

110TH CONGRESS  
2D SESSION

# H. R. 6179

To encourage and enhance the adoption of interoperable health information technology to improve health care quality, reduce medical errors, and increase the efficiency of care.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 4, 2008

Mr. CAMP of Michigan (for himself, Mr. SAM JOHNSON of Texas, Mr. HERGER, Mr. PORTER, Mr. ENGLISH of Pennsylvania, Mr. PRICE of Georgia, Mr. GINGREY, Mr. BOUSTANY, Mr. WELLER of Illinois, Mr. RAMSTAD, and Mr. HULSHOF) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To encourage and enhance the adoption of interoperable health information technology to improve health care quality, reduce medical errors, and increase the efficiency of care.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Promoting Health Information Technology Act of 2008”.

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

Sec. 1. Short title; table of contents.

TITLE I—STRATEGIC PLAN TOWARDS NATIONWIDE  
 INTEROPERABILITY

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

Sec. 102. Successor to the American Health Information Community.

Sec. 103. Health Information Technology Resource Center.

Sec. 104. Strategic plan for coordinating implementation of health information technology.

TITLE II—MODERNIZING THE HEALTH CARE DELIVERY SYSTEM

Sec. 201. Rulemaking to upgrade ASC X12 and NCPDP standards and ICD codes.

Sec. 202. Procedures to ensure timely updating of standards that enable electronic exchanges.

Sec. 203. Federal purchasing and data collection.

Sec. 204. Study to improve preservation and protection of security and confidentiality of health information.

TITLE III—INCENTIVIZING ADOPTION OF HEALTH IT

Sec. 301. Physician Incentives to Adopt Health IT.

Sec. 302. Elimination of sunset applicable to Stark exception for electronic health records arrangements.

Sec. 303. Promotion of telehealth services.

Sec. 304. FQHCs included in electronic health records demonstration.

3 **TITLE I—STRATEGIC PLAN TO-**  
 4 **WARDS NATIONWIDE INTER-**  
 5 **OPERABILITY**

6 **SEC. 101. OFFICE OF THE NATIONAL COORDINATOR FOR**  
 7 **HEALTH INFORMATION TECHNOLOGY.**

8 (a) ESTABLISHMENT.—There is established within  
 9 the Department of Health and Human Services an Office  
 10 of the National Coordinator for Health Information Tech-  
 11 nology that shall be headed by the National Coordinator  
 12 for Health Information Technology (referred to in this

1 section as the “National Coordinator”). The National Co-  
2 ordinator shall be appointed by the President and shall  
3 report directly to the Secretary of Health and Human  
4 Services. The National Coordinator shall be paid at a rate  
5 equal to the rate of basic pay for level IV of the Executive  
6 Schedule.

7 (b) GOALS OF NATIONWIDE INTEROPERABLE  
8 HEALTH INFORMATION TECHNOLOGY INFRASTRUC-  
9 TURE.—The National Coordinator shall perform the du-  
10 ties under subsection (c) in a manner consistent with the  
11 development of a nationwide interoperable health informa-  
12 tion technology infrastructure that—

13 (1) improves health care quality, reduces med-  
14 ical errors, increases the efficiency of care, and ad-  
15 vances the delivery of appropriate, evidence-based  
16 health care services;

17 (2) promotes wellness, disease prevention, and  
18 management of chronic illnesses by increasing the  
19 availability and transparency of information related  
20 to the health care needs of an individual for such in-  
21 dividual;

22 (3) ensures that appropriate information nec-  
23 essary to make medical decisions is available in a us-  
24 able form at the time and in the location that the  
25 medical service involved is provided;

1           (4) produces greater value for health care ex-  
2           penditures by reducing health care costs that result  
3           from inefficiency, medical errors, inappropriate care,  
4           and incomplete information;

5           (5) promotes a more effective marketplace,  
6           greater competition, greater systems analysis, in-  
7           creased choice, enhanced quality, and improved out-  
8           comes in health care services;

9           (6) improves the coordination of information  
10          and the provision of such services through an effec-  
11          tive infrastructure for the secure and authorized ex-  
12          change and use of health care information; and

13          (7) ensures that the confidentiality of individ-  
14          ually identifiable health information of a patient is  
15          secure and protected.

16          (c) DUTIES OF NATIONAL COORDINATOR.—

17                 (1) STRATEGIC PLANNER FOR INTEROPERABLE  
18                 HEALTH INFORMATION TECHNOLOGY.—The Na-  
19                 tional Coordinator shall maintain, direct, and over-  
20                 see the continuous improvement of a strategic plan  
21                 to guide the nationwide implementation of interoper-  
22                 able health information technology in both the public  
23                 and private health care sectors consistent with sub-  
24                 section (b).

1           (2) PRINCIPAL ADVISOR TO HHS.—The Na-  
2           tional Coordinator shall serve as the principal advi-  
3           sor of the Secretary of Health and Human Services  
4           on the development, application, and use of health  
5           information technology, and coordinate the health  
6           information technology programs of the Department  
7           of Health and Human Services.

