

SECTION-BY-SECTION – *PROMOTING HEALTH INFORMATION TECHNOLOGY ACT*

TITLE I – IMPROVING THE INTEROPERABILITY OF HIT

Sec. 101. Improving Health Care Quality, Safety and Efficiency

TITLE XXX – HIT and Quality

Sec. 3001. Definitions; Reference

Defines 12 terms, including “health information,” “health insurance plan,” “safety net health plan,” “individually identifiable health information,” “qualified health information technology,” and “interoperability.”

Sec. 3002. National Coordinator for Health Information Technology

Codifies the position of the National Coordinator of HIT, which will be appointed by and report directly to the Secretary of HHS. Requires the Coordinator to coordinate HIT initiatives across HHS and all federal agencies, serve on both the AHIC and the Partnership and act as a liaison between the AHIC, Partnership and federal government.

Requires the Office of the National Coordinator to develop and publish a strategic plan for implementing a nationwide interoperable health infrastructure; to maintain and update a website with information related to standards and use cases, AHIC/Partnership recommendations, quality measures, funding, and post-sunset transition plans; to report on major public and private HIT systems; and to assess the impact of HIT in communities with health disparities and identify best practices to increase the adoption of HIT by providers in those communities. Authorizes such sums as necessary for fiscal years 2008-2012 and sunsets the ONC and the position of the National Coordinator on September 30, 2014.

Sec. 3003. Partnership for Health Care Improvement (“Partnership”); Standards and Technology

Establishes the public-private Partnership for Health Care Improvement (Partnership) to advise the Secretary on specific actions to achieve nationwide interoperable HIT infrastructure and to make recommendations on standards, implementation specifications, and certification criteria to be adopted by the federal government. Requires participation from a broad range of stakeholder groups with specific technical expertise in standards development, implementation specifications, and certification criteria. Sets forth guidelines for appointing members to 3-year terms, and requires the membership to designate a Chairperson and Vice Chairperson.

Requires the Partnership to develop and maintain a website that outlines governance rules, a business plan, meeting information and a process for public comment. Also requires participation from outside groups, including those with expertise in: health information privacy, health information security, health care quality and patient safety, medical and clinical research

data exchange, developing HIT standards and new HIT. Instructs the Partnership to take into account the recommendations of the AHIC in carrying out its duties.

Standards and Implementation Requirements: Requires the Partnership within 90 days to develop and publish in the Federal Register and on the HHS website an annual assessment schedule for standards and implementation specifications. Within one year after enactment, the Partnership will recommend to the Secretary and publish in the Federal Register and on the ONC website any standards and implementation specifications to be reviewed by the Secretary, HHS, VA, DoD and other agencies. The Partnership, in consultation with the Secretary, may designate one or more private entities to develop and recommend standards and implementation specifications. The Secretary, or a recognized private entity, may also conduct pilot projects to test the standards and implementation specifications. If appropriate and approved, the President will provide for federal adoption of proposed recommendations – provided they are consistent with HIPAA – to be published in the Federal Register and ONC website within 30 days of interagency review.

Certification: The Partnership, in consultation with the Secretary, may designate one or more private entities to develop certification criteria to certify that HIT products are in compliance with adopted standards. The criteria for certification of HIT products will be reviewed, and possibly adopted by the Secretary, based on Partnership recommendations. A third party may also be designated by the Secretary to carry out certification responsibilities. Mandates that nothing in the section should disrupt existing certification and standards development activities (e.g., CCHIT and HITSP). Authorizes such sums as necessary for fiscal years 2008-2012.

Sec. 3004. American Health Information Community – Policies

Establishes the public-private American Health Information Community (AHIC) to serve as a broad discussion forum for stakeholders to improve HIT adoption and implementation; to advise the Secretary and other department heads on policy considerations related to HIT; and to make annual recommendations related to a policy framework for and national adoption of nationwide interoperable HIT infrastructure. The policy recommendations will encompass privacy and security protections, consumer education, appropriate uses of health information, and chronic disease management. The recommendations will be published on the ONC website and in the Federal Register. The Secretary will determine which recommendations will be endorsed by the federal government.

