

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4157
OFFERED BY MRS. JOHNSON OF CONNECTICUT**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Health Information Technology Promotion Act of 2006”.

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

Sec. 1. Short title and table of contents.

Sec. 2. Office of the National Coordinator for Health Information Technology.

Sec. 3. Safe harbors for provision of health information technology and services
to health care professionals.

Sec. 4. Consistency and variation in health information laws and regulations.

Sec. 5. Implementing modern coding system; application under part A of the
Medicare program.

Sec. 6. Procedures to ensure timely updating of standards that enable elec-
tronic exchanges.

Sec. 7. Report on the American Health Information Community.

Sec. 8. Strategic plan for coordinating implementation of health information
technology.

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

8 (a) **IN GENERAL.**—Title II of the Public Health Serv-
9 ice Act is amended by adding at the end the following new
10 part:

1 “(2) promotes wellness, disease prevention, and
2 management of chronic illnesses by increasing the
3 availability and transparency of information related
4 to the health care needs of an individual for such in-
5 dividual;

6 “(3) ensures that appropriate information nec-
7 essary to make medical decisions is available in a us-
8 able form at the time and in the location that the
9 medical service involved is provided;

10 “(4) produces greater value for health care ex-
11 penditures by reducing health care costs that result
12 from inefficiency, medical errors, inappropriate care,
13 and incomplete information;

14 “(5) promotes a more effective marketplace,
15 greater competition, greater systems analysis, in-
16 creased choice, enhanced quality, and improved out-
17 comes in health care services;

18 “(6) improves the coordination of information
19 and the provision of such services through an effec-
20 tive infrastructure for the secure and authorized ex-
21 change and use of health care information; and

22 “(7) ensures that the confidentiality of individ-
23 ually identifiable health information of a patient is
24 secure and protected.

25 “(c) DUTIES OF NATIONAL COORDINATOR.—

1 “(1) STRATEGIC PLANNER FOR INTEROPER-
2 ABLE HEALTH INFORMATION TECHNOLOGY.—The
3 National Coordinator shall maintain, direct, and
4 oversee the continuous improvement of a strategic
5 plan to guide the nationwide implementation of
6 interoperable health information technology in both
7 the public and private health care sectors consistent
8 with subsection (b).

9 “(2) PRINCIPAL ADVISOR TO HHS.—The Na-
10 tional Coordinator shall serve as the principal advi-
11 sor of the Secretary on the development, application,
12 and use of health information technology, and co-
13 ordinate the health information technology programs
14 of the Department of Health and Human Services.

15 “(3) COORDINATOR OF FEDERAL GOVERNMENT
16 ACTIVITIES.—

17 “(A) IN GENERAL.—The National Coordi-
18 nator shall serve as the coordinator of Federal
19 Government activities relating to health infor-
20 mation technology.

21 “(B) SPECIFIC COORDINATION FUNC-
22 TIONS.—In carrying out subparagraph (A), the
23 National Coordinator shall provide for—

24 “(i) the development and approval of
25 standards used in the electronic creation,

1 maintenance, or exchange of health infor-
2 mation; and

3 “(ii) the certification and inspection of
4 health information technology products, ex-
5 changes, and architectures to ensure that
6 such products, exchanges, and architec-
7 tures conform to the applicable standards
8 approved under clause (i).

9 “(C) USE OF PRIVATE ENTITIES.—The
10 National Coordinator shall, to the maximum ex-
11 tent possible, contract with or recognize private
12 entities in carrying out subparagraph (B).

13 “(D) UNIFORM APPLICATION OF STAND-
14 ARDS.—A standard approved under subpara-
15 graph (B)(i) for use in the electronic creation,
16 maintenance, or exchange of health information
17 shall preempt a standard adopted under State
18 law, regulation, or rule for such a use.

19 “(4) INTRAGOVERNMENTAL COORDINATOR.—
20 The National Coordinator shall ensure that health
21 information technology policies and programs of the
22 Department of Health and Human Services are co-
23 ordinated with those of relevant executive branch
24 agencies and departments with a goal to avoid dupli-
25 cation of effort and to ensure that each agency or

1 department conducts programs within the areas of
2 its greatest expertise and its mission in order to cre-
3 ate a national interoperable health information sys-
4 tem capable of meeting national public health needs
5 effectively and efficiently.