8           (3) COORDINATOR OF FEDERAL GOVERNMENT  
9           ACTIVITIES.—

10           (A) IN GENERAL.—The National Coordi-  
11           nator shall serve as the coordinator of Federal  
12           Government activities relating to health infor-  
13           mation technology.

14           (B) SPECIFIC COORDINATION FUNC-  
15           TIONS.—In carrying out subparagraph (A), the  
16           National Coordinator shall provide for—

17           (i) the approval of standards devel-  
18           oped and recommended by AHIC 2.0  
19           under section 102 (which may include  
20           standards relating to the interoperability,  
21           privacy, and security of health information  
22           technology) to be used in the electronic  
23           creation, maintenance, or exchange of  
24           health information; and

1                   (ii) the certification and inspection of  
2                   health information technology products, ex-  
3                   changes, and architectures to ensure that  
4                   such products, exchanges, and architec-  
5                   tures conform to the applicable standards  
6                   approved under clause (i).

7                   Any standard approved or health information  
8                   technology product, exchange, or architecture  
9                   certified pursuant to Executive Order 13335 as  
10                  of the day before the date of the enactment of  
11                  this Act shall be deemed to be a standard ap-  
12                  proved or product, exchange, or architecture  
13                  certified, respectively, pursuant to this subpara-  
14                  graph as of such date of enactment.

15                  (C) USE OF PRIVATE ENTITIES.—The Na-  
16                  tional Coordinator shall, to the maximum extent  
17                  possible, contract with or recognize private enti-  
18                  ties in carrying out subparagraph (B).

19                  (D) UNIFORM APPLICATION OF STAND-  
20                  ARDS.—A standard approved under subpara-  
21                  graph (B)(i) for use in the electronic creation,  
22                  maintenance, or exchange of health information  
23                  shall preempt a standard adopted under State  
24                  law, regulation, or rule for such a use.

1           (4) INTRAGOVERNMENTAL COORDINATOR.—The  
2           National Coordinator shall ensure that health infor-  
3           mation technology policies and programs of the De-  
4           partment of Health and Human Services are coordi-  
5           nated with those of relevant executive branch agen-  
6           cies and departments with a goal to avoid duplica-  
7           tion of effort and to ensure that each agency or de-  
8           partment conducts programs within the areas of its  
9           greatest expertise and its mission in order to create  
10          a national interoperable health information system  
11          capable of meeting national public health needs ef-  
12          fectively and efficiently.

13          (5) ADVISOR TO OMB.—The National Coordi-  
14          nator shall provide to the Director of the Office of  
15          Management and Budget comments and advice with  
16          respect to specific Federal health information tech-  
17          nology programs.

18          (d) AUTHORIZATION OF APPROPRIATIONS.—There  
19          are authorized to be appropriated such sums as may be  
20          necessary to carry out this section for each of fiscal years  
21          2009 through 2013.

22          (e) TREATMENT OF EXECUTIVE ORDER 13335.—Ex-  
23          ecutive Order 13335 shall not have any force or effect  
24          after the date of the enactment of this Act.

1 (f) TRANSITION FROM ONCHIT UNDER EXECUTIVE  
2 ORDER.—

3 (1) IN GENERAL.—All functions, personnel, as-  
4 sets, liabilities, administrative actions, and statutory  
5 reporting requirements applicable to the old Na-  
6 tional Coordinator or the Office of the old National  
7 Coordinator on the date before the date of the enact-  
8 ment of this Act shall be transferred, and applied in  
9 the same manner and under the same terms and  
10 conditions, to the new National Coordinator and the  
11 Office of the new National Coordinator as of the  
12 date of the enactment of this Act.

13 (2) ACTING NATIONAL COORDINATOR.—Before  
14 the appointment of the new National Coordinator,  
15 the old National Coordinator shall act as the Na-  
16 tional Coordinator for Health Information Tech-  
17 nology until the office is filled as provided in sub-  
18 section (a). The President may appoint the old Na-  
19 tional Coordinator as the new National Coordinator.

20 (3) DEFINITIONS.—For purposes of this sub-  
21 section:

22 (A) NEW NATIONAL COORDINATOR.—The  
23 term “new National Coordinator” means the  
24 National Coordinator for Health Information  
25 Technology appointed under subsection (a).

1 (B) OLD NATIONAL COORDINATOR.—The  
2 term “old National Coordinator” means the  
3 National Coordinator for Health Information  
4 Technology appointed under Executive Order  
5 13335.

6 **SEC. 102. SUCCESSOR TO THE AMERICAN HEALTH INFOR-**  
7 **MATION COMMUNITY.**

8 (a) IN GENERAL.—The Secretary of Health and  
9 Human Services shall (through a grant, contract, or coop-  
10 erative agreement) ensure the establishment and provide  
11 for the operation of an entity described in subsection (b)  
12 (in this Act to be referred to as “AHIC 2.0”) for purposes  
13 of developing and recommending standards described in  
14 section 101(c)(3)(B)(i) for approval under such section.

