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(Original Signature of Member)

109TH CONGRESS
1ST SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mrs. JOHNSON of Connecticut introduced the following bill; which was referred to the Committee on _____

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Health Information Technology Promotion Act of 2005''.

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

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

(a) IN GENERAL.—Part A of title XI of the Social Security Act is amended by adding at the end the following new section:

''OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY

''SEC. 1150A. (a) ESTABLISHMENT.—There is established within the Department of Health and Human Services an Office of the National Coordinator for Health Information Technology that shall be headed by the National Coordinator for Health Information Technology (referred to in this section as the 'National Coordinator'). The National Coordinator shall be appointed by the President and shall report directly to the Secretary. The National Coordinator shall be paid at a rate equal to the rate of basic pay for level IV of the Executive Schedule.

''(b) GOALS OF NATIONWIDE INTEROPERABLE HEALTH INFORMATION TECHNOLOGY INFRASTRUCTURE.—The National Coordinator shall perform the duties under subsection (c) in a manner consistent with the

development of a nationwide interoperable health information technology infrastructure that—

''(1) improves health care quality, reduces medical errors, increases the efficiency of care, and advances the delivery of appropriate, evidence-based health care services;

''(2) promotes wellness, disease prevention, and management of chronic illnesses by increasing the availability and transparency of information related to the health care needs of an individual for such individual;

''(3) ensures that appropriate information necessary to make medical decisions is available in a usable form at the time and in the location that such service is provided;

''(4) produces greater value for health care expenditures by reducing health care costs that result from inefficiency, medical errors, inappropriate care, and incomplete information;

''(5) promotes a more effective marketplace, greater competition, greater systems analysis, increased choice, enhanced quality, and improved outcomes in health care services;

''(6) improves the coordination of information and the provision of such services through an effec-

tive infrastructure for the secure and authorized exchange and use of health care information; and

''(7) ensures that the confidentiality of individually identifiable health information of a patient is secure and protected.

''(c) DUTIES OF NATIONAL COORDINATOR.—

''(1) STRATEGIC PLANNER FOR INTEROPERABLE HEALTH INFORMATION TECHNOLOGY.—The National Coordinator shall maintain, direct, and oversee the continuous improvement of a strategic plan to guide the nationwide implementation of interoperable health information technology in both the public and private health care sectors consistent with subsection (b).

''(2) PRINCIPAL ADVISOR TO HHS.—The National Coordinator shall serve as the principal advisor of the Secretary on the development, application, and use of health information technology, and coordinate the health information technology programs of the Department of Health and Human Services.

''(3) COORDINATOR OF FEDERAL GOVERNMENT ACTIVITIES.—

''(A) IN GENERAL.—The National Coordinator shall serve as the coordinator of Federal

Government activities relating to health information technology.

''(B) SPECIFIC COORDINATION FUNCTIONS.—In carrying out subparagraph (A), the National Coordinator shall provide for—

''(i) the development and approval of standards used in the electronic creation, maintenance, or exchange of health information; and

''(ii) the certification and inspection of health information technology products, exchanges, and architectures to ensure that such products, exchanges, and architectures conform to the applicable standards approved under clause (i).

''(C) USE OF PRIVATE ENTITIES.—The National Coordinator shall, to the maximum extent possible, contract with or recognize private entities in carrying out subparagraph (B).

''(D) UNIFORM APPLICATION OF STANDARDS.—A standard approved under subparagraph (B)(i) for use in the electronic creation, maintenance, or exchange of health information shall preempt a standard adopted under State law, regulation, or rule for such a use.

''(4) INTRAGOVERNMENTAL COORDINATOR.—The National Coordinator shall ensure that health information technology policies and programs of the Department of Health and Human Services are coordinated with those of relevant executive branch agencies and departments with a goal to avoid duplication of effort and to ensure that each agency or department conducts programs within the areas of its greatest expertise and its mission in order to create a national interoperable health information system capable of meeting national public health needs effectively and efficiently.

''(5) ADVISOR TO OMB.—The National Coordinator shall provide to the Director of the Office of Management and Budget comments and advice with respect to specific Federal health information technology programs.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section for each of fiscal years 2006 through 2010.''.

