

## Side-by-Side Comparison of Health Information Technology Legislation

December 2, 2005

	<b>S. 1418, the “Wired for Health Care Quality and Safety Act,” as passed in the Senate on November 11, 2005 (combined Frist/Clinton S. 1262 and Enzi/Kennedy S. 1355)</b>	<b>H.R. 4157, the “Health Information Technology Promotion Act of 2005,” as introduced in the House on October 27, 2005 (Johnson)</b>	<b>H.R. 2234, the “21<sup>st</sup> Century Health Information Act of 2005,” as introduced in the House on May 10, 2005 (Murphy and Kennedy)</b>
<b>Definitions</b>	<p>The terms (1) group health plan (the Public Health Service Act) (2) healthcare provider (Social Security Act) and health insurance issuer (Public Health Service Act) use definitions under existing federal law. [Sec. 2901].</p> <p>The term “health information” is any information, from any medium relating to past, present, and future conditions (including mental health). [Sec. 2901] <b>Note:</b> This definition generally mirrors that under HIPAA.</p> <p>The term “individually identifiable health information” refers to any information, including demographic information, that:</p> <ol style="list-style-type: none"> <li>1. is created or received by a health care provider, health plan, employer or health care clearinghouse; and</li> <li>2. relates to the past, present, or future physical or mental health of an individual or the past, present or future payment for the provision of</li> </ol>	<p>Health information technology includes 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.</p>	<p>The terms (1) group health plan (ERISA), (2) physician (Social Security Act), and (3) health insurance issuer (ERISA) use definitions under existing federal law. [Sec. 10].</p> <p>The term “regional health information organization” is any organization or consortium that:</p> <ol style="list-style-type: none"> <li>1. facilitates the drafting or implementation of a regional health network plan for a defined geographic region; and</li> <li>2. includes representatives of health plans and other payers; government health care programs; employers, physicians, hospitals and other providers, consumers and may include representatives from organized labor.</li> </ol> <p>The term “small physician group” means a physician practice with 10 or fewer physicians.</p>

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	<p>health care to an individual; and</p> <p>3. identifies the individual if there is a reasonable chance that the information can identify the individual.</p> <p>Qualified information technology means a computerized system that:</p> <ol style="list-style-type: none"> <li>1. protects privacy and security;</li> <li>2. maintains and provides permitted access in an electronic format;</li> <li>3. incorporates decision support to reduce errors and enhance quality;</li> <li>4. complies with adopted standards; and</li> <li>5. allows for reporting quality measures. [Sec. 2901].</li> </ol>		
<p><b>Office of the National Coordinator for Health Information Technology (ONCHIT)</b></p>	<p>Establishes an “Office of the National Coordinator of Health Information Technology (ONCHIT)” in the Office of the Secretary of HHS that is headed by a National Coordinator who is appointed by, and reports to, the Secretary. [Sec. 2902].</p> <p>The ONCHIT is to coordinate with Federal agencies and private entities to oversee the development of a nation wide interoperable health information technology (HIT) infrastructure that: protects privacy, improves health care quality, reduces costs, enhances access to health information at the point of care, increases efficiency, enhances</p>	<p>Similar to S.1418 in guidance and duties, however the National Coordinator is appointed by the President and reports to the Secretary of HHS.</p> <p>Appropriates such sums as necessary for FY06 to FY10. [Sec. 2].</p>	<p>No comparable provision.</p>

