

109TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. FRIST (for himself, Mrs. CLINTON, Mr. MARTINEZ, Mr. BINGAMAN, Mr. TALENT, Ms. MIKULSKI, Mr. THUNE, and Mr. OBAMA) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To reduce healthcare costs, improve efficiency, and improve healthcare quality through the development of a nationwide interoperable health information technology system, and for other purposes.

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.**

4 This Act may be cited as the “Health Technology to
5 Enhance Quality Act of 2005” or the “Health TEQ Act
6 of 2005”.

1 **TITLE I—HEALTH INFORMATION**
2 **TECHNOLOGY STANDARDS**
3 **ADOPTION AND INFRASTRUC-**
4 **TURE DEVELOPMENT**

5 **SEC. 101. ESTABLISHMENT OF NATIONAL COORDINATOR;**
6 **RECOMMENDATION, ADOPTION, AND IMPLE-**
7 **MENTATION OF HEALTH INFORMATION**
8 **ELECTRONIC EXCHANGE STANDARDS.**

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

11 **“TITLE XXIX—HEALTH**
12 **INFORMATION TECHNOLOGY**

13 **“SEC. 2901. DEFINITIONS.**

14 “For purposes of this title:

15 “(1) **GROUP HEALTH PLAN.**—The term ‘group
16 health plan’ has the meaning giving that term in
17 section 2791.

18 “(2) **HEALTHCARE PROVIDER.**—The term
19 ‘healthcare provider’ means a hospital, skilled nurs-
20 ing facility, home health entity, healthcare clinic,
21 community health center, group practice (as defined
22 in section 1877(h)(4) of the Social Security Act), a
23 physician (as defined in section 1861(r)(1) of the
24 Social Security Act), a pharmacist, a pharmacy, a

1 laboratory, and any other category of facility or cli-
2 nician determined appropriate by the Secretary.

3 “(3) HEALTH INFORMATION.—The term ‘health
4 information’ means any information, recorded in any
5 form or medium, that relates to the past, present, or
6 future physical or mental health or condition of an
7 individual, the provision of healthcare to an indi-
8 vidual, or the past, present, or future payment for
9 the provision of healthcare to an individual.

10 “(4) HEALTH INSURANCE ISSUER.—The term
11 ‘health insurance issuer’ has the meaning given that
12 term in section 2791.

13 “(5) LABORATORY.—The term ‘laboratory’ has
14 the meaning given that term in section 353.

15 “(6) PHARMACIST.—The term ‘pharmacist’ has
16 the meaning given that term in section 804 of the
17 Federal Food, Drug, and Cosmetic Act.

18 **“SEC. 2902. OFFICE OF THE NATIONAL COORDINATOR OF**
19 **HEALTH INFORMATION TECHNOLOGY.**

20 “(a) OFFICE OF NATIONAL HEALTH INFORMATION
21 TECHNOLOGY.—There is established within the Office of
22 the Secretary an Office of the National Coordinator of
23 Health Information Technology (referred to in this section
24 as the ‘Office’). The Office shall be headed by a National
25 Coordinator who shall be appointed by the President in

1 consultation with the Secretary and shall report directly
2 to the Secretary.

3 “(b) PURPOSE.—It shall be the purpose of the Office
4 to carry out programs and activities to develop a nation-
5 wide interoperable health information technology infra-
6 structure that—

7 “(1) improves healthcare quality, reduces med-
8 ical errors, and advances the delivery of patient-cen-
9 tered medical care;

10 “(2) reduces healthcare costs resulting from in-
11 efficiency, medical errors, inappropriate care, and in-
12 complete information;

13 “(3) ensures that appropriate information to
14 help guide medical decisions is available at the time
15 and place of care;

16 “(4) promotes a more effective marketplace,
17 greater competition, and increased choice through
18 the wider availability of accurate information on
19 healthcare costs, quality, and outcomes;

20 “(5) improves the coordination of care and in-
21 formation among hospitals, laboratories, physician
22 offices, and other entities through an effective infra-
23 structure for the secure and authorized exchange of
24 healthcare information;

1 “(6) improves public health reporting and facili-
2 tates the early identification and rapid response to
3 public health threats and emergencies, including bio-
4 terror events and infectious disease outbreaks;

5 “(7) facilitates health research; and

6 “(8) ensures that patients’ health information
7 is secure and protected.

8 “(c) DUTIES OF NATIONAL COORDINATOR.—

9 “(1) IN GENERAL.—The National Coordinator
10 shall—

11 “(A) facilitate the adoption of a national
12 system for the electronic exchange of health in-
13 formation;

14 “(B) serve as the principal advisor to the
15 Secretary on the development, application, and
16 use of health information technology, and co-
17 ordinate and oversee the health information
18 technology programs of the Department;

19 “(C) ensure the adoption and implementa-
20 tion of standards for the electronic exchange of
21 health information, including coordinating the
22 activities of the Standards Working Group
23 under section 2903;

1 “(D) carry out activities related to the
2 electronic exchange of health information that
3 reduce cost and improve healthcare quality;

4 “(E) ensure that health information tech-
5 nology policy and programs of the Department
6 are coordinated with those of relevant executive
7 branch agencies (including Federal commis-
8 sions) with a goal of avoiding duplication of ef-
9 forts and of helping to ensure that each agency
10 undertakes health information technology activi-
11 ties primarily within the areas of its greatest
12 expertise and technical capability;

13 “(F) to the extent permitted by law, co-
14 ordinate outreach and consultation by the rel-
15 evant executive branch agencies (including Fed-
16 eral commissions) with public and private par-
17 ties of interest, including consumers, payers,
18 employers, hospitals and other healthcare pro-
19 viders, physicians, community health centers,
20 laboratories, vendors and other stakeholders;

21 “(G) advise the President regarding spe-
22 cific Federal health information technology pro-
23 grams; and

24 “(H) submit the reports described under
25 paragraph (2).

