application, at such time, in such manner, and con-
2 taining such information as the Secretary may re-
3 quire, including—

4 “(A) a description of the project that the
5 system will carry out using the funds provided
6 under the grant;

7 “(B) a description of the manner in which
8 the project funded under the grant will advance
9 the goal specified in subsection (a); and

10 “(C) a description of the populations to be
11 served by the adoption or improvement of health
12 information technology.

13 “(2) *OPTIONAL REPORTING CONDITION.*—The
14 Secretary may also condition the provision of a grant
15 to an integrated health care system under this section
16 for a project on the submission by such system to the
17 Secretary of a report on the impact of the health in-
18 formation technology adopted (or improved) under
19 such project on the delivery of health care and the
20 quality of care (in accordance with applicable meas-
21 ures of such quality). Such report shall be at such
22 time and in such form and manner as specified by
23 the Secretary.

24 “(c) *INTEGRATED HEALTH CARE SYSTEM DEFINED.*—

25 For purposes of this section, the term ‘integrated health care

1 *system' means a system of health care providers that is or-*
2 *ganized to provide care in a coordinated fashion and has*
3 *a demonstrated commitment to provide uninsured, under-*
4 *insured, and medically underserved individuals with access*
5 *to such care.*

6 “(d) *PRIORITIES.—In making grants under this sec-*
7 *tion, the Secretary shall give priority to an integrated*
8 *health care system—*

9 “(1) *that can demonstrate past successful com-*
10 *munity-wide efforts to improve the quality of care*
11 *provided and the coordination of care for the unin-*
12 *insured, underinsured, and medically underserved; or*

13 “(2) *if the project to be funded through such a*
14 *grant—*

15 “(A) *will improve the delivery of health care*
16 *and the quality of care provided; and*

17 “(B) *will demonstrate savings for State or*
18 *Federal health care benefits programs or entities*
19 *legally obligated under Federal law to provide*
20 *health care from the reduction of duplicative*
21 *health care services, administrative costs, and*
22 *medical errors.*

23 “(e) *LIMITATION, MATCHING REQUIREMENT, AND*
24 *CONDITIONS.—*

1 “(1) *LIMITATION ON USE OF FUNDS.*—None of
2 the funds provided under a grant made under this
3 section may be used for a project providing for the
4 adoption or improvement of health information tech-
5 nology that is used exclusively for financial record
6 keeping, billing, or other non-clinical applications.

7 “(2) *MATCHING REQUIREMENT.*—To be eligible
8 for a grant under this section an integrated health
9 care system shall contribute non-Federal contributions
10 to the costs of carrying out the project for which the
11 grant is awarded in an amount equal to \$1 for each
12 \$5 of Federal funds provided under the grant.

13 “(f) *AUTHORIZATION OF APPROPRIATIONS.*—There are
14 authorized to be appropriated to carry out this section
15 \$15,000,000 for each of fiscal years 2007 and 2008.”.

16 **SEC. 107. DEMONSTRATION PROGRAM.**

17 (a) *IN GENERAL.*—The Secretary of Health and
18 Human Services shall establish a demonstration program
19 under which the Secretary makes grants to small physician
20 practices (including such practices that furnish services to
21 individuals with chronic illnesses) that are located in rural
22 areas or medically underserved urban areas for the pur-
23 chase and support of health information technology.

24 (b) *ELIGIBILITY.*—To be eligible to receive a grant
25 under this section, an applicant shall prepare and submit

1 *to the Secretary of Health and Human Services an applica-*
2 *tion, at such time, in such manner, and containing such*
3 *information, as the Secretary may require.*

4 *(c) REPORTING.—*

5 *(1) REQUIRED REPORTS BY SMALL PHYSICIAN*
6 *PRACTICES.—A small physician practice receiving a*
7 *grant under subsection (a) shall submit to the Sec-*
8 *retary of Health and Human Services an evaluation*
9 *on the health information technology funded by such*
10 *grant. Such evaluation shall include information*
11 *on—*

12 *(A) barriers to the adoption of health infor-*
13 *mation technology by the small physician prac-*
14 *tice;*

15 *(B) issues for such practice in the use of*
16 *health information technology;*

17 *(C) the effect health information technology*
18 *will have on the quality of health care furnished*
19 *by such practice; and*

20 *(D) the effect of the rules under sections*
21 *1128A, 1128B, and 1877 of the Social Security*
22 *Act and any medical liability rules on such*
23 *practice.*

24 *(2) REPORT TO CONGRESS.—Not later than Jan-*
25 *uary 1, 2009, the Secretary of Health and Human*

1 “(3) *EXPEDITED PROCEDURES FOR ADOPTION OF*
2 *ADDITIONS AND MODIFICATIONS TO STANDARDS.—*

3 “(A) *IN GENERAL.—For purposes of para-*
4 *graph (1), the Secretary shall provide for an ex-*
5 *pedited upgrade program (in this paragraph re-*
6 *ferred to as the ‘upgrade program’), in accord-*
7 *ance with this paragraph, to develop and ap-*
8 *prove additions and modifications to the stand-*
9 *ards adopted under section 1173(a) to improve*
10 *the quality of such standards or to extend the*
11 *functionality of such standards to meet evolving*
12 *requirements in health care.*

13 “(B) *PUBLICATION OF NOTICES.—Under the*
14 *upgrade program:*

15 “(i) *VOLUNTARY NOTICE OF INITIATION*
16 *OF PROCESS.—Not later than 30 days after*
17 *the date the Secretary receives a notice from*
18 *a standard setting organization that the or-*
19 *ganization is initiating a process to develop*
20 *an addition or modification to a standard*
21 *adopted under section 1173(a), the Sec-*
22 *retary shall publish a notice in the Federal*
23 *Register that—*

24 “(I) *identifies the subject matter*
25 *of the addition or modification;*

1 “(II) provides a description of
2 how persons may participate in the de-
3 velopment process; and

4 “(III) invites public participation
5 in such process.

6 “(ii) VOLUNTARY NOTICE OF PRELIMI-
7 NARY DRAFT OF ADDITIONS OR MODIFICA-
8 TIONS TO STANDARDS.—Not later than 30
9 days after the date of the date the Secretary
10 receives a notice from a standard setting or-
11 ganization that the organization has pre-
12 pared a preliminary draft of an addition or
13 modification to a standard adopted by sec-
14 tion 1173(a), the Secretary shall publish a
15 notice in the Federal Register that—

16 “(I) identifies the subject matter
17 of (and summarizes) the addition or
18 modification;

19 “(II) specifies the procedure for
20 obtaining the draft;

21 “(III) provides a description of
22 how persons may submit comments in
23 writing and at any public hearing or
24 meeting held by the organization on
25 the addition or modification; and

1 “(IV) invites submission of such
2 comments and participation in such
3 hearing or meeting without requiring
4 the public to pay a fee to participate.

5 “(iii) NOTICE OF PROPOSED ADDITION
6 OR MODIFICATION TO STANDARDS.—Not
7 later than 30 days after the date of the date
8 the Secretary receives a notice from a
9 standard setting organization that the orga-
10 nization has a proposed addition or modi-
11 fication to a standard adopted under sec-
12 tion 1173(a) that the organization intends
13 to submit under subparagraph (D)(iii), the
14 Secretary shall publish a notice in the Fed-
15 eral Register that contains, with respect to
16 the proposed addition or modification, the
17 information required in the notice under
18 clause (ii) with respect to the addition or
19 modification.

20 “(iv) CONSTRUCTION.—Nothing in this
21 paragraph shall be construed as requiring a
22 standard setting organization to request the
23 notices described in clauses (i) and (ii) with
24 respect to an addition or modification to a
25 standard in order to qualify for an expe-

1 *dited determination under subparagraph*
2 *(C) with respect to a proposal submitted to*
3 *the Secretary for adoption of such addition*
4 *or modification.*

5 “(C) *PROVISION OF EXPEDITED DETER-*
6 *MINATION.—Under the upgrade program and*
7 *with respect to a proposal by a standard setting*
8 *organization for an addition or modification to*
9 *a standard adopted under section 1173(a), if the*
10 *Secretary determines that the standard setting*
11 *organization developed such addition or modi-*
12 *fication in accordance with the requirements of*
13 *subparagraph (D) and the National Committee*
14 *on Vital and Health Statistics recommends ap-*
15 *proval of such addition or modification under*
16 *subparagraph (E), the Secretary shall provide*
17 *for expedited treatment of such proposal in ac-*
18 *cordance with subparagraph (F).*

19 “(D) *REQUIREMENTS.—The requirements*
20 *under this subparagraph with respect to a pro-*
21 *posed addition or modification to a standard by*
22 *a standard setting organization are the fol-*
23 *lowing:*

24 “(i) *REQUEST FOR PUBLICATION OF*
25 *NOTICE.—The standard setting organization*

1 *submits to the Secretary a request for publi-*
2 *cation in the Federal Register of a notice*
3 *described in subparagraph (B)(iii) for the*
4 *proposed addition or modification.*

5 *“(ii) PROCESS FOR RECEIPT AND CON-*
6 *SIDERATION OF PUBLIC COMMENT.—The*
7 *standard setting organization provides for a*
8 *process through which, after the publication*
9 *of the notice referred to under clause (i), the*
10 *organization—*

11 *“(I) receives and responds to pub-*
12 *lic comments submitted on a timely*
13 *basis on the proposed addition or*
14 *modification before submitting such*
15 *proposed addition or modification to*
16 *the National Committee on Vital and*
17 *Health Statistics under clause (iii);*