(b) TREATMENT OF EXECUTIVE ORDER 13335.—Executive Order 13335 shall not have any force or effect after the date of the enactment of this Act.

(c) TRANSITION FROM ONCHIT UNDER EXECUTIVE ORDER.—

(1) IN GENERAL.—All functions, personnel, assets, liabilities, administrative actions, and statutory reporting requirements applicable to the old National Coordinator or the Office of the old National Coordinator on the date before the date of the enactment of this Act shall be transferred, and applied in the same manner and under the same terms and conditions, to the new National Coordinator and the Office of the new National Coordinator as of the date of the enactment of this Act.

(2) ACTING NATIONAL COORDINATOR.—Before the appointment of the new National Coordinator, the old National Coordinator shall act as the National Coordinator for Health Information Technology until the office is filled as provided in section 1150A(a) of the Social Security Act, as added by subsection (a). The President may appoint the old National Coordinator as the new National Coordinator.

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

(A) NEW NATIONAL COORDINATOR.—The term ''new National Coordinator'' means the

National Coordinator for Health Information Technology appointed under section 1150A of the Social Security Act, as added by subsection (a).

(B) OLD NATIONAL COORDINATOR.—The term ''old National Coordinator'' means the National Coordinator for Health Information Technology appointed under Executive Order 13335.

SEC. 3. SAFE HARBORS FOR PROVISION OF HEALTH INFORMATION TECHNOLOGY AND TRAINING SERVICES TO HEALTH CARE PROFESSIONALS.

(a) FOR CIVIL PENALTIES.—Section 1128A(b) of the Social Security Act (42 U.S.C. 1320a-7a(b)) is amended by adding at the end the following new paragraph:

''(4)(A) For purposes of this subsection, a payment described in paragraph (1) does not include any nonmonetary remuneration (in the form of health information technology and related training services) made by an entity to a physician if—

''(i) such remuneration is made without a condition that—

''(I) limits or restricts the use of the health information technology to services provided by

the physician to individuals receiving services at the entity;

''(II) limits or restricts the use of the health information technology in conjunction with other health information technology; or

''(III) takes into account the volume or value of referrals (or other business generated) by the physician to the entity;

''(ii) in the case of such remuneration made on a date that is on or after the date described in section 3(d)(2) of the Health Information Technology Promotion Act of 2005, to the extent the National Coordinator of Health Information Technology has approved a standard under section 1150A(c)(3)(B)(i), the health information technology provided conforms to such standard;

''(iii) in the case of such remuneration made on or after the date that is three years after the date described in section 3(d)(2) of the Health Information Technology Promotion Act of 2005, if the Secretary establishes criteria under section 3(e)(3) of such Act, such remuneration is made in accordance with such criteria; and

''(iv) such remuneration is arranged for in a written agreement that is signed by a representative

of the entity and by the physician and that specifies the remuneration made.

''(B) For purposes of subparagraph (A) and sections 1128B(b)(3)(J) and 1877(e)(9), the term 'health information technology' means hardware, software, license, right, intellectual property, equipment, or other information technology used primarily for the electronic creation, maintenance, and exchange of clinical health information to improve health care quality or efficiency.''.

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

(1) in subparagraph (G), by striking ''and'' at the end;

(2) in the subparagraph (H) added by section 237(d) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2213)—

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

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

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

(A) by redesignating such subparagraph as subparagraph (I);

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

(C) by striking the period at the end and inserting ''; and''; and

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

''(J) any nonmonetary remuneration (in the form of health information technology, as defined in section 1128A(b)(4)(B), and related training services) made to a person if—

''(i) such remuneration is solicited or received (or offered or paid) without a condition that—

''(I) limits or restricts the use of the health information technology to services provided by the person to individuals receiving services at the location of the entity providing such technology;

''(II) limits or restricts the use of the health information technology in conjunction with other health information technology; or

"(III) takes into account the volume or value of referrals (or other business generated) by the person to the entity providing such technology;

"(ii) in the case of such remuneration made on a date that is on or after the date described in section 3(d)(2) of the Health Information Technology Promotion Act of 2005, to the extent the National Coordinator of Health Information Technology has approved a standard under section 1150A(c)(3)(B)(i), the health information technology provided conforms to such standard;

"(iii) in the case of such remuneration made on or after the date that is three years after the date described in section 3(d)(2) of the Health Information Technology Promotion Act of 2005, if the Secretary establishes criteria under section 3(e)(3) of such Act, such remuneration is made in accordance with such criteria; and

"(iv) such remuneration is arranged for in a written agreement that is signed by the parties involved and that specifies the remuneration solicited or received (or offered or paid).".

