111TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 111–

ENERGY AND COMMERCE RECOVERY AND REINVESTMENT ACT

JANUARY , 2009.—Ordered to be printed

Mr. WAXMAN, from the Committee on Energy and Commmerce, submitted the following

R E P O R T

together with

_____ VIEWS

[To accompany H.R. 629]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 629) to provide energy and commerce provisions of the American Recovery and Reinvestment Act of 2009, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

[Showing Text of H.R. 629 as Ordered to be Reported by E & C on January 22, 2009]

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the ''Energy and Commerce
3 Recovery and Reinvestment Act''.

4 **SEC. 2. TABLE OF CONTENTS.**

5 The table of contents of this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—BROADBAND COMMUNICATIONS

Sec. 1001. Inventory of Broadband Service Capability and Availability.
Sec. 1002. Wireless and Broadband Deployment Grant Programs.
Sec. 1003. National broadband plan.

TITLE II—ENERGY

Sec. 2001. Technical corrections to the Energy Independence and Security Act of 2007.
Sec. 2002. Amendments to title XIII of the Energy Independence and Security Act of 2007.
Sec. 2003. Renewable energy and electric power transmission loan guarantee program.
Sec. 2004. Weatherization Assistance Program amendments.
Sec. 2005. Renewable electricity transmission study.
Sec. 2006. Additional State energy grants.
Sec. 2007. Inapplicability of limitation.

TITLE III—HEALTH INSURANCE ASSISTANCE FOR THE UNEMPLOYED

Sec. 3001. Short title and table of contents of title.
Sec. 3002. Premium assistance for COBRA benefits and extension of COBRA benefits for older or long-term employees.
Sec. 3003. Temporary optional Medicaid coverage for the unemployed.

TITLE IV—HEALTH INFORMATION TECHNOLOGY

Sec. 4001. Short title; table of contents of title.

Subtitle A—Promotion of Health Information Technology

PART 1—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY

Sec. 4101. ONCHIT; standards development and adoption.
Sec. 4102. Technical amendment.
Sec. 4103. American technology required.

PART 2—APPLICATION AND USE OF ADOPTED HEALTH INFORMATION TECHNOLOGY STANDARDS; REPORTS

Sec. 4111. Coordination of Federal activities with adopted standards and implementation specifications.
Sec. 4112. Application to private entities.
Sec. 4113. Study and reports.

Subtitle B—Testing of Health Information Technology

Sec. 4201. National Institute for Standards and Technology testing.
Sec. 4202. Research and development programs.

Subtitle C—Incentives for the Use of Health Information Technology

PART I—GRANTS AND LOANS FUNDING

Sec. 4301. Grant, loan, and demonstration programs.

PART II—MEDICARE PROGRAM

Sec. 4311. Incentives for eligible professionals.
Sec. 4312. Incentives for hospitals.
Sec. 4313. Treatment of payments and savings; implementation funding.
Sec. 4314. Study on application of EHR payment incentives for providers not receiving other incentive payments.

PART III—MEDICAID FUNDING

Sec. 4321. Medicaid provider HIT adoption and operation payments; implementation funding.

Subtitle D—Privacy

Sec. 4400. Definitions.

PART I—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS

Sec. 4401. Application of security provisions and penalties to business associates of covered entities; annual guidance on security provisions.
Sec. 4402. Notification in the case of breach.
Sec. 4403. Education on Health Information Privacy.
Sec. 4404. Application of privacy provisions and penalties to business associates of covered entities.
Sec. 4405. Restrictions on certain disclosures and sales of health information; accounting of certain protected health information disclosures; access to certain information in electronic format.
Sec. 4406. Conditions on certain contacts as part of health care operations.
Sec. 4407. Temporary breach notification requirement for vendors of personal health records and other non-HIPAA covered entities.
Sec. 4408. Business associate contracts required for certain entities.
Sec. 4409. Clarification of application of wrongful disclosures criminal penalties.
Sec. 4410. Improved enforcement.
Sec. 4411. Audits.

Sec. 4412. Securing individually identifiable health information.
Sec. 4413. Special rule for information to reduce medication errors and improve patient safety.

PART II—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES; EFFECTIVE DATE; REPORTS

Sec. 4421. Relationship to other laws.
Sec. 4422. Regulatory references.
Sec. 4423. Effective date.
Sec. 4424. Studies, reports, guidance.

TITLE V—MEDICAID PROVISIONS

Sec. 5000. Table of contents of title.
Sec. 5001. Temporary increase of Medicaid FMAP.
Sec. 5002. Moratoria on certain regulations.
Sec. 5003. Transitional Medicaid assistance (TMA).
Sec. 5004. State eligibility option for family planning services.
Sec. 5005. Protections for Indians under Medicaid and CHIP.
Sec. 5006. Consultation on Medicaid and CHIP.
Sec. 5007. Temporary increase in DSH allotments during recession.

TITLE I—BROADBAND COMMUNICATIONS

SEC. 1001. INVENTORY OF BROADBAND SERVICE CAPABILITY AND AVAILABILITY.

(a) ESTABLISHMENT.—To provide a comprehensive nationwide inventory of existing broadband service capability and availability, the National Telecommunications and Information Administration (''NTIA'') shall develop and maintain a broadband inventory map of the United States that identifies and depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State.

(b) PUBLIC AVAILABILITY AND INTERACTIVITY.—Not later than 2 years after the date of enactment of this

Act, the NTIA shall make the broadband inventory map developed and maintained pursuant to this section accessible by the public on a World Wide Web site of the NTIA in a form that is interactive and searchable.

SEC. 1002. WIRELESS AND BROADBAND DEPLOYMENT GRANT PROGRAMS.

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—The National Telecommunications and Information Administration (''NTIA'') is authorized to carry out a program to award grants to eligible entities for the non-recurring costs associated with the deployment of broadband infrastructure in rural, suburban, and urban areas, in accordance with the requirements of this section.

(2) PROGRAM WEBSITE.—The NTIA shall develop and maintain a website to make publicly available information about the program described in paragraph (1), including—

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

(B) a list of eligible entities that have applied for a grant under this section, and the area or areas the entity proposes to serve; and

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

(b) STATE PRIORITIES.—

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

(A) for the purposes of determining the need for Wireless Deployment Grants under subsection (c), the State considers to have the greatest priority for—

(i) wireless voice service in unserved areas; and

(ii) advanced wireless broadband service in underserved areas; and

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

(i) basic broadband service in unserved areas; and

(ii) advanced broadband service in underserved areas.

(2) LIMITATION.—The unserved and underserved areas identified by a State in the report re-

quired by this subsection shall not represent, in the aggregate, more than 20 percent of the population of such State.

(c) WIRELESS DEPLOYMENT GRANTS.—

(1) AUTHORIZED ACTIVITY.—The NTIA shall award Wireless Deployment Grants in accordance with this subsection from amounts authorized for Wireless Deployment Grants by this subtitle to eligible entities to deploy necessary infrastructure for the provision of wireless voice service or advanced wireless broadband service to end users in designated areas.

(2) GRANT DISTRIBUTION.—The NTIA shall seek to distribute grants, to the extent possible, so that 25 percent of the grants awarded under this subsection shall be awarded to eligible entities for providing wireless voice service to unserved areas and 75 percent of grants awarded under this subsection shall be awarded to eligible entities for providing advanced wireless broadband service to underserved areas.

(d) BROADBAND DEPLOYMENT GRANTS.—

(1) AUTHORIZED ACTIVITY.—The NTIA shall award Broadband Deployment Grants in accordance with this subsection from amounts authorized for

Broadband Deployment Grants by this subtitle to eligible entities to deploy necessary infrastructure for the provision of basic broadband service or advanced broadband service to end users in designated areas.

(2) GRANT DISTRIBUTION.—The NTIA shall seek to distribute grants, to the extent possible, so that 25 percent of the grants awarded under this subsection shall be awarded to eligible entities for providing basic broadband service to unserved areas and 75 percent of grants awarded under this subsection shall be awarded to eligible entities for providing advanced broadband service to underserved areas.

(e) GRANT REQUIREMENTS.—The NTIA shall—

(1) adopt rules to protect against unjust enrichment; and

(2) ensure that grant recipients—

(A) meet buildout requirements;

(B) maximize use of the supported infrastructure by the public;

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

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

(E) adhere to the principles contained in the Federal Communications Commission's broadband policy statement (FCC 05-151, adopted August 5, 2005).

(f) APPLICATIONS.—

(1) SUBMISSION.—To be considered for a grant awarded under subsection (c) or (d), an eligible entity shall submit to the NTIA an application at such time, in such manner, and containing such information and assurances as the NTIA may require. Such an application shall include—

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

(B) a proposed build-out schedule to residential households and small businesses in the area;

(C) for applicants for Wireless Deployment Grants under subsection (c), a build-out schedule for geographic coverage of such areas; and

(D) any other requirements the NTIA deems necessary.

(2) SELECTION.—

(A) NOTIFICATION.—The NTIA shall notify each eligible entity that has submitted a

complete application whether the entity has been approved or denied for a grant under this section in a timely fashion.

(B) GRANT DISTRIBUTION CONSIDERATIONS.—In awarding grants under this section, the NTIA shall, to the extent practical—

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

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

(I) identified by a State in a report submitted under subsection (b); or

(II) in which the NTIA determines there will be a significant amount of public safety or emergency response use of the infrastructure;

(iii) consider whether an application from an eligible entity to deploy infrastructure in an area—

(I) will, if approved, increase the affordability of, or subscribership to,

service to the greatest population of underserved users in the area;

(II) will, if approved, enhance service for health care delivery, education, or children to the greatest population of underserved users in the area;

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

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

(V) will, if approved, result in unjust enrichment because the eligible entity has applied for, or intends to apply for, support for the non-recurring costs through another Federal program for service in the area; and

(VI) will, if approved, significantly improve interoperable broadband communications systems

available for use by public safety and emergency response; and

(iv) consider whether the eligible entity is a socially and economically disadvantaged small business concern, as defined under section 8(a) of the Small Business Act (15 U.S.C. 637).

(g) COORDINATION AND CONSULTATION.—The NTIA shall coordinate with the Federal Communications Commission and shall consult with other appropriate Federal agencies in implementing this section.

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

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

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

(1) the term ''advanced broadband service'' means a service delivering data to the end user transmitted at a speed of at least 45 megabits per

second downstream and at least 15 megabits per second upstream;

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

(3) the term ''basic broadband service'' means a service delivering data to the end user transmitted at a speed of at least 5 megabits per second downstream and at least 1 megabit per second upstream;

(4) the term ''eligible entity'' means—

(A) a provider of wireless voice service, advanced wireless broadband service, basic broadband service, or advanced broadband service, including a satellite carrier that provides any such service;

(B) a State or unit of local government, or agency or instrumentality thereof, that is or intends to be a provider of any such service; and

(C) any other entity, including construction companies, tower companies, backhaul companies, or other service providers, that the NTIA authorizes by rule to participate in the

programs under this section, if such other entity is required to provide access to the supported infrastructure on a neutral, reasonable basis to maximize use;

(5) the term ''interoperable broadband communications systems'' means communications systems which enable public safety agencies to share information among local, State, Federal, and tribal public safety agencies in the same area using voice or data signals via advanced wireless broadband service;

(6) the term ''open access'' shall be defined by the Federal Communications Commission not later than 45 days after the date of enactment of this section;

(7) the term ''State'' includes the District of Columbia and the territories and possessions;

(8) the term ''underserved area'' shall be defined by the Federal Communications Commission not later than 45 days after the date of enactment of this section;

(9) the term ''unserved area'' shall be defined by the Federal Communications Commission not later than 45 days after the date of enactment of this section;

(10) the term ''wireless open access'' shall be defined by the Federal Communications Commission not later than 45 days after the date of enactment of this section; and

(11) the term ''wireless voice service'' means the provision of two-way, real-time, voice communications using a mobile service.

(k) REVIEW OF DEFINITIONS.—Not later than 3 months after the date the NTIA makes a broadband inventory map of the United States accessible to the public pursuant to section 1001(b), the Federal Communications Commission shall review the definitions of ''underserved area'' and ''unserved area'', as defined by the Commission within 45 days after the date of enactment of this Act (as required by paragraphs (8) and (9) of subsection (j)), and shall revise such definitions based on the data used by the NTIA to develop and maintain such map.

SEC. 1003. NATIONAL BROADBAND PLAN.

(a) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this section, the Federal Communications Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, a report containing a national broadband plan.

(b) CONTENTS OF PLAN.—The national broadband plan required by this section shall seek to ensure that all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal. The plan shall also include—

(1) an analysis of the most effective and efficient mechanisms for ensuring broadband access by all people of the United States;

(2) a detailed strategy for achieving affordability of such service and maximum utilization of broadband infrastructure and service by the public; and

(3) a plan for use of broadband infrastructure and services in advancing consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, worker training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes.

TITLE II—ENERGY

SEC. 2001. TECHNICAL CORRECTIONS TO THE ENERGY INDEPENDENCE AND SECURITY ACT OF 2007.

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

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

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

''(1) 34 percent to eligible units of local government–alternative 1, in accordance with subsection (b);

''(2) 34 percent to eligible units of local government–alternative 2, in accordance with subsection (b);''.

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

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

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

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

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

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

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

"(C) FEDERAL SHARE OF COST OF TECHNOLOGY INVESTMENTS.—The Secretary shall provide to an electric utility described in subparagraph (B) or to other parties financial assistance for use in paying an amount equal to not more than 50 percent of the cost of qualifying advanced grid technology investments made by the electric utility or other party to carry out a demonstration project.".

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

"(E) AVAILABILITY OF DATA.—The Secretary shall establish and maintain a smart grid information clearinghouse in a timely manner which will make data from smart grid dem-

onstration projects and other sources available to the public. As a condition of receiving financial assistance under this subsection, a utility or other participant in a smart grid demonstration project shall provide such information as the Secretary may require to become available through the smart grid information clearinghouse in the form and within the timeframes as directed by the Secretary. The Secretary shall assure that business proprietary information and individual customer information is not included in the information made available through the clearinghouse.

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

(4) By amending paragraph (2) of section 1304(c) to read as follows:

''(2) to carry out subsection (b), such sums as may be necessary.''.

(5) By amending subsection (a) of section 1306 by striking ''reimbursement of one-fifth (20 per-

1 cent)'' and inserting ''grants of up to one-half (50
2 percent)''.
3 (6) By striking the last sentence of subsection
4 (b)(9) of section 1306.
5 (7) By striking ''are eligible for'' in subsection
6 (c)(1) of section 1306 and inserting ''utilize''.
7 (8) By amending subsection (e) of section 1306
8 to read as follows:
9 ''(e) PROCEDURES AND RULES.—The Secretary
10 shall—
11 ''(1) establish within 60 days after the enact-
12 ment of the Energy and Commerce Recovery and
13 Reinvestment Act procedures by which applicants
14 can obtain grants of not more than one-half of their
15 documented costs;
16 ''(2) require as a condition of receiving a grant
17 under this section that grant recipients utilize open
18 Internet-based protocols and standards if available;
19 ''(3) establish procedures to ensure that there is
20 no duplication or multiple payment or recovery for
21 the same investment or costs, that the grant goes to
22 the party making the actual expenditures for quali-
23 fying smart grid investments, and that the grants
24 made have significant effect in encouraging and fa-
25 cilitating the development of a smart grid;

1 ''(4) maintain public records of grants made,
2 recipients, and qualifying smart grid investments
3 which have received grants;
4 ''(5) establish procedures to provide advance
5 payment of moneys up to the full amount of the
6 grant award; and
7 ''(6) have and exercise the discretion to deny
8 grants for investments that do not qualify in the
9 reasonable judgment of the Secretary.''.

10 **SEC. 2003. RENEWABLE ENERGY AND ELECTRIC POWER**
11 **TRANSMISSION LOAN GUARANTEE PROGRAM.**

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

15 **''SEC. 1705. TEMPORARY PROGRAM FOR RAPID DEPLOY-**
16 **MENT OF RENEWABLE ENERGY AND ELEC-**
17 **TRIC POWER TRANSMISSION PROJECTS.**

18 ''(a) IN GENERAL.—Notwithstanding section 1703,
19 the Secretary may make guarantees under this section
20 only for commercial technology projects under subsection
21 (b) that will commence construction not later than Sep-
22 tember 30, 2011.
23 ''(b) CATEGORIES.—Projects from only the following
24 categories shall be eligible for support under this section:

1 ''(1) Renewable energy systems, including incre-
2 mental hydropower, that generate electricity.
3 ''(2) Electric power transmission systems, in-
4 cluding upgrading and reconductoring projects.
5 ''(3) Leading edge biofuel projects that will use
6 technologies performing at the pilot or demonstra-
7 tion scale that the Secretary determines are likely to
8 become commercial technologies and will produce
9 transportation fuels that substantially reduce life-
10 cycle greenhouse gas emissions compared to other
11 transportation fuels.
12 ''(c) FACTORS RELATING TO ELECTRIC POWER
13 TRANSMISSION SYSTEMS.—In determining to make guar-
14 antees to projects described in subsection (b)(2), the Sec-
15 retary shall consider the following factors:
16 ''(1) The viability of the project without guar-
17 antees.
18 ''(2) The availability of other Federal and State
19 incentives.
20 ''(3) The importance of the project in meeting
21 reliability needs.
22 ''(4) The effect of the project in meeting a
23 State or region's environment (including climate
24 change) and energy goals.

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

12 "(e) LIMITATION.—Funding under this section for
13 projects described in subsection (b)(3) shall not exceed
14 $500,000,000.

15 "(f) SUNSET.—The authority to enter into guaran-
16 tees under this section shall expire on September 30,
17 2011.".

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

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

SEC. 2004. WEATHERIZATION ASSISTANCE PROGRAM AMENDMENTS.

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

(b) ASSISTANCE LEVEL PER DWELLING UNIT.—Section 415(c)(1) of the Energy Conservation and Production Act (42 U.S.C. 6865(c)(1)) is amended by striking ''$2,500'' and inserting ''$5,000''.

(c) EFFECTIVE USE OF FUNDS.—In providing funds made available by this Act for the Weatherization Assistance Program, the Secretary may encourage States to give priority to using such funds for the most cost-effective efficiency activities, which may include insulation of attics, if, in the Secretary's view, such use of funds would increase the effectiveness of the program.

SEC. 2005. RENEWABLE ELECTRICITY TRANSMISSION STUDY.

In completing the 2009 National Electric Transmission Congestion Study, the Secretary of Energy shall include—

(1) an analysis of the significant potential sources of renewable energy that are constrained in accessing appropriate market areas by lack of adequate transmission capacity;

(2) an analysis of the reasons for failure to develop the adequate transmission capacity;

(3) recommendations for achieving adequate transmission capacity;

(4) an analysis of the extent to which legal challenges filed at the State and Federal level are delaying the construction of transmission necessary to access renewable energy; and

(5) an explanation of assumptions and projections made in the Study, including—

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

(B) assumptions and projections regarding the location and type of projected new generation capacity; and

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

SEC. 2006. ADDITIONAL STATE ENERGY GRANTS.

(a) IN GENERAL.—Amounts appropriated for the State Energy Program under the American Recovery and Reinvestment Act of 2009 shall be available to the Secretary of Energy for making additional grants under part D of title III of the Energy Policy and Conservation Act

1 (42 U.S.C. 6321 et seq.). The Secretary shall make grants
2 under this section in excess of the base allocation estab-
3 lished for a State under regulations issued pursuant to
4 the authorization provided in section 365(f) of such Act
5 only if the governor of the recipient State notifies the Sec-
6 retary of Energy that the governor will seek, to the extent
7 of his or her authority, to ensure that each of the following
8 will occur:

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

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

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

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

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

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

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

(C) A plan for the jurisdiction achieving compliance with the building energy code or codes described in subparagraphs (A) and (B) within 8 years of the date of enactment of this Act in at least 90 percent of new and renovated residential and commercial building space. Such plan shall include active training and enforcement programs and measurement of the rate of compliance each year.

(3) The State will to the extent practicable prioritize the grants toward funding energy efficiency and renewable energy programs, including—

(A) the expansion of existing energy efficiency programs approved by the State or the appropriate regulatory authority, including energy efficiency retrofits of buildings and industrial facilities, that are funded—

(i) by the State; or

(ii) through rates under the oversight of the applicable regulatory authority, to the extent applicable;

(B) the expansion of existing programs, approved by the State or the appropriate regulatory authority, to support renewable energy projects and deployment activities, including programs operated by entities which have the authority and capability to manage and distribute grants, loans, performance incentives, and other forms of financial assistance; and

(C) cooperation and joint activities between States to advance more efficient and effective use of this funding to support the priorities described in this paragraph.

(b) STATE MATCH.—The State cost share requirement under the item relating to "DEPARTMENT OF ENERGY; energy conservation" in title II of the Department of the Interior and Related Agencies Appropriations

Act, 1985 (42 U.S.C. 6323a; 98 Stat. 1861) shall not apply to assistance provided under this section.

(c) EQUIPMENT AND MATERIALS FOR ENERGY EFFICIENCY MEASURES.—No limitation on the percentage of funding that may be used for the purchase and installation of equipment and materials for energy efficiency measures under grants provided under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.) shall apply to assistance provided under this section.

SEC. 2007. INAPPLICABILITY OF LIMITATION.

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

TITLE III—HEALTH INSURANCE ASSISTANCE FOR THE UNEMPLOYED

SEC. 3001. SHORT TITLE AND TABLE OF CONTENTS OF TITLE.

(a) SHORT TITLE OF TITLE.—This title may be cited as the ''Health Insurance Assistance for the Unemployed Act of 2009''.

1 (b) TABLE OF CONTENTS OF TITLE.—The table of
2 contents of this title is as follows:

Sec. 3001. Short title and table of contents of title.
Sec. 3002. Premium assistance for COBRA benefits and extension of COBRA benefits for older or long-term employees.
Sec. 3003. Temporary optional Medicaid coverage for the unemployed.

3 **SEC. 3002. PREMIUM ASSISTANCE FOR COBRA BENEFITS**
4 **AND EXTENSION OF COBRA BENEFITS FOR**
5 **OLDER OR LONG-TERM EMPLOYEES.**

6 (a) PREMIUM ASSISTANCE FOR COBRA CONTINU-
7 ATION COVERAGE FOR INDIVIDUALS AND THEIR FAMI-
8 LIES.—

9 (1) PROVISION OF PREMIUM ASSISTANCE.—

10 (A) REDUCTION OF PREMIUMS PAY-
11 ABLE.—In the case of any premium for a pe-
12 riod of coverage beginning on or after the date
13 of the enactment of this Act for COBRA con-
14 tinuation coverage with respect to any assist-
15 ance eligible individual, such individual shall be
16 treated for purposes of any COBRA continu-
17 ation provision as having paid the amount of
18 such premium if such individual pays 35 per-
19 cent of the amount of such premium (as deter-
20 mined without regard to this subsection).

21 (B) PREMIUM REIMBURSEMENT.—For pro-
22 visions providing the balance of such premium,

see section 6431 of the Internal Revenue Code of 1986, as added by paragraph (12).

(2) LIMITATION OF PERIOD OF PREMIUM ASSISTANCE.—

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

(i) the first date that such individual is eligible for coverage under any other group health plan (other than coverage consisting of only dental, vision, counseling, or referral services (or a combination thereof), coverage under a health reimbursement arrangement or a health flexible spending arrangement, or coverage of treatment that is furnished in an on-site medical facility maintained by the employer and that consists primarily of first-aid services, prevention and wellness care, or similar care (or a combination thereof)) or is eligible for benefits under title XVIII of the Social Security Act, or

(ii) the earliest of—

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

(II) the date following the expiration of the maximum period of continuation coverage required under the applicable COBRA continuation coverage provision, or

(III) the date following the expiration of the period of continuation coverage allowed under paragraph (4)(B)(ii).

(B) TIMING OF ELIGIBILITY FOR ADDITIONAL COVERAGE.—For purposes of subparagraph (A)(i), an individual shall not be treated as eligible for coverage under a group health plan before the first date on which such individual could be covered under such plan.

(C) NOTIFICATION REQUIREMENT.—An assistance eligible individual shall notify in writing the group health plan with respect to which paragraph (1)(A) applies if such paragraph ceases to apply by reason of subparagraph (A)(i). Such notice shall be provided to the

group health plan in such time and manner as may be specified by the Secretary of Labor.

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

(A) at any time during the period that begins with September 1, 2008, and ends with December 31, 2009, such qualified beneficiary is eligible for COBRA continuation coverage,

(B) such qualified beneficiary elects such coverage,

(C) the qualifying event with respect to the COBRA continuation coverage consists of the involuntary termination of the covered employee's employment and occurred during such period, and

(D) at the time of the election such qualified beneficiary's annual income is less than $1,000,000.

(4) EXTENSION OF ELECTION PERIOD AND EFFECT ON COVERAGE.—

(A) IN GENERAL.—Notwithstanding section 605(a) of the Employee Retirement Income Security Act of 1974, section 4980B(f)(5)(A) of the Internal Revenue Code of 1986, section

2205(a) of the Public Health Service Act, and section 8905a(c)(2) of title 5, United States Code, in the case of an individual who is a qualified beneficiary described in paragraph (3)(A) as of the date of the enactment of this Act and has not made the election referred to in paragraph (3)(B) as of such date, such individual may elect the COBRA continuation coverage under the COBRA continuation coverage provisions containing such sections during the 60-day period commencing with the date on which the notification required under paragraph (7)(C) is provided to such individual.

(B) COMMENCEMENT OF COVERAGE; NO REACH-BACK.—Any COBRA continuation coverage elected by a qualified beneficiary during an extended election period under subparagraph (A)—

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

(ii) shall not extend beyond the period of COBRA continuation coverage that would have been required under the applicable COBRA continuation coverage provi-

1 sion if the coverage had been elected as re-
2 quired under such provision.
3 (C) PREEXISTING CONDITIONS.—With re-
4 spect to a qualified beneficiary who elects
5 COBRA continuation coverage pursuant to sub-
6 paragraph (A), the period—
7 (i) beginning on the date of the quali-
8 fying event, and
9 (ii) ending with the day before the
10 date of the enactment of this Act,
11 shall be disregarded for purposes of deter-
12 mining the 63-day periods referred to in section
13 701)(2) of the Employee Retirement Income
14 Security Act of 1974, section 9801(c)(2) of the
15 Internal Revenue Code of 1986, and section
16 2701(c)(2) of the Public Health Service Act.
17 (5) EXPEDITED REVIEW OF DENIALS OF PRE-
18 MIUM ASSISTANCE.—In any case in which an indi-
19 vidual requests treatment as an assistance eligible
20 individual and is denied such treatment by the group
21 health plan by reason of such individual's ineligi-
22 bility for COBRA continuation coverage, the Sec-
23 retary of Labor (or the Secretary of Health and
24 Human services in connection with COBRA continu-
25 ation coverage which is provided other than pursu-

ant to part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974), in consultation with the Secretary of the Treasury, shall provide for expedited review of such denial. An individual shall be entitled to such review upon application to such Secretary in such form and manner as shall be provided by such Secretary. Such Secretary shall make a determination regarding such individual's eligibility within 10 business days after receipt of such individual's application for review under this paragraph.

(6) DISREGARD OF SUBSIDIES FOR PURPOSES OF FEDERAL AND STATE PROGRAMS.—Notwithstanding any other provision of law, any premium reduction with respect to an assistance eligible individual under this subsection shall not be considered income or resources in determining eligibility for, or the amount of assistance or benefits provided under, any other public benefit provided under Federal law or the law of any State or political subdivision thereof.

(7) NOTICES TO INDIVIDUALS.—

(A) GENERAL NOTICE.—

(i) IN GENERAL.—In the case of notices provided under section 606(4) of the

1 Employee Retirement Income Security Act
2 of 1974 (29 U.S.C. 1166(4)), section
3 4980B(f)(6)(D) of the Internal Revenue
4 Code of 1986, section 2206(4) of the Pub-
5 lic Health Service Act (42 U.S.C. 300bb-
6 6(4)), or section 8905a(f)(2)(A) of title 5,
7 United States Code, with respect to indi-
8 viduals who, during the period described in
9 paragraph (3)(A), become entitled to elect
10 COBRA continuation coverage, such no-
11 tices shall include an additional notifica-
12 tion to the recipient of the availability of
13 premium reduction with respect to such
14 coverage under this subsection.
15 (ii) ALTERNATIVE NOTICE.—In the
16 case of COBRA continuation coverage to
17 which the notice provision under such sec-
18 tions does not apply, the Secretary of
19 Labor, in consultation with the Secretary
20 of the Treasury and the Secretary of
21 Health and Human Services, shall, in co-
22 ordination with administrators of the
23 group health plans (or other entities) that
24 provide or administer the COBRA continu-

ation coverage involved, provide rules requiring the provision of such notice.

(iii) FORM.—The requirement of the additional notification under this subparagraph may be met by amendment of existing notice forms or by inclusion of a separate document with the notice otherwise required.

(B) SPECIFIC REQUIREMENTS.—Each additional notification under subparagraph (A) shall include—

(i) the forms necessary for establishing eligibility for premium reduction under this subsection,

(ii) the name, address, and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with such premium reduction,

(iii) a description of the extended election period provided for in paragraph (4)(A),

(iv) a description of the obligation of the qualified beneficiary under paragraph (2)(C) to notify the plan providing continu-

ation coverage of eligibility for subsequent coverage under another group health plan or eligibility for benefits under title XVIII of the Social Security Act and the penalty provided for failure to so notify the plan, and

(v) a description, displayed in a prominent manner, of the qualified beneficiary's right to a reduced premium and any conditions on entitlement to the reduced premium.

(C) NOTICE RELATING TO RETROACTIVE COVERAGE.—In the case of an individual described in paragraph (3)(A) who has elected COBRA continuation coverage as of the date of enactment of this Act or an individual described in paragraph (4)(A), the administrator of the group health plan (or other entity) involved shall provide (within 60 days after the date of enactment of this Act) for the additional notification required to be provided under subparagraph (A).

(D) MODEL NOTICES.—Not later than 30 days after the date of enactment of this Act, the Secretary of the Labor, in consultation with

the Secretary of the Treasury and the Secretary of Health and Human Services, shall prescribe models for the additional notification required under this paragraph.

(8) SAFEGUARDS.—The Secretary of the Treasury shall provide such rules, procedures, regulations, and other guidance as may be necessary and appropriate to prevent fraud and abuse under this subsection.

(9) OUTREACH.—The Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall provide outreach consisting of public education and enrollment assistance relating to premium reduction provided under this subsection. Such outreach shall target employers, group health plan administrators, public assistance programs, States, insurers, and other entities as determined appropriate by such Secretaries. Such outreach shall include an initial focus on those individuals electing continuation coverage who are referred to in paragraph (7)(C). Information on such premium reduction, including enrollment, shall also be made available on website of the Departments of Labor, Treasury, and Health and Human Services.

(10) DEFINITIONS.—For purposes of this subsection—

(A) ADMINISTRATOR.—The term ''administrator'' has the meaning given such term in section 3(16) of the Employee Retirement Income Security Act of 1974.

(B) COBRA CONTINUATION COVERAGE.—The term ''COBRA continuation coverage'' means continuation coverage provided pursuant to part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (other than under section 609), title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986 (other than subsection (f)(1) of such section insofar as it relates to pediatric vaccines), or section 8905a of title 5, United States Code, or under a State program that provides continuation coverage comparable to such continuation coverage. Such term does not include coverage under a health flexible spending arrangement.

(C) COBRA CONTINUATION PROVISION.—The term ''COBRA continuation provision'' means the provisions of law described in subparagraph (B).

(D) COVERED EMPLOYEE.—The term ''covered employee'' has the meaning given such term in section 607(2) of the Employee Retirement Income Security Act of 1974.

(E) QUALIFIED BENEFICIARY.—The term ''qualified beneficiary'' has the meaning given such term in section 607(3) of the Employee Retirement Income Security Act of 1974.

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

(G) STATE.—The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(11) REPORTS.—

(A) INTERIM REPORT.—The Secretary of the Treasury shall submit an interim report to the Committee on Education and Labor, the Committee on Ways and Means, and the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and

the Committee on Finance of the Senate regarding the premium reduction provided under this subsection that includes—

(i) the number of individuals provided such assistance as of the date of the report; and

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

(B) FINAL REPORT.—As soon as practicable after the last period of COBRA continuation coverage for which premium reduction is provided under this section, the Secretary of the Treasury shall submit a final report to each Committee referred to in subparagraph (A) that includes—

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

(ii) the average dollar amount (monthly and annually) of premium reductions provided to such individuals; and

(iii) the total amount of expenditures incurred (with administrative expenditures

1 noted separately) in connection with pre-
2 mium reduction under this section.
3 (12) COBRA PREMIUM ASSISTANCE.—
4 (A) IN GENERAL.—Subchapter B of chap-
5 ter 65 of the Internal Revenue Code of 1986 is
6 amended by adding at the end the following
7 new section:

8 **"SEC. 6431. COBRA PREMIUM ASSISTANCE.**

9 "(a) IN GENERAL.—The entity to whom premiums
10 are payable under COBRA continuation coverage shall be
11 reimbursed for the amount of premiums not paid by plan
12 beneficiaries by reason of section 3002(a) of the Health
13 Insurance Assistance for the Unemployed Act of 2009.
14 Such amount shall be treated as a credit against the re-
15 quirement of such entity to make deposits of payroll taxes.
16 To the extent that such amount exceeds the amount of
17 such taxes, the Secretary shall pay to such entity the
18 amount of such excess. No payment may be made under
19 this subsection to an entity with respect to any assistance
20 eligible individual until after such entity has received the
21 reduced premium from such individual required under sec-
22 tion 3002(a)(1)(A) of such Act.
23 "(b) PAYROLL TAXES.—For purposes of this section,
24 the term 'payroll taxes' means—

1 ''(1) amounts required to be deducted and with-
2 held for the payroll period under section 3401 (relat-
3 ing to wage withholding),
4 ''(2) amounts required to be deducted for the
5 payroll period under section 3102 (relating to FICA
6 employee taxes), and
7 ''(3) amounts of the taxes imposed for the pay-
8 roll period under section 3111 (relating to FICA em-
9 ployer taxes).
10 ''(c) TREATMENT OF CREDIT.—Except as otherwise
11 provided by the Secretary, the credit described in sub-
12 section (a) shall be applied as though the employer had
13 paid to the Secretary, on the day that the qualified bene-
14 ficiary's premium payment is received, an amount equal
15 to such credit.
16 ''(d) TREATMENT OF PAYMENT.—For purposes of
17 section 1324(b)(2) of title 31, United States Code, any
18 payment under this section shall be treated in the same
19 manner as a refund of the credit under section 35.
20 ''(e) REPORTING.—
21 ''(1) IN GENERAL.—Each entity entitled to re-
22 imbursement under subsection (a) for any period
23 shall submit such reports as the Secretary may re-
24 quire, including—

"(A) an attestation of involuntary termination of employment for each covered employee on the basis of whose termination entitlement to reimbursement is claimed under subsection (a), and

"(B) a report of the amount of payroll taxes offset under subsection (a) for the reporting period and the estimated offsets of such taxes for the subsequent reporting period in connection with reimbursements under subsection (a).

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

"(f) REGULATIONS.—The Secretary may issue such regulations or other guidance as may be necessary or appropriate to carry out this section, including the requirement to report information or the establishment of other methods for verifying the correct amounts of payments and credits under this section.".

(B) SOCIAL SECURITY TRUST FUNDS HELD HARMLESS.—In determining any amount trans-

ferred or appropriated to any fund under the Social Security Act, section 6431 of the Internal Revenue Code of 1986 shall not be taken into account.

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

"Sec. 6431. COBRA premium assistance.".

(D) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to premiums to which subsection (a)(1)(A) applies.

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

(A) IN GENERAL.—Part I of subchapter B of chapter 68 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR COBRA PREMIUM ASSISTANCE.

"(a) IN GENERAL.—Any person required to notify a group health plan under section 3002(a)(2)(C)) of the Health Insurance Assistance for the Unemployed Act of 2009 who fails to make such a notification at such time

1 and in such manner as the Secretary of Labor may require
2 shall pay a penalty of 110 percent of the premium reduc-
3 tion provided under such section after termination of eligi-
4 bility under such subsection.

5 ''(b) REASONABLE CAUSE EXCEPTION.—No penalty
6 shall be imposed under subsection (a) with respect to any
7 failure if it is shown that such failure is due to reasonable
8 cause and not to willful neglect.''.

9 (B) CLERICAL AMENDMENT.—The table of
10 sections of part I of subchapter B of chapter 68
11 of such Code is amended by adding at the end
12 the following new item:

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

13 (C) EFFECTIVE DATE.—The amendments
14 made by this paragraph shall apply to failures
15 occurring after the date of the enactment of
16 this Act.

17 (14) COORDINATION WITH HCTC.—

18 (A) IN GENERAL.—Subsection (g) of sec-
19 tion 35 of the Internal Revenue Code of 1986
20 is amended by redesignating paragraph (9) as
21 paragraph (10) and inserting after paragraph
22 (8) the following new paragraph:

23 ''(9) COBRA PREMIUM ASSISTANCE.—In the
24 case of an assistance eligible individual who receives

premium reduction for COBRA continuation coverage under section 3002(a) of the Health Insurance Assistance for the Unemployed Act of 2009 for any month during the taxable year, such individual shall not be treated as an eligible individual, a certified individual, or a qualifying family member for purposes of this section or section 7527 with respect to such month.''.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to taxable years ending after the date of the enactment of this Act.

(15) EXCLUSION OF COBRA PREMIUM ASSISTANCE FROM GROSS INCOME.—

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

''SEC. 139C. COBRA PREMIUM ASSISTANCE.

''In the case of an assistance eligible individual (as defined in section 3002 of the Health Insurance Assistance for the Unemployed Act of 2009), gross income does not include any premium reduction provided under subsection (a) of such section.''.

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

"Sec. 139C. COBRA premium assistance.".

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

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

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

"(x) SPECIAL RULE FOR OLDER OR LONG-TERM EMPLOYEES GENERALLY.—In the case of a qualifying event described in section 603(2) with respect to a covered employee who (as of such qualifying event) has attained age 55 or has completed 10 or more years of service with the entity that is the employer at the time of the qualifying event, clauses (i) and (ii) shall not apply.

"(xi) YEAR OF SERVICE.— For purposes of this subparagraph, the term 'year of service' shall have the meaning provided in section 202(a)(3).".

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

"(X) SPECIAL RULE FOR OLDER OR LONG-TERM EMPLOYEES GENERALLY.—In the case of a qualifying event described in paragraph (3)(B) with respect to a covered employee who (as of such qualifying event) has attained age 55 or has completed 10 or more years of service with the entity that is the employer at the time of the qualifying event, subclauses (I) and (II) shall not apply.

"(XI) YEAR OF SERVICE.— For purposes of this clause, the term 'year of service' shall have the meaning provided in section 202(a)(3) of the Employee Retirement Income Security Act of 1974.".

(3) PHSA AMENDMENT.—Section 2202(2)(A) of the Public Health Service Act is amended by adding at the end the following new clauses:

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

"(ix) YEAR OF SERVICE.— For purposes of this subparagraph, the term 'year of service' shall have the meaning provided in section 202(a)(3) of the Employee Retirement Income Security Act of 1974.".

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

SEC. 3003. TEMPORARY OPTIONAL MEDICAID COVERAGE FOR THE UNEMPLOYED.

(a) IN GENERAL.—Section 1902 of the Social Security Act (42 U.S.C. 1396b) is amended—

(1) in subsection (a)(10)(A)(ii)—

(A) by striking ''or'' at the end of subclause (XVIII);

(B) by adding ''or'' at the end of subclause (XIX); and

(C) by adding at the end the following new subclause

''(XX) who are described in subsection (dd)(1) (relating to certain unemployed individuals and their families);''; and

(2) by adding at the end the following new subsection:

''(dd)(1) Individuals described in this paragraph are—

''(A) individuals who—

''(i) are within one or more of the categories described in paragraph (2), as elected under the State plan; and

''(ii) meet the applicable requirements of paragraph (3); and

''(B) individuals who—

1 ''(i) are the spouse, or dependent child under
2 19 years of age, of an individual described in sub-
3 paragraph (A); and
4 ''(ii) meet the requirement of paragraph (3)(B).
5 ''(2) The categories of individuals described in this
6 paragraph are each of the following:
7 ''(A) Individuals who are receiving unemploy-
8 ment compensation benefits.
9 ''(B) Individuals who were receiving, but have
10 exhausted, unemployment compensation benefits on
11 or after July 1, 2008.
12 ''(C) Individuals who are involuntarily unem-
13 ployed and were involuntarily separated from em-
14 ployment on or after September 1, 2008, and before
15 January 1, 2011, whose family gross income does
16 not exceed a percentage specified by the State (not
17 to exceed 200 percent) of the income official poverty
18 line (as defined by the Office of Management and
19 Budget, and revised annually in accordance with sec-
20 tion 673(2) of the Omnibus Budget Reconciliation
21 Act of 1981) applicable to a family of the size in-
22 volved, and who, but for subsection
23 (a)(10)(A)(ii)(XX), are not eligible for medical as-
24 sistance under this title or health assistance under
25 title XXI.

1 ''(D) Individuals who are involuntarily unem-
2 ployed and were involuntarily separated from em-
3 ployment on or after September 1, 2008, and before
4 January 1, 2011, who are members of households
5 participating in the supplemental nutrition assist-
6 ance program established under the Food and Nutri-
7 tion Act of 2008 (7 U.S.C. 2011 et seq), and who,
8 but for subsection (a)(10)(A)(ii)(XX), are not eligi-
9 ble for medical assistance under this title or health
10 assistance under title XXI.
11 A State plan may elect one or more of the categories de-
12 scribed in this paragraph but may not elect the category
13 described in subparagraph (B) unless the State plan also
14 elects the category described in subparagraph (A).
15 ''(3) The requirements of this paragraph with respect
16 to an individual are the following:
17 ''(A) In the case of individuals within a cat-
18 egory described in subparagraph (A) or (B) of para-
19 graph (2), the individual was involuntarily separated
20 from employment on or after September 1, 2008,
21 and before January 1, 2011, or meets such com-
22 parable requirement as the Secretary specifies
23 through rule, guidance, or otherwise in the case of
24 an individual who was an independent contractor.

"(B) The individual is not otherwise covered under creditable coverage, as defined in section 2701(c) of the Public Health Service Act (42 U.S.C. 300gg(c)), but applied without regard to paragraph (1)(F) of such section and without regard to coverage provided by reason of the application of subsection (a)(10)(A)(ii)(XX).

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

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

"(C) In the case of individuals provided medical assistance by reason of the application of subsection (a)(10)(A)(ii)(XX), the requirements of subsections (i)(22) and (x) shall not apply.".

(b) 100 PERCENT FEDERAL MATCHING RATE.—

(1) FMAP FOR TIME-LIMITED PERIOD.—The third sentence of section 1905(b) of such Act (42 U.S.C. 1396d(b)) is amended by inserting before the period at the end the following: "and for items and services furnished on or after the date of enactment

of this Act and before January 1, 2011, to individuals who are eligible for medical assistance only by reason of the application of section 1902(a)(10)(A)(ii)(XX)''.

(2) CERTAIN ENROLLMENT-RELATED ADMINISTRATIVE COSTS.—Notwithstanding any other provision of law, for purposes of applying section 1903(a) of the Social Security Act (42 U.S.C. 1396b(a)), with respect to expenditures incurred on or after the date of the enactment of this Act and before January 1, 2011, for costs of administration (including outreach and the modification and operation of eligibility information systems) attributable to eligibility determination and enrollment of individuals who are eligible for medical assistance only by reason of the application of section 1902(a)(10)(A)(ii)(XX) of such Act, as added by subsection (a)(1), the Federal matching percentage shall be 100 percent instead of the matching percentage otherwise applicable.

(c) CONFORMING AMENDMENTS.—(1) Section 1903(f)(4) of such Act (42 U.S.C. 1396c(f)(4)) is amended by inserting ''1902(a)(10)(A)(ii)(XX), or'' after ''1902(a)(10)(A)(ii)(XIX),''.

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

(A) by striking ''or'' at the end of clause (xii);

(B) by adding ''or'' at the end of clause (xiii); and

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

''(xiv) individuals described in section 1902(dd)(1),''.

TITLE IV—HEALTH INFORMATION TECHNOLOGY

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

(a) SHORT TITLE.—This title may be cited as the ''Health Information Technology for Economic and Clinical Health Act'' or the ''HITECH Act''.

(b) TABLE OF CONTENTS OF TITLE.—The table of contents of this title is as follows:

Sec. 4001. Short title; table of contents of title.