6 “(5) ADVISOR TO OMB.—The National Coordi-
7 nator shall provide to the Director of the Office of
8 Management and Budget comments and advice with
9 respect to specific Federal health information tech-
10 nology programs.

11 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated such sums as may be
13 necessary to carry out this section for each of fiscal years
14 2006 through 2010.”.

15 (b) TREATMENT OF EXECUTIVE ORDER 13335.—Ex-
16 ecutive Order 13335 shall not have any force or effect
17 after the date of the enactment of this Act.

18 (c) TRANSITION FROM ONCHIT UNDER EXECUTIVE
19 ORDER.—

20 (1) IN GENERAL.—All functions, personnel, as-
21 sets, liabilities, administrative actions, and statutory
22 reporting requirements applicable to the old Na-
23 tional Coordinator or the Office of the old National
24 Coordinator on the date before the date of the enact-
25 ment of this Act shall be transferred, and applied in

1 the same manner and under the same terms and
2 conditions, to the new National Coordinator and the
3 Office of the new National Coordinator as of the
4 date of the enactment of this Act.

5 (2) ACTING NATIONAL COORDINATOR.—Before
6 the appointment of the new National Coordinator,
7 the old National Coordinator shall act as the Na-
8 tional Coordinator for Health Information Tech-
9 nology until the office is filled as provided in section
10 271(a) of the Public Health Service Act, as added
11 by subsection (a). The President may appoint the
12 old National Coordinator as the new National Coor-
13 dinator.

14 (3) DEFINITIONS.—For purposes of this sub-
15 section:

16 (A) NEW NATIONAL COORDINATOR.—The
17 term “new National Coordinator” means the
18 National Coordinator for Health Information
19 Technology appointed under section 271(a) of
20 the Public Health Service Act, as added by sub-
21 section (a).

22 (B) OLD NATIONAL COORDINATOR.—The
23 term “old National Coordinator” means the
24 National Coordinator for Health Information

1 Technology appointed under Executive Order
2 13335.

3 **SEC. 3. SAFE HARBORS FOR PROVISION OF HEALTH INFOR-**
4 **MATION TECHNOLOGY AND SERVICES TO**
5 **HEALTH CARE PROFESSIONALS.**

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

9 “(4)(A) For purposes of this subsection, a payment
10 described in paragraph (1) does not include any nonmone-
11 tary remuneration (in the form of health information tech-
12 nology and related services) made on or after the HIT ef-
13 fective date (as defined in subparagraph (B)(ii)) by a hos-
14 pital or critical access hospital to a physician if the fol-
15 lowing requirements are met:

16 “(i) The provision of such remuneration is
17 made without a condition that—

18 “(I) limits or restricts the use of the health
19 information technology to services provided by
20 the physician to individuals receiving services at
21 the location of the hospital or critical access
22 hospital providing such technology;

23 “(II) limits or restricts the use of the
24 health information technology in conjunction
25 with other health information technology; or

1 “(III) takes into account the volume or
2 value of referrals (or other business generated)
3 by the physician to the hospital or critical ac-
4 cess hospital.

5 “(ii) Such remuneration is arranged for in a
6 written agreement that is signed by a representative
7 of the hospital or critical access hospital and by the
8 physician and that specifies the remuneration made
9 and states that the provision of such remuneration
10 is made for the primary purpose of better coordina-
11 tion of care or improvement of health care quality or
12 efficiency.

13 “(B) For purposes of subparagraph (A) and sections
14 1128B(b)(3)(J) and 1877(e)(9)—

15 “(i) the term ‘health information technology’
16 means hardware, software, license, intellectual prop-
17 erty, equipment, or other information technology (in-
18 cluding new versions, upgrades, and connectivity) or
19 related services used for the electronic creation,
20 maintenance, and exchange of clinical health infor-
21 mation; and

22 “(ii) the term ‘HIT effective date’ means the
23 date that is 180 days after the date of the enact-
24 ment of this paragraph.”.