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

''(9) INFORMATION TECHNOLOGY AND TRAINING SERVICES.—Any nonmonetary remuneration (in the form of health information technology, as defined in section 1128A(b)(4)(B), and related training services) made by an entity to a physician if—

''(A) such remuneration is made without a condition that—

''(i) limits or restricts the use of the health information technology to services provided by the physician to individuals receiving services at the location of the entity providing such technology;

''(ii) limits or restricts the use of the health information technology in conjunction with other health information technology; or

''(iii) takes into account the volume or value of referrals (or other business generated) by the physician to the entity providing such technology;

"(B) in the case of such remuneration made on a date that is on or after the date described in section 3(d)(2) of the Health Information Technology Promotion Act of 2005, to the extent the National Coordinator of Health Information Technology has approved a standard under section 1150A(c)(3)(B)(i), the health information technology provided conforms to such standard;

"(C) in the case of such remuneration made on or after the date that is three years after the date described in section 3(d)(2) of the Health Information Technology Promotion Act of 2005, if the Secretary establishes criteria under section 3(e)(3) of such Act, such remuneration is made in accordance with such criteria; and

"(D) such remuneration is arranged for in a written agreement that is signed by a representative of the entity and by the physician and that specifies the remuneration made.".

(d) REGULATION, EFFECTIVE DATE, AND EFFECT ON STATE LAWS.—

(1) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Sec-

retary of Health and Human Services shall promulgate such regulations as may be necessary to carry out the provisions of this section.

(2) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 180 days after the date of the enactment of this Act.

(3) PREEMPTION OF STATE LAWS.—No State (as defined in section 4(a)(3)) shall have in effect a State law that imposes a criminal or civil penalty for a transaction described in section 1128A(b)(4); 1128B(b)(3)(J); or 1877(e)(9) of the Social Security Act, as added by this section, if the conditions described in the respective section, with respect to such transaction, are met.

(e) STUDY AND REPORT TO ASSESS EFFECT OF SAFE HARBORS ON HEALTH SYSTEM.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine the impact of each of the safe harbors described in paragraph (4). In particular, the study shall examine the following:

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

(B) The types of health information technology provided under each safe harbor.

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

(2) REPORT.—Not later than three years after the effective date described in subsection (d)(2), the Secretary of Health and Human Services shall submit to Congress a report on the study under paragraph (1) and shall include such recommendations for changes in the safe harbors as the Secretary determines may be appropriate.

(3) UPDATED CRITERIA FOR PERMISSIBLE HEALTH INFORMATION TECHNOLOGY REMUNERATION UNDER SAFE HARBORS.—Not later than three years after the effective date described in subsection (d)(2), the Secretary of Health and Human Services may issue regulations that establish updated criteria for nonmonetary remuneration (in the form of health information technology and related training services) for purposes of the safe harbors described in paragraph (4). Such criteria may be based on the

extent to which the health information technology conforms to a standard developed under section 1150A(c)(3)(B)(i) of the Social Security Act, as added by section 2, only to the extent that such standard is recognized by the National Coordinator of Health Information Technology under such section 1150A(c)(3)(B)(i).

(4) SAFE HARBORS DESCRIBED.—For purposes of paragraphs (1) and (3), the safe harbors described in this paragraph are—

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

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

(C) the safe harbor under section 1877(e)(9) of such Act (42 U.S.C. 1395nn(e)(9)), as added by subsection (c).

SEC. 4. UNIFORM HEALTH INFORMATION LAWS AND REGULATIONS.

(a) STUDY TO DETERMINE EXTENT OF VARIATION IN STATE HEALTH INFORMATION LAWS AND REGULATIONS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study of State laws and regulations relating to the security and confidentiality of individually identifiable health information to determine—

(A) the degree to which such laws and regulations vary among States, and between the States and the Federal privacy standards established pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-2 note) and security standards established under section 1173(d) of the Social Security Act; and

(B) how any such variation may adversely impact the electronic exchange of clinical health information among States, the Federal government, and private entities.