Subtitle A—Promotion of Health Information Technology

PART I—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY

Sec. 4101. ONCHIT; standards development and adoption.

''TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND QUALITY

''Sec. 3000. Definitions.

''Subtitle A—Promotion of Health Information Technology

''Sec. 3001. Office of the National Coordinator for Health Information Technology.

''Sec. 3002. HIT Policy Committee.

"Sec. 3003. HIT Standards Committee.
"Sec. 3004. Process for adoption of endorsed recommendations; adoption of initial set of standards, implementation specifications, and certification criteria.
"Sec. 3005. Application and use of adopted standards and implementation specifications by Federal agencies.
"Sec. 3006. Voluntary application and use of adopted standards and implementation specifications by private entities.
"Sec. 3007. Federal health information technology.
"Sec. 3008. Transitions.
"Sec. 3009. Relation to HIPAA privacy and security law.
"Sec. 3010. Authorization for appropriations.
Sec. 4102. Technical amendment.
Sec. 4103. American technology required.

PART II—APPLICATION AND USE OF ADOPTED HEALTH INFORMATION TECHNOLOGY STANDARDS; REPORTS

Sec. 4111. Coordination of Federal activities with adopted standards and implementation specifications.
Sec. 4112. Application to private entities.
Sec. 4113. Study and reports.

Subtitle B—Testing of Health Information Technology

Sec. 4201. National Institute for Standards and Technology testing.
Sec. 4202. Research and development programs.

Subtitle C—Incentives for the Use of Health Information Technology

PART I—GRANTS AND LOANS FUNDING

Sec. 4301. Grant, loan, and demonstration programs.

"Subtitle B—Incentives for the Use of Health Information Technology

"Sec. 3011. Immediate funding to strengthen the health information technology infrastructure.
"Sec. 3012. Health information technology implementation assistance.
"Sec. 3013. State grants to promote health information technology.
"Sec. 3014. Competitive grants to States and Indian tribes for the development of loan programs to facilitate the widespread adoption of certified EHR technology.
"Sec. 3015. Demonstration program to integrate information technology into clinical education.
"Sec. 3016. Information technology professionals on health care.
"Sec. 3017. General grant and loan provisions.
"Sec. 3018. Authorization for appropriations.

PART II—MEDICARE PROGRAM

Sec. 4311. Incentives for eligible professionals.
Sec. 4312. Incentives for hospitals.
Sec. 4313. Treatment of payments and savings; implementation funding.
Sec. 4314. Study on application of EHR payment incentives for providers not receiving other incentive payments.

PART III—MEDICAID FUNDING

Sec. 4321. Medicaid provider HIT adoption and operation payments; implementation funding.

Subtitle D—Privacy

Sec. 4400. Definitions.

PART I—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS

Sec. 4401. Application of security provisions and penalties to business associates of covered entities; annual guidance on security provisions.
Sec. 4402. Notification in the case of breach.
Sec. 4403. Education on Health Information Privacy.
Sec. 4404. Application of privacy provisions and penalties to business associates of covered entities.
Sec. 4405. Restrictions on certain disclosures and sales of health information; accounting of certain protected health information disclosures; access to certain information in electronic format.
Sec. 4406. Conditions on certain contacts as part of health care operations.
Sec. 4407. Temporary breach notification requirement for vendors of personal health records and other non-HIPAA covered entities.
Sec. 4408. Business associate contracts required for certain entities.
Sec. 4409. Clarification of application of wrongful disclosures criminal penalties.
Sec. 4410. Improved enforcement.
Sec. 4411. Audits.
Sec. 4412. Securing individually identifiable health information.
Sec. 4413. Special rule for information to reduce medication errors and improve patient safety.

PART II—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES; EFFECTIVE DATE; REPORTS

Sec. 4421. Relationship to other laws.
Sec. 4422. Regulatory references.
Sec. 4423. Effective date.
Sec. 4424. Studies, reports, guidance.

Subtitle A—Promotion of Health Information Technology

PART 1—IMPROVING HEALTH CARE QUALITY, SAFETY, AND EFFICIENCY

SEC. 4101. ONCHIT; STANDARDS DEVELOPMENT AND ADOPTION.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

"TITLE XXX—HEALTH INFORMATION TECHNOLOGY AND QUALITY

"SEC. 3000. DEFINITIONS.

''In this title:

''(1) CERTIFIED EHR TECHNOLOGY.—The term 'certified EHR technology' means a qualified electronic health record that is certified pursuant to section 3001(c)(5) as meeting standards adopted under section 3004 that are applicable to the type of record involved (as determined by the Secretary, such as an ambulatory electronic health record for office-based physicians or an inpatient hospital electronic health record for hospitals).

''(2) ENTERPRISE INTEGRATION.—The term 'enterprise integration' means the electronic linkage of health care providers, health plans, the government, and other interested parties, to enable the electronic exchange and use of health information among all the components in the health care infrastructure in accordance with applicable law, and such term includes related application protocols and other related standards.

''(3) HEALTH CARE PROVIDER.—The term 'health care provider' means a hospital, skilled nurs-

ing facility, nursing facility, home health entity or other long term care facility, health care clinic, Federally qualified health center, group practice (as defined in section 1877(h)(4) of the Social Security Act), a pharmacist, a pharmacy, a laboratory, a physician (as defined in section 1861(r) of the Social Security Act), a practitioner (as described in section 1842(b)(18)(C) of the Social Security Act), a provider operated by, or under contract with, the Indian Health Service or by an Indian tribe (as defined in the Indian Self-Determination and Education Assistance Act), tribal organization, or urban Indian organization (as defined in section 4 of the Indian Health Care Improvement Act), a rural health clinic, a covered entity under section 340B, an ambulatory surgical center described in section 1833(i) of the Social Security Act, and any other category of facility or clinician determined appropriate by the Secretary.

''(4) HEALTH INFORMATION.—The term 'health information' has the meaning given such term in section 1171(4) of the Social Security Act.

''(5) HEALTH INFORMATION TECHNOLOGY.—The term 'health information technology' means hardware, software, integrated technologies and re-

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

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

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

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

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

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

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

1 "(12) PHARMACIST.—The term 'pharmacist'
2 has the meaning given such term in section 804(2)
3 of the Federal Food, Drug, and Cosmetic Act.
4 "(13) QUALIFIED ELECTRONIC HEALTH
5 RECORD.—The term 'qualified electronic health
6 record' means an electronic record of health-related
7 information on an individual that—
8 "(A) includes patient demographic and
9 clinical health information, such as medical his-
10 tory and problem lists; and
11 "(B) has the capacity—
12 "(i) to provide clinical decision sup-
13 port;
14 "(ii) to support physician order entry;
15 "(iii) to capture and query informa-
16 tion relevant to health care quality; and
17 "(iv) to exchange electronic health in-
18 formation with, and integrate such infor-
19 mation from other sources.
20 "(14) STATE.—The term 'State' means each of
21 the several States, the District of Columbia, Puerto
22 Rico, the Virgin Islands, Guam, American Samoa,
23 and the Northern Mariana Islands.

"Subtitle A—Promotion of Health Information Technology

"SEC. 3001. OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY.

''(a) ESTABLISHMENT.—There is established within the Department of Health and Human Services an Office of the National Coordinator for Health Information Technology (referred to in this section as the 'Office'). The Office shall be headed by a National Coordinator who shall be appointed by the Secretary and shall report directly to the Secretary.

''(b) PURPOSE.—The National Coordinator shall perform the duties under subsection (c) in a manner consistent with the development of a nationwide health information technology infrastructure that allows for the electronic use and exchange of information and that—

''(1) ensures that each patient's health information is secure and protected, in accordance with applicable law;

''(2) improves health care quality, reduces medical errors, reduces health disparities, and advances the delivery of patient-centered medical care;

''(3) reduces health care costs resulting from inefficiency, medical errors, inappropriate care, duplicative care, and incomplete information;

1 ''(4) provides appropriate information to help
2 guide medical decisions at the time and place of
3 care;
4 ''(5) ensures the inclusion of meaningful public
5 input in such development of such infrastructure;
6 ''(6) improves the coordination of care and in-
7 formation among hospitals, laboratories, physician
8 offices, and other entities through an effective infra-
9 structure for the secure and authorized exchange of
10 health care information;
11 ''(7) improves public health activities and facili-
12 tates the early identification and rapid response to
13 public health threats and emergencies, including bio-
14 terror events and infectious disease outbreaks;
15 ''(8) facilitates health and clinical research and
16 health care quality;
17 ''(9) promotes prevention of chronic diseases;
18 ''(10) promotes a more effective marketplace,
19 greater competition, greater systems analysis, in-
20 creased consumer choice, and improved outcomes in
21 health care services; and
22 ''(11) improves efforts to reduce health dispari-
23 ties.
24 ''(c) DUTIES OF THE NATIONAL COORDINATOR.—

1 "(1) STANDARDS.—The National Coordinator
2 shall review and determine whether to endorse each
3 standard, implementation specification, and certifi-
4 cation criterion for the electronic exchange and use
5 of health information that is recommended by the
6 HIT Standards Committee under section 3003 for
7 purposes of adoption under section 3004. The Coor-
8 dinator shall make such determination, and report to
9 the Secretary such determination, not later than 45
10 days after the date the recommendation is received
11 by the Coordinator.
12 "(2) HIT POLICY COORDINATION.—
13 "(A) IN GENERAL.—The National Coordi-
14 nator shall coordinate health information tech-
15 nology policy and programs of the Department
16 with those of other relevant executive branch
17 agencies with a goal of avoiding duplication of
18 efforts and of helping to ensure that each agen-
19 cy undertakes health information technology ac-
20 tivities primarily within the areas of its greatest
21 expertise and technical capability and in a man-
22 ner towards a coordinated national goal.
23 "(B) HIT POLICY AND STANDARDS COM-
24 MITTEES.—The National Coordinator shall be a
25 leading member in the establishment and oper-

1 ations of the HIT Policy Committee and the
2 HIT Standards Committee and shall serve as a
3 liaison among those two Committees and the
4 Federal Government.
5 ''(3) STRATEGIC PLAN.—
6 ''(A) IN GENERAL.—The National Coordi-
7 nator shall, in consultation with other appro-
8 priate Federal agencies (including the National
9 Institute of Standards and Technology), update
10 the Federal Health IT Strategic Plan (devel-
11 oped as of June 3, 2008) to include specific ob-
12 jectives, milestones, and metrics with respect to
13 the following:
14 ''(i) The electronic exchange and use
15 of health information and the enterprise
16 integration of such information.
17 ''(ii) The utilization of an electronic
18 health record for each person in the United
19 States by 2014.
20 ''(iii) The incorporation of privacy and
21 security protections for the electronic ex-
22 change of an individual's individually iden-
23 tifiable health information.
24 ''(iv) Ensuring security methods to
25 ensure appropriate authorization and elec-

1 tronic authentication of health information
2 and specifying technologies or methodolo-
3 gies for rendering health information unus-
4 able, unreadable, or indecipherable.
5 ''(v) Specifying a framework for co-
6 ordination and flow of recommendations
7 and policies under this subtitle among the
8 Secretary, the National Coordinator, the
9 HIT Policy Committee, the HIT Standards
10 Committee, and other health information
11 exchanges and other relevant entities.
12 ''(vi) Methods to foster the public un-
13 derstanding of health information tech-
14 nology.
15 ''(vii) Strategies to enhance the use of
16 health information technology in improving
17 the quality of health care, reducing medical
18 errors, reducing health disparities, improv-
19 ing public health, and improving the con-
20 tinuity of care among health care settings.
21 ''(B) COLLABORATION.—The strategic
22 plan shall be updated through collaboration of
23 public and private entities.

1 "(C) MEASURABLE OUTCOME GOALS.—
2 The strategic plan update shall include measur-
3 able outcome goals.
4 "(D) PUBLICATION.—The National Coor-
5 dinator shall republish the strategic plan, in-
6 cluding all updates.
7 "(4) WEBSITE.—The National Coordinator
8 shall maintain and frequently update an Internet
9 website on which there is posted information on the
10 work, schedules, reports, recommendations, and
11 other information to ensure transparency in pro-
12 motion of a nationwide health information tech-
13 nology infrastructure.
14 "(5) CERTIFICATION.—
15 "(A) IN GENERAL.—The National Coordi-
16 nator, in consultation with the Director of the
17 National Institute of Standards and Tech-
18 nology, shall develop a program (either directly
19 or by contract) for the voluntary certification of
20 health information technology as being in com-
21 pliance with applicable certification criteria
22 adopted under this subtitle. Such program shall
23 include testing of the technology in accordance
24 with section 4201(b) of the HITECH Act.

1 "(B) CERTIFICATION CRITERIA DE-
2 SCRIBED.—In this title, the term 'certification
3 criteria' means, with respect to standards and
4 implementation specifications for health infor-
5 mation technology, criteria to establish that the
6 technology meets such standards and implemen-
7 tation specifications.
8 "(6) REPORTS AND PUBLICATIONS.—
9 "(A) REPORT ON ADDITIONAL FUNDING
10 OR AUTHORITY NEEDED.—Not later than 12
11 months after the date of the enactment of this
12 title, the National Coordinator shall submit to
13 the appropriate committees of jurisdiction of
14 the House of Representatives and the Senate a
15 report on any additional funding or authority
16 the Coordinator or the HIT Policy Committee
17 or HIT Standards Committee requires to evalu-
18 ate and develop standards, implementation
19 specifications, and certification criteria, or to
20 achieve full participation of stakeholders in the
21 adoption of a nationwide health information
22 technology infrastructure that allows for the
23 electronic use and exchange of health informa-
24 tion.

1 "(B) IMPLEMENTATION REPORT.—The
2 National Coordinator shall prepare a report
3 that identifies lessons learned from major pub-
4 lic and private health care systems in their im-
5 plementation of health information technology,
6 including information on whether the tech-
7 nologies and practices developed by such sys-
8 tems may be applicable to and usable in whole
9 or in part by other health care providers.
10 "(C) ASSESSMENT OF IMPACT OF HIT ON
11 COMMUNITIES WITH HEALTH DISPARITIES AND
12 UNINSURED, UNDERINSURED, AND MEDICALLY
13 UNDERSERVED AREAS.—The National Coordi-
14 nator shall assess and publish the impact of
15 health information technology in communities
16 with health disparities and in areas with a high
17 proportion of individuals who are uninsured,
18 underinsured, and medically underserved indi-
19 viduals (including urban and rural areas) and
20 identify practices to increase the adoption of
21 such technology by health care providers in
22 such communities.
23 "(D) EVALUATION OF BENEFITS AND
24 COSTS OF THE ELECTRONIC USE AND EX-
25 CHANGE OF HEALTH INFORMATION.—The Na-

tional Coordinator shall evaluate and publish evidence on the benefits and costs of the electronic use and exchange of health information and assess to whom these benefits and costs accrue.

"(E) RESOURCE REQUIREMENTS.—The National Coordinator shall estimate and publish resources required annually to reach the goal of utilization of an electronic health record for each person in the United States by 2014, including the required level of Federal funding, expectations for regional, State, and private investment, and the expected contributions by volunteers to activities for the utilization of such records.

"(7) ASSISTANCE.—The National Coordinator may provide financial assistance to consumer advocacy groups and not-for-profit entities that work in the public interest for purposes of defraying the cost to such groups and entities to participate under, whether in whole or in part, the National Technology Transfer Act of 1995 (15 U.S.C. 272 note).

"(8) GOVERNANCE FOR NATIONWIDE HEALTH INFORMATION NETWORK.—The National Coordi-

1 nator shall establish a governance mechanism for the
2 nationwide health information network.
3 ''(d) DETAIL OF FEDERAL EMPLOYEES.—
4 ''(1) IN GENERAL.—Upon the request of the
5 National Coordinator, the head of any Federal agen-
6 cy is authorized to detail, with or without reimburse-
7 ment from the Office, any of the personnel of such
8 agency to the Office to assist it in carrying out its
9 duties under this section.
10 ''(2) EFFECT OF DETAIL.—Any detail of per-
11 sonnel under paragraph (1) shall—
12 ''(A) not interrupt or otherwise affect the
13 civil service status or privileges of the Federal
14 employee; and
15 ''(B) be in addition to any other staff of
16 the Department employed by the National Co-
17 ordinator.
18 ''(3) ACCEPTANCE OF DETAILEES.—Notwith-
19 standing any other provision of law, the Office may
20 accept detailed personnel from other Federal agen-
21 cies without regard to whether the agency described
22 under paragraph (1) is reimbursed.
23 ''(e) CHIEF PRIVACY OFFICER OF THE OFFICE OF
24 THE NATIONAL COORDINATOR.—Not later than 12
25 months after the date of the enactment of this title, the

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

10 **"SEC. 3002. HIT POLICY COMMITTEE.**

11 "(a) ESTABLISHMENT.—There is established a HIT
12 Policy Committee to make policy recommendations to the
13 National Coordinator relating to the implementation of a
14 nationwide health information technology infrastructure,
15 including implementation of the strategic plan described
16 in section 3001(c)(3).

17 "(b) DUTIES.—

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

recommendations under paragraph (2). The Committee shall update such recommendations and make new recommendations as appropriate.

"(2) SPECIFIC AREAS OF STANDARD DEVELOPMENT.—

"(A) IN GENERAL.—The HIT Policy Committee shall recommend the areas in which standards, implementation specifications, and certification criteria are needed for the electronic exchange and use of health information for purposes of adoption under section 3004 and shall recommend an order of priority for the development, harmonization, and recognition of such standards, specifications, and certification criteria among the areas so recommended. Such standards and implementation specifications shall include named standards, architectures, and software schemes for the authentication and security of individually identifiable health information and other information as needed to ensure the reproducible development of common solutions across disparate entities.

"(B) AREAS REQUIRED FOR CONSIDERATION.—For purposes of subparagraph (A), the

1 HIT Policy Committee shall make recommenda-
2 tions for at least the following areas:
3 ''(i) Technologies that protect the pri-
4 vacy of health information and promote se-
5 curity in a qualified electronic health
6 record, including for the segmentation and
7 protection from disclosure of specific and
8 sensitive individually identifiable health in-
9 formation with the goal of minimizing the
10 reluctance of patients to seek care (or dis-
11 close information about a condition) be-
12 cause of privacy concerns, in accordance
13 with applicable law, and for the use and
14 disclosure of limited data sets of such in-
15 formation.
16 ''(ii) A nationwide health information
17 technology infrastructure that allows for
18 the electronic use and accurate exchange of
19 health information.
20 ''(iii) The utilization of a certified
21 electronic health record for each person in
22 the United States by 2014.
23 ''(iv) Technologies that as a part of a
24 qualified electronic health record allow for
25 an accounting of disclosures made by a

1 covered entity (as defined for purposes of
2 regulations promulgated under section
3 264(c) of the Health Insurance Portability
4 and Accountability Act of 1996) for pur-
5 poses of treatment, payment, and health
6 care operations (as such terms are defined
7 for purposes of such regulations).
8 ''(v) The use of certified electronic
9 health records to improve the quality of
10 health care, such as by promoting the co-
11 ordination of health care and improving
12 continuity of health care among health
13 care providers, by reducing medical errors,
14 by improving population health, by reduc-
15 ing health disparities, and by advancing re-
16 search and education.
17 ''(C) OTHER AREAS FOR CONSIDER-
18 ATION.—In making recommendations under
19 subparagraph (A), the HIT Policy Committee
20 may consider the following additional areas:
21 ''(i) The appropriate uses of a nation-
22 wide health information infrastructure, in-
23 cluding for purposes of—
24 ''(I) the collection of quality data
25 and public reporting;

1 ''(II) biosurveillance and public
2 health;
3 ''(III) medical and clinical re-
4 search; and
5 ''(IV) drug safety.
6 ''(ii) Self-service technologies that fa-
7 cilitate the use and exchange of patient in-
8 formation and reduce wait times.
9 ''(iii) Telemedicine technologies, in
10 order to reduce travel requirements for pa-
11 tients in remote areas.
12 ''(iv) Technologies that facilitate home
13 health care and the monitoring of patients
14 recuperating at home.
15 ''(v) Technologies that help reduce
16 medical errors.
17 ''(vi) Technologies that facilitate the
18 continuity of care among health settings.
19 ''(vii) Technologies that meet the
20 needs of diverse populations.
21 ''(viii) Any other technology that the
22 HIT Policy Committee finds to be among
23 the technologies with the greatest potential
24 to improve the quality and efficiency of
25 health care.

1 "(3) FORUM.—The HIT Policy Committee shall
2 serve as a forum for broad stakeholder input with
3 specific expertise in policies relating to the matters
4 described in paragraphs (1) and (2).
5 "(c) MEMBERSHIP AND OPERATIONS.—
6 "(1) IN GENERAL.—The National Coordinator
7 shall provide leadership in the establishment and op-
8 erations of the HIT Policy Committee.
9 "(2) MEMBERSHIP.—The membership of the
10 HIT Policy Committee shall at least reflect pro-
11 viders, ancillary healthcare workers, consumers, pur-
12 chasers, health plans, technology vendors, research-
13 ers, relevant Federal agencies, and individuals with
14 technical expertise on health care quality, privacy
15 and security, and on the electronic exchange and use
16 of health information.
17 "(3) CONSIDERATION.—The National Coordi-
18 nator shall ensure that the relevant recommenda-
19 tions and comments from the National Committee
20 on Vital and Health Statistics are considered in the
21 development of policies.
22 "(d) APPLICATION OF FACA.—The Federal Advisory
23 Committee Act (5 U.S.C. App.), other than section 14 of
24 such Act, shall apply to the HIT Policy Committee.

1 ''(e) PUBLICATION.—The Secretary shall provide for
2 publication in the Federal Register and the posting on the
3 Internet website of the Office of the National Coordinator
4 for Health Information Technology of all policy rec-
5 ommendations made by the HIT Policy Committee under
6 this section.

7 **"SEC. 3003. HIT STANDARDS COMMITTEE.**

8 ''(a) ESTABLISHMENT.—There is established a com-
9 mittee to be known as the HIT Standards Committee to
10 recommend to the National Coordinator standards, imple-
11 mentation specifications, and certification criteria for the
12 electronic exchange and use of health information for pur-
13 poses of adoption under section 3004, consistent with the
14 implementation of the strategic plan described in section
15 3001(c)(3) and beginning with the areas listed in section
16 3002(b)(2)(B) in accordance with policies developed by
17 the HIT Policy Committee.

18 ''(b) DUTIES.—

19 ''(1) STANDARDS DEVELOPMENT.—

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

1 Committee. The HIT Standards Committee
2 shall update such recommendations and make
3 new recommendations as appropriate, including
4 in response to a notification sent under section
5 3004(b)(2). Such recommendations shall be
6 consistent with the latest recommendations
7 made by the HIT Policy Committee.
8 ''(B) PILOT TESTING OF STANDARDS AND
9 IMPLEMENTATION SPECIFICATIONS.—In the de-
10 velopment, harmonization, or recognition of
11 standards and implementation specifications,
12 the HIT Standards Committee shall, as appro-
13 priate, provide for the testing of such standards
14 and specifications by the National Institute for
15 Standards and Technology under section 4201
16 of the HITECH Act.
17 ''(C) CONSISTENCY.—The standards, im-
18 plementation specifications, and certification
19 criteria recommended under this subsection
20 shall be consistent with the standards for infor-
21 mation transactions and data elements adopted
22 pursuant to section 1173 of the Social Security
23 Act.
24 ''(2) FORUM.—The HIT Standards Committee
25 shall serve as a forum for the participation of a

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

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

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

24 ''(c) MEMBERSHIP AND OPERATIONS.—

1 "(1) IN GENERAL.—The National Coordinator
2 shall provide leadership in the establishment and op-
3 erations of the HIT Standards Committee.
4 "(2) MEMBERSHIP.—The membership of the
5 HIT Standards Committee shall at least reflect pro-
6 viders, ancillary healthcare workers, consumers, pur-
7 chasers, health plans, technology vendors, research-
8 ers, relevant Federal agencies, and individuals with
9 technical expertise on health care quality, privacy
10 and security, and on the electronic exchange and use
11 of health information.
12 "(3) CONSIDERATION.—The National Coordi-
13 nator shall ensure that the relevant recommenda-
14 tions and comments from the National Committee
15 on Vital and Health Statistics are considered in the
16 development of standards.
17 "(4) ASSISTANCE.—For the purposes of car-
18 rying out this section, the Secretary may provide or
19 ensure that financial assistance is provided by the
20 HIT Standards Committee to defray in whole or in
21 part any membership fees or dues charged by such
22 Committee to those consumer advocacy groups and
23 not for profit entities that work in the public inter-
24 est as a part of their mission.

1 "(d) APPLICATION OF FACA.—The Federal Advisory
2 Committee Act (5 U.S.C. App.), other than section 14,
3 shall apply to the HIT Standards Committee.
4 "(e) PUBLICATION.—The Secretary shall provide for
5 publication in the Federal Register and the posting on the
6 Internet website of the Office of the National Coordinator
7 for Health Information Technology of all recommenda-
8 tions made by the HIT Standards Committee under this
9 section.

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

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

ards, implementation specifications, or certification criteria.

"(2) DETERMINATION TO ADOPT STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—If the Secretary determines—

"(A) to propose adoption of any grouping of such standards, implementation specifications, or certification criteria, the Secretary shall, by regulation, determine whether or not to adopt such grouping of standards, implementation specifications, or certification criteria; or

"(B) not to propose adoption of any grouping of standards, implementation specifications, or certification criteria, the Secretary shall notify the National Coordinator and the HIT Standards Committee in writing of such determination and the reasons for not proposing the adoption of such recommendation.

"(3) PUBLICATION.—The Secretary shall provide for publication in the Federal Register of all determinations made by the Secretary under paragraph (1).

"(b) ADOPTION OF INITIAL SET OF STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA.—

1 "(1) IN GENERAL.—Not later than December
2 31, 2009, the Secretary shall, through the rule-
3 making process described in section 3003, adopt an
4 initial set of standards, implementation specifica-
5 tions, and certification criteria for the areas required
6 for consideration under section 3002(b)(2)(B).
7 "(2) APPLICATION OF CURRENT STANDARDS,
8 IMPLEMENTATION SPECIFICATIONS, AND CERTIFI-
9 CATION CRITERIA.—The standards, implementation
10 specifications, and certification criteria adopted be-
11 fore the date of the enactment of this title through
12 the process existing through the Office of the Na-
13 tional Coordinator for Health Information Tech-
14 nology may be applied towards meeting the require-
15 ment of paragraph (1).

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

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

"SEC. 3006. VOLUNTARY APPLICATION AND USE OF ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS BY PRIVATE ENTITIES.

"(a) IN GENERAL.—Except as provided under section 4112 of the HITECH Act, any standard or implementation specification adopted under section 3004 shall be voluntary with respect to private entities.

"(b) RULE OF CONSTRUCTION.—Nothing in this subtitle shall be construed to require that a private entity that enters into a contract with the Federal Government apply or use the standards and implementation specifications adopted under section 3004 with respect to activities not related to the contract.

"SEC. 3007. FEDERAL HEALTH INFORMATION TECHNOLOGY.

"(a) IN GENERAL.—The National Coordinator shall support the development, routine updating, and provision of qualified EHR technology (as defined in section 3000) consistent with subsections (b) and (c) unless the Secretary determines that the needs and demands of providers are being substantially and adequately met through the marketplace.

"(b) CERTIFICATION.—In making such EHR technology publicly available, the National Coordinator shall ensure that the qualified EHR technology described in subsection (a) is certified under the program developed

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

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

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

15 **''SEC. 3008. TRANSITIONS.**

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

1 ''(b) AHIC.—

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

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

17 ''(c) RULES OF CONSTRUCTION.—

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

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

11 **"SEC. 3009. RELATION TO HIPAA PRIVACY AND SECURITY**
12 **LAW.**

13 "(a) IN GENERAL.—With respect to the relation of
14 this title to HIPAA privacy and security law:
15 "(1) This title may not be construed as having
16 any effect on the authorities of the Secretary under
17 HIPAA privacy and security law.
18 "(2) The purposes of this title include ensuring
19 that the health information technology standards
20 and implementation specifications adopted under
21 section 3004 take into account the requirements of
22 HIPAA privacy and security law.
23 "(b) DEFINITION.—For purposes of this section, the
24 term 'HIPAA privacy and security law' means—

"(1) the provisions of part C of title XI of the Social Security Act, section 264 of the Health Insurance Portability and Accountability Act of 1996, and subtitle D of title IV of the HITECH Act; and

"(2) regulations under such provisions.

"SEC. 3010. AUTHORIZATION FOR APPROPRIATIONS.

"There is authorized to be appropriated to the Office of the National Coordinator for Health Information Technology to carry out this subtitle $250,000,000 for fiscal year 2009.".

SEC. 4102. TECHNICAL AMENDMENT.

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

SEC. 4103. AMERICAN TECHNOLOGY REQUIRED.

(a) REQUIREMENT.—Any funds made available to carry out this title and the amendments made by this title (including through grants, contracts, loans, payments under title XVIII or XIX of the Social Security Act, or other assistance) may be used to purchase health information technology only if such technology is manufactured, including the engineering and programming of any software, in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States.

(b) DEFINITION.—In this section, the term ''health information technology'' has the meaning given to that term in section 3000 of the Public Health Service Act, as added by section 4101.

PART 2—APPLICATION AND USE OF ADOPTED HEALTH INFORMATION TECHNOLOGY STANDARDS; REPORTS

SEC. 4111. COORDINATION OF FEDERAL ACTIVITIES WITH ADOPTED STANDARDS AND IMPLEMENTATION SPECIFICATIONS.

(a) SPENDING ON HEALTH INFORMATION TECHNOLOGY SYSTEMS.—As each agency (as defined in the Executive Order issued on August 22, 2006, relating to promoting quality and efficient health care in Federal government administered or sponsored health care programs) implements, acquires, or upgrades health information technology systems used for the direct exchange of individually identifiable health information between agencies and with non-Federal entities, it shall utilize, where available, health information technology systems and products that meet standards and implementation specifications adopted under section 3004 of the Public Health Service Act, as added by section 4101.

(b) FEDERAL INFORMATION COLLECTION ACTIVITIES.—With respect to a standard or implementation

specification adopted under section 3004 of the Public Health Service Act, as added by section 4101, the President shall take measures to ensure that Federal activities involving the broad collection and submission of health information are consistent with such standard or implementation specification, respectively, within three years after the date of such adoption.

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

SEC. 4112. APPLICATION TO PRIVATE ENTITIES.

Each agency (as defined in such Executive Order issued on August 22, 2006, relating to promoting quality and efficient health care in Federal government administered or sponsored health care programs) shall require in contracts or agreements with health care providers, health plans, or health insurance issuers that as each provider, plan, or issuer implements, acquires, or upgrades health information technology systems, it shall utilize, where available, health information technology systems and products that meet standards and implementation specifications adopted under section 3004 of the Public Health Service Act, as added by section 4101.

SEC. 4113. STUDY AND REPORTS.

(a) REPORT ON ADOPTION OF NATIONWIDE SYSTEM.—Not later than 2 years after the date of the enactment of this Act and annually thereafter, the Secretary of Health and Human Services shall submit to the appropriate committees of jurisdiction of the House of Representatives and the Senate a report that—

(1) describes the specific actions that have been taken by the Federal Government and private entities to facilitate the adoption of a nationwide system for the electronic use and exchange of health information;

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

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

(b) REIMBURSEMENT INCENTIVE STUDY AND REPORT.—

(1) STUDY.—The Secretary of Health and Human Services shall carry out, or contract with a private entity to carry out, a study that examines methods to create efficient reimbursement incentives for improving health care quality in Federally qualified health centers, rural health clinics, and free clinics.

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

(c) AGING SERVICES TECHNOLOGY STUDY AND REPORT.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall carry out, or contract with a private entity to carry out, a study of matters relating to the potential use of new aging services technology to assist seniors, individuals with disabilities, and their caregivers throughout the aging process.

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

(A) an evaluation of—

(i) methods for identifying current, emerging, and future health technology that can be used to meet the needs of seniors and individuals with disabilities and their caregivers across all aging services settings, as specified by the Secretary;

(ii) methods for fostering scientific innovation with respect to aging services

technology within the business and academic communities; and

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

(B) identification of—

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

(ii) barriers to the adoption of aging services technology by health care providers and consumers and devising strategies to removing such barriers.

(3) REPORT.—Not later than 24 months after the date of the enactment of this Act, the Secretary shall submit to the appropriate committees of jurisdiction of the House of Representatives and of the Senate a report on the study carried out under paragraph (1).

(4) DEFINITIONS.—For purposes of this subsection:

(A) AGING SERVICES TECHNOLOGY.—The term ''aging services technology'' means health technology that meets the health care needs of

seniors, individuals with disabilities, and the caregivers of such seniors and individuals.

(B) SENIOR.—The term ''senior'' has such meaning as specified by the Secretary.

Subtitle B—Testing of Health Information Technology

SEC. 4201. NATIONAL INSTITUTE FOR STANDARDS AND TECHNOLOGY TESTING.

(a) PILOT TESTING OF STANDARDS AND IMPLEMENTATION SPECIFICATIONS.—In coordination with the HIT Standards Committee established under section 3003 of the Public Health Service Act, as added by section 4101, with respect to the development of standards and implementation specifications under such section, the Director of the National Institute for Standards and Technology shall test such standards and implementation specifications, as appropriate, in order to assure the efficient implementation and use of such standards and implementation specifications.

(b) VOLUNTARY TESTING PROGRAM.—In coordination with the HIT Standards Committee established under section 3003 of the Public Health Service Act, as added by section 4101, with respect to the development of standards and implementation specifications under such section, the Director of the National Institute of Standards

and Technology shall support the establishment of a conformance testing infrastructure, including the development of technical test beds. The development of this conformance testing infrastructure may include a program to accredit independent, non-Federal laboratories to perform testing.

SEC. 4202. RESEARCH AND DEVELOPMENT PROGRAMS.

(a) HEALTH CARE INFORMATION ENTERPRISE INTEGRATION RESEARCH CENTERS.—

(1) IN GENERAL.—The Director of the National Institute of Standards and Technology, in consultation with the Director of the National Science Foundation and other appropriate Federal agencies, shall establish a program of assistance to institutions of higher education (or consortia thereof which may include nonprofit entities and Federal Government laboratories) to establish multidisciplinary Centers for Health Care Information Enterprise Integration.

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

(3) PURPOSE.—The purposes of the Centers described in paragraph (1) shall be—

(A) to generate innovative approaches to health care information enterprise integration

by conducting cutting-edge, multidisciplinary research on the systems challenges to health care delivery; and

(B) the development and use of health information technologies and other complementary fields.

(4) RESEARCH AREAS.—Research areas may include—

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

(B) voice-recognition systems;

(C) software that improves interoperability and connectivity among health information systems;

(D) software dependability in systems critical to health care delivery;

(E) measurement of the impact of information technologies on the quality and productivity of health care;

(F) health information enterprise management;

(G) health information technology security and integrity; and

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

1 (5) APPLICATIONS.—An institution of higher
2 education (or a consortium thereof) seeking funding
3 under this subsection shall submit an application to
4 the Director of the National Institute of Standards
5 and Technology at such time, in such manner, and
6 containing such information as the Director may re-
7 quire. The application shall include, at a minimum,
8 a description of—
9 (A) the research projects that will be un-
10 dertaken by the Center established pursuant to
11 assistance under paragraph (1) and the respec-
12 tive contributions of the participating entities;
13 (B) how the Center will promote active col-
14 laboration among scientists and engineers from
15 different disciplines, such as information tech-
16 nology, biologic sciences, management, social
17 sciences, and other appropriate disciplines;
18 (C) technology transfer activities to dem-
19 onstrate and diffuse the research results, tech-
20 nologies, and knowledge; and
21 (D) how the Center will contribute to the
22 education and training of researchers and other
23 professionals in fields relevant to health infor-
24 mation enterprise integration.

(b) NATIONAL INFORMATION TECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM.—The National High-Performance Computing Program established by section 101 of the High-Performance Computing Act of 1991 (15 U.S.C. 5511) shall coordinate Federal research and development programs related to the development and deployment of health information technology, including activities related to—

(1) computer infrastructure;

(2) data security;

(3) development of large-scale, distributed, reliable computing systems;

(4) wired, wireless, and hybrid high-speed networking;

(5) development of software and software-intensive systems;

(6) human-computer interaction and information management technologies; and

(7) the social and economic implications of information technology.

Subtitle C—Incentives for the Use of Health Information Technology

PART I—GRANTS AND LOANS FUNDING

SEC. 4301. GRANT, LOAN, AND DEMONSTRATION PROGRAMS.

Title XXX of the Public Health Service Act, as added by section 4101, is amended by adding at the end the following new subtitle:

"Subtitle B—Incentives for the Use of Health Information Technology

"SEC. 3011. IMMEDIATE FUNDING TO STRENGTHEN THE HEALTH INFORMATION TECHNOLOGY INFRASTRUCTURE.

''(a) IN GENERAL.—The Secretary shall, using amounts appropriated under section 3018, invest in the infrastructure necessary to allow for and promote the electronic exchange and use of health information for each individual in the United States consistent with the goals outlined in the strategic plan developed by the National Coordinator (and as available) under section 3001. To the greatest extent practicable, the Secretary shall ensure that any funds so appropriated shall be used for the acquisition of health information technology that meets standards and certification criteria adopted before the date of the enactment of this title until such date as the standards are

1 adopted under section 3004. The Secretary shall invest
2 funds through the different agencies with expertise in such
3 goals, such as the Office of the National Coordinator for
4 Health Information Technology, the Health Resources and
5 Services Administration, the Agency for Healthcare Re-
6 search and Quality, the Centers of Medicare & Medicaid
7 Services, the Centers for Disease Control and Prevention,
8 and the Indian Health Service to support the following:
9 ''(1) Health information technology architecture
10 that will support the nationwide electronic exchange
11 and use of health information in a secure, private,
12 and accurate manner, including connecting health
13 information exchanges, and which may include up-
14 dating and implementing the infrastructure nec-
15 essary within different agencies of the Department
16 of Health and Human Services to support the elec-
17 tronic use and exchange of health information.
18 ''(2) Development and adoption of appropriate
19 certified electronic health records for categories of
20 providers, as defined in section 3000, not eligible for
21 support under title XVIII or XIX of the Social Secu-
22 rity Act for the adoption of such records.
23 ''(3) Training on and dissemination of informa-
24 tion on best practices to integrate health information
25 technology, including electronic health records, into

1 a provider's delivery of care, consistent with best
2 practices learned from the Health Information Tech-
3 nology Research Center developed under section
4 3012(b), including community health centers receiv-
5 ing assistance under section 330, covered entities
6 under section 340B, and providers participating in
7 one or more of the programs under titles XVIII,
8 XIX, and XXI of the Social Security Act (relating
9 to Medicare, Medicaid, and the State Children's
10 Health Insurance Program).
11 ''(4) Infrastructure and tools for the promotion
12 of telemedicine, including coordination among Fed-
13 eral agencies in the promotion of telemedicine.
14 ''(5) Promotion of the interoperability of clinical
15 data repositories or registries.
16 ''(6) Promotion of technologies and best prac-
17 tices that enhance the protection of health informa-
18 tion by all holders of individually identifiable health
19 information.
20 ''(7) Improvement and expansion of the use of
21 health information technology by public health de-
22 partments.
23 ''(8) Provision of $300 million to support re-
24 gional or sub-national efforts towards health infor-
25 mation exchange.

1 ''(b) COORDINATION.—The Secretary shall ensure
2 funds under this section are used in a coordinated manner
3 with other health information promotion activities.

4 ''(c) ADDITIONAL USE OF FUNDS.—In addition to
5 using funds as provided in subsection (a), the Secretary
6 may use amounts appropriated under section 3018 to
7 carry out health information technology activities that are
8 provided for under laws in effect on the date of the enact-
9 ment of this title.

10 **''SEC. 3012. HEALTH INFORMATION TECHNOLOGY IMPLE-**
11 **MENTATION ASSISTANCE.**

12 ''(a) HEALTH INFORMATION TECHNOLOGY EXTEN-
13 SION PROGRAM.—To assist health care providers to adopt,
14 implement, and effectively use certified EHR technology
15 that allows for the electronic exchange and use of health
16 information, the Secretary, acting through the Office of
17 the National Coordinator, shall establish a health informa-
18 tion technology extension program to provide health infor-
19 mation technology assistance services to be carried out
20 through the Department of Health and Human Services.
21 The National Coordinator shall consult with other Federal
22 agencies with demonstrated experience and expertise in in-
23 formation technology services, such as the National Insti-
24 tute of Standards and Technology, in developing and im-
25 plementing this program.

1 "(b) HEALTH INFORMATION TECHNOLOGY RE-
2 SEARCH CENTER.—
3 "(1) IN GENERAL.—The Secretary shall create
4 a Health Information Technology Research Center
5 (in this section referred to as the 'Center') to pro-
6 vide technical assistance and develop or recognize
7 best practices to support and accelerate efforts to
8 adopt, implement, and effectively utilize health infor-
9 mation technology that allows for the electronic ex-
10 change and use of information in compliance with
11 standards, implementation specifications, and certifi-
12 cation criteria adopted under section 3004.
13 "(2) INPUT.—The Center shall incorporate
14 input from—
15 "(A) other Federal agencies with dem-
16 onstrated experience and expertise in informa-
17 tion technology services such as the National
18 Institute of Standards and Technology;
19 "(B) users of health information tech-
20 nology, such as providers and their support and
21 clerical staff and others involved in the care and
22 care coordination of patients, from the health
23 care and health information technology indus-
24 try; and
25 "(C) others as appropriate.

1 "(3) PURPOSES.—The purposes of the Center
2 are to—
3 "(A) provide a forum for the exchange of
4 knowledge and experience;
5 "(B) accelerate the transfer of lessons
6 learned from existing public and private sector
7 initiatives, including those currently receiving
8 Federal financial support;
9 "(C) assemble, analyze, and widely dis-
10 seminate evidence and experience related to the
11 adoption, implementation, and effective use of
12 health information technology that allows for
13 the electronic exchange and use of information
14 including through the regional centers described
15 in subsection (c);
16 "(D) provide technical assistance for the
17 establishment and evaluation of regional and
18 local health information networks to facilitate
19 the electronic exchange of information across
20 health care settings and improve the quality of
21 health care;
22 "(E) provide technical assistance for the
23 development and dissemination of solutions to
24 barriers to the exchange of electronic health in-
25 formation; and

1 "(F) learn about effective strategies to
2 adopt and utilize health information technology
3 in medically underserved communities.
4 "(c) HEALTH INFORMATION TECHNOLOGY RE-
5 GIONAL EXTENSION CENTERS.—
6 "(1) IN GENERAL.—The Secretary shall provide
7 assistance for the creation and support of regional
8 centers (in this subsection referred to as 'regional
9 centers') to provide technical assistance and dissemi-
10 nate best practices and other information learned
11 from the Center to support and accelerate efforts to
12 adopt, implement, and effectively utilize health infor-
13 mation technology that allows for the electronic ex-
14 change and use of information in compliance with
15 standards, implementation specifications, and certifi-
16 cation criteria adopted under section 3004. Activities
17 conducted under this subsection shall be consistent
18 with the strategic plan developed by the National
19 Coordinator, (and, as available) under section 3001.
20 "(2) AFFILIATION.—Regional centers shall be
21 affiliated with any United States-based nonprofit in-
22 stitution or organization, or group thereof, that ap-
23 plies and is awarded financial assistance under this
24 section. Individual awards shall be decided on the
25 basis of merit.

1 "(3) OBJECTIVE.—The objective of the regional
2 centers is to enhance and promote the adoption of
3 health information technology through—
4 "(A) assistance with the implementation,
5 effective use, upgrading, and ongoing mainte-
6 nance of health information technology, includ-
7 ing electronic health records, to healthcare pro-
8 viders nationwide;
9 "(B) broad participation of individuals
10 from industry, universities, and State govern-
11 ments;
12 "(C) active dissemination of best practices
13 and research on the implementation, effective
14 use, upgrading, and ongoing maintenance of
15 health information technology, including elec-
16 tronic health records, to health care providers
17 in order to improve the quality of healthcare
18 and protect the privacy and security of health
19 information;
20 "(D) participation, to the extent prac-
21 ticable, in health information exchanges; and
22 "(E) utilization, when appropriate, of the
23 expertise and capability that exists in Federal
24 agencies other than the Department; and

1 "(F) integration of health information
2 technology, including electronic health records,
3 into the initial and ongoing training of health
4 professionals and others in the healthcare in-
5 dustry that would be instrumental to improving
6 the quality of healthcare through the smooth
7 and accurate electronic use and exchange of
8 health information.
9 "(4) REGIONAL ASSISTANCE.—Each regional
10 center shall aim to provide assistance and education
11 to all providers in a region, but shall prioritize any
12 direct assistance first to the following:
13 "(A) Public or not-for-profit hospitals or
14 critical access hospitals.
15 "(B) Federally qualified health centers (as
16 defined in section 1861(aa)(4) of the Social Se-
17 curity Act).
18 "(C) Entities that are located in rural and
19 other areas that serve uninsured, underinsured,
20 and medically underserved individuals (regard-
21 less of whether such area is urban or rural).
22 "(D) Individual or small group practices
23 (or a consortium thereof) that are primarily fo-
24 cused on primary care.