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	<p>public health reporting, and facilitates health research.</p> <p>The bill details the specific duties of the National Coordinator which include facilitating the development and adoption of standards for the electronic exchange of health information.</p> <p>Appropriates \$5 million for fiscal years (FY) 2006 and 2007, and such sums as necessary for FY08 to FY10. [Sec. 2902].</p>		
<b>Interoperability Standards</b>	<p>Establishes the American Health Information Collaborative (AHIC) to recommend uniform national policies for widespread HIT adoption by the Federal Government and voluntary adoption by private sector.</p> <p>The AHIC will be appointed by the Secretary and include balanced representation of public and private sector representatives from:</p> <ol style="list-style-type: none"> <li>1. consumer and patient organizations;</li> <li>2. privacy and security experts;</li> <li>3. health care providers;</li> <li>4. health insurance plans (or third party payers);</li> <li>5. IT vendors; and</li> <li>6. purchasers and employers.</li> </ol> <p>Members will serve 2 year terms, except those appointed to an unexpired term will only serve the remainder of such term.</p>	<p>The National Coordinator will lead the development and approval of standards used in the creation, maintenance, or exchanges of health information, as well as the certification and inspection of health information technology products, exchanges, and architectures. To the maximum extent possible, the National Coordinator is instructed to contract with, or recognize, private entities to develop these standards. Approved standards will preempt state laws and regulations. [Sec. 3(c)].</p> <p>The Secretary, in consultation with other entities, will develop a strategic plan for coordinating the following areas:</p> <ol style="list-style-type: none"> <li>1. health information technology standards;</li> <li>2. HIPAA transaction standards;</li> <li>3. updated ICD codes; and</li> <li>4. federal activities with respect to the electronic exchange of health</li> </ol>	No comparable provision.

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	<p>The AHIC will recommend standards that:</p> <ol style="list-style-type: none"> <li>1. protect privacy and security;</li> <li>2. limit unauthorized access to health information;</li> <li>3. notify patients if their health information is wrongfully disclosed;</li> <li>4. facilitates secure patient access to health information;</li> <li>5. fosters greater public understanding of HIT;</li> <li>6. promote ongoing harmonization of industry-wide HIT standards;</li> <li>7. prioritize specific uses for which HIT is valuable; and</li> <li>8. other policies determined to be necessary.</li> </ol> <p>Deems the standards adopted by the Consolidated Health Informatics Initiative to be recommended by the Collaborative.</p> <p>No later than 1 year after the date of enactment of this title, and on an ongoing basis, the Collaborative will: review existing standards for the electronic exchange of health information; identify deficiencies and omissions; and identify duplication and overlap.</p> <p><b>Note:</b> this section does not apply to any standards developed in relationship to HIPAA. [Sec. 2903(d)(4)]</p> <p>Any standards adopted by the Secretary</p>	<p>information (includes the ONCHIT, AHIC, OESS, NCVHs, and any other entity involved in the exchange of health information that the Secretary deems appropriate. [Sec. 7].</p>	

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	<p>under this section are voluntary for private entities.</p> <p>The Secretary of HHS will submit to the Senate HELP and Finance Committees and the House Energy and Commerce and Ways and Means Committees, an annual report that describes actions by both the private and public sector to facilitate adoption, discusses barriers, and makes recommendations for achieving an interoperable health care system.</p> <p>Appropriates \$4 million for FY06 - FY07 and such sums as necessary for FY08 to FY10. [Sec. 2903].</p>		
<p><b>Privacy, Security, and Confidentiality Standards</b></p>	<p>HIPAA fully applies. [Sec. 4].</p> <p>Directs the Secretary to conduct (or contract) a study that examines:</p> <ol style="list-style-type: none"> <li>1. variation in state laws relating to licensure, registration, and certification of medical professionals; and</li> <li>2. how variation in state laws impacts the secure electronic exchange of health information among the states and with the federal government.</li> </ol> <p>Within one year of enactment, the Secretary will publish a report that describes the results and make recommendations for harmonizing state laws. [Sec. 3].</p> <p>Directs the GAO to report to Congress,</p>	<p>Directs the Secretary to conduct a study of state and federal security and confidentiality laws to determine:</p> <ol style="list-style-type: none"> <li>1. the degree to which state laws vary;</li> <li>2. how variation may adversely impact security and confidentiality and the electronic exchange of information; and</li> <li>3. the strengths and weaknesses of laws and standards for protecting the security and confidentiality of individually identifiable information while considering the need for efficient exchange of information to improve quality.</li> </ol> <p>After completing the study, the Secretary will issue a report to Congress within 18 months of</p>	<p>RHIOs receiving funding must comply with HIPAA and allow patients to exclude their health information from the network. In addition, RHIOs are required to report any unauthorized disclosures to the Secretary and give notice to affected individuals. [Sec. 3(b)].</p>