18 *“(II) makes publicly available a*
19 *written explanation for its response in*
20 *the proposed addition or modification*
21 *to comments submitted on a timely*
22 *basis; and*

23 *“(III) makes public comments re-*
24 *ceived under clause (I) available, or*

1 *provides access to such comments, to*
2 *the Secretary.*

3 “(iii) *SUBMITTAL OF FINAL PROPOSED*
4 *ADDITION OR MODIFICATION TO NCVHS.—*
5 *After completion of the process under clause*
6 *(ii), the standard setting organization sub-*
7 *mits the proposed addition or modification*
8 *to the National Committee on Vital and*
9 *Health Statistics for review and consider-*
10 *ation under subparagraph (E). Such sub-*
11 *mission shall include information on the or-*
12 *ganization’s compliance with the notice and*
13 *comment requirements (and responses to*
14 *those comments) under clause (ii).*

15 “(E) *HEARING AND RECOMMENDATIONS BY*
16 *NATIONAL COMMITTEE ON VITAL AND HEALTH*
17 *STATISTICS.—Under the upgrade program, upon*
18 *receipt of a proposal submitted by a standard*
19 *setting organization under subparagraph*
20 *(D)(iii) for the adoption of an addition or modi-*
21 *fication to a standard, the National Committee*
22 *on Vital and Health Statistics shall provide no-*
23 *tice to the public and a reasonable opportunity*
24 *for public testimony at a hearing on such addi-*
25 *tion or modification. The Secretary may partici-*

1 *pate in such hearing in such capacity (including*
2 *presiding ex officio) as the Secretary shall deter-*
3 *mine appropriate. Not later than 90 days after*
4 *the date of receipt of the proposal, the Committee*
5 *shall submit to the Secretary its recommendation*
6 *to adopt (or not adopt) the proposed addition or*
7 *modification.*

8 *“(F) DETERMINATION BY SECRETARY TO*
9 *ACCEPT OR REJECT NATIONAL COMMITTEE ON*
10 *VITAL AND HEALTH STATISTICS RECOMMENDA-*
11 *TION.—*

12 *“(i) TIMELY DETERMINATION.—Under*
13 *the upgrade program, if the National Com-*
14 *mittee on Vital and Health Statistics sub-*
15 *mits to the Secretary a recommendation*
16 *under subparagraph (E) to adopt a pro-*
17 *posed addition or modification, not later*
18 *than 90 days after the date of receipt of*
19 *such recommendation the Secretary shall*
20 *make a determination to accept or reject the*
21 *recommendation and shall publish notice of*
22 *such determination in the Federal Register*
23 *not later than 30 days after the date of the*
24 *determination.*

1 “(ii) *CONTENTS OF NOTICE.*—If the de-
2 termination is to reject the recommendation,
3 such notice shall include the reasons for the
4 rejection. If the determination is to accept
5 the recommendation, as part of such notice
6 the Secretary shall promulgate the modified
7 standard (including the accepted proposed
8 addition or modification accepted).

9 “(iii) *LIMITATION ON CONSIDER-*
10 *ATION.*—The Secretary shall not consider a
11 proposal under this subparagraph unless the
12 Secretary determines that the requirements
13 of subparagraph (D) (including publication
14 of notice and opportunity for public com-
15 ment) have been met with respect to the
16 proposal.

17 “(G) *EXEMPTION FROM PAPERWORK RE-*
18 *DUCTION ACT.*—Chapter 35 of title 44, United
19 States Code, shall not apply to a final rule pro-
20 mulgated under subparagraph (F).”.

21 **SEC. 202. UPGRADING ASC X12 AND NCPDP STANDARDS.**

22 *The Secretary of Health and Human Services shall*
23 *provide by notice published in the Federal Register for the*
24 *following replacements of standards to apply to trans-*
25 *actions occurring on or after April 1, 2009:*

1 *retary of Health and Human Services shall ensure that no*
 2 *health care provider is required to code to a level of speci-*
 3 *ficity that would require documentation of non-medical in-*
 4 *formation on the external cause of any given type of injury.*

5 **TITLE III—PROMOTING THE USE**
 6 **OF HEALTH INFORMATION**
 7 **TECHNOLOGY TO BETTER CO-**
 8 **ORDINATE HEALTH CARE**

9 **SEC. 301. SAFE HARBORS TO ANTIKICKBACK CIVIL PEN-**
 10 **ALTIES AND CRIMINAL PENALTIES FOR PRO-**
 11 **VISION OF HEALTH INFORMATION TECH-**
 12 **NOLOGY AND TRAINING SERVICES.**

13 *(a) FOR CIVIL PENALTIES.—Section 1128A of the So-*
 14 *cial Security Act (42 U.S.C. 1320a–7a) is amended—*

15 *(1) in subsection (b), by adding at the end the*
 16 *following new paragraph:*

17 *“(4) For purposes of this subsection, inducements to*
 18 *reduce or limit services described in paragraph (1) shall*
 19 *not include the practical or other advantages resulting from*
 20 *health information technology or related installation, main-*
 21 *tenance, support, or training services.”; and*

22 *(2) in subsection (i), by adding at the end the*
 23 *following new paragraph:*

24 *“(8) The term ‘health information technology’*
 25 *means hardware, software, license, right, intellectual*

1 *property, equipment, or other information technology*
2 *(including new versions, upgrades, and connectivity)*
3 *designed primarily for the electronic creation, main-*
4 *tenance, or exchange of health information to better*
5 *coordinate care or improve health care quality, effi-*
6 *ciency, or research.”.*

7 *(b) FOR CRIMINAL PENALTIES.—Section 1128B(b)(3)*
8 *of such Act (42 U.S.C. 1320a–7b(b)(3)) is amended—*

9 *(1) in subparagraph (G), by striking “and” at*
10 *the end;*

11 *(2) in the subparagraph (H) added by section*
12 *237(d) of the Medicare Prescription Drug, Improve-*
13 *ment, and Modernization Act of 2003 (Public Law*
14 *108–173; 117 Stat. 2213)—*

15 *(A) by moving such subparagraph 2 ems to*
16 *the left; and*

17 *(B) by striking the period at the end and*
18 *inserting a semicolon;*

19 *(3) in the subparagraph (H) added by section*
20 *431(a) of such Act (117 Stat. 2287)—*

21 *(A) by redesignating such subparagraph as*
22 *subparagraph (I);*

23 *(B) by moving such subparagraph 2 ems to*
24 *the left; and*

1 (C) by striking the period at the end and
2 inserting “; and”; and

3 (4) by adding at the end the following new sub-
4 paragraph:

5 “(J) any nonmonetary remuneration (in the
6 form of health information technology, as defined in
7 section 1128A(i)(8), or related installation, mainte-
8 nance, support or training services) made to a person
9 by an entity that is a hospital, group practice, pre-
10 scription drug plan sponsor, or Medicare Advantage
11 organization if—

12 “(i) the provision of such remuneration is
13 without an agreement between the parties or
14 legal condition that—

15 “(I) limits or restricts the use of the
16 health information technology to services
17 provided by the physician to individuals re-
18 ceiving services at the entity;

19 “(II) limits or restricts the use of the
20 health information technology in conjunc-
21 tion with other health information tech-
22 nology; or

23 “(III) conditions the provision of such
24 remuneration on the referral of patients or
25 business to the entity;

1 “(ii) such remuneration is arranged for in
2 a written agreement that is signed by the parties
3 involved (or their representatives) and that
4 specifies the remuneration solicited or received
5 (or offered or paid) and states that the provision
6 of such remuneration is made for the primary
7 purpose of better coordination of care or im-
8 provement of health quality, efficiency, or re-
9 search; and

10 “(iii) the entity providing the remuneration
11 (or a representative of such entity) has not taken
12 any action to disable any basic feature of any
13 hardware or software component of such remu-
14 neration that would permit interoperability.”.

15 (c) *EFFECTIVE DATE AND EFFECT ON STATE LAWS.*—

16 (1) *EFFECTIVE DATE.*—The amendments made
17 by subsections (a) and (b) shall take effect on the date
18 that is 120 days after the date of the enactment of
19 this Act.

20 (2) *PREEMPTION OF STATE LAWS.*—No State (as
21 defined in section 1101(a) of the Social Security Act
22 (42 U.S.C. 1301(a)) for purposes of title XI of such
23 Act) shall have in effect a State law that imposes a
24 criminal or civil penalty for a transaction described
25 in section 1128A(b)(4) or section 1128B(b)(3)(J) of

1 *such Act, as added by subsections (a)(1) and (b), re-*
2 *spectively, if the conditions described in the respective*
3 *provision, with respect to such transaction, are met.*

4 *(d) STUDY AND REPORT TO ASSESS EFFECT OF SAFE*
5 *HARBORS ON HEALTH SYSTEM.—*

6 *(1) IN GENERAL.—The Inspector General of the*
7 *Department of Health and Human Services shall con-*
8 *duct a study to determine the impact of each of the*
9 *safe harbors described in paragraph (3). In par-*
10 *ticular, the study shall examine the following:*

11 *(A) The effectiveness of each safe harbor in*
12 *increasing the adoption of health information*
13 *technology.*

14 *(B) The types of health information tech-*
15 *nology provided under each safe harbor.*

16 *(C) The extent to which the financial or*
17 *other business relationships between providers*
18 *under each safe harbor have changed as a result*
19 *of the safe harbor in a way that adversely affects*
20 *or benefits the health care system or choices*
21 *available to consumers.*

22 *(D) The impact of the adoption of health*
23 *information technology on health care quality,*
24 *cost, and access under each safe harbor.*

1 (2) *REPORT.*—Not later than three years after
 2 the effective date described in subsection (c)(1), the
 3 Secretary of Health and Human Services shall sub-
 4 mit to Congress a report on the study under para-
 5 graph (1).