"(5) FINANCIAL SUPPORT.—The Secretary may provide financial support to any regional center created under this subsection for a period not to exceed four years. The Secretary may not provide more than 50 percent of the capital and annual operating and maintenance funds required to create and maintain such a center, except in an instance of national economic conditions which would render this cost-share requirement detrimental to the program and upon notification to Congress as to the justification to waive the cost-share requirement.

"(6) NOTICE OF PROGRAM DESCRIPTION AND AVAILABILITY OF FUNDS.—The Secretary shall publish in the Federal Register, not later than 90 days after the date of the enactment of this title, a draft description of the program for establishing regional centers under this subsection. Such description shall include the following:

"(A) A detailed explanation of the program and the programs goals.

"(B) Procedures to be followed by the applicants.

"(C) Criteria for determining qualified applicants.

1 "(D) Maximum support levels expected to
2 be available to centers under the program.
3 "(7) APPLICATION REVIEW.—The Secretary
4 shall subject each application under this subsection
5 to merit review. In making a decision whether to ap-
6 prove such application and provide financial support,
7 the Secretary shall consider at a minimum the mer-
8 its of the application, including those portions of the
9 application regarding—
10 "(A) the ability of the applicant to provide
11 assistance under this subsection and utilization
12 of health information technology appropriate to
13 the needs of particular categories of health care
14 providers;
15 "(B) the types of service to be provided to
16 health care providers;
17 "(C) geographical diversity and extent of
18 service area; and
19 "(D) the percentage of funding and
20 amount of in-kind commitment from other
21 sources.
22 "(8) BIENNIAL EVALUATION.—Each regional
23 center which receives financial assistance under this
24 subsection shall be evaluated biennially by an evalua-
25 tion panel appointed by the Secretary. Each evalua-

tion panel shall be composed of private experts, none of whom shall be connected with the center involved, and of Federal officials. Each evaluation panel shall measure the involved center's performance against the objective specified in paragraph (3). The Secretary shall not continue to provide funding to a regional center unless its evaluation is overall positive.

"(9) CONTINUING SUPPORT.—After the second year of assistance under this subsection, a regional center may receive additional support under this subsection if it has received positive evaluations and a finding by the Secretary that continuation of Federal funding to the center was in the best interest of provision of health information technology extension services.

"SEC. 3013. STATE GRANTS TO PROMOTE HEALTH INFORMATION TECHNOLOGY.

"(a) IN GENERAL.—The Secretary, acting through the National Coordinator, shall establish a program in accordance with this section to facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards.

"(b) PLANNING GRANTS.—The Secretary may award a grant to a State or qualified State-designated entity (as

1 described in subsection (f)) that submits an application
2 to the Secretary at such time, in such manner, and con-
3 taining such information as the Secretary may specify, for
4 the purpose of planning activities described in subsection
5 (d).

6 ''(c) IMPLEMENTATION GRANTS.—The Secretary
7 may award a grant to a State or qualified State designated
8 entity that—

9 ''(1) has submitted, and the Secretary has ap-
10 proved, a plan described in subsection (e) (regardless
11 of whether such plan was prepared using amounts
12 awarded under subsection (b); and

13 ''(2) submits an application at such time, in
14 such manner, and containing such information as
15 the Secretary may specify.

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

22 ''(1) enhancing broad and varied participation
23 in the authorized and secure nationwide electronic
24 use and exchange of health information;

1 ''(2) identifying State or local resources avail-
2 able towards a nationwide effort to promote health
3 information technology;
4 ''(3) complementing other Federal grants, pro-
5 grams, and efforts towards the promotion of health
6 information technology;
7 ''(4) providing technical assistance for the de-
8 velopment and dissemination of solutions to barriers
9 to the exchange of electronic health information;
10 ''(5) promoting effective strategies to adopt and
11 utilize health information technology in medically
12 underserved communities;
13 ''(6) assisting patients in utilizing health infor-
14 mation technology;
15 ''(7) encouraging clinicians to work with Health
16 Information Technology Regional Extension Centers
17 as described in section 3012, to the extent they are
18 available and valuable;
19 ''(8) supporting public health agencies' author-
20 ized use of and access to electronic health informa-
21 tion;
22 ''(9) promoting the use of electronic health
23 records for quality improvement including through
24 quality measures reporting; and

1 ''(10) such other activities as the Secretary may
2 specify.
3 ''(e) PLAN.—
4 ''(1) IN GENERAL.—A plan described in this
5 subsection is a plan that describes the activities to
6 be carried out by a State or by the qualified State-
7 designated entity within such State to facilitate and
8 expand the electronic movement and use of health
9 information among organizations according to na-
10 tionally recognized standards and implementation
11 specifications.
12 ''(2) REQUIRED ELEMENTS.—A plan described
13 in paragraph (1) shall—
14 ''(A) be pursued in the public interest;
15 ''(B) be consistent with the strategic plan
16 developed by the National Coordinator, (and, as
17 available) under section 3001;
18 ''(C) include a description of the ways the
19 State or qualified State-designated entity will
20 carry out the activities described in subsection
21 (b); and
22 ''(D) contain such elements as the Sec-
23 retary may require.

1 "(f) QUALIFIED STATE-DESIGNATED ENTITY.—For
2 purposes of this section, to be a qualified State-designated
3 entity, with respect to a State, an entity shall—
4 "(1) be designated by the State as eligible to
5 receive awards under this section;
6 "(2) be a not-for-profit entity with broad stake-
7 holder representation on its governing board;
8 "(3) demonstrate that one of its principal goals
9 is to use information technology to improve health
10 care quality and efficiency through the authorized
11 and secure electronic exchange and use of health in-
12 formation;
13 "(4) adopt nondiscrimination and conflict of in-
14 terest policies that demonstrate a commitment to
15 open, fair, and nondiscriminatory participation by
16 stakeholders; and
17 "(5) conform to such other requirements as the
18 Secretary may establish.
19 "(g) REQUIRED CONSULTATION.—In carrying out
20 activities described in subsections (b) and (c), a State or
21 qualified State-designated entity shall consult with and
22 consider the recommendations of—
23 "(1) health care providers (including providers
24 that provide services to low income and underserved
25 populations);

1 ''(2) health plans;
2 ''(3) patient or consumer organizations that
3 represent the population to be served;
4 ''(4) health information technology vendors;
5 ''(5) health care purchasers and employers;
6 ''(6) public health agencies;
7 ''(7) health professions schools, universities and
8 colleges;
9 ''(8) clinical researchers;
10 ''(9) other users of health information tech-
11 nology such as the support and clerical staff of pro-
12 viders and others involved in the care and care co-
13 ordination of patients; and
14 ''(10) such other entities, as may be determined
15 appropriate by the Secretary.
16 ''(h) CONTINUOUS IMPROVEMENT.—The Secretary
17 shall annually evaluate the activities conducted under this
18 section and shall, in awarding grants under this section,
19 implement the lessons learned from such evaluation in a
20 manner so that awards made subsequent to each such
21 evaluation are made in a manner that, in the determina-
22 tion of the Secretary, will lead towards the greatest im-
23 provement in quality of care, decrease in costs, and the
24 most effective authorized and secure electronic exchange
25 of health information.

1 "(i) REQUIRED MATCH.—
2 "(1) IN GENERAL.—For a fiscal year (begin-
3 ning with fiscal year 2011), the Secretary may not
4 make a grant under this section to a State unless
5 the State agrees to make available non-Federal con-
6 tributions (which may include in-kind contributions)
7 toward the costs of a grant awarded under sub-
8 section (c) in an amount equal to—
9 "(A) for fiscal year 2011, not less than $1
10 for each $10 of Federal funds provided under
11 the grant;
12 "(B) for fiscal year 2012, not less than $1
13 for each $7 of Federal funds provided under
14 the grant; and
15 "(C) for fiscal year 2013 and each subse-
16 quent fiscal year, not less than $1 for each $3
17 of Federal funds provided under the grant.
18 "(2) AUTHORITY TO REQUIRE STATE MATCH
19 FOR FISCAL YEARS BEFORE FISCAL YEAR 2011.—For
20 any fiscal year during the grant program under this
21 section before fiscal year 2011, the Secretary may
22 determine the extent to which there shall be required
23 a non-Federal contribution from a State receiving a
24 grant under this section.

"SEC. 3014. COMPETITIVE GRANTS TO STATES AND INDIAN TRIBES FOR THE DEVELOPMENT OF LOAN PROGRAMS TO FACILITATE THE WIDESPREAD ADOPTION OF CERTIFIED EHR TECHNOLOGY.

"(a) IN GENERAL.—The National Coordinator may award competitive grants to eligible entities for the establishment of programs for loans to health care providers to conduct the activities described in subsection (e).

"(b) ELIGIBLE ENTITY DEFINED.—For purposes of this subsection, the term 'eligible entity' means a State or Indian tribe (as defined in the Indian Self-Determination and Education Assistance Act) that—

"(1) submits to the National Coordinator an application at such time, in such manner, and containing such information as the National Coordinator may require;

"(2) submits to the National Coordinator a strategic plan in accordance with subsection (d) and provides to the National Coordinator assurances that the entity will update such plan annually in accordance with such subsection;

"(3) provides assurances to the National Coordinator that the entity will establish a Loan Fund in accordance with subsection (c);

1 ''(4) provides assurances to the National Coor-
2 dinator that the entity will not provide a loan from
3 the Loan Fund to a health care provider unless the
4 provider agrees to—
5 ''(A) submit reports on quality measures
6 adopted by the Federal Government (by not
7 later than 90 days after the date on which such
8 measures are adopted), to—
9 ''(i) the Administrator of the Centers
10 for Medicare & Medicaid Services (or his
11 or her designee), in the case of an entity
12 participating in the Medicare program
13 under title XVIII of the Social Security
14 Act or the Medicaid program under title
15 XIX of such Act; or
16 ''(ii) the Secretary in the case of other
17 entities;
18 ''(B) demonstrate to the satisfaction of the
19 Secretary (through criteria established by the
20 Secretary) that any certified EHR technology
21 purchased, improved, or otherwise financially
22 supported under a loan under this section is
23 used to exchange health information in a man-
24 ner that, in accordance with law and standards
25 (as adopted under section 3004) applicable to

the exchange of information, improves the quality of health care, such as promoting care coordination; and

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

"(D) include a plan on how health care providers involved intend to maintain and support the certified EHR technology over time;

"(E) include a plan on how the health care providers involved intend to maintain and support the certified EHR technology that would be purchased with such loan, including the type of resources expected to be involved and any such other information as the State or Indian Tribe, respectively, may require; and

"(5) agrees to provide matching funds in accordance with subsection (h).

"(c) ESTABLISHMENT OF FUND.—For purposes of subsection (b)(3), an eligible entity shall establish a certified EHR technology loan fund (referred to in this subsection as a 'Loan Fund') and comply with the other requirements contained in this section. A grant to an eligible entity under this section shall be deposited in the Loan Fund established by the eligible entity. No funds authorized by other provisions of this title to be used for other

1 purposes specified in this title shall be deposited in any
2 Loan Fund.
3 "(d) STRATEGIC PLAN.—
4 "(1) IN GENERAL.—For purposes of subsection
5 (b)(2), a strategic plan of an eligible entity under
6 this subsection shall identify the intended uses of
7 amounts available to the Loan Fund of such entity.
8 "(2) CONTENTS.—A strategic plan under para-
9 graph (1), with respect to a Loan Fund of an eligi-
10 ble entity, shall include for a year the following:
11 "(A) A list of the projects to be assisted
12 through the Loan Fund during such year.
13 "(B) A description of the criteria and
14 methods established for the distribution of
15 funds from the Loan Fund during the year.
16 "(C) A description of the financial status
17 of the Loan Fund as of the date of submission
18 of the plan.
19 "(D) The short-term and long-term goals
20 of the Loan Fund.
21 "(e) USE OF FUNDS.—Amounts deposited in a Loan
22 Fund, including loan repayments and interest earned on
23 such amounts, shall be used only for awarding loans or
24 loan guarantees, making reimbursements described in sub-
25 section (g)(4)(A), or as a source of reserve and security

for leveraged loans, the proceeds of which are deposited in the Loan Fund established under subsection (c). Loans under this section may be used by a health care provider to—

"(1) facilitate the purchase of certified EHR technology;

"(2) enhance the utilization of certified EHR technology;

"(3) train personnel in the use of such technology; or

"(4) improve the secure electronic exchange of health information.

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

"(1) To award loans that comply with the following:

"(A) The interest rate for each loan shall not exceed the market interest rate.

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

1 ''(C) The Loan Fund shall be credited with
2 all payments of principal and interest on each
3 loan awarded from the Loan Fund.
4 ''(2) To guarantee, or purchase insurance for,
5 a local obligation (all of the proceeds of which fi-
6 nance a project eligible for assistance under this
7 subsection) if the guarantee or purchase would im-
8 prove credit market access or reduce the interest
9 rate applicable to the obligation involved.
10 ''(3) As a source of revenue or security for the
11 payment of principal and interest on revenue or gen-
12 eral obligation bonds issued by the eligible entity if
13 the proceeds of the sale of the bonds will be depos-
14 ited into the Loan Fund.
15 ''(4) To earn interest on the amounts deposited
16 into the Loan Fund.
17 ''(5) To make reimbursements described in sub-
18 section (g)(4)(A).
19 ''(g) ADMINISTRATION OF LOAN FUNDS.—
20 ''(1) COMBINED FINANCIAL ADMINISTRATION.—
21 An eligible entity may (as a convenience and to
22 avoid unnecessary administrative costs) combine, in
23 accordance with applicable State law, the financial
24 administration of a Loan Fund established under
25 this subsection with the financial administration of

any other revolving fund established by the entity if otherwise not prohibited by the law under which the Loan Fund was established.

"(2) COST OF ADMINISTERING FUND.—Each eligible entity may annually use not to exceed 4 percent of the funds provided to the entity under a grant under this section to pay the reasonable costs of the administration of the programs under this section, including the recovery of reasonable costs expended to establish a Loan Fund which are incurred after the date of the enactment of this title.

"(3) GUIDANCE AND REGULATIONS.—The National Coordinator shall publish guidance and promulgate regulations as may be necessary to carry out the provisions of this section, including—

"(A) provisions to ensure that each eligible entity commits and expends funds allotted to the entity under this section as efficiently as possible in accordance with this title and applicable State laws; and

"(B) guidance to prevent waste, fraud, and abuse.

"(4) PRIVATE SECTOR CONTRIBUTIONS.—

"(A) IN GENERAL.—A Loan Fund established under this section may accept contribu-

1 tions from private sector entities, except that
2 such entities may not specify the recipient or
3 recipients of any loan issued under this sub-
4 section. An eligible entity may agree to reim-
5 burse a private sector entity for any contribu-
6 tion made under this subparagraph, except that
7 the amount of such reimbursement may not be
8 greater than the principal amount of the con-
9 tribution made.

10 ''(B) AVAILABILITY OF INFORMATION.—
11 An eligible entity shall make publicly available
12 the identity of, and amount contributed by, any
13 private sector entity under subparagraph (A)
14 and may issue letters of commendation or make
15 other awards (that have no financial value) to
16 any such entity.

17 ''(h) MATCHING REQUIREMENTS.—

18 ''(1) IN GENERAL.—The National Coordinator
19 may not make a grant under subsection (a) to an el-
20 igible entity unless the entity agrees to make avail-
21 able (directly or through donations from public or
22 private entities) non-Federal contributions in cash to
23 the costs of carrying out the activities for which the
24 grant is awarded in an amount equal to not less

than $1 for each $5 of Federal funds provided under the grant.

"(2) DETERMINATION OF AMOUNT OF NON-FEDERAL CONTRIBUTION.—In determining the amount of non-Federal contributions that an eligible entity has provided pursuant to subparagraph (A), the National Coordinator may not include any amounts provided to the entity by the Federal Government.

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

"SEC. 3015. DEMONSTRATION PROGRAM TO INTEGRATE INFORMATION TECHNOLOGY INTO CLINICAL EDUCATION.

"(a) IN GENERAL.—The Secretary may award grants under this section to carry out demonstration projects to develop academic curricula integrating certified EHR technology in the clinical education of health professionals. Such awards shall be made on a competitive basis and pursuant to peer review.

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

1 ''(1) submit to the Secretary an application at
2 such time, in such manner, and containing such in-
3 formation as the Secretary may require;
4 ''(2) submit to the Secretary a strategic plan
5 for integrating certified EHR technology in the clin-
6 ical education of health professionals to reduce med-
7 ical errors and enhance health care quality;
8 ''(3) be—
9 ''(A) a school of medicine, osteopathic
10 medicine, dentistry, or pharmacy, a graduate
11 program in behavioral or mental health, or any
12 other graduate health professions school;
13 ''(B) a graduate school of nursing or phy-
14 sician assistant studies;
15 ''(C) a consortium of two or more schools
16 described in subparagraph (A) or (B); or
17 ''(D) an institution with a graduate med-
18 ical education program in medicine, osteopathic
19 medicine, dentistry, pharmacy, nursing, or phy-
20 sician assistance studies;
21 ''(4) provide for the collection of data regarding
22 the effectiveness of the demonstration project to be
23 funded under the grant in improving the safety of
24 patients, the efficiency of health care delivery, and
25 in increasing the likelihood that graduates of the

1 grantee will adopt and incorporate certified EHR
2 technology, in the delivery of health care services;
3 and
4 ''(5) provide matching funds in accordance with
5 subsection (d).
6 ''(c) USE OF FUNDS.—
7 ''(1) IN GENERAL.—With respect to a grant
8 under subsection (a), an eligible entity shall—
9 ''(A) use grant funds in collaboration with
10 2 or more disciplines; and
11 ''(B) use grant funds to integrate certified
12 EHR technology into community-based clinical
13 education.
14 ''(2) LIMITATION.—An eligible entity shall not
15 use amounts received under a grant under sub-
16 section (a) to purchase hardware, software, or serv-
17 ices.
18 ''(d) FINANCIAL SUPPORT.—The Secretary may not
19 provide more than 50 percent of the costs of any activity
20 for which assistance is provided under subsection (a), ex-
21 cept in an instance of national economic conditions which
22 would render the cost-share requirement under this sub-
23 section detrimental to the program and upon notification
24 to Congress as to the justification to waive the cost-share
25 requirement.

1 ''(e) EVALUATION.—The Secretary shall take such
2 action as may be necessary to evaluate the projects funded
3 under this section and publish, make available, and dis-
4 seminate the results of such evaluations on as wide a basis
5 as is practicable.

6 ''(f) REPORTS.—Not later than 1 year after the date
7 of enactment of this title, and annually thereafter, the Sec-
8 retary shall submit to the Committee on Health, Edu-
9 cation, Labor, and Pensions and the Committee on Fi-
10 nance of the Senate, and the Committee on Energy and
11 Commerce of the House of Representatives a report
12 that—

13 ''(1) describes the specific projects established
14 under this section; and

15 ''(2) contains recommendations for Congress
16 based on the evaluation conducted under subsection
17 (e).

18 **''SEC. 3016. INFORMATION TECHNOLOGY PROFESSIONALS**
19 **ON HEALTH CARE.**

20 ''(a) IN GENERAL.—The Secretary, in consultation
21 with the Director of the National Science Foundation,
22 shall provide assistance to institutions of higher education
23 (or consortia thereof) to establish or expand medical
24 health informatics education programs, including certifi-
25 cation, undergraduate, and masters degree programs, for

both health care and information technology students to ensure the rapid and effective utilization and development of health information technologies (in the United States health care infrastructure).

"(b) ACTIVITIES.—Activities for which assistance may be provided under subsection (a) may include the following:

"(1) Developing and revising curricula in medical health informatics and related disciplines.

"(2) Recruiting and retaining students to the program involved.

"(3) Acquiring equipment necessary for student instruction in these programs, including the installation of testbed networks for student use.

"(4) Establishing or enhancing bridge programs in the health informatics fields between community colleges and universities.

"(c) PRIORITY.—In providing assistance under subsection (a), the Secretary shall give preference to the following:

"(1) Existing education and training programs.

"(2) Programs designed to be completed in less than six months.

"(d) FINANCIAL SUPPORT.—The Secretary may not provide more than 50 percent of the costs of any activity

for which assistance is provided under subsection (a), except in an instance of national economic conditions which would render the cost-share requirement under this subsection detrimental to the program and upon notification to Congress as to the justification to waive the cost-share requirement.

"SEC. 3017. GENERAL GRANT AND LOAN PROVISIONS.

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

"(1) an analysis of the effectiveness of the activities for which the entity receives such assistance, as compared to the goals for such activities; and

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

"(b) REQUIREMENT TO IMPROVE QUALITY OF CARE AND DECREASE IN COSTS.—The National Coordinator shall annually evaluate the activities conducted under this subtitle and shall, in awarding grants, implement the lessons learned from such evaluation in a manner so that awards made subsequent to each such evaluation are made in a manner that, in the determination of the National

1 Coordinator, will result in the greatest improvement in the
2 quality and efficiency of health care.

3 **"SEC. 3018. AUTHORIZATION FOR APPROPRIATIONS.**

4 "For the purposes of carrying out this subtitle, there
5 is authorized to be appropriated such sums as may be nec-
6 essary for each of the fiscal years 2009 through 2013.
7 Amounts so appropriated shall remain available until ex-
8 pended.".

9 **PART II—MEDICARE PROGRAM**

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

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

14 "(o) INCENTIVES FOR ADOPTION AND MEANINGFUL
15 USE OF CERTIFIED EHR TECHNOLOGY.—

16 "(1) INCENTIVE PAYMENTS.—

17 "(A) IN GENERAL.—Subject to the suc-
18 ceeding subparagraphs of this paragraph, with
19 respect to covered professional services fur-
20 nished by an eligible professional during a pay-
21 ment year (as defined in subparagraph (E)), if
22 the eligible professional is a meaningful EHR
23 user (as determined under paragraph (2)) for
24 the reporting period with respect to such year,
25 in addition to the amount otherwise paid under

this part, there also shall be paid to the eligible professional (or to an employer or facility in the cases described in clause (A) of section 1842(b)(6)), from the Federal Supplementary Medical Insurance Trust Fund established under section 1841 an amount equal to 75 percent of the Secretary's estimate (based on claims submitted not later than 2 months after the end of the payment year) of the allowed charges under this part for all such covered professional services furnished by the eligible professional during such year.

"(B) LIMITATIONS ON AMOUNTS OF INCENTIVE PAYMENTS.—

"(i) IN GENERAL.—In no case shall the amount of the incentive payment provided under this paragraph for an eligible professional for a payment year exceed the applicable amount specified under this subparagraph with respect to such eligible professional and such year.

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

1 "(I) For the first payment year
2 for such professional, $15,000.
3 "(II) For the second payment
4 year for such professional, $12,000.
5 "(III) For the third payment
6 year for such professional, $8,000.
7 "(IV) For the fourth payment
8 year for such professional, $4,000.
9 "(V) For the fifth payment year
10 for such professional, $2,000.
11 "(VI) For any succeeding pay-
12 ment year for such professional, $0.
13 "(iii) PHASE DOWN FOR ELIGIBLE
14 PROFESSIONALS FIRST ADOPTING EHR
15 AFTER 2013.—If the first payment year for
16 an eligible professional is after 2013, then
17 the amount specified in this subparagraph
18 for a payment year for such professional is
19 the same as the amount specified in clause
20 (ii) for such payment year for an eligible
21 professional whose first payment year is
22 2013. If the first payment year for an eli-
23 gible professional is after 2015 then the
24 applicable amount specified in this sub-

1 paragraph for such professional for such
2 year and any subsequent year shall be $0.
3 "(C) NON-APPLICATION TO HOSPITAL-
4 BASED ELIGIBLE PROFESSIONALS.—
5 "(i) IN GENERAL.—No incentive pay-
6 ment may be made under this paragraph
7 in the case of a hospital-based eligible pro-
8 fessional.
9 "(ii) HOSPITAL-BASED ELIGIBLE PRO-
10 FESSIONAL.—For purposes of clause (i),
11 the term 'hospital-based eligible profes-
12 sional' means, with respect to covered pro-
13 fessional services furnished by an eligible
14 professional during the reporting period for
15 a payment year, an eligible professional,
16 such as a pathologist, anesthesiologist, or
17 emergency physician, who furnishes sub-
18 stantially all of such services in a hospital
19 setting (whether inpatient or outpatient)
20 and through the use of the facilities and
21 equipment, including computer equipment,
22 of the hospital.
23 "(D) PAYMENT.—
24 "(i) FORM OF PAYMENT.—The pay-
25 ment under this paragraph may be in the

form of a single consolidated payment or in the form of such periodic installments as the Secretary may specify.

"(ii) COORDINATION OF APPLICATION OF LIMITATION FOR PROFESSIONALS IN DIFFERENT PRACTICES.—In the case of an eligible professional furnishing covered professional services in more than one practice (as specified by the Secretary), the Secretary shall establish rules to coordinate the incentive payments, including the application of the limitation on amounts of such incentive payments under this paragraph, among such practices.

"(iii) COORDINATION WITH MEDICAID.—The Secretary shall seek, to the maximum extent practicable, to avoid duplicative requirements from Federal and State Governments to demonstrate meaningful use of certified EHR technology under this title and title XIX. In doing so, the Secretary may deem satisfaction of State requirements for such meaningful use for a payment year under title XIX to be sufficient to qualify as meaningful use

1 under this subsection and subsection (a)(7)
2 and vice versa. The Secretary may also ad-
3 just the reporting periods under such title
4 and such subsections in order to carry out
5 this clause.
6 ''(E) PAYMENT YEAR DEFINED.—
7 ''(i) IN GENERAL.—For purposes of
8 this subsection, the term 'payment year'
9 means a year beginning with 2011.
10 ''(ii) FIRST, SECOND, ETC. PAYMENT
11 YEAR.—The term 'first payment year'
12 means, with respect to covered professional
13 services furnished by an eligible profes-
14 sional, the first year for which an incentive
15 payment is made for such services under
16 this subsection. The terms 'second pay-
17 ment year', 'third payment year', 'fourth
18 payment year', and 'fifth payment year'
19 mean, with respect to covered professional
20 services furnished by such eligible profes-
21 sional, each successive year immediately
22 following the first payment year for such
23 professional.
24 ''(2) MEANINGFUL EHR USER.—

1 "(A) IN GENERAL.—For purposes of para-
2 graph (1), an eligible professional shall be
3 treated as a meaningful EHR user for a report-
4 ing period for a payment year (or, for purposes
5 of subsection (a)(7), for a reporting period
6 under such subsection for a year) if each of the
7 following requirements is met:
8 "(i) MEANINGFUL USE OF CERTIFIED
9 EHR TECHNOLOGY.—The eligible profes-
10 sional demonstrates to the satisfaction of
11 the Secretary, in accordance with subpara-
12 graph (C)(i), that during such period the
13 professional is using certified EHR tech-
14 nology in a meaningful manner, which
15 shall include the use of electronic pre-
16 scribing as determined to be appropriate
17 by the Secretary.
18 "(ii) INFORMATION EXCHANGE.—The
19 eligible professional demonstrates to the
20 satisfaction of the Secretary, in accordance
21 with subparagraph (C)(i), that during such
22 period such certified EHR technology is
23 connected in a manner that provides, in
24 accordance with law and standards appli-
25 cable to the exchange of information, for

the electronic exchange of health information to improve the quality of health care, such as promoting care coordination.

"(iii) REPORTING ON MEASURES USING EHR.—Subject to subparagraph (B)(ii) and using such certified EHR technology, the eligible professional submits information for such period, in a form and manner specified by the Secretary, on such clinical quality measures and such other measures as selected by the Secretary under subparagraph (B)(i).

The Secretary may provide for the use of alternative means for meeting the requirements of clauses (i), (ii), and (iii) in the case of an eligible professional furnishing covered professional services in a group practice (as defined by the Secretary). The Secretary shall seek to improve the use of electronic health records and health care quality over time by requiring more stringent measures of meaningful use selected under this paragraph.

"(B) REPORTING ON MEASURES.—

"(i) SELECTION.—The Secretary shall select measures for purposes of subpara-

1 graph (A)(iii) but only consistent with the
2 following:
3 ''(I) The Secretary shall provide
4 preference to clinical quality measures
5 that have been endorsed by the entity
6 with a contract with the Secretary
7 under section 1890(a).
8 ''(II) Prior to any measure being
9 selected under this subparagraph, the
10 Secretary shall publish in the Federal
11 Register such measure and provide for
12 a period of public comment on such
13 measure.
14 ''(ii) LIMITATION.—The Secretary
15 may not require the electronic reporting of
16 information on clinical quality measures
17 under subparagraph (A)(iii) unless the
18 Secretary has the capacity to accept the in-
19 formation electronically, which may be on
20 a pilot basis.
21 ''(iii) COORDINATION OF REPORTING
22 OF INFORMATION.—In selecting such
23 measures, and in establishing the form and
24 manner for reporting measures under sub-
25 paragraph (A)(iii), the Secretary shall seek

to avoid redundant or duplicative reporting otherwise required, including reporting under subsection (k)(2)(C).

"(C) DEMONSTRATION OF MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY AND INFORMATION EXCHANGE.—

"(i) IN GENERAL.—A professional may satisfy the demonstration requirement of clauses (i) and (ii) of subparagraph (A) through means specified by the Secretary, which may include—

"(I) an attestation;

"(II) the submission of claims with appropriate coding (such as a code indicating that a patient encounter was documented using certified EHR technology);

"(III) a survey response;

"(IV) reporting under subparagraph (A)(iii); and

"(V) other means specified by the Secretary.

"(ii) USE OF PART D DATA.—Notwithstanding sections 1860D–15(d)(2)(B) and 1860D–15(f)(2), the Secretary may

use data regarding drug claims submitted for purposes of section 1860D–15 that are necessary for purposes of subparagraph (A).

"(3) APPLICATION.—

"(A) PHYSICIAN REPORTING SYSTEM RULES.—Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this subsection in the same manner as they apply for purposes of such subsection.

"(B) COORDINATION WITH OTHER PAYMENTS.—The provisions of this subsection shall not be taken into account in applying the provisions of subsection (m) of this section and of section 1833(m) and any payment under such provisions shall not be taken into account in computing allowable charges under this subsection.

"(C) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the determination of any incentive payment under this subsection and the payment adjustment under subsection (a)(7), including the determination of a meaningful EHR user under

1 paragraph (2), a limitation under paragraph
2 (1)(B), and the exception under subsection
3 (a)(7)(B).
4 "(D) POSTING ON WEBSITE.—The Sec-
5 retary shall post on the Internet website of the
6 Centers for Medicare & Medicaid Services, in an
7 easily understandable format, a list of the
8 names, business addresses, and business phone
9 numbers of the eligible professionals who are
10 meaningful EHR users and, as determined ap-
11 propriate by the Secretary, of group practices
12 receiving incentive payments under paragraph
13 (1).
14 "(4) CERTIFIED EHR TECHNOLOGY DEFINED.—
15 For purposes of this section, the term 'certified
16 EHR technology' means a qualified electronic health
17 record (as defined in 3000(13) of the Public Health
18 Service Act) that is certified pursuant to section
19 3001(c)(5) of such Act as meeting standards adopt-
20 ed under section 3004 of such Act that are applica-
21 ble to the type of record involved (as determined by
22 the Secretary, such as an ambulatory electronic
23 health record for office-based physicians or an inpa-
24 tient hospital electronic health record for hospitals).

1 "(5) DEFINITIONS.—For purposes of this sub-
2 section:
3 "(A) COVERED PROFESSIONAL SERV-
4 ICES.—The term 'covered professional services'
5 has the meaning given such term in subsection
6 (k)(3).
7 "(B) ELIGIBLE PROFESSIONAL.—The term
8 'eligible professional' means a physician, as de-
9 fined in section 1861(r).
10 "(C) REPORTING PERIOD.—The term 're-
11 porting period' means any period (or periods),
12 with respect to a payment year, as specified by
13 the Secretary.".
14 (b) INCENTIVE PAYMENT ADJUSTMENT.—Section
15 1848(a) of the Social Security Act (42 U.S.C. 1395w–
16 4(a)) is amended by adding at the end the following new
17 paragraph:
18 "(7) INCENTIVES FOR MEANINGFUL USE OF
19 CERTIFIED EHR TECHNOLOGY.—
20 "(A) ADJUSTMENT.—
21 "(i) IN GENERAL.—Subject to sub-
22 paragraphs (B) and (D), with respect to
23 covered professional services furnished by
24 an eligible professional during 2016 or any
25 subsequent payment year, if the eligible

1 professional is not a meaningful EHR user
2 (as determined under subsection (o)(2)) for
3 a reporting period for the year, the fee
4 schedule amount for such services fur-
5 nished by such professional during the year
6 (including the fee schedule amount for pur-
7 poses of determining a payment based on
8 such amount) shall be equal to the applica-
9 ble percent of the fee schedule amount that
10 would otherwise apply to such services
11 under this subsection (determined after ap-
12 plication of paragraph (3) but without re-
13 gard to this paragraph).
14 ''(ii) APPLICABLE PERCENT.—Subject
15 to clause (iii), for purposes of clause (i),
16 the term 'applicable percent' means—
17 ''(I) for 2016, 99 percent;
18 ''(II) for 2017, 98 percent; and
19 ''(III) for 2018 and each subse-
20 quent year, 97 percent.
21 ''(iii) AUTHORITY TO DECREASE AP-
22 PLICABLE PERCENTAGE FOR 2019 AND
23 SUBSEQUENT YEARS.—For 2019 and each
24 subsequent year, if the Secretary finds that
25 the proportion of eligible professionals who

are meaningful EHR users (as determined under subsection (o)(2)) is less than 75 percent, the applicable percent shall be decreased by 1 percentage point from the applicable percent in the preceding year, but in no case shall the applicable percent be less than 95 percent.

"(B) SIGNIFICANT HARDSHIP EXCEPTION.—The Secretary may, on a case-by-case basis, exempt an eligible professional from the application of the payment adjustment under subparagraph (A) if the Secretary determines, subject to annual renewal, that compliance with the requirement for being a meaningful EHR user would result in a significant hardship, such as in the case of an eligible professional who practices in a rural area without sufficient Internet access. In no case may an eligible professional be granted an exemption under this subparagraph for more than 5 years.

"(C) APPLICATION OF PHYSICIAN REPORTING SYSTEM RULES.—Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this paragraph in the same manner as they apply for purposes of such subsection.

"(D) NON-APPLICATION TO HOSPITAL-BASED ELIGIBLE PROFESSIONALS.—No payment adjustment may be made under subparagraph (A) in the case of hospital-based eligible professionals (as defined in subsection (o)(1)(C)(ii)).

"(E) DEFINITIONS.—For purposes of this paragraph:

"(i) COVERED PROFESSIONAL SERVICES.—The term 'covered professional services' has the meaning given such term in subsection (k)(3).

"(ii) ELIGIBLE PROFESSIONAL.—The term 'eligible professional' means a physician, as defined in section 1861(r).

"(iii) REPORTING PERIOD.—The term 'reporting period' means, with respect to a year, a period specified by the Secretary.".

(c) APPLICATION TO CERTAIN HMO-AFFILIATED ELIGIBLE PROFESSIONALS.—Section 1853 of the Social Security Act (42 U.S.C. 1395w–23) is amended by adding at the end the following new subsection:

"(l) APPLICATION OF ELIGIBLE PROFESSIONAL INCENTIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOP-

1 TION AND MEANINGFUL USE OF CERTIFIED EHR TECH-
2 NOLOGY.—
3 "(1) IN GENERAL.—Subject to paragraphs (3)
4 and (4), in the case of a qualifying MA organization,
5 the provisions of sections 1848(o) and 1848(a)(7)
6 shall apply with respect to eligible professionals de-
7 scribed in paragraph (2) of the organization who the
8 organization attests under paragraph (6) to be
9 meaningful EHR users in a similar manner as they
10 apply to eligible professionals under such sections.
11 Incentive payments under paragraph (3) shall be
12 made to and payment adjustments under paragraph
13 (4) shall apply to such qualifying organizations.
14 "(2) ELIGIBLE PROFESSIONAL DESCRIBED.—
15 With respect to a qualifying MA organization, an eli-
16 gible professional described in this paragraph is an
17 eligible professional (as defined for purposes of sec-
18 tion 1848(o)) who—
19 "(A)(i) is employed by the organization; or
20 "(ii)(I) is employed by, or is a partner of,
21 an entity that through contract with the organi-
22 zation furnishes at least 80 percent of the enti-
23 ty's patient care services to enrollees of such or-
24 ganization; and

"(II) furnishes at least 75 percent of the professional services of the eligible professional to enrollees of the organization; and

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

"(3) ELIGIBLE PROFESSIONAL INCENTIVE PAYMENTS.—

"(A) IN GENERAL.—In applying section 1848(o) under paragraph (1), instead of the additional payment amount under section 1848(o)(1)(A) and subject to subparagraph (B), the Secretary may substitute an amount determined by the Secretary to the extent feasible and practical to be similar to the estimated amount in the aggregate that would be payable if payment for services furnished by such professionals was payable under part B instead of this part.

"(B) AVOIDING DUPLICATION OF PAYMENTS.—

"(i) IN GENERAL.—If an eligible professional described in paragraph (2) is eligible for the maximum incentive payment under section 1848(o)(1)(A) for the same payment period, the payment incentive

shall be made only under such section and not under this subsection.

"(ii) METHODS.—In the case of an eligible professional described in paragraph (2) who is eligible for an incentive payment under section 1848(o)(1)(A) but is not described in clause (i) for the same payment period, the Secretary shall develop a process—

"(I) to ensure that duplicate payments are not made with respect to an eligible professional both under this subsection and under section 1848(o)(1)(A); and

"(II) to collect data from Medicare Advantage organizations to ensure against such duplicate payments.

"(C) FIXED SCHEDULE FOR APPLICATION OF LIMITATION ON INCENTIVE PAYMENTS FOR ALL ELIGIBLE PROFESSIONALS.—In applying section 1848(o)(1)(B)(ii) under subparagraph (A), in accordance with rules specified by the Secretary, a qualifying MA organization shall specify a year (not earlier than 2011) that shall be treated as the first payment year for all eli-

gible professionals with respect to such organization.

"(4) PAYMENT ADJUSTMENT.—

"(A) IN GENERAL.—In applying section 1848(a)(7) under paragraph (1), instead of the payment adjustment being an applicable percent of the fee schedule amount for a year under such section, subject to subparagraph (D), the payment adjustment under paragraph (1) shall be equal to the percent specified in subparagraph (B) for such year of the payment amount otherwise provided under this section for such year.

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

"(i) the number of percentage points by which the applicable percent (under section 1848(a)(7)(A)(ii)) for the year is less than 100 percent; and

"(ii) the Medicare physician expenditure proportion specified in subparagraph (C) for the year.

1 "(C) MEDICARE PHYSICIAN EXPENDITURE
2 PROPORTION.—The Medicare physician expend-
3 iture proportion under this subparagraph for a
4 year is the Secretary's estimate of the propor-
5 tion, of the expenditures under parts A and B
6 that are not attributable to this part, that are
7 attributable to expenditures for physicians'
8 services.
9 "(D) APPLICATION OF PAYMENT ADJUST-
10 MENT.—In the case that a qualifying MA orga-
11 nization attests that not all eligible profes-
12 sionals are meaningful EHR users with respect
13 to a year, the Secretary shall apply the payment
14 adjustment under this paragraph based on the
15 proportion of such eligible professionals that are
16 not meaningful EHR users for such year.
17 "(5) QUALIFYING MA ORGANIZATION DE-
18 FINED.—In this subsection and subsection (m), the
19 term 'qualifying MA organization' means a Medicare
20 Advantage organization that is organized as a health
21 maintenance organization (as defined in section
22 2791(b)(3) of the Public Health Service Act).
23 "(6) MEANINGFUL EHR USER ATTESTATION.—
24 For purposes of this subsection and subsection (m),
25 a qualifying MA organization shall submit an attes-

1 tation, in a form and manner specified by the Sec-
2 retary which may include the submission of such at-
3 testation as part of submission of the initial bid
4 under section 1854(a)(1)(A)(iv), identifying—
5 "(A) whether each eligible professional de-
6 scribed in paragraph (2), with respect to such
7 organization is a meaningful EHR user (as de-
8 fined in section 1848(o)(2)) for a year specified
9 by the Secretary; and
10 "(B) whether each eligible hospital de-
11 scribed in subsection (m)(1), with respect to
12 such organization, is a meaningful EHR user
13 (as defined in section 1886(n)(3)) for an appli-
14 cable period specified by the Secretary.".
15 (d) CONFORMING AMENDMENTS.—Section 1853 of
16 the Social Security Act (42 U.S.C. 1395w–23) is amend-
17 ed—
18 (1) in subsection (a)(1)(A), by striking "and
19 (i)" and inserting "(i), and (l)";
20 (2) in subsection (c)—
21 (A) in paragraph (1)(D)(i), by striking
22 "section 1886(h)" and inserting "sections
23 1848(o) and 1886(h)"; and
24 (B) in paragraph (6)(A), by inserting after
25 "under part B," the following: "excluding ex-

1 penditures attributable to subsections (a)(7)
2 and (o) of section 1848,''; and
3 (3) in subsection (f), by inserting ''and for pay-
4 ments under subsection (l)'' after ''with the organi-
5 zation''.
6 (e) CONFORMING AMENDMENTS TO E-PRE-
7 SCRIBING.—
8 (1) Section 1848(a)(5)(A) of the Social Security
9 Act (42 U.S.C. 1395w–4(a)(5)(A)) is amended—
10 (A) in clause (i), by striking ''or any sub-
11 sequent year'' and inserting '', 2013, 2014, or
12 2015''; and
13 (B) in clause (ii), by striking ''and each
14 subsequent year'' and inserting ''and 2015''.
15 (2) Section 1848(m)(2) of such Act (42 U.S.C.
16 1395w–4(m)(2)) is amended—
17 (A) in subparagraph (A), by striking ''For
18 2009'' and inserting ''Subject to subparagraph
19 (D), for 2009''; and
20 (B) by adding at the end the following new
21 subparagraph:
22 ''(D) LIMITATION WITH RESPECT TO EHR
23 INCENTIVE PAYMENTS.—The provisions of this
24 paragraph shall not apply to an eligible profes-
25 sional (or, in the case of a group practice under

paragraph (3)(C), to the group practice) if, for the reporting period the eligible professional (or group practice) receives an incentive payment under subsection (o)(1)(A) with respect to a certified EHR technology (as defined in subsection (o)(4)) that has the capability of electronic prescribing.''.

SEC. 4312. INCENTIVES FOR HOSPITALS.

(a) INCENTIVE PAYMENT.—Section 1886 of the Social Security Act (42 U.S.C. 1395ww) is amended by adding at the end the following new subsection:

''(n) INCENTIVES FOR ADOPTION AND MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.—

''(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, with respect to inpatient hospital services furnished by an eligible hospital during a payment year (as defined in paragraph (2)(G)), if the eligible hospital is a meaningful EHR user (as determined under paragraph (3)) for the reporting period with respect to such year, in addition to the amount otherwise paid under this section, there also shall be paid to the eligible hospital, from the Federal Hospital Insurance Trust Fund established under section 1817, an amount equal to

the applicable amount specified in paragraph (2)(A) for the hospital for such payment year.

"(2) PAYMENT AMOUNT.—

"(A) IN GENERAL.—Subject to the succeeding subparagraphs of this paragraph, the applicable amount specified in this subparagraph for an eligible hospital for a payment year is equal to the product of the following:

"(i) INITIAL AMOUNT.—The sum of—

"(I) the base amount specified in subparagraph (B); plus

"(II) the discharge related amount specified in subparagraph (C) for a 12-month period selected by the Secretary with respect to such payment year.

"(ii) MEDICARE SHARE.—The Medicare share as specified in subparagraph (D) for the hospital for a period selected by the Secretary with respect to such payment year.

"(iii) TRANSITION FACTOR.—The transition factor specified in subparagraph (E) for the hospital for the payment year.