15 (b) STRUCTURE AND PROCEDURES OF ENTITY.—An  
16 entity described in this subsection is an entity—

17 (1) in the operation of which there is broad par-  
18 ticipation by a variety of public and private stake-  
19 holders (whether through membership or through  
20 other means);

21 (2) that uses a consensus approach and a fair  
22 and open process to support the development of  
23 standards under subsection (a); and

24 (3) that has a business plan and a published set  
25 of governance rules that enables the entity to be

1 self-sustaining and to fulfill the purposes described  
2 in subsection (a).

3 (c) CONSULTATION.—In establishing AHIC 2.0, the  
4 entity awarded a grant, contract, or cooperative agreement  
5 pursuant to subsection (a), shall consult with a wide vari-  
6 ety of private and public stakeholders that are knowledge-  
7 able with respect to standards to be developed by AHIC  
8 2.0 or that would be potentially affected by the rec-  
9 ommendations of AHIC 2.0.

10 (d) FUNDING.—

11 (1) AUTHORIZATION OF APPROPRIATIONS.—

12 There are authorized to be appropriated to carry out  
13 this section \$13,000,000, to remain available until  
14 expended.

15 (2) FURTHER FEDERAL FUNDING OTHER THAN

16 DUES PROHIBITED.—Except as otherwise provided  
17 by this subsection, and except for such dues as may  
18 be paid by a Federal agency for membership or  
19 other participation in AHIC 2.0, no Federal agency  
20 may provide funding to the entity. There are author-  
21 ized to be appropriated to such agencies such  
22 amounts as are necessary to pay the dues described  
23 in the previous sentence.

24 (e) NONDUPLICATION OF EFFORTS TO ESTABLISH  
25 AHIC 2.0.—Nothing in this section shall be construed as

1 requiring the duplication of Federal efforts (such as  
2 awarding a grant, contract, or cooperative agreement)  
3 that were carried out before the date of the enactment  
4 of this Act, with respect to the establishment of an entity  
5 to support the development and recommendation of stand-  
6 ards under subsection (a).

7 (f) TREATMENT OF STANDARDS DEVELOPED OR AP-  
8 PROVED BY AHIC.—For purposes of this title, a standard  
9 developed or approved (or in a stage of development or  
10 approval) by the American Health Information Commu-  
11 nity established pursuant to Executive Order 13335 as of  
12 the day before the date of the enactment of this Act shall  
13 be deemed to be a standard developed or approved, respec-  
14 tively, (or in such stage of development or approval) by  
15 AHIC 2.0 as of such date of enactment.

16 **SEC. 103. HEALTH INFORMATION TECHNOLOGY RESOURCE**  
17 **CENTER.**

18 (a) IN GENERAL.—There is established within the  
19 Office of the National Coordinator for Health Information  
20 Technology the Health Information Technology Resource  
21 Center (referred to in this section as the “Center”) to  
22 carry out the following functions:

23 (1) Provide assistance and support for adoption  
24 and implementation efforts and effective use of  
25 interoperable health information technology.

1           (2) Serve as a forum for the exchange of knowl-  
2           edge and experience.

3           (3) Accelerate the transmission of knowledge  
4           from existing health information initiatives in both  
5           the private and public sectors.

6           (4) Support the establishment of regional and  
7           local health information networks to facilitate the  
8           interoperability of health care data across health  
9           care settings.

10          (5) Develop solutions to barriers to electronic  
11          health information exchange.

12          (6) Provide technical assistance and tools to  
13          help health information exchanges develop a path to-  
14          ward financial sustainability.

15          (7) Establish a longitudinal database to meas-  
16          ure the business sustainability of health information  
17          exchange and evaluate the impact of health informa-  
18          tion exchange on community health outcomes and  
19          value.

20          (b) RULE OF CONSTRUCTION.—Nothing in this sec-  
21          tion shall be construed to require the duplication of Fed-  
22          eral efforts with respect to the establishment of the Cen-  
23          ter, regardless of whether such efforts were carried out  
24          prior to or after the enactment of this subsection.

1 (c) TRANSITION FROM NATIONAL RESOURCE CEN-  
2 TER FOR HEALTH INFORMATION TECHNOLOGY UNDER  
3 AHRQ.—All functions, personnel, assets, and liabilities  
4 applicable to the National Resource Center for Health In-  
5 formation Technology under the Agency for Healthcare  
6 Research and Quality as of the day before the date of the  
7 enactment of this Act shall be transferred, and applied  
8 in the same manner and under the same terms and condi-  
9 tions, to the Health Information Technology Resource  
10 Center under the Office of the National Coordinator for  
11 Health Information Technology established under sub-  
12 section (a) as of the date of the enactment of this Act.

13 **SEC. 104. STRATEGIC PLAN FOR COORDINATING IMPLE-**  
14 **MENTATION OF HEALTH INFORMATION**  
15 **TECHNOLOGY.**

16 (a) IN GENERAL.—Not later than 180 days after the  
17 date of the enactment of this Act, the Secretary of Health  
18 and Human Services, in consultation with entities involved  
19 in the area of health information technology, shall develop  
20 a strategic plan related to the need for coordination in  
21 such area.