6 (3) *SAFE HARBORS DESCRIBED.*—For purposes
 7 of paragraphs (1) and (2), the safe harbors described
 8 in this paragraph are—

9 (A) the safe harbor under section
 10 1128A(b)(4) of such Act (42 U.S.C. 1320a-
 11 7a(b)(4)), as added by subsection (a)(1); and

12 (B) the safe harbor under section
 13 1128B(b)(3)(J) of such Act (42 U.S.C. 1320a-
 14 7b(b)(3)(J)), as added by subsection (b).

15 **SEC. 302. EXCEPTION TO LIMITATION ON CERTAIN PHYSI-**
 16 **CIAN REFERRALS (UNDER STARK) FOR PROVI-**
 17 **SION OF HEALTH INFORMATION TECH-**
 18 **NOLOGY AND TRAINING SERVICES TO**
 19 **HEALTH CARE PROFESSIONALS.**

20 (a) *IN GENERAL.*—Section 1877(b) of the Social Secu-
 21 rity Act (42 U.S.C. 1395nn(b)) is amended by adding at
 22 the end the following new paragraph:

23 “(6) *INFORMATION TECHNOLOGY AND TRAINING*
 24 *SERVICES.*—

1 “(A) *IN GENERAL.*—*Any nonmonetary re-*
2 *muneration (in the form of health information*
3 *technology or related installation, maintenance,*
4 *support or training services) made by an entity*
5 *that is a hospital, group practice, prescription*
6 *drug plan sponsor, or a Medicare Advantage or-*
7 *ganization to a physician if—*

8 “(i) *the provision of such remuneration*
9 *is without an agreement between the parties*
10 *or legal condition that—*

11 “(I) *limits or restricts the use of*
12 *the health information technology to*
13 *services provided by the physician to*
14 *individuals receiving services at the en-*
15 *tity;*

16 “(II) *limits or restricts the use of*
17 *the health information technology in*
18 *conjunction with other health informa-*
19 *tion technology; or*

20 “(III) *conditions the provision of*
21 *such remuneration on the referral of*
22 *patients or business to the entity;*

23 “(ii) *such remuneration is arranged*
24 *for in a written agreement that is signed by*
25 *the parties involved (or their representa-*

1 *tives) and that specifies the remuneration*
2 *made and states that the provision of such*
3 *remuneration is made for the primary pur-*
4 *pose of better coordination of care or im-*
5 *provement of health quality, efficiency, or*
6 *research; and*

7 *“(iii) the entity (or a representative of*
8 *such entity) has not taken any action to*
9 *disable any basic feature of any hardware*
10 *or software component of such remuneration*
11 *that would permit interoperability.*

12 *“(B) HEALTH INFORMATION TECHNOLOGY*
13 *DEFINED.—For purposes of subparagraph (A),*
14 *the term ‘health information technology’ means*
15 *hardware, software, license, right, intellectual*
16 *property, equipment, or other information tech-*
17 *nology (including new versions, upgrades, and*
18 *connectivity) designed primarily for the elec-*
19 *tronic creation, maintenance, or exchange of*
20 *health information to better coordinate care or*
21 *improve health care quality, efficiency, or re-*
22 *search.”.*

23 *(b) EFFECTIVE DATE AND EFFECT ON STATE LAWS.—*

1 (1) *EFFECTIVE DATE.*—*The amendment made by*
2 *subsection (a) shall take effect on the date that is 120*
3 *days after the date of the enactment of this Act.*

4 (2) *PREEMPTION OF STATE LAWS.*—*No State (as*
5 *defined in section 1101(a) of the Social Security Act*
6 *(42 U.S.C. 1301(a)) for purposes of title XI of such*
7 *Act) shall have in effect a State law that imposes a*
8 *criminal or civil penalty for a transaction described*
9 *in section 1877(b)(6) of such Act, as added by sub-*
10 *section (a), if the conditions described in such section,*
11 *with respect to such transaction, are met.*

12 (c) *STUDY AND REPORT TO ASSESS EFFECT OF EX-*
13 *CEPTION ON HEALTH SYSTEM.*—

14 (1) *IN GENERAL.*—*The Inspector General of the*
15 *Department of Health and Human Services shall con-*
16 *duct a study to determine the impact of the exception*
17 *under section 1877(b)(6) of such Act (42 U.S.C.*
18 *1395nn(b)(6)), as added by subsection (a). In par-*
19 *ticular, the study shall examine the following:*

20 (A) *The effectiveness of the exception in in-*
21 *creasing the adoption of health information tech-*
22 *nology.*

23 (B) *The types of health information tech-*
24 *nology provided under the exception.*

1 (C) *The extent to which the financial or*
 2 *other business relationships between providers*
 3 *under the exception have changed as a result of*
 4 *the exception in a way that adversely affects or*
 5 *benefits the health care system or choices avail-*
 6 *able to consumers.*

7 (D) *The impact of the adoption of health*
 8 *information technology on health care quality,*
 9 *cost, and access under the exception.*

10 (2) *REPORT.—Not later than three years after*
 11 *the effective date described in subsection (b)(1), the*
 12 *Secretary of Health and Human Services shall sub-*
 13 *mit to Congress a report on the study under para-*
 14 *graph (1).*

15 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

16 **(a) SHORT TITLE.—This Act may be cited as**
 17 **the “Health Information Technology Pro-**
 18 **motion Act of 2006”.**

19 **(b) TABLE OF CONTENTS.—The table of con-**
 20 **tents of this Act is as follows:**

- Sec. 1. Short title and table of contents.**
- Sec. 2. Office of the National Coordinator for Health Informa-**
tion Technology.
- Sec. 3. Safe harbors for provision of health information tech-**
nology and services to health care professionals.
- Sec. 4. Commonality and variation in health information laws**
and regulations.
- Sec. 5. Implementing modern coding system; application under**
part A of the Medicare program.
- Sec. 6. Procedures to ensure timely updating of standards that**
enable electronic exchanges.

Sec. 7. Report on the American Health Information Community.

Sec. 8. Strategic plan for coordinating implementation of health information technology.

Sec. 9. Promotion of telehealth services.

1 SEC. 2. OFFICE OF THE NATIONAL COORDINATOR FOR
2 HEALTH INFORMATION TECHNOLOGY.

3 (a) IN GENERAL.—Title II of the Public
4 Health Service Act is amended by adding at
5 the end the following new part:

6 “PART D—HEALTH INFORMATION TECHNOLOGY
7 “SEC. 271. OFFICE OF THE NATIONAL COORDINATOR FOR
8 HEALTH INFORMATION TECHNOLOGY.

9 “(a) ESTABLISHMENT.—There is established
10 within the Department of Health and Human
11 Services an Office of the National Coordi-
12 nator for Health Information Technology that
13 shall be headed by the National Coordinator
14 for Health Information Technology (referred
15 to in this section as the ‘National Coordi-
16 nator’). The National Coordinator shall be ap-
17 pointed by the President and shall report di-
18 rectly to the Secretary. The National Coordi-
19 nator shall be paid at a rate equal to the rate
20 of basic pay for level IV of the Executive
21 Schedule.

22 “(b) GOALS OF NATIONWIDE INTEROPERABLE
23 HEALTH INFORMATION TECHNOLOGY INFRA-

1 **STRUCTURE.—The National Coordinator shall**
2 **perform the duties under subsection (c) in a**
3 **manner consistent with the development of a**
4 **nationwide interoperable health information**
5 **technology infrastructure that—**

6 **“(1) improves health care quality, re-**
7 **duces medical errors, increases the effi-**
8 **ciency of care, and advances the delivery**
9 **of appropriate, evidence-based health**
10 **care services;**

11 **“(2) promotes wellness, disease pre-**
12 **vention, and management of chronic ill-**
13 **nesses by increasing the availability and**
14 **transparency of information related to**
15 **the health care needs of an individual for**
16 **such individual;**

17 **“(3) ensures that appropriate infor-**
18 **mation necessary to make medical deci-**
19 **sions is available in a usable form at the**
20 **time and in the location that the medical**
21 **service involved is provided;**

22 **“(4) produces greater value for health**
23 **care expenditures by reducing health**
24 **care costs that result from inefficiency,**

1 **medical errors, inappropriate care, and**
2 **incomplete information;**

3 **“(5) promotes a more effective mar-**
4 **ketplace, greater competition, greater**
5 **systems analysis, increased choice, en-**
6 **hanced quality, and improved outcomes**
7 **in health care services;**

8 **“(6) improves the coordination of in-**
9 **formation and the provision of such serv-**
10 **ices through an effective infrastructure**
11 **for the secure and authorized exchange**
12 **and use of health care information; and**

13 **“(7) ensures that the confidentiality**
14 **of individually identifiable health infor-**
15 **mation of a patient is secure and pro-**
16 **tected.**

17 **“(c) DUTIES OF NATIONAL COORDINATOR.—**

18 **“(1) STRATEGIC PLANNER FOR INTER-**
19 **OPERABLE HEALTH INFORMATION TECH-**
20 **NOLOGY.—The National Coordinator shall**
21 **maintain, direct, and oversee the contin-**
22 **uous improvement of a strategic plan to**
23 **guide the nationwide implementation of**
24 **interoperable health information tech-**
25 **nology in both the public and private**

1 health care sectors consistent with sub-
2 section (b).