Sets forth guidelines for appointing AHIC members to 3-year terms and requires the membership to designate a Chairperson and Vice Chairperson. Allows for detailees from other federal agencies and provides for participation in AHIC by outside groups, including those with expertise in health information privacy and security, health information security, health care quality and patient safety, medical ethics, medical and clinical research data exchange, and developing HIT standards and new HIT. Applies the *Federal Advisory Committee Act* to the AHIC for 7 years, sunsets the section on September 20, 2014 and authorizes such sums as necessary for fiscal years 2008-2012.

Sec. 3005. Federal Purchasing and Data Collection

Coordination of Federal Spending: Not later than one year following adoption of standards by the President, federal agencies will not be allowed to expend federal funds for the purchase of any new HIT or HIT system for clinical care or for the electronic retrieval, storage, or exchange of health information if the HIT is not consistent with applicable standards adopted by the federal government. This does not restrict the purchase of minor hardware/software to modify, correct deficiencies in, or extend existing components.

Voluntary Adoption: Federally-adopted standards and implementation specifications are voluntary for private entities, but any private entities that enter into federal contracts must adopt the standards used by the federal government for the purposes of the contract.

Coordination of Federal Data Collection: Within 3 years of adoption of data collection standards and implementation specifications, all agencies collecting data in electronic format for quality reporting, surveillance, epidemiology, adverse event reporting, research, etc., will need to comply with those standards.

Sec. 3006. Quality and Efficiency Reports

Provides for the development of reports based on publicly available or entity-provided federal health care and private data to improve health care quality, advance health care research; enhance consumer education and awareness; and provide the public with reports on national, regional, and provider- and supplier-specific performance. Within a year of enactment, the Secretary will establish and implement procedures for requesting a Health Quality Organization (HQO) report based on federal healthcare data disclosed to the HQO; federal healthcare data that is de-identified patient enrollment data or reimbursement claims; survey data maintained by the Secretary/entities under contract with HHS; and, where feasible, other such data maintained by other federal agencies/contracts.

The Secretary will enter into 3 HQO contracts with entities to store federal and private health data and to develop and release reports. The HQO must release reports within 6 months of a request or the Secretary may enter into additional contracts. The HQO must have research capabilities to conduct and complete reports; secure IT infrastructure and operational standards to support a federal health care database; expertise in developing health care quality and efficiency reports; and significant business presence in the U.S.

Contract requirements: The HQO entity must meet HIPAA requirements and provide assurances it will not use federal health care data in a manner that violates privacy of individually identifiable health information. If a contract is terminated or not renewed, the entity will continue to comply with confidentiality requirements and return data and reports to HHS or destroy the data. The entity is also prohibited from disclosing negotiated price concessions obtained by providers, suppliers, or health care plans, or other proprietary cost information; and from merging federal health care data with other data within the entity. The entity must disclose financial, reporting, contractual or other relationship with providers, suppliers, health care plans. The contracts must be competitive and will be reviewed by the Secretary in the event of a HQO merger or acquisition.

The Secretary will develop procedures by which entities can submit requests for reports based on federal health care data for an approved purpose, a specific methodology and a specific HQO. Following a HQO publishing a summary of the request in the Federal Register and on the HHS website, the HQO may develop the report, which must include the standards, methodologies, and measures of quality used. The Secretary will review the report prior to its release within 30 days of completion to ensure HIPAA compliance; if the report complies, it will be released to the requesting entity and a brief description will be posted for the public on the HHS website. Within one year of release, the entire report will be made available to the public. The Comptroller General will review and submit an annual report to the Secretary on report compliance with their intended purpose; if there is a pattern of non-compliance, the Secretary may cancel the HQO's contract.

The Secretary can charge the HQO a fee for disclosing data and conducting the review; the fee must be sufficient to cover costs of those activities. HQOs can charge entities a fee for report development and release; if an entity's annual revenue is less than \$10 million, they can receive a 10% discount; larger entities that do not agree to release the report to the public within 6 months, will have a 10% increase added to their fee. Within 1 year after enactment, the Secretary will submit a report to Congress on the coordination of existing federal health care quality initiatives (e.g., coordination of data between HQOs). Within 6 months after enactment, the Secretary will prescribe regulations to carry out the section.