1 (b) FOR CRIMINAL PENALTIES.—Section
2 1128B(b)(3) of such Act (42 U.S.C. 1320a-7b(b)(3)) is
3 amended—

4 (1) in subparagraph (G), by striking “and” at
5 the end;

6 (2) in the subparagraph (H) added by section
7 237(d) of the Medicare Prescription Drug, Improve-
8 ment, and Modernization Act of 2003 (Public Law
9 108–173; 117 Stat. 2213)—

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

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

14 (3) in the subparagraph (H) added by section
15 431(a) of such Act (117 Stat. 2287)—

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

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

20 (C) by striking the period at the end and
21 inserting “; and”; and

22 (4) by adding at the end the following new sub-
23 paragraph:

24 “(J) any nonmonetary remuneration (in the
25 form of health information technology, as defined in

1 section 1128A(b)(4)(B)(i), and related services) so-
2 licited or received by a person on or after the HIT
3 effective date (as defined in section
4 1128A(b)(4)(B)(ii)) (or offered or paid to a person
5 on or after such date) if—

6 “(i) such remuneration is solicited or re-
7 ceived (or offered or paid) without a condition
8 that—

9 “(I) limits or restricts the use of the
10 health information technology to services
11 provided by the person to individuals re-
12 ceiving services at the location of the entity
13 providing such technology;

14 “(II) limits or restricts the use of the
15 health information technology in conjunc-
16 tion with other health information tech-
17 nology; or

18 “(III) takes into account the volume
19 or value of referrals (or other business
20 generated) by the person to the entity pro-
21 viding such technology; and

22 “(ii) such remuneration is arranged for in
23 a written agreement that is signed by a rep-
24 resentative of the entity and by the physician
25 and that specifies the remuneration made and

1 states that the provision of such remuneration
2 is made for the primary purpose of better co-
3 ordination of care or improvement of health
4 care quality or efficiency.”.

5 (c) FOR LIMITATION ON CERTAIN PHYSICIAN RE-
6 FERRALS.—Section 1877(e) of such Act (42 U.S.C.
7 1395nn(e)) is amended by adding at the end the following
8 new paragraph:

9 “(9) INFORMATION TECHNOLOGY AND SERV-
10 ICES.—Any nonmonetary remuneration (in the form
11 of health information technology, as defined in sec-
12 tion 1128A(b)(4)(B)(i), and related services) made
13 on or after the HIT effective date (as defined in sec-
14 tion 1128A(b)(4)(B)(ii)) by an entity to a physician
15 if the following requirements are met:

16 “(A) The provision of such remuneration is
17 made without a condition that—

18 “(i) limits or restricts the use of the
19 health information technology to services
20 provided by the physician to individuals re-
21 ceiving services at the location of the entity
22 providing such technology;

23 “(ii) limits or restricts the use of the
24 health information technology in conjunc-

1 tion with other health information tech-
2 nology; or

3 “(iii) takes into account the volume or
4 value of referrals (or other business gen-
5 erated) by the physician to the entity pro-
6 viding such technology.

7 “(B) Such remuneration is arranged for in
8 a written agreement that is signed by a rep-
9 resentative of the entity and by the physician
10 and that specifies the remuneration made and
11 states that the provision of such remuneration
12 is made for the primary purpose of better co-
13 ordination of care or improvement of health
14 care quality or efficiency.”.

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

17 (1) REGULATIONS.—Not later than the HIT ef-
18 fective date, the Secretary of Health and Human
19 Services shall promulgate such regulations as may
20 be necessary to carry out the provisions of this sec-
21 tion.

22 (2) HIT EFFECTIVE DATE DEFINED.—For pur-
23 poses of this subsection and subsection (e), the term
24 “HIT effective date” has the meaning given such

1 term in section 1128A(b)(4)(C)(ii) of the Social Se-
2 curity Act, as added by subsection (a).

3 (3) PREEMPTION OF STATE LAWS.—No State
4 (as defined in section 4(c)(3)) shall have in effect a
5 State law that imposes a criminal or civil penalty for
6 a transaction described in section 1128A(b)(4),
7 1128B(b)(3)(J), or 1877(e)(9) of the Social Security
8 Act, as added by this section, if the conditions de-
9 scribed in the respective section of such Act, with re-
10 spect to such transaction, are met.

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

13 (1) IN GENERAL.—The Secretary of Health and
14 Human Services shall conduct a study to determine
15 the impact of each of the safe harbors and the ex-
16 ception described in paragraph (3). In particular,
17 the study shall examine the following:

18 (A) The effectiveness of each safe harbor
19 and exception in increasing the adoption of
20 health information technology.