22 (b) COORDINATION OF SPECIFIC IMPLEMENTATION  
23 PROCESSES.—The strategic plan under subsection (a)  
24 shall address the need for coordination in the implementa-  
25 tion of the following:

1           (1) HEALTH INFORMATION TECHNOLOGY  
2 STANDARDS.—Health information technology stand-  
3 ards approved under section 101(c)(3)(B)(i).

4           (2) HIPAA TRANSACTION STANDARDS.—Trans-  
5 action standards under section 1173(a) of the Social  
6 Security Act (42 U.S.C. 1320d–2(d)).

7           (3) UPDATED ICD CODES.—The International  
8 Statistical Classification of Diseases and Related  
9 Health Problems, 10th revision, Clinical Modifica-  
10 tion (ICD–10–CM) and the International Statistical  
11 Classification of Diseases and Related Health Prob-  
12 lems, 10th revision, Procedure Coding System  
13 (ICD–10–PCS) described in section 201.

14       (c) COORDINATION AMONG SPECIFIC FEDERAL EN-  
15 TITIES.—The strategic plan under subsection (a) shall ad-  
16 dress any methods to coordinate, with respect to the elec-  
17 tronic exchange of health information, actions taken by  
18 the following entities:

19           (1) The Office of the National Coordinator for  
20 Health Information Technology.

21           (2) AHIC 2.0 established under section 102.

22           (3) The Office of Electronic Standards and Se-  
23 curity of the Centers for Medicare and Medicaid  
24 Services.

1           (4) The National Committee on Vital Health  
2           Statistics.

3           (5) Any other entity involved in the electronic  
4           exchange of health information that the Secretary  
5           determines appropriate.

6           **TITLE II—MODERNIZING THE**  
7           **HEALTH CARE DELIVERY SYS-**  
8           **TEM**

9           **SEC. 201. RULEMAKING TO UPGRADE ASC X12 AND NCPDP**  
10           **STANDARDS AND ICD CODES.**

11           (a) IN GENERAL.—

12           (1) ASC X12 AND NCPDP STANDARDS.—Not  
13           later than April 1, 2009, the Secretary of Health  
14           and Human Services shall promulgate a final rule  
15           under section 1174(b) of the Social Security Act (42  
16           U.S.C. 1320d–3(b)) to provide for the following  
17           modification of standards:

18           (A) ACCREDITED STANDARDS COMMITTEE  
19           X12 (ASC X12) STANDARD.—The replacement of  
20           the Accredited Standards Committee X12 (ASC  
21           X12) version 4010 adopted under section  
22           1173(a) of such Act (42 U.S.C. 1320d–2(a)),  
23           including for purposes of part A of title XVIII  
24           of such Act, with the ASC X12 version 5010,

1 as reviewed by the National Committee on Vital  
2 Health Statistics.

3 (B) NATIONAL COUNCIL FOR PRESCRIP-  
4 TION DRUG PROGRAMS (NCPDP) TELECOMMUNI-  
5 CATIONS STANDARDS.—The replacement of the  
6 National Council for Prescription Drug Pro-  
7 grams (NCPDP) Telecommunications Stand-  
8 ards version 5.1 adopted under section 1173(a)  
9 of such Act (42 U.S.C. 1320d–2(a)), including  
10 for purposes of part A of title XVIII of such  
11 Act, with NCPDP Telecommunications Stand-  
12 ards version C.3, as approved by such Council  
13 and reviewed by the National Committee on  
14 Vital Health Statistics.

15 (2) ICD CODES.—Not later than January 1,  
16 2011, the Secretary of Health and Human Services  
17 shall promulgate a final rule under section 1174(b)  
18 of the Social Security Act (42 U.S.C. 1320d–3(b))  
19 to provide for the replacement of the International  
20 Statistical Classification of Diseases and Related  
21 Health Problems, 9th revision, Clinical Modification  
22 (ICD–9–CM) under the regulation promulgated  
23 under section 1173(c) of such Act (42 U.S.C.  
24 1320d–2(c)), including for purposes of part A of  
25 title XVIII of such Act, with both of the following:

1 (A) The International Statistical Classi-  
2 fication of Diseases and Related Health Prob-  
3 lems, 10th revision, Clinical Modification (ICD-  
4 10-CM).

5 (B) The International Statistical Classi-  
6 fication of Diseases and Related Health Prob-  
7 lems, 10th revision, Procedure Coding System  
8 (ICD-10-PCS).

9 (b) **RULE OF CONSTRUCTION.**—Nothing in sub-  
10 section (a)(2) shall be construed as affecting the applica-  
11 tion of classification methodologies or codes, such as CPT  
12 or HCPCS codes, other than under the International Sta-  
13 tistical Classification of Diseases and Related Health  
14 Problems (ICD).