1 "(B) BASE AMOUNT.—The base amount
2 specified in this subparagraph is $2,000,000.
3 "(C) DISCHARGE RELATED AMOUNT.—The
4 discharge related amount specified in this sub-
5 paragraph for a 12-month period selected by
6 the Secretary shall be determined as the sum of
7 the amount, based upon total discharges (re-
8 gardless of any source of payment) for the pe-
9 riod, for each discharge up to the 23,000th dis-
10 charge as follows:
11 "(i) For the 1,150th through the
12 9,200nd discharge, $200.
13 "(ii) For the 9,201st through the
14 13,800th discharge, 50 percent of the
15 amount specified in clause (i).
16 "(iii) For the 13,801st through the
17 23,000th discharge, 30 percent of the
18 amount specified in clause (i).
19 "(D) MEDICARE SHARE.—The Medicare
20 share specified under this subparagraph for a
21 hospital for a period selected by the Secretary
22 for a payment year is equal to the fraction—
23 "(i) the numerator of which is the
24 sum (for such period and with respect to
25 the hospital) of—

1 ''(I) the number of inpatient-bed-
2 days (as established by the Secretary)
3 which are attributable to individuals
4 with respect to whom payment may be
5 made under part A; and
6 ''(II) the number of inpatient-
7 bed-days (as so established) which are
8 attributable to individuals who are en-
9 rolled with a Medicare Advantage or-
10 ganization under part C; and
11 ''(ii) the denominator of which is the
12 product of—
13 ''(I) the total number of inpa-
14 tient-bed-days with respect to the hos-
15 pital during such period; and
16 ''(II) the total amount of the hos-
17 pital's charges during such period, not
18 including any charges that are attrib-
19 utable to charity care (as such term is
20 used for purposes of hospital cost re-
21 porting under this title), divided by
22 the total amount of the hospital's
23 charges during such period.
24 Insofar as the Secretary determines that data
25 are not available on charity care necessary to

calculate the portion of the formula specified in clause (ii)(II), the Secretary shall use data on uncompensated care and may adjust such data so as to be an appropriate proxy for charity care including a downward adjustment to eliminate bad debt data from uncompensated care data. In the absence of the data necessary, with respect to a hospital, for the Secretary to compute the amount described in clause (ii)(II), the amount under such clause shall be deemed to be 1. In the absence of data, with respect to a hospital, necessary to compute the amount described in clause (i)(II), the amount under such clause shall be deemed to be 0.

"(E) TRANSITION FACTOR SPECIFIED.—

"(i) IN GENERAL.—Subject to clause (ii), the transition factor specified in this subparagraph for an eligible hospital for a payment year is as follows:

"(I) For the first payment year for such hospital, 1.

"(II) For the second payment year for such hospital, ¾.

"(III) For the third payment year for such hospital, ½.

1 "(IV) For the fourth payment
2 year for such hospital, ¼.
3 "(V) For any succeeding pay-
4 ment year for such hospital, 0.
5 "(ii) PHASE DOWN FOR ELIGIBLE
6 HOSPITALS FIRST ADOPTING EHR AFTER
7 2013.—If the first payment year for an eli-
8 gible hospital is after 2013, then the tran-
9 sition factor specified in this subparagraph
10 for a payment year for such hospital is the
11 same as the amount specified in clause (i)
12 for such payment year for an eligible hos-
13 pital for which the first payment year is
14 2013. If the first payment year for an eli-
15 gible hospital is after 2015 then the transi-
16 tion factor specified in this subparagraph
17 for such hospital and for such year and
18 any subsequent year shall be 0.
19 "(F) FORM OF PAYMENT.—The payment
20 under this subsection for a payment year may
21 be in the form of a single consolidated payment
22 or in the form of such periodic installments as
23 the Secretary may specify.
24 "(G) PAYMENT YEAR DEFINED.—

1 "(i) IN GENERAL.—For purposes of
2 this subsection, the term 'payment year'
3 means a fiscal year beginning with fiscal
4 year 2011.
5 "(ii) FIRST, SECOND, ETC. PAYMENT
6 YEAR.—The term 'first payment year'
7 means, with respect to inpatient hospital
8 services furnished by an eligible hospital,
9 the first fiscal year for which an incentive
10 payment is made for such services under
11 this subsection. The terms 'second pay-
12 ment year', 'third payment year', and
13 'fourth payment year' mean, with respect
14 to an eligible hospital, each successive year
15 immediately following the first payment
16 year for that hospital.
17 "(3) MEANINGFUL EHR USER.—
18 "(A) IN GENERAL.—For purposes of para-
19 graph (1), an eligible hospital shall be treated
20 as a meaningful EHR user for a reporting pe-
21 riod for a payment year (or, for purposes of
22 subsection (b)(3)(B)(ix), for a reporting period
23 under such subsection for a fiscal year) if each
24 of the following requirements are met:

1 "(i) MEANINGFUL USE OF CERTIFIED
2 EHR TECHNOLOGY.—The eligible hospital
3 demonstrates to the satisfaction of the Sec-
4 retary, in accordance with subparagraph
5 (C)(i), that during such period the hospital
6 is using certified EHR technology in a
7 meaningful manner.
8 "(ii) INFORMATION EXCHANGE.—The
9 eligible hospital demonstrates to the satis-
10 faction of the Secretary, in accordance
11 with subparagraph (C)(i), that during such
12 period such certified EHR technology is
13 connected in a manner that provides, in
14 accordance with law and standards appli-
15 cable to the exchange of information, for
16 the electronic exchange of health informa-
17 tion to improve the quality of health care,
18 such as promoting care coordination.
19 "(iii) REPORTING ON MEASURES
20 USING EHR.—Subject to subparagraph
21 (B)(ii) and using such certified EHR tech-
22 nology, the eligible hospital submits infor-
23 mation for such period, in a form and
24 manner specified by the Secretary, on such
25 clinical quality measures and such other

1 measures as selected by the Secretary
2 under subparagraph (B)(i).
3 The Secretary shall seek to improve the use of
4 electronic health records and health care quality
5 over time by requiring more stringent measures
6 of meaningful use selected under this para-
7 graph.
8 ''(B) REPORTING ON MEASURES.—
9 ''(i) SELECTION.—The Secretary shall
10 select measures for purposes of subpara-
11 graph (A)(iii) but only consistent with the
12 following:
13 ''(I) The Secretary shall provide
14 preference to clinical quality measures
15 that have been selected for purposes
16 of applying subsection (b)(3)(B)(viii)
17 or that have been endorsed by the en-
18 tity with a contract with the Secretary
19 under section 1890(a).
20 ''(II) Prior to any measure (other
21 than a clinical quality measure that
22 has been selected for purposes of ap-
23 plying subsection (b)(3)(B)(viii))
24 being selected under this subpara-
25 graph, the Secretary shall publish in

the Federal Register such measure and provide for a period of public comment on such measure.

"(ii) LIMITATIONS.—The Secretary may not require the electronic reporting of information on clinical quality measures under subparagraph (A)(iii) unless the Secretary has the capacity to accept the information electronically, which may be on a pilot basis.

"(iii) COORDINATION OF REPORTING OF INFORMATION.—In selecting such measures, and in establishing the form and manner for reporting measures under subparagraph (A)(iii), the Secretary shall seek to avoid redundant or duplicative reporting with reporting otherwise required, including reporting under subsection (b)(3)(B)(viii).

"(C) DEMONSTRATION OF MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY AND INFORMATION EXCHANGE.—

"(i) IN GENERAL.—A hospital may satisfy the demonstration requirement of clauses (i) and (ii) of subparagraph (A)

through means specified by the Secretary, which may include—

"(I) an attestation;

"(II) the submission of claims with appropriate coding (such as a code indicating that inpatient care was documented using certified EHR technology);

"(III) a survey response;

"(IV) reporting under subparagraph (A)(iii); and

"(V) other means specified by the Secretary.

"(ii) USE OF PART D DATA.—Notwithstanding sections 1860D–15(d)(2)(B) and 1860D–15(f)(2), the Secretary may use data regarding drug claims submitted for purposes of section 1860D–15 that are necessary for purposes of subparagraph (A).

"(4) APPLICATION.—

"(A) LIMITATIONS ON REVIEW.—There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the determination of any incentive payment

1 under this subsection and the payment adjust-
2 ment under subsection (b)(3)(B)(ix), including
3 the determination of a meaningful EHR user
4 under paragraph (3), determination of meas-
5 ures applicable to services furnished by eligible
6 hospitals under this subsection, and the excep-
7 tion under subsection (b)(3)(B)(ix)(II).
8 "(B) POSTING ON WEBSITE.—The Sec-
9 retary shall post on the Internet website of the
10 Centers for Medicare & Medicaid Services, in an
11 easily understandable format, a list of the
12 names of the eligible hospitals that are mean-
13 ingful EHR users under this subsection or sub-
14 section (b)(3)(B)(ix) and other relevant data as
15 determined appropriate by the Secretary. The
16 Secretary shall ensure that a hospital has the
17 opportunity to review the other relevant data
18 that are to be made public with respect to the
19 hospital prior to such data being made public.
20 "(5) CERTIFIED EHR TECHNOLOGY DEFINED.—
21 The term 'certified EHR technology' has the mean-
22 ing given such term in section 1848(o)(4).
23 "(6) DEFINITIONS.—For purposes of this sub-
24 section:

"(A) ELIGIBLE HOSPITAL.—The term 'eligible hospital' means a subsection (d) hospital.

"(B) REPORTING PERIOD.—The term 'reporting period' means any period (or periods), with respect to a payment year, as specified by the Secretary.".

(b) INCENTIVE MARKET BASKET ADJUSTMENT.—Section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)) is amended—

(1) in clause (viii)(I), by inserting "(or, beginning with fiscal year 2016, by one-quarter)" after "2.0 percentage points"; and

(2) by adding at the end the following new clause:

"(ix)(I) For purposes of clause (i) for fiscal year 2016 and each subsequent fiscal year, in the case of an eligible hospital (as defined in subsection (n)(6)(A)) that is not a meaningful EHR user (as defined in subsection (n)(3)) for the reporting period for such fiscal year, three-quarters of the applicable percentage increase otherwise applicable under clause (i) for such fiscal year shall be reduced by 33⅓ percent for fiscal year 2016, 66⅔ percent for fiscal year 2017, and 100 percent for fiscal year 2018 and each subsequent fiscal year. Such reduction shall apply only with respect to the fiscal year involved

1 and the Secretary shall not take into account such reduc-
2 tion in computing the applicable percentage increase under
3 clause (i) for a subsequent fiscal year.

4 ''(II) The Secretary may, on a case-by-case basis, ex-
5 empt a subsection (d) hospital from the application of sub-
6 clause (I) with respect to a fiscal year if the Secretary
7 determines, subject to annual renewal, that requiring such
8 hospital to be a meaningful EHR user during such fiscal
9 year would result in a significant hardship, such as in the
10 case of a hospital in a rural area without sufficient Inter-
11 net access. In no case may a hospital be granted an ex-
12 emption under this subclause for more than 5 years.

13 ''(III) For fiscal year 2016 and each subsequent fis-
14 cal year, a State in which hospitals are paid for services
15 under section 1814(b)(3) shall adjust the payments to
16 each subsection (d) hospital in the State that is not a
17 meaningful EHR user (as defined in subsection (n)(3))
18 in a manner that is designed to result in an aggregate
19 reduction in payments to hospitals in the State that is
20 equivalent to the aggregate reduction that would have oc-
21 curred if payments had been reduced to each subsection
22 (d) hospital in the State in a manner comparable to the
23 reduction under the previous provisions of this clause. The
24 State shall report to the Secretary the methodology it will

1 use to make the payment adjustment under the previous
2 sentence.
3 ''(IV) For purposes of this clause, the term 'reporting
4 period' means, with respect to a fiscal year, any period
5 (or periods), with respect to the fiscal year, as specified
6 by the Secretary.''.
7 (c) APPLICATION TO CERTAIN HMO-AFFILIATED
8 ELIGIBLE HOSPITALS.—Section 1853 of the Social Secu-
9 rity Act (42 U.S.C. 1395w-23), as amended by section
10 4311(c), is further amended by adding at the end the fol-
11 lowing new subsection:
12 ''(m) APPLICATION OF ELIGIBLE HOSPITAL INCEN-
13 TIVES FOR CERTAIN MA ORGANIZATIONS FOR ADOPTION
14 AND MEANINGFUL USE OF CERTIFIED EHR TECH-
15 NOLOGY.—
16 ''(1) APPLICATION.—Subject to paragraphs (3)
17 and (4), in the case of a qualifying MA organization,
18 the provisions of sections 1886(n) and
19 1886(b)(3)(B)(ix) shall apply with respect to eligible
20 hospitals described in paragraph (2) of the organiza-
21 tion which the organization attests under subsection
22 (l)(6) to be meaningful EHR users in a similar man-
23 ner as they apply to eligible hospitals under such
24 sections. Incentive payments under paragraph (3)
25 shall be made to and payment adjustments under

1 paragraph (4) shall apply to such qualifying organi-
2 zations.
3 "(2) ELIGIBLE HOSPITAL DESCRIBED.—With
4 respect to a qualifying MA organization, an eligible
5 hospital described in this paragraph is an eligible
6 hospital that is under common corporate governance
7 with such organization and serves individuals en-
8 rolled under an MA plan offered by such organiza-
9 tion.
10 "(3) ELIGIBLE HOSPITAL INCENTIVE PAY-
11 MENTS.—
12 "(A) IN GENERAL.—In applying section
13 1886(n)(2) under paragraph (1), instead of the
14 additional payment amount under section
15 1886(n)(2), there shall be substituted an
16 amount determined by the Secretary to be simi-
17 lar to the estimated amount in the aggregate
18 that would be payable if payment for services
19 furnished by such hospitals was payable under
20 part A instead of this part. In implementing the
21 previous sentence, the Secretary—
22 "(i) shall, insofar as data to deter-
23 mine the discharge related amount under
24 section 1886(n)(2)(C) for an eligible hos-
25 pital are not available to the Secretary, use

1 such alternative data and methodology to
2 estimate such discharge related amount as
3 the Secretary determines appropriate; and
4 ''(ii) shall, insofar as data to deter-
5 mine the medicare share described in sec-
6 tion 1886(n)(2)(D) for an eligible hospital
7 are not available to the Secretary, use such
8 alternative data and methodology to esti-
9 mate such share, which data and method-
10 ology may include use of the inpatient bed
11 days (or discharges) with respect to an eli-
12 gible hospital during the appropriate pe-
13 riod which are attributable to both individ-
14 uals for whom payment may be made
15 under part A or individuals enrolled in an
16 MA plan under a Medicare Advantage or-
17 ganization under this part as a proportion
18 of the total number of patient-bed-days (or
19 discharges) with respect to such hospital
20 during such period.
21 ''(B) AVOIDING DUPLICATION OF PAY-
22 MENTS.—
23 ''(i) IN GENERAL.—In the case of a
24 hospital that for a payment year is an eli-
25 gible hospital described in paragraph (2),

is an eligible hospital under section 1886(n), and for which at least one-third of their discharges (or bed-days) of Medicare patients for the year are covered under part A, payment for the payment year shall be made only under section 1886(n) and not under this subsection.

"(ii) METHODS.—In the case of a hospital that is an eligible hospital described in paragraph (2) and also is eligible for an incentive payment under section 1886(n) but is not described in clause (i) for the same payment period, the Secretary shall develop a process—

"(I) to ensure that duplicate payments are not made with respect to an eligible hospital both under this subsection and under section 1886(n); and

"(II) to collect data from Medicare Advantage organizations to ensure against such duplicate payments.

"(4) PAYMENT ADJUSTMENT.—

"(A) Subject to paragraph (3), in the case of a qualifying MA organization (as defined in

1 section 1853(l)(5)), if, according to the attesta-
2 tion of the organization submitted under sub-
3 section (l)(6) for an applicable period, one or
4 more eligible hospitals (as defined in section
5 1886(n)(6)(A)) that are under common cor-
6 porate governance with such organization and
7 that serve individuals enrolled under a plan of-
8 fered by such organization are not meaningful
9 EHR users (as defined in section 1886(n)(3))
10 with respect to a period, the payment amount
11 payable under this section for such organization
12 for such period shall be the percent specified in
13 subparagraph (B) for such period of the pay-
14 ment amount otherwise provided under this sec-
15 tion for such period.
16 ''(B) SPECIFIED PERCENT.—The percent
17 specified under this subparagraph for a year is
18 100 percent minus a number of percentage
19 points equal to the product of—
20 ''(i) the number of the percentage
21 point reduction effected under section
22 1886(b)(3)(B)(ix)(I) for the period; and
23 ''(ii) the Medicare hospital expendi-
24 ture proportion specified in subparagraph
25 (C) for the year.

"(C) MEDICARE HOSPITAL EXPENDITURE PROPORTION.—The Medicare hospital expenditure proportion under this subparagraph for a year is the Secretary's estimate of the proportion, of the expenditures under parts A and B that are not attributable to this part, that are attributable to expenditures for inpatient hospital services.

"(D) APPLICATION OF PAYMENT ADJUSTMENT.—In the case that a qualifying MA organization attests that not all eligible hospitals are meaningful EHR users with respect to an applicable period, the Secretary shall apply the payment adjustment under this paragraph based on a methodology specified by the Secretary, taking into account the proportion of such eligible hospitals, or discharges from such hospitals, that are not meaningful EHR users for such period.".

(d) CONFORMING AMENDMENTS.—

(1) Section 1814(b) of the Social Security Act (42 U.S.C. 1395f(b)) is amended—

(A) in paragraph (3), in the matter preceding subparagraph (A), by inserting ", sub-

1 ject to section 1886(d)(3)(B)(ix)(III),'' after
2 ''then''; and
3 (B) by adding at the end the following:
4 ''For purposes of applying paragraph (3), there
5 shall be taken into account incentive payments,
6 and payment adjustments under subsection
7 (b)(3)(B)(ix) or (n) of section 1886.''.
8 (2) Section 1851(i)(1) of the Social Security
9 Act (42 U.S.C. 1395w–21(i)(1)) is amended by
10 striking ''and 1886(h)(3)(D)'' and inserting
11 ''1886(h)(3)(D), and 1853(m)''.
12 (3) Section 1853 of the Social Security Act (42
13 U.S.C. 1395w–23), as amended by section
14 4311(d)(1), is amended—
15 (A) in subsection (c)—
16 (i) in paragraph (1)(D)(i), by striking
17 ''1848(o)'' and inserting '', 1848(o), and
18 1886(n)''; and
19 (ii) in paragraph (6)(A), by inserting
20 ''and subsections (b)(3)(B)(ix) and (n) of
21 section 1886'' after ''section 1848''; and
22 (B) in subsection (f), by inserting ''and
23 subsection (m)'' after ''under subsection (l)''.

SEC. 4313. TREATMENT OF PAYMENTS AND SAVINGS; IMPLEMENTATION FUNDING.

(a) PREMIUM HOLD HARMLESS.—

(1) IN GENERAL.—Section 1839(a)(1) of the Social Security Act (42 U.S.C. 1395r(a)(1)) is amended by adding at the end the following: ''In applying this paragraph there shall not be taken into account additional payments under section 1848(o) and section 1853(l)(3) and the Government contribution under section 1844(a)(3).''.

(2) PAYMENT.—Section 1844(a) of such Act (42 U.S.C. 1395w(a)) is amended—

(A) in paragraph (2), by striking the period at the end and inserting ''; plus''; and

(B) by adding at the end the following new paragraph:

''(3) a Government contribution equal to the amount of payment incentives payable under sections 1848(o) and 1853(l)(3).''.

(b) MEDICARE IMPROVEMENT FUND.—Section 1898 of the Social Security Act (42 U.S.C. 1395iii), as added by section 7002(a) of the Supplemental Appropriations Act, 2008 (Public Law 110–252) and as amended by section 188(a)(2) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275; 122

1 Stat. 2589) and by section 6 of the QI Program Supple-
2 mental Funding Act of 2008, is amended—
3 (1) in subsection (a)—
4 (A) by inserting ''medicare'' before ''fee-
5 for-service''; and
6 (B) by inserting before the period at the
7 end the following: ''including, but not limited
8 to, an increase in the conversion factor under
9 section 1848(d) to address, in whole or in part,
10 any projected shortfall in the conversion factor
11 for 2014 relative to the conversion factor for
12 2008 and adjustments to payments for items
13 and services furnished by providers of services
14 and suppliers under such original medicare fee-
15 for-service program''; and
16 (2) in subsection (b)—
17 (A) in paragraph (1), by striking ''during
18 fiscal year 2014,'' and all that follows and in-
19 serting the following: ''during—
20 ''(A) fiscal year 2014, $22,290,000,000;
21 and
22 ''(B) fiscal year 2020 and each subsequent
23 fiscal year, the Secretary's estimate, as of July
24 1 of the fiscal year, of the aggregate reduction
25 in expenditures under this title during the pre-

ceding fiscal year directly resulting from the reduction in payment amounts under sections 1848(a)(7), 1853(l)(4), 1853(m)(4), and 1886(b)(3)(B)(ix).''; and

(B) by adding at the end the following new paragraph:

''(4) NO EFFECT ON PAYMENTS IN SUBSEQUENT YEARS.—In the case that expenditures from the Fund are applied to, or otherwise affect, a payment rate for an item or service under this title for a year, the payment rate for such item or service shall be computed for a subsequent year as if such application or effect had never occurred.''.

(c) IMPLEMENTATION FUNDING.—In addition to funds otherwise available, out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary of Health and Human Services for the Center for Medicare & Medicaid Services Program Management Account, $60,000,000 for each of fiscal years 2009 through 2015 and $30,000,000 for each succeeding fiscal year through fiscal year 2019, which shall be available for purposes of carrying out the provisions of (and amendments made by) this part. Amounts appropriated under this subsection for a fiscal year shall be available until expended.

1 **SEC. 4314. STUDY ON APPLICATION OF EHR PAYMENT IN-**
2 **CENTIVES FOR PROVIDERS NOT RECEIVING**
3 **OTHER INCENTIVE PAYMENTS.**
4 (a) STUDY.—
5 (1) IN GENERAL.—The Secretary of Health and
6 Human Services shall conduct a study to determine
7 the extent to which and manner in which payment
8 incentives (such as under title XVIII or XIX of the
9 Social Security Act) and other funding for purposes
10 of implementing and using certified EHR technology
11 (as defined in section 3000 of the Public Health
12 Service Act) should be made available to health care
13 providers who are receiving minimal or no payment
14 incentives or other funding under this Act, under
15 title XVIII or XIX of the Social Security Act, or
16 otherwise, for such purposes.
17 (2) DETAILS OF STUDY.—Such study shall in-
18 clude an examination of—
19 (A) the adoption rates of certified EHR
20 technology by such health care providers;
21 (B) the clinical utility of such technology
22 by such health care providers;
23 (C) whether the services furnished by such
24 health care providers are appropriate for or
25 would benefit from the use of such technology;

(D) the extent to which such health care providers work in settings that might otherwise receive an incentive payment or other funding under this Act, title XVIII or XIX of the Social Security Act, or otherwise;

(E) the potential costs and the potential benefits of making payment incentives and other funding available to such health care providers; and

(F) any other issues the Secretary deems to be appropriate.

(b) REPORT.—Not later than June 30, 2010, the Secretary shall submit to Congress a report on the findings and conclusions of the study conducted under subsection (a).

PART III—MEDICAID FUNDING

SEC. 4321. MEDICAID PROVIDER HIT ADOPTION AND OPERATION PAYMENTS; IMPLEMENTATION FUNDING.

(a) IN GENERAL.—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended—

(1) in subsection (a)(3)—

(A) by striking ''and'' at the end of subparagraph (D);

(B) by striking ''plus'' at the end of subparagraph (E) and inserting ''and''; and

(C) by adding at the end the following new subparagraph:

''(F)(i) 100 percent of so much of the sums expended during such quarter as are attributable to payments for certified EHR technology (and support services including maintenance and training that is for, or is necessary for the adoption and operation of, such technology) by Medicaid providers described in subsection (t)(1); and

''(ii) 90 percent of so much of the sums expended during such quarter as are attributable to payments for reasonable administrative expenses related to the administration of payments described in clause (i) if the State meets the condition described in subsection (t)(9); plus''; and

(2) by inserting after subsection (s) the following new subsection:

''(t)(1) For purposes of subsection (a)(3)(F), the payments for certified EHR technology (and support services including maintenance that is for, or is necessary for the operation of, such technology) by Medicaid providers de-

1 scribed in this paragraph are payments made by the State
2 in accordance with this subsection of 85 percent of the
3 net allowable costs of Medicaid providers (as defined in
4 paragraph (2)) for such technology (and support services).
5 ''(2) In this subsection and subsection (a)(3)(F), the
6 term 'Medicaid provider' means—
7 ''(A) an eligible professional (as defined in
8 paragraph (3)(B)) who is not hospital-based and has
9 at least 30 percent of the professional's patient vol-
10 ume (as estimated in accordance with standards es-
11 tablished by the Secretary) attributable to individ-
12 uals who are receiving medical assistance under this
13 title; and
14 ''(B)(i) a children's hospital, (ii) an acute-care
15 hospital that is not described in clause (i) and that
16 has at least 10 percent of the hospital's patient vol-
17 ume (as estimated in accordance with standards es-
18 tablished by the Secretary) attributable to individ-
19 uals who are receiving medical assistance under this
20 title, or (iii) a Federally-qualified health center or
21 rural health clinic that has at least 30 percent of the
22 center's or clinic's patient volume (as estimated in
23 accordance with standards established by the Sec-
24 retary) attributable to individuals who are receiving
25 medical assistance under this title.

1 An eligible professional shall not qualify as a Medicaid
2 provider under this subsection unless the eligible profes-
3 sional has waived, in a manner specified by the Secretary,
4 any right to payment under section 1848(o) with respect
5 to the adoption or support of certified EHR technology
6 by the professional. In applying clauses (ii) and (iii) of
7 subparagraph (B), the standards established by the Sec-
8 retary for patient volume shall include individuals enrolled
9 in a Medicaid managed care plan (under section 1903(m)
10 or section 1932).

11 ''(3) In this subsection and subsection (a)(3)(F):

12 ''(A) The term 'certified EHR technology'
13 means a qualified electronic health record (as de-
14 fined in 3000(13) of the Public Health Service Act)
15 that is certified pursuant to section 3001(c)(5) of
16 such Act as meeting standards adopted under sec-
17 tion 3004 of such Act that are applicable to the type
18 of record involved (as determined by the Secretary,
19 such as an ambulatory electronic health record for
20 office-based physicians or an inpatient hospital elec-
21 tronic health record for hospitals).

22 ''(B) The term 'eligible professional' means a
23 physician as defined in paragraphs (1) and (2) of
24 section 1861(r), and includes a nurse mid-wife and
25 a nurse practitioner.

1 ''(C) The term 'hospital-based' means, with re-
2 spect to an eligible professional, a professional (such
3 as a pathologist, anesthesiologist, or emergency phy-
4 sician) who furnishes substantially all of the individ-
5 ual's professional services in a hospital setting
6 (whether inpatient or outpatient) and through the
7 use of the facilities and equipment, including com-
8 puter equipment, of the hospital.
9 ''(4)(A) The term 'allowable costs' means, with re-
10 spect to certified EHR technology of a Medicaid provider,
11 costs of such technology (and support services including
12 maintenance and training that is for, or is necessary for
13 the adoption and operation of, such technology) as deter-
14 mined by the Secretary to be reasonable.
15 ''(B) The term 'net allowable costs' means allowable
16 costs reduced by any payment that is made to the Med-
17 icaid provider involved from any other source that is di-
18 rectly attributable to payment for certified EHR tech-
19 nology or services described in subparagraph (A).
20 ''(C) In no case shall—
21 ''(i) the aggregate allowable costs under this
22 subsection (covering one or more years) with respect
23 to a Medicaid provider described in paragraph
24 (2)(A) for purchase and initial implementation of
25 certified EHR technology (and services described in

1 subparagraph (A)) exceed $25,000 or include costs
2 over a period of longer than 5 years;
3 ''(ii) for costs not described in clause (i) relat-
4 ing to the operation, maintenance, or use of certified
5 EHR technology, the annual allowable costs under
6 this subsection with respect to such a Medicaid pro-
7 vider for costs not described in clause (i) for any
8 year exceed $10,000;
9 ''(iii) payment described in paragraph (1) for
10 costs described in clause (ii) be made with respect
11 to such a Medicaid provider over a period of more
12 than 5 years;
13 ''(iv) the aggregate allowable costs under this
14 subsection with respect to such a Medicaid provider
15 for all costs exceed $75,000; or
16 ''(v) the allowable costs, whether for purchase
17 and initial implementation, maintenance, or other-
18 wise, for a Medicaid provider described in paragraph
19 (2)(B) exceed such aggregate or annual limitation as
20 the Secretary shall establish, based on an amount
21 determined by the Secretary as being adequate to
22 adopt and maintain certified EHR technology, con-
23 sistent with paragraph (6).

1 ''(5) Payments described in paragraph (1) are not in
2 accordance with this subsection unless the following re-
3 quirements are met:
4 ''(A) The State provides assurances satisfactory
5 to the Secretary that amounts received under sub-
6 section (a)(3)(F) with respect to costs of a Medicaid
7 provider are paid directly to such provider without
8 any deduction or rebate.
9 ''(B) Such Medicaid provider is responsible for
10 payment of the costs described in such paragraph
11 that are not provided under this title.
12 ''(C) With respect to payments to such Med-
13 icaid provider for costs other than costs related to
14 the initial adoption of certified EHR technology, the
15 Medicaid provider demonstrates meaningful use of
16 certified EHR technology through a means that is
17 approved by the State and acceptable to the Sec-
18 retary, and that may be based upon the methodolo-
19 gies applied under section 1848(o) or 1886(n).
20 ''(D) To the extent specified by the Secretary,
21 the certified EHR technology is compatible with
22 State or Federal administrative management sys-
23 tems.

1 ''(6)(A) In no case shall the payments described in
2 paragraph (1), with respect to a hospital, exceed in the
3 aggregate the product of—
4 ''(i) the overall hospital EHR amount for the
5 hospital computed under subparagraph (B); and
6 ''(ii) the Medicaid share for such hospital com-
7 puted under subparagraph (C).
8 ''(B) For purposes of this paragraph, the overall hos-
9 pital EHR amount, with respect to a hospital, is the sum
10 of the applicable amounts specified in section
11 1886(n)(2)(A) for such hospital for the first 4 payment
12 years (as estimated by the Secretary) determined as if the
13 Medicare share specified in clause (ii) of such section were
14 1. The Secretary shall publish in the Federal Register the
15 overall hospital EHR amount for each hospital eligible for
16 payments under this subsection. In computing amounts
17 under clause (ii) for payment years after the first payment
18 year, the Secretary shall assume that in subsequent pay-
19 ment years discharges increase at the average annual rate
20 of growth of the most recent 3 years for which discharge
21 data are available per year.
22 ''(C) The Medicaid share computed under this sub-
23 paragraph, for a hospital for a period specified by the Sec-
24 retary, shall be calculated in the same manner as the
25 Medicare share under section 1886(n)(2)(D) for such a

1 hospital and period, except that there shall be substituted
2 for the numerator under clause (i) of such section the
3 amount that is equal to the number of inpatient-bed-days
4 (as established by the Secretary) which are attributable
5 to individuals who are receiving medical assistance under
6 this title and who are not described in section
7 1886(n)(2)(D)(i). In computing inpatient-bed-days under
8 the previous sentence, the Secretary shall take into ac-
9 count inpatient-bed-days attributable to inpatient-bed-
10 days that are paid for individuals enrolled in a Medicaid
11 managed care plan (under section 1903(m) or section
12 1932).

13 ''(7) With respect to health care providers other than
14 hospitals, the Secretary shall ensure coordination of the
15 different programs for payment of such health care pro-
16 viders for adoption or use of health information technology
17 (including certified EHR technology), as well as payments
18 for such health care providers provided under this title or
19 title XVIII, to assure no duplication of funding.

20 ''(8) In carrying out paragraph (5)(C), the State and
21 Secretary shall seek, to the maximum extent practicable,
22 to avoid duplicative requirements from Federal and State
23 Governments to demonstrate meaningful use of certified
24 EHR technology under this title and title XVIII. In doing
25 so, the Secretary may deem satisfaction of requirements

1 for such meaningful use for a payment year under title
2 XVIII to be sufficient to qualify as meaningful use under
3 this subsection. The Secretary may also specify the report-
4 ing periods under this subsection in order to carry out this
5 paragraph.

6 ''(9) In order to be provided Federal financial partici-
7 pation under subsection (a)(3)(F)(ii), a State must dem-
8 onstrate to the satisfaction of the Secretary, that the
9 State—

10 ''(A) is using the funds provided for the pur-
11 poses of administering payments under this sub-
12 section, including tracking of meaningful use by
13 Medicaid providers;

14 ''(B) is conducting adequate oversight of the
15 program under this subsection, including routine
16 tracking of meaningful use attestations and report-
17 ing mechanisms; and

18 ''(C) is pursuing initiatives to encourage the
19 adoption of certified EHR technology to promote
20 health care quality and the exchange of health care
21 information under this title, subject to applicable
22 laws and regulations governing such exchange.

23 ''(10) The Secretary shall periodically submit reports
24 to the Committee on Energy and Commerce of the House
25 of Representatives and the Committee on Finance of the

1 Senate on status, progress, and oversight of payments
2 under paragraph (1).''.
3 (b) IMPLEMENTATION FUNDING.—In addition to
4 funds otherwise available, out of any funds in the Treas-
5 ury not otherwise appropriated, there are appropriated to
6 the Secretary of Health and Human Services for the Cen-
7 ter for Medicare & Medicaid Services Program Manage-
8 ment Account, $40,000,000 for each of fiscal years 2009
9 through 2015 and $20,000,000 for each succeeding fiscal
10 year through fiscal year 2019, which shall be available for
11 purposes of carrying out the provisions of (and the amend-
12 ments made by) this part. Amounts appropriated under
13 this subsection for a fiscal year shall be available until ex-
14 pended.

15 **Subtitle D—Privacy**

16 **SEC. 4400. DEFINITIONS.**

17 In this subtitle, except as specified otherwise:
18 (1) BREACH.—The term ''breach'' means the
19 unauthorized acquisition, access, use, or disclosure
20 of protected health information which compromises
21 the security, privacy, or integrity of protected health
22 information maintained by or on behalf of a person.
23 Such term does not include any unintentional acqui-
24 sition, access, use, or disclosure of such information
25 by an employee or agent of the covered entity or

business associate involved if such acquisition, access, use, or disclosure, respectively, was made in good faith and within the course and scope of the employment or other contractual relationship of such employee or agent, respectively, with the covered entity or business associate and if such information is not further acquired, accessed, used, or disclosed by such employee or agent.

(2) BUSINESS ASSOCIATE.—The term ''business associate'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(3) COVERED ENTITY.—The term ''covered entity'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(4) DISCLOSE.—The terms ''disclose'' and ''disclosure'' have the meaning given the term ''disclosure'' in section 160.103 of title 45, Code of Federal Regulations.

(5) ELECTRONIC HEALTH RECORD.—The term ''electronic health record'' means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

(6) HEALTH CARE OPERATIONS.—The term ''health care operation'' has the meaning given such term in section 164.501 of title 45, Code of Federal Regulations.

(7) HEALTH CARE PROVIDER.—The term ''health care provider'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

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

(9) NATIONAL COORDINATOR.—The term ''National Coordinator'' means the head of the Office of the National Coordinator for Health Information Technology established under section 3001(a) of the Public Health Service Act, as added by section 4101.

(10) PAYMENT.—The term ''payment'' has the meaning given such term in section 164.501 of title 45, Code of Federal Regulations.

(11) PERSONAL HEALTH RECORD.—The term ''personal health record'' means an electronic record of individually identifiable health information on an individual that can be drawn from multiple sources

and that is managed, shared, and controlled by or for the individual.

(12) PROTECTED HEALTH INFORMATION.—The term ''protected health information'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(13) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(14) SECURITY.—The term ''security'' has the meaning given such term in section 164.304 of title 45, Code of Federal Regulations.

(15) STATE.—The term ''State'' means each of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(16) TREATMENT.—The term ''treatment'' has the meaning given such term in section 164.501 of title 45, Code of Federal Regulations.

(17) USE.—The term ''use'' has the meaning given such term in section 160.103 of title 45, Code of Federal Regulations.

(18) VENDOR OF PERSONAL HEALTH RECORDS.—The term ''vendor of personal health records'' means an entity, other than a covered enti-

ty (as defined in paragraph (3)), that offers or maintains a personal health record.

PART I—IMPROVED PRIVACY PROVISIONS AND SECURITY PROVISIONS

SEC. 4401. APPLICATION OF SECURITY PROVISIONS AND PENALTIES TO BUSINESS ASSOCIATES OF COVERED ENTITIES; ANNUAL GUIDANCE ON SECURITY PROVISIONS.

(a) APPLICATION OF SECURITY PROVISIONS.—Sections 164.308, 164.310, 164.312, and 164.316 of title 45, Code of Federal Regulations, shall apply to a business associate of a covered entity in the same manner that such sections apply to the covered entity. The additional requirements of this title that relate to security and that are made applicable with respect to covered entities shall also be applicable to such a business associate and shall be incorporated into the business associate agreement between the business associate and the covered entity.

(b) APPLICATION OF CIVIL AND CRIMINAL PENALTIES.—In the case of a business associate that violates any security provision specified in subsection (a), sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6) shall apply to the business associate with respect to such violation in the same manner such

1 sections apply to a covered entity that violates such secu-
2 rity provision.

3 (c) ANNUAL GUIDANCE.—For the first year begin-
4 ning after the date of the enactment of this Act and annu-
5 ally thereafter, the Secretary of Health and Human Serv-
6 ices shall, in consultation with industry stakeholders, an-
7 nually issue guidance on the most effective and appro-
8 priate technical safeguards for use in carrying out the sec-
9 tions referred to in subsection (a) and the security stand-
10 ards in subpart C of part 164 of title 45, Code of Federal
11 Regulations, as such provisions are in effect as of the date
12 before the enactment of this Act.

13 **SEC. 4402. NOTIFICATION IN THE CASE OF BREACH.**

14 (a) IN GENERAL.—A covered entity that accesses,
15 maintains, retains, modifies, records, stores, destroys, or
16 otherwise holds, uses, or discloses unsecured protected
17 health information (as defined in subsection (h)(1)) shall,
18 in the case of a breach of such information that is discov-
19 ered by the covered entity, notify each individual whose
20 unsecured protected health information has been, or is
21 reasonably believed by the covered entity to have been,
22 accessed, acquired, or disclosed as a result of such breach.

23 (b) NOTIFICATION OF COVERED ENTITY BY BUSI-
24 NESS ASSOCIATE.—A business associate of a covered enti-
25 ty that accesses, maintains, retains, modifies, records,

1 stores, destroys, or otherwise holds, uses, or discloses un-
2 secured protected health information shall, following the
3 discovery of a breach of such information, notify the cov-
4 ered entity of such breach. Such notice shall include the
5 identification of each individual whose unsecured protected
6 health information has been, or is reasonably believed by
7 the business associate to have been, accessed, acquired,
8 or disclosed during such breach.

9 (c) BREACHES TREATED AS DISCOVERED.—For pur-
10 poses of this section, a breach shall be treated as discov-
11 ered by a covered entity or by a business associate as of
12 the first day on which such breach is known to such entity
13 or associate, respectively, (including any person, other
14 than the individual committing the breach, that is an em-
15 ployee, officer, or other agent of such entity or associate,
16 respectively) or should reasonably have been known to
17 such entity or associate (or person) to have occurred.

18 (d) TIMELINESS OF NOTIFICATION.—

19 (1) IN GENERAL.—Subject to subsection (g), all
20 notifications required under this section shall be
21 made without unreasonable delay and in no case
22 later than 60 calendar days after the discovery of a
23 breach by the covered entity involved (or business
24 associate involved in the case of a notification re-
25 quired under subsection (b)).

1 (2) BURDEN OF PROOF.—The covered entity in-
2 volved (or business associate involved in the case of
3 a notification required under subsection (b)), shall
4 have the burden of demonstrating that all notifica-
5 tions were made as required under this part, includ-
6 ing evidence demonstrating the necessity of any
7 delay.
8 (e) METHODS OF NOTICE.—
9 (1) INDIVIDUAL NOTICE.—Notice required
10 under this section to be provided to an individual,
11 with respect to a breach, shall be provided promptly
12 and in the following form:
13 (A) Written notification by first-class mail
14 to the individual (or the next of kin of the indi-
15 vidual if the individual is deceased) at the last
16 known address of the individual or the next of
17 kin, respectively, or, if specified as a preference
18 by the individual, by electronic mail. The notifi-
19 cation may be provided in one or more mailings
20 as information is available.
21 (B) In the case in which there is insuffi-
22 cient, or out-of-date contact information (in-
23 cluding a phone number, email address, or any
24 other form of appropriate communication) that
25 precludes direct written (or, if specified by the

individual under subparagraph (A), electronic) notification to the individual, a substitute form of notice shall be provided, including, in the case that there are 10 or more individuals for which there is insufficient or out-of-date contact information, a conspicuous posting for a period determined by the Secretary on the home page of the Web site of the covered entity involved or notice in major print or broadcast media, including major media in geographic areas where the individuals affected by the breach likely reside. Such a notice in media or web posting will include a toll-free phone number where an individual can learn whether or not the individual's unsecured protected health information is possibly included in the breach.

(C) In any case deemed by the covered entity involved to require urgency because of possible imminent misuse of unsecured protected health information, the covered entity, in addition to notice provided under subparagraph (A), may provide information to individuals by telephone or other means, as appropriate.

(2) MEDIA NOTICE.—Notice shall be provided to prominent media outlets serving a State or juris-

1 diction, following the discovery of a breach described
2 in subsection (a), if the unsecured protected health
3 information of more than 500 residents of such
4 State or jurisdiction is, or is reasonably believed to
5 have been, accessed, acquired, or disclosed during
6 such breach.

7 (3) NOTICE TO SECRETARY.—Notice shall be
8 provided to the Secretary by covered entities of un-
9 secured protected health information that has been
10 acquired or disclosed in a breach. If the breach was
11 with respect to 500 or more individuals than such
12 notice must be provided immediately. If the breach
13 was with respect to less than 500 individuals, the
14 covered entity involved may maintain a log of any
15 such breach occurring and annually submit such a
16 log to the Secretary documenting such breaches oc-
17 curring during the year involved.

18 (4) POSTING ON HHS PUBLIC WEBSITE.—The
19 Secretary shall make available to the public on the
20 Internet website of the Department of Health and
21 Human Services a list that identifies each covered
22 entity involved in a breach described in subsection
23 (a) in which the unsecured protected health informa-
24 tion of more than 500 individuals is acquired or dis-
25 closed.

1 (f) CONTENT OF NOTIFICATION.—Regardless of the
2 method by which notice is provided to individuals under
3 this section, notice of a breach shall include, to the extent
4 possible, the following:
5 (1) A brief description of what happened, in-
6 cluding the date of the breach and the date of the
7 discovery of the breach, if known.
8 (2) A description of the types of unsecured pro-
9 tected health information that were involved in the
10 breach (such as full name, Social Security number,
11 date of birth, home address, account number, or dis-
12 ability code).
13 (3) The steps individuals should take to protect
14 themselves from potential harm resulting from the
15 breach.
16 (4) A brief description of what the covered enti-
17 ty involved is doing to investigate the breach, to
18 mitigate losses, and to protect against any further
19 breaches.
20 (5) Contact procedures for individuals to ask
21 questions or learn additional information, which
22 shall include a toll-free telephone number, an e-mail
23 address, Web site, or postal address.
24 (g) DELAY OF NOTIFICATION AUTHORIZED FOR LAW
25 ENFORCEMENT PURPOSES.—If a law enforcement official

1 determines that a notification, notice, or posting required
2 under this section would impede a criminal investigation
3 or cause damage to national security, such notification,
4 notice, or posting shall be delayed in the same manner
5 as provided under section 164.528(a)(2) of title 45, Code
6 of Federal Regulations, in the case of a disclosure covered
7 under such section.

8 (h) UNSECURED PROTECTED HEALTH INFORMA-
9 TION.—

10 (1) DEFINITION.—

11 (A) IN GENERAL.—Subject to subpara-
12 graph (B), for purposes of this section, the
13 term ''unsecured protected health information''
14 means protected health information that is not
15 secured through the use of a technology or
16 methodology specified by the Secretary in the
17 guidance issued under paragraph (2).