21 (B) The types of health information tech-
22 nology provided under each safe harbor and ex-
23 ception.

24 (C) The extent to which the financial or
25 other business relationships between providers

1 under each safe harbor or exception have
2 changed as a result of the safe harbor or excep-
3 tion in a way that affects the health care sys-
4 tem, affects choices available to consumers, or
5 affects health care expenditures.

6 (2) REPORT.—Not later than three years after
7 the HIT effective date, the Secretary of Health and
8 Human Services shall submit to Congress a report
9 on the study under paragraph (1) and shall include
10 such recommendations for changes in the safe har-
11 bors and exception as the Secretary determines may
12 be appropriate.

13 (3) SAFE HARBORS AND EXCEPTION DE-
14 SCRIBED.—For purposes of this subsection, the safe
15 harbors and exception described in this paragraph
16 are—

17 (A) the safe harbor under section
18 1128A(b)(4) of the Social Security Act (42
19 U.S.C. 1320a-7a(b)(4)), as added by subsection
20 (a);

21 (B) the safe harbor under section
22 1128B(b)(3)(J) of such Act (42 U.S.C. 1320a-
23 7b(b)(3)(J)), as added by subsection (b); and

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

4 **SEC. 4. CONSISTENCY AND VARIATION IN HEALTH INFOR-**
5 **MATION LAWS AND REGULATIONS.**

6 (a) STUDY TO DETERMINE IMPACT OF VARIATION
7 AND CONSISTENCY IN STATE HEALTH INFORMATION
8 LAWS AND REGULATIONS.—

9 (1) IN GENERAL.—The Secretary of Health and
10 Human Services shall conduct a study of the impact
11 of variation in State security and confidentiality laws
12 and current Federal security and confidentiality
13 standards on quality of care by permitting the timely
14 and efficient exchanges of health information in
15 order to ensure the availability of health information
16 necessary to make medical decisions at the location
17 in which the medical care involved is provided. Such
18 study shall examine, with respect to each subject
19 matter area of such laws and standards—

20 (A) the degree to which such laws vary and
21 are consistent among States, and between the
22 States and such current Federal standards;

23 (B) insofar as there is variation among
24 and between such laws and standards, the

1 strengths and weaknesses of such laws and
2 standards; and

3 (C) the extent to which such variation may
4 adversely impact the security and confiden-
5 tiality of individually identifiable health infor-
6 mation in the electronic exchange of health in-
7 formation among States, the Federal govern-
8 ment, and other appropriate public or private
9 entities, or may otherwise impact the reliability
10 of such information.

11 (2) REPORT.—Not later than 18 months after
12 the date of the enactment of this Act, the Secretary
13 of Health and Human Services shall submit to Con-
14 gress a report on the study under paragraph (1) and
15 shall include in such report the following:

16 (A) ANALYSIS OF NEED FOR IMPROVED
17 CONSISTENCY.—A determination by the Sec-
18 retary on the extent to which State security and
19 confidentiality laws and current Federal secu-
20 rity and confidentiality standards in each sub-
21 ject matter area of such laws and standards
22 need to be made more consistent to better pro-
23 tect or strengthen the security and confiden-
24 tiality of individually identifiable health infor-
25 mation in the electronic exchange of health in-

1 formation among States, the Federal govern-
2 ment, and private entities.

3 (B) RECOMMENDATIONS FOR IMPROVED
4 CONSISTENCY.—Insofar as the Secretary deter-
5 mines under subparagraph (A) that such laws
6 and such standards need to be made more con-
7 sistent for such an area, the extent to which the
8 current Federal standards should be changed,
9 and the extent to which the State laws should
10 be conformed, in order to provide needed con-
11 sistency needed in such area to better protect or
12 strengthen the security and confidentiality of
13 individually identifiable health information in
14 the electronic exchange of health information.

15 (b) IMPLEMENTATION OF RECOMMENDATIONS IF
16 CONGRESS FAILS TO ACT.—

17 (1) IN GENERAL.—If the conditions under para-
18 graph (2) are met with respect to a subject matter
19 area, the Secretary shall, by rule, modify the current
20 Federal security and confidentiality standards in the
21 subject matter area, limit the State security and
22 confidentiality laws that are permissible in the sub-
23 ject matter area, or both, to the extent that the Sec-
24 retary determines it necessary in order to achieve
25 the needed degree of consistency to better protect or

1 strengthen the security and confidentiality of patient
2 health information in the electronic exchange of
3 health information. Such a modification or limita-
4 tions shall be based upon the recommendations de-
5 scribed in subsection (a)(2)(B).