15 **SEC. 202. PROCEDURES TO ENSURE TIMELY UPDATING OF**  
16 **STANDARDS THAT ENABLE ELECTRONIC EX-**  
17 **CHANGES.**

18 Section 1174(b) of the Social Security Act (42 U.S.C.  
19 1320d-3(b)) is amended—

20 (1) in paragraph (1)—

21 (A) in the first sentence, by inserting “and  
22 in accordance with paragraph (3)” before the  
23 period; and

24 (B) by adding at the end the following new  
25 sentence: “For purposes of this subsection and

1 section 1173(c)(2), the term ‘modification’ in-  
2 cludes a new version or a version upgrade.’’;  
3 and

4 (2) by adding at the end the following new  
5 paragraph:

6 “(3) EXPEDITED PROCEDURES FOR ADOPTION  
7 OF ADDITIONS AND MODIFICATIONS TO STAND-  
8 ARDS.—

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

19 “(B) PUBLICATION OF NOTICES.—Under  
20 the upgrade program:

21 “(i) VOLUNTARY NOTICE OF INITI-  
22 ATION OF PROCESS.—Not later than 30  
23 days after the date the Secretary receives  
24 a notice from a standard setting organiza-  
25 tion that the organization is initiating a

1 process to develop an addition or modifica-  
2 tion to a standard adopted under section  
3 1173(a), the Secretary shall publish a no-  
4 tice in the Federal Register that—

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

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

10 “(III) invites public participation  
11 in such process.

12 “(ii) VOLUNTARY NOTICE OF PRE-  
13 LIMINARY DRAFT OF ADDITIONS OR MODI-  
14 FICATIONS TO STANDARDS.—Not later  
15 than 30 days after the date the Secretary  
16 receives a notice from a standard setting  
17 organization that the organization has pre-  
18 pared a preliminary draft of an addition or  
19 modification to a standard adopted by sec-  
20 tion 1173(a), the Secretary shall publish a  
21 notice in the Federal Register that—

22 “(I) identifies the subject matter  
23 of (and summarizes) the addition or  
24 modification;

1                   “(II) specifies the procedure for  
2                   obtaining the draft;

3                   “(III) provides a description of  
4                   how persons may submit comments in  
5                   writing and at any public hearing or  
6                   meeting held by the organization on  
7                   the addition or modification; and

8                   “(IV) invites submission of such  
9                   comments and participation in such  
10                  hearing or meeting without requiring  
11                  the public to pay a fee to participate.

12                  “(iii) NOTICE OF PROPOSED ADDITION  
13                  OR MODIFICATION TO STANDARDS.—Not  
14                  later than 30 days after the date the Sec-  
15                  retary receives a notice from a standard  
16                  setting organization that the organization  
17                  has a proposed addition or modification to  
18                  a standard adopted under section 1173(a)  
19                  that the organization intends to submit  
20                  under subparagraph (D)(iii), the Secretary  
21                  shall publish a notice in the Federal Reg-  
22                  ister that contains, with respect to the pro-  
23                  posed addition or modification, the infor-  
24                  mation required in the notice under clause

1 (ii) with respect to the addition or modi-  
2 fication.

3 “(iv) CONSTRUCTION.—Nothing in  
4 this paragraph shall be construed as re-  
5 quiring a standard setting organization to  
6 request the notices described in clauses (i)  
7 and (ii) with respect to an addition or  
8 modification to a standard in order to  
9 qualify for an expedited determination  
10 under subparagraph (C) with respect to a  
11 proposal submitted to the Secretary for  
12 adoption of such addition or modification.

13 “(C) PROVISION OF EXPEDITED DETER-  
14 MINATION.—Under the upgrade program and  
15 with respect to a proposal by a standard setting  
16 organization for an addition or modification to  
17 a standard adopted under section 1173(a), if  
18 the Secretary determines that the standard set-  
19 ting organization developed such addition or  
20 modification in accordance with the require-  
21 ments of subparagraph (D) and the National  
22 Committee on Vital and Health Statistics rec-  
23 ommends approval of such addition or modifica-  
24 tion under subparagraph (E), the Secretary

1 shall provide for expedited treatment of such  
2 proposal in accordance with subparagraph (F).

3 “(D) REQUIREMENTS.—The requirements  
4 under this subparagraph with respect to a pro-  
5 posed addition or modification to a standard by  
6 a standard setting organization are the fol-  
7 lowing:

8 “(i) REQUEST FOR PUBLICATION OF  
9 NOTICE.—The standard setting organiza-  
10 tion submits to the Secretary a request for  
11 publication in the Federal Register of a no-  
12 tice described in subparagraph (B)(iii) for  
13 the proposed addition or modification.

14 “(ii) PROCESS FOR RECEIPT AND  
15 CONSIDERATION OF PUBLIC COMMENT.—  
16 The standard setting organization provides  
17 for a process through which, after the pub-  
18 lication of the notice referred to under  
19 clause (i), the organization—

20 “(I) receives and responds to  
21 public comments submitted on a time-  
22 ly basis on the proposed addition or  
23 modification before submitting such  
24 proposed addition or modification to

1 the National Committee on Vital and  
2 Health Statistics under clause (iii);

3 “(II) makes publicly available a  
4 written explanation for its response in  
5 the proposed addition or modification  
6 to comments submitted on a timely  
7 basis; and

8 “(III) makes public comments re-  
9 ceived under clause (I) available, or  
10 provides access to such comments, to  
11 the Secretary.