1 “(2) REPORTS TO CONGRESS.—The National
2 Coordinator shall submit to Congress, on an annual
3 basis, a report that describes—

4 “(A) specific steps that have been taken to
5 facilitate the adoption of a nationwide system
6 for the electronic exchange of health informa-
7 tion;

8 “(B) barriers to the adoption of such a na-
9 tionwide system; and

10 “(C) recommendations to achieve full im-
11 plementation of such a nationwide system.

12 “(d) DETAIL OF FEDERAL EMPLOYEES.—

13 “(1) IN GENERAL.—Upon the request of the
14 National Coordinator, the head of any Federal agen-
15 cy is authorized to detail, with or without reimburse-
16 ment from the Office, any of the personnel of such
17 agency to the Office to assist it in carrying out its
18 duties under this section.

19 “(2) EFFECT OF DETAIL.—Any such detail
20 shall—

21 “(A) not interrupt or otherwise affect the
22 civil service status or privileges of the Federal
23 employee; and

1 “(B) be in addition to any other staff of
2 the Department employed by the National Co-
3 ordinator.

4 “(3) ACCEPTANCE OF DETAILEES.—Notwith-
5 standing any other provision of law, the Office may
6 accept detailed personnel from other Federal agen-
7 cies without regard to whether the agency described
8 under paragraph (1) is reimbursed.

9 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated such sums as may be
11 necessary to carry out the activities of the Office under
12 this section for each of fiscal years 2006 through 2010.

13 **“SEC. 2903. COLLABORATIVE PROCESS FOR THE REC-**
14 **COMMENDATION, ADOPTION, AND IMPLEMEN-**
15 **TATION OF HEALTH INFORMATION STAND-**
16 **ARDS.**

17 “(a) ESTABLISHMENT OF WORKING GROUP.—Not
18 later than 60 days after the date of enactment of this title,
19 the National Coordinator, in consultation with the Direc-
20 tor of the National Institute of Standards and Technology
21 (referred to in this section as the ‘Director’), shall estab-
22 lish a permanent Electronic Health Information Stand-
23 ards Development Working Group (referred to in this title
24 as the ‘Standards Working Group’).

1 “(b) COMPOSITION.—The Standards Working Group
2 shall be composed of—

3 “(1) the National Coordinator, who shall serve
4 as the chairperson of the Standards Working Group;

5 “(2) the Director;

6 “(3) representatives of the relevant Federal
7 agencies and departments, as selected by the Sec-
8 retary in consultation with the National Coordinator,
9 including representatives of the Department of Vet-
10 erans Affairs, the Department of Defense, the Office
11 of Management and Budget, the Department of
12 Homeland Security, and the Environmental Protec-
13 tion Agency;

14 “(4) private entities accredited by the American
15 National Standards Institute, as selected by the Na-
16 tional Coordinator;

17 “(5) representatives, as selected by the National
18 Coordinator—

19 “(A) of group health plans or other health
20 insurance issuers;

21 “(B) of healthcare provider organizations;

22 “(C) with expertise in health information
23 security;

24 “(D) with expertise in health information
25 privacy;

1 “(E) with experience in healthcare quality
2 and patient safety, including those with experi-
3 ence in utilizing health information technology
4 to improve healthcare quality and patient safe-
5 ty;

6 “(F) of consumer and patient organiza-
7 tions;

8 “(G) of employers;

9 “(H) with experience in data exchange;
10 and

11 “(I) with experience in developing health
12 information technology standards and new
13 health information technology; and

14 “(6) other representatives as determined appro-
15 priate by the National Coordinator in consultation
16 with the Secretary.

17 “(c) STANDARDS DEEMED ADOPTED.—On the date
18 of enactment of this title, the Secretary and the Standards
19 Working Group shall deem as adopted, for use by the Sec-
20 retary and private entities, the standards adopted by the
21 Consolidated Health Informatics Initiative prior to such
22 date of enactment.

23 “(d) DUTIES.—

1 “(1) FIRST YEAR REVIEW.—Not later than 1
2 year after the date of enactment of this title, the
3 Standards Working Group shall—

4 “(A) review existing standards (including
5 content, communication, and security stand-
6 ards) for the electronic exchange of health in-
7 formation, including such standards deemed
8 adopted under subsection (c);

9 “(B) identify deficiencies and omissions in
10 such existing standards;

11 “(C) identify duplications and omissions in
12 existing standards, and recommend modifica-
13 tions to such standards as necessary; and

14 “(D) submit a report to the Secretary rec-
15 ommending for adoption by such Secretary and
16 private entities—

17 “(i) modifications to the standards
18 deemed adopted under subsection (c); and

19 “(ii) any additional standards re-
20 viewed pursuant to this paragraph.

21 “(2) ONGOING REVIEW.—Beginning 1 year
22 after the date of enactment of this title, and on an
23 ongoing basis thereafter, the Standards Working
24 Group shall—

1 “(A) review existing standards (including
2 content, communication, and security stand-
3 ards) for the electronic exchange of health in-
4 formation, including such standards adopted by
5 the Secretary under subsections (c) and (e);

6 “(B) identify deficiencies and omissions in
7 such existing standards;

8 “(C) identify duplications and omissions in
9 existing standards, and recommend modifica-
10 tions to such standards as necessary; and

11 “(D) submit reports to the Secretary rec-
12 ommending for adoption by such Secretary and
13 private entities—

14 “(i) modifications to any existing
15 standards; and

16 “(ii) any additional standards re-
17 viewed pursuant to this paragraph.

18 “(3) LIMITATION.—The standards described
19 under this subsection shall not include any stand-
20 ards developed pursuant the Health Insurance Port-
21 ability and Accountability Act of 1996.

22 “(e) ADOPTION BY SECRETARY.—Not later than 1
23 year after the receipt of a report from the Standards
24 Working Group under paragraph (1)(D) or (2)(D) of sub-
25 section (d), the Secretary shall review and provide for the

1 adoption by the Federal Government of any modification
2 or standard recommended in such report.

3 “(f) VOLUNTARY ADOPTION.—Any standards adopt-
4 ed by the Secretary under this section shall be voluntary
5 for private entities.

6 “(g) APPLICATION OF FACA.—

7 “(1) IN GENERAL.—The Federal Advisory Com-
8 mittee Act (5 U.S.C. App.) shall apply to the Stand-
9 ards Working Group established under this section.

10 “(2) LIMITATION.—Notwithstanding paragraph
11 (1), the 2-year termination date under section 14 of
12 the Federal Advisory Committee Act shall not apply
13 to the Standards Working Group.

14 **“SEC. 2904. IMPLEMENTATION AND CERTIFICATION OF**
15 **HEALTH INFORMATION STANDARDS.**

16 “(a) IMPLEMENTATION.—

17 “(1) IN GENERAL.—The Secretary, in consulta-
18 tion with the National Coordinator and the Director
19 of the National Institute of Standards and Tech-
20 nology, shall develop criteria to ensure uniform and
21 consistent implementation of any standards for the
22 electronic exchange of health information voluntarily
23 adopted by private entities in technical conformance
24 with such standards adopted under this title.

1 “(2) IMPLEMENTATION ASSISTANCE.—The Sec-
2 retary may recognize a private entity or entities to
3 assist private entities in the implementation of the
4 standards adopted under this title.

5 “(b) CERTIFICATION.—

6 “(1) IN GENERAL.—The Secretary, in consulta-
7 tion with the National Coordinator and the Director
8 of the National Institute of Standards and Tech-
9 nology shall develop criteria to ensure and certify
10 that hardware, software, and support services that
11 claim to be in compliance with any standard for the
12 electronic exchange of health information adopted
13 under this title have established and maintain such
14 compliance in technical conformance with such
15 standard.

16 “(2) CERTIFICATION ASSISTANCE.—The Sec-
17 retary may recognize a private entity or entities to
18 assist in the certification described under paragraph
19 (1).

20 “(c) DELEGATION AUTHORITY.—The Secretary may
21 delegate the development of the criteria under subsection
22 (a) and (b) to a private entity.

1 **“SEC. 2905. AUTHORITY FOR COORDINATION AND SPEND-**
2 **ING.**

3 “(a) IN GENERAL.—The Secretary acting through
4 the National Coordinator—

5 “(1) shall direct and coordinate—

6 “(A) Federal spending related to the devel-
7 opment, adoption, and implementation of stand-
8 ards for the electronic exchange of health infor-
9 mation; and

10 “(B) the adoption of the recommendations
11 submitted to such Secretary by the Standards
12 Working Group established under section 2903;
13 and

14 “(2) may utilize the entities recognized under
15 section 2904 to assist in implementation and certifi-
16 cation related to the implementation by the Federal
17 Government of the standards adopted by the Sec-
18 retary under this title.

19 “(b) LIMITATION.—

20 “(1) IN GENERAL.—Notwithstanding any other
21 provision of law, no Federal agency shall expend
22 Federal funds for the purchase of hardware, soft-
23 ware, or support services for the purpose of imple-
24 menting a standard related to the electronic ex-
25 change of health information that is not a standard
26 adopted by the Secretary under section 2903.

1 “(2) EFFECTIVE DATE.—The limitation under
2 paragraph (1) shall take effect not later than 1 year
3 after the adoption by the Secretary of such stand-
4 ards under section 2903.”.

5 **SEC. 102. ENCOURAGING SECURE EXCHANGE OF HEALTH**
6 **INFORMATION.**

7 (a) STUDY AND GRANT PROGRAMS RELATED TO
8 STATE HEALTH INFORMATION LAWS AND PRACTICES.—

9 (1) STUDY OF STATE HEALTH INFORMATION
10 LAWS AND PRACTICES.—

11 (A) IN GENERAL.—The Secretary of
12 Health and Human Services (referred to in this
13 Act as the “Secretary”) shall carry out, or con-
14 tract with a private entity to carry out, a study
15 that examines—

16 (i) the variation among State laws
17 and practices that relate to the privacy,
18 confidentiality, and security of health in-
19 formation;

20 (ii) how such variation among State
21 laws and practices may impact the elec-
22 tronic exchange of health information (as
23 defined in section 2901 of the Public
24 Health Service Act) (as added by section
25 101)—

- 1 (I) among the States;
2 (II) between the States and the
3 Federal Government; and
4 (III) among private entities; and
5 (iii) how such laws and practices may
6 be harmonized to permit the secure elec-
7 tronic exchange of health information.

8 (B) REPORT AND RECOMMENDATIONS.—
9 Not later than 1 year after the date of enact-
10 ment of this Act, the Secretary shall submit to
11 Congress a report that—

- 12 (i) describes the results of the study
13 carried out under subparagraph (A); and
14 (ii) makes recommendations based on
15 the results of such study.

16 (2) SECURE EXCHANGE OF HEALTH INFORMA-
17 TION; INCENTIVE GRANTS.—Title XXIX of the Pub-
18 lic Health Service Act (as added by section 101) is
19 amended by adding at the end the following:

20 **“SEC. 2906. SECURE EXCHANGE OF HEALTH INFORMATION;**
21 **INCENTIVE GRANTS.**

22 “(a) IN GENERAL.—The Secretary may make grants
23 to States to carry out programs under which such States
24 cooperate with other States to develop and implement
25 State policies that will facilitate the secure electronic ex-

1 change of health information utilizing the standards
2 adopted under section 2903—

3 “(1) among the States;

4 “(2) between the States and the Federal Gov-
5 ernment; and

6 “(3) among private entities.

7 “(b) PRIORITY.—In awarding grants under sub-
8 section (a), the Secretary shall give priority to States that
9 provide assurance that any funding awarded under such
10 a grant shall be used to harmonize privacy laws and prac-
11 tices between the States, the States and the Federal Gov-
12 ernment, and among private entities related to the privacy,
13 confidentiality, and security of health information.

14 “(c) DISSEMINATION OF INFORMATION.—The Sec-
15 retary shall disseminate information regarding the efficacy
16 of efforts of a recipient of a grant under this section.

17 “(d) TECHNICAL ASSISTANCE.—The Secretary may
18 provide technical assistance to recipients of a grant under
19 this section.

20 “(e) AUTHORIZATION OF APPROPRIATIONS.—For the
21 purpose of carrying out subsection (a), there are author-
22 ized to be appropriated such sums as may be necessary
23 for each of the fiscal years 2006 through 2010.”.

24 (b) STUDY AND GRANT PROGRAMS RELATED TO
25 STATE LICENSURE LAWS.—

1 (1) STUDY OF STATE LICENSURE LAWS.—

2 (A) IN GENERAL.—The Secretary shall
3 carry out, or contract with a private entity to
4 carry out, a study that examines—

5 (i) the variation among State laws
6 that relate to the licensure, registration,
7 and certification of medical professionals;
8 and

9 (ii) how such variation among State
10 laws impacts the secure electronic ex-
11 change of health information (as defined in
12 section 2901 of the Public Health Service
13 Act) (as added by section 101)—

14 (I) among the States; and

15 (II) between the States and the
16 Federal Government.

17 (B) REPORT AND RECOMMENDATIONS.—

18 Not later than 1 year after the date of enact-
19 ment of this Act, the Secretary shall publish a
20 report that—

21 (i) describes the results of the study
22 carried out under subparagraph (A); and

23 (ii) makes recommendations to States
24 regarding the harmonization of State laws
25 based on the results of such study.

1 (2) REAUTHORIZATION OF INCENTIVE GRANTS
2 REGARDING TELEMEDICINE.—Section 330L(b) of
3 the Public Health Service Act (42 U.S.C. 254c–
4 18(b)) is amended by striking “2002 through 2006”
5 and inserting “2006 through 2010”.

6 (3) HIPAA APPLICATION TO ELECTRONIC
7 HEALTH INFORMATION.—Title XXIX of the Public
8 Health Service Act (as added by section 101 and
9 amended by subsection (a)) is further amended by
10 adding at the end the following:

11 **“SEC. 2907. APPLICABILITY OF PRIVACY AND SECURITY**
12 **REGULATIONS.**

13 “The regulations promulgated by the Secretary under
14 part C of title XI of the Social Security Act and sections
15 261, 262, 263, and 264 of the Health Insurance Port-
16 ability and Accountability Act of 1996 with respect to the
17 privacy, confidentiality, and security of health information
18 shall—

19 “(1) apply to any health information stored or
20 transmitted in an electronic format as of the date of
21 enactment of this title; and

22 “(2) apply to the implementation of standards,
23 programs, and activities under this title.”.

24 (c) STUDY AND REPORT.—

1 (1) STUDY.—Not later than 2 years after the
2 date of enactment of this Act, the Secretary shall
3 carry out, or contract with a private entity to carry
4 out, a study that examines the integration of the
5 standards adopted under the amendments made by
6 this Act with the standards adopted under the
7 Health Insurance Portability and Accountability Act
8 of 1996 (Public Law 104-191).

9 (2) PLAN; REPORT.—

10 (A) PLAN.—Not later than 3 years after
11 the date of enactment of this Act, the Secretary
12 shall, based on the results of the study carried
13 out under paragraph (1), develop a plan for the
14 integration of the standards described under
15 such paragraph and submit a report to Con-
16 gress describing such plan.

17 (B) PERIODIC REPORTS.—The Secretary
18 shall submit periodic reports to Congress that
19 describe the progress of the integration de-
20 scribed under subparagraph (A).

1 **TITLE II—FACILITATING THE**
2 **ADOPTION AND IMPLEMEN-**
3 **TATION OF INTEROPERABLE**
4 **ELECTRONIC HEALTH INFOR-**
5 **MATION**

6 **SEC. 201. GRANTS FOR THE IMPLEMENTATION OF RE-**
7 **GIONAL OR LOCAL HEALTH INFORMATION**
8 **TECHNOLOGY PLANS.**

9 Title XXIX of the Public Health Service Act (as
10 amended by section 102) is further amended by adding
11 at the end the following:

12 **“SEC. 2908. GRANTS FOR THE IMPLEMENTATION OF RE-**
13 **GIONAL OR LOCAL HEALTH INFORMATION**
14 **TECHNOLOGY PLANS.**

15 “(a) IN GENERAL.—The Secretary, in consultation
16 with the National Coordinator, may award competitive
17 grants to eligible entities to implement regional or local
18 health information plans to improve healthcare quality and
19 efficiency through the electronic exchange of health infor-
20 mation pursuant to the standards, protocols, and other re-
21 quirements adopted by the Secretary under sections 2903
22 and 2910.

23 “(b) ELIGIBILITY.—To be eligible to receive a grant
24 under subsection (a) an entity shall—

1 “(1) demonstrate financial need to the Sec-
2 retary;

3 “(2) demonstrate that one of its principal mis-
4 sions or purposes is to use information technology to
5 improve healthcare quality and efficiency;

6 “(3) adopt bylaws, memoranda of under-
7 standing, or other charter documents that dem-
8 onstrate that the governance structure and decision-
9 making processes of such entity allow for participa-
10 tion on an ongoing basis by multiple stakeholders
11 within a community, including—

12 “(A) physicians (as defined in section
13 1861(r)(1) of the Social Security Act), includ-
14 ing physicians that provide services to low in-
15 come and underserved populations;

16 “(B) hospitals (including hospitals that
17 provide services to low income and underserved
18 populations);

19 “(C) group health plans or other health in-
20 surance issuers;

21 “(D) health centers (as defined in section
22 330(b)) and Federally qualified health centers
23 (as defined in section 1861(aa)(4) of the Social
24 Security Act);

1 “(E) rural health clinics (as defined in sec-
2 tion 1861(aa) of the Social Security Act);

3 “(F) consumer organizations;

4 “(G) employers; and

5 “(H) any other healthcare providers or
6 other entities, as determined appropriate by the
7 Secretary;

8 “(4) adopt nondiscrimination and conflict of in-
9 terest policies that demonstrate a commitment to
10 open, fair, and nondiscriminatory participation in
11 the health information plan by all stakeholders;

12 “(5) adopt the national health information tech-
13 nology standards adopted by the Secretary under
14 section 2903;

15 “(6) facilitate the electronic exchange of health
16 information within the local or regional area and
17 among local and regional areas;

18 “(7) prepare and submit to the Secretary an
19 application in accordance with subsection (c); and

20 “(8) agree to provide matching funds in accord-
21 ance with subsection (e).

22 “(c) APPLICATION.—

23 “(1) IN GENERAL.—To be eligible to receive a
24 grant under subsection (a), an entity shall submit to
25 the Secretary an application at such time, in such

1 manner, and containing such information as the Sec-
2 retary may require.

3 “(2) REQUIRED INFORMATION.—At a min-
4 imum, an application submitted under this sub-
5 section shall include—

6 “(A) clearly identified short-term and long-
7 term objectives of the regional or local health
8 information plan;

9 “(B) a technology plan that complies with
10 the standards adopted under section 2903 and
11 that includes a descriptive and reasoned esti-
12 mate of costs of the hardware, software, train-
13 ing, and consulting services necessary to imple-
14 ment the regional or local health information
15 plan;

16 “(C) a strategy that includes initiatives to
17 improve healthcare quality and efficiency, in-
18 cluding the use of healthcare quality measures
19 adopted under section 2910;

20 “(D) a plan that describes provisions to
21 encourage the implementation of the electronic
22 exchange of health information by all physi-
23 cians, including single physician practices and
24 small physician groups participating in the
25 health information plan;

1 “(E) a plan to ensure the privacy and se-
2 curity of personal health information that is
3 consistent with Federal and State law;

4 “(F) a governance plan that defines the
5 manner in which the stakeholders shall jointly
6 make policy and operational decisions on an on-
7 going basis; and

8 “(G) a financial or business plan that
9 describes—

10 “(i) the sustainability of the plan;

11 “(ii) the financial costs and benefits
12 of the plan; and

13 “(iii) the entities to which such costs
14 and benefits will accrue.

15 “(d) USE OF FUNDS.—Amounts received under a
16 grant under subsection (a) shall be used to establish and
17 implement a regional or local health information plan in
18 accordance with this section.

19 “(e) MATCHING REQUIREMENT.—

20 “(1) IN GENERAL.—The Secretary may not
21 make a grant under this section to an entity unless
22 the entity agrees that, with respect to the costs to
23 be incurred by the entity in carrying out the infra-
24 structure program for which the grant was awarded,
25 the entity will make available (directly or through

1 donations from public or private entities) non-Fed-
2 eral contributions toward such costs in an amount
3 equal to not less than 50 percent of such costs (\$1
4 for each \$2 of Federal funds provided under the
5 grant).

6 “(2) DETERMINATION OF AMOUNT CONTRIB-
7 UTED.—Non-Federal contributions required under
8 paragraph (1) may be in cash or in kind, fairly eval-
9 uated, including equipment, technology, or services.
10 Amounts provided by the Federal Government, or
11 services assisted or subsidized to any significant ex-
12 tent by the Federal Government, may not be in-
13 cluded in determining the amount of such non-Fed-
14 eral contributions.

15 “(f) AUTHORIZATION OF APPROPRIATIONS.—

16 “(1) IN GENERAL.—There is authorized to be
17 appropriated to carry out this section, \$125,000,000
18 for each of fiscal years 2006 through 2010.

19 “(2) AVAILABILITY.—Amounts appropriated
20 under paragraph (1) shall remain available for obli-
21 gation until expended.

22 **“SEC. 2909. REPORTS.**

23 “Not later than 1 year after the date on which the
24 first grant is awarded under section 2908, and annually
25 thereafter during the grant period, an entity that receives

1 a grant under such section shall submit to the Secretary,
2 acting through the National Coordinator, a report on the
3 activities carried out under the grant involved. Each such
4 report shall include—

5 “(1) a description of the financial costs and
6 benefits of the project involved and of the entities to
7 which such costs and benefits accrue;

8 “(2) an analysis of the impact of the project on
9 healthcare quality and safety;

10 “(3) a description of any reduction in duplica-
11 tive or unnecessary care as a result of the project in-
12 volved; and

13 “(4) other information as required by the Sec-
14 retary.”.

15 **SEC. 202. EXCEPTION FOR THE PROVISION OF PERMITTED**
16 **SUPPORT.**

17 (a) EXEMPTION FROM CRIMINAL PENALTIES.—Sec-
18 tion 1128B(b) of the Social Security Act (42 U.S.C.
19 1320a–7b(b)(3)) is amended—

20 (1) in paragraph (3)—

21 (A) in subparagraph (G), by striking
22 “and” at the end;

23 (B) in subparagraph (H), as added by sec-
24 tion 237(d) of the Medicare Prescription Drug,

1 Improvement, and Modernization Act of 2003
2 (Public Law 108–173; 117 Stat. 2213)—

3 (i) by moving such subparagraph 2
4 ems to the left; and

5 (ii) by striking the period at the end
6 and inserting a semicolon;

7 (C) by redesignating subparagraph (H), as
8 added by section 431(a) of the Medicare Pre-
9 scription Drug, Improvement, and Moderniza-
10 tion Act of 2003 (Public Law 108–173; 117
11 Stat. 2287), as subparagraph (I);

12 (D) in subparagraph (I), as so
13 redesignated—

14 (i) by moving such subparagraph 2
15 ems to the left; and

16 (ii) by striking the period at the end
17 and inserting “; and”; and

18 (E) by adding at the end the following
19 new:

20 “(J) subject to paragraph (4), the provi-
21 sion, with or without charge, of any permitted
22 support (as defined in paragraph (4)(A) and
23 subject to the conditions in paragraph (4)(B))
24 to an entity or individual for developing, imple-
25 menting, operating, or facilitating the electronic

1 exchange of health information (as defined in
2 section 2901 of the Public Health Service Act),
3 so long as such support is primarily designed to
4 promote the electronic exchange of health infor-
5 mation.”; and

6 (2) by adding at the end the following:

7 “(4) PERMITTED SUPPORT.—

8 “(A) DEFINITION OF PERMITTED SUP-
9 PORT.—In this section, the term ‘permitted
10 support’ means the provision of, or funding
11 used exclusively to provide or pay for, any
12 equipment, item, information, right, license, in-
13 tellectual property, software, or service, regard-
14 less of whether any such support may have util-
15 ity or value to the recipient for any purpose be-
16 yond the exchange of health information (as de-
17 fined in section 2901 of the Public Health Serv-
18 ice Act).

19 “(B) CONDITIONS ON PERMITTED SUP-
20 PORT.—Paragraph (3)(J) shall not apply unless
21 the following conditions are met:

22 “(i) The provision of permitted sup-
23 port is not conditioned on the recipient of
24 such support making any referral to, or
25 generating any business for, any entity or

1 individual for which any Federal health
2 care program provides reimbursement.

3 “(ii) The permitted support complies
4 with the standards for the electronic ex-
5 change of health information adopted by
6 the Secretary under section 2903 of the
7 Public Health Service Act.

8 “(iii) The entity or network receiving
9 permitted support is able to document that
10 such support is used by the entity or the
11 network for the electronic exchange of
12 health information in accordance with the
13 standards adopted by the Secretary under
14 section 2903 of the Public Health Service
15 Act.”.

16 (b) EXEMPTION FROM LIMITATION ON CERTAIN
17 PHYSICIAN REFERRALS.—Section 1877(e) of the Social
18 Security Act (42 U.S.C. 1395nn(e)) is amended by adding
19 at the end the following:

20 “(9) PERMITTED SUPPORT.—The provision of
21 permitted support (as described in section
22 1128B(b)(3)(J)).”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to permitted support provided on
25 or after the date of enactment of this Act.

1 **SEC. 203. GROUP PURCHASING.**

2 (a) IN GENERAL.—Not later than 1 year after the
3 date of enactment of this Act, the Secretary shall establish
4 a safe harbor for group purchasing of hardware, software,
5 and support services for the electronic exchange of health
6 information in compliance with section 2903 of the Public
7 Health Service Act (as added by section 101).

8 (b) CONDITIONS.—In establishing the safe harbor
9 under subsection (a), the Secretary shall establish condi-
10 tions on such safe harbor consistent with the purposes
11 of—

- 12 (1) improving healthcare quality;
- 13 (2) reducing medical errors;
- 14 (3) reducing healthcare costs;
- 15 (4) improving the coordination of care;
- 16 (5) streamlining administrative processes; and
- 17 (6) promoting transparency and competition.

18 **SEC. 204. PERMISSIBLE ARRANGEMENTS.**

19 (a) IN GENERAL.—Not later than 1 year after the
20 date of enactment of this Act and notwithstanding any
21 other provision of law, the Secretary shall establish guide-
22 lines in compliance with section 2903 of the Public Health
23 Service Act that permit certain arrangements between
24 group health plans and health insurance issuers (as de-
25 fined in section 2791 of the Public Health Service Act (42
26 U.S.C. 300gg–91)) and between healthcare providers (as

1 defined in section 2901 of such Act, as added by section
2 101) in accordance with subsection (b).

3 (b) CONDITIONS.—In establishing the guidelines
4 under subsection (a), the Secretary shall establish condi-
5 tions on such arrangements consistent with the purposes
6 of—

- 7 (1) improving healthcare quality;
- 8 (2) reducing medical errors;
- 9 (3) reducing healthcare costs;
- 10 (4) improving the coordination of care;
- 11 (5) streamlining administrative processes; and
- 12 (6) promoting transparency and competition.

13 **TITLE III—ADOPTION, IMPLE-**
14 **MENTATION, AND USE OF**
15 **HEALTHCARE QUALITY MEAS-**
16 **URES**

17 **SEC. 301. STANDARDIZED MEASURES.**

18 Title XXIX of the Public Health Service Act (as
19 amended by section 201) is further amended by adding
20 at the end the following:

21 **“SEC. 2910. COLLABORATIVE PROCESS FOR THE DEVELOP-**
22 **MENT, RECOMMENDATION, AND ADOPTION**
23 **OF STANDARDIZED MEASURES OF QUALITY**
24 **HEALTHCARE.**

25 “(a) IN GENERAL.—

1 “(1) COLLABORATION.—The Secretary, the
2 Secretary of Defense, the Secretary of Veterans Af-
3 fairs, and any other heads of relevant Federal agen-
4 cies as determined appropriate by the President, (re-
5 ferred to in this section as the ‘Secretaries’) shall
6 adopt, on an ongoing basis, uniform healthcare qual-
7 ity measures to assess the effectiveness, timeliness,
8 patient self-management, patient-centeredness, effi-
9 ciency, and safety of care delivered by healthcare
10 providers across Federal healthcare programs, in-
11 cluding those in titles XVIII, XIX, and XXI of the
12 Social Security Act.

13 “(2) REVIEW OF MEASURES ADOPTED.—The
14 Secretaries shall conduct an ongoing review of the
15 measures adopted under paragraph (1).

16 “(3) EXISTING ACTIVITIES—Notwithstanding
17 any other provision of law, the measures and report-
18 ing activities described in this subsection shall re-
19 place, to the extent practicable and appropriate, any
20 duplicative or redundant existing measurement and
21 reporting activities currently utilized by Federal
22 healthcare programs, including those in titles XVIII,
23 XIX, and XXI of the Social Security Act.

24 “(b) PRIORITY MEASURES.—

1 “(1) IN GENERAL.—In determining the meas-
2 ures to be adopted under subsection (a), and the
3 timing of any such adoption, the Secretaries shall
4 give priority to—

5 “(A) measures with the greatest potential
6 impact for improving the quality and efficiency
7 of care provided under Federal programs;

8 “(B) measures that may be rapidly imple-
9 mented by group health plans, health insurance
10 issuers, physicians, hospitals, nursing homes,
11 long-term care providers, and other providers;
12 and

13 “(C) measures which may inform
14 healthcare decisions made by consumers and
15 patients.

16 “(2) NATIONAL QUALITY FORUM MEASURES;
17 QUALITY OF CARE INDICATORS.—To the extent de-
18 termined feasible and appropriate by the Secretaries,
19 the Secretaries shall adopt—

20 “(A) measures endorsed by the National
21 Quality Forum, subject to compliance with the
22 amendments made by the National Technology
23 Transfer and Advancement Act of 1995; and

24 “(B) indicators relating to the quality of
25 care data submitted to the Secretary by hos-

1 pitals under section 1886(b)(3)(B)(vii)(II) of
2 the Social Security Act.

3 “(c) COLLABORATION WITH PRIVATE ENTITIES.—

4 “(1) IN GENERAL.—The Secretaries may estab-
5 lish collaborative agreements with private entities,
6 including group health plans and health insurance
7 issuers, providers, purchasers, consumer organiza-
8 tions, and entities receiving a grant under section
9 2908, to—

10 “(A) encourage the use of the healthcare
11 quality measures adopted by the Secretary
12 under this section; and

13 “(B) foster uniformity between the
14 healthcare quality measures utilized in Federal
15 programs and private entities.

16 “(2) USE OF MEASURES.—The measures adopt-
17 ed by the Secretaries under this section may apply
18 in one or more disease areas and across delivery set-
19 tings, in order to improve the quality of care pro-
20 vided or delivered by private entities.

21 “(d) COMPARATIVE QUALITY REPORTS.—Beginning
22 on January 1, 2008, in order to make comparative quality
23 information available to healthcare consumers, health pro-
24 fessionals, public health officials, researchers, and other
25 appropriate individuals and entities, the Secretaries and

1 other relevant agencies shall provide for the aggregation,
2 analysis, and dissemination of quality measures collected
3 under this section. Nothing in this section shall be con-
4 strued as modifying the privacy standards under the
5 Health Insurance Portability and Accountability Act of
6 1996 (Public Law 104–191).

7 “(e) EVALUATIONS.—

8 “(1) ONGOING EVALUATIONS OF USE.—The
9 Secretary shall ensure the ongoing evaluation of the
10 use of the healthcare quality measures adopted
11 under this section.

12 “(2) EVALUATION AND REPORT.—

13 “(A) EVALUATION.—The Secretary shall,
14 directly or indirectly through a contract with
15 another entity, conduct an evaluation of the col-
16 laborative efforts of the Secretaries to adopt
17 uniform healthcare quality measures and re-
18 porting requirements for federally supported
19 healthcare delivery programs as required under
20 this section.

21 “(B) REPORT.—Not later than 2 years
22 after the date of enactment of this title, the
23 Secretary shall submit a report to the appro-
24 priate committees of Congress concerning the

1 results of the evaluation under subparagraph
2 (A).”.

3 **SEC. 302. VALUE BASED PURCHASING PROGRAMS; SENSE**
4 **OF THE SENATE.**

5 (a) MEDICARE VALUE BASED PURCHASING PILOT
6 PROGRAM.—

7 (1) IN GENERAL.—The Secretary shall establish
8 under title XVIII of the Social Security Act (42
9 U.S.C. 1395 et seq.) a value based purchasing pilot
10 program based on the reporting of quality measures
11 pursuant to those adopted in section 2910 of the
12 Public Health Service Act (as added by section 301)
13 and the overall improvement of healthcare quality
14 through the use of the electronic exchange of health
15 information by entities (including Federally qualified
16 health centers, as defined in section 1861(aa)(4) of
17 the Social Security Act (42 U.S.C. 1395x(aa)(4)))
18 pursuant to the standards adopted under section
19 2903 of the Public Health Service Act (as added by
20 section 101). Such pilot program should be based on
21 experience gained through previous demonstration
22 projects conducted by the Secretary, including dem-
23 onstration projects conducted under sections 1866A
24 and 1866C of the Social Security Act (42 U.S.C.
25 1395cc-1; 1395cc-3), section 649 of the Medicare

1 Prescription Drug, Improvement, and Modernization
2 Act of 2003 (Public Law 108–173; 117 Stat. 2322),
3 and other relevant work conducted by private enti-
4 ties.

5 (2) EXPANSION.—After conducting the pilot
6 program under paragraph (1) for not less than 2
7 years, the Secretary may transition and implement
8 such program on a national basis.

9 (3) FUNDING.—

10 (A) IN GENERAL.—Payments for the costs
11 of carrying out the provisions of this subsection
12 shall be made from the Federal Hospital Insur-
13 ance Trust Fund under section 1817 of the So-
14 cial Security Act (42 U.S.C. 1395i) and the
15 Federal Supplementary Insurance Trust Fund
16 under section 1841 of such Act (42 U.S.C.
17 1395t) (in this subsection referred to as the
18 “Trust Funds”), as determined appropriate by
19 the Secretary.

20 (B) LIMITATION TO ENSURE BUDGET NEU-
21 TRALITY.—The Secretary shall ensure that the
22 total amount of expenditures from the Trust
23 Funds in a year does not exceed the total
24 amount of expenditures from the Trust Funds

1 that would have been made in such year if this
2 subsection had not been enacted.

3 (C) MONITORING AND REPORTS.—

4 (i) ONGOING MONITORING BY THE
5 SECRETARY TO ENSURE FUNDING LIMITA-
6 TION IS NOT VIOLATED.—The Secretary
7 shall continually monitor expenditures
8 made from the Trust Funds by reason of
9 the provisions of this subsection to ensure
10 that the limitation described in subpara-
11 graph (B) is not violated.

12 (ii) REPORTS.—Not later than April 1
13 of each year (beginning in the year fol-
14 lowing the year in which the pilot program
15 under paragraph (1) is implemented), the
16 Secretary shall submit a report to Con-
17 gress and the Comptroller General of the
18 United States that includes—

19 (I) a detailed description of—

20 (aa) the total amount ex-
21 pended from the Trust Funds
22 (including all amounts expended
23 as a result of the provisions of
24 this subsection) during the pre-
25 vious year compared to the total

1 amount that would have been ex-
2 pended from the Trust Funds
3 during such year if this sub-
4 section had not been enacted;

5 (bb) the projections of the
6 total amount that will be ex-
7 pended from the Trust Funds
8 (including all amounts that will
9 be expended as a result of the
10 provisions of this subsection)
11 during the year in which the re-
12 port is submitted compared to
13 the total amount that would have
14 been expended from the Trust
15 Funds during the year if this
16 subsection had not been enacted;
17 and

18 (cc) specify the steps (if
19 any) that the Secretary will take
20 pursuant to subparagraph (D) to
21 ensure that the limitation de-
22 scribed in subparagraph (B) will
23 not be violated; and

24 (II) a certification from the Chief
25 Actuary of the Centers for Medicare &

1 Medicaid Services that the descrip-
2 tions under items (aa), (bb), and (cc)
3 of subclause (I) are reasonable, accu-
4 rate, and based on generally accepted
5 actuarial principles and methodolo-
6 gies, including that the steps de-
7 scribed in subclause (I)(cc) will be
8 adequate to avoid violating the limita-
9 tion described in subparagraph (B).

10 (D) APPLICATION OF LIMITATION.—If the
11 Secretary determines that the provisions of this
12 subsection will result in the limitation described
13 in subparagraph (B) being violated in any year,
14 the Secretary shall take appropriate steps to re-
15 duce spending that is occurring by reason of
16 such provisions, including through reducing the
17 scope, site, and duration of the pilot project.

18 (E) AUTHORITY.—The Secretary shall
19 make necessary spending adjustments under
20 the medicare program to recoup amounts so
21 that the limitation described in subparagraph
22 (B) is not violated in any year.

23 (b) SENSE OF THE SENATE REGARDING PHYSICIAN
24 PAYMENTS UNDER MEDICARE.—It is the sense of the
25 Senate that modifications to the medicare fee schedule for

1 physicians' services under section 1848 of the Social Secu-
2 rity Act (42 U.S.C. 1394w-4) should include provisions
3 based on the reporting of quality measures pursuant to
4 those adopted in section 2910 of the Public Health Service
5 Act (as added by section 301) and the overall improvement
6 of healthcare quality through the use of the electronic ex-
7 change of health information pursuant to the standards
8 adopted under section 2903 of such Act (as added by sec-
9 tion 101).

10 (c) MEDICAID VALUE BASED PURCHASING PRO-
11 GRAMS.—

12 (1) IN GENERAL.—The Secretary shall author-
13 ize waivers under section 1115 of the Social Security
14 Act (42 U.S.C. 1315) for States to establish value
15 based purchasing programs for State medicaid pro-
16 grams established under title XIX of such Act (42
17 U.S.C. 1396 et seq.). Such programs shall be based
18 on the reporting of quality measures pursuant to
19 those adopted in section 2910 of the Public Health
20 Service Act (as added by section 301) and the over-
21 all improvement of healthcare quality through the
22 use of the electronic exchange of health information
23 pursuant to the standards adopted under section
24 2903 of the Public Health Service Act (as added by
25 section 101).

1 (2) WAIVER.—In authorizing such waivers, the
2 Secretary shall waive any provisions of title XI or
3 XIX of the Social Security Act that would otherwise
4 prevent a State from establishing a value based pur-
5 chasing program in accordance with paragraph (1).

6 (d) QUALITY INFORMATION SHARING.—

7 (1) REVIEW OF MEDICARE CLAIMS DATA.—

8 (A) PROCEDURES.—In order to improve
9 the quality and efficiency of items and services
10 furnished to medicare beneficiaires under title
11 XVIII of the Social Security Act, the Secretary
12 shall establish procedures to review claims data
13 submitted under such title with respect to items
14 and services furnished or ordered by physicians.

15 (B) USE OF MOST RECENT MEDICARE
16 CLAIMS DATA.—In conducting the review under
17 subparagraph (A), the Secretary shall use the
18 most recent claims data that is available to the
19 Secretary.

20 (2) SHARING OF DATA.—Beginning in 2006,
21 the Secretary shall periodically provide physicians
22 with comparative information on the utilization of
23 items and services under such title XVIII based
24 upon the review of claims data under paragraph (1).

1 **SEC. 303. QUALITY IMPROVEMENT ORGANIZATION ASSIST-**
2 **ANCE.**

3 (a) **IN GENERAL.**—Section 1154(a) of the Social Se-
4 curity Act (42 U.S.C. 1320c–3(a)) is amended by adding
5 at the end the following:

6 “(18) The organization shall assist, at such
7 time and in such manner as the Secretary may re-
8 quire, healthcare providers (as defined in section
9 2901 of the Public Health Service Act) in imple-
10 menting the electronic exchange of health informa-
11 tion (as defined in such section 2901).”.

12 (b) **EFFECTIVE DATE.**—The amendment made by
13 this section shall apply to contracts entered into on or
14 after the date of enactment of this Act.