6 (2) CONDITIONS.—The conditions under this
7 paragraph are, with respect to a subject matter
8 area, the following:

9 (A) NEED FOR IMPROVED CONSISTENCY.—
10 The Secretary determines under subsection
11 (a)(2)(A) that State security and confidentiality
12 laws and current Federal security and confiden-
13 tiality standards in the subject matter area
14 need to be more consistent to better protect or
15 strengthen the security and confidentiality of
16 patient health information in the electronic ex-
17 change of health information among States, the
18 Federal government, and private entities.

19 (B) CONGRESSIONAL FAILURE TO ACT.—
20 The Congress fails to enact, within 18 months
21 after the the date of receipt of the report under
22 subsection (a)(2), legislation that specifically re-
23 sponds to the recommendations described in
24 subsection (a)(2)(B) in the subject matter area.
25 Such legislation may include any action de-

1 scribed in paragraph (1) (relating to modifying
2 Federal security and confidentiality standards
3 or limiting the application of State security and
4 confidentiality laws).

5 (3) TREATMENT OF CURRENT LAWS AND
6 STANDARDS.—

7 (A) CONTINUATION OF CURRENT FEDERAL
8 STANDARDS AND STATE LAWS PERMITTED.—
9 Nothing in this subsection shall be construed as
10 preventing the Secretary from continuing to
11 apply the current Federal security and con-
12 fidentiality standards and from permitting the
13 continuance of State security and confiden-
14 tiality laws.

15 (B) NO PREEMPTION OF STATE LAW UN-
16 LESS RULE ADOPTED.—A State security and
17 confidentiality law shall not be preempted under
18 paragraph (1), except to the extent the Sec-
19 retary limits the application of such law under
20 such paragraph. The Secretary's exercise of
21 such authority in a subject matter area
22 supercedes the provisions of section 1178(a) of
23 the Social Security Act (42 U.S.C. 1320d-7(a))
24 and section 264(c)(2) of the Health Insurance
25 Portability and Accountability Act of 1996 (42

1 U.S.C. 1320d-2 note) in such subject matter
2 area.

3 (c) DEFINITIONS.—For purposes of this section:

4 (1) CURRENT FEDERAL SECURITY AND CON-
5 FIDENTIALITY STANDARDS.—The term “current
6 Federal security and confidentiality standards”
7 means the Federal privacy standards established
8 pursuant to section 264(c) of the Health Insurance
9 Portability and Accountability Act of 1996 (42
10 U.S.C. 1320d-2 note) and security standards estab-
11 lished under section 1173(d) of the Social Security
12 Act.

13 (2) SECRETARY.—The term “Secretary” means
14 the Secretary of Health and Human Services.

15 (3) STATE.—The term “State” has the mean-
16 ing given such term when used in title XI of the So-
17 cial Security Act, as provided under section 1101(a)
18 of such Act (42 U.S.C. 1301(a)).

19 (4) STATE SECURITY AND CONFIDENTIALITY
20 LAWS.—The term “State security and confidentiality
21 laws” means State laws and regulations relating to
22 the privacy and confidentiality of individually identi-
23 fiable health information or to the security of such
24 information.

25 (d) CONFORMING AMENDMENTS.—

1 (1) HIPAA.—Section 264(e)(2) of the Health
2 Insurance Portability and Accountability Act of
3 1996 (42 U.S.C. 1320d-2 note) is amended by strik-
4 ing “A regulation” and inserting “(A) Subject to
5 section 4(b) of the Health Information Technology
6 Promotion Act of 2006, a regulation”.

7 (2) TITLE XI.—Section 1178(a) of the Social
8 Security Act (42 U.S.C. 1320d-7(a)) is amended, in
9 the matter before paragraph (1), by inserting “Sub-
10 ject to section 4(b) of the Health Information Tech-
11 nology Promotion Act of 2006—” after “.—”.