12 “(iii) SUBMITTAL OF FINAL PRO-  
13 POSED ADDITION OR MODIFICATION TO  
14 NCVHS.—After completion of the process  
15 under clause (ii), the standard setting or-  
16 ganization submits the proposed addition  
17 or modification to the National Committee  
18 on Vital and Health Statistics for review  
19 and consideration under subparagraph (E).  
20 Such submission shall include information  
21 on the organization’s compliance with the  
22 notice and comment requirements (and re-  
23 sponses to those comments) under clause  
24 (ii).

1           “(E) HEARING AND RECOMMENDATIONS  
2 BY NATIONAL COMMITTEE ON VITAL AND  
3 HEALTH STATISTICS.—Under the upgrade pro-  
4 gram, upon receipt of a proposal submitted by  
5 a standard setting organization under subpara-  
6 graph (D)(iii) for the adoption of an addition or  
7 modification to a standard, the National Com-  
8 mittee on Vital and Health Statistics shall pro-  
9 vide notice to the public and a reasonable op-  
10 portunity for public testimony at a hearing on  
11 such addition or modification. The Secretary  
12 may participate in such hearing in such capac-  
13 ity (including presiding ex officio) as the Sec-  
14 retary shall determine appropriate. Not later  
15 than 90 days after the date of receipt of the  
16 proposal, the Committee shall submit to the  
17 Secretary its recommendation to adopt (or not  
18 adopt) the proposed addition or modification.

19           “(F) DETERMINATION BY SECRETARY TO  
20 ACCEPT OR REJECT NATIONAL COMMITTEE ON  
21 VITAL AND HEALTH STATISTICS RECOMMENDA-  
22 TION.—

23           “(i) TIMELY DETERMINATION.—  
24 Under the upgrade program, if the Na-  
25 tional Committee on Vital and Health Sta-

1           tistics submits to the Secretary a rec-  
2           ommendation under subparagraph (E) to  
3           adopt a proposed addition or modification,  
4           not later than 90 days after the date of re-  
5           ceipt of such recommendation the Sec-  
6           retary shall make a determination to ac-  
7           cept or reject the recommendation and  
8           shall publish notice of such determination  
9           in the Federal Register not later than 30  
10          days after the date of the determination.

11           “(ii) CONTENTS OF NOTICE.—If the  
12          determination is to reject the recommenda-  
13          tion, such notice shall include the reasons  
14          for the rejection. If the determination is to  
15          accept the recommendation, as part of  
16          such notice the Secretary shall promulgate  
17          the modified standard (including the ac-  
18          cepted proposed addition or modification  
19          accepted).

20           “(iii) LIMITATION ON CONSIDER-  
21          ATION.—The Secretary shall not consider a  
22          proposal under this subparagraph unless  
23          the Secretary determines that the require-  
24          ments of subparagraph (D) (including pub-  
25          lication of notice and opportunity for pub-

1           lic comment) have been met with respect to  
2           the proposal.

3           “(G) EXEMPTION FROM PAPERWORK RE-  
4           DUCTION ACT.—Chapter 35 of title 44, United  
5           States Code, shall not apply to a final rule pro-  
6           mulgated under subparagraph (F).”.

7 **SEC. 203. FEDERAL PURCHASING AND DATA COLLECTION.**

8           (a) COORDINATION OF FEDERAL SPENDING.—

9           (1) IN GENERAL.—Subject to section 204(e),  
10          not later than 1 year after the date of the approval  
11          of an applicable standard under section  
12          101(c)(3)(B)(i), no Federal funds may be used for  
13          the purchase of any health information technology or  
14          health information technology system for clinical  
15          care or for the electronic retrieval, storage, or ex-  
16          change of health information unless such technology  
17          or system has been certified under section  
18          101(c)(3)(B)(ii) with respect to compliance with  
19          such standard.

20          (2) RULE OF CONSTRUCTION.—Nothing in  
21          paragraph (1) shall be construed to restrict the pur-  
22          chase of minor (as determined by the Secretary)  
23          hardware or software components in order to mod-  
24          ify, correct a deficiency in, or extend the life of exist-  
25          ing hardware or software.

1 (b) COORDINATION OF FEDERAL DATA COLLEC-  
2 TION.—Subject to section 204(c), not later than 3 years  
3 after the date of the approval of an applicable standard  
4 under section 101(c)(3)(B)(i), all Federal agencies col-  
5 lecting health data in an electronic format for the pur-  
6 poses of quality reporting, surveillance, epidemiology, ad-  
7 verse event reporting, research, or for other purposes de-  
8 termined appropriate by the Secretary of Health and  
9 Human Services, shall comply with such standard.

