H.R. 598
THE AMERICAN ECONOMIC RECOVERY AND REINVESTMENT PLAN
SECTION- BY SECTION SUMMARY

Title II – ASSISTANCE FOR UNEMPLOYED WORKERS AND STRUGGLING FAMILIES

Subtitle A – Unemployment Insurance

Section 2001 – Extension of Emergency Unemployment Compensation Program – The provision would extend the Emergency Unemployment Compensation (EUC) program, which provides between 20 and 33 weeks of extended unemployment benefits to workers exhausting their regular benefits. The EUC program is currently scheduled to phase out at the end of March 2009. The provision would extend the duration of the program through December 2009.

Section 2002 – Increase in Unemployment Compensation Benefits - The provision would allow States to enter into agreements to receive federal funds to increase unemployment benefits by $25 a week (including both regular and extended benefits). Such agreements would prohibit a State from reducing regular unemployment benefits below the level in effect on December 31, 2008. The additional $25 payment would be provided through December 2009 (those receiving such a payment before that date could continue to receive it up to June 30, 2010).

Section 2003 – Special Transfers for Unemployment Compensation Modernization - For FY 2009, 2010, and 2011, the provision would provide up to $7 billion in total for States that enact (or have already enacted) specific policies designed to increase access to unemployment benefits and to make other improvements to the Unemployment Compensation (UC) program. For a State to receive a distribution under the provision, it must first have enacted an alternative base period, which ensures that a worker's last completed quarter of employment is counted when determining his/her eligibility for unemployment benefits. Once it has enacted an alternative base period, a State is entitled to one-third of its total potential distribution (which is based on a State's share of unemployment taxes). To receive its remaining distribution, a State must enact provisions in two out of the following four areas: (1) permit former part-time workers to seek part-time work; (2) permit voluntary separations from employment for compelling family reasons; (3) provide extended compensation to UC recipients in training programs for high demand occupations; and (4) provide dependents allowances to UC recipients with children. In addition to the $7 billion in conditional transfers, the provision also would automatically send a total of $500 million to all States for UC administrative expenses.

Subtitle B – Assistance to Vulnerable Individuals

Section 2101 – Emergency Fund for TANF program - The provision would establish a new temporary emergency fund for the Temporary Assistance for Needy Families (TANF) program to assist States with rising welfare caseloads. If a State's basic assistance caseload increases in FY 2009 or FY 2010 compared to either FY 2007 or FY 2008, the fund would provide an 80% federal match for the increased expenditures. Additionally, increased expenditures for short-term, non-recurring assistance and for subsidized employment would be reimbursed at that same rate. Total payments from the new emergency fund and from the current-law contingency fund (which remains unchanged) may not exceed 25% of a State's annual TANF grant. The provision also would provide a temporary hold-harmless for the caseload reduction credit under TANF to allow States to maintain the credit provided in FY 2007 or FY 2008.

Section 2102 – One-Time Emergency SSI Payment - The provision would provide an additional one-time payment in 2009 to Supplemental Security Income (SSI) recipients equaling the average SSI monthly benefit (approximately $450 for an individual). These payments would not be considered income, or resources for the six months following receipt, for the purposes of determining eligibility for other means-tested programs.

Section 2103 – Temporary Resumption of Prior Child Support Law - For FY 2009 and FY 2010, the provision would restore a policy in place before 2007 which permitted a federal match for the expenditure of child support incentive funds, which are awarded to States based on the performance of their child support programs.

Title III – HEALTH INSURANCE ASSISTANCE FOR THE UNEMPLOYED

Sec. 3001 – Short Title and Table of Contents – Health Insurance Assistance for the Unemployed Act of 2009

Sec. 3002 - Premium assistance for COBRA benefits and extension of COBRA benefits for older or long-term employees - See Joint Committee on Taxation document "Description of Title III of H.R. 598, the 'Health Insurance Assistance for the Unemployed Act of 2009' "

> **Sec. 6431 – COBRA Premium Assistance -** See Joint Committee on Taxation document "Description of Title III of H.R. 598, the 'Health Insurance Assistance for the Unemployed Act of 2009' "
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> **Sec. 6720C Penalty for failure to notify health plan of cessation of eligibility for COBRA premium assistance -** See Joint Committee on Taxation document

"Description of Title III of H.R. 598, the 'Health Insurance Assistance for the Unemployed Act of 2009' "