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	<p>within 6 months of enactment whether health plans, health care clearinghouses, and providers who transmit health information in electronic form should notify patients if their individually identifiable information is wrongfully disclosed. [Sec. 5].</p>	<p>enactment that addresses:</p> <ol style="list-style-type: none"> <li>1. whether state and federal security and confidentiality laws should be conformed to create a single set of national standards; and</li> <li>2. what those standards should be (if a single standard is deemed necessary). [Sec. 4(a)].</li> </ol> <p>If the Secretary determines that a single set of standards is necessary and Congress fails to act within 36 months, the Secretary will specify and regulate such standards. Any federal standards would preempt any contrary state provision. [Sec. 4(b)].</p>	
<p><b>Implementation and Certification Standards</b></p>	<p>The Secretary (in consultation with the ONCHIT and NIST) shall develop criteria to ensure uniform and consistent implementation of standards voluntarily adopted by private sector entities. In addition, the Secretary, based upon the Collaborative recommendations, will develop criteria to certify that hardware and software are compliant with the applicable standards for electronic exchange of health information.</p> <p>The Secretary may recognize a private entity (or entities) to assist with the implementation and certification of standards [Sec. 2904]</p> <p>Within 3 years of the federal government’s adoption of a recommendation, all federal</p>	<p>The National Coordinator is responsible for developing certification and inspection processes for health information technology products, exchanges, and architectures. The National Coordinator is to contract with, or recognize, private entities to carry out this provision. Approved certification standards will preempt any contrary state provision. [Sec. 2].</p>	<p>The Certification Commission for Health Information Technology (CCHIT) must be approved by the American National Standards Institute (ANSI) or the Secretary. If CCHIT is not accredited by ANSI and is disapproved by the Secretary, the Secretary will adopt interoperability standards and compliance criteria for health IT products. A private entity may be designated for this task. [Sec. 4].</p> <p>Federal funds may not be used to purchase health information technology unless the product is certified, or if there is not yet a certification process, the federal department or agency involved determines that the product incorporates appropriate interoperability data standards and compliance criteria. [Sec. 4].</p>

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	agencies collecting health care data for quality, surveillance, epidemiology, adverse event reporting, or other purposes, must comply with the adopted recommendations.		
<b>Adoption of ICD-10 Standards</b>	No comparable provision.	No later than April 1, 2007, the Secretary will issue a final rule to modify the following standards: <ol style="list-style-type: none"> <li>1. replace ASC X12 version 4010 with ASC X12 version 5010 on or after April 1, 2009;</li> <li>2. replace NCPDP Telecommunications Standards version 5.1 with version C.3 on or after April 1, 2009;</li> <li>3. replace ICD-9-CM with ICD-10-CM and ICD-10-PCS on or after October 1, 2009.</li> </ol> The Secretary’s final rules will not be subject to judicial review. [Sec. 5].	No comparable provision.
<b>Federal Data Collection and Coordination of Funding</b>	Federal agencies are precluded from adopting non-conforming HIT one year after enactment. [Sec. 2903 (g)]	The National Coordinator is to coordinate Federal activities relating to HIT. [Sec. 2].	No comparable provision.
<b>Incentive Grants for the Secure Exchange of Health Information</b>	Authorizes grants to eligible entities to purchase or enhance qualified HIT systems to improve quality and efficiency. There is a matching requirement for grant recipients in the amount of \$1 for every \$3 of federal funds. Prioritizes grants for entities in rural and underserved areas; or entities that use grant funding to promote secure data sharing or interoperability across health care settings in regional or local information networks;	No comparable provision.	No comparable provision. Provides funding for regional health information networks described below.