10 **SEC. 204. STUDY TO IMPROVE PRESERVATION AND PRO-**  
11 **TECTION OF SECURITY AND CONFIDEN-**  
12 **TIALITY OF HEALTH INFORMATION.**

13 (a) IN GENERAL.—The Secretary of Health and  
14 Human Services shall conduct a study of current Federal  
15 security and confidentiality standards to determine the  
16 strengths and weaknesses of such standards for purposes  
17 of protecting the security and confidentiality of individ-  
18 ually identifiable health information while taking into ac-  
19 count the need for timely and efficient exchanges of health  
20 information to improve quality of care and ensure the  
21 availability of health information necessary to make med-  
22 ical decisions at the location in which the medical care in-  
23 volved is provided.

24 (b) REPORT.—Not later than 24 months after the  
25 date of the enactment of this Act, the Secretary of Health

1 and Human Services shall submit to Congress a report  
2 on the study under subsection (a) and shall include in such  
3 report recommendations for improving the current Federal  
4 security and confidentiality standards, including rec-  
5 ommendations for a mechanism to track breaches to the  
6 security or confidentiality of individually identifiable  
7 health information and for appropriate penalties to apply  
8 in the case of such a breach.

9 (c) PRESERVATION OF CURRENT SECURITY AND  
10 CONFIDENTIALITY STANDARDS BEFORE SUBMITTAL OF  
11 REPORT.—None of the provisions of this Act or amend-  
12 ments made by this Act may limit, or require issuance of  
13 a regulation that would limit, the effect of a current Fed-  
14 eral security and confidentiality standard before the date  
15 of the submittal of the report under subsection (b).

16 (d) CURRENT FEDERAL SECURITY AND CONFIDEN-  
17 TIALITY STANDARDS DEFINED.—For purposes of this sec-  
18 tion, the term “current Federal security and confiden-  
19 tiality standards” means the Federal privacy standards es-  
20 tablished pursuant to section 264(c) of the Health Insur-  
21 ance Portability and Accountability Act of 1996 (42  
22 U.S.C. 1320d–2 note) and security standards established  
23 under section 1173(d) of the Social Security Act.

1           **TITLE III—INCENTIVIZING**  
2           **ADOPTION OF HEALTH IT**

3   **SEC. 301. PHYSICIAN INCENTIVES TO ADOPT HEALTH IT.**

4           (a) PURCHASE OF QUALIFIED HEALTH CARE INFOR-  
5   MATION TECHNOLOGY.—Section 179 of the Internal Rev-  
6   enue Code of 1986 (relating to election to expense certain  
7   depreciable assets) is amended by adding at the end the  
8   following new subsection:

9           “(e) HEALTH CARE INFORMATION TECHNOLOGY.—

10           “(1) IN GENERAL.—In the case of qualified  
11   health care information technology purchased by a  
12   medical care provider and placed in service during a  
13   taxable year—

14           “(A) subsection (b)(1) shall be applied by  
15   substituting ‘\$250,000’ for ‘\$100,000’,

16           “(B) subsection (b)(2) shall be applied by  
17   substituting ‘\$600,000’ for ‘\$400,000’, and

18           “(C) subsection (b)(5)(A) shall be applied  
19   by substituting ‘\$250,000 and \$600,000’ for  
20   ‘\$100,000 and \$400,000’.

21           “(2) DEFINITIONS.—For purposes of this sub-  
22   section—

23           “(A) QUALIFIED HEALTH CARE INFORMA-  
24   TION TECHNOLOGY.—The term ‘qualified health

1 care information technology’ means section 179  
2 property which—

3 “(i) has been certified pursuant to  
4 section 101(e)(3)(B)(ii) of the Promoting  
5 Health Information Technology Act of  
6 2008, and

7 “(ii) is used primarily for the elec-  
8 tronic creation, maintenance, and exchange  
9 of medical care information to improve the  
10 quality or efficiency of medical care.

11 “(B) MEDICAL CARE PROVIDER.—The  
12 term ‘medical care provider’ means any person  
13 engaged in the trade or business of providing  
14 medical care.

15 “(C) MEDICAL CARE.—The term ‘medical  
16 care’ has the meaning given such term by sec-  
17 tion 213(d).”.

18 (b) EFFECTIVE DATE.—The amendment made by  
19 this section shall apply to property placed in service on  
20 or after the date of the enactment of this Act.

21 **SEC. 302. ELIMINATION OF SUNSET APPLICABLE TO STARK**  
22 **EXCEPTION FOR ELECTRONIC HEALTH**  
23 **RECORDS ARRANGEMENTS.**

24 In applying section 1877(e) of the Social Security Act  
25 (42 U.S.C. 1395(e)), with respect to a regulation imple-

1 menting such section by providing an exception to the pro-  
2 hibition against making certain physician referrals in the  
3 case of the offering or payment of nonmonetary remunera-  
4 tion (consisting of items and services in the form of soft-  
5 ware or information technology and training services) nec-  
6 essary and used predominantly to create, maintain, trans-  
7 mit, or receive electronic health records, the Secretary of  
8 Health and Human Services shall not limit the period in  
9 which such an exception under such a regulation applies.