12 **SEC. 5. IMPLEMENTING MODERN CODING SYSTEM; APPLI-**
13 **CATION UNDER PART A OF THE MEDICARE**
14 **PROGRAM.**

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

20 (1) ACCREDITED STANDARDS COMMITTEE X12
21 (ASC X12) STANDARD.—The replacement of the Ac-
22 credited Standards Committee X12 (ASC X12) ver-
23 sion 4010 adopted under section 1173(a) of such
24 Act (42 U.S.C. 1320d-2(a)), including for purposes
25 of part A of title XVIII of such Act, with the ASC

1 X12 version 5010, as approved by such Committee
2 and reviewed by the National Committee on Vital
3 Health Statistics as of the date of the promulgation
4 of the rule.

5 (2) NATIONAL COUNCIL FOR PRESCRIPTION
6 DRUG PROGRAMS (NCPDP) TELECOMMUNICATIONS
7 STANDARDS.—The replacement of the National
8 Council for Prescription Drug Programs (NCPDP)
9 Telecommunications Standards version 5.1 adopted
10 under section 1173(a) of such Act (42 U.S.C.
11 1320d-2(a)) with NCPDP Telecommunications
12 Standards version D.0, as approved by such Council
13 and reviewed by the National Committee on Vital
14 Health Statistics.

15 (3) ICD CODES.—The replacement of the Inter-
16 national Statistical Classification of Diseases and
17 Related Health Problems, 9th revision, Clinical
18 Modification (ICD-9-CM) under the regulation pro-
19 mulgated under section 1173(c) of such Act (42
20 U.S.C. 1320d-2(c)), including for purposes of part A
21 of title XVIII of such Act, with both of the fol-
22 lowing:

23 (A) The International Statistical Classi-
24 fication of Diseases and Related Health Prob-

1 lems, 10th revision, Clinical Modification (ICD–
2 10–CM).

3 (B) The International Statistical Classi-
4 fication of Diseases and Related Health Prob-
5 lems, 10th revision, Procedure Coding System
6 (ICD–10–PCS).

7 (b) RULE OF CONSTRUCTION.—Nothing in sub-
8 section (a)(3) shall be construed as affecting the applica-
9 tion of classification methodologies or codes, such as CPT
10 or HCPCS codes, other than under the International Sta-
11 tistical Classification of Diseases and Related Health
12 Problems (ICD).

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

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

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

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

1 X12, NCPDP, and ICD codes under such sub-
2 section.

3 (d) NO JUDICIAL REVIEW.—The final rules promul-
4 gated under subsection (a) shall not be subject to judicial
5 review.

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

9 (1) ASC X12 AND NCPDP STANDARDS.—The
10 final rules promulgated under paragraphs (1) and
11 (2) of subsection (a) shall apply to transactions oc-
12 ccurring on or after April 1, 2009.

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

16 (f) APPLICATION OF UPGRADED STANDARDS UNDER
17 PART A OF THE MEDICARE PROGRAM.—Section 1816 of
18 the Social Security Act (42 U.S.C. 1395h) is amended by
19 inserting after subsection (a) the following new subsection:

20 “(b) With respect to transactions under this part—

21 “(1) occurring on or after April 1, 2009, all
22 providers of services shall use ASC X12 version
23 5010 with respect to services provided under this
24 part in compliance with the final rule promulgated

1 under section 5(a)(1) of the Health Information
2 Technology Promotion Act of 2006; and

3 “(2) occurring on or after October 1, 2009—

4 “(A) all providers of services shall use
5 ICD–10–CM codes with respect to services pro-
6 vided under this part in compliance with the
7 final rule promulgated under section 5(a)(3) of
8 such Act; and

9 “(B) hospitals shall use ICD–10–PCS
10 codes (as well as ICD–10–CM codes) with re-
11 spect to inpatient hospital services provided
12 under this part in compliance with such final
13 rule.”.