Sec. 139C – COBRA premium assistance - See Joint Committee on Taxation document "Description of Title III of H.R. 598, the 'Health Insurance Assistance for the Unemployed Act of 2009' "

Sec. 3003 – Temporary optional Medicaid coverage for the unemployed - The provision would create a new optional Medicaid eligibility group for certain unemployed individuals and their families. Under this eligibility group, states could cover one or more categories of individuals, along with their spouses and dependent children under age 19. The categories would include those who:

- are receiving unemployment compensation (UC) benefits or who have exhausted unemployment benefits; or who have exhausted unemployment benefits;
- have family income that does not exceed 200% of the federal poverty line (FPL), and who are otherwise not eligible for Medicaid or the State Children's Health Insurance Program (SCHIP);
- are members of households participating in the supplemental nutrition assistance program (i.e., food stamps), and who are otherwise not eligible for Medicaid or SCHIP.

In all cases, the individual must be involuntarily separated from employment on or after September 1, 2008, and before January 1, 2011. The Secretary of Health and Human Services will specify appropriate requirements in the case of an individual who was an independent contractor.

The individuals and their families could not otherwise be covered under creditable coverage (i.e., they would have to otherwise be uninsured). Individuals who exhausted unemployment benefits may only be covered if the state also covers those who are receiving unemployment benefits. No income or resource test could be applied to individuals in the optional eligibility group, except for those in the category up to 200% FPL. Citizenship documentation requirements would not apply to those in the optional eligibility group.

States would receive 100% federal funding for items and services furnished to individuals in the optional eligibility group on or after the date of enactment through the end of calendar year 2010. In addition, they would receive 100% federal funding for expenditures incurred during this period for administrative costs attributable to eligibility determination and enrollment of such individuals.

Title IV – HEALTH INFORMATION TECHNOLOGY

Sec. 4001 – Short title, table of contents of title – Health Information Technology for Economic and Clinical Health Act or the HITECH Act

Subtitle A – Promotion of Health Information Technology

Part I – Improving Health Care Quality, Safety and Efficiency

Sec. 4101 – ONCHIT; standards development and adoption. – NOTE: This section makes a number of amendments to the Public Health Service Act (PHSA).

Sec. 3000 – Definitions - These provisions define key terms related to the promotion of health information technologies.

Subtitle A – Promotion of Health Information Technology

Sec. 3001 – Office of the National Coordinator for Health Information Technology - The Office of the National Coordinator of Health Information Technology (ONCHIT), which was originally created by Executive Order 13335, is codified into statute within the U.S. Department of Health and Human Services (HHS). The head of ONCHIT (the National Coordinator) will lead the efforts for the development of policies and recognition of standards to allow for the secure electronic exchange of health information that leads to improvements in the quality of clinical care.

The National Coordinator is charged with the following duties:

- Update and maintain strategic plan on how to achieve widespread adoption and use of interoperable, secure, and clinically useful electronic health records. The plan shall include measurable goals and the National Coordinator is required to regularly evaluate and publicly report on progress toward achieving these goals.

- Provide guidance to and act as a liaison between the HIT Policy and HIT Policy Committees.

- Review and recommend standards and guidance to the Secretary to ensure interoperability, security/privacy, and clinical utility of electronic health information. Such recommendations will be developed with input from the HIT Standards Committee.

- Develop a program for the voluntary testing and certification of products as meeting the standards adopted by the Secretary for the secure electronic exchange of health information.

- Coordinate efforts throughout the federal government to promote and utilize electronic health information technology.

- Appoint a Chief Privacy Officer who shall assist the National Coordinator with initiatives to promote privacy, security, and data stewardship of electronic health information.

- Regularly report on progress on efforts to achieve the goals outlined in the strategic plan, as well as the impact of health information technology in communities with health disparities and medically underserved areas.

Sec. 3002 – HIT Policy Committee - Establishes a federal advisory committee of public and private stakeholders to provide input and assistance to the National Coordinator. The HIT Policy Committee will serve as a forum for input and expertise in the area of health information technology. The HIT Policy Committee will provide policy advice and make recommendations to the National Coordinator on how best to achieve the goals outlined in the strategic plan, including how to achieve the goal of ensuring that every person in the nation has a secure electronic health record by 2014.