3 “(2) PRINCIPAL ADVISOR TO HHS.—The
4 National Coordinator shall serve as the
5 principal advisor of the Secretary on the
6 development, application, and use of
7 health information technology, and co-
8 ordinate the health information tech-
9 nology programs of the Department of
10 Health and Human Services.

11 “(3) COORDINATOR OF FEDERAL GOVERN-
12 MENT ACTIVITIES.—

13 “(A) IN GENERAL.—The National
14 Coordinator shall serve as the coordi-
15 nator of Federal Government activi-
16 ties relating to health information
17 technology.

18 “(B) SPECIFIC COORDINATION FUNC-
19 TIONS.—In carrying out subparagraph
20 (A), the National Coordinator shall
21 provide for—

22 “(i) the development and ap-
23 proval of standards used in the
24 electronic creation, maintenance,

1 or exchange of health informa-
2 tion; and

3 “(ii) the certification and in-
4 spection of health information
5 technology products, exchanges,
6 and architectures to ensure that
7 such products, exchanges, and ar-
8 chitectures conform to the appli-
9 cable standards approved under
10 clause (i).

11 “(C) USE OF PRIVATE ENTITIES.—
12 The National Coordinator shall, to
13 the maximum extent possible, con-
14 tract with or recognize private enti-
15 ties in carrying out subparagraph (B).

16 “(D) UNIFORM APPLICATION OF
17 STANDARDS.—A standard approved
18 under subparagraph (B)(i) for use in
19 the electronic creation, maintenance,
20 or exchange of health information
21 shall preempt a standard adopted
22 under State law, regulation, or rule
23 for such a use.

24 “(4) INTRAGOVERNMENTAL COORDI-
25 NATOR.—The National Coordinator shall

1 ensure that health information tech-
2 nology policies and programs of the De-
3 partment of Health and Human Services
4 are coordinated with those of relevant
5 executive branch agencies and depart-
6 ments with a goal to avoid duplication of
7 effort and to ensure that each agency or
8 department conducts programs within
9 the areas of its greatest expertise and its
10 mission in order to create a national
11 interoperable health information system
12 capable of meeting national public health
13 needs effectively and efficiently.

14 “(5) ADVISOR TO OMB.—The National
15 Coordinator shall provide to the Director
16 of the Office of Management and Budget
17 comments and advice with respect to spe-
18 cific Federal health information tech-
19 nology programs.

20 “(d) AUTHORIZATION OF APPROPRIATIONS.—
21 There are authorized to be appropriated such
22 sums as may be necessary to carry out this
23 section for each of fiscal years 2006 through
24 2010.”.

1 **(b) TREATMENT OF EXECUTIVE ORDER**
2 **13335.—Executive Order 13335 shall not have**
3 **any force or effect after the date of the enact-**
4 **ment of this Act.**

5 **(c) TRANSITION FROM ONCHIT UNDER EX-**
6 **ECUTIVE ORDER.—**

7 **(1) IN GENERAL.—All functions, per-**
8 **sonnel, assets, liabilities, administrative**
9 **actions, and statutory reporting require-**
10 **ments applicable to the old National Co-**
11 **ordinator or the Office of the old Na-**
12 **tional Coordinator on the date before the**
13 **date of the enactment of this Act shall be**
14 **transferred, and applied in the same**
15 **manner and under the same terms and**
16 **conditions, to the new National Coordi-**
17 **nator and the Office of the new National**
18 **Coordinator as of the date of the enact-**
19 **ment of this Act.**

20 **(2) ACTING NATIONAL COORDINATOR.—**
21 **Before the appointment of the new Na-**
22 **tional Coordinator, the old National Co-**
23 **ordinator shall act as the National Coor-**
24 **dinator for Health Information Tech-**
25 **nology until the office is filled as pro-**

1 vided in section 271(a) of the Public
2 Health Service Act, as added by sub-
3 section (a). The President may appoint
4 the old National Coordinator as the new
5 National Coordinator.

6 (3) DEFINITIONS.—For purposes of this
7 subsection:

8 (A) NEW NATIONAL COORDINATOR.—

9 The term “new National Coordinator”
10 means the National Coordinator for
11 Health Information Technology ap-
12 pointed under section 271(a) of the
13 Public Health Service Act, as added
14 by subsection (a).

15 (B) OLD NATIONAL COORDINATOR.—

16 The term “old National Coordinator”
17 means the National Coordinator for
18 Health Information Technology ap-
19 pointed under Executive Order 13335.

20 SEC. 3. SAFE HARBORS FOR PROVISION OF HEALTH INFOR-
21 MATION TECHNOLOGY AND SERVICES TO
22 HEALTH CARE PROFESSIONALS.

23 (a) FOR CIVIL PENALTIES.—Section
24 1128A(b) of the Social Security Act (42 U.S.C.

1 1320a-7a(b)) is amended by adding at the end
2 the following new paragraph:

3 “(4)(A) For purposes of this subsection, a
4 payment described in paragraph (1) does not
5 include any nonmonetary remuneration (in
6 the form of health information technology
7 and related services) made on or after the HIT
8 effective date (as defined in subparagraph
9 (B)(ii)) by a hospital or critical access hospital
10 to a physician if the following requirements
11 are met:

12 “(i) The provision of such remunera-
13 tion is made without a condition that—

14 “(I) limits or restricts the use of
15 the health information technology to
16 services provided by the physician to
17 individuals receiving services at the
18 location of the hospital or critical ac-
19 cess hospital providing such tech-
20 nology;

21 “(II) limits or restricts the use of
22 the health information technology in
23 conjunction with other health infor-
24 mation technology; or

1 **“(III) takes into account the vol-**
2 **ume or value of referrals (or other**
3 **business generated) by the physician**
4 **to the hospital or critical access hos-**
5 **pital.**

6 **“(ii) Such remuneration is arranged**
7 **for in a written agreement that is signed**
8 **by a representative of the hospital or**
9 **critical access hospital and by the physi-**
10 **cian and that specifies the remuneration**
11 **made and states that the provision of**
12 **such remuneration is made for the pri-**
13 **mary purpose of better coordination of**
14 **care or improvement of health care qual-**
15 **ity or efficiency.**

16 **“(B) For purposes of subparagraph (A)**
17 **and sections 1128B(b)(3)(J) and 1877(e)(9)—**

18 **“(i) the term ‘health information tech-**
19 **nology’ means hardware, software, li-**
20 **cence, intellectual property, equipment,**
21 **or other information technology (includ-**
22 **ing new versions, upgrades, and**
23 **connectivity) or related services used for**
24 **the electronic creation, maintenance, and**

1 **exchange of clinical health information;**
2 **and**

3 **“(ii) the term ‘HIT effective date’**
4 **means the date that is 180 days after the**
5 **date of the enactment of this paragraph.”.**

6 **(b) FOR CRIMINAL PENALTIES.—Section**
7 **1128B(b)(3) of such Act (42 U.S.C. 1320a-**
8 **7b(b)(3)) is amended—**

9 **(1) in subparagraph (G), by striking**
10 **“and” at the end;**

11 **(2) in the subparagraph (H) as added**
12 **by section 237(d) of the Medicare Pre-**
13 **scription Drug, Improvement, and Mod-**
14 **ernization Act of 2003 (Public Law 108-**
15 **173; 117 Stat. 2213)—**

16 **(A) by moving such subparagraph**
17 **2 ems to the left; and**

18 **(B) by striking the period at the**
19 **end and inserting a semicolon;**

20 **(3) in the subparagraph (H) added by**
21 **section 431(a) of such Act (117 Stat.**
22 **2287)—**

23 **(A) by redesignating such sub-**
24 **paragraph as subparagraph (I);**

1 **(B) by moving such subparagraph**
2 **2 ems to the left; and**

3 **(C) by striking the period at the**
4 **end and inserting “; and”; and**

5 **(4) by adding at the end the following**
6 **new subparagraph:**

7 **“(J) any nonmonetary remuneration**
8 **(in the form of health information tech-**
9 **nology, as defined in section**
10 **1128A(b)(4)(B)(i), and related services) so-**
11 **licted or received by a person on or after**
12 **the HIT effective date (as defined in sec-**
13 **tion 1128A(b)(4)(B)(ii)) (or offered or paid**
14 **to a person on or after such date) if—**

15 **“(i) such remuneration is solicited**
16 **or received (or offered or paid) with-**
17 **out a condition that—**

18 **“(I) limits or restricts the use**
19 **of the health information tech-**
20 **nology to services provided by the**
21 **person to individuals receiving**
22 **services at the location of the en-**
23 **tity providing such technology;**

24 **“(II) limits or restricts the use**
25 **of the health information tech-**

1 nology in conjunction with other
2 health information technology; or

3 “(III) takes into account the
4 volume or value of referrals (or
5 other business generated) by the
6 person to the entity providing
7 such technology; and

8 “(ii) such remuneration is ar-
9 ranged for in a written agreement
10 that is signed by a representative of
11 the entity and by the physician and
12 that specifies the remuneration made
13 and states that the provision of such
14 remuneration is made for the pri-
15 mary purpose of better coordination
16 of care or improvement of health care
17 quality or efficiency.”.