18 (B) EXCEPTION IN CASE TIMELY GUID-
19 ANCE NOT ISSUED.—In the case that the Sec-
20 retary does not issue guidance under paragraph
21 (2) by the date specified in such paragraph, for
22 purposes of this section, the term ''unsecured
23 protected health information'' shall mean pro-
24 tected health information that is not secured by
25 a technology standard that renders protected

1 health information unusable, unreadable, or in-
2 decipherable to unauthorized individuals and is
3 developed or endorsed by a standards devel-
4 oping organization that is accredited by the
5 American National Standards Institute.
6 (2) GUIDANCE.—For purposes of paragraph (1)
7 and section 407(f)(3), not later than the date that
8 is 60 days after the date of the enactment of this
9 Act, the Secretary shall, after consultation with
10 stakeholders, issue (and annually update) guidance
11 specifying the technologies and methodologies that
12 render protected health information unusable,
13 unreadable, or indecipherable to unauthorized indi-
14 viduals.
15 (i) REPORT TO CONGRESS ON BREACHES.—
16 (1) IN GENERAL.—Not later than 12 months
17 after the date of the enactment of this Act and an-
18 nually thereafter, the Secretary shall prepare and
19 submit to the Committee on Finance and the Com-
20 mittee on Health, Education, Labor, and Pensions
21 of the Senate and the Committee on Ways and
22 Means and the Committee on Energy and Commerce
23 of the House of Representatives a report containing
24 the information described in paragraph (2) regard-

ing breaches for which notice was provided to the Secretary under subsection (e)(3).

(2) INFORMATION.—The information described in this paragraph regarding breaches specified in paragraph (1) shall include—

(A) the number and nature of such breaches; and

(B) actions taken in response to such breaches.

(j) REGULATIONS; EFFECTIVE DATE.—To carry out this section, the Secretary of Health and Human Services shall promulgate interim final regulations by not later than the date that is 180 days after the date of the enactment of this title. The provisions of this section shall apply to breaches that are discovered on or after the date that is 30 days after the date of publication of such interim final regulations.

SEC. 4403. EDUCATION ON HEALTH INFORMATION PRIVACY.

(a) REGIONAL OFFICE PRIVACY ADVISORS.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall designate an individual in each regional office of the Department of Health and Human Services to offer guidance and education to covered entities, business associates, and individuals on their

1 rights and responsibilities related to Federal privacy and
2 security requirements for protected health information.
3 (b) EDUCATION INITIATIVE ON USES OF HEALTH IN-
4 FORMATION.—Not later than 12 months after the date of
5 the enactment of this Act, the Office for Civil Rights with-
6 in the Department of Health and Human Services shall
7 develop and maintain a multi-faceted national education
8 initiative to enhance public transparency regarding the
9 uses of protected health information, including programs
10 to educate individuals about the potential uses of their
11 protected health information, the effects of such uses, and
12 the rights of individuals with respect to such uses. Such
13 programs shall be conducted in a variety of languages and
14 present information in a clear and understandable man-
15 ner.

16 **SEC. 4404. APPLICATION OF PRIVACY PROVISIONS AND**
17 **PENALTIES TO BUSINESS ASSOCIATES OF**
18 **COVERED ENTITIES.**

19 (a) APPLICATION OF CONTRACT REQUIREMENTS.—
20 In the case of a business associate of a covered entity that
21 obtains or creates protected health information pursuant
22 to a written contract (or other written arrangement) de-
23 scribed in section 164.502(e)(2) of title 45, Code of Fed-
24 eral Regulations, with such covered entity, the business
25 associate may use and disclose such protected health infor-

1 mation only if such use or disclosure, respectively, is in
2 compliance with each applicable requirement of section
3 164.504(e) of such title. The additional requirements of
4 this subtitle that relate to privacy and that are made ap-
5 plicable with respect to covered entities shall also be appli-
6 cable to such a business associate and shall be incor-
7 porated into the business associate agreement between the
8 business associate and the covered entity.

9 (b) APPLICATION OF KNOWLEDGE ELEMENTS ASSO-
10 CIATED WITH CONTRACTS.—Section 164.504(e)(1)(ii) of
11 title 45, Code of Federal Regulations, shall apply to a
12 business associate described in subsection (a), with respect
13 to compliance with such subsection, in the same manner
14 that such section applies to a covered entity, with respect
15 to compliance with the standards in sections 164.502(e)
16 and 164.504(e) of such title, except that in applying such
17 section 164.504(e)(1)(ii) each reference to the business as-
18 sociate, with respect to a contract, shall be treated as a
19 reference to the covered entity involved in such contract.

20 (c) APPLICATION OF CIVIL AND CRIMINAL PEN-
21 ALTIES.—In the case of a business associate that violates
22 any provision of subsection (a) or (b), the provisions of
23 sections 1176 and 1177 of the Social Security Act (42
24 U.S.C. 1320d-5, 1320d-6) shall apply to the business as-
25 sociate with respect to such violation in the same manner

as such provisions apply to a person who violates a provision of part C of title XI of such Act.

SEC. 4405. RESTRICTIONS ON CERTAIN DISCLOSURES AND SALES OF HEALTH INFORMATION; ACCOUNTING OF CERTAIN PROTECTED HEALTH INFORMATION DISCLOSURES; ACCESS TO CERTAIN INFORMATION IN ELECTRONIC FORMAT.

(a) REQUESTED RESTRICTIONS ON CERTAIN DISCLOSURES OF HEALTH INFORMATION.—In the case that an individual requests under paragraph (a)(1)(i)(A) of section 164.522 of title 45, Code of Federal Regulations, that a covered entity restrict the disclosure of the protected health information of the individual, notwithstanding paragraph (a)(1)(ii) of such section, the covered entity must comply with the requested restriction if—

(1) except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and

(2) the protected health information pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full.

1 (b) DISCLOSURES REQUIRED TO BE LIMITED TO
2 THE LIMITED DATA SET OR THE MINIMUM NEC-
3 ESSARY.—
4 (1) IN GENERAL.—
5 (A) IN GENERAL.—Subject to subpara-
6 graph (B), a covered entity shall be treated as
7 being in compliance with section 164.502(b)(1)
8 of title 45, Code of Federal Regulations, with
9 respect to the use, disclosure, or request of pro-
10 tected health information described in such sec-
11 tion, only if the covered entity limits such pro-
12 tected health information, to the extent prac-
13 ticable, to the limited data set (as defined in
14 section 164.514(e)(2) of such title) or, if needed
15 by such entity, to the minimum necessary to ac-
16 complish the intended purpose of such use, dis-
17 closure, or request, respectively.
18 (B) GUIDANCE.—Not later than 18
19 months after the date of the enactment of this
20 section, the Secretary shall issue guidance on
21 what constitutes "minimum necessary" for pur-
22 poses of subpart E of part 164 of title 45, Code
23 of Federal Regulation. In issuing such guidance
24 the Secretary shall take into consideration the
25 guidance under section 4424(c).

1 (C) SUNSET.—Subparagraph (A) shall not
2 apply on and after the effective date on which
3 the Secretary issues the guidance under sub-
4 paragraph (B).
5 (2) DETERMINATION OF MINIMUM NEC-
6 ESSARY.—For purposes of paragraph (1), in the
7 case of the disclosure of protected health informa-
8 tion, the covered entity or business associate dis-
9 closing such information shall determine what con-
10 stitutes the minimum necessary to accomplish the
11 intended purpose of such disclosure.
12 (3) APPLICATION OF EXCEPTIONS.—The excep-
13 tions described in section 164.502(b)(2) of title 45,
14 Code of Federal Regulations, shall apply to the re-
15 quirement under paragraph (1) as of the effective
16 date described in section 4423 in the same manner
17 that such exceptions apply to section 164.502(b)(1)
18 of such title before such date.
19 (4) RULE OF CONSTRUCTION.—Nothing in this
20 subsection shall be construed as affecting the use,
21 disclosure, or request of protected health information
22 that has been de-identified.
23 (c) ACCOUNTING OF CERTAIN PROTECTED HEALTH
24 INFORMATION DISCLOSURES REQUIRED IF COVERED EN-
25 TITY USES ELECTRONIC HEALTH RECORD.—

1 (1) IN GENERAL.—In applying section 164.528
2 of title 45, Code of Federal Regulations, in the case
3 that a covered entity uses or maintains an electronic
4 health record with respect to protected health infor-
5 mation—
6 (A) the exception under paragraph
7 (a)(1)(i) of such section shall not apply to dis-
8 closures through an electronic health record
9 made by such entity of such information; and
10 (B) an individual shall have a right to re-
11 ceive an accounting of disclosures described in
12 such paragraph of such information made by
13 such covered entity during only the three years
14 prior to the date on which the accounting is re-
15 quested.
16 (2) REGULATIONS.—The Secretary shall pro-
17 mulgate regulations on what information shall be
18 collected about each disclosure referred to in para-
19 graph (1)(A) not later than 18 months after the
20 date on which the Secretary adopts standards on ac-
21 counting for disclosure described in the section
22 3002(b)(2)(B)(iv) of the Public Health Service Act,
23 as added by section 4101. Such regulations shall
24 only require such information to be collected through
25 an electronic health record in a manner that takes

1 into account the interests of individuals in learning
2 the circumstances under which their protected health
3 information is being disclosed and takes into account
4 the administrative burden of accounting for such
5 disclosures.

6 (3) CONSTRUCTION.—Nothing in this sub-
7 section shall be construed as requiring a covered en-
8 tity to account for disclosures of protected health in-
9 formation that are not made by such covered entity
10 or by a business associate acting on behalf of the
11 covered entity.

12 (4) EFFECTIVE DATE.—

13 (A) CURRENT USERS OF ELECTRONIC
14 RECORDS.—In the case of a covered entity inso-
15 far as it acquired an electronic health record as
16 of January 1, 2009, paragraph (1) shall apply
17 to disclosures, with respect to protected health
18 information, made by the covered entity from
19 such a record on and after January 1, 2014.

20 (B) OTHERS.—In the case of a covered en-
21 tity insofar as it acquires an electronic health
22 record after January 1, 2009, paragraph (1)
23 shall apply to disclosures, with respect to pro-
24 tected health information, made by the covered

1 entity from such record on and after the later
2 of the following:
3 (i) January 1, 2011; or
4 (ii) the date that it acquires an elec-
5 tronic health record.
6 (d) REVIEW OF HEALTH CARE OPERATIONS.—Not
7 later than 18 months after the date of the enactment of
8 this title, the Secretary shall promulgate regulations to
9 eliminate from the definition of health care operations
10 under section 164.501 of title 45, Code of Federal Regula-
11 tions, those activities that can reasonably and efficiently
12 be conducted through the use of information that is de-
13 identified (in accordance with the requirements of section
14 164.514(b) of such title) or that should require a valid
15 authorization for use or disclosure. In promulgating such
16 regulations, the Secretary may choose to narrow or clarify
17 activities that the Secretary chooses to retain in the defini-
18 tion of health care operations and the Secretary shall take
19 into account the report under section 424(d). In such reg-
20 ulations the Secretary shall specify the date on which such
21 regulations shall apply to disclosures made by a covered
22 entity, but in no case would such date be sooner than the
23 date that is 24 months after the date of the enactment
24 of this section.

1 (e) PROHIBITION ON SALE OF ELECTRONIC HEALTH
2 RECORDS OR PROTECTED HEALTH INFORMATION.—
3 (1) IN GENERAL.—Except as provided in para-
4 graph (2), a covered entity or business associate
5 shall not directly or indirectly receive remuneration
6 in exchange for any protected health information of
7 an individual unless the covered entity obtained from
8 the individual, in accordance with section 164.508 of
9 title 45, Code of Federal Regulations, a valid au-
10 thorization that includes, in accordance with such
11 section, a specification of whether the protected
12 health information can be further exchanged for re-
13 muneration by the entity receiving protected health
14 information of that individual.
15 (2) EXCEPTIONS.—Paragraph (1) shall not
16 apply in the following cases:
17 (A) The purpose of the exchange is for re-
18 search or public health activities (as described
19 in sections 164.501, 164.512(i), and 164.512(b)
20 of title 45, Code of Federal Regulations) and
21 the price charged reflects the costs of prepara-
22 tion and transmittal of the data for such pur-
23 pose.
24 (B) The purpose of the exchange is for the
25 treatment of the individual and the price

1 charges reflects not more than the costs of
2 preparation and transmittal of the data for
3 such purpose.
4 (C) The purpose of the exchange is the
5 health care operation specifically described in
6 subparagraph (iv) of paragraph (6) of the defi-
7 nition of health care operations in section
8 164.501 of title 45, Code of Federal Regula-
9 tions.
10 (D) The purpose of the exchange is for re-
11 muneration that is provided by a covered entity
12 to a business associate for activities involving
13 the exchange of protected health information
14 that the business associate undertakes on behalf
15 of and at the specific request of the covered en-
16 tity pursuant to a business associate agreement.
17 (E) The purpose of the exchange is to pro-
18 vide an individual with a copy of the individ-
19 ual's protected health information pursuant to
20 section 164.524 of title 45, Code of Federal
21 Regulations.
22 (F) The purpose of the exchange is other-
23 wise determined by the Secretary in regulations
24 to be similarly necessary and appropriate as the

exceptions provided in subparagraphs (A) through (E).

(3) REGULATIONS.—The Secretary shall promulgate regulations to carry out paragraph (this subsection, including exceptions described in paragraph (2), not later than 18 months after the date of the enactment of this title.

(4) EFFECTIVE DATE.—Paragraph (1) shall apply to exchanges occurring on or after the date that is 6 months after the date of the promulgation of final regulations implementing this subsection.

(f) ACCESS TO CERTAIN INFORMATION IN ELECTRONIC FORMAT.—In applying section 164.524 of title 45, Code of Federal Regulations, in the case that a covered entity uses or maintains an electronic health record with respect to protected health information of an individual—

(1) the individual shall have a right to obtain from such covered entity a copy of such information in an electronic format; and

(2) notwithstanding paragraph (c)(4) of such section, any fee that the covered entity may impose for providing such individual with a copy of such information (or a summary or explanation of such information) if such copy (or summary or explanation)

is in an electronic form shall not be greater than the entity's labor costs in responding to the request for the copy (or summary or explanation).

SEC. 4406. CONDITIONS ON CERTAIN CONTACTS AS PART OF HEALTH CARE OPERATIONS.

(a) MARKETING.—

(1) IN GENERAL.—A communication by a covered entity or business associate that is about a product or service and that encourages recipients of the communication to purchase or use the product or service shall not be considered a health care operation for purposes of subpart E of part 164 of title 45, Code of Federal Regulations, unless the communication is made as described in subparagraph (i), (ii), or (iii) of paragraph (1) of the definition of marketing in section 164.501 of such title.

(2) PAYMENT FOR CERTAIN COMMUNICATIONS.—A covered entity or business associate may not receive direct or indirect payment in exchange for making any communication described in subparagraph (i), (ii), or (iii) of paragraph (1) of the definition of marketing in section 164.501 of title 45, Code of Federal Regulations, except—

(A) a business associate of a covered entity may receive payment from the covered entity

for making any such communication on behalf of the covered entity that is consistent with the written contract (or other written arrangement) described in section 164.502(e)(2) of such title between such business associate and covered entity; or

(B) a covered entity may receive payment in exchange for making any such communication if the entity obtains from the recipient of the communication, in accordance with section 164.508 of title 45, Code of Federal Regulations, a valid authorization (as described in paragraph (b) of such section) with respect to such communication.

(b) FUNDRAISING.—Fundraising for the benefit of a covered entity shall not be considered a health care operation for purposes of section 164.501 of title 45, Code of Federal Regulations.

(c) EFFECTIVE DATE.—This section shall apply to contracting occurring on or after the effective date specified under section 4423.

SEC. 4407. TEMPORARY BREACH NOTIFICATION REQUIREMENT FOR VENDORS OF PERSONAL HEALTH RECORDS AND OTHER NON-HIPAA COVERED ENTITIES.

(a) IN GENERAL.—In accordance with subsection (c), each vendor of personal health records, following the discovery of a breach of security of unsecured PHR identifiable health information that is in a personal health record maintained or offered by such vendor, and each entity described in clause (ii) or (iii) of section 4424(b)(1)(A), following the discovery of a breach of security of such information that is obtained through a product or service provided by such entity, shall—

(1) notify each individual who is a citizen or resident of the United States whose unsecured PHR identifiable health information was acquired by an unauthorized person as a result of such a breach of security; and

(2) notify the Federal Trade Commission.

(b) NOTIFICATION BY THIRD PARTY SERVICE PROVIDERS.—A third party service provider that provides services to a vendor of personal health records or to an entity described in clause (ii) or (iii) of section 4424(b)(1)(A) in connection with the offering or maintenance of a personal health record or a related product or service and that accesses, maintains, retains, modifies,

1 records, stores, destroys, or otherwise holds, uses, or dis-
2 closes unsecured PHR identifiable health information in
3 such a record as a result of such services shall, following
4 the discovery of a breach of security of such information,
5 notify such vendor or entity, respectively, of such breach.
6 Such notice shall include the identification of each indi-
7 vidual whose unsecured PHR identifiable health informa-
8 tion has been, or is reasonably believed to have been,
9 accessed, acquired, or disclosed during such breach.

10 (c) APPLICATION OF REQUIREMENTS FOR TIMELI-
11 NESS, METHOD, AND CONTENT OF NOTIFICATIONS.—
12 Subsections (c), (d), (e), and (f) of section 402 shall apply
13 to a notification required under subsection (a) and a ven-
14 dor of personal health records, an entity described in sub-
15 section (a) and a third party service provider described
16 in subsection (b), with respect to a breach of security
17 under subsection (a) of unsecured PHR identifiable health
18 information in such records maintained or offered by such
19 vendor, in a manner specified by the Federal Trade Com-
20 mission.

21 (d) NOTIFICATION OF THE SECRETARY.—Upon re-
22 ceipt of a notification of a breach of security under sub-
23 section (a)(2), the Federal Trade Commission shall notify
24 the Secretary of such breach.

1 (e) ENFORCEMENT.—A violation of subsection (a) or
2 (b) shall be treated as an unfair and deceptive act or prac-
3 tice in violation of a regulation under section 18(a)(1)(B)
4 of the Federal Trade Commission Act (15 U.S.C.
5 57*a*(a)(1)(B)) regarding unfair or deceptive acts or prac-
6 tices.

7 (f) DEFINITIONS.—For purposes of this section:

8 (1) BREACH OF SECURITY.—The term ''breach
9 of security'' means, with respect to unsecured PHR
10 identifiable health information of an individual in a
11 personal health record, acquisition of such informa-
12 tion without the authorization of the individual.

13 (2) PHR IDENTIFIABLE HEALTH INFORMA-
14 TION.—The term ''PHR identifiable health informa-
15 tion'' means individually identifiable health informa-
16 tion, as defined in section 1171(6) of the Social Se-
17 curity Act (42 U.S.C. 1320d(6)), and includes, with
18 respect to an individual, information—

19 (A) that is provided by or on behalf of the
20 individual; and

21 (B) that identifies the individual or with
22 respect to which there is a reasonable basis to
23 believe that the information can be used to
24 identify the individual.

1 (3) UNSECURED PHR IDENTIFIABLE HEALTH
2 INFORMATION.—
3 (A) IN GENERAL.—Subject to subpara-
4 graph (B), the term ''unsecured PHR identifi-
5 able health information'' means PHR identifi-
6 able health information that is not protected
7 through the use of a technology or methodology
8 specified by the Secretary in the guidance
9 issued under section 4402(h)(2).
10 (B) EXCEPTION IN CASE TIMELY GUID-
11 ANCE NOT ISSUED.—In the case that the Sec-
12 retary does not issue guidance under section
13 4402(h)(2) by the date specified in such sec-
14 tion, for purposes of this section, the term ''un-
15 secured PHR identifiable health information''
16 shall mean PHR identifiable health information
17 that is not secured by a technology standard
18 that renders protected health information unus-
19 able, unreadable, or indecipherable to unauthor-
20 ized individuals and that is developed or en-
21 dorsed by a standards developing organization
22 that is accredited by the American National
23 Standards Institute.
24 (g) REGULATIONS; EFFECTIVE DATE; SUNSET.—

1 (1) REGULATIONS; EFFECTIVE DATE.—To
2 carry out this section, the Secretary of Health and
3 Human Services shall promulgate interim final regu-
4 lations by not later than the date that is 180 days
5 after the date of the enactment of this section. The
6 provisions of this section shall apply to breaches of
7 security that are discovered on or after the date that
8 is 30 days after the date of publication of such in-
9 terim final regulations.
10 (2) SUNSET.—The provisions of this section
11 shall not apply to breaches of security occurring on
12 or after the earlier of the following the dates:
13 (A) The date on which a standard relating
14 to requirements for entities that are not covered
15 entities that includes requirements relating to
16 breach notification has been promulgated by the
17 Secretary.
18 (B) The date on which a standard relating
19 to requirements for entities that are not covered
20 entities that includes requirements relating to
21 breach notification has been promulgated by the
22 Federal Trade Commission and has taken ef-
23 fect.

SEC. 4408. BUSINESS ASSOCIATE CONTRACTS REQUIRED FOR CERTAIN ENTITIES.

Each organization, with respect to a covered entity, that provides data transmission of protected health information to such entity (or its business associate) and that requires access on a routine basis to such protected health information, such as a Health Information Exchange Organization, Regional Health Information Organization, E-prescribing Gateway, or each vendor that contracts with a covered entity to allow that covered entity to offer a personal health record to patients as part of its electronic health record, is required to enter into a written contract (or other written arrangement) described in section 164.502(e)(2) of title 45, Code of Federal Regulations and a written contract (or other arrangement) described in section 164.308(b) of such title, with such entity and shall be treated as a business associate of the covered entity for purposes of the provisions of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this title.

SEC. 4409. CLARIFICATION OF APPLICATION OF WRONGFUL DISCLOSURES CRIMINAL PENALTIES.

Section 1177(a) of the Social Security Act (42 U.S.C. 1320d–6(a)) is amended by adding at the end the following new sentence: ''For purposes of the previous sen-

tence, a person (including an employee or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a covered entity (as defined in the HIPAA privacy regulation described in section 1180(b)(3)) and the individual obtained or disclosed such information without authorization.''.

SEC. 4410. IMPROVED ENFORCEMENT.

(a) IN GENERAL.—Section 1176 of the Social Security Act (42 U.S.C. 1320d-5) is amended—

(1) in subsection (b)(1), by striking ''the act constitutes an offense punishable under section 1177'' and inserting ''a penalty has been imposed under section 1177 with respect to such act''; and

(2) by adding at the end the following new subsection:

''(c) NONCOMPLIANCE DUE TO WILLFUL NEGLECT.—

''(1) IN GENERAL.—A violation of a provision of this part due to willful neglect is a violation for which the Secretary is required to impose a penalty under subsection (a)(1).

''(2) REQUIRED INVESTIGATION.—For purposes of paragraph (1), the Secretary shall formally investigate any complaint of a violation of a provision of

this part if a preliminary investigation of the facts of the complaint indicate such a possible violation due to willful neglect.''.

(b) EFFECTIVE DATE; REGULATIONS.—

(1) The amendments made by subsection (a) shall apply to penalties imposed on or after the date that is 24 months after the date of the enactment of this title.

(2) Not later than 18 months after the date of the enactment of this title, the Secretary of Health and Human Services shall promulgate regulations to implement such amendments.

(c) DISTRIBUTION OF CERTAIN CIVIL MONETARY PENALTIES COLLECTED.—

(1) IN GENERAL.—Subject to the regulation promulgated pursuant to paragraph (3), any civil monetary penalty or monetary settlement collected with respect to an offense punishable under this subtitle or section 1176 of the Social Security Act (42 U.S.C. 1320d-5) insofar as such section relates to privacy or security shall be transferred to the Office of Civil Rights of the Department of Health and Human Services to be used for purposes of enforcing the provisions of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations,

as such provisions are in effect as of the date of enactment of this Act.

(2) GAO REPORT.—Not later than 18 months after the date of the enactment of this title, the Comptroller General shall submit to the Secretary a report including recommendations for a methodology under which an individual who is harmed by an act that constitutes an offense referred to in paragraph (1) may receive a percentage of any civil monetary penalty or monetary settlement collected with respect to such offense.

(3) ESTABLISHMENT OF METHODOLOGY TO DISTRIBUTE PERCENTAGE OF CMPS COLLECTED TO HARMED INDIVIDUALS.—Not later than 3 years after the date of the enactment of this title, the Secretary shall establish by regulation and based on the recommendations submitted under paragraph (2), a methodology under which an individual who is harmed by an act that constitutes an offense referred to in paragraph (1) may receive a percentage of any civil monetary penalty or monetary settlement collected with respect to such offense.

(4) APPLICATION OF METHODOLOGY.—The methodology under paragraph (3) shall be applied with respect to civil monetary penalties or monetary

settlements imposed on or after the effective date of the regulation.

(d) TIERED INCREASE IN AMOUNT OF CIVIL MONETARY PENALTIES.—

(1) IN GENERAL.—Section 1176(a)(1) of the Social Security Act (42 U.S.C. 1320d-5(a)(1)) is amended by striking ''who violates a provision of this part a penalty of not more than'' and all that follows and inserting the following: ''who violates a provision of this part—

''(A) in the case of a violation of such provision in which it is established that the person did not know (and by exercising reasonable diligence would not have known) that such person violated such provision, a penalty for each such violation of an amount that is at least the amount described in paragraph (3)(A) but not to exceed the amount described in paragraph (3)(D);

''(B) in the case of a violation of such provision in which it is established that the violation was due to reasonable cause and not to willful neglect, a penalty for each such violation of an amount that is at least the amount de-

scribed in paragraph (3)(B) but not to exceed the amount described in paragraph (3)(D); and

"(C) in the case of a violation of such provision in which it is established that the violation was due to willful neglect—

"(i) if the violation is corrected as described in subsection (b)(3)(A), a penalty in an amount that is at least the amount described in paragraph (3)(C) but not to exceed the amount described in paragraph (3)(D); and

"(ii) if the violation is not corrected as described in such subsection, a penalty in an amount that is at least the amount described in paragraph (3)(D).

In determining the amount of a penalty under this section for a violation, the Secretary shall base such determination on the nature and extent of the violation and the nature and extent of the harm resulting from such violation.".

(2) TIERS OF PENALTIES DESCRIBED.—Section 1176(a) of such Act (42 U.S.C. 1320d-5(a)) is further amended by adding at the end the following new paragraph:

1 "(3) TIERS OF PENALTIES DESCRIBED.—For
2 purposes of paragraph (1), with respect to a viola-
3 tion by a person of a provision of this part—
4 "(A) the amount described in this subpara-
5 graph is $100 for each such violation, except
6 that the total amount imposed on the person
7 for all such violations of an identical require-
8 ment or prohibition during a calendar year may
9 not exceed $25,000;
10 "(B) the amount described in this subpara-
11 graph is $1,000 for each such violation, except
12 that the total amount imposed on the person
13 for all such violations of an identical require-
14 ment or prohibition during a calendar year may
15 not exceed $100,000;
16 "(C) the amount described in this subpara-
17 graph is $10,000 for each such violation, except
18 that the total amount imposed on the person
19 for all such violations of an identical require-
20 ment or prohibition during a calendar year may
21 not exceed $250,000; and
22 "(D) the amount described in this sub-
23 paragraph is $50,000 for each such violation,
24 except that the total amount imposed on the
25 person for all such violations of an identical re-

quirement or prohibition during a calendar year may not exceed $1,500,000.''.

(3) CONFORMING AMENDMENTS.—Section 1176(b) of such Act (42 U.S.C. 1320d-5(b)) is amended—

(A) by striking paragraph (2) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and

(B) in paragraph (2), as so redesignated—

(i) in subparagraph (A), by striking ''in subparagraph (B), a penalty may not be imposed under subsection (a) if'' and all that follows through ''the failure to comply is corrected'' and inserting ''in subparagraph (B) or subsection (a)(1)(C), a penalty may not be imposed under subsection (a) if the failure to comply is corrected''; and

(ii) in subparagraph (B), by striking ''(A)(ii)'' and inserting ''(A)'' each place it appears.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to violations occurring after the date of the enactment of this title.

1 (e) ENFORCEMENT THROUGH STATE ATTORNEYS
2 GENERAL.—
3 (1) IN GENERAL.—Section 1176 of the Social
4 Security Act (42 U.S.C. 1320d–5) is amended by
5 adding at the end the following new subsection:
6 "(e) ENFORCEMENT BY STATE ATTORNEYS GEN-
7 ERAL.—
8 "(1) CIVIL ACTION.—Except as provided in
9 subsection (b), in any case in which the attorney
10 general of a State has reason to believe that an in-
11 terest of one or more of the residents of that State
12 has been or is threatened or adversely affected by
13 any person who violates a provision of this part, the
14 attorney general of the State, as parens patriae, may
15 bring a civil action on behalf of such residents of the
16 State in a district court of the United States of ap-
17 propriate jurisdiction—
18 "(A) to enjoin further such violation by the
19 defendant; or
20 "(B) to obtain damages on behalf of such
21 residents of the State, in an amount equal to
22 the amount determined under paragraph (2).
23 "(2) STATUTORY DAMAGES.—
24 "(A) IN GENERAL.—For purposes of para-
25 graph (1)(B), the amount determined under

this paragraph is the amount calculated by multiplying the number of violations by up to $100. For purposes of the preceding sentence, in the case of a continuing violation, the number of violations shall be determined consistent with the HIPAA privacy regulations (as defined in section 1180(b)(3)) for violations of subsection (a).

"(B) LIMITATION.—The total amount of damages imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed $25,000.

"(C) REDUCTION OF DAMAGES.—In assessing damages under subparagraph (A), the court may consider the factors the Secretary may consider in determining the amount of a civil money penalty under subsection (a) under the HIPAA privacy regulations.

"(3) ATTORNEY FEES.—In the case of any successful action under paragraph (1), the court, in its discretion, may award the costs of the action and reasonable attorney fees to the State.

"(4) NOTICE TO SECRETARY.—The State shall serve prior written notice of any action under paragraph (1) upon the Secretary and provide the Sec-

retary with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Secretary shall have the right—

"(A) to intervene in the action;

"(B) upon so intervening, to be heard on all matters arising therein; and

"(C) to file petitions for appeal.

"(5) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State.

"(6) VENUE; SERVICE OF PROCESS.—

"(A) VENUE.—Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

"(B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant—

"(i) is an inhabitant; or

"(ii) maintains a physical place of business.

"(7) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Secretary has instituted an action against a person under subsection (a) with respect to a specific violation of this part, no State attorney general may bring an action under this subsection against the person with respect to such violation during the pendency of that action.

"(8) APPLICATION OF CMP STATUTE OF LIMITATION.—A civil action may not be instituted with respect to a violation of this part unless an action to impose a civil money penalty may be instituted under subsection (a) with respect to such violation consistent with the second sentence of section 1128A(c)(1).".

(2) CONFORMING AMENDMENTS.—Subsection (b) of such section, as amended by subsection (d)(3), is amended—

(A) in paragraph (1), by striking "A penalty may not be imposed under subsection (a)" and inserting "No penalty may be imposed under subsection (a) and no damages obtained under subsection (c)";

(B) in paragraph (2)(A)—

(i) in the matter before clause (i), by striking ''a penalty may not be imposed under subsection (a)'' and inserting ''no penalty may be imposed under subsection (a) and no damages obtained under subsection (c)''; and

(ii) in clause (ii), by inserting ''or damages'' after ''the penalty'';

(C) in paragraph (2)(B)(i), by striking ''The period'' and inserting ''With respect to the imposition of a penalty by the Secretary under subsection (a), the period''; and

(D) in paragraph (3), by inserting ''and any damages under subsection (c)'' after ''any penalty under subsection (a)''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to violations occurring after the date of the enactment of this Act.

(f) ALLOWING CONTINUED USE OF CORRECTIVE ACTION.—Such section is further amended by adding at the end the following new subsection:

''(d) ALLOWING CONTINUED USE OF CORRECTIVE ACTION.—Nothing in this section shall be construed as preventing the Office of Civil Rights of the Department

of Health and Human Services from continuing, in its discretion, to use corrective action without a penalty in cases where the person did not know (and by exercising reasonable diligence would not have known) of the violation involved.''.

SEC. 4411. AUDITS.

The Secretary shall provide for periodic audits to ensure that covered entities and business associates that are subject to the requirements of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this Act, comply with such requirements.

SEC. 4412. SECURING INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION.

Notwithstanding the previous provisions of this title, a covered entity or business associate must use a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute to secure individually identifiable health information that is transmitted in the nationwide health information network supported in this title or physically transported outside of a covered entity's or business associate's secured, physical perimeter, including in-

formation transported on removable media and on portable devices. The Secretary may establish implementation criteria such that smaller covered entities with fewer resources are granted a longer period of time to comply with these requirements.

SEC. 4413. SPECIAL RULE FOR INFORMATION TO REDUCE MEDICATION ERRORS AND IMPROVE PATIENT SAFETY.

Nothing under this subtitle shall prevent a pharmacist from collecting and sharing information with patients in order to reduce medication errors and improve patient safety as long as any renumeration received for making such communication is reasonable and cost-based. Within 180 days of the date of the enactment of this Act, the Secretary shall promulgate regulations implementing this section.

PART II—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES; EFFECTIVE DATE; REPORTS

SEC. 4421. RELATIONSHIP TO OTHER LAWS.

(a) APPLICATION OF HIPAA STATE PREEMPTION.—Section 1178 of the Social Security Act (42 U.S.C. 1320d–7) shall apply to a provision or requirement under this subtitle in the same manner that such section applies to a provision or requirement under part C of title XI of

1 such Act or a standard or implementation specification
2 adopted or established under sections 1172 through 1174
3 of such Act.

4 (b) HEALTH INSURANCE PORTABILITY AND AC-
5 COUNTABILITY ACT.—The standards governing the pri-
6 vacy and security of individually identifiable health infor-
7 mation promulgated by the Secretary under sections
8 262(a) and 264 of the Health Insurance Portability and
9 Accountability Act of 1996 shall remain in effect to the
10 extent that they are consistent with this subtitle. The Sec-
11 retary shall by rule amend such Federal regulations as re-
12 quired to make such regulations consistent with this sub-
13 title.

14 **SEC. 4422. REGULATORY REFERENCES.**

15 Each reference in this subtitle to a provision of the
16 Code of Federal Regulations refers to such provision as
17 in effect on the date of the enactment of this title (or to
18 the most recent update of such provision).

19 **SEC. 4423. EFFECTIVE DATE.**

20 Except as otherwise specifically provided, the provi-
21 sions of part I shall take effect on the date that is 12
22 months after the date of the enactment of this title.

23 **SEC. 4424. STUDIES, REPORTS, GUIDANCE.**

24 (a) REPORT ON COMPLIANCE.—

1 (1) IN GENERAL.—For the first year beginning
2 after the date of the enactment of this Act and an-
3 nually thereafter, the Secretary shall prepare and
4 submit to the Committee on Health, Education,
5 Labor, and Pensions of the Senate and the Com-
6 mittee on Ways and Means and the Committee on
7 Energy and Commerce of the House of Representa-
8 tives a report concerning complaints of alleged viola-
9 tions of law, including the provisions of this subtitle
10 as well as the provisions of subparts C and E of part
11 164 of title 45, Code of Federal Regulations, (as
12 such provisions are in effect as of the date of enact-
13 ment of this Act) relating to privacy and security of
14 health information that are received by the Secretary
15 during the year for which the report is being pre-
16 pared. Each such report shall include, with respect
17 to such complaints received during the year—
18 (A) the number of such complaints;
19 (B) the number of such complaints re-
20 solved informally, a summary of the types of
21 such complaints so resolved, and the number of
22 covered entities that received technical assist-
23 ance from the Secretary during such year in
24 order to achieve compliance with such provi-

1 sions and the types of such technical assistance
2 provided;
3 (C) the number of such complaints that
4 have resulted in the imposition of civil monetary
5 penalties or have been resolved through mone-
6 tary settlements, including the nature of the
7 complaints involved and the amount paid in
8 each penalty or settlement;
9 (D) the number of compliance reviews con-
10 ducted and the outcome of each such review;
11 (E) the number of subpoenas or inquiries
12 issued;
13 (F) the Secretary's plan for improving
14 compliance with and enforcement of such provi-
15 sions for the following year; and
16 (G) the number of audits performed and a
17 summary of audit findings pursuant to section
18 4411.
19 (2) AVAILABILITY TO PUBLIC.—Each report
20 under paragraph (1) shall be made available to the
21 public on the Internet website of the Department of
22 Health and Human Services.
23 (b) STUDY AND REPORT ON APPLICATION OF PRI-
24 VACY AND SECURITY REQUIREMENTS TO NON-HIPAA
25 COVERED ENTITIES.—

1 (1) STUDY.—Not later than one year after the
2 date of the enactment of this title, the Secretary, in
3 consultation with the Federal Trade Commission,
4 shall conduct a study, and submit a report under
5 paragraph (2), on privacy and security requirements
6 for entities that are not covered entities or business
7 associates as of the date of the enactment of this
8 title, including—
9 (A) requirements relating to security, pri-
10 vacy, and notification in the case of a breach of
11 security or privacy (including the applicability
12 of an exemption to notification in the case of
13 individually identifiable health information that
14 has been rendered unusable, unreadable, or in-
15 decipherable through technologies or methodolo-
16 gies recognized by appropriate professional or-
17 ganization or standard setting bodies to provide
18 effective security for the information) that
19 should be applied to—
20 (i) vendors of personal health records;
21 (ii) entities that offer products or
22 services through the website of a vendor of
23 personal health records;
24 (iii) entities that are not covered enti-
25 ties and that offer products or services

through the websites of covered entities that offer individuals personal health records;

(iv) entities that are not covered entities and that access information in a personal health record or send information to a personal health record; and

(v) third party service providers used by a vendor or entity described in clause (i), (ii), (iii), or (iv) to assist in providing personal health record products or services;

(B) a determination of which Federal government agency is best equipped to enforce such requirements recommended to be applied to such vendors, entities, and service providers under subparagraph (A); and

(C) a timeframe for implementing regulations based on such findings.

(2) REPORT.—The Secretary shall submit to the Committee on Finance, the Committee on Health, Education, Labor, and Pensions, and the Committee on Commerce of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report on the findings of the study

1 under paragraph (1) and shall include in such report
2 recommendations on the privacy and security re-
3 quirements described in such paragraph.
4 (c) GUIDANCE ON IMPLEMENTATION SPECIFICATION
5 TO DE-IDENTIFY PROTECTED HEALTH INFORMATION.—
6 Not later than 12 months after the date of the enactment
7 of this title, the Secretary shall, in consultation with stake-
8 holders, issue guidance on how best to implement the re-
9 quirements for the de-identification of protected health in-
10 formation under section 164.514(b) of title 45, Code of
11 Federal Regulations.
12 (d) GAO REPORT ON TREATMENT DISCLOSURES.—
13 Not later than one year after the date of the enactment
14 of this title, the Comptroller General of the United States
15 shall submit to the Committee on Health, Education,
16 Labor, and Pensions of the Senate and the Committee on
17 Ways and Means and the Committee on Energy and Com-
18 merce of the House of Representatives a report on the
19 best practices related to the disclosure among health care
20 providers of protected health information of an individual
21 for purposes of treatment of such individual. Such report
22 shall include an examination of the best practices imple-
23 mented by States and by other entities, such as health
24 information exchanges and regional health information or-
25 ganizations, an examination of the extent to which such

1 best practices are successful with respect to the quality
2 of the resulting health care provided to the individual and
3 with respect to the ability of the health care provider to
4 manage such best practices, and an examination of the
5 use of electronic informed consent for disclosing protected
6 health information for treatment, payment, and health
7 care operations.

8 TITLE V—MEDICAID 9 PROVISIONS

10 **SEC. 5000. TABLE OF CONTENTS OF TITLE.**

11 The table of contents of this title is as follows:

Sec. 5000. Table of contents of title.
Sec. 5001. Temporary increase of Medicaid FMAP.
Sec. 5002. Moratoria on certain regulations.
Sec. 5003. Transitional Medicaid assistance (TMA).
Sec. 5004. State eligibility option for family planning services.
Sec. 5005. Protections for Indians under Medicaid and CHIP.
Sec. 5006. Consultation on Medicaid and CHIP.
Sec. 5007. Temporary increase in DSH allotments during recession.

12 **SEC. 5001. TEMPORARY INCREASE OF MEDICAID FMAP.**

13 (a) PERMITTING MAINTENANCE OF FMAP.—Subject
14 to subsections (e), (f), and (g), if the FMAP determined
15 without regard to this section for a State for—

16 (1) fiscal year 2009 is less than the FMAP as
17 so determined for fiscal year 2008, the FMAP for
18 the State for fiscal year 2008 shall be substituted
19 for the State's FMAP for fiscal year 2009, before
20 the application of this section;

(2) fiscal year 2010 is less than the FMAP as so determined for fiscal year 2008 or fiscal year 2009 (after the application of paragraph (1)), the greater of such FMAP for the State for fiscal year 2008 or fiscal year 2009 shall be substituted for the State's FMAP for fiscal year 2010, before the application of this section; and

(3) fiscal year 2011 is less than the FMAP as so determined for fiscal year 2008, fiscal year 2009 (after the application of paragraph (1)), or fiscal year 2010 (after the application of paragraph (2)), the greatest of such FMAP for the State for fiscal year 2008, fiscal year 2009, or fiscal year 2010 shall be substituted for the State's FMAP for fiscal year 2011, before the application of this section, but only for the first calendar quarter in fiscal year 2011.

(b) GENERAL 4.9 PERCENTAGE POINT INCREASE.—

(1) IN GENERAL.—Subject to subsections (e), (f), and (g) and paragraph (2), for each State for calendar quarters during the recession adjustment period (as defined in subsection (h)(2)), the FMAP (after the application of subsection (a)) shall be increased (without regard to any limitation otherwise specified in section 1905(b) of the Social Security Act) by 4.9 percentage points.

(2) SPECIAL ELECTION FOR TERRITORIES.—In the case of a State that is not one of the 50 States or the District of Columbia, paragraph (1) shall only apply if the State makes a one-time election, in a form and manner specified by the Secretary and for the entire recession adjustment period, to apply the increase in FMAP under paragraph (1) and a 10 percent increase under subsection (d) instead of applying a 20 percent increase under subsection (d).

(c) ADDITIONAL ADJUSTMENT TO REFLECT INCREASE IN UNEMPLOYMENT.—

(1) IN GENERAL.—Subject to subsections (e), (f), and (g), in the case of a State that is a high unemployment State (as defined in paragraph (2)) for a calendar quarter during the recession adjustment period, the FMAP (taking into account the application of subsections (a) and (b)) for such quarter shall be further increased by the high unemployment percentage point adjustment specified in paragraph (3) for the State for the quarter.

(2) HIGH UNEMPLOYMENT STATE.—

(A) IN GENERAL.—In this subsection, subject to subparagraph (B), the term ''high unemployment State'' means, with respect to a calendar quarter in the recession adjustment pe-

riod, a State that is 1 of the 50 States or the District of Columbia and for which the State unemployment increase percentage (as computed under paragraph (5)) for the quarter is not less than 1.5 percentage points.

(B) MAINTENANCE OF STATUS.—If a State is a high unemployment State for a calendar quarter, it shall remain a high unemployment State for each subsequent calendar quarter ending before July 1, 2010.

(3) HIGH UNEMPLOYMENT PERCENTAGE POINT ADJUSTMENT.—

(A) IN GENERAL.—The high unemployment percentage point adjustment specified in this paragraph for a high unemployment State for a quarter is equal to the product of—

(i) the SMAP for such State and quarter (determined after the application of subsection (a) and before the application of subsection (b)); and

(ii) subject to subparagraph (B), the State unemployment reduction factor specified in paragraph (4) for the State and quarter.

(B) MAINTENANCE OF ADJUSTMENT LEVEL FOR CERTAIN QUARTERS.—In no case shall the State unemployment reduction factor applied under subparagraph (A)(ii) for a State for a quarter (beginning on or after January 1, 2009, and ending before July 1, 2010) be less than the State unemployment reduction factor applied to the State for the previous quarter (taking into account the application of this subparagraph).

(4) STATE UNEMPLOYMENT REDUCTION FACTOR.—In the case of a high unemployment State for which the State unemployment increase percentage (as computed under paragraph (5)) with respect to a calendar quarter is—

(A) not less than 1.5, but is less than 2.5, percentage points, the State unemployment reduction factor for the State and quarter is 6 percent;

(B) not less than 2.5, but is less than 3.5, percentage points, the State unemployment reduction factor for the State and quarter is 12 percent; or

(C) not less than 3.5 percentage points, the State unemployment reduction factor for the State and quarter is 14 percent.