Sec. 3003 – HIT Standards Committee – Establishes a federal advisory committee of public and private stakeholders to provide input and assistance to the National Coordinator. The HIT Standards Committee will recommend standards, implementation specifications, and certification criteria for the secure electronic exchange and use of health information technology consistent with the strategic plan and policy recommendations from the HIT Policy Committee.

Sec. 3004 – Process for adoption of endorsed recommendations; adoption of initials set of standards, implementation of specifications, and certification criteria – Directs the Secretary, in consultation with other relevant agencies, to review standards recommended by the National Coordinator and, where appropriate, provide for adoption by the Government through a rulemaking process. Requires that the Secretary adopt an initial set of standards, which may be based on standards already developed by the National Coordinator, no later than December 31, 2009.

Sec. 3005 – Application and use of adopted standards and implementation specifications by Federal agencies – Requires that federal agencies implementing or using electronic health information do so in a way that is consistent with Section 4111.

Sec. 3006 – Voluntary application and use of adopted standards and implementation specifications by private entities – Except as provided for under Section 4112, states that standards developed under this Act shall not be binding on private entities, but may be voluntarily adopted.

Sec. 3007 – Federal health information technology – Directs the Secretary to support the development of, and make available, a low-cost electronic health record that is certified as meeting the adopted standards, unless the Secretary finds that provider demand for such systems is being met through the marketplace. States that no public or private entity will be required to adopt of use the system developed under this Section.

Sec. 3008 – Transitions – Provides for transitions to allow for the development and harmonization of standards currently taking place to continue to occur as ONCHIT is codified and the functions of the American Health Information Community Successor, Inc. flow appropriately to the HIT Policy and Standards Committees.

Sec. 3009 – Relation to HIPPA privacy and security law – Specifies that this title may not be construed as having any effect on the authorities granted to the Secretary under the HIPAA privacy and security law.

Sec. 3010 – Authorization for appropriations – Authorizes an appropriation of $250 million to ONCHIT for 2009 to implement this title.

Sec. 4102 – Technical Amendment – Amends the HIPAA definition of health plan to include Medicare Part D.

Part II – Application and Use of Adopted Health Information Technology Standards; Reports

Sec. 4111 – Coordination of Federal activities with adopted standards and implementation specifications – Codifies a 2006 executive order to require Federal agencies implementing, acquiring, or upgrading HIT systems for the electronic exchange of identifiable health information use HIT products meeting standards adopted by the Secretary of HHS in accordance with this bill. It also requires that the President ensure that Federal activities involving the collection and submission of health information be consistent with standards established under this bill for the electronic exchange of health information.

Sec. 4112 – Application to private entities – Requires that private entities contracting with the Federal Government to carry out health activities adopt the standards established under this bill for the electronic exchange of health information.

Sec. 4113 – Study and reports – Requires the Secretary to submit an annual report to Congress on the efforts toward, and barriers to, facilitating the electronic exchange of

health information nationwide. It also requires the Secretary to study methods to create efficient reimbursement incentives for improving healthcare quality in Federally-qualified health centers, rural health clinics, and free clinics.

Subtitle B – Testing of Health Information Technology

Sec. 4201 – National Institute for Standards and Technology testing – Requires that the National Institute for Standards and Technology (NIST) work in coordination with the Office of the National Coordinator to test standards. These are standards being developed or recognized for the electronic exchange of health information by the Office of National Coordinator. It additionally requires the director of NIST in coordination with the Office of the National Coordinator to support the establishment of accredited testing laboratories for the voluntary testing of products for certification by the National Coordinator that they meet standards for the electronic exchange of information.

Sec. 4202 – Research and development programs – Requires that the Director of NIST, in consultation with the Director of the National Science Foundation and other appropriate Federal agencies, award competitive grants to institutes of higher education to research innovative approaches for the use of HIT in the delivery of health care. Additional, it directs the National High-Performance Computing Program, created by the High Performance Computing Act of 1991, to coordinate Federal research and programs related to the development and deployment of HIT.