Sec. 3007. Research Access to Health Care Data and Reporting on Performance

Researchers who meet the Secretary's criteria will be permitted access to all federal health care data and can report on the performance of providers, and suppliers in an identifiable format, and health plans.

TITLE II – FACILITATING THE WIDESPREAD ADOPTION OF INTEROPERABLE HIT

Sec. 3008. Facilitating the Widespread Adoption of Interoperable HIT

Competitive Grants for Adoption of Technology: The Secretary may provide grants to eligible entities to facilitate purchase and enhance utilization of qualified HIT systems. Outlines eligibility for grants, including requirements for strategic plans, adoption of voluntary federal standards, implementation of adopted quality measures, agreement to notify patients of wrongful disclosure of their individually identifiable health information, consideration of input by healthcare providers' employees on implementation and use of HIT systems, significant financial need, and a matching provision of \$1 to \$3 in federal funds. Specifies how grant funds may be used. Identifies entities that will receive preference in awarding grants.

Competitive Grants for Development of State Loan Programs: The Secretary may give grants to States to establish loan programs for health care providers, provided the state has established a qualified HIT loan fund. Grant dollars for the state loans will be deposited directly into the loan fund – dollars for other purposes may not be deposited into the loan fund. Outlines

eligibility requirements for state receiving grants and requires the establishment of state loan funds and annual state strategic plans. Requires providers receiving funds by way of the grant-enabled loan fund to meet certain mandates related to interoperability, privacy/security and others. Describes the types of assistance the state loans funds may provide and provides limitations on the cost of administering. Allows for private sector contributions and imposes a matching requirement of \$1 to \$1 in federal funds. Authorizes the Secretary to give a preference in awarding state loan grants to states that adopt value-based purchasing programs. Requires a report from the Secretary to the Congress summarizing the reports from the States under the program.

Competitive grants for the implementation of regional or local HIT plans: The Secretary may give grants to entities to implement regional or local health information plans, pursuant to standards, implementation specifications and certification criteria, and other requirements adopted by the Secretary. Outlines the eligibility requirements for entities, including financial need, a governance structure with participation from specific sectors of the health care community, adoption of nondiscrimination and conflict of interest policies, adoption of federally-adopted HIT standards, adoption of quality measures, and implementation of policies to notify patients if health information is wrongfully disclosed.

Requires applicants to submit an application to the Secretary that outlines specific objectives, strategies and plans for improving health care quality through standards adoption, quality measures, privacy/security practices, sound governance and financial plans, and the promotion of HIT use by providers. Requires a match of \$1 to \$2 in federal funds – non-federal contributions can be in the form of cash or in kind, including equipment, technology or services. Outlines the manner in which the grant money may used and requires an annual report to the Secretary outlining specific benchmarks. Authorizes \$163 million for 2008, \$163 million for 2009, and such sums as necessary for 2010-2012. All funds will be made available through 2012.

Sec. 3009. Demonstration Program to Integrate Information Technology into Clinical Education

The Secretary may give competitive grants, pursuant to peer review, to entities or consortia to carry out demonstration projects to develop academic curricula integrating HIT systems into clinical education or analyze clinical data to discover quality measures for improved clinical outcomes. Outlines eligibility requirements and identifies entities that may apply. Limits the use of funding to collaboration between 2 or more disciplines -- prohibits purchase the hardware, software or services. Requires matching funding of \$1 to \$2 in federal funds. The Secretary will provide for evaluation of the projects, distribute the findings and report to Congress within on year. Authorizes such sums as necessary for 2008-2011 and sunsets the program on September 30, 2012.