(5) COMPUTATION OF STATE UNEMPLOYMENT INCREASE PERCENTAGE.—

(A) IN GENERAL.—In this subsection, the ''State unemployment increase percentage'' for a State for a calendar quarter is equal to the number of percentage points (if any) by which—

(i) the average monthly unemployment rate for the State for months in the most recent previous 3-consecutive-month period for which data are available, subject to subparagraph (C); exceeds

(ii) the lowest average monthly unemployment rate for the State for any 3-consecutive-month period preceding the period described in clause (i) and beginning on or after January 1, 2006.

(B) AVERAGE MONTHLY UNEMPLOYMENT RATE DEFINED.—In this paragraph, the term ''average monthly unemployment rate'' means the average of the monthly number unemployed, divided by the average of the monthly civilian

1 labor force, seasonally adjusted, as determined
2 based on the most recent monthly publications
3 of the Bureau of Labor Statistics of the De-
4 partment of Labor.
5 (C) SPECIAL RULE.—With respect to—
6 (i) the first 2 calendar quarters of the
7 recession adjustment period, the most re-
8 cent previous 3-consecutive-month period
9 described in subparagraph (A)(i) shall be
10 the 3-consecutive-month period beginning
11 with October 2008; and
12 (ii) the last 2 calendar quarters of the
13 recession adjustment period, the most re-
14 cent previous 3-consecutive-month period
15 described in such subparagraph shall be
16 the 3-consecutive-month period beginning
17 with December 2009.
18 (d) INCREASE IN CAP ON MEDICAID PAYMENTS TO
19 TERRITORIES.—Subject to subsections (f) and (g) , with
20 respect to entire fiscal years occurring during the reces-
21 sion adjustment period and with respect to fiscal years
22 only a portion of which occurs during such period (and
23 in proportion to the portion of the fiscal year that occurs
24 during such period), the amounts otherwise determined for
25 Puerto Rico, the Virgin Islands, Guam, the Northern Mar-

1 iana Islands, and American Samoa under subsections (f)
2 and (g) of section 1108 of the Social Security Act (42
3 U.S.C. 1308) shall each be increased by 20 percent (or,
4 in the case of an election under subsection (b)(2), 10 per-
5 cent).

6 (e) SCOPE OF APPLICATION.—The increases in the
7 FMAP for a State under this section shall apply for pur-
8 poses of title XIX of the Social Security Act and—

9 (1) the increases applied under subsections (a),
10 (b), and (c) shall not apply with respect—

11 (A) to payments under parts A, B, and D
12 of title IV or title XXI of such Act (42 U.S.C.
13 601 et seq. and 1397aa et seq.);

14 (B) to payments under title XIX of such
15 Act that are based on the enhanced FMAP de-
16 scribed in section 2105(b) of such Act (42
17 U.S.C. 1397ee(b)); and

18 (C) to payments for disproportionate share
19 hospital (DSH) payment adjustments under
20 section 1923 of such Act (42 U.S.C. 1396r–4);
21 and

22 (2) the increase provided under subsection (c)
23 shall not apply with respect to payments under part
24 E of title IV of such Act.

25 (f) STATE INELIGIBILITY AND LIMITATION.—

1 (1) IN GENERAL.—Subject to paragraphs (2)
2 and (3), a State is not eligible for an increase in its
3 FMAP under subsection (a), (b), or (c), or an in-
4 crease in a cap amount under subsection (d), if eligi-
5 bility standards, methodologies, or procedures under
6 its State plan under title XIX of the Social Security
7 Act (including any waiver under such title or under
8 section 1115 of such Act (42 U.S.C. 1315)) are
9 more restrictive than the eligibility standards, meth-
10 odologies, or procedures, respectively, under such
11 plan (or waiver) as in effect on July 1, 2008.
12 (2) STATE REINSTATEMENT OF ELIGIBILITY
13 PERMITTED.—Subject to paragraph (3), a State that
14 has restricted eligibility standards, methodologies, or
15 procedures under its State plan under title XIX of
16 the Social Security Act (including any waiver under
17 such title or under section 1115 of such Act (42
18 U.S.C. 1315)) after July 1, 2008, is no longer ineli-
19 gible under paragraph (1) beginning with the first
20 calendar quarter in which the State has reinstated
21 eligibility standards, methodologies, or procedures
22 that are no more restrictive than the eligibility
23 standards, methodologies, or procedures, respec-
24 tively, under such plan (or waiver) as in effect on
25 July 1, 2008.

1 (3) SPECIAL RULES.—A State shall not be in-
2 eligible under paragraph (1)—
3 (A) before July 1, 2009, on the basis of a
4 restriction that was applied after July 1, 2008,
5 and before the date of the enactment of this
6 Act; or
7 (B) on the basis of a restriction that was
8 effective under State law as of July 1, 2008,
9 and would have been in effect as of such date,
10 but for a delay (of not longer than 1 calendar
11 quarter) in the approval of a request for a new
12 waiver under section 1115 of such Act with re-
13 spect to such restriction.
14 (4) STATE'S APPLICATION TOWARD RAINY DAY
15 FUND.—A State is not eligible for an increase in its
16 FMAP under subsection (b) or (c), or an increase in
17 a cap amount under subsection (d), if any amounts
18 attributable (directly or indirectly) to such increase
19 are deposited or credited into any reserve or rainy
20 day fund of the State.
21 (5) RULE OF CONSTRUCTION.—Nothing in
22 paragraph (1) or (2) shall be construed as affecting
23 a State's flexibility with respect to benefits offered
24 under the State Medicaid program under title XIX
25 of the Social Security Act (42 U.S.C. 1396 et seq.)

(including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)).

(6) NO WAIVER AUTHORITY.—The Secretary may not waive the application of this subsection or subsection (g) under section 1115 of the Social Security Act or otherwise.

(g) REQUIREMENT FOR CERTAIN STATES.—In the case of a State that requires political subdivisions within the State to contribute toward the non-Federal share of expenditures under the State Medicaid plan required under section 1902(a)(2) of the Social Security Act (42 U.S.C. 1396a(a)(2)), the State is not eligible for an increase in its FMAP under subsection (a), (b), or (c), or an increase in a cap amount under subsection (d), if it requires that such political subdivisions pay a greater percentage of the non-Federal share of such expenditures for quarters during the recession adjustment period, than the percentage that would have been required by the State under such plan on September 30, 2008, prior to application of this section.

(h) DEFINITIONS.—In this section, except as otherwise provided:

(1) FMAP.—The term ''FMAP'' means the Federal medical assistance percentage, as defined in section 1905(b) of the Social Security Act (42

U.S.C. 1396d(b)), as determined without regard to this section except as otherwise specified.

(2) RECESSION ADJUSTMENT PERIOD.—The term ''recession adjustment period'' means the period beginning on October 1, 2008, and ending on December 31, 2010.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(4) SMAP.—The term ''SMAP'' means, for a State, 100 percent minus the Federal medical assistance percentage..

(5) STATE.—The term ''State'' has the meaning given such term in section 1101(a)(1) of the Social Security Act (42 U.S.C. 1301(a)(1)) for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(i) SUNSET.—This section shall not apply to items and services furnished after the end of the recession adjustment period.

SEC. 5002. MORATORIA ON CERTAIN REGULATIONS.

(a) EXTENSION OF MORATORIA ON CERTAIN MEDICAID REGULATIONS.—The following sections are each amended by striking ''April 1, 2009'' and inserting ''July 1, 2009'':

(1) Section 7002(a)(1) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Public Law 110–28), as amended by section 7001(a)(1) of the Supplemental Appropriations Act, 2008 (Public Law 110–252).

(2) Section 206 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110-173), as amended by section 7001(a)(2) of the Supplemental Appropriations Act, 2008 (Public Law 110–252).

(3) Section 7001(a)(3)(A) of the Supplemental Appropriations Act, 2008 (Public Law 110–252).

(b) ADDITIONAL MEDICAID MORATORIUM.—Notwithstanding any other provision of law, with respect to expenditures for services furnished during the period beginning on December 8, 2008 and ending on June 30, 2009, the Secretary of Health and Human Services shall not take any action (through promulgation of regulation, issuance of regulatory guidance, use of Federal payment audit procedures, or other administrative action, policy, or practice, including a Medical Assistance Manual transmittal or letter to State Medicaid directors) to implement the final regulation relating to clarification of the definition of outpatient hospital facility services under the Med-

1 icaid program published on November 7, 2008 (73 Federal
2 Register 66187).

3 **SEC. 5003. TRANSITIONAL MEDICAID ASSISTANCE (TMA).**

4 (a) 18-MONTH EXTENSION.—

5 (1) IN GENERAL.—Sections 1902(e)(1)(B) and
6 1925(f) of the Social Security Act (42 U.S.C.
7 1396a(e)(1)(B), 1396r–6(f)) are each amended by
8 striking ''September 30, 2003'' and inserting ''De-
9 cember 31, 2010''.

10 (2) EFFECTIVE DATE.—The amendments made
11 by this subsection shall take effect on July 1, 2009.

12 (b) STATE OPTION OF INITIAL 12-MONTH ELIGI-
13 BILITY.—Section 1925 of the Social Security Act (42
14 U.S.C. 1396r–6) is amended—

15 (1) in subsection (a)(1), by inserting ''but sub-
16 ject to paragraph (5)'' after ''Notwithstanding any
17 other provision of this title'';

18 (2) by adding at the end of subsection (a) the
19 following:

20 ''(5) OPTION OF 12-MONTH INITIAL ELIGIBILITY
21 PERIOD.—A State may elect to treat any reference
22 in this subsection to a 6-month period (or 6 months)
23 as a reference to a 12-month period (or 12 months).
24 In the case of such an election, subsection (b) shall
25 not apply.''; and

(3) in subsection (b)(1), by inserting ''but subject to subsection (a)(5)'' after ''Notwithstanding any other provision of this title''.

(c) REMOVAL OF REQUIREMENT FOR PREVIOUS RECEIPT OF MEDICAL ASSISTANCE.—Section 1925(a)(1) of such Act (42 U.S.C. 1396r–6(a)(1)), as amended by subsection (b)(1), is further amended—

(1) by inserting ''subparagraph (B) and'' before ''paragraph (5)'';

(2) by redesignating the matter after ''REQUIREMENT.—'' as a subparagraph (A) with the heading ''IN GENERAL.—'' and with the same indentation as subparagraph (B) (as added by paragraph (3)); and

(3) by adding at the end the following:

''(B) STATE OPTION TO WAIVE REQUIREMENT FOR 3 MONTHS BEFORE RECEIPT OF MEDICAL ASSISTANCE.—A State may, at its option, elect also to apply subparagraph (A) in the case of a family that was receiving such aid for fewer than three months or that had applied for and was eligible for such aid for fewer than 3 months during the 6 immediately preceding months described in such subparagraph.''.

1 (d) CMS REPORT ON ENROLLMENT AND PARTICIPA-
2 TION RATES UNDER TMA.—Section 1925 of such Act (42
3 U.S.C. 1396r–6), as amended by this section, is further
4 amended by adding at the end the following new sub-
5 section:
6 "(g) COLLECTION AND REPORTING OF PARTICIPA-
7 TION INFORMATION.—
8 "(1) COLLECTION OF INFORMATION FROM
9 STATES.—Each State shall collect and submit to the
10 Secretary (and make publicly available), in a format
11 specified by the Secretary, information on average
12 monthly enrollment and average monthly participa-
13 tion rates for adults and children under this section
14 and of the number and percentage of children who
15 become ineligible for medical assistance under this
16 section whose medical assistance is continued under
17 another eligibility category or who are enrolled under
18 the State's child health plan under title XXI. Such
19 information shall be submitted at the same time and
20 frequency in which other enrollment information
21 under this title is submitted to the Secretary.
22 "(2) ANNUAL REPORTS TO CONGRESS.—Using
23 the information submitted under paragraph (1), the
24 Secretary shall submit to Congress annual reports

concerning enrollment and participation rates described in such paragraph.''.

(e) EFFECTIVE DATE.—The amendments made by subsections (b) through (d) shall take effect on July 1, 2009.

SEC. 5004. STATE ELIGIBILITY OPTION FOR FAMILY PLANNING SERVICES.

(a) COVERAGE AS OPTIONAL CATEGORICALLY NEEDY GROUP.—

(1) IN GENERAL.—Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)), as amended by section 3003(a) of the Health Insurance Assistance for the Unemployed Act of 2009, is amended—

(A) in subclause (XIX), by striking ''or'' at the end;

(B) in subclause (XX), by adding ''or'' at the end; and

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

''(XXI) who are described in subsection (ee) (relating to individuals who meet certain income standards);''.

(2) GROUP DESCRIBED.—Section 1902 of such Act (42 U.S.C. 1396a), as amended by section

3003(a) of the Health Insurance Assistance for the Unemployed Act of 2009, is amended by adding at the end the following new subsection:

''(ee)(1) Individuals described in this subsection are individuals—

''(A) whose income does not exceed an income eligibility level established by the State that does not exceed the highest income eligibility level established under the State plan under this title (or under its State child health plan under title XXI) for pregnant women; and

''(B) who are not pregnant.

''(2) At the option of a State, individuals described in this subsection may include individuals who, had individuals applied on or before January 1, 2007, would have been made eligible pursuant to the standards and processes imposed by that State for benefits described in clause (XV) of the matter following subparagraph (G) of section subsection (a)(10) pursuant to a waiver granted under section 1115.

''(3) At the option of a State, for purposes of subsection (a)(17)(B), in determining eligibility for services under this subsection, the State may consider only the income of the applicant or recipient.''.

(3) LIMITATION ON BENEFITS.—Section 1902(a)(10) of the Social Security Act (42 U.S.C. 1396a(a)(10)) is amended in the matter following subparagraph (G)—

(A) by striking ''and (XIV)'' and inserting ''(XIV)''; and

(B) by inserting '', and (XV) the medical assistance made available to an individual described in subsection (ee) shall be limited to family planning services and supplies described in section 1905(a)(4)(C) including medical diagnosis and treatment services that are provided pursuant to a family planning service in a family planning setting'' after ''cervical cancer''.

(4) CONFORMING AMENDMENTS.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)), as amended by section 3003(c)(2) of the Health Insurance Assistance for the Unemployed Act of 2009, is amended in the matter preceding paragraph (1)—

(A) in clause (xiii), by striking ''or'' at the end;

(B) in clause (xiv), by adding ''or'' at the end; and

(C) by inserting after clause (xiii) the following:

"(xv) individuals described in section 1902(ee),".

(b) PRESUMPTIVE ELIGIBILITY.—

(1) IN GENERAL.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended by inserting after section 1920B the following:

"PRESUMPTIVE ELIGIBILITY FOR FAMILY PLANNING SERVICES

"SEC. 1920C. (a) STATE OPTION.—State plan approved under section 1902 may provide for making medical assistance available to an individual described in section 1902(ee) (relating to individuals who meet certain income eligibility standard) during a presumptive eligibility period. In the case of an individual described in section 1902(ee), such medical assistance shall be limited to family planning services and supplies described in 1905(a)(4)(C) and, at the State's option, medical diagnosis and treatment services that are provided in conjunction with a family planning service in a family planning setting.

"(b) DEFINITIONS.—For purposes of this section:

"(1) PRESUMPTIVE ELIGIBILITY PERIOD.—The term 'presumptive eligibility period' means, with re-

1 spect to an individual described in subsection (a),
2 the period that—
3 "(A) begins with the date on which a
4 qualified entity determines, on the basis of pre-
5 liminary information, that the individual is de-
6 scribed in section 1902(ee); and
7 "(B) ends with (and includes) the earlier
8 of—
9 "(i) the day on which a determination
10 is made with respect to the eligibility of
11 such individual for services under the State
12 plan; or
13 "(ii) in the case of such an individual
14 who does not file an application by the last
15 day of the month following the month dur-
16 ing which the entity makes the determina-
17 tion referred to in subparagraph (A), such
18 last day.
19 "(2) QUALIFIED ENTITY.—
20 "(A) IN GENERAL.—Subject to subpara-
21 graph (B), the term 'qualified entity' means
22 any entity that—
23 "(i) is eligible for payments under a
24 State plan approved under this title; and

1 ''(ii) is determined by the State agen-
2 cy to be capable of making determinations
3 of the type described in paragraph (1)(A).
4 ''(B) RULE OF CONSTRUCTION.—Nothing
5 in this paragraph shall be construed as pre-
6 venting a State from limiting the classes of en-
7 tities that may become qualified entities in
8 order to prevent fraud and abuse.
9 ''(c) ADMINISTRATION.—
10 ''(1) IN GENERAL.—The State agency shall pro-
11 vide qualified entities with—
12 ''(A) such forms as are necessary for an
13 application to be made by an individual de-
14 scribed in subsection (a) for medical assistance
15 under the State plan; and
16 ''(B) information on how to assist such in-
17 dividuals in completing and filing such forms.
18 ''(2) NOTIFICATION REQUIREMENTS.—A quali-
19 fied entity that determines under subsection
20 (b)(1)(A) that an individual described in subsection
21 (a) is presumptively eligible for medical assistance
22 under a State plan shall—
23 ''(A) notify the State agency of the deter-
24 mination within 5 working days after the date
25 on which determination is made; and

1 "(B) inform such individual at the time
2 the determination is made that an application
3 for medical assistance is required to be made by
4 not later than the last day of the month fol-
5 lowing the month during which the determina-
6 tion is made.
7 "(3) APPLICATION FOR MEDICAL ASSIST-
8 ANCE.—In the case of an individual described in
9 subsection (a) who is determined by a qualified enti-
10 ty to be presumptively eligible for medical assistance
11 under a State plan, the individual shall apply for
12 medical assistance by not later than the last day of
13 the month following the month during which the de-
14 termination is made.
15 "(d) PAYMENT.—Notwithstanding any other provi-
16 sion of law, medical assistance that—
17 "(1) is furnished to an individual described in
18 subsection (a)—
19 "(A) during a presumptive eligibility pe-
20 riod;
21 "(B) by a entity that is eligible for pay-
22 ments under the State plan; and
23 "(2) is included in the care and services covered
24 by the State plan,

1 shall be treated as medical assistance provided by such
2 plan for purposes of clause (4) of the first sentence of
3 section 1905(b).''.
4 (2) CONFORMING AMENDMENTS.—
5 (A) Section 1902(a)(47) of the Social Se-
6 curity Act (42 U.S.C. 1396a(a)(47)) is amend-
7 ed by inserting before the semicolon at the end
8 the following: ''and provide for making medical
9 assistance available to individuals described in
10 subsection (a) of section 1920C during a pre-
11 sumptive eligibility period in accordance with
12 such section''.
13 (B) Section 1903(u)(1)(D)(v) of such Act
14 (42 U.S.C. 1396b(u)(1)(D)(v)) is amended—
15 (i) by striking ''or for'' and inserting
16 ''for''; and
17 (ii) by inserting before the period the
18 following: '', or for medical assistance pro-
19 vided to an individual described in sub-
20 section (a) of section 1920C during a pre-
21 sumptive eligibility period under such sec-
22 tion''.
23 (c) CLARIFICATION OF COVERAGE OF FAMILY PLAN-
24 NING SERVICES AND SUPPLIES.—Section 1937(b) of the

1 Social Security Act (42 U.S.C. 1396u–7(b)) is amended
2 by adding at the end the following:
3 ''(5) COVERAGE OF FAMILY PLANNING SERV-
4 ICES AND SUPPLIES.—Notwithstanding the previous
5 provisions of this section, a State may not provide
6 for medical assistance through enrollment of an indi-
7 vidual with benchmark coverage or benchmark-equiv-
8 alent coverage under this section unless such cov-
9 erage includes for any individual described in section
10 1905(a)(4)(C), medical assistance for family plan-
11 ning services and supplies in accordance with such
12 section.''.
13 (d) EFFECTIVE DATE.—The amendments made by
14 this section take effect on the date of the enactment of
15 this Act and shall apply to items and services furnished
16 on or after such date.
17 **SEC. 5005. PROTECTIONS FOR INDIANS UNDER MEDICAID**
18 **AND CHIP.**
19 (a) PREMIUMS AND COST SHARING PROTECTION
20 UNDER MEDICAID.—
21 (1) IN GENERAL.—Section 1916 of the Social
22 Security Act (42 U.S.C. 1396o) is amended—
23 (A) in subsection (a), in the matter pre-
24 ceding paragraph (1), by striking ''and (i)'' and
25 inserting '', (i), and (j)''; and

1 (B) by adding at the end the following new
2 subsection:
3 "(j) NO PREMIUMS OR COST SHARING FOR INDIANS
4 FURNISHED ITEMS OR SERVICES DIRECTLY BY INDIAN
5 HEALTH PROGRAMS OR THROUGH REFERRAL UNDER
6 CONTRACT HEALTH SERVICES.—
7 "(1) NO COST SHARING FOR ITEMS OR SERV-
8 ICES FURNISHED TO INDIANS THROUGH INDIAN
9 HEALTH PROGRAMS.—
10 "(A) IN GENERAL.—No enrollment fee,
11 premium, or similar charge, and no deduction,
12 copayment, cost sharing, or similar charge shall
13 be imposed against an Indian who is furnished
14 an item or service directly by the Indian Health
15 Service, an Indian Tribe, Tribal Organization,
16 or Urban Indian Organization or through refer-
17 ral under contract health services for which
18 payment may be made under this title.
19 "(B) NO REDUCTION IN AMOUNT OF PAY-
20 MENT TO INDIAN HEALTH PROVIDERS.—Pay-
21 ment due under this title to the Indian Health
22 Service, an Indian Tribe, Tribal Organization,
23 or Urban Indian Organization, or a health care
24 provider through referral under contract health
25 services for the furnishing of an item or service

to an Indian who is eligible for assistance under such title, may not be reduced by the amount of any enrollment fee, premium, or similar charge, or any deduction, copayment, cost sharing, or similar charge that would be due from the Indian but for the operation of subparagraph (A).

"(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as restricting the application of any other limitations on the imposition of premiums or cost sharing that may apply to an individual receiving medical assistance under this title who is an Indian.".

(2) CONFORMING AMENDMENT.—Section 1916A(b)(3) of such Act (42 U.S.C. 1396o–1(b)(3)) is amended—

(A) in subparagraph (A), by adding at the end the following new clause:

"(vi) An Indian who is furnished an item or service directly by the Indian Health Service, an Indian Tribe, Tribal Organization or Urban Indian Organization or through referral under contract health services."; and

(B) in subparagraph (B), by adding at the end the following new clause:

"(ix) Items and services furnished to an Indian directly by the Indian Health Service, an Indian Tribe, Tribal Organization or Urban Indian Organization or through referral under contract health services.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on October 1, 2009.

(b) TREATMENT OF CERTAIN PROPERTY FROM RESOURCES FOR MEDICAID AND CHIP ELIGIBILITY.—

(1) MEDICAID.—Section 1902 of the Social Security Act (42 U.S.C. 1396a), as amended by section 3003(a) of the Health Insurance Assistance for the Unemployed Act of 2009 and section 5004, is amended by adding at the end the following new subsection:

"(ff) Notwithstanding any other requirement of this title or any other provision of Federal or State law, a State shall disregard the following property from resources for purposes of determining the eligibility of an individual who is an Indian for medical assistance under this title:

1 ''(1) Property, including real property and im-
2 provements, that is held in trust, subject to Federal
3 restrictions, or otherwise under the supervision of
4 the Secretary of the Interior, located on a reserva-
5 tion, including any federally recognized Indian
6 Tribe's reservation, pueblo, or colony, including
7 former reservations in Oklahoma, Alaska Native re-
8 gions established by the Alaska Native Claims Set-
9 tlement Act, and Indian allotments on or near a res-
10 ervation as designated and approved by the Bureau
11 of Indian Affairs of the Department of the Interior.
12 ''(2) For any federally recognized Tribe not de-
13 scribed in paragraph (1), property located within the
14 most recent boundaries of a prior Federal reserva-
15 tion.
16 ''(3) Ownership interests in rents, leases, royal-
17 ties, or usage rights related to natural resources (in-
18 cluding extraction of natural resources or harvesting
19 of timber, other plants and plant products, animals,
20 fish, and shellfish) resulting from the exercise of fed-
21 erally protected rights.
22 ''(4) Ownership interests in or usage rights to
23 items not covered by paragraphs (1) through (3)
24 that have unique religious, spiritual, traditional, or
25 cultural significance or rights that support subsist-

ence or a traditional lifestyle according to applicable tribal law or custom.''.

(2) APPLICATION TO CHIP.—Section 2107(e)(1) of such Act (42 U.S.C. 1397gg(e)(1)) is amended by adding at the end the following new subparagraph:

''(E) Section 1902(ff) (relating to disregard of certain property for purposes of making eligibility determinations).''.

(c) CONTINUATION OF CURRENT LAW PROTECTIONS OF CERTAIN INDIAN PROPERTY FROM MEDICAID ESTATE RECOVERY.—Section 1917(b)(3) of the Social Security Act (42 U.S.C. 1396p(b)(3)) is amended—

(1) by inserting ''(A)'' after ''(3)''; and

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

''(B) The standards specified by the Secretary under subparagraph (A) shall require that the procedures established by the State agency under subparagraph (A) exempt income, resources, and property that are exempt from the application of this subsection as of April 1, 2003, under manual instructions issued to carry out this subsection (as in effect on such date) because of the Federal responsibility for Indian Tribes and Alaska Native Villages. Nothing in

this subparagraph shall be construed as preventing the Secretary from providing additional estate recovery exemptions under this title for Indians.''.

SEC. 5006. CONSULTATION ON MEDICAID AND CHIP.

(a) IN GENERAL.—Section 1139 of the Social Security Act (42 U.S.C. 1320b–9) is amended to read as follows:

''CONSULTATION WITH TRIBAL TECHNICAL ADVISORY GROUP (TTAG)

''SEC. 1139.

''The Secretary shall maintain within the Centers for Medicaid & Medicare Services (CMS) a Tribal Technical Advisory Group, which was first established in accordance with requirements of the charter dated September 30, 2003, and the Secretary shall include in such Group a representative of the Urban Indian Organizations and the Service. The representative of the Urban Indian Organization shall be deemed to be an elected officer of a tribal government for purposes of applying section 204(b) of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1534(b)).''.

(b) SOLICITATION OF ADVICE UNDER MEDICAID AND CHIP.—

1 (1) MEDICAID STATE PLAN AMENDMENT.—Sec-
2 tion 1902(a) of the Social Security Act (42 U.S.C.
3 1396a(a)) is amended—
4 (A) in paragraph (70), by striking ''and''
5 at the end;
6 (B) in paragraph (71), by striking the pe-
7 riod at the end and inserting ''; and''; and
8 (C) by inserting after paragraph (71), the
9 following new paragraph:
10 ''(72) in the case of any State in which 1 or
11 more Indian Health Programs or Urban Indian Or-
12 ganizations furnishes health care services, provide
13 for a process under which the State seeks advice on
14 a regular, ongoing basis from designees of such In-
15 dian Health Programs and Urban Indian Organiza-
16 tions on matters relating to the application of this
17 title that are likely to have a direct effect on such
18 Indian Health Programs and Urban Indian Organi-
19 zations and that—
20 ''(A) shall include solicitation of advice
21 prior to submission of any plan amendments,
22 waiver requests, and proposals for demonstra-
23 tion projects likely to have a direct effect on In-
24 dians, Indian Health Programs, or Urban In-
25 dian Organizations; and

"(B) may include appointment of an advisory committee and of a designee of such Indian Health Programs and Urban Indian Organizations to the medical care advisory committee advising the State on its State plan under this title.".

(2) APPLICATION TO CHIP.—Section 2107(e)(1) of such Act (42 U.S.C. 1397gg(e)(1)), as amended by section 5005(b), is amended by adding at the end the following new subparagraph:

"(F) Section 1902(a)(72) (relating to requiring certain States to seek advice from designees of Indian Health Programs and Urban Indian Organizations).".

(c) RULE OF CONSTRUCTION.—Nothing in the amendments made by this section shall be construed as superseding existing advisory committees, working groups, guidance, or other advisory procedures established by the Secretary of Health and Human Services or by any State with respect to the provision of health care to Indians.

SEC. 5007. TEMPORARY INCREASE IN DSH ALLOTMENTS DURING RECESSION.

Section 1923(f)(3) of the Social Security Act (42 U.S.C. 1396r-4(f)(3)) is amended—

(1) in subparagraph (A), by striking ''paragraph (6)'' and inserting ''paragraph (6) and subparagraph (E)''; and

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

''(E) TEMPORARY INCREASE IN ALLOTMENTS DURING RECESSION.—

''(i) IN GENERAL.—Subject to clause (ii), the DSH allotment for any State—

''(I) for fiscal year 2009 is equal to 102.5 percent of the DSH allotment that would be determined under this paragraph for the State for fiscal year 2009 without application of this subparagraph, notwithstanding subparagraph (B);

''(II) for fiscal year 2010 is equal to 102.5 percent of the the DSH allotment for the State for fiscal year 2009, as determined under subclause (I); and

''(III) for each succeeding fiscal year is equal to the DSH allotment for the State under this paragraph de-

1 termined without applying subclauses
2 (I) and (II).
3 ''(ii) APPLICATION.—Clause (i) shall
4 not apply to a State for a year in the case
5 that the DSH allotment for such State for
6 such year under this paragraph determined
7 without applying clause (i) would grow
8 higher than the DSH allotment specified
9 under clause (i) for the State for such
10 year.''.

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PURPOSE AND SUMMARY

H.R. 629, the Energy and Commerce Recovery and Investment Act, was introduced by Rep Henry A. Waxman on January 22, 2009. The purpose of the bill is to promote recovery in the nation's foundering economy by investing in the following areas: (1) broadband infrastructure so that businesses and households in rural and other underserved areas can link to the global economy; (2) clean energy technologies that will put people to work, clean our environment, and reduce our dependence on foreign oil; and (3) health to create new jobs related to health information technology, provide health insurance assistance for workers hurt by the recession, and strengthen a key safety net by increasing the federal contribution to Medicaid.

BACKGROUND AND NEED FOR LEGISLATION

Broadband

Broadband infrastructure is the foundation of the digital economy. The broadband networks that must be constructed throughout the nation will be as important to the nation's economic success as the postal roads, canals, rail lines, and interstate highways of the past. Unfortunately, the United States has fallen behind other nations in terms of broadband deployment and adoption.[1] This legislation will put people to work building new broadband infrastructure. The Communications Workers of America estimate that a $5 billion investment in broadband will result in 100,000 new jobs, and it will begin the process of restoring the United States' position as the leading broadband nation in the world.

The legislation requires the grant administrator to attempt to award 25% of available funds to areas with either no wireless voice service or no basic broadband service so that these unserved areas can begin the process of building communications infrastructure. The measure also requires the grant administrator to attempt to award 75% of the funds to areas in need of an upgrade of existing wireless and wireline broadband facilities. The aim of these provisions is to stimulate job creation in all parts of the country and to not limit the expected economic development to certain regions. These provisions will help ensure that all Americans have a chance to benefit from new and upgraded infrastructure.

Energy

In the "American Recovery and Reinvestment Act," the House Appropriations Committee has proposed to provide approximately $30 billion for energy-related programs created by the Committee on Energy and Commerce. This investment would create new jobs, increase the efficiency of the nation's existing infrastructure and upgrade critical energy infrastructure. This effort would serve as the foundation for renewed

[1] For instance, the United States ranks 15th in broadband penetration among OECD nations. *See* http://www.oecd.org/dataoecd/21/35/39574709.xls.

economic growth that is consistent with meeting our energy and environmental challenges.

In light of the levels of funding proposed for these programs and the intention to move the appropriated funds rapidly into active use, the Committee on Energy and Commerce considered whether amendments to the authorizing language creating these programs should be adopted to assure that the funds were used to their full intended effect. Specifically, the Energy and Commerce Committee considered and amended portions of the provisions that make up Sections 5001, 5002, 5003, 5005, and 5007 of the "American Recovery and Reinvestment Act" approved by the Appropriations Committee, and added new provisions with respect to conditions that should apply other programs for which authorization language changes had not been proposed by the Appropriations Committee.

Health

1. Health Insurance Assistance for the Unemployed

According to the Congressional Budget Office (CBO), the United States is in a recession that "will probably be the longest and deepest since World War II."[2] CBO estimates that the unemployment rate, which was 5.7% in 2008, is projected to increase to 8.3% in 2009 and 9% into 2010.[3]

Each 1 percentage point increase in unemployment translates into a 0.6 percentage point increase in the number of nonelderly adults without health insurance coverage. Put another way, if, as projected, the unemployment rate rises to 9%, the number of uninsured adults will increase by 4.8 million.[4]

The bill contains two provisions to address this foreseeable increase in the number of unemployed Americans without health insurance coverage. It provides temporary subsidies for COBRA premiums to enable workers who have been involuntarily terminated from their jobs to maintain the coverage they had through work. To address the needs of those workers (and their families) that do not have access to COBRA coverage, the bill also creates a temporary option for states to extend health care coverage to displaced workers through their Medicaid programs.

CBO estimates that these two provisions will provide health care coverage to a total of 8.2 million unemployed workers and dependents in 2009. Of these, 7 million will

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[2] Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2009 to 2019*, at 1 (Jan. 2009).
[3] *Id.*, Table B-1.
[4] J. Holahan, A. Bowen Garrett, *Rising Unemployment, Medicaid, and the Uninsured*, Kaiser Commission on Medicaid and the Uninsured, at 4 (Jan. 2009).

be covered through COBRA; the remaining 1.2 million will be covered through Medicaid.[5]

CBO estimates these provisions will cost $40.2 billion over the next 5 years. Of this amount, over 90 percent will be spent during 2009 and 2010, maximizing the economic impact of this spending during the recession.

2. *Health Information Technology*

The U.S. health care system is characterized by systemic quality and efficiency shortcomings. The system's quality problems are evidenced by high rates of medical and medication errors and a lack of adherence to practice guidelines. In a 2000 study, the Institute of Medicine (IOM) found that as many as 98,000 people die each year due to preventable medical errors.[6] According to the Agency for Healthcare Research and Quality (AHRQ), an average of 17 years is required for findings from randomized clinical trials to be implemented into clinical practice. These documented shortcomings in our quality of care contribute to higher health care costs and place patients at risk.

Nationwide adoption of health information technology (HIT), that supports the electronic exchange of health information, has the potential to ameliorate many of the quality and efficiency problems endemic to our health care system. HIT would allow for the centralization of patient information, enhanced, real-time communication between providers to improve the coordination of care, improved patient access to medical records, and access to a variety of quality enhancing programs and tools.

According to the Congressional Budget Office, only 5% of physicians have and use a comprehensive electronic health record, those that provide decision support capability, physician order entry and more.[7] Similarly, only 11% of hospitals have adopted such systems.[8] A commonly cited impediment to the adoption of HIT is cost. A study published in the New England Journal of Medicine showed that a large majority of physicians using electronic health records are satisfied and report that those systems have positive effects on the quality of patient care.[9] The study, which surveyed 2,607 physicians, showed that physicians without HIT systems were concerned about financial barriers.[10] Evidence from this study and others strongly indicate that health care

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[5] Both are preliminary estimates that reflect the total number of people over the course of CY 2009 that receive benefits from sections 3002 and 3003. These are mutually exclusive groups, so they are additive and take into account interactions between both sections.

[6] To Err is Human. IOM (2000) National Academy Press.

[7] Congressional Budget Office, *Budget Options Health Care*, Volume I, Option 46 (Dec. 2008).

[8] Congressional Budget Office, *Evidence on the Cots and Benefits of Health Information Technology* (May 2008).

[9] Catherine M. DesRoches, Dr.P.H., Eric G. Campbell, Ph.D., Sowmya R. Rao, Ph.D., Karen Donelan, Sc.D., Timothy G. Ferris, M.D., M.P.H., Ashish Jha, M.D., M.P.H., Rainu Kaushal, M.D., M.P.H., Douglas E. Levy, Ph.D., Sara Rosenbaum, J.D., Alexandra E. Shields, Ph.D., and David Blumenthal, M.D., M.P.P, "Electronic Health Records in Ambulatory Care—A National Survey of Physicians" *The New England Journal of Medicine,* Published at www.nejm.org (June18, 2008) (10.1056/NEJMsa0802005).

[10] *Id.*

providers need guidance and financial support if HIT is to be widely adopted in the United States.[11]

In addition to costs, concerns about the security and privacy of health information have also been regarded as an obstacle to the adoption of HIT. As the electronic transmission of health information between various independent entities is encouraged, the privacy and security of that health information becomes a much greater concern. The Health Insurance Portability and Accountability Act of 1996 (HIPAA; P.L. 104–191) resulted in the Secretary of HHS developing privacy and security standards giving patients the right of access to their medical information and placing restrictions on the use and disclosure of that information without the patient's consent. The HIPAA "Privacy Rule" and "Security Rule" currently provide the federal standard for the protection of individually identifiable health information.

There are, however, clear gaps in the current privacy and security structure established under HIPAA that have become apparent over time. For example, there are no requirements that a person be notified if their information is accessed by an unauthorized party. In addition, between April 2003 and March 2007, HHS documented 26,408 complaints of Privacy Rule violations.[12] Despite the relatively large number of complaints, no civil penalties were levied during that period and only one civil fine has been levied since then.[13] The bill would address these barriers to adoption and take steps to provide for greater privacy and security of health information and stronger enforcement of violations of federal law.

3. *Medicaid Provisions*

The rise in unemployment during a recession also has severe impact on state Medicaid programs. Caseloads rise as workers lose their incomes. If, as projected, the unemployment rate rises to 9%, the number of children enrolled in Medicaid or the Children's Health Insurance Program (CHIP) will increase by 2.8 million, while the number of non-elderly adults in Medicaid will rise by 1.6 million.[14]

At the same time, the revenues that states need to pay for their Medicaid programs fall as income tax, sales tax, property tax, and corporate tax receipts decline. A 1 percentage point increase in the unemployment rate causes state general fund revenue to drop by 3% to 4% below the level of revenues expected. A 9 percent unemployment rate would reduce state revenues by an estimated $26 billion.[15]

Because the states, on average, pay 43% of Medicaid program costs, states would have to reduce their Medicaid spending by over $60 billion in order to reduce their state-

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[11] *Id.*
[12] Stevens, Gina Marie, "Enforcement of the HIPAA Privacy Rule," CRS Report RL33989 (Apr. 30, 2007).
[13] *Id.*
[14] Holahan and Garrett, op. cit., Table 2.
[15] *Id.* at 8.

only spending by $26 billion. Withdrawing $60 billion in aggregate demand from the health care sector of the economy is likely to prolong the recession.

The bill contains provisions to assist states in maintaining their Medicaid programs in the face of caseload increases and revenue shortfalls. The bill provides a temporary increase in the federal Medicaid matching rate (FMAP) targeted in part at states with high unemployment. The bill also extends a moratorium on regulations that would substantially reduce federal Medicaid matching payments to states.

CBO estimates that these provisions will increase federal Medicaid spending by $89.5 billion over the next five years. Of this amount, about $80 billion, or nearly 90%, will be spent during 2009 and 2010, providing immediate fiscal relief to state Medicaid programs while the recession is underway.

LEGISLATIVE HISTORY

H.R. 629, the Energy and Commerce Recovery and Investment Act, was introduced by Rep. Henry A. Waxman on January 22, 2009, and referred to the Committee on Energy and Commerce.

On January 22, 2009, the Committee g met in open markup session to consider five Committee prints that correspond to the five titles of H.R. 629. The Committee by unanimous consent substituted the text of these five prints, as amended during the markup session, for the text of H.R. 629 as introduced, and approved H.R. 629,amended, by a voice vote.

SECTION-BY-SECTION

Title I – Broadband Communications

Section 1001: Inventory of Broadband Service Capability and Availability

Subsection (a) directs the National Telecommunications and Information Administration ("NTIA") to develop and maintain a broadband inventory map of the United States that identifies and depicts broadband service availability and capability. Subsection (b) directs the NTIA to make the map accessible online no later than 2 years after the date of enactment of this Act.

Section 1002: Wireless and Broadband Deployment Grant Programs

Subsection (a) authorizes the creation of grant programs for wireless and wireline broadband infrastructure to be administered by the NTIA.

Subsection (b) authorizes a state to submit a priority report to NTIA that identifies the geographic areas within that state that have greatest need for new or additional telecommunications infrastructure. A state may not identify areas encompassing more than 20% of that state's population.

Subsection (c) authorizes the NTIA to award Wireless Broadband Grants. The NTIA shall seek to distribute grants, to the extent possible, so that 25% of the available funds to "unserved areas" for basic voice services and 75% to "underserved areas" for advanced broadband services.

Subsection (d) authorizes the NTIA to award Broadband Deployment Grants. The NTIA shall seek to distribute grants, to the extent possible, so that 25% of the available funds go to "unserved areas" for basic broadband services and 75% to "underserved areas" for advanced broadband services.

Subsection (e) directs the NTIA to establish certain grant requirements, including that grant recipients are not unjustly enriched by the program, that grant recipients adhere to the FCC's August 5, 2005, broadband Internet policy statement, which grant recipients operate networks on an open access basis, and that grant recipients adhere to a build out schedule.

Subsection (f) sets for the requirements of the grant application and grant selection criteria. The NTIA is required to consider certain public policy goals (e.g., public safety benefits and enhancement in computer ownership or literacy) before awarding grants.

Subsection (g) requires the NTIA to coordinate with the FCC and to consult with other agencies as necessary to implement this Section.

Subsection (h) requires NTIA to submit an annual report to Congress assessing the impact o the grants on the policy objectives and criteria contained in this Section.

Subsection (i) grants the NTIA authority to prescribe rules as necessary to implement this Section.

Subsection (j) contains definitions of terms used in this Section, and directs the FCC to develop definitions for certain terms.

Section 1003: National Broadband Plan

Subsection (a) requires the FCC to, not later than one year after the date of enactment of this section, develop and submit to Congress a report containing a national broadband plan.

Subsection (b) sets forth the contents of the plan.

Title II – Energy

Section 2001: Technical Corrections to the Energy Independence and Security Act of 2007

This section provides technical corrections to the Energy Independence and Security Act of 2007 (EISA) to eliminate confusion in grant fund allocations.

Section 2002: Amendments to Title XIII of the Energy Independence And Security Act of 2007.

Presented in Appropriations Committee bill as "Technical Corrections" to EISA, this section in fact comprises substantive changes to that title and has therefore been retitled "Amendments to Title XIII" of EISA by the Committee. The language of subsection (1)(A) has been clarified to avoid concern that demonstration projects would be limited to those in rural areas when the intent is to have them in a variety of geographic settings. An additional paragraph (F) was added requiring grantees for EISA section 1304 Demonstration Projects to "utilize open Internet-based protocols and standards if available." The same conditioning language is also applied to Smart Grid grantees under section 1306 of EISA as an addition to the procedural changes in subsection (8)(e)(2).

Section 2003: Renewable Energy and Electric Power Transmission Loan Guarantee Programs

This provision creates a new section of Title XVII of the Energy Policy Act of 2005 (EPAct) to provide temporary loan guarantee authority for certain commercially ready renewable energy technologies. The bill modifies the categories of eligible recipients to clarify that "renewable energy systems" would be those "including incremental hydropower, that generate electricity," and that "electric power transmission systems" would include "upgrading and reconductoring projects." The bill adds a third category of eligible users, "leading edge biofuel projects," judged by the Secretary of Energy as likely to become commercial, and limited to using $500 million of the total authority provided. These projects are required to "substantially reduce life cycle greenhouse gas emissions" and it is expected that the Secretary will use a procedure and methodology consistent for calculating emissions that is consistent with those being developed by the U.S. Environmental Protection Agency. The bill also includes factors to be considered by the Secretary in reviewing transmission projects for federal support.

Section 2004: Weatherization Program Amendments

This section contains language allowing the Secretary of Energy to encourage states to move forward with attic insulation and other low-cost high-efficiency techniques in weatherization program actions for qualifying homes rather than weatherizing single homes at once with all techniques, if the Secretary judged that such action would increase the effectiveness of the program.

Section 2005: Renewable Electricity Transmission Study

This section provides for additional elements to the triennial DOE study of transmission congestion, required under Section 1221 of the Energy Policy Act of 2005. It requires the analysis of renewable transmission constraints and legal actions as

obstacles to new renewable transmission, and requiring that assumptions and projections involved in the study be explained.

Section 2006: Additional State Energy Grants

This section adds conditions that would apply to acceptance by a state of incremental State Energy Program grant funding beyond base amounts. The funds would be conditioned on governors of states notifying the Secretary of Energy that they would seek, within the limits of their authority, to ensure that three conditions were met.

First, the governor would seek to promote policies to ensure that recovery of a utility's fixed costs of service are independent of retail sales, that a utility could recover costs for energy efficiency and that an earnings opportunity existed for energy efficiency. This provision is designed to nudge a state toward adopting policies that would remove disincentives that utilities have to invest in energy efficiency and promote new incentives to encourage energy efficiency. Experience in states that have adopted these policies show that consumer rates may fluctuate only minimally while delivering substantial benefits and reducing the need for additional power plant construction.