Subtitle C – Incentives for the Use of Health Information Technology

Part I – Grants and Loans Funding

Sec. 4301 – Grant, loan and demonstration programs - NOTE: This section makes a number of amendments to the Public Health Service Act (PHSA)**.**

> **Sec. 3011 – Immediate funding to strengthen the health information technology infrastructure –** Authorizes the Secretary to make immediate investments in the infrastructure necessary to facilitate the electronic exchange and use of health information for each individual in the United States consistent with the goals and strategies outlined in the strategic plan developed by the Office of the National Coordinator, including assistance to providers not eligible for assistance under Medicare or Medicaid.
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> **Sec. 3012 – Health information technology implementation assistance –** Establishes several programs to help providers adopt and use health information technology. These programs will serve as a forum for exchanging knowledge and experience, disseminate lessons learned and best practices, and provide technical assistance to providers and health information networks about how to implement health IT. The program will prioritize direct assistance first to non-for profit hospitals, Federally qualified health care centers, providers in medically

underserved areas, and individual or small group practices focused on primary care.

Sec. 3013 – State grants to promote health information technology – Authorizes the Secretary to award states, or qualified state-designated entities, grants to implement and expand the electronic exchange of health information.

Sec. 3014 – Competitive grants to States and Indian Tribes for the development of loan programs to facilitate the widespread adoption of certified EHR technology – Authorizes the National Coordinator to award states and Indian tribes grants for the purpose of establishing health IT loan programs. Such loans could only be used to assist with the purchase health information technology that facilitates the electronic exchange of health information and improves the quality of care.

Sec. 3015 – Demonstration program to integrate information technology into clinical education – Establishes a demonstration program for awarding grants to medical, dental, nursing schools, and other graduate health education programs to integrate health IT into the clinical education of health care professionals.

Sec. 3016 – Information technology professionals on health care – Directs the Secretary, in consultation with the National Science Foundation, to provide financial assistance to educational institutions to support training in medical health informatics.

Sec. 3017 – General grant and loan provisions – Permits the Secretary to require that grantees report on the effectiveness of activities funded through the grant, and requires the National Coordinator to annually evaluate the effectiveness of grants in improving the quality and efficiency of health care.

Sec. 3018 – Authorization for appropriations – Authorizes appropriations of such sums as are necessary to carry out this subtitle from 2009 through 2013.

Part II – Medicare Program

Sec. 4311 – Incentives for eligible professionals – Provides incentive payments to Section 1861(r) providers who adopt and utilize EHR technology that is certified as meeting appropriate standards for interoperability, security and clinical functionality. In order to receive the incentives, providers must demonstrate that they are engaging in meaningful use of the EHR technology, including electronically exchanging clinical information with other providers and reporting on clinical quality measures. In selecting the quality measures the Secretary shall seek to select measures that are consistent with those already in use under Title XVIII, such as the Physician Quality Reporting Initiative (PQRI) program.

Beginning in fiscal year 2011, professionals that demonstrate they have adopted and are utilizing a qualified EHR system are eligible to receive incentive payments through the Medicare program. Professionals who demonstrate they are meaningful EHR users starting in 2011, 2012 or 2013 will receive incentive payments that are phased-out over a five-year period. Eligible professional who use a certified EHR may receive up to $41,000 over five years, which may be made in annual lump-sum payments or a series of smaller payments. Professionals that become meaningful EHR users in 2014 and 2015 will receive a reduced series of payments over a 4 and 3 year period, respectively. No incentive payments are available for professionals who begin meaningful use of EHR technology after 2015.

Starting in 2016, Medicare payments are then reduced by a percentage of allowed charges for any eligible professional who does not demonstrate they are meaningfully using a certified EHR system. Allowed charges are reduced by 1 percent in 2016 and by an additional percentage point each year until payments are reduced by 3 percent for non-users. If less than 75 percent of eligible professionals are not demonstrating meaningful use of a certified EHR system, the reduction in payments will increase by 1 percent a year for a maximum reduction of 5 percent. The Secretary may provide a time-limited exemption from the payment reductions to professionals who demonstrate a significant hardship in meeting the meaningful use criteria.

Similar payment incentives and reductions will apply to professionals who are affiliated with certain staff/employee model Medicare Advantage (MA) plans. Furthermore, MA benchmark payments are not affected by incentive payments or penalties that apply to professionals for the use of EHRs.

Sec. 4312 – Incentives for hospitals – Provides incentive payments to Section 1886(d) hospitals that adopt and utilize EHR technology that is certified as meeting appropriate standards for interoperability, security and clinical functionality. In order to receive the incentives, hospitals must demonstrate that they are engaging in meaningful use of EHR technology, including electronically exchanging clinical information with other providers and reporting on clinical quality measures. In selecting clinical quality measures the Secretary shall seek to avoid redundant or duplicative reporting with reporting required under the Reporting Hospital Quality Data for Annual Payment Update (RHQDAPU) Program under 1886(b)(3)(B)(viii) of the Social Security Act.