(2) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the study under paragraph (1) and shall include in such report—

(A) a determination by the Secretary whether the State laws and regulations described in such paragraph should be conformed

to a single set of Federal standards to protect the security and confidentiality of patient health information in order to improve health care quality or efficiency; and

(B) if the Secretary determines such State laws and regulations should be conformed to such a single set of Federal standards, what the single set of standards should be.

(3) STATE DEFINED.—For purposes of this subsection, the term ''State'' has the meaning given such term when used in title XI of the Social Security Act, as provided under section 1101(a) of such Act (42 U.S.C. 1301(a)).

(b) ESTABLISHMENT OF UNIFORM CONFIDENTIALITY AND SECURITY STANDARDS.—

(1) IN GENERAL.—Section 1178(a) of the Social Security Act (42 U.S.C. 1320d-7(a)), is amended—

(A) in paragraph (1), by inserting after ''Except as provided in paragraph (2)'' the following: ''and subject to paragraph (3)'';

(B) in paragraph (2), by striking ''A provision'' and inserting ''Subject to paragraph (3)(B), a provision''; and

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

''(3) UNIFORM NATIONAL STANDARDS.—

''(A) IN GENERAL.—If legislation establishing uniform Federal standards and preempting State laws with respect to the confidentiality of individually identifiable health information and the security of health information is not enacted by the date that is 36 months after the date of the enactment of the Health Information Technology Promotion Act of 2005, the regulation and standards described in subparagraph (C) shall supersede any State law or regulation relating to the privacy or confidentiality of individually identifiable health information and any State law or regulation relating to the security of health information.

''(B) NARROWING OF PREEMPTION EXCEPTIONS.—

''(i) SUBSEQUENT LEGISLATION.—If legislation described in subparagraph (A) is enacted by the date described in such subparagraph, as of the effective date of such legislation paragraph (2) shall be superseded by such exceptions as may be

provided for in such legislation. It is the intent of Congress that such exceptions be as narrow as possible to maximize the uniform application of the regulation and standards described in subparagraph (C).

''(ii) NO LEGISLATION.—If legislation described in subparagraph (A) is not enacted by the date described in such subparagraph, paragraph (2) shall be superseded by such exceptions as may be provided for by the Secretary by regulation issued in connection with the regulation and standards described in subparagraph (C). It is the intent of Congress that such exceptions be as narrow as possible to maximize the uniform application of the regulation and standards described in subparagraph (C).

''(C) APPLICATION OF UNIFORM STANDARDS.—The regulation and standards described in this subparagraph are the regulation promulgated under section 264(c)(1) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-2 note) and standards under section 1173(d), as modified by the Sec-

retary to the extent the Secretary determines, after consideration of the results of the study conducted under section 4(a) of the Health Information Technology Promotion Act of 2005, necessary to promote uniformity in the application of confidentiality and security standards with respect to health information.''.

(2) HIPAA CONFORMING AMENDMENT.—Section 264(c)(2) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-2 note) is amended by striking ''A regulation'' and inserting ''(A) Subject to section 1178(a)(3) of the Social Security Act, a regulation''.

SEC. 5. RULEMAKING TO UPGRADE ASC X12 AND NCPDP STANDARDS AND ICD CODES.

(a) IN GENERAL.—Not later than April 1, 2007, the Secretary of Health and Human Services shall promulgate a final rule under section 1174(b) of the Social Security Act (42 U.S.C. 1320d-3(b)) to provide for the following modification of standards:

(1) ACCREDITED STANDARDS COMMITTEE X12 (ASC X12) STANDARD.—The replacement of the Accredited Standards Committee X12 (ASC X12) version 4010 adopted under section 1173(a) of such Act (42 U.S.C. 1320d-2(a)), including for purposes

of part A of title XVIII of such Act, with the ASC X12 version 5010, as reviewed by the National Committee on Vital Health Statistics.