Care was taken to ensure that governors were not encouraged to advocate that variable charges be shifted to fixed charges. In this way, consumers can continue to save money through their own conservation efforts and rate structures that are not advantageous to consumers are not encouraged. Moreover, the Committee understands the limited effect of this condition. Public utility commissions are generally independent of a governor's office and a governor's notification under this section will not legally require a public utility commission to adopt any specific regulatory policy. In fact, nothing in this section preempts state laws or in anyway limits the authority of a state to protect its consumers. This provision is intended to aid consumers by ensuring that the most cost-effective energy solutions are sought. The Committee expects that public utility commissions will maintain their practice of ensuring that only prudent investments are recovered and that consumers are protected.

Second, the governor would seek to promote the adoption of updated energy efficient building codes adopted by leading code-setting organizations or their equivalent.

Finally, the governor would seek, to the extent practicable, to prioritize the use of such funds in the expansion of existing energy efficiency programs or renewable energy programs. A separate provision of the section eliminates the 20% state match required under current law for receipt of Economic Recovery Act revenues. Another provision removes any limits in current law as to percentages of funding that can be used for purchase and installation of equipment and materials for energy efficiency measures.

Section 2007: Inapplicability of Limitation

This provision temporarily lifts current statutory limitations and conditions on grant and loan funding pursuant to Section 471 of EISA, Sustainability and Energy

Efficiency Loans and Grants for Institutions, to accord with the "American Recovery and Reinvestment Act of 2009" appropriation timing and amounts. It provides that not more than 80% of the funding for any project can be provided in the form of grant funding.

Title III – Health Insurance Assistance for the Unemployed

Section 3001: Short Title and Table of Contents

Sets forth the short title and table of contents.

Section 3002: Premium Assistance for COBRA Benefits and Extension of Cobra Benefits for Older or Long-Term Employees

Section 3002 establishes a temporary premium assistance program for COBRA benefits and extends COBRA benefits for older or long-term employees.

To be eligible for COBRA under current law, a worker must have worked for an employer with 20 or more employees, have been enrolled in the employer's health plan, and have lost his/her health coverage due to termination of employment for reasons other than gross misconduct. Workers must pay 100% of the premium plus 2% in administrative costs. In addition, some states offer similar health care continuation coverage for those employers with less than 20 employees.

The bill provides a 65% subsidy for COBRA continuation premiums for up to 12 months for workers who have been involuntarily terminated (and their families) and are otherwise eligible for federal or state COBRA continuation coverage. To qualify for this COBRA premium assistance, a worker must be involuntarily terminated between September 1, 2008, and December 31, 2009, and not have an income of over 1 million dollars. The subsidy would terminate upon offer of any new employer-sponsored coverage.

The bill also provides that those COBRA-eligible workers who are 55 and older, or who have worked for an employer for 10 or more years, would be able to retain COBRA coverage, at their own expense, until they become Medicare eligible at age 65.

Section 3003: Temporary Optional Medicaid Coverage for the Unemployed

This section provides temporary optional Medicaid coverage for the unemployed without health insurance coverage. State Medicaid programs will have the option of covering one or more of the following groups of unemployed individuals without health insurance (and their uninsured spouses and dependents):

(1) individuals who are receiving unemployment benefits and individuals who were receiving but have exhausted unemployment benefits on or after July 1, 2008;

(2) individuals who are involuntarily unemployed and were involuntarily separated from employment on or after September 1, 2008, and before January 1, 2009, with a gross family income below 200% of the poverty level ($44,100 per year for a family of four in 2009) and are not otherwise eligible for Medicaid;

(3) individuals who are involuntarily unemployed and were involuntarily separated from employment on or after September 1, 2008, and before January 1, 2009, are member of households participating in the food stamps program, and are not otherwise eligible for Medicaid.

The federal government will assume 100% of the costs of benefits and administration for individuals enrolled under this option through December 31, 2010. The costs of administration include the cost of outreach and modification and operation of eligibility information systems.

Individuals eligible for coverage as of December 31, 2010, will continue to be entitled to coverage until their next regularly-scheduled eligibility redetermination date. During this post-December 31, 2010, coverage period, the federal government will share in the cost of covered items and services for such individuals at the state's regular matching rate.

Title IV -- Health Information Technology

Sec. 4001: Short Title, Table of Contents of Title

Provides that the title of the section is the Health Information Technology for Economic and Clinical Health Act or the HITECH Act.

Subtitle A – Promotion of Health Information Technology
Part I – Improving Health Care Quality, Safety and Efficiency

Sec. 4101: ONCHIT; Standards Development and Adoption

This section makes a number of amendments to the Public Health Service Act (PHSA):

Sec. 3000 – Definitions. These provisions define key terms related to the promotion of health information technologies.

Sec. 3001 – Office of the National Coordinator for Health Information Technology. The Office of the National Coordinator of Health Information Technology (ONCHIT), which was originally created by Executive Order 13335, is codified into statute within the U.S. Department of Health and Human Services (HHS). The head of ONCHIT (the National Coordinator) will lead the efforts for the development of policies and recognition of standards to allow for the secure electronic exchange of health information that leads to improvements in the quality of clinical care.

The National Coordinator is charged with the following duties:

- Update and maintain strategic plan on how to achieve widespread adoption and use of interoperable, secure, and clinically useful electronic health records. The plan shall include measurable goals and the National Coordinator is required to regularly evaluate and publicly report on progress toward achieving these goals.

- Provide guidance to and act as a liaison between the HIT Policy and HIT Policy Committees.

- Review and recommend standards and guidance to the Secretary to ensure interoperability, security/privacy, and clinical utility of electronic health information. Such recommendations will be developed with input from the HIT Standards Committee.

- Develop a program for the voluntary testing and certification of products as meeting the standards adopted by the Secretary for the secure electronic exchange of health information.

- Coordinate efforts throughout the federal government to promote and utilize electronic health information technology.

- Appoint a Chief Privacy Officer who shall assist the National Coordinator with initiatives to promote privacy, security, and data stewardship of electronic health information.

- Regularly report on progress on efforts to achieve the goals outlined in the strategic plan, as well as the impact of health information technology in communities with health disparities and medically underserved areas.

Sec. 3002 – HIT Policy Committee. Establishes a federal advisory committee of public and private stakeholders to provide input and assistance to the National Coordinator. The HIT Policy Committee will serve as a forum for input and expertise in the area of health information technology. The HIT Policy Committee will provide policy advice and make recommendations to the National Coordinator on how best to achieve the goals outlined in the strategic plan, including how to achieve the goal of ensuring that every person in the nation has a secure electronic health record by 2014.

Sec. 3003 – HIT Standards Committee. Establishes a federal advisory committee of public and private stakeholders to provide input and assistance to the National Coordinator. The HIT Standards Committee will recommend standards, implementation specifications, and certification criteria for the secure

electronic exchange and use of health information technology consistent with the strategic plan and policy recommendations from the HIT Policy Committee.

Sec. 3004 – Process for adoption of endorsed recommendations; adoption of initials set of standards, implementation of specifications, and certification criteria. Directs the Secretary, in consultation with other relevant agencies, to review standards recommended by the National Coordinator and, where appropriate, provide for adoption by the government through a rulemaking process. Requires that the Secretary adopt an initial set of standards, which may be based on standards already developed by the National Coordinator, no later than December 31, 2009.

Sec. 3005 – Application and use of adopted standards and implementation specifications by federal agencies. Requires that federal agencies implementing or using electronic health information do so in a way that is consistent with Section 4111.

Sec. 3006 – Voluntary application and use of adopted standards and implementation specifications by private entities. Except as provided for under Section 4112, states that standards developed under this Act shall not be binding on private entities, but may be voluntarily adopted.

Sec. 3007 – Federal health information technology. Directs the Secretary to support the development of, and make available, a low-cost electronic health record that is certified as meeting the adopted standards, unless the Secretary finds that provider demand for such systems is being met through the marketplace. States that no public or private entity will be required to adopt or use the system developed under this Section.

Sec. 3008 – Transitions. Provides for transitions to allow for the development and harmonization of standards currently taking place to continue to occur as ONCHIT is codified and the functions of the American Health Information Community Successor, Inc. flow appropriately to the HIT Policy and Standards Committees.

Sec. 3009 – Relation to HIPPA privacy and security law. Specifies that this title may not be construed as having any effect on the authorities granted to the Secretary under the HIPAA privacy and security law.

Sec. 3010 – Authorization for appropriations. Authorizes an appropriation of $250 million to ONCHIT for 2009 to implement this title.

Sec. 4102: Technical Amendment

Amends the HIPAA definition of health plan to include Medicare Part D.

Sec. 4103: American Technology Required

Requires all funds made available pursuant to this Act for the purchase of health information technology only purchase technology that is manufactured, engineered, programmed in the United States and made substantially from articles, materials, supplies, mined, produced or manufactured in the United States.

Part II – Application and Use of Adopted Health Information Technology Standards; Reports

Sec. 4111: Coordination of Federal Activities with Adopted Standards and Implementation Specifications

Codifies a 2006 executive order to require federal agencies implementing, acquiring, or upgrading HIT systems for the electronic exchange of identifiable health information use HIT products meeting standards adopted by the Secretary of HHS in accordance with this bill. It also requires that the President ensure that federal activities involving the collection and submission of health information be consistent with standards established under this bill for the electronic exchange of health information.

Sec. 4112: Application to Private Entities

Requires that private entities contracting with the federal government to carry out health activities adopt the standards established under this bill for the electronic exchange of health information.

Sec. 4113: Study and Reports

Requires the Secretary to submit an annual report to Congress on the efforts toward, and barriers to, facilitating the electronic exchange of health information nationwide. It also requires the Secretary to study methods to create efficient reimbursement incentives for improving healthcare quality in federally-qualified health centers, rural health clinics, and free clinics.

Subtitle B – Testing of Health Information Technology

Sec. 4201: National Institute for Standards and Technology Testing

Requires that the National Institute for Standards and Technology (NIST) work in coordination with the Office of the National Coordinator to test standards. These are standards being developed or recognized for the electronic exchange of health information by the Office of National Coordinator. It additionally requires the director of NIST in coordination with the Office of the National Coordinator to support the establishment of accredited testing laboratories for the voluntary testing of products for certification by the National Coordinator that they meet standards for the electronic exchange of information.

Sec. 4202: Research and Development Programs

Requires that the Director of NIST, in consultation with the Director of the National Science Foundation and other appropriate federal agencies, award competitive grants to institutes of higher education to research innovative approaches for the use of HIT in the delivery of health care. Additionally, it directs the National High-Performance Computing Program, created by the High Performance Computing Act of 1991, to coordinate federal research and programs related to the development and deployment of HIT.

Subtitle C – Incentives for the Use of Health Information Technology
Part I – Grants and Loans Funding

Sec. 4301: Grant, Loan and Demonstration Programs

This section makes a number of amendments to the Public Health Service Act (PHSA):

Sec. 3011 – Immediate funding to strengthen the health information technology infrastructure, Authorizes the Secretary to make immediate investments in the infrastructure necessary to facilitate the electronic exchange and use of health information for each individual in the United States consistent with the goals and strategies outlined in the strategic plan developed by the Office of the National Coordinator, including assistance to providers not eligible for assistance under Medicare or Medicaid.

Sec. 3012 – Health information technology implementation assistance. Establishes several programs to help providers adopt and use health information technology. These programs will serve as a forum for exchanging knowledge and experience, disseminate lessons learned and best practices, and provide technical assistance to providers and health information networks about how to implement health IT. The program will prioritize direct assistance first to non-for profit hospitals, federally qualified health care centers, providers in medically underserved areas, and individual or small group practices focused on primary care.

Sec. 3013 – State grants to promote health information technology. Authorizes the Secretary to award states, or qualified state-designated entities, grants to implement and expand the electronic exchange of health information.

Sec. 3014 – Competitive grants to States and Indian Tribes for the development of loan programs to facilitate the widespread adoption of certified EHR technology. Authorizes the National Coordinator to award states and Indian Tribes grants for the purpose of establishing health IT loan programs. Such loans could only be used to assist with the purchase of health information

technology that facilitates the electronic exchange of health information and improves the quality of care.

Sec. 3015 – Demonstration program to integrate information technology into clinical education. Establishes a demonstration program for awarding grants to medical, dental, nursing schools, and other graduate health education programs to integrate health IT into the clinical education of health care professionals.

Sec. 3016 – Information technology professionals on health care. Directs the Secretary, in consultation with the National Science Foundation, to provide financial assistance to educational institutions to support training in medical health informatics.

Sec. 3017 – General grant and loan provisions. Permits the Secretary to require that grantees report on the effectiveness of activities funded through the grant, and requires the National Coordinator to annually evaluate the effectiveness of grants in improving the quality and efficiency of health care.

Sec. 3018 – Authorization for appropriations. Authorizes appropriations of such sums as are necessary to carry out this subtitle from 2009 through 2013.

Part II – Medicare Program

Sec. 4311: Incentives for Eligible Professionals

Provides for incentive payments to Section 1861(r) physicians and providers who adopt and utilize EHR technology that is certified as meeting appropriate standards for interoperability, security and clinical functionality. In order to receive the incentives, providers must demonstrate that they are engaging in meaningful use of the EHR technology, including electronically exchanging clinical information with other providers and reporting on clinical quality measures. In selecting the quality measures the Secretary is instructed to seek to select measures that are consistent with those already in use under other quality reporting programs under Title XVIII, such as the Physician Quality Reporting Initiative (PQRI) program.

Beginning in fiscal year 2011, professionals that demonstrate they have adopted and are utilizing a certified EHR system are eligible to receive incentive payments through the Medicare program. Professionals who demonstrate they are meaningful EHR users starting in 2011, 2012, or 2013 will receive incentive payments that are phased out over a five-year period. Eligible professionals who use a certified EHR may receive up to $41,000 over five years, which may be made in annual lump-sum payments or a series of smaller payments. Professionals that become meaningful EHR users in 2014 and 2015 will receive a reduced series of payments over a 4 and 3 year period, respectively. No incentive payments are available for professionals who begin meaningful use of EHR technology after 2015. The Secretary is instructed to coordinate payments for professionals who participate in more than one practice to ensure proper application of

payment incentives and limits. The Secretary is also given authority to adjust measures of meaningful use for professionals in group practice as appropriate.

Starting in 2016, Medicare payments are reduced by a percentage of allowed charges for any eligible professional who does not demonstrate they are meaningfully using a certified EHR system. Allowed charges are reduced by 1% in 2016 and by an additional percentage point each year until payments are reduced by 3% for non-users. If less than 75% of eligible professionals are not demonstrating meaningful use of a certified EHR system, the reduction in payments will increase by 1% a year for a maximum reduction of 5%. The Secretary may provide a time-limited exemption from the payment reductions to professionals who demonstrate a significant hardship in meeting the meaningful use criteria.

Similar payment incentives and reductions will apply to professionals who are affiliated with certain staff or group model Medicare Advantage (MA) plans. Furthermore, MA benchmark payments are not affected by incentive payments or penalties that apply to professionals in fee-for-service Medicare for the use of EHRs.

Sec. 4312: Incentives for Hospitals

Provides incentive payments to Section 1886(d) hospitals that adopt and utilize EHR technology that is certified as meeting appropriate standards for interoperability, security and clinical functionality. In order to receive the incentives, hospitals must demonstrate that they are engaging in meaningful use of EHR technology, including electronically exchanging clinical information with other providers and reporting on clinical quality measures. In selecting clinical quality measures the Secretary is instructed to seek to avoid redundant or duplicative reporting with reporting required under the Reporting Hospital Quality Data for Annual Payment Update (RHQDAPU) Program under 1886(b)(3)(B)(viii) of the Social Security Act.

Beginning in fiscal year 2011, hospitals that demonstrate they have adopted and are utilizing an approved EHR system are eligible to receive incentive payments through Part A of the Medicare program. Hospitals that demonstrate they are meaningful EHR users by either fiscal 2011, 2012, or 2013 receive incentive payments that are phased out over a four-year period. Hospitals that become meaningful EHR users in 2014 and 2015 receive 3 and 2 years of incentive payments respectively. No incentive payments are available for hospitals that begin adoption and meaningful use of EHR technology after 2015.

All hospitals that meet the standards for meaningful EHR use receive a base payment based on their Medicare share of business. Hospitals receive additional payments based on total discharges, at a declining rate per discharge, up to a maximum number of discharges. All payments are adjusted by Medicare share, taking into account the level of charity care provided by the hospital.

The market basket update is reduced for any eligible hospital that has not adopted a certified system by 2016. The Secretary may provide a time-limited exemption from the payment reduction to professionals who demonstrate a significant hardship in meeting the meaningful use criteria.

Similar payment incentives and reductions will apply to hospitals which are affiliated with certain staff or group model Medicare Advantage (MA) plans and have less than one-third of their total discharges covered under Medicare fee-for-service. MA benchmark payments are not affected by incentive payments and penalties to 1886(d) hospitals for the development of EHRs.

Sec. 4313: Treatment of Payments and Savings; Implementation Funding

This section excludes all payment incentives made by this Act from Medicare beneficiary premiums. All funds currently held in the Medicare Improvement Fund are designated to be expended in fiscal year 2014, and any savings resulting from payment reductions for failing to use certified EHRs is deposited into the Fund starting in 2020. Provides funding to the Centers for Medicare and Medicaid Service to implement the incentive programs described in this part of the Act.

Sec. 4314: Study on Application of EHR Payment Incentives for Providers Not Receiving Other Incentive Payments

Instructs the Secretary to conduct a study to determine the extent to which and manner in which incentives and other funding for adoption and use of qualified EHR technology should be made available to health care providers who are receiving minimal or no payments under this Act, titles XVIII, or XIX of the Social Security Act, or otherwise. The study is due to Congress by June 30, 2010.

Part III – Medicaid Funding

Sec. 4321: Medicaid Provider HIT Adoption and Operation Payments; Implementation Funding

Provides incentives to encourage the adoption and use of an electronic health record that is certified as meeting appropriate standards for interoperability, security, and clinical functionality among providers participating in the Medicaid program under title XIX of the Social Security Act. Incentives are administered by state Medicaid programs according to statute and under regulatory supervision of the Secretary of Health and Human Services. There is no payment reduction associated with incentive payments under this section.

Eligible practitioners include physicians as defined in Sections 1861(r)(1) and 1861(r)(2) of the Social Security Act, nurse practitioners, and certified nurse midwives with at least 30% of patient volume attributable to patients receiving assistance under title XIX. Such practitioners would be eligible to receive 85% of the costs of implementing

and operating health information technology up to $75,000 over a period of six years, or $63,750 in federal spending. Up to $25,000 of this funding would be for the initial adoption of an electronic health record with the rest being for operation and maintenance costs spread over the succeeding five years.

Practitioners receiving such assistance would be required to demonstrate meaningful use of certified electronic health records in a manner specified by the State and satisfactory to the Secretary. In order to avoid duplicative reporting requirements such demonstration may be based on the rules developed for the Medicare program.

Other eligible providers include children's hospitals, acute care hospitals with at least 10 percent of their patient volume attributable to patients receiving assistance under title XIX, and federally qualified health centers (FQHCs) and rural health clinics (RHCs) with at least 30% of their patient volume attributable to such individuals. Payments to hospitals are calculated in a similar fashion as under Section 4312 of this Act. Hospitals demonstrating meaningful use of certified electronic health records (under standards administered by the states and acceptable to the Secretary) may receive a base payment based on their Medicaid share, with additional amounts for additional discharges. All payments are adjusted by the percentage of discharges made for individuals receiving assistance under title XIX (the Medicaid share, including individuals enrolled in managed care plans) and the amount of charity care being provided by the hospital. Payments to FQHCs and RHCs are made according to a formula to be developed by the Secretary.

State spending for payments to providers for adoption and operation of certified electronic health records will be entirely paid for by the federal government; 90% of state costs in administering the program will be reimbursed by the federal government. Funding is provided to the Centers for Medicare & Medicaid Services to administer this section.

Subtitle D – Privacy

Sec. 4400: Definitions

These provisions define key terms related to the privacy and security provisions of this bill.

Part I – Improved Privacy Provisions and Security Provisions

Sec. 4401: Application of Security Provisions and Penalties to Business Associates of Covered Entities; Annual Guidance on Security Provisions

Requires that security safeguards promulgated pursuant to Health Insurance Portability and Accountability Act of 1996 (HIPAA) and this bill, and the penalties for violation of those safeguards apply to business associates under HIPAA (see note below) in the same manner as applied to covered entities. This provision also requires that the

Secretary, in consultation with stakeholders, annually issue guidance on the most appropriate security safeguard technologies for protecting information.

Sec. 4401: Notification in the Case of Breach

Requires that, in the case of a breach of unsecured Protected Health Information (PHI), a covered entity must notify each individual whose information has been, or is reasonably believed to have been, breached. In the case of a breach of unsecured PHI that is under the control of a business associate, that business associate is required to notify the covered entity. All breach notifications must be made without unreasonable delay and no later than 60 calendar days after discovery. The provision provides instruction for the required methods by which an individual must be notified and the content of the notification. However, this notification may be delayed if it could impede a criminal investigation or damage national security.

The Secretary is also required to issue guidance within 60 days, and annually thereafter, as to the technologies or methodologies that meet the standard of making information secure (i.e. unusable, unreadable, or indecipherable). If the Secretary fails to issue guidance within 60 days, PHI will be considered secure if it is protected by technology standards developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute (ANSI).

Finally, the Secretary is required each year to compile and analyze the number and nature of breaches reported to the Secretary and issue a report to Congress concerning the scope of the problem and steps that have or will be taken to address it at a federal level and through guidance on best practices for covered entities and business associates.

Sec. 4403: Education on Health Information Technology Privacy

Requires that the Secretary designate an individual in each regional HHS office to offer education and guidance on privacy requirements regarding PHI.

Sec. 4404: Application of Privacy Provisions and Penalties to Business Associates of Covered Entities

Requires that privacy provisions promulgated pursuant to Health Insurance Portability and Accountability Act of 1996 (HIPAA) and this bill, and the penalties for violation of those privacy provisions apply to business associates under HIPAA in the same manner as applied to covered entities.

Sec. 4405: Restrictions on Certain Disclosures and Sales of Health Information; Accounting of Certain Protected Health Information Disclosures; Access to Certain Information in Electronic Format

Permits a patient to request that their PHI regarding a specific healthcare item or service not be disclosed by a covered entity to a health plan for purposes of payment or healthcare operations, unless otherwise required by law, if that patient has paid in full out-of-pocket for that item or service. In such a circumstance, the covered entity is required to honor the patient's request.

Also requires covered entities to make reasonable effort to restrict the use, disclosure, request of PHI to a "limited data set" of information as defined in the HIPAA rules until such time that the Secretary issues guidance on what constitutes the "minimum necessary" for use or disclosure of such data.

The provision also gives an individual the right to request an accounting of disclosures of PHI from an entity or business associate to another party for treatment, payment, and health care operations in the three years prior to the request if that entity is utilizing an electronic health record and the disclosure was made from the electronic health record. Covered entities would not be required to make an accounting for uses of PHI or oral disclosures of such information.

The provision additionally requires the Secretary to review the definition of health care operations to determine those activities that can reasonably and efficiently be conducted through the use of information that is de-identified. Health care operations are activities for which providers and insurers can share a patient's protected health information without their authorization.

Additionally, this provision clarifies that certain uses and disclosures of PHI are not permitted without a valid authorization, such as the sale of PHI (with some exceptions) and the unauthorized re-identification of de-identified data or the limited data set.

This provision also gives individuals the right to receive electronic copies of their PHI used or maintained by a covered entity in electronic format if the entity uses an electronic medical record or electronic health record. The provider would be able to charge a reasonable cost based fee for doing so.

Sec. 4406: Conditions on Certain Contracts as Part of Health Care Operations

Clarifies the definition of marketing under HIPAA and precludes direct or indirect payment to covered entities for the use of PHI to make certain communications without valid patient authorization. Removes fundraising from the HIPAA definition of health care operations.

Sec. 4407: Temporary Breach Notification Requirement for Vendors of Personal Health Records and Other Non-HIPPA Covered Entities

In the case that an individual's personal health record (PHR) unsecured identifiable health information is breached, requires that PHR vendors notify that

individual along with the Federal Trade Commission (FTC). The provision requires that the notification requirements applicable to covered entities under section 4402 of this bill be applied to notifications required under this section and that FTC notify HHS of breach notices received by FTC. The provision gives the FTC enforcement authority regarding breaches of health information maintained by PHR vendors. The provision sunsets when either HHS or FTC adopt privacy and security standards specific to PHRs and other non-HIPAA covered entities.

Sec. 4408: Business Associate Contracts Required for Certain Entities

Requires organizations such as Health Information Exchanges, Regional Health Information Organizations, E-prescribing Gateways, and vendors of PHRs who have entered into contracts with covered entities to have business associate agreement as defined under HIPAA.

Sec. 4409: Clarification of Application of Wrongful Disclosures Criminal Penalties

Clarifies that criminal penalties for violations of HIPAA can be applied directly to individuals, whether they are employees of covered entities or have no relationship to covered entities.

Sec. 4410: Improved Enforcement

Improves enforcement of the federal health privacy law by the Office of Civil Rights (OCR) at HHS by requiring a formal investigation of complaints and the imposition of civil monetary penalties for violations that rise to the level of willful neglect or other violations that are not corrected. The provision also increases the amount of civil monetary penalties and authorizes a percentage of the penalty to accrue to the individual(s) harmed and the OCR, through the application of a methodology to be developed by the GAO and adopted by the Secretary.

Preserves OCR's current tools for informal resolution, technical assistance, and correction without the imposition of a penalty in situations where the violation was due to a reasonable cause. Currently, all complaints and violations can be handled informally and without the imposition of civil monetary penalties.

In addition, this provision permits OCR to pursue an investigation and the imposition of civil monetary penalties against any individual for an alleged criminal violation of the federal health privacy law if the Department of Justice has not prosecuted the individual.

Finally, this provision authorizes state attorneys general to enforce federal privacy and security laws.

Sec. 4411: Audits

Directs the Secretary to perform periodic audits to oversee compliance with the privacy and security provisions.

Sec. 4412: Securing Individually Identifiable Health Information

Requires covered entities and business associates to use technology to make all data transmitted in the nationwide health information network or transported outside a covered entities or business associate's physical perimeter unusable, unreadable, or indecipherable to unauthorized individuals.

Sec. 4413: Special Rule for Information to Reduce Medication Errors and Improve Patient Safety

Clarifies that nothing in the privacy subtitle of the Act shall prevent a pharmacist from collecting and sharing information with a patient in order to reduce medication errors and improve patient safety so long as any remuneration received for making such communication is reasonable and cost based.

Part II – Relationship to other laws; regulatory references; effective date; reports

Sec. 4421: Relationship to Other Laws

Applies the preemption in Section 1178 of the Social Security Act to the provisions of title IV of this bill and preserves the HIPAA and the regulations promulgated pursuant to that Act to the extent that they are consistent with Title IV of this bill.

Sec. 4422: Regulatory References

States that each reference in this subtitle to a federal regulation refers to the most recent version of the regulation.

Sec. 4423: Effective Date

With the exception of certain specified provisions, this bill shall become effective 12 months after the date of enactment of this Act.

Sec. 4424: Studies, Reports, Guidance

This provision requires that the Secretary annually report to Congress on the number and nature of complaints of alleged violations and how they were resolved, including the imposition and amount of civil money penalties; the number of audits performed, and more.

In addition, this section requires study on the application of privacy and security requirements to vendors of personal health records. The provision requires the Secretary,

in consultation with the Federal Trade Commission (FTC) to submit recommendations to Congress regarding: (1) the requirements relating to security, privacy, and notification in the case of a breach of protected health information, including the applicability of an exemption to notification in the case of PHI that has been rendered indecipherable through the use of encryption or alternative technologies, with respect to personal health record vendors; and (2) the federal agency best equipped to enforce those requirements.

Finally, this section requires that the GAO study and report on the disclosures of protected health information made for treatment purposes and best practices used by entities and states for such disclosures.

Title V – Medicaid Provisions

Section 5000: Table of Contents of Title

Sets forth the table of contents.

Section 5001: Temporary Increase of Medicaid FMAP

Provides for a temporary increase in the federal medical assistance percentage (FMAP) to assist states in meeting the costs of increasing Medicaid caseloads at a time when their revenues are falling due to rising unemployment. Three types of temporary assistance will apply to the costs of Medicaid items and services during the period October 1, 2008, through December 31, 2010:

(1) States that would otherwise experience a drop in their federal matching rate under the regular FMAP formula during FY 2009 or FY 2010 or the first quarter of FY 2011 will be held harmless against any decline.

(2) Every state will receive an increase in its FMAP by 4.9 percentage points for the entire nine quarter period.

(3) States experiencing an increase in their unemployment rate will receive an additional percentage point increase in their FMAP as follows. Each state's average monthly unemployment rate for the most recent previous three-consecutive-month period for which data are available is compared to the state's lowest average monthly unemployment rate for any three-consecutive-month period beginning on or after January 1, 2006. If the most recent rate exceeds the lowest rate by not less than 1.5 percentage points but less than 2.5 percentage points, the additional percentage point increase in FMAP is the product of 6 percent and the state's regular state matching rate. If the most recent rate exceeds the lowest rate by not less than 2.5 percentage points but less than 3.5 percentage points, the additional percentage point increase in FMAP is the product of 12 percent and the state's regular state matching rate. If the most recent rate exceeds the lowest rate by not less than 3.5 percentage points, the additional percentage point increase in FMAP is the product of 14 percent and the state's regular state matching rate.

For purposes of this calculation, the state's regular state matching rate is determined after applying the hold harmless but before applying the 4.9 percentage point increase.

This high unemployment percentage point adjustment will automatically adjust upward, per the formula described above, to reflect increases in a state's unemployment rates until the quarter ending June 30, 2010. Until that time, the percentage point adjustment can only remain unchanged or go up; it cannot go down. For the last two quarters in calendar year 2010, the adjustment will be determined based on the state's average monthly unemployment rate for December 2009, January 2010, and February 2010.

Puerto Rico, the Virgin Islands, Guam, the Northern Marianna Islands, and American Samoa will have the option of a 20% increase in their medical assistance cap amount or a 4.9 percentage point increase in their FMAP plus a 10% increase in their cap.

The temporary increase in FMAP resulting from the hold harmless provision and the 4.9 percentage point increase will apply to payments under Title IV-E (relating to foster care and adoption assistance). None of the three temporary FMAP increases described above will apply to Medicaid payments to disproportionate share (DSH) hospital or to payments under the State Children's Health Insurance Program (SCHIP).

In order to receive the temporary FMAP increase, a state must have in place eligibility standards, methodologies, and procedures (such as the length of a redetermination period) that are no more restrictive than those in effect on July 1, 2008. The bill provides special rules for states that implemented more restrictive eligibility standards, methodologies, or procedures after July 1, 2008, but before enactment.

A state is not eligible for the 4.9 percentage point adjustment or any high unemployment adjustment if any amounts attributable (directly or indirectly) to such an increase are deposited or credited into any reserve or rainy day fund.

In the case of a state that requires a county or other locality to contribute toward the state share of Medicaid costs, the state is not eligible for any increase in its FMAP if it requires the county or other locality to pay a larger percentage of the state share than the county or other locality was required to contribute as of September 30, 2008.

Section 5002: Moratoria on Certain Medicaid Regulations

Extends from March 31, 2009, through June 30, 2009, the current law moratoria on implementation of Medicaid regulations relating to cost limits on public providers, graduate medical education (GME) payments, provider taxes, rehabilitative services, targeted case management services, and school administration and transportation services. In addition, the bill imposes a moratorium through June 30, 2009, on implementation of a final regulation published on November 7, 2008, relating to Medicaid outpatient hospital services.

Section 5003: Transitional Medical Assistance

Extends and simplifies transitional medical assistance (TMA), under which individuals who leave welfare to go to work receive up to one year of Medicaid coverage so long as they continue working. The bill extends the current TMA provision, which expires on June 30, 2009, through December 31, 2010. In addition, the bill gives states the option of simplifying TMA eligibility determinations to reduce administrative burden and turnover.

Section 5004: State Eligibility Option for Family Planning Services

This section gives states the option of providing Medicaid coverage for family planning services and supplies to individuals who are not pregnant and whose income does not exceed the highest income eligibility level for pregnant women established under the state's Medicaid or State Children's Health Insurance programs. The allowable coverage includes medical diagnosis and treatment services provided pursuant to a family planning service in a family planning setting. In addition, states will have the option of providing this coverage to such individuals during a presumptive eligibility period.

In its *Budget Options for Health Care* (December 2009), CBO presents an option that would require state Medicaid programs to cover family planning services and supplies for low-income women who are not pregnant. The bill allows each state to make its own decision as to whether to provide such coverage. CBO estimates that the option provided by the Committee bill will save the federal government $700 million in Medicaid outlays over the next ten years.

The arguments cited by CBO in support of its budget option apply with equal force to this section of the bill: "The main argument for this option is that it would reduce the number of unplanned pregnancies while resulting in savings to the states and the federal government. A number of benefits are associated with lowering the rate of unplanned pregnancies. Women with unplanned pregnancies are less likely to recognize early signs of pregnancy and thus delay the use of prenatal services until later in their pregnancies, possibly increase the risk of birth complications. In addition, motherhood among young women tends to result in lower educational attainment and higher reliance on public assistance. Finally, reducing unplanned pregnancies could reduce the adverse health consequences of closely spaced births."

Section 5005: Protections for Indians under Medicaid and CHIP

This section establishes protections for American Indians and Alaska Natives under Medicaid and the State Children's Health Insurance Program (SCHIP). The bill prohibits state Medicaid programs from imposing cost-sharing requirements on Medicaid-eligible American Indians or Alaska Natives when the beneficiary is receiving an item or service directly from an Indian health care provider or through referral from a Contract Health Services (CHS) provider. The bill requires that states disregard certain property in determining the Medicaid or SCHIP eligibility of American Indians or Alaska

Natives. Finally, the bill requires that the procedures used by state Medicaid programs for estate recovery exempt certain income, resources, and property described in manual instructions in effect on April 1, 2003.

Section 5006: Consultation on Medicaid and CHIP

This section requires state Medicaid and SCHIP programs to seek advice on a regular, ongoing basis from Indian Health Programs and Urban Indian Organizations on all matters likely to have a direct effect on such Programs and Organizations, including plan amendments, waiver request, and proposals for demonstration projects.

Section 5007: Temporary Increase in DSH Allotments during Recession

Provides a temporary increase in state allotments for payments to Medicaid disproportionate share (DSH) hospitals. The bill increases the DSH allotment for each state for FY 2009 by 2.5 % above the allotment the state would otherwise receive. Each state's DSH allotment for FY 2010 will be 102.5% of its DSH allotment for FY 2009, as increased by the bill. For FY 2011 and each fiscal year thereafter, each state's DSH allotment will be determined as under current law without regard to the temporary increases for FY 2009 and FY 2010.

EXPLANATION OF AMENDMENTS

During the January 22, 2009, Committee business meeting, the Committee considered five separate Committee prints on the following subjects: (1) broadband; (2) energy; (3) health insurance for the unemployed; (4) health information technology; and (5) Medicaid. The text of these prints was comprised of provisions of the legislation proposed by the House Appropriations Committee known as the "American Recovery and Reinvestment Act" that fund communications, energy, and health-related programs created by and within the jurisdiction of the Committee on Energy and Commerce.

At the conclusion of consideration of these prints, the Committee by unanimous consent agreed to replace the text of H.R. 629 as introduced with the text of the five Committee prints as amended during the Committee business meeting. This section will therefore describe amendments to the five Committee prints.

Broadband

Chairman Waxman offered an Amendment in the Nature of a Substitute ("ANS") that incorporated several technical changes. The ANS changed the funding language of "from money appropriated" to "from amounts authorized." It added a requirement that the NTIA coordinate with the FCC while consulting with other federal agencies. To provide enhanced oversight, the ANS added a requirement that NTIA submit an annual report to Congress for five years assessing the impact of the grants funded under this program and whether the grants are meeting the objectives and criteria described. It also gave the NTIA the explicit authority to prescribe rules as necessary to carry out the

purposes of the section. The ANS modified the definition of eligible entities to make it clear that satellite providers, tower companies, and "backhaul companies" (companies that provide facilities critical for connecting broadband and wireless networks) are all potentially eligible for the funds. Finally the ANS dropped the requirement that applicants provide an "engineering plan." The amendment was adopted by voice vote.

Rep. Stupak offered an amendment that requires the FCC to revise its definitions of "unserved" and "underserved" based on data used by the NTIA to develop and maintain its new national broadband map no later than three months after the map becomes available. This allows the FCC to utilize the best available data for the purpose of defining the terms. The Stupak amendment was accepted by voice vote.

Rep. Stupak offered a second amendment that would add to the list of public policy goals to be considered by the NTIA in making the grants whether a grant application will significantly improve interoperable broadband communications used by public safety. The term "interoperable broadband communications systems" is defined as communications systems which enable public safety agencies to share information using voice or data signals via advanced wireless broadband services. Equipment used would include hardware, software, middleware, or network-based IP solutions. The amendment was accepted by voice vote.

Rep. Rush offered an amendment that would add to the list of public policy goals to be considered by the NTIA in making the grants whether the applicant is a "socially and economically disadvantaged small business concern" as defined under the Small Business Act. The amendment was accepted by voice vote.

Rep. Markey offered an amendment to direct the FCC to submit a National Broadband Plan to the Energy and Commerce Committee within one year after enactment. The amendment was accepted by voice vote.

Rep. Walden offered an amendment to delete the prohibition on a state from identifying more than 20% of the geographic area of that state as an area worthy of grant funds. The Walden amendment was adopted by voice vote.

Rep. Blunt offered an amendment that would have prioritized grant applications for unserved areas over underserved areas based on the number of existing service providers. The amendment was defeated on a 23-to-33 vote.

Rep. Buyer offered an amendment to require the FCC to revise the definitions of "unserved" and "underserved." It would require the FCC to also review the percentage distribution currently allocated to unserved and underserved areas. The amendment was defeated on a 21-to-33 vote.

Ranking Member Barton offered an amendment to disqualify applicants that have received or are scheduled to receive Universal Service Fund under its high-cost program

or from the Rural Utilities Service within 12 months of the date of its application for the grant programs. The amendment was defeated on a voice vote.

Energy

An amendment in the nature of a substitute offered by Mr. Waxman was adopted by a voice vote. The Chairman's amendment in the nature of a substitute included the following changes:

- Adding a condition to smart-grid grants for demonstration projects and qualifying smart-grid investments that requires grantees to utilize open internet-based protocols and standards, if available.
- Allowing the Weatherization Assistance Program to proceed separately if cost-effective on separate elements of weatherizing eligible homes, such as attic insulation.
- Elaboration of the categories of eligible recipients of loan guarantees to limit awardees to renewable energy systems that generate electricity and that favor electric power transmission system projects, including upgrading and reconductoring, that require such guarantees to be viable and that serve reliability and environmental objectives.
- Elaboration of what became Section 2005 of H.R. 629, to assure that assumptions and projections made in the study will be fully explained.

An amendment offered by Mr. Upton was adopted by a voice vote. This amendment required the Secretary of Energy to analyze the extent to which legal challenges are delaying construction of transmission lines necessary to access renewable energy.

An amendment offered by Mr. Upton was defeated by a recorded vote, 21 – 33. This amendment would have expanded the category of eligible projects for loan guarantees to include zero-emission technologies.

An amendment offered by Ms. Baldwin was adopted by a voice vote. This amendment allowed leading edge biofuels to be eligible for loan guarantees.

An amendment offered by Mr. Shadegg was adopted by a voice vote. This amendment clarified that that incremental hydropower projects were eligible for loan guarantees.

An amendment offered by Mr. Inslee was adopted by a voice vote. This amendment ensured that prior to receiving funds for state energy programs; governors would notify the Secretary of Energy that to the extent practicable they would seek to prioritize funding for existing energy efficiency and renewable energy programs.

An amendment offered by Mr. Barton was defeated by a recorded vote, 20 – 33. This amendment sought to eliminate the requirement that governors notify the Secretary

of Energy that they would seek to modify utility policies in favor of allowing utilities to promote energy efficiency.

An amendment offered by Mr. Shimkus was defeated on a recorded vote, 19 – 34. This amendment would have made forestry projects and other carbon sequestration projects eligible for loan guarantees.

An amendment offered by Mr. Stearns was defeated by a division vote, 15 - 29. This amendment would have eliminated the requirement that governors notify the Secretary of Energy that they would seek to update their state building energy codes.

An amendment offered by Mr. Walden was ruled non germane. This amendment would have amended the Clean Air Act.

An amendment offered by Mr. Gingrey was withdrawn. This amendment would have amended a governmentwide contracting standard.

An amendment offered by Mr. Terry was ruled non germane. This amendment would have amended the Federal Power Act to create a new program for the promotion of transmission lines.

Health Insurance for the Unemployed

An amendment in the nature of a substitute offered by Mr. Waxman was agreed to as amended by a voice vote. This amendment made a minor change in the Medicaid assistance provided for those affected by the economic downturn. It consolidated two Medicaid eligibility categories—individuals who are receiving unemployment benefits, and individuals who have exhausted those benefits—into one optional category. It also made conforming technical changes.

An amendment offered by Mr. Barton was not agreed to by a vote of 14 to 30. This amendment would have required individuals seeking temporary assistance for COBRA coverage to meet an income test of $100,000 and an asset test of $1,000,000 to qualify for the COBRA coverage option.

An amendment offered by Mr. Stearns was agreed to by voice vote. This amendment imposed an income limit of $1,000,000 on individuals seeking temporary assistance under the COBRA coverage option.

An amendment offered by Mr. Rogers was not agreed to by voice vote. The amendment would have required states that provide coverage through Medicaid to those affected by the economic downturn to offer premium assistance through a voucher to purchase coverage in the individual market as part of that option.

An amendment offered by Mr. Deal was not agreed to by a vote of 13 to 27. This amendment would have imposed a limit of $1,000,000 for those seeking temporary assistance under the Medicaid coverage option.

Health Information Technology

An amendment in the nature of a substitute offered by Rep. Waxman made certain technical corrections to title IV of the Committee print relating to health information technology, including a clarification that Medicare measures of clinical quality should be selected in parallel fashion for hospitals and eligible professionals. The amendment was further amended to clarify that certain grant activities would be directed towards expanding the use of health information technology. The amendment was adopted, amended, by a voice vote.

An amendment offered by Rep. Whitfield would have modified Medicare's sustainable growth rate formula for updating the Medicare physician fee schedule to require an annual increase in fees equal to the Medicare Economic Index. The amendment was defeated by a recorded vote of 15 – 31.

An amendment offered by Rep. Burgess would have modified Medicare's sustainable growth rate formula for updating the Medicare physician fee schedule. The amendment was defeated by a recorded vote of 15 – 34.

An amendment offered by Rep. Gingrey would have set the update for 2010 to Medicare's physician fee schedule to 0 percent. The amendment was defeated by a division vote of 13 – 27.

An amendment offered by Rep. Barton would have created an exception to self-referral prohibitions in the case of a physician owning an interest in a whole hospital. The amendment was defeated by a division vote of 10 – 30.

An amendment offered by Rep. Rogers would have prohibited enforcement of federal privacy and security laws by state attorneys general. The amendment was defeated by a recorded vote of 15 – 32.

An amendment offered by Rep. Blunt provided that nothing in the privacy subtitle of the HITECH Act shall prevent a pharmacist from collecting and sharing information with a patient in order to improve patient safety. The amendment was withdrawn without prejudice.

An amendment offered by Rep. Rogers would allow providers and health plans to market to individuals using their personal health information so long as any remuneration was disclosed and there was notice of a toll-free number patients could call to opt out of the communications. The amendment was withdrawn without prejudice.

An amendment offered by Rep. Markey would require individually identifiable health information be secured by technology to render it unusable, unreadable, or indecipherable. The amendment was adopted by unanimous consent.

An amendment offered by Rep. Murphy of Pennsylvania required all funds made available pursuant to the HITECH Act for health information technology only purchase technology that is manufactured, engineered, programmed in the United States and made substantially from articles, materials, or supplies mined, produced, or manufactured in the United States. The amendment was adopted by a voice vote.

An amendment offered by Rep. Christensen required that one of the purposes of the Office of the National Coordinator for Health Information Technology and Health Information Technology Policy Committee be to reduce health disparities through the use of health information technology. The amendment was adopted by a voice vote.