Beginning in fiscal year 2011, hospitals that demonstrate they have adopted and are utilizing an approved EHR system are eligible to receive incentive payments through Part A of the Medicare program. Hospitals that demonstrate they are meaningful EHR users by either fiscal 2011, 2012 or 2013 receive incentive payments that are phased-out over a four-year period. Hospitals that become meaningful EHR users in 2014 and 2015 receive 3 and 2 years of incentive payments respectively. No incentive payments are available for hospitals that begin adoption and meaningful use of EHR technology after 2015.

All hospitals that meet the standards for meaningful EHR use receive a base payment. Hospitals receive additional payments based on total discharges, at a declining rate per

discharge, up to a maximum number of discharges. All payments are adjusted by Medicare share, taking into account the level of charity care provided by the hospital.

The market basket update is reduced for any eligible hospital that has not adopted a certified system by 2016. The Secretary may provide a time-limited exemption from the payment reduction to professionals who demonstrate a significant hardship in meeting the meaningful use criteria.

Similar payment incentives and reductions will apply to hospitals which are affiliated with certain staff/employee model Medicare Advantage (MA) plans and have less than one-third of their total discharges covered under Medicare fee-for-service. MA benchmark payments are not affected by incentive payments and penalties to hospitals for the development of EHRs.

Sec. 4313 – Treatment of payments and savings; implementation funding – All payment incentives made by this Act are excluded from Medicare beneficiary premiums. All funds currently held in the Medicare Improvement Fund are designated to be expended in fiscal year 2014, and any savings resulting from payment reductions for failing to use certified EHRs is deposited into the Fund starting in 2020. Provides funding to the Centers for Medicare and Medicaid Service to implement the incentive programs described in this part of the Act.

Sec. 4314 – Study on application of EHR payment incentives for providers not receiving other incentive payments – The Secretary shall conduct a study to determine the extent to which and manner in which incentives and other funding for adoption and use of qualified EHR technology should be made available to health care providers who are receiving minimal or no payments under this Act, titles XVIII, or XIX of the Social Security Act, or otherwise. The study is due to Congress by June 30, 2010.

Part III – Medicaid Funding

Sec. 4321 – Medicaid Provider HIT Adoption and Operation Payments; Implementation Funding – Provides incentives to encourage the adoption and use of an electronic health record that is certified as meeting appropriate standards for interoperability, security, and clinical functionality among providers participating in the Medicaid program under title XIX of the Social Security Act. Incentives are administered by State Medicaid programs according to statute and under regulatory supervision by the Secretary of Health and Human Services. There is no payment reduction associated with incentive payments under this section.

Eligible practitioners include physicians as defined in Sections 1861(r) (1) and 1861(r) (2) of the Social Security Act, nurse practitioners, and certified nurse midwives with at least 30 percent of patient volume attributable to patients receiving assistance under title XIX. Such practitioners would be eligible to receive 85 percent of the costs of implementing and operating health information technology up to $75,000 over a period of six years, or $63,750 in federal spending. Up to $25,000 of this funding would be for

the initial adoption of an electronic health record with the rest being for operation and maintenance costs spread over the succeeding five years. Practitioners receiving such assistance would be required to demonstrate meaningful use of certified electronic health records in a manner specified by the State and satisfactory to the Secretary. In order to avoid duplicative reporting requirements such demonstration may be based on the rules developed for the Medicare program.

Other eligible providers include children's hospitals, acute care hospitals with at least 10 percent of their patient volume attributable to patients receiving assistance under title XIX, and Federally qualified health centers (FQHCs) and rural health clinics with at least 30 percent of their patient volume attributable to such individuals. Payments to hospitals are calculated in a similar fashion as under Section 4312 of this Act. Hospitals demonstrating meaningful use of certified electronic health records (under standards administered by the States and acceptable to the Secretary) may receive a base payment, with additional amounts for additional discharges. All payments are adjusted by the percentage of discharges made for individuals receiving assistance under title XIX (including individuals enrolled in managed care plans) and the amount of charity care being provided by the hospital. Payments to FQHCs and RHCs are made according to a formula to be developed by the Secretary.