(2) NATIONAL COUNCIL FOR PRESCRIPTION DRUG PROGRAMS (NCPDP) TELECOMMUNICATIONS STANDARDS.—The replacement of the National Council for Prescription Drug Programs (NCPDP) Telecommunications Standards version 5.1 adopted under section 1173(a) of such Act (42 U.S.C. 1320d-2(a)), including for purposes of part A of title XVIII of such Act, with NCPDP Telecommunications Standards version C.3, as approved by such Council and reviewed by the National Committee on Vital Health Statistics.

(3) ICD CODES.—The replacement of the International Statistical Classification of Diseases and Related Health Problems, 9th revision, Clinical Modification (ICD–9–CM) under the regulation promulgated under section 1173(c) of such Act (42 U.S.C. 1320d-2(c)), including for purposes of part A of title XVIII of such Act, with both of the following:

(A) The International Statistical Classification of Diseases and Related Health Prob-

lems, 10th revision, Clinical Modification (ICD–10–CM).

(B) The International Statistical Classification of Diseases and Related Health Problems, 10th revision, Procedure Coding System (ICD–10–PCS).

(b) RULE OF CONSTRUCTION.—Nothing in subsection (a)(3) shall be construed as affecting the application of classification methodologies or codes, such as CPT or HCPCS codes, other than under the International Statistical Classification of Diseases and Related Health Problems (ICD).

(c) NOTICE.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall publish in the Federal Register a notice of the requirements to promulgate final rules under subsection (a). Such notice shall include—

(1) the respective date by which each such rule must be promulgated under such subsection;

(2) the respective compliance date described in subsection (e) for each such rule; and

(3) a statement that entities covered under the Health Insurance Portability and Accountability Act of 1996 and health information technology vendors should plan for the implementation of upgraded ASC

X12, NCPDP, and ICD codes under such subsection.

(d) NO JUDICIAL REVIEW.—The final rules promulgated under subsections (a) shall not be subject to judicial review.

(e) COMPLIANCE WITH UPGRADED STANDARDS.—For purposes of section 1175(b)(2) of the Social Security Act (42 U.S.C. 1320d-4(b)(2))—

(1) ASC X12 AND NCPDP STANDARDS.—The final rules promulgated under paragraphs (1) and (2) of subsection (a) shall apply to transactions occurring on or after April 1, 2009.

(2) ICD CODES.—The final rule promulgated under paragraph (3) of subsection (a) shall apply to transactions occurring on or after October 1, 2009.

SEC. 6. REPORT ON THE AMERICAN HEALTH INFORMATION COMMUNITY.

Not later than two years after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the work conducted by the American Health Information Community (in this section referred to as ''AHIC''), as established by the Secretary. Such report shall include the following:

(1) A description of the accomplishments of AHIC, with respect to the promotion of the develop-

ment of a nationwide health information network and the increased adoption of health information technology.

(2) Information identifying the practices that are used to protect health information and to guarantee confidentiality and security of such information.

(3) Information on the progress in—

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

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

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

(4) Recommendations for the transition of the AHIC to a permanent advisory entity, including—

(A) a schedule for such transition;

(B) options for structuring the entity as either a public-private or private sector entity;

(C) the role of the Federal Government in the entity; and

(D) the ongoing responsibilities of the entity, such as in establishing standards, certifying health information technology, and providing

long-term governance for health care transformation.

SEC. 7. STRATEGIC PLAN FOR COORDINATING IMPLEMENTATION OF HEALTH INFORMATION TECHNOLOGY.

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

(b) COORDINATION OF SPECIFIC IMPLEMENTATION PROCESSES.—The strategic plan under subsection (a) shall address the need for coordination in the implementation of the following:

(1) HEALTH INFORMATION TECHNOLOGY STANDARDS.—Health information technology standards approved under section 1150A(c)(3)(B)(i) of the Social Security Act, as added by section 2.

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

(3) UPDATED ICD CODES.—The International Statistical Classification of Diseases and Related Health Problems, 10th revision, Clinical Modifica-

tion (ICD–10–CM) and the International Statistical Classification of Diseases and Related Health Problems, 10th revision, Procedure Coding System (ICD–10–PCS) described in section 5.

(c) COORDINATION AMONG SPECIFIC FEDERAL ENTITIES.—The strategic plan under subsection (a) shall address any methods to coordinate, with respect to the electronic exchange of health information, actions taken by the following entities:

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

(2) The American Health Information Community.

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

(4) The National Committee on Vital Health Statistics.

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