An amendment offered by Rep. Burgess would permit the donation of health information technology from one provider to another by rolling back anti-fraud protections that currently exist under Medicare. The amendment was defeated by a recorded vote of 16-32.

An amendment offered by Rep. Rogers would require covered entities to only account for disclosures made for health care operations. The underlying bill requires covered entities to account for disclosures made for treatment, payment and health care operations. The amendment was defeated by a voice vote.

An amendment offered by Rep. Burgess would have prohibited incentives payments to eligible professionals for the use of certified electronic health records in Medicare until the sustainable growth rate formula relating to the physician fee schedule remains is repealed. The amendment was defeated by a voice vote.

An amendment offered by Rep. Gingrey would have accelerated the depreciation of health IT expenses for tax purposes. The amendment was ruled non-germane and withdrawn.

An amendment offered by Mr. Gingrey would accelerate the date in which Medicare incentive payments are made for physicians to acquire and use health information technology and delayed the date in which penalties were applied to physician payments for noncompliance. The amendment was defeated by voice vote.

An amendment offered by Mr. Burgess would have accelerated the date in which Medicare incentive payments are made for physicians to acquire and use health information technology to June 2009. The amendment was defeated by a voice vote.

An amendment offered by Rep. Blunt clarifies that nothing in the privacy subtitle of the HITECH Act shall prevent a pharmacist from collecting and sharing information with a patient in order to reduce medication errors and improve patient safety so long as

any remuneration received for making such communication is reasonable and cost based. The amendment was adopted by unanimous consent.

Medicaid

An amendment in the nature of a substitute offered by Mr. Waxman was agreed to by voice vote. This amendment contained a minor change to the text of the Committee print. It added a section that would temporarily raise the Medicaid DSH allotments for all States in Fiscal Years 2009 and 2010 by 2.5 percent each year.

An amendment offered by Mr. Buyer was withdrawn. This amendment would have imposed stricter requirements on state Medicaid programs relating to formularies and prior authorization for single source drugs within six protected classes.

An amendment offered by Mr. Pitts was not agreed to by a recorded vote of 14 to 29. This amendment would have required any entity determining a minor presumptively eligible for family planning services provide parental notification before providing any services.

An amendment offered by Mr. Deal was not agreed to by a recorded vote of 11 to 32. This amendment would have required states under title XIX to require providers to report prices charged to self-paying (non-Medicaid) patients to the state to report to the Secretary of Health and Human Services. The Secretary would then publish these prices on a publicly available website.

An amendment offered by Mr. Deal was not agreed to by a recorded vote of 11 to 32. This amendment would have required states, as a condition of receiving enhanced federal assistance under title XIX beginning with FY 2010, to pay pharmacies a minimum of $9 per prescription dispensed under XIX.

An amendment offered by Mr. Shadegg was not agreed to by a division vote of 9 to 26. This amendment would have mandated that a state offer a premium assistance program under title XIX to allow individuals to use Medicaid funding to purchase health coverage in the individual market or employer coverage as a condition of receiving enhanced federal assistance under section 5001.

An amendment offered by Mr. Rush was withdrawn. This amendment would have expanded the number of entities that receive federally mandated 340B prices.

An amendment offered by Mr. Stupak was withdrawn. This amendment would have required that managed care organizations providing outpatient prescription drugs to individuals under title XIX receive the same rebate from drug manufacturers as the state receives for such covered drugs, without meeting the same statutory protections relating to formularies and prior authorization as the state must follow.

An amendment offered by Mr. Deal was not agreed to by a recorded vote of 11 to 31. This amendment would have prevented states from receiving certain enhanced federal assistance if the state provided coverage to legal immigrants, such as legal immigrant pregnant women and children.

COMMITTEE CONSIDERATION

On Thursday, January 22, 2009, the Committee met in open session and ordered H.R. 629 to be favorably reported to the House by a voice vote.

ROLL CALL VOTES

Clause 3(b) of Rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Waxman to order H.R. 629 favorably reported to the House, amended, by a voice vote. The following is the recorded votes taken during Committee consideration, including the names of those Members voting for and against:

(Insert Recorded Votes)

COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 03

BILL: **H.R. 629**, the "Energy and Commerce Recovery and Investment Act".

AMENDMENT: An amendment by Mr. Blunt, No. 1C, to the Broadband section to prioritize grant applications for unserved areas over underserved areas based on the number of existing service providers.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 23 yeas to 33 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey		X		Mr. Upton	X		
Mr. Boucher				Mr. Stearns	X		
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon		X		Mr. Whitfield	X		
Mr. Rush		X		Mr. Shimkus	X		
Ms. Eshoo		X		Mr. Shadegg	X		
Mr. Stupak		X		Mr. Blunt	X		
Mr. Engel				Mr. Buyer	X		
Mr. Green		X		Mr. Radanovich	X		
Ms. DeGette		X		Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack	X		
Mr. Doyle		X		Mr. Walden	X		
Ms. Harman		X		Mr. Terry	X		
Ms. Schakowsky		X		Mr. Rogers	X		
Mr. Gonzalez		X		Mrs. Myrick	X		
Mr. Inslee		X		Mr. Sullivan	X		
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess	X		
Mr. Weiner		X		Ms. Blackburn	X		
Mr. Matheson		X		Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise	X		
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley							
Mr. Welch		X					

01/22/2009

COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 3

BILL: **H.R. 629**, the "Energy and Commerce Recovery and Investment Act".

AMENDMENT: An amendment by Mr. Blunt, No. 1C, to the Broadband section to prioritize grant applications for unserved areas over underserved areas based on the number of existing service providers.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 23 yeas to 33 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey		X		Mr. Upton	X		
Mr. Boucher				Mr. Stearns	X		
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon		X		Mr. Whitfield	X		
Mr. Rush		X		Mr. Shimkus	X		
Ms. Eshoo		X		Mr. Shadegg	X		
Mr. Stupak		X		Mr. Blunt	X		
Mr. Engel				Mr. Buyer	X		
Mr. Green		X		Mr. Radanovich	X		
Ms. DeGette		X		Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack	X		
Mr. Doyle		X		Mr. Walden	X		
Ms. Harman		X		Mr. Terry	X		
Ms. Schakowsky		X		Mr. Rogers	X		
Mr. Gonzalez		X		Mrs. Myrick	X		
Mr. Inslee		X		Mr. Sullivan	X		
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess	X		
Mr. Weiner		X		Ms. Blackburn	X		
Mr. Matheson		X		Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise	X		
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley							
Mr. Welch		X					

01/22/2009

COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 04

BILL: **H.R. 629**, the "Energy and Commerce Recovery and Investment Act".

AMENDMENT: An amendment by Mr. Buyer, No. 1H, to add a section at the end of section 3102 to require the Federal Communications Commission to revise the definition of "unserved" and "underserved", and review the percentage distribution currently allocated to unserved and underserved.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 21 yeas to 33 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell	X			Mr. Hall	X		
Mr. Markey		X		Mr. Upton	X		
Mr. Boucher				Mr. Stearns			
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon		X		Mr. Whitfield	X		
Mr. Rush		X		Mr. Shimkus	X		
Ms. Eshoo		X		Mr. Shadegg	X		
Mr. Stupak		X		Mr. Blunt	X		
Mr. Engel		X		Mr. Buyer	X		
Mr. Green		X		Mr. Radanovich	X		
Ms. DeGette		X		Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack	X		
Mr. Doyle		X		Mr. Walden	X		
Ms. Harman		X		Mr. Terry	X		
Ms. Schakowsky		X		Mr. Rogers	X		
Mr. Gonzalez		X		Mrs. Myrick			
Mr. Inslee		X		Mr. Sullivan			
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess	X		
Mr. Weiner		X		Ms. Blackburn	X		
Mr. Matheson		X		Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise	X		
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes							
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

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COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 05

BILL: **H.R. 629**, the "Energy and Commerce Recovery and Investment Act".

AMENDMENT: An amendment by Mr. Upton, No. 1B, to the Energy provisions in section 5003 to expand the category of eligible projects for loan guarantees to include zero-emission technologies.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 21 yeas to 33 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey		X		Mr. Upton	X		
Mr. Boucher				Mr. Stearns			
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon		X		Mr. Whitfield	X		
Mr. Rush		X		Mr. Shimkus	X		
Ms. Eshoo		X		Mr. Shadegg	X		
Mr. Stupak		X		Mr. Blunt	X		
Mr. Engel		X		Mr. Buyer	X		
Mr. Green		X		Mr. Radanovich	X		
Ms. DeGette		X		Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack	X		
Mr. Doyle		X		Mr. Walden	X		
Ms. Harman				Mr. Terry	X		
Ms. Schakowsky		X		Mr. Rogers	X		
Mr. Gonzalez		X		Mrs. Myrick	X		
Mr. Inslee		X		Mr. Sullivan			
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess	X		
Mr. Weiner		X		Ms. Blackburn	X		
Mr. Matheson		X		Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise	X		
Mr. Melancon							
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

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COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 06

BILL: **H.R. 629**, the "Energy and Commerce Recovery and Investment Act".

AMENDMENT: An amendment by Mr. Barton, No. 1F, to the Energy provisions to eliminate the requirement that governments notify the Secretary of Energy regarding modifying utility policies to allow utilities to promote energy efficiency.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 20 yeas to 33 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey		X		Mr. Upton	X		
Mr. Boucher				Mr. Stearns	X		
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon				Mr. Whitfield	X		
Mr. Rush		X		Mr. Shimkus	X		
Ms. Eshoo		X		Mr. Shadegg	X		
Mr. Stupak		X		Mr. Blunt	X		
Mr. Engel		X		Mr. Buyer	X		
Mr. Green		X		Mr. Radanovich	X		
Ms. DeGette		X		Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack	X		
Mr. Doyle		X		Mr. Walden	X		
Ms. Harman		X		Mr. Terry	X		
Ms. Schakowsky		X		Mr. Rogers	X		
Mr. Gonzalez		X		Mrs. Myrick			
Mr. Inslee		X		Mr. Sullivan			
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess	X		
Mr. Weiner		X		Ms. Blackburn			
Mr. Matheson				Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise	X		
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

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COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 07

BILL: **H.R. 629**, the "Energy and Commerce Recovery and Investment Act".

AMENDMENT: An amendment by Mr. Shimkus, No. 1G, to the Energy provisions to make eligible for loan guarantees forestry projects and other carbon sequestration projects.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 19 yeas to 34 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey		X		Mr. Upton	X		
Mr. Boucher				Mr. Stearns	X		
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon		X		Mr. Whitfield	X		
Mr. Rush		X		Mr. Shimkus	X		
Ms. Eshoo		X		Mr. Shadegg	X		
Mr. Stupak		X		Mr. Blunt	X		
Mr. Engel		X		Mr. Buyer	X		
Mr. Green		X		Mr. Radanovich	X		
Ms. DeGette		X		Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack	X		
Mr. Doyle		X		Mr. Walden	X		
Ms. Harman		X		Mr. Terry	X		
Ms. Schakowsky		X		Mr. Rogers	X		
Mr. Gonzalez		X		Mrs. Myrick			
Mr. Inslee		X		Mr. Sullivan			
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess	X		
Mr. Weiner		X		Ms. Blackburn			
Mr. Matheson				Mr. Gingrey			
Mr. Butterfield		X		Mr. Scalise	X		
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

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COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 08

BILL: **H.R. 629**, the "Energy and Commerce Recovery and Investment Act".

MOTION: A Motion by Mr. Waxman to order the Energy provisions of H.R. 629 favorably to the House, amended.

DISPOSITION: AGREED TO by a roll call vote of 34 yeas to 17 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman	X			Mr. Barton		X	
Mr. Dingell	X			Mr. Hall		X	
Mr. Markey	X			Mr. Upton			
Mr. Boucher				Mr. Stearns			
Mr. Pallone	X			Mr. Deal		X	
Mr. Gordon	X			Mr. Whitfield		X	
Mr. Rush	X			Mr. Shimkus			
Ms. Eshoo	X			Mr. Shadegg		X	
Mr. Stupak	X			Mr. Blunt		X	
Mr. Engel	X			Mr. Buyer		X	
Mr. Green	X			Mr. Radanovich		X	
Ms. DeGette	X			Mr. Pitts		X	
Mrs. Capps	X			Ms. Bono Mack		X	
Mr. Doyle	X			Mr. Walden		X	
Ms. Harman	X			Mr. Terry		X	
Ms. Schakowsky	X			Mr. Rogers		X	
Mr. Gonzalez	X			Mrs. Myrick			
Mr. Inslee	X			Mr. Sullivan			
Ms. Baldwin	X			Mr. Murphy of PA		X	
Mr. Ross	X			Mr. Burgess		X	
Mr. Weiner	X			Ms. Blackburn			
Mr. Matheson				Mr. Gingrey		X	
Mr. Butterfield	X			Mr. Scalise		X	
Mr. Melancon	X						
Mr. Barrow	X						
Mr. Hill	X						
Ms. Matsui	X						
Mrs. Christensen	X						
Ms. Castor	X						
Mr. Sarbanes	X						
Mr. Murphy of CT	X						
Mr. Space	X						
Mr. McNerney	X						
Ms. Sutton	X						
Mr. Braley	X						
Mr. Welch	X						

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COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 09

BILL: **H.R. 629**, the "Energy and Commerce Recovery and Investment Act"

AMENDMENT: An amendment by Mr. Whitfield, No. 1A, to title IV of Health Information Technology provision to add Sec. 4315 on permanent annual MEI updates to physician fee schedule.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 15 yeas to 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell				Mr. Hall	X		
Mr. Markey		X		Mr. Upton			
Mr. Boucher				Mr. Stearns			
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon		X		Mr. Whitfield	X		
Mr. Rush		X		Mr. Shimkus			
Ms. Eshoo		X		Mr. Shadegg	X		
Mr. Stupak		X		Mr. Blunt	X		
Mr. Engel		X		Mr. Buyer	X		
Mr. Green		X		Mr. Radanovich			
Ms. DeGette		X		Mr. Pitts			
Mrs. Capps		X		Ms. Bono Mack	X		
Mr. Doyle		X		Mr. Walden	X		
Ms. Harman				Mr. Terry	X		
Ms. Schakowsky		X		Mr. Rogers	X		
Mr. Gonzalez		X		Mrs. Myrick			
Mr. Inslee		X		Mr. Sullivan			
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess	X		
Mr. Weiner		X		Ms. Blackburn			
Mr. Matheson				Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise	X		
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill							
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

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COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 10

BILL: **H.R. 629**, the "Energy and Commerce Recovery and Investment Act".

AMENDMENT: An amendment by Mr. Burgess, No. 1B, to title IV of Health Information Technology provisions to modify Medicare's sustainable growth rate formula.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 15 yeas to 34 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall			
Mr. Markey		X		Mr. Upton			
Mr. Boucher				Mr. Stearns			
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon		X		Mr. Whitfield	X		
Mr. Rush		X		Mr. Shimkus			
Ms. Eshoo		X		Mr. Shadegg	X		
Mr. Stupak		X		Mr. Blunt	X		
Mr. Engel		X		Mr. Buyer	X		
Mr. Green		X		Mr. Radanovich	X		
Ms. DeGette		X		Mr. Pitts			
Mrs. Capps		X		Ms. Bono Mack	X		
Mr. Doyle				Mr. Walden	X		
Ms. Harman		X		Mr. Terry	X		
Ms. Schakowsky		X		Mr. Rogers	X		
Mr. Gonzalez		X		Mrs. Myrick			
Mr. Inslee		X		Mr. Sullivan			
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess	X		
Mr. Weiner		X		Ms. Blackburn			
Mr. Matheson				Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise	X		
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

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COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 11

BILL: **H.R. 629,** the "Energy and Commerce Recovery and Investment Act".

AMENDMENT: An amendment by Mr. Rogers, No. 1E, to Title IV of Health Information Technology provisions to prohibit enforcement of federal privacy and security laws by state attorneys general.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 15 yeas to 32 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey		X		Mr. Upton			
Mr. Boucher				Mr. Stearns			
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon		X		Mr. Whitfield			
Mr. Rush		X		Mr. Shimkus			
Ms. Eshoo		X		Mr. Shadegg	X		
Mr. Stupak		X		Mr. Blunt	X		
Mr. Engel		X		Mr. Buyer	X		
Mr. Green		X		Mr. Radanovich	X		
Ms. DeGette		X		Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack	X		
Mr. Doyle				Mr. Walden	X		
Ms. Harman		X		Mr. Terry	X		
Ms. Schakowsky		X		Mr. Rogers	X		
Mr. Gonzalez		X		Mrs. Myrick			
Mr. Inslee				Mr. Sullivan			
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess	X		
Mr. Weiner		X		Ms. Blackburn			
Mr. Matheson				Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise			
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

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COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 12

BILL: **H.R. 629**, the "Energy and Commerce Recovery and Investment Act".

AMENDMENT: An amendment by Mr. Burgess, No. 1K, to title IV of Health Information Technology provisions to modify Medicare's sustainable growth rate formula for updating the Medicare physician fee schedule.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 16 yeas to 32 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey		X		Mr. Upton			
Mr. Boucher				Mr. Stearns	X		
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon		X		Mr. Whitfield			
Mr. Rush		X		Mr. Shimkus			
Ms. Eshoo		X		Mr. Shadegg	X		
Mr. Stupak		X		Mr. Blunt	X		
Mr. Engel		X		Mr. Buyer	X		
Mr. Green		X		Mr. Radanovich	X		
Ms. DeGette		X		Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack	X		
Mr. Doyle				Mr. Walden	X		
Ms. Harman		X		Mr. Terry	X		
Ms. Schakowsky		X		Mr. Rogers	X		
Mr. Gonzalez		X		Mrs. Myrick			
Mr. Inslee				Mr. Sullivan			
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess	X		
Mr. Weiner		X		Ms. Blackburn			
Mr. Matheson				Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise			
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

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COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 13

BILL: **H.R. 629**, the "Energy and Commerce Recovery and Investment Act".

AMENDMENT: An amendment by Mr. Pitts, No. 1C, to Title V of the Medicaid portion to require that a minor provide parental notification to receive family planning services.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 14 yeas to 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey		X		Mr. Upton			
Mr. Boucher				Mr. Stearns			
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon				Mr. Whitfield			
Mr. Rush		X		Mr. Shimkus			
Ms. Eshoo		X		Mr. Shadegg	X		
Mr. Stupak	X			Mr. Blunt	X		
Mr. Engel		X		Mr. Buyer			
Mr. Green		X		Mr. Radanovich			
Ms. DeGette		X		Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack			
Mr. Doyle				Mr. Walden	X		
Ms. Harman		X		Mr. Terry			
Ms. Schakowsky		X		Mr. Rogers	X		
Mr. Gonzalez		X		Mrs. Myrick			
Mr. Inslee		X		Mr. Sullivan			
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross	X			Mr. Burgess	X		
Mr. Weiner		X		Ms. Blackburn			
Mr. Matheson				Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise			
Mr. Melancon	X						
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

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COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 14

BILL: **H.R. 629**, the "Energy and Commerce Recovery and Investment Act".

AMENDMENT: An amendment by Mr. Deal, No. 1D, to Title V of the Medicaid portion to authorize the states to require providers to report to the State prices charged to self-paying (non-Medicaid) patients. The State would provide the report to HHS. HHS would publish on a public Web site.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 11 yeas to 32 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey		X		Mr. Upton			
Mr. Boucher				Mr. Stearns			
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon				Mr. Whitfield			
Mr. Rush		X		Mr. Shimkus			
Ms. Eshoo		X		Mr. Shadegg	X		
Mr. Stupak		X		Mr. Blunt	X		
Mr. Engel		X		Mr. Buyer			
Mr. Green		X		Mr. Radanovich			
Ms. DeGette		X		Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack			
Mr. Doyle				Mr. Walden	X		
Ms. Harman		X		Mr. Terry			
Ms. Schakowsky		X		Mr. Rogers	X		
Mr. Gonzalez		X		Mrs. Myrick			
Mr. Inslee		X		Mr. Sullivan			
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess	X		
Mr. Weiner		X		Ms. Blackburn			
Mr. Matheson				Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise			
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

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COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 15

BILL: **H.R. 629**, the "Energy and Commerce Recovery and Investment Act".

AMENDMENT: An amendment by Mr. Deal, No. 1E, to Title V the Medicaid portion to require states, as a condition of receiving enhanced Federal assistance under title XIX beginning with FY2010, to pay pharmacies a minimum of $9 per prescription dispensed under title XIX.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 11 yeas to 32 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey		X		Mr. Upton			
Mr. Boucher				Mr. Stearns			
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon				Mr. Whitfield			
Mr. Rush		X		Mr. Shimkus			
Ms. Eshoo		X		Mr. Shadegg	X		
Mr. Stupak		X		Mr. Blunt	X		
Mr. Engel		X		Mr. Buyer			
Mr. Green		X		Mr. Radanovich			
Ms. DeGette		X		Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack			
Mr. Doyle				Mr. Walden	X		
Ms. Harman		X		Mr. Terry			
Ms. Schakowsky		X		Mr. Rogers	X		
Mr. Gonzalez		X		Mrs. Myrick			
Mr. Inslee		X		Mr. Sullivan			
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess	X		
Mr. Weiner		X		Ms. Blackburn			
Mr. Matheson				Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise			
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

01/22/2009

COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 16

BILL: **H.R. 629**, the "Energy and Commerce Recovery and Investment Act".

AMENDMENT: An amendment by Mr. Gingrey (on behalf of Mr. Stearns), No. 1H, to title V of the Medicaid portion adding at end of section 50001 a section on state ineligibility for failure to satisfy documentation requirement.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 14 yeas to 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey		X		Mr. Upton			
Mr. Boucher				Mr. Stearns			
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon				Mr. Whitfield			
Mr. Rush		X		Mr. Shimkus			
Ms. Eshoo		X		Mr. Shadegg	X		
Mr. Stupak		X		Mr. Blunt	X		
Mr. Engel		X		Mr. Buyer			
Mr. Green		X		Mr. Radanovich			
Ms. DeGette		X		Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack			
Mr. Doyle				Mr. Walden	X		
Ms. Harman		X		Mr. Terry			
Ms. Schakowsky		X		Mr. Rogers	X		
Mr. Gonzalez		X		Mrs. Myrick			
Mr. Inslee		X		Mr. Sullivan			
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross	X			Mr. Burgess	X		
Mr. Weiner				Ms. Blackburn			
Mr. Matheson				Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise			
Mr. Melancon							
Mr. Barrow		X					
Mr. Hill	X						
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space	X						
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

01/22/2009

COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 17

BILL: **H.R. 629**, the "Energy and Commerce Recovery and Investment Act".

AMENDMENT: An amendment by Mr. Deal, No. 1I, to Title V of the Medicaid portion to prevent states from receiving certain enhanced Federal assistance if the state provided coverage to legal immigrants.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 11 yeas to 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey		X		Mr. Upton			
Mr. Boucher				Mr. Stearns			
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon				Mr. Whitfield			
Mr. Rush		X		Mr. Shimkus			
Ms. Eshoo		X		Mr. Shadegg	X		
Mr. Stupak		X		Mr. Blunt	X		
Mr. Engel		X		Mr. Buyer			
Mr. Green		X		Mr. Radanovich			
Ms. DeGette		X		Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack			
Mr. Doyle				Mr. Walden	X		
Ms. Harman		X		Mr. Terry			
Ms. Schakowsky		X		Mr. Rogers	X		
Mr. Gonzalez		X		Mrs. Myrick			
Mr. Inslee		X		Mr. Sullivan			
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess	X		
Mr. Weiner		X		Ms. Blackburn			
Mr. Matheson				Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise			
Mr. Melancon							
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

01/22/2009

COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 18

BILL: **H.R. 629**, the "Energy and Commerce Recovery and Investment Act".

MOTION: A Motion by Mr. Waxman to order the Medicaid provisions of H.R. 629 favorably to the House, amended.

DISPOSITION: **AGREED TO** by a roll call vote of 11 yeas to 32 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey		X		Mr. Upton			
Mr. Boucher				Mr. Stearns			
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon				Mr. Whitfield			
Mr. Rush		X		Mr. Shimkus			
Ms. Eshoo		X		Mr. Shadegg	X		
Mr. Stupak		X		Mr. Blunt	X		
Mr. Engel		X		Mr. Buyer			
Mr. Green		X		Mr. Radanovich			
Ms. DeGette		X		Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack			
Mr. Doyle				Mr. Walden	X		
Ms. Harman		X		Mr. Terry			
Ms. Schakowsky		X		Mr. Rogers	X		
Mr. Gonzalez		X		Mrs. Myrick			
Mr. Inslee		X		Mr. Sullivan			
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess	X		
Mr. Weiner		X		Ms. Blackburn			
Mr. Matheson				Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise			
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

01/22/2009

COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 19

BILL: **H.R. 629**, the "Energy and Commerce Recovery and Investment Act".

AMENDMENT: An amendment by Mr. Barton, No. 1A, to Title III of the Health Insurance for the Unemployed portion to require individuals seeking temporary assistance for COBRA coverage to meet an income test of $100,000 and an asset test of $1,000,000 to qualify for the COBRA coverage option.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 14 yeas to 30 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey		X		Mr. Upton			
Mr. Boucher				Mr. Stearns	X		
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon		X		Mr. Whitfield			
Mr. Rush		X		Mr. Shimkus			
Ms. Eshoo		X		Mr. Shadegg	X		
Mr. Stupak		X		Mr. Blunt	X		
Mr. Engel		X		Mr. Buyer	X		
Mr. Green		X		Mr. Radanovich	X		
Ms. DeGette		X		Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack			
Mr. Doyle				Mr. Walden	X		
Ms. Harman		X		Mr. Terry			
Ms. Schakowsky		X		Mr. Rogers	X		
Mr. Gonzalez		X		Mrs. Myrick			
Mr. Inslee				Mr. Sullivan			
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess	X		
Mr. Weiner		X		Ms. Blackburn			
Mr. Matheson				Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise			
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch							

01/22/2009

COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 20

BILL: **H.R. 629**, the "Energy and Commerce Recovery and Investment Act".

AMENDMENT: An amendment by Mr. Rogers, No. 1C, to Title III of the Health Insurance for the Unemployed portion to require states that provide coverage through Medicaid to those affected by the economic downturn to offer premium assistance through a voucher to purchase coverage in the individual market as part of that option.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 14 yeas to 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey		X		Mr. Upton			
Mr. Boucher				Mr. Stearns	X		
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon				Mr. Whitfield			
Mr. Rush		X		Mr. Shimkus			
Ms. Eshoo		X		Mr. Shadegg	X		
Mr. Stupak		X		Mr. Blunt	X		
Mr. Engel		X		Mr. Buyer	X		
Mr. Green		X		Mr. Radanovich	X		
Ms. DeGette		X		Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack			
Mr. Doyle				Mr. Walden	X		
Ms. Harman		X		Mr. Terry			
Ms. Schakowsky		X		Mr. Rogers	X		
Mr. Gonzalez		X		Mrs. Myrick			
Mr. Inslee		X		Mr. Sullivan			
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess	X		
Mr. Weiner		X		Ms. Blackburn			
Mr. Matheson				Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise			
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch							

01/22/2009

COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 21

BILL: **H.R. 629**, the "Energy and Commerce Recovery and Investment Act".

AMENDMENT: An amendment by Mr. Deal, No. 1E, to Title III of the Health Insurance for the Unemployed portion to impose a limit of $1,000,000 for those seeking temporary assistance under the Medicaid coverage option.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 13 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey				Mr. Upton			
Mr. Boucher				Mr. Stearns			
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon		X		Mr. Whitfield			
Mr. Rush				Mr. Shimkus			
Ms. Eshoo		X		Mr. Shadegg	X		
Mr. Stupak		X		Mr. Blunt	X		
Mr. Engel		X		Mr. Buyer	X		
Mr. Green				Mr. Radanovich			
Ms. DeGette		X		Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack			
Mr. Doyle				Mr. Walden	X		
Ms. Harman				Mr. Terry			
Ms. Schakowsky		X		Mr. Rogers	X		
Mr. Gonzalez		X		Mrs. Myrick			
Mr. Inslee		X		Mr. Sullivan			
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess	X		
Mr. Weiner		X		Ms. Blackburn			
Mr. Matheson				Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise			
Mr. Melancon		X					
Mr. Barrow	X						
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch							

01/22/2009

COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 22

BILL: **H.R. 629**, the "Energy and Commerce Recovery and Investment Act".

MOTION: A Motion by Mr. Waxman to order the Health Insurance for the Unemployed provisions of H.R. 629 favorably to the House, amended.

DISPOSITION: **AGREED TO** by a roll call vote of 32 yeas to 12 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman	X			Mr. Barton		X	
Mr. Dingell	X			Mr. Hall		X	
Mr. Markey	X			Mr. Upton			
Mr. Boucher				Mr. Stearns			
Mr. Pallone	X			Mr. Deal		X	
Mr. Gordon	X			Mr. Whitfield			
Mr. Rush	X			Mr. Shimkus			
Ms. Eshoo	X			Mr. Shadegg		X	
Mr. Stupak	X			Mr. Blunt		X	
Mr. Engel	X			Mr. Buyer		X	
Mr. Green	X			Mr. Radanovich			
Ms. DeGette	X			Mr. Pitts		X	
Mrs. Capps	X			Ms. Bono Mack			
Mr. Doyle				Mr. Walden		X	
Ms. Harman	X			Mr. Terry			
Ms. Schakowsky	X			Mr. Rogers		X	
Mr. Gonzalez	X			Mrs. Myrick			
Mr. Inslee	X			Mr. Sullivan			
Ms. Baldwin	X			Mr. Murphy of PA		X	
Mr. Ross	X			Mr. Burgess		X	
Mr. Weiner	X			Ms. Blackburn			
Mr. Matheson				Mr. Gingrey		X	
Mr. Butterfield	X			Mr. Scalise			
Mr. Melancon	X						
Mr. Barrow	X						
Mr. Hill	X						
Ms. Matsui	X						
Mrs. Christensen	X						
Ms. Castor	X						
Mr. Sarbanes	X						
Mr. Murphy of CT	X						
Mr. Space	X						
Mr. McNerney	X						
Ms. Sutton	X						
Mr. Braley	X						
Mr. Welch							

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APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of P.L. 104-1 requires a description of the application of this bill to the legislative branch where the bill relates to terms and conditions of employment or access to public services and accommodations. H.R. 629 is a generally applicable measure that does not have provisions that uniquely apply to the legislative branch.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of Rule XIII and clause (2)(b)(1) of Rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 629. Article I, Section 8, Clause 18 of the Constitution of the United States grants the Congress the power to enact this law.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104-4) requires a statement on whether the provisions of the report include unfunded mandates. The Congressional Budget Office is conducting the analysis of this matter as part of its review of H.R.1, which incorporates provisions of H.R. 629.

EARMARK IDENTIFICATION

H.R. 629 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 629. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act. CBO is conducting a cost estimate of H.R.1, which incorporates provisions of H.R. 629.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, Congressional Budget Office is conducting a cost estimate of H.R. 1, which incorporates provisions of H.R. 629.

MINORITY AND DISSENTING VIEWS

(Insert Views)

Committee on Energy and Commerce
Report on H.R.629
Minority Views

[Title I] Broadband

This title throws nearly $3 billion into the air and hopes the right people catch it when it falls out of the sky more like manna from heaven than money taken away from working families. If the point of this exercise was to meet the President's call for bipartisan ideas that stimulate broadband deployment and the economy, we do not believe that the inclusion of controversial provisions on open access, minimum speeds, and build-out requirements meets such goals. These provisions are not bipartisan, and they harm rather than advance the stated goal. "Open access" is not even defined in the legislation. The speed requirements are unrealistic at best, and at worst they are neither competitively nor technologically neutral. Possibly worst of all, these conditions combine to discourage companies from participating in the stimulus plan.

This title has its priorities upside down. Why else would it send 75 percent of the grants to "underserved areas" and give totally "unserved areas" the leftovers. Most people know what some service is, and what no service is, and they know the difference. This bill either doesn't know the difference, or gets it exactly backwards. In fact, the fair case can be made that all the money should go to unserved areas. Those are the places that need the most help, since there is apparently no market-based business case to deploy there yet. At least in underserved areas, a market appears to be developing. Moreover, sending money to underserved areas simply subsidizes one set of providers as they compete against others. Government's role is not to put fingers on the scale. The Majority rejected an amendment offered by Mr. Blunt that would have addressed this disparity on a party line vote.

Lastly, this title cedes far too much discretion over a $3 billion program to unelected officials at the Federal Communications Commission (FCC). Not only does the public not know who they are, Congress doesn't know who they are. At the moment, only three of the five seats on the Commission are filled, and two of the sitting members must leave if they are not renominated and reconfirmed in short order. Yet the bill leaves it to the FCC to define what "unserved' and "underserved" areas are. It is irresponsible for Congress to allocate $3 billion in this fashion.

Elsewhere in the stimulus package Congress is apparently considering allocating $650 million to pay for the disaster that delaying the digital television transition will cause. Delaying the transition is not necessary, and will cause more harm than good by confusing consumers and jeopardizing spectrum earmarked for public safety and wireless broadband services. It will also cost government and industry millions of more dollars to change five years worth of previous planning. Ensuring that the DTV transition goes forward on February 17, 2009, is perhaps the nation's quickest, most realistic chance of creating a broadband stimulus and creating jobs. To top it off, legislation delaying the

DTV transition has not even passed, so we may be allocating $650 million with nothing to spend it on.

[Title II] Energy Provisions

The most egregious provision in the energy title is one that attempts to promulgate a policy to preserve utility profits at the expense of energy-saving consumers. In order for a state to receive energy efficiency grants, a governor would have to notify the Secretary of Energy that his state is trying to institute a system in which utilities' fixed costs are covered by consumers, independent of energy usage. Under this concept, consumers who follow our persistent advice to consume less energy will see their bills either stay the same or actually rise. Families who buy appliances rated high for energy stinginess will be punished for their good intentions and expensive investments. We believe that consumers should be rewarded when they save energy, not penalized so that electric utility companies can be supported in the luxe style to which they have become accustomed. Mr. Barton proposed an amendment to remedy this injustice; it was rejected on a party-line vote by the Majority.

The energy title fails to address important sources of energy that are essential to stimulating our economy. This title—which authorizes $22.1 billion in spending for renewable energy, transmission projects, and increased energy efficiency—completely neglects almost 70 percent of our country's electricity supply. Mr. Upton proposed an amendment designed to stimulate zero-emissions energy which did not pass. Mr. Shimkus's amendment to add carbon capture and sequestration for coal-fired generation to the list of energy project categories to the proposed temporary program for rapid deployment of energy projects also was rejected. Republican Members' position is that a true stimulus should stimulate all American energy, a suggestion that the Majority rebuffed as too wide-ranging for the narrow focus of the $22.1 billion in stimulus dollars. The Majority totally failed to address energy from America's most abundant source -- coal -- and its cleanest -- nuclear. The Majority's energy mark-up resulted in a package that overstimulates a small area of our economy and neglects the energy sources that provide the most jobs right now, that ensure energy security, and that will provide clean energy for years to come.

Smart-grid technology is extremely promising. It holds the possibility of increasing efficiency throughout the electricity system and giving consumers more control over their own electricity use. However, language was added in Chairman Waxman's substitute which would limit the grants only to recipients using open internet-based protocols and standards, when available. This language, if passed, would result in Congress picking technology winners and losers, without any hearings or discussions. Smart-grid technology is still developing, and there is more than one standard being tested. Forget about paper versus plastic or VHS versus Betamax—the ramifications of determining the industry standards and protocols for deployment of smart grid technology are monumental in comparison. Given the importance of this issue, the one thing that is clear is that smart-grid standards and protocols should be carefully

considered and not added as a last-minute afterthought to the Chairman's substitute with absolutely no discussion or consideration.

The Majority is equally misguided in their position that stimulating the economy should involve micro-managing state and local building codes. The majority proposes $8.4 billion in energy efficiency grants and loans. Rather than funding states and localities to enforce the currently-existing energy efficiency codes, the Majority insists on micro-managing states and localities by mandating adoption of the most recently published version of the International Energy Conservation Code or its equivalent for residential buildings, and the ANSI/ASHRAE/IESNA Standard 90.1-2007 or equivalent for commercial buildings. Mr. Stearns proposed an amendment that would provide grant funding to empower states and localities to enforce the codes that they have chosen in the best interests of their states. The choices for cost-effective energy efficiency technology should be determined by those closest to the building site, not a wide-sweeping federal code. Nevertheless, the Majority insists that states should be forced to conform to a model code to receive the grants.

The mark-up highlighted the need for changes to the Energy Independence and Security Act of 2007 ("EISA"), as evidenced by the rejection of all Minority-offered amendments, including: Mr. Walden's amendment to correct the definition of renewable biomass so advanced biofuels derived from woody material gathered from federal lands and other private lands can be counted towards the renewable fuels standard; Mr. Gingrey's proposed amendment to strike Section 526 of EISA, which restricts procurement and acquisition of alternative fuels; and Mr. Shadegg's proposed amendment to remove the Davis-Bacon provisions from Section 545 of EISA. While the Majority members agreed with the need for an all-encompassing revision to EISA, they stopped short of actually supporting any of the Minority amendments to make improvements to EISA. We hope the Majority lives up to its commitments to revisit EISA and look forward to working with them, when that time comes.

[Title III] Health Insurance for the Unemployed

This title permanently extends COBRA coverage to any person 55 or older who loses their job or to any person that has worked for a company for at least 10 years. This will lead to greater cost for the employers that currently provide health care coverage to their employees and a reduction in employer sponsored health care.

In addition to the change in length to COBRA eligibility, this title establishes a new government subsidy of 65 percent of COBRA premium costs for the first 12 months of coverage. Unfortunately, the bill lacks the thoughtful approach of legislation that results from regular order. The new program for COBRA subsidies does not contain an income test or an asset test. In tough economic times it is unconscionable that we would ask the average American to have their tax dollars transferred to the wealthiest in this country. An amendment was rejected that would have capped eligibility for the government subsidy at $100,000 in annual income and a total of $1 million in assets on a party line vote.

We are pleased that the Majority accepted an amendment that would have capped eligibility for the new government subsidy at $1 million in annual income. We believe this level is still too high, but as previously mentioned, efforts to impose a lower income threshold were rejected.

The legislation expands the Medicaid program to new groups of individuals. The "temporary" Medicaid option is funded 100 percent by the federal government and has no regard to a person's income or asset levels. An amendment to limit the program to individuals with incomes below $1 million in the previous year was rejected.

Medicaid has historically been administered by the states and funded jointly by the states and the federal government. Although there are significant reports of persistent fraud and abuse in the Medicaid program, as reiterated in a recently released study by the Government Accountability Office (GAO), states had the incentive to protect their investments in the program, and they succeeded in getting more money with less reform. The new Medicaid expansion would provide 100 percent of the financing for the program not just for medical services but also for administrative costs. This is a dangerous precedent that will undermine the already unsustainable Medicaid program. Unless there is significant state investment in the program, there will be little or no incentive for the state to govern the program efficiently and ensure that federal taxpayer dollars are being spent responsibly.

An amendment also was rejected that would have provided a premium subsidy for individuals in the new Medicaid expansion so they could enroll in a health plan of their choice. Individuals in Medicaid should have the same options to receive better heath care as those receiving the new COBRA subsidy. The Committee has repeatedly heard of instances where Medicaid fails patients. Many doctors will not participate in the program. Patients must linger on waiting lists or drive miles to find a doctor who takes Medicaid patients.

[Title IV] Health Information Technology

We support the adoption of health information technology and believe its increased adoption will lead to reduced medical errors and improved patient outcomes. However rushed adoption of non-interoperable health information technology could actually impede its deployment.

Although the legislation purports to be an economic stimulus package, the bonus payments for using electronic health records do not go out until 2011 with penalties for not using electronic health records going into effect in 2016. How these are supposed to stimulate a cure for the present recession is a medical mystery. Given that payment incentives are not distributed until 2011, the legislation should have been considered through regular order to ensure that health information technology is disseminated efficiently and effectively.

[Title V] Medicaid Provisions

In what may be considered a fitting coincidence, on the same day that legislation designed to increase the federal share of the costs of the Medicaid program by $98.5 billion over the next two years was favorably reported by the Energy and Commerce Committee, the Government Accountability Office released a report stating that the Medicaid program remained on GAO's list of "high-risk" programs because of "growing concerns about the quality of fiscal oversight, which is necessary to prevent inappropriate program spending." Unfortunately, GAO's concern about the future stability of the Medicaid program is directly contrasted by the provisions in Title V of the *American Recovery and Reinvestment Act of 2009*, which, other than expanding taxpayer coverage of family planning items and services, only serves to temporarily prop up an unsustainable, broken program.

When Senator Mark Warner (D-VA) was the governor of Virginia and the chairman of the National Governors Association, he correctly stated that the unsustainable growth of Medicaid spending has every state and the federal government "on the road to a meltdown." His solution was to update the severely outdated rules and regulations and allow state governments the flexibility to run their programs with increased levels of innovation, efficiency, and accountability. The Republican Members of the Committee on Energy and Commerce believe that Senator Warner was correct in both his assessment of the problem facing Medicaid as well as its solution. In contrast, the proposed solution put forward by the Majority ignores the impending meltdown of the Medicaid system and places a finger in the leaking dam with a proposal to temporarily shift more of the costs of the Medicaid program onto the federal government in exchange for a commitment from the states that they will not reduce their eligibility criteria below where they were on July 1, 2008. While, states retain the flexibility to cut payment rates to the rapidly decreasing number of health care providers that still participate in the Medicaid program and the flexibility to reduce the number of items and services that are covered in Medicaid, states accepting any of the temporarily increased reimbursement rates are prohibited from reforming their eligibility criteria, unless – of course – a state would like to expand its eligibility.

Proponents of this legislation like to claim that it is necessary because states cannot afford the expenses of their current Medicaid programs. However, simply dumping more federal dollars into an unsustainable status quo is not the answer. State officials must be held accountable for the performance of their programs, and states that continue to administer their programs in the same inefficient manner that created the current crisis should not be rewarded with additional federal funds.

The Republicans on the Energy and Commerce Committee are deeply concerned that this legislation will create a very troubling situation on January 1, 2011, when the temporary increases in reimbursement expire. Under the legislation reported out of the Committee, states will be prevented from making certain necessary reforms to their programs and will have additional federal dollars with which to expand their Medicaid enrollment to new populations. As a result, short-sighted state officials may take the bait

and expand their Medicaid program while blissfully ignoring the fact that the billions of dollars worth of increased reimbursement rates will come to an abrupt halt on December 31, 2010. Clearly, if a state cannot afford its Medicaid program today, it is reasonable to assume that this same state will not be able to afford an even larger, more expensive Medicaid program on January 1, 2011. This is why the Republican approach of reforming the Medicaid program and demanding accountability from state officials is the better approach for the American taxpayers, health care providers, and the current and future generations of Medicaid beneficiaries.

The Minority was disappointed that an amendment offered by Dr. Gingrey requiring all states to verify the identity of all applicants for Medicaid coverage was defeated by the Majority. Given the tens of billions of dollars of state and federal Medicaid funds that are lost each year to criminally fraudulent claims and fraudulently enrolled beneficiaries, this amendment would have been an important provision to enable states to continue their current Medicaid program without making cuts to benefits or eligibility.

Joe Barton
Ranking Member

Roy Blunt

Steve Buyer

George Radanovich

Joe Pitts

Mary Bono Mack

Greg Walden

Lee Terry

Mike Rogers

John Sullivan

Michael Burgess

Marsha Blackburn

Phil Gingrey

Steve Scalise

Nathan Deal

Congress of the United States
Washington, DC 20515

Committee on Energy & Commerce
Report on H.R.1

Dissenting Views

In addition to the Minority Views expressed by Ranking Member Barton and our Republican colleagues on the Committee, we have some additional concerns that this legislation fails to address. Several Republican Members offered amendments to ensure Medicare beneficiaries continue to have access to their doctors and that new Medicare beneficiaries would be able to find a doctor that would accept Medicare. Unfortunately, these amendments were all rejected on a party-line vote by the Majority.

Over the last several years, the Sustainable Growth Rate (SGR), the formula that controls Medicare physician payment, has forecast deep cuts to Medicare Part B reimbursement. This has created a high-degree of instability for doctors and threatens the viability of their practices. Including a permanent fix to Medicare physician payment rates would have a profound impact on stimulating the health care sector of the U.S. economy, which constitutes 16.2% of GDP, and ensuring vulnerable seniors have access to their doctors.

Phil Gingrey, M.D.
Member of Congress

Michael Burgess, M.D.
Member of Congress

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