18 (c) **FOR LIMITATION ON CERTAIN PHYSICIAN**
19 **REFERRALS.**—Section 1877(e) of such Act (42
20 **U.S.C. 1395nn(e))** is amended by adding at the
21 **end the following new paragraph:**

22 “(9) **INFORMATION TECHNOLOGY AND**
23 **SERVICES.**—Any nonmonetary remunera-
24 **tion (in the form of health information**
25 **technology, as defined in section**

1 **1128A(b)(4)(B)(i), and related services)**
2 **made on or after the HIT effective date**
3 **(as defined in section 1128A(b)(4)(B)(ii))**
4 **by an entity to a physician if the fol-**
5 **lowing requirements are met:**

6 **“(A) The provision of such remu-**
7 **neration is made without a condition**
8 **that—**

9 **“(i) limits or restricts the use**
10 **of the health information tech-**
11 **nology to services provided by the**
12 **physician to individuals receiving**
13 **services at the location of the en-**
14 **tity providing such technology;**

15 **“(ii) limits or restricts the use**
16 **of the health information tech-**
17 **nology in conjunction with other**
18 **health information technology; or**

19 **“(iii) takes into account the**
20 **volume or value of referrals (or**
21 **other business generated) by the**
22 **physician to the entity providing**
23 **such technology.**

24 **“(B) Such remuneration is ar-**
25 **ranged for in a written agreement**

1 that is signed by a representative of
2 the entity and by the physician and
3 that specifies the remuneration made
4 and states that the provision of such
5 remuneration is made for the pri-
6 mary purpose of better coordination
7 of care or improvement of health care
8 quality or efficiency.”.

9 **(d) REGULATION, EFFECTIVE DATE, AND EF-**
10 **FECT ON STATE LAWS.—**

11 **(1) REGULATIONS.—**Not later than the
12 **HIT effective date, the Secretary of**
13 **Health and Human Services shall promul-**
14 **gate such regulations as may be nec-**
15 **essary to carry out the provisions of this**
16 **section.**

17 **(2) HIT EFFECTIVE DATE DEFINED.—**For
18 **purposes of this subsection and sub-**
19 **section (e), the term “HIT effective date”**
20 **has the meaning given such term in sec-**
21 **tion 1128A(b)(4)(B)(ii) of the Social Secu-**
22 **rity Act, as added by subsection (a).**

23 **(3) PREEMPTION OF STATE LAWS.—**No
24 **State (as defined in section 4(c)(3)) shall**
25 **have in effect a State law that imposes a**

1 **criminal or civil penalty for a transaction**
2 **described in section 1128A(b)(4),**
3 **1128B(b)(3)(J), or 1877(e)(9) of the Social**
4 **Security Act, as added by this section, if**
5 **the conditions described in the respective**
6 **section of such Act, with respect to such**
7 **transaction, are met.**

8 **(e) STUDY AND REPORT TO ASSESS EFFECT OF**
9 **SAFE HARBORS AND EXCEPTION ON HEALTH SYS-**
10 **TEM.—**

11 **(1) IN GENERAL.—The Secretary of**
12 **Health and Human Services shall conduct**
13 **a study to determine the impact of each**
14 **of the safe harbors and the exception de-**
15 **scribed in paragraph (3). In particular,**
16 **the study shall examine the following:**

17 **(A) The effectiveness of each safe**
18 **harbor and exception in increasing**
19 **the adoption of health information**
20 **technology.**

21 **(B) The types of health informa-**
22 **tion technology provided under each**
23 **safe harbor and exception.**

24 **(C) The extent to which the finan-**
25 **cial or other business relationships**

1 **between providers under each safe**
2 **harbor or exception have changed as**
3 **a result of the safe harbor or excep-**
4 **tion in a way that affects the health**
5 **care system, affects choices available**
6 **to consumers, or affects health care**
7 **expenditures.**

8 **(2) REPORT.—Not later than three**
9 **years after the HIT effective date, the**
10 **Secretary of Health and Human Services**
11 **shall submit to Congress a report on the**
12 **study under paragraph (1) and shall in-**
13 **clude such recommendations for changes**
14 **in the safe harbors and exception as the**
15 **Secretary determines may be appro-**
16 **priate.**

17 **(3) SAFE HARBORS AND EXCEPTION DE-**
18 **SCRIBED.—For purposes of this sub-**
19 **section, the safe harbors and exception**
20 **described in this paragraph are—**

21 **(A) the safe harbor under section**
22 **1128A(b)(4) of the Social Security Act**
23 **(42 U.S.C. 1320a–7a(b)(4)), as added by**
24 **subsection (a);**

1 **(B) the safe harbor under section**
2 **1128B(b)(3)(J) of such Act (42 U.S.C.**
3 **1320a-7b(b)(3)(J)), as added by sub-**
4 **section (b); and**

5 **(C) the exception under section**
6 **1877(e)(9) of such Act (42 U.S.C.**
7 **1395nn(e)(9)), as added by subsection**
8 **(c).**

9 **SEC. 4. COMMONALITY AND VARIATION IN HEALTH INFOR-**
10 **MATION LAWS AND REGULATIONS.**

11 **(a) STUDY TO DETERMINE IMPACT OF VARI-**
12 **ATION AND COMMONALITY IN STATE HEALTH IN-**
13 **FORMATION LAWS AND REGULATIONS.—**

14 **(1) IN GENERAL.—For purposes of pro-**
15 **moting the development of a nationwide**
16 **interoperable health information tech-**
17 **nology infrastructure consistent with sec-**
18 **tion 271(b) of the Public Health Service**
19 **Act (as added by section 2(a)), the Sec-**
20 **retary of Health and Human Services**
21 **shall conduct a study of the impact of**
22 **variation in State security and confiden-**
23 **tiality laws and current Federal security**
24 **and confidentiality standards on the**
25 **timely exchanges of health information in**

1 **order to ensure the availability of health**
2 **information necessary to make medical**
3 **decisions at the location in which the**
4 **medical care involved is provided. Such**
5 **study shall examine—**

6 **(A)(i) the degree of variation and**
7 **commonality among the requirements**
8 **of such laws for States; and**

9 **(ii) the degree of variation and**
10 **commonality between the require-**
11 **ments of such laws and the current**
12 **Federal standards;**

13 **(B) insofar as there is variation**
14 **among and between such require-**
15 **ments, the strengths and weaknesses**
16 **of such requirements; and**

17 **(C) the extent to which such vari-**
18 **ation may adversely impact the se-**
19 **cure, confidential, and timely ex-**
20 **change of health information among**
21 **States, the Federal government, and**
22 **public and private entities, or may**
23 **otherwise impact the reliability of**
24 **such information.**

1 **(2) REPORT.**—Not later than 18 months
2 after the date of the enactment of this
3 Act, the Secretary of Health and Human
4 Services shall submit to Congress a re-
5 port on the study under paragraph (1)
6 and shall include in such report the fol-
7 lowing:

8 **(A) ANALYSIS OF NEED FOR GREATER**
9 **COMMONALITY.**—A determination by
10 the Secretary on the extent to which
11 there is a need for greater com-
12 monality of the requirements of State
13 security and confidentiality laws and
14 current Federal security and con-
15 fidentiality standards to better pro-
16 tect or strengthen the security and
17 confidentiality of health information
18 in the timely exchange of health in-
19 formation among States, the Federal
20 government, and public and private
21 entities.

22 **(B) RECOMMENDATIONS FOR GREAT-**
23 **ER COMMONALITY.**—Insofar as the Sec-
24 retary determines under subpara-
25 graph (A) that there is a need for

1 **greater commonality of such require-**
2 **ments, the extent to which (and how)**
3 **the current Federal standards should**
4 **be changed, and the extent to which**
5 **(and how) the State laws should be**
6 **conformed, in order to provide the**
7 **commonality needed to better protect**
8 **or strengthen the security and con-**
9 **fidentiality of health information in**
10 **the timely exchange of health infor-**
11 **mation.**

12 **(b) IMPLEMENTATION OF RECOMMENDATIONS**
13 **IF CONGRESS FAILS TO ACT.—**

14 **(1) IN GENERAL.—If the conditions**
15 **under paragraph (2) are met, the Sec-**
16 **retary shall, by regulation, modify the**
17 **current Federal security and confiden-**
18 **tiality standards to the extent that the**
19 **Secretary determines it necessary in**
20 **order to achieve the needed degree of**
21 **commonality to better protect or**
22 **strengthen the security and confiden-**
23 **tiality of health information in the timely**
24 **exchange of health information. Such a**
25 **modification shall be based upon the rec-**

1 **ommendations described in subsection**
2 **(a)(2)(B), and if the Secretary modifies a**
3 **current Federal security and confiden-**
4 **tiality standard, the modified standard**
5 **shall supersede (and the Secretary shall**
6 **limit the permissibility of) any State se-**
7 **curity and confidentiality law that re-**
8 **lates to (but is different from) such stand-**
9 **ard.**

10 **(2) CONDITIONS.—The conditions**
11 **under this paragraph are the following:**

12 **(A) NEED FOR GREATER COM-**
13 **MONALITY.—The Secretary determines**
14 **under subsection (a)(2)(A) that there**
15 **is a need for greater commonality in**
16 **the requirements of State security**
17 **and confidentiality laws and current**
18 **Federal security and confidentiality**
19 **standards to better protect or**
20 **strengthen the security and confiden-**
21 **tiality of health information in the**
22 **timely exchange of health informa-**
23 **tion among States, the Federal gov-**
24 **ernment, and public and private enti-**
25 **ties.**