10 **SEC. 303. PROMOTION OF TELEHEALTH SERVICES.**

11 (a) FACILITATING THE PROVISION OF TELEHEALTH  
12 SERVICES ACROSS STATE LINES.—

13 (1) IN GENERAL.—The Secretary of Health and  
14 Human Services shall, in coordination with physi-  
15 cians, health care practitioners, patient advocates,  
16 and representatives of States, encourage and facili-  
17 tate the adoption of State reciprocity agreements for  
18 practitioner licensure in order to expedite the provi-  
19 sion across State lines of telehealth services.

20 (2) REPORT.—Not later than 18 months after  
21 the date of the enactment of this Act, the Secretary  
22 of Health and Human Services shall submit to Con-  
23 gress a report on the actions taken to carry out  
24 paragraph (1).

1           (3) STATE DEFINED.—For purposes of this  
2 subsection, the term “State” has the meaning given  
3 that term for purposes of title XVIII of the Social  
4 Security Act.

5           (b) STUDY AND REPORT ON EXPANSION OF HOME  
6 HEALTH-RELATED TELEHEALTH SERVICES.—

7           (1) STUDY.—The Secretary of Health and  
8 Human Services shall conduct a study to determine  
9 the feasibility, advisability, and the costs of—

10                   (A) including coverage and payment for  
11 home health-related telehealth services as part  
12 of home health services under title XVIII of the  
13 Social Security Act; and

14                   (B) expanding the list of sites described in  
15 paragraph (4)(C)(ii) of section 1834(m) of the  
16 Social Security Act (42 U.S.C. 1395m(m)) to  
17 include county mental health clinics or other  
18 publicly funded mental health facilities for the  
19 purpose of payment under such section for the  
20 provision of telehealth services at such clinics or  
21 facilities.

22           (2) SPECIFICS OF STUDY.—Such study shall  
23 demonstrate whether the changes described in sub-  
24 paragraphs (A) and (B) of paragraph (1) are likely  
25 to result in the following:

1 (A) Enhanced health outcomes for individ-  
2 uals with one or more chronic conditions.

3 (B) Health outcomes for individuals fur-  
4 nished telehealth services or home health-re-  
5 lated telehealth services that are at least com-  
6 parable to the health outcomes for individuals  
7 furnished similar items and services by a health  
8 care provider at the same location of the indi-  
9 vidual or at the home of the individual, respec-  
10 tively.

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

14 (D) Closer monitoring of individuals by  
15 health care providers.

16 (E) Overall reduction in expenditures for  
17 health care items and services.

18 (F) Improved access to health care.

19 (3) HOME HEALTH-RELATED TELEHEALTH  
20 SERVICES DEFINED.—For purposes of this sub-  
21 section, the term “home health-related telehealth  
22 services” means technology-based professional con-  
23 sultations, patient monitoring, patient training serv-  
24 ices, clinical observation, patient assessment, and  
25 any other health services that utilize telecommuni-

1 cations technologies. Such term does not include a  
2 telecommunication that consists solely of a telephone  
3 audio conversation, facsimile, electronic text mail, or  
4 consultation between two health care providers.

5 (4) REPORT.—Not later than 18 months after  
6 the date of the enactment of this Act, the Secretary  
7 of Health and Human Services shall submit to Con-  
8 gress a report on the study conducted under para-  
9 graph (1) and shall include in such report such rec-  
10 ommendations for legislation or administration ac-  
11 tion as the Secretary determines appropriate.

12 (c) STUDY AND REPORT ON STORE AND FORWARD  
13 TECHNOLOGY FOR TELEHEALTH.—

14 (1) STUDY.—The Secretary of Health and  
15 Human Services, acting through the Director of the  
16 Office for the Advancement of Telehealth, shall con-  
17 duct a study on the use of store and forward tech-  
18 nologies (that provide for the asynchronous trans-  
19 mission of health care information in single or multi-  
20 media formats) in the provision of telehealth serv-  
21 ices. Such study shall include an assessment of the  
22 feasibility, advisability, and the costs of expanding  
23 the use of such technologies for use in the diagnosis  
24 and treatment of certain health conditions, as speci-  
25 fied by the Secretary.

1           (2) REPORT.—Not later than 18 months after  
2           the date of the enactment of this Act, the Secretary  
3           of Health and Human Services shall submit to Con-  
4           gress a report on the study conducted under para-  
5           graph (1) and shall include in such report such rec-  
6           ommendations for legislation or administration ac-  
7           tion as the Secretary determines appropriate.

8   **SEC. 304. FQHCS INCLUDED IN ELECTRONIC HEALTH**  
9                                   **RECORDS DEMONSTRATION.**

10          Effective as of the date of the enactment of this Act,  
11          in developing and implementing a demonstration initiative  
12          to foster the implementation and adoption of electronic  
13          health records and health information technology, the  
14          Centers of Medicare & Medicaid Services shall provide for  
15          the eligibility of Federally qualified health centers (as de-  
16          fined in section 1861(aa)(4) of the Social Security Act (42  
17          U.S.C. 1395x(aa)(4)) to participate in such demonstra-  
18          tion.

○