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	<p>and non-profit health care providers.</p> <p>Authorizes \$25 million for FY06; \$75 million for 2007; and sums as necessary for 2008 through 2010. [Sec. 2906]</p> <p>Authorizes grants to the states for the establishment of state loan programs for health care providers for the purchase and increased use of qualified HIT. State loan funds, including repayments and interest earned, may only be used for awarding loans or loan guarantees. A state loan fund may accept contributions from private sector entities (the identity and amount contributed by a private entity must be made public). States are subject to a minimum matching requirement of \$1 for each \$1 of Federal funding provided under the grant.</p> <p>Funds may not be used for:</p> <ol style="list-style-type: none"> <li>1. purchasing or acquiring any health information technology that is not a “qualified” system;</li> <li>2. conducting activities for which Federal funds are expended; or</li> <li>3. any purpose other than making loans to eligible entities.</li> </ol> <p>[Sec. 2905 (b)]</p>		
<p><b>Funding for Regional Health Information Organizations</b></p>	<p>Authorizes competitive grants for the implementation of regional or local health information plans to improve health care quality and efficiency through electronic</p>	<p>No comparable provision.</p>	<p>Authorizes the Secretary to make up to 20 grants to regional health information organizations (RHIOs) to develop and implement, over a three year period, a</p>

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	<p>exchange of health information. The bill outlines the eligibility requirements for receiving funding. The Secretary is required to evaluate the activities of the grants and implement lessons learned.</p> <p>An eligible entity may receive only one non-renewable grant.</p> <p>Provides \$116 million in grants for fiscal year 2006; \$141 million for fiscal year 2007, and such sums as may be necessary for each fiscal year 2008 through 2010. [Sec. 2905(c)].</p>		<p>regional health information technology plan. The bill provides explicit guidance for the content of the regional health information technology plan that must be submitted, and approved, by the Secretary. In addition, the bill provides guidance for how the Secretary should prioritize the grants and provide technical assistance to RHIOs.</p> <p>The Director of AHRQ will establish and maintain, through contract or grant, a National Technical Assistance Center to assist physicians successfully adopt health information technology and participate in RHIOs. Small group practices will receive priority for assistance.</p> <p>Within 4 years of enactment, the GAO will report to Congress on the progress of RHIOs.</p> <p>Appropriates \$50 million for fiscal year 2006 and such sums as necessary for the years between 2007 and 2010. No more than 10 percent of these funds will be directed towards the National Technical Assistance Center.</p> <p>The Secretary may also make 10 year loans to accredited RHIOs to finance investments in network infrastructure and technology acquisition, training, and workflow engineering.</p>
<b>HHS Studies</b>	Directs the Secretary to conduct (or contract) a study that examines:	No later than 2 years after enactment, the Secretary will provide a report to Congress on	No comparable provision.

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	<p>3. variation in state laws relating to licensure, registration, and certification of medical professionals; and</p> <p>4. how variation in state laws impacts the secure electronic exchange of health information among the states and with the federal government.</p> <p>Within one year of enactment, the Secretary will publish a report that describes the results and make recommendations for harmonizing state laws. [Sec. 3].</p> <p>Directs the Secretary to conduct a study to determine efficient reimbursement incentives for improving health care quality in qualified health centers, rural health care clinics and free clinics. [Sec. 6].</p>	<p>the work of the American Health Information Community (AHIC). The report will describe AHIC’s work to develop a national health information network, identify best practices to protect private health information, progress on establishing uniform health IT standards, electronic medical record adoption, and recommendations for transitioning AHIC into a permanent advisory board.</p>	
<p><b>Group Purchasing “Safe Harbors”</b></p>	<p>No comparable provision.</p>	<p>Provides an exemption and “safe harbor” in the Stark Act and Medicare Anti-Kickback Law for non-monetary remuneration in the form of health information technology as long as it does not:</p> <ol style="list-style-type: none"> <li>1. limit or restrict the use of health information technology to services provided by the physician to individuals at the granting entity;</li> <li>2. limit or restrict the use of health IT in conjunction with other health IT;</li> <li>3. take into account the volume or value of referrals (or other business generated) by the physician to the providing entity.</li> </ol>	<p>Provides a “safe harbor” under the Anti-kickback Statute for the provision of any equipment or services that are appropriate for the development or implementation of an approved RHIO plan. [Sec. 6].</p>