1 **(B) CONGRESSIONAL FAILURE TO**
2 **ACT.—The Congress fails to enact,**
3 **within 18 months after the date of re-**
4 **ceipt of the report under subsection**
5 **(a)(2), legislation that specifically re-**
6 **sponds to the recommendations de-**
7 **scribed in subsection (a)(2)(B). Such**
8 **legislation may include any action de-**
9 **scribed in paragraph (1) (relating to**
10 **modifying Federal security and con-**
11 **fidentiality standards).**

12 **(3) TREATMENT OF CURRENT LAWS AND**
13 **STANDARDS.—**

14 **(A) CONTINUATION OF CURRENT FED-**
15 **ERAL STANDARDS AND STATE LAWS PER-**
16 **MITTED.—Nothing in this subsection**
17 **shall be construed as preventing the**
18 **Secretary from continuing to apply**
19 **the current Federal security and con-**
20 **fidentiality standards and from per-**
21 **mitting the continuance of State secu-**
22 **rity and confidentiality laws if such**
23 **standards are not modified.**

24 **(B) NO PREEMPTION OF STATE LAW**
25 **UNLESS RULE ADOPTED.—A State secu-**

1 rity and confidentiality law shall not
2 be preempted under paragraph (1),
3 except to the extent the Secretary
4 limits the application of such law
5 under such paragraph. The Sec-
6 retary’s exercise of such authority
7 supercedes the provisions of section
8 1178(a) of the Social Security Act (42
9 U.S.C. 1320d-7(a)) and section
10 264(c)(2) of the Health Insurance
11 Portability and Accountability Act of
12 1996 (42 U.S.C. 1320d-2 note).

13 (c) **DEFINITIONS.**—For purposes of this sec-
14 **tion:**

15 (1) **CURRENT FEDERAL SECURITY AND**
16 **CONFIDENTIALITY STANDARDS.**—The term
17 “current Federal security and confiden-
18 tiality standards” means the Federal pri-
19 vacy standards established pursuant to
20 section 264(c) of the Health Insurance
21 Portability and Accountability Act of
22 1996 (42 U.S.C. 1320d-2 note) and security
23 standards established under section
24 1173(d) of the Social Security Act.

1 **(2) SECRETARY.**—The term “Secretary”
2 means the Secretary of Health and
3 Human Services.

4 **(3) STATE.**—The term “State” has the
5 meaning given such term when used in
6 title XI of the Social Security Act, as pro-
7 vided under section 1101(a) of such Act
8 (42 U.S.C. 1301(a)).

9 **(4) STATE SECURITY AND CONFIDEN-**
10 **TIALITY LAWS.**—The term “State security
11 and confidentiality laws” means State
12 laws and regulations relating to the pri-
13 vacy and confidentiality of health infor-
14 mation or to the security of such informa-
15 tion.

16 **(d) CONFORMING AMENDMENTS.**—

17 **(1) HIPAA.**—Section 264(c)(2) of the
18 Health Insurance Portability and Ac-
19 countability Act of 1996 (42 U.S.C. 1320d-
20 2 note) is amended by striking “A regula-
21 tion” and inserting “Subject to section
22 4(b) of the Health Information Tech-
23 nology Promotion Act of 2006, a regula-
24 tion”.

1 **(2) TITLE XI.—Section 1178(a) of the**
2 **Social Security Act (42 U.S.C. 1320d–7(a))**
3 **is amended, in the matter preceding**
4 **paragraph (1), by inserting “Subject to**
5 **section 4(b) of the Health Information**
6 **Technology Promotion Act of 2006—”**
7 **after “GENERAL EFFECT.—”.**

8 **SEC. 5. IMPLEMENTING MODERN CODING SYSTEM; APPLI-**
9 **CATION UNDER PART A OF THE MEDICARE**
10 **PROGRAM.**

11 **(a) UPGRADING ASC X12 AND NCPDP**
12 **STANDARDS.—**

13 **(1) IN GENERAL.—The Secretary of**
14 **Health and Human Services shall provide**
15 **by notice published in the Federal Reg-**
16 **ister for the following replacements of**
17 **standards to apply, including for pur-**
18 **poses of part A of title XVIII of such Act:**

19 **(A) ACCREDITED STANDARDS COM-**
20 **MITTEE X12 (ASC X12) STANDARD.—The**
21 **replacement of the Accredited Stand-**
22 **ards Committee X12 (ASC X12)**
23 **version 4010 adopted under section**
24 **1173(a) of such Act (42 U.S.C. 1320d–**
25 **2(a)) with the ASC X12 version 5010,**

1 as reviewed by the National Com-
2 mittee on Vital Health Statistics.

3 (B) NATIONAL COUNCIL FOR PRE-
4SCRIPTION DRUG PROGRAMS (NCPDP)
5TELECOMMUNICATIONS STANDARDS.—
6The replacement of the National
7Council for Prescription Drug Pro-
8grams (NCPDP) Telecommunications
9Standards version 5.1 adopted under
10section 1173(a) of such Act (42 U.S.C.
111320d-2(a)) with whichever is the lat-
12est version (as determined by the Sec-
13retary) of the NCPDP Telecommuni-
14cations Standards that has been ap-
15proved by such Council and reviewed
16by the National Committee on Vital
17Health Statistics as of April 1, 2008.

18 (2) APPLICATION.—The replacements
19made by paragraph (1) shall apply, for
20purposes of section 1175(b)(2) of the So-
21cial Security Act (42 U.S.C. 1320d-4(b)(2)),
22to transactions occurring on or after
23April 1, 2009.

24 (3) NO JUDICIAL REVIEW.—The deter-
25mination of the latest version under

1 paragraph (1)(B) shall not be subject to
2 judicial review.

3 **(b) UPGRADING ICD CODES.—**

4 (1) **IN GENERAL.—**The Secretary of
5 Health and Human Services shall provide
6 by notice published in the Federal Reg-
7 ister for the replacement of the Inter-
8 national Classification of Diseases, 9th re-
9 vision, Clinical Modification (ICD-9-CM)
10 under the regulation promulgated under
11 section 1173(c) of the Social Security Act
12 (42 U.S.C. 1320d-2(c)), including for pur-
13 poses of part A of title XVIII of such Act,
14 with both of the following:

15 (A) The International Classifica-
16 tion of Diseases, 10th revision, Clin-
17 ical Modification (ICD-10-CM).

18 (B) The International Classifica-
19 tion of Diseases, 10th revision, Proce-
20 dure Coding System (ICD-10-PCS).

21 (2) **APPLICATION.—**The replacement
22 made by paragraph (1) shall apply, for
23 purposes of section 1175(b)(2) of the So-
24 cial Security Act (42 U.S.C. 1320d-4(b)(2)),

1 to services furnished on or after October
2 1, 2009.

3 (3) **RULES OF CONSTRUCTION.—Nothing**
4 **in paragraph (1) shall be construed—**

5 (A) as affecting the application of
6 classification methodologies or codes,
7 such as CPT or HCPCS codes, other
8 than under the International Classi-
9 fication of Diseases (ICD); or

10 (B) as superseding the authority
11 of the Secretary of Health and
12 Human Services to maintain and
13 modify the coding set for ICD-10-CM
14 and ICD-10-PCS, including under the
15 amendments made by section 6.

16 (c) **APPLICATION OF UPGRADED STANDARDS**
17 **UNDER PART A OF THE MEDICARE PROGRAM.—**
18 **Section 1816 of the Social Security Act (42**
19 **U.S.C. 1395h) is amended by inserting after**
20 **subsection (a) the following new subsection:**

21 **“(b) With respect to—**

22 **“(1) transactions under this part oc-**
23 **curring on or after April 1, 2009, all pro-**
24 **viders of services shall use ASC X12**
25 **version 5010 with respect to services pro-**

1 vided under this part in compliance with
2 section 5(a) of the Health Information
3 Technology Promotion Act of 2006; and

4 “(2) services furnished on or after Oc-
5 tober 1, 2009—

6 “(A) all providers of services shall
7 use ICD-10-CM codes with respect to
8 services provided under this part in
9 compliance with section 5(b) of such
10 Act; and

11 “(B) hospitals shall use ICD-10-
12 PCS codes (as well as ICD-10-CM
13 codes) with respect to inpatient hos-
14 pital services provided under this
15 part in compliance with such sec-
16 tion.”.

17 SEC. 6. PROCEDURES TO ENSURE TIMELY UPDATING OF
18 STANDARDS THAT ENABLE ELECTRONIC EX-
19 CHANGES.

20 Section 1174(b) of the Social Security Act
21 (42 U.S.C. 1320d-3(b)) is amended—

22 (1) in paragraph (1)—

23 (A) in the first sentence, by insert-
24 ing “and in accordance with para-
25 graph (3)” before the period; and

1 **(B) by adding at the end the fol-**
2 **lowing new sentence: “For purposes**
3 **of this subsection and section**
4 **1173(c)(2), the term ‘modification’ in-**
5 **cludes a new version or a version up-**
6 **grade.”; and**

7 **(2) by adding at the end the following**
8 **new paragraph:**

9 **“(3) EXPEDITED PROCEDURES FOR ADOP-**
10 **TION OF ADDITIONS AND MODIFICATIONS TO**
11 **STANDARDS.—**

12 **“(A) IN GENERAL.—For purposes of**
13 **paragraph (1), the Secretary shall**
14 **provide for an expedited upgrade**
15 **program (in this paragraph referred**
16 **to as the ‘upgrade program’), in ac-**
17 **cordance with this paragraph, to de-**
18 **velop and approve additions and**
19 **modifications to the standards adopt-**
20 **ed under section 1173(a) to improve**
21 **the quality of such standards or to ex-**
22 **tend the functionality of such stand-**
23 **ards to meet evolving requirements**
24 **in health care.**

“(B) PUBLICATION OF NOTICES.—

Under the upgrade program:

“(i) VOLUNTARY NOTICE OF INITIATION OF PROCESS.—Not later than 30 days after the date the Secretary receives a notice from a standard setting organization that the organization is initiating a process to develop an addition or modification to a standard adopted under section 1173, the Secretary shall publish a notice in the Federal Register that—

“(I) identifies the subject matter of the addition or modification;

“(II) provides a description of how persons may participate in the development process; and

“(III) invites public participation in such process.