State spending for payments to providers for adoption and operation of certified electronic health records will be entirely paid for by the federal government; 90 percent of State costs in administering the program will be reimbursed by the federal government. Funding is provided to the Centers for Medicare & Medicaid Services to administer this section.

Subtitle D – Privacy

Sec. 4400 – Definitions - These provisions define key terms related to the privacy and security provisions of this bill.

Part I – Improved Privacy Provisions and Security Provisions

Sec. 4401 – Application of security provisions and penalties to business associates of covered entities; annual guidance on security provisions – Requires that security safeguards promulgated pursuant to Health Insurance Portability and Accountability Act of 1996 (HIPAA) and this bill, and the penalties for violation of those safeguards apply to business associates under HIPAA (see note below) in the same manner as applied to covered entities. This provision also requires that the Secretary, in consultation with stakeholders, annually issue guidance on the most appropriate security safeguard technologies for protecting information. [NOTE: Covered entities are defined as providers, such as physicians, health plans and healthcare clearinghouses, such as claims processors. Business associates are entities that assist covered entities with particular routine business functions, including quality efforts.]

Sec. 4401 – Notification in the case of breach – Requires that, in the case of a breach of unsecured Protected Health Information (PHI), a covered entity must notify each individual whose information has been, or is reasonably believed to have been, breached. In the case of a breach of unsecured PHI that is under the control of a business associate, that business associate is required to notify the covered entity. All breach notifications must be made without unreasonable delay and no later than 60 calendar days after discovery. The provision provides instruction for the required methods by which an individual must be notified and the content of the notification. However, this notification may be delayed if it could impede a criminal investigation or damage national security.

The Secretary is also required to issue guidance within 60 days, and annually thereafter, as to the technologies or methodologies that meet the standard of making information secure (i.e. unusable, unreadable, or indecipherable). If the Secretary fails to issue guidance within 60 days, PHI will be considered secure if it is protected by technology standards developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute (ANSI).

Finally, the Secretary is required each year to compile and analyze the number and nature of breaches reported to the Secretary and issue a report to Congress concerning the scope of the problem and steps that have or will be taken to address it at a Federal level and through guidance on best practices for covered entities and business associates.

Sec. 4403 - Education on health information technology privacy – Requires that the Secretary designate an individual in each regional HHS office to offer education and guidance on privacy requirements regarding PHI.

Sec. 4404 – Application of privacy provisions and penalties to business associates of covered entities – Requires that privacy provisions promulgated pursuant to Health Insurance Portability and Accountability Act of 1996 (HIPAA) and this bill, and the penalties for violation of those privacy provisions apply to business associates under HIPAA in the same manner as applied to covered entities.

Sec. 4405 – Restrictions on certain disclosures and sales of health information; accounting of certain protected health information disclosures; access to certain information in electronic format – Permits a patient to request that their PHI regarding a specific healthcare item or service not be disclosed by a covered entity to a health plan for purposes of payment or healthcare operations, unless otherwise required by law, if that patient has paid in full out-of-pocket for that item or service. In such a circumstance, the covered entity is required to honor the patient's request.

Also requires covered entities to make reasonable effort to restrict the use, disclosure, request of PHI to a 'limited data set' of information as defined in the HIPAA rules until such time that the Secretary issues guidance on what constitutes the 'minimum necessary' for use or disclosure of such data.

The provision also gives an individual the right to request an accounting of disclosures of PHI from an entity or business associate to another party for treatment, payment, and health care operations in the three years prior to the request if that entity is utilizing an electronic health record and the disclosure was made from the electronic health record. Covered entities would not be required to make an accounting for uses of PHI or oral disclosures of such information.

The provision additionally requires the Secretary to review the definition of health care operations to determine those activities that can reasonable and efficiently be conducted through the use of information that is de-identified. Health care operations are activities for which providers and insurers can share a patient's protected health information without their authorization.

Additionally, this provision clarifies that certain uses and disclosures of PHI are not permitted without a valid authorization, such as the sale of PHI (with some exceptions) and the unauthorized re-identification of de-identified data or the limited data set.

This provision also gives individuals the right to receive electronic copies of their PHI used or maintained by a covered entity in electronic format if the entity uses an electronic medical record or electronic health record. The provider would be able to charge a reasonable cost based fee for doing so.

Sec. 4406 – Conditions on certain contracts as part of health care operations – Clarifies the definition of marketing under HIPAA and precludes direct payment to covered entities for the use of PHI to make certain communications. Removes fundraising from the HIPAA definition of health care operations.