14 **SEC. 6. PROCEDURES TO ENSURE TIMELY UPDATING OF**
15 **STANDARDS THAT ENABLE ELECTRONIC EX-**
16 **CHANGES.**

17 Section 1174(b) of the Social Security Act (42 U.S.C.
18 1320d-3(b)) is amended—

19 (1) in paragraph (1)—

20 (A) in the first sentence, by inserting “and
21 in accordance with paragraph (3)” before the
22 period; and

23 (B) by adding at the end the following new
24 sentence: “For purposes of this subsection and
25 section 1173(c)(2), the term ‘modification’ in-

1 cludes a new version or a version upgrade.”;

2 and

3 (2) by adding at the end the following new

4 paragraph:

5 “(3) EXPEDITED PROCEDURES FOR ADOPTION
6 OF ADDITIONS AND MODIFICATIONS TO STAND-
7 ARDS.—

8 “(A) IN GENERAL.—For purposes of para-
9 graph (1), the Secretary shall provide for an ex-
10 pedited upgrade program (in this paragraph re-
11 ferred to as the ‘upgrade program’), in accord-
12 ance with this paragraph, to develop and ap-
13 prove additions and modifications to the stand-
14 ards adopted under section 1173(a) to improve
15 the quality of such standards or to extend the
16 functionality of such standards to meet evolving
17 requirements in health care.

18 “(B) PUBLICATION OF NOTICES.—Under
19 the upgrade program:

20 “(i) VOLUNTARY NOTICE OF INITI-
21 ATION OF PROCESS.—Not later than 30
22 days after the date the Secretary receives
23 a notice from a standard setting organiza-
24 tion that the organization is initiating a
25 process to develop an addition or modifica-

1 tion to a standard adopted under section
2 1173, the Secretary shall publish a notice
3 in the Federal Register that—

4 “**(I)** identifies the subject matter
5 of the addition or modification;

6 “**(II)** provides a description of
7 how persons may participate in the
8 development process; and

9 “**(III)** invites public participation
10 in such process.

11 “**(ii)** VOLUNTARY NOTICE OF PRE-
12 LIMINARY DRAFT OF ADDITIONS OR MODI-
13 FICATIONS TO STANDARDS.—Not later
14 than 30 days after the date of the date the
15 Secretary receives a notice from a standard
16 setting organization that the organization
17 has prepared a preliminary draft of an ad-
18 dition or modification to a standard adopt-
19 ed by section 1173, the Secretary shall
20 publish a notice in the Federal Register
21 that—

22 “**(I)** identifies the subject matter
23 of (and summarizes) the draft;

24 “**(II)** specifies the procedure for
25 obtaining documentation for the draft;

1 “(III) provides a description of
2 how persons may submit comments in
3 writing and at any public hearing or
4 meeting held by the organization on
5 the draft; and

6 “(IV) invites submission of such
7 comments and participation in such
8 hearing or meeting.

9 “(iii) NOTICE OF PROPOSED ADDITION
10 OR MODIFICATION TO STANDARDS.—Not
11 later than 30 days after the date of the
12 date the Secretary receives a notice from a
13 standard setting organization that the or-
14 ganization has a proposed addition or
15 modification to a standard adopted under
16 section 1173 that the organization intends
17 to submit under subparagraph (D)(iii), the
18 Secretary shall publish a notice in the Fed-
19 eral Register that contains, with respect to
20 the proposed addition or modification, the
21 information required in the notice under
22 clause (ii) with respect to a preliminary
23 draft of an addition or modification.

24 “(iv) CONSTRUCTION.—Nothing in
25 this paragraph shall be construed as re-

1 quiring a standard setting organization to
2 request the notices described in clauses (i)
3 and (ii) with respect to an addition or
4 modification to a standard in order to
5 qualify for an expedited determination
6 under subparagraph (C) with respect to a
7 proposal submitted to the Secretary for
8 adoption of such addition or modification.

9 “(C) PROVISION OF EXPEDITED DETER-
10 MINATION.—Under the upgrade program and
11 with respect to a proposal by a standard setting
12 organization for an addition or modification to
13 a standard adopted under section 1173, if the
14 Secretary determines that the standard setting
15 organization developed such addition or modi-
16 fication in accordance with the requirements of
17 subparagraph (D) and the National Committee
18 on Vital and Health Statistics recommends ap-
19 proval of such addition or modification under
20 subparagraph (E), the Secretary shall provide
21 for expedited treatment of such proposal in ac-
22 cordance with subparagraph (F).

23 “(D) REQUIREMENTS.—The requirements
24 under this subparagraph with respect to a pro-
25 posed addition or modification to a standard by

1 a standard setting organization are the fol-
2 lowing:

3 “(i) REQUEST FOR PUBLICATION OF
4 NOTICE.—The standard setting organiza-
5 tion submits to the Secretary a request for
6 publication in the Federal Register of a no-
7 tice described in subparagraph (B)(iii) for
8 the proposed addition or modification.