“(ii) VOLUNTARY NOTICE OF PRELIMINARY DRAFT OF ADDITIONS OR MODIFICATIONS TO STANDARDS.—

1 **Not later than 30 days after the**
2 **date the Secretary receives a no-**
3 **tice from a standard setting orga-**
4 **nization that the organization has**
5 **prepared a preliminary draft of**
6 **an addition or modification to a**
7 **standard adopted by section 1173,**
8 **the Secretary shall publish a no-**
9 **tice in the Federal Register that—**

10 **“(I) identifies the subject**
11 **matter of (and summarizes)**
12 **the draft;**

13 **“(II) specifies the proce-**
14 **dure for obtaining docu-**
15 **mentation for the draft;**

16 **“(III) provides a descrip-**
17 **tion of how persons may sub-**
18 **mit comments in writing and**
19 **at any public hearing or meet-**
20 **ing held by the organization**
21 **on the draft; and**

22 **“(IV) invites submission of**
23 **such comments and participa-**
24 **tion in such hearing or meet-**
25 **ing.**

1 **“(iii) NOTICE OF PROPOSED AD-**
2 **DITION OR MODIFICATION TO STAND-**
3 **ARDS.—Not later than 30 days**
4 **after the date the Secretary re-**
5 **ceives a notice from a standard**
6 **setting organization that the or-**
7 **ganization has a proposed addi-**
8 **tion or modification to a standard**
9 **adopted under section 1173 that**
10 **the organization intends to sub-**
11 **mit under subparagraph (D)(iii),**
12 **the Secretary shall publish a no-**
13 **tice in the Federal Register that**
14 **contains, with respect to the pro-**
15 **posed addition or modification,**
16 **the information required in the**
17 **notice under clause (ii) with re-**
18 **spect to a preliminary draft of an**
19 **addition or modification.**

20 **“(iv) CONSTRUCTION.—Nothing**
21 **in this paragraph shall be con-**
22 **strued as requiring a standard**
23 **setting organization to request**
24 **the notices described in clauses**
25 **(i) and (ii) with respect to an ad-**

1 **dition or modification to a stand-**
2 **ard in order to qualify for an ex-**
3 **pedited determination under sub-**
4 **paragraph (C) with respect to a**
5 **proposal submitted to the Sec-**
6 **retary for adoption of such addi-**
7 **tion or modification.**

8 **“(C) PROVISION OF EXPEDITED DE-**
9 **TERMINATION.—Under the upgrade**
10 **program and with respect to a pro-**
11 **posal by a standard setting organiza-**
12 **tion for an addition or modification**
13 **to a standard adopted under section**
14 **1173, if the Secretary determines that**
15 **the standard setting organization de-**
16 **veloped such addition or modification**
17 **in accordance with the requirements**
18 **of subparagraph (D) and the National**
19 **Committee on Vital and Health Statis-**
20 **tics recommends approval of such ad-**
21 **dition or modification under subpara-**
22 **graph (E), the Secretary shall provide**
23 **for expedited treatment of such pro-**
24 **posal in accordance with subpara-**
25 **graph (F).**

1 **“(D) REQUIREMENTS.—**The require-
2 **ments under this subparagraph with**
3 **respect to a proposed addition or**
4 **modification to a standard by a**
5 **standard setting organization are the**
6 **following:**

7 **“(i) REQUEST FOR PUBLICATION**
8 **OF NOTICE.—**The standard setting
9 **organization submits to the Sec-**
10 **retary a request for publication in**
11 **the Federal Register of a notice**
12 **described in subparagraph (B)(iii)**
13 **for the proposed addition or**
14 **modification.**

15 **“(ii) PROCESS FOR RECEIPT AND**
16 **CONSIDERATION OF PUBLIC COM-**
17 **MENT.—**The standard setting orga-
18 **nization provides for a process**
19 **through which, after the publica-**
20 **tion of the notice referred to**
21 **under clause (i), the organiza-**
22 **tion—**

23 **“(I) receives and responds**
24 **to public comments submitted**
25 **on a timely basis on the pro-**

1 **posed addition or modifica-**
2 **tion before submitting such**
3 **proposed addition or modi-**
4 **fication to the National Com-**
5 **mittee on Vital and Health**
6 **Statistics under clause (iii);**
7 **and**

8 **“(II) makes publicly avail-**
9 **able a written explanation for**
10 **its response in the proposed**
11 **addition or modification to**
12 **comments submitted on a**
13 **timely basis.**

14 **“(iii) SUBMITTAL OF FINAL PRO-**
15 **POSED ADDITION OR MODIFICATION**
16 **TO NCVHS.—After completion of**
17 **the process under clause (ii), the**
18 **standard setting organization**
19 **submits the proposed addition or**
20 **modification to the National Com-**
21 **mittee on Vital and Health Statis-**
22 **tics for review and consideration**
23 **under subparagraph (E). Such**
24 **submission shall include informa-**
25 **tion on the organization’s compli-**

1 **ance with the notice and com-**
2 **ment requirements (and re-**
3 **sponses to those comments) under**
4 **clause (ii).**

5 **“(E) HEARING AND RECOMMENDA-**
6 **TIONS BY NATIONAL COMMITTEE ON**
7 **VITAL AND HEALTH STATISTICS.—Under**
8 **the upgrade program, upon receipt of**
9 **a proposal submitted by a standard**
10 **setting organization under subpara-**
11 **graph (D)(iii) for the adoption of an**
12 **addition or modification to a stand-**
13 **ard, the National Committee on Vital**
14 **and Health Statistics shall provide**
15 **notice to the public and a reasonable**
16 **opportunity for public testimony at a**
17 **hearing on such addition or modifica-**
18 **tion. The Secretary may participate**
19 **in such hearing in such capacity (in-**
20 **cluding presiding ex officio) as the**
21 **Secretary shall determine appro-**
22 **priate. Not later than 120 days after**
23 **the date of receipt of the proposal,**
24 **the Committee shall submit to the**
25 **Secretary its recommendation to**

1 **adopt (or not adopt) the proposed ad-**
2 **dition or modification.**

3 **“(F) DETERMINATION BY SECRETARY**
4 **TO ACCEPT OR REJECT NATIONAL COM-**
5 **MITTEE ON VITAL AND HEALTH STATIS-**
6 **TICS RECOMMENDATION.—**

7 **“(i) TIMELY DETERMINATION.—**
8 **Under the upgrade program, if**
9 **the National Committee on Vital**
10 **and Health Statistics submits to**
11 **the Secretary a recommendation**
12 **under subparagraph (E) to adopt**
13 **a proposed addition or modifica-**
14 **tion, not later than 90 days after**
15 **the date of receipt of such rec-**
16 **ommendation the Secretary shall**
17 **make a determination to accept**
18 **or reject the recommendation and**
19 **shall publish notice of such deter-**
20 **mination in the Federal Register**
21 **not later than 30 days after the**
22 **date of the determination.**

23 **“(ii) CONTENTS OF NOTICE.—If**
24 **the determination is to reject the**
25 **recommendation, such notice**

1 shall include the reasons for the
2 rejection. If the determination is
3 to accept the recommendation, as
4 part of such notice the Secretary
5 shall promulgate the modified
6 standard (including the accepted
7 proposed addition or modification
8 accepted) as a final rule under
9 this subsection without any fur-
10 ther notice or public comment pe-
11 riod.

12 “(iii) LIMITATION ON CONSIDER-
13 ATION.—The Secretary shall not
14 consider a proposal under this
15 subparagraph unless the Sec-
16 retary determines that the re-
17 quirements of subparagraph (D)
18 (including publication of notice
19 and opportunity for public com-
20 ment) have been met with respect
21 to the proposal.

22 “(G) TREATMENT AS SATISFYING RE-
23 QUIREMENTS FOR NOTICE-AND-COM-
24 MENT.—Any requirements under sec-
25 tion 553 of title 5, United States Code,

1 relating to notice and an opportunity
2 for public comment with respect to a
3 final rule promulgated under sub-
4 paragraph (F) shall be treated as hav-
5 ing been met by meeting the require-
6 ments of the notice and opportunity
7 for public comment provided under
8 provisions of subparagraphs (B)(iii),
9 (D), and (E).

10 “(H) NO JUDICIAL REVIEW.—A final
11 rule promulgated under subpara-
12 graph (F) shall not be subject to judi-
13 cial review.”.