TITLE III – IMPROVING THE QUALITY OF HEALTH CARE

Sec. 301. Consensus Process for the Adoption of Quality Measures for Use in the Nationwide Interoperable HIT Infrastructure

Sec. 3010. Fostering Development and Use of Health Care Quality Measures

The Secretary will provide for the development of quality measures to evaluate quality and efficiency by designating an arrangement with a single organization to provide advice and recommendations on priorities, within 90 days of enactment. The designated organization, which will need 7 years of experience, will be responsible for developing an integrated national strategy for establishing quality measures; coordinating/harmonizing the development and testing of quality measures; establish standards for the development and testing of quality measures; endorsing national consensus quality measures; recommending quality measures to the Secretary for adoption and use; promoting the development and use of EHRs with automated collection, aggregation and transmission of quality measures; and providing recommendations to the Partnership (on integration of quality measures into certification process) and AHIC (on national policies).

The organization will be a private, non-profit entity, governed by a Board of Directors with a President/CEO. Sets forth guidelines for membership on the governing Board of Directors with respect to sector representatives and fields of experience. The designated organization's activities will be open and transparent, providing opportunity for public comment, and will operate as a voluntary consensus standards setting organization. Establishes requirements for development and annual update of quality measures, including ensuring they are evidence-based, reliable and valid. The Secretary may award grants through AHRQ to support the development and testing of quality measures -- the grants may not exceed \$50,000 each.

Sec. 3011. Adoption and Use of Quality Measures; Reporting

In order to ensure use and uniformity of private entity quality measures, the Secretary will adopt quality measures recommended by multi-stakeholder organizations and endorsed by the designated quality measures organization, and ensure standards adopted for federal purchasing and data collection integrate the adopted quality measures and do not conflict with SSA programs. The Secretary will enable HHS to accept electronic data submissions for the purposes of performance measurement. After consulting with multi-stakeholder groups, the Secretary will promulgate regulations to ensure comparative performance information is available to all appropriate individuals and entities.

TITLE IV – ENSURING PRIVACY AND SECURITY

Sec. 3012. Ensuring Privacy and Security

Expands the definition of “covered entities” under HIPAA to include “operators of health information electronic databases.” Defines “operators of health information electronic databases” as entities that “are constituted, organized, or chartered for the primary purpose of maintaining or transmitting protected health information (PHI) in a designated record; receive valuable consideration for maintaining or transmitting PHI in a designated record set; and are not

a provider, a payer, a health care clearinghouse or business associate of a covered entity as such terms are defined in the HIPAA privacy regulations.

Patient Rights: Provides individuals with the right of access to inspect and obtain a copy of their PHI in electronic format, to the extent provided under HIPAA. Provides individuals who believe they are the victim of medical fraud or that there is an error in their electronic PHI with the right to access, inspect and copy their PHI in a designated record set, including that which was fraudulently entered, and have a covered entity amend the PHI or record in the designated electronic record set. Provides individuals with the right to be notified in a manner consistent with the HIPAA privacy regulation by a covered entity if that covered entity wrongfully discloses protected health information and the wrongful disclosure is materially expected to result in medical fraud or identity theft.

Holds harmless provisions of any contract that provides for the application of privacy protections under HIPAA.

TITLE V – MISCELLANEOUS PROVISIONS

Sec. 501. GAO Study

Requires the GAO to submit a report to Congress within 9 months on the circumstances in which it is workable and necessary for entities that transmit data in electronic form to notify consumers when their individually identifiable health information is wrongfully disclosed.

Sec. 502. HIT Resource Center

Requires the Secretary to develop a HIT Resource Center (Center) to provide technical assistance and develop best practices to support and accelerate efforts to adopt, implement, and effectively use interoperable health information technology. Among other functions, the Center will serve as a forum for the exchange of knowledge and experience, provide for the establishment of regional and local health information networks, help develop and share best practices. To support Center activities and facilitate HIE across public and private sectors, the Director can modify the requirements of AHRQ's National Resource Center for HIT to provide necessary infrastructure to the HIT Resource Center. Authorizes such sums as necessary for the establishment of the Center in 2008-2009.

Sec. 503. Facilitating the Provision of Telehealth Services Across State Lines

Amends the PSA to Sec. 330L. Telemedicine; Incentive Grants Regarding Coordination Among States: The Secretary can award grants to States that have adopted regional State licensure reciprocity agreements to expedite telemedicine across state lines. The bill authorizes the appropriation of such sums necessary for the grants in each of 2008 and 2009-2012.