9 “(ii) PROCESS FOR RECEIPT AND
10 CONSIDERATION OF PUBLIC COMMENT.—
11 The standard setting organization provides
12 for a process through which, after the pub-
13 lication of the notice referred to under
14 clause (i), the organization—

15 “(I) receives and responds to
16 public comments submitted on a time-
17 ly basis on the proposed addition or
18 modification before submitting such
19 proposed addition or modification to
20 the National Committee on Vital and
21 Health Statistics under clause (iii);
22 and

23 “(II) make publicly available a
24 written explanation for its response in
25 the proposed addition or modification

1 to comments submitted on a timely
2 basis.

3 “(iii) SUBMITTAL OF FINAL PRO-
4 POSED ADDITION OR MODIFICATION TO
5 NCVHS.—After completion of the process
6 under clause (ii), the standard setting or-
7 ganization submits the proposed addition
8 or modification to the National Committee
9 on Vital and Health Statistics for review
10 and consideration under subparagraph (E).
11 Such submission shall include information
12 on the organization’s compliance with the
13 notice and comment requirements (and re-
14 sponses to those comments) under clause
15 (ii).

16 “(E) HEARING AND RECOMMENDATIONS
17 BY NATIONAL COMMITTEE ON VITAL AND
18 HEALTH STATISTICS.—Under the upgrade pro-
19 gram, upon receipt of a proposal submitted by
20 a standard setting organization under subpara-
21 graph (D)(iii) for the adoption of an addition or
22 modification to a standard, the National Com-
23 mittee on Vital and Health Statistics shall pro-
24 vide notice to the public and a reasonable op-
25 portunity for public testimony at a hearing on

1 such addition or modification. The Secretary
2 may participate in such hearing in such capac-
3 ity (including presiding ex officio) as the Sec-
4 retary shall determine appropriate. Not later
5 than 90 days after the date of receipt of the
6 proposal, the Committee shall submit to the
7 Secretary its recommendation to adopt (or not
8 adopt) the proposed addition or modification.

9 “(F) DETERMINATION BY SECRETARY TO
10 ACCEPT OR REJECT NATIONAL COMMITTEE ON
11 VITAL AND HEALTH STATISTICS RECOMMENDA-
12 TION.—

13 “(i) TIMELY DETERMINATION.—
14 Under the upgrade program, if the Na-
15 tional Committee on Vital and Health Sta-
16 tistics submits to the Secretary a rec-
17 ommendation under subparagraph (E) to
18 adopt a proposed addition or modification,
19 not later than 90 days after the date of re-
20 ceipt of such recommendation the Sec-
21 retary shall make a determination to ac-
22 cept or reject the recommendation and
23 shall publish notice of such determination
24 in the Federal Register not later than 30
25 days after the date of the determination.

1 “(ii) CONTENTS OF NOTICE.—If the
2 determination is to reject the recommenda-
3 tion, such notice shall include the reasons
4 for the rejection. If the determination is to
5 accept the recommendation, as part of
6 such notice the Secretary shall promulgate
7 the modified standard (including the ac-
8 cepted proposed addition or modification
9 accepted) as a final rule under this sub-
10 section without any further notice or public
11 comment period.

12 “(iii) LIMITATION ON CONSIDER-
13 ATION.—The Secretary shall not consider a
14 proposal under this subparagraph unless
15 the Secretary determines that the require-
16 ments of subparagraph (D) (including pub-
17 lication of notice and opportunity for pub-
18 lic comment) have been met with respect to
19 the proposal.

20 “(G) NO JUDICIAL REVIEW.—A final rule
21 promulgated under subparagraph (F) shall not
22 be subject to judicial review.”.

1 **SEC. 7. REPORT ON THE AMERICAN HEALTH INFORMATION**
2 **COMMUNITY.**

3 Not later than one year after the date of the enact-
4 ment of this Act, the Secretary of Health and Human
5 Services shall submit to Congress a report on the work
6 conducted by the American Health Information Commu-
7 nity (in this section referred to as “AHIC”), as established
8 by the Secretary. Such report shall include the following:

9 (1) A description of the accomplishments of
10 AHIC, with respect to the promotion of the develop-
11 ment of a nationwide health information network
12 and the increased adoption of health information