Sec. 4407 – Temporary breach notification requirement for vendors of personal health records and other non-HIPPA covered entities – In the case that an individual's personal health record (PHR) unsecured identifiable health information is breached, requires that PHR vendors notify that individual along with the Federal Trade Commission (FTC). The provision requires that the notification requirements applicable to covered entities under section 4402 of this bill be applied to notifications required under this section and that FTC notify HHS of breach notices received by FTC. The provision gives the FTC enforcement authority regarding breaches of health information maintained by PHR vendors. The provision sunsets when either HHS or FTC adopt privacy and security standards specific to PHRs and other non-HIPAA covered entities.

Sec. 4408 – Business associate contracts required for certain entities – Requires organizations such as Health Information Exchanges, Regional Health Information Organizations, E-prescribing Gateways, and vendors of PHRs who have entered into contracts with covered entities to have business associate agreement as defined under HIPAA.

Sec. 4409 – Clarification of application of wrongful disclosures criminal penalties – Clarifies that criminal penalties for violations of HIPAA can be applied directly to

individuals, whether they are employees of covered entities or have no relationship to covered entities.

Sec. 4410 – Improved enforcement - Improves enforcement of the Federal health privacy law by the Office of Civil Rights (OCR) at HHS by requiring a formal investigation of complaints and the imposition of civil monetary penalties for violations that rise to the level of willful neglect or other violations that are not corrected. The provision also increases the amount of civil monetary penalties and authorizes a percentage of the penalty to accrue to the individual(s) harmed and the OCR, through the application of a methodology to be developed by the GAO and adopted by the Secretary.

Preserves OCR's current tools for informal resolution, technical assistance, and correction without the imposition of a penalty in situations where the violation was due to a reasonable cause. Currently, all complaints and violations can be handled informally and without the imposition of civil monetary penalties.

In addition, this provision permits OCR to pursue an investigation and the imposition of civil monetary penalties against any individual for an alleged criminal violation of the Federal health privacy law if the Department of Justice has not prosecuted the individual.

Finally, this provision authorizes State attorneys general to enforce Federal privacy and Security laws.

Sec. 4411 – Audits – Directs the Secretary to perform periodic audits to oversee compliance with the privacy and security provisions.

Part II – Relationship to other laws; regulatory references; effective date; reports

Sec. 4421 – Relationship to other laws – Applies the preemption in Section 1178 of the Social Security Act to the provisions of title IV of this bill and preserves the HIPAA and the regulations promulgated pursuant to that Act to the extent that they are consistent with Title IV of this bill.

Sec. 4422 – Regulatory references - States that each reference in this subtitle to a federal regulation refers to the most recent version of the regulation.

Sec. 4423 – Effective date – With the exception of certain specified provisions, this bill shall become effective 12 months after the date of enactment of this Act.

Sec. 4424 – Studies, reports, guidance – This provision requires that the Secretary annually report to Congress on the number and nature of complaints of alleged violations and how they were resolved, including the imposition and amount of civil money penalties; the number of audits performed, and more.

In addition, this section requires study on the application of privacy and security requirements to vendors of personal health records. The provision requires the Secretary,

in consultation with the Federal Trade Commission (FTC) to submit recommendations to Congress regarding: (1) the requirements relating to security, privacy, and notification in the case of a breach of protected health information, including the applicability of an exemption to notification in the case of PHI that has been rendered indecipherable through the use of encryption or alternative technologies, with respect to personal health record vendors; and (2) the Federal agency best equipped to enforce those requirements.

Finally, this section requires that the GAO study and report on the disclosures of protected health information made for treatment purposes and best practices used by entities and States for such disclosures.

Subtitle E – Miscellaneous Medicare Provisions

Sec. 4501 – Moratoria on certain Medicare regulations – Provides a moratorium for fiscal year 2009 on a provision in the FY09 Medicare Inpatient Prospective Payment System final regulation phasing-out payments for capital indirect medical education. Provides a moratorium for fiscal year 2009 on a provision in the FY09 Hospice Wage Index final regulation phasing-out the budget neutrality adjust factor for hospice wage payments.

Sec. 4502 – Long-Term Care Hospital technical corrections – Provides technical corrections to Section 114 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (P.L. 110-173) affecting long-term care hospitals.