14 **SEC. 7. REPORT ON THE AMERICAN HEALTH INFORMATION**
15 **COMMUNITY.**

16 Not later than one year after the date of
17 the enactment of this Act, the Secretary of
18 Health and Human Services shall submit to
19 Congress a report on the work conducted by
20 the American Health Information Community
21 (in this section referred to as “AHIC”), as es-
22 tablished by the Secretary. Such report shall
23 include the following:

24 (1) A description of the accomplish-
25 ments of AHIC, with respect to the pro-

1 **motion of the development of a nation-**
2 **wide health information network and the**
3 **increased adoption of health information**
4 **technology.**

5 **(2) Information identifying the prac-**
6 **tices that are used to protect health in-**
7 **formation and to guarantee confiden-**
8 **tiality and security of such information.**

9 **(3) Information on the progress in—**

10 **(A) establishing uniform industry-**
11 **wide health information technology**
12 **standards;**

13 **(B) achieving an internet-based**
14 **nationwide health information net-**
15 **work;**

16 **(C) achieving interoperable elec-**
17 **tronic health record adoption across**
18 **health care providers; and**

19 **(D) making available techno-**
20 **logical and other innovations to en-**
21 **sure the security and confidentiality**
22 **of health information in the pro-**
23 **motion of health information tech-**
24 **nology.**

1 **(4) Recommendations for the transi-**
2 **tion of the AHIC to a permanent entity,**
3 **including—**

4 **(A) a schedule for such transition;**

5 **(B) options for structuring the en-**
6 **tity as either a public-private or pri-**
7 **ivate sector entity;**

8 **(C) the collaborative role of the**
9 **Federal Government in the entity;**
10 **and**

11 **(D) the ongoing responsibilities of**
12 **the entity, such as providing the lead-**
13 **ership and planning in establishing**
14 **standards, certifying health informa-**
15 **tion technology, and providing long-**
16 **term governance for health care**
17 **transformation through technology.**

18 **SEC. 8. STRATEGIC PLAN FOR COORDINATING IMPLEMEN-**
19 **TATION OF HEALTH INFORMATION TECH-**
20 **NOLOGY.**

21 **(a) IN GENERAL.—Not later than 180 days**
22 **after the date of the enactment of this Act, the**
23 **Secretary of Health and Human Services, in**
24 **consultation with public and private entities**
25 **involved in the area of health information**

1 **technology, shall develop a strategic plan re-**
2 **lated to the need for coordination in such**
3 **area.**

4 **(b) COORDINATION OF SPECIFIC IMPLEMEN-**
5 **TATION PROCESSES.—The strategic plan under**
6 **subsection (a) shall address the need for co-**
7 **ordination in the implementation of the fol-**
8 **lowing:**

9 **(1) HEALTH INFORMATION TECHNOLOGY**
10 **STANDARDS.—Health information tech-**
11 **nology standards approved under section**
12 **271(c)(3)(B)(i) of the Public Health Serv-**
13 **ice Act, as added by section 2.**

14 **(2) HIPAA TRANSACTION STANDARDS.—**
15 **Transaction standards under section**
16 **1173(a) of the Social Security Act (42**
17 **U.S.C. 1320d-2(d)).**

18 **(3) UPDATED ICD CODES.—The Inter-**
19 **national Statistical Classification of Dis-**
20 **eases and Related Health Problems, 10th**
21 **revision, Clinical Modification (ICD-10-**
22 **CM) and the International Statistical**
23 **Classification of Diseases and Related**
24 **Health Problems, 10th revision, Proce-**

1 **diagnosis Coding System (ICD-10-PCS) de-**
2 **scribed in section 5.**

3 **(c) COORDINATION AMONG SPECIFIC FED-**
4 **ERAL ENTITIES.—The strategic plan under sub-**
5 **section (a) shall address any methods to co-**
6 **ordinate, with respect to the electronic ex-**
7 **change of health information, actions taken**
8 **by the following entities:**

9 **(1) The Office of the National Coordi-**
10 **nator for Health Information Technology.**

11 **(2) The American Health Information**
12 **Community.**

13 **(3) The Office of Electronic Standards**
14 **and Security of the Centers for Medicare**
15 **and Medicaid Services.**

16 **(4) The National Committee on Vital**
17 **Health Statistics.**

18 **(5) Any other entity involved in the**
19 **electronic exchange of health informa-**
20 **tion that the Secretary determines appro-**
21 **priate.**

22 **SEC. 9. PROMOTION OF TELEHEALTH SERVICES.**

23 **(a) FACILITATING THE PROVISION OF TELE-**
24 **HEALTH SERVICES ACROSS STATE LINES.—**

1 **(1) IN GENERAL.**—The Secretary of
2 **Health and Human Services shall, in co-**
3 **ordination with representatives of States,**
4 **physicians, health care practitioners, and**
5 **patient advocates, encourage and facili-**
6 **tate the adoption of State reciprocity**
7 **agreements for practitioner licensure in**
8 **order to expedite the provision across**
9 **State lines of telehealth services.**

10 **(2) REPORT.**—Not later than 18 months
11 **after the date of the enactment of this**
12 **Act, the Secretary shall submit to Con-**
13 **gress a report on the actions taken to**
14 **carry out paragraph (1).**

15 **(3) STATE DEFINED.**—In this sub-
16 **section, the term “State” has the meaning**
17 **given that term for purposes of title XVIII**
18 **of the Social Security Act.**

19 **(b) USE OF STORE AND FORWARD TECH-**
20 **NOLOGY.**—

21 **(1) STUDY.**—The Secretary of Health
22 **and Human Services, acting through the**
23 **Director of the Office for the Advance-**
24 **ment of Telehealth, shall conduct a study**
25 **on the use of store and forward tech-**

1 nologies (that provide for the asyn-
2 chronous transmission of health care in-
3 formation in single or multimedia for-
4 mats) in the provision of telehealth serv-
5 ices for which payment may be made
6 under the Medicare program. Such study
7 shall include an assessment of the feasi-
8 bility, advisability, and the costs of ex-
9 panding the use of such technologies for
10 use in the diagnosis and treatment of cer-
11 tain conditions.

12 (2) **REPORT.**—Not later than 18 months
13 after the date of the enactment of this
14 Act, the Secretary shall submit to Con-
15 gress a report on the study conducted
16 under paragraph (1) and shall include in
17 such report such recommendations for
18 legislation or administration action as
19 the Secretary determines appropriate.

20 **(c) EXPANSION OF TELEHEALTH SERVICES.**—

21 (1) **STUDY.**—The Secretary of Health
22 and Human Services, in coordination
23 with the Office for the Advancement of
24 Telehealth, the Agency for Healthcare Re-
25 search and Quality, and the Centers for

1 Medicare and Medicaid Services, shall
2 conduct a study to determine the feasi-
3 bility, advisability, and the costs of—

4 (A) including coverage and pay-
5 ment for home health-related tele-
6 health services as part of home
7 health services under title XVIII of
8 the Social Security Act; and

9 (B) expanding the list of sites de-
10 scribed in paragraph (4)(C)(ii) of sec-
11 tion 1834(m) of the Social Security
12 Act (42 U.S.C. 1395m(m)) to include
13 county mental health clinics or other
14 publicly funded mental health facili-
15 ties for the purpose of payment under
16 such section for the provision of tele-
17 health services at such clinics or fa-
18 cilities.

19 (2) SPECIFICS OF STUDY.—Such study
20 shall demonstrate whether the changes
21 described in subparagraphs (A) and (B) of
22 paragraph (1) will result in the following:

23 (A) Enhanced health outcomes for
24 individuals with one or more chronic
25 conditions.

1 **(B) Health outcomes for individ-**
2 **uals furnished telehealth services or**
3 **home health-related telehealth serv-**
4 **ices that are at least comparable to**
5 **the health outcomes for individuals**
6 **furnished similar items and services**
7 **by a health care provider at the same**
8 **location of the individual or at the**
9 **home of the individual, respectively.**

10 **(C) Facilitation of communication**
11 **of more accurate clinical information**
12 **between health care providers.**

13 **(D) Closer monitoring of individ-**
14 **uals by health care providers.**

15 **(E) Overall reduction in expendi-**
16 **tures for health care items and serv-**
17 **ices.**

18 **(F) Improved access to health**
19 **care.**

20 **(3) HOME HEALTH-RELATED TELEHEALTH**
21 **SERVICES DEFINED.—For purposes of this**
22 **subsection, the term “home health-re-**
23 **lated telehealth services” means tech-**
24 **nology-based professional consultations,**
25 **patient monitoring, patient training serv-**

1 **ices, clinical observation, patient assess-**
2 **ment, and any other health services that**
3 **utilize telecommunications technologies.**
4 **Such term does not include a tele-**
5 **communication that consists solely of a**
6 **telephone audio conversation, facsimile,**
7 **electronic text mail, or consultation be-**
8 **tween two health care providers.**

9 **(4) REPORT.—Not later than 18 months**
10 **after the date of the enactment of this**
11 **Act, the Secretary shall submit to Con-**
12 **gress a report on the study conducted**
13 **under subparagraph (1) and shall include**
14 **in such report such recommendations for**
15 **legislation or administration action as**
16 **the Secretary determines appropriate.**

Amend the title so as to read: “A bill to promote a better health information system.”.

Union Calendar No. 347

109TH CONGRESS
2^D SESSION

H. R. 4157

[Report No. 109-601, Parts I and II]

A BILL

To amend the Social Security Act to encourage the dissemination, security, confidentiality, and usefulness of health information technology.

JULY 26, 2006

Reported from the Committee on Energy and Commerce
with amendments

JULY 26, 2006

Reported from the Committee on Ways and Means with
an amendment; committed to the Committee of the
Whole House on the State of the Union and ordered
to be printed