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		<p>Health information technology includes 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.</p> <p>Requires the Secretary to issue regulations implementing the exemptions and safe harbors within six months of enactment.</p> <p>Instructs the Secretary to conduct a study to determine the impact of these safe harbors, focusing in particular on:</p> <ol style="list-style-type: none"> <li>1. the effectiveness on increasing adoption;</li> <li>2. the types of health IT provided; and</li> <li>3. adverse affects on the health care system or choices available to consumers.</li> </ol> <p>Within 3 years of enactment, the Secretary will submit a report on the study and include recommendations to change safe harbor descriptions if appropriate. In addition, the Secretary may issue regulations to update the criteria for nonmonetary remuneration (in the form of health information technology and related training services) to include certification criteria or adopted standards. [Sec. 3].</p>	
<b>Clinical Education Demonstrations</b>	Authorizes grants to carry out demonstration programs to develop academic curricula integrating qualified health information	No comparable provision.	No comparable provision.

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	technology systems into clinical education. Grants are to be awarded on a competitive basis and pursuant to peer review. Grant recipients must provide data regarding the effectiveness of the demonstration project on improving safety, efficacy of delivery, and increasing the likelihood that graduates adopt and incorporate health IT into their practice. Grant recipients must match no less than \$1 for every \$2 of Federal funds provided. Appropriates \$5 million for fiscal year 2007 and such sums as may be necessary for the fiscal years between 2008 and 2010. [Sec. 2906].		
<b>Quality Improvement and Measurement</b>	<p>The Secretary of HHS, the Secretary of VA, the Secretary of Defense and representatives of other relevant Federal agencies will develop a quality measurement system for measuring the quality of health care. Quality measures must: be evidence-based, reliable and feasible to collect; include measures of clinical process, outcomes and patient experience; and include measures of overuse, underuse and misuse of healthcare services. The Secretary will give priority to measures that will have the greatest impact for improving quality and efficiency of federal programs, can be implemented rapidly and inform decision-making by consumers.</p> <p>The Secretary may establish collaborative agreements with private entities to</p>	No comparable provision.	No comparable provision.

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	<p>encourage the use of the adopted health care quality measures and foster uniformity with measures utilized in the private sector.</p> <p>As of January 1, 2008, the Secretary will provide for the aggregation and analysis of the quality measures collected and disseminate recommendations and the derived best practices.</p> <p>The Secretary will provide technical assistance to public and private entities to enable them to implement, use and rapidly disseminate evidence-based guidelines.</p> <p>The Secretary will implement procedures to enable DHHS to accept the electronic transmission of data fro quality measurement using the measures adopted. [2907].</p>		
<p><b>Health Information Technology Resource Center</b></p>	<p>Authorizes the Secretary to develop a Health Information Technology Resource Center to provide technical assistance and develop best practices to support and accelerate the adoption, implementation, and effective use of health information technology.</p> <p>The Secretary will establish a toll-free telephone number or internet website to provide healthcare providers with a single point of contact for information on:</p> <ol style="list-style-type: none"> <li>1. Federal grants and technical assistance services;</li> <li>2. qualified health information software; and</li> </ol>	<p>No comparable provision.</p>	<p>No comparable provision.</p>

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	3. regional and local health information technology and quality measures adopted by the federal government. [Sec. 7].		
<b>Adjustments to Medicare Payments</b>	No comparable provision.	No comparable provision.	Instructs the Secretary to develop a methodology for adjusting Medicare payments to providers who participate in accredited RHIOs and use health information technology to improve quality and accuracy of clinical decision making. [Sec. 8].
<b>Telemedicine</b>	Reauthorizes incentive grants for telemedicine. Amends section 330L(b) of the Public Health Services Act to extend grants from 2006 through 2010. [Sec. 8].	No comparable provision.	No comparable provision.



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America's Health Insurance Plans  
601 Pennsylvania Ave., NW  
South Building, Suite 500  
Washington, DC 20004

202.778.3200  
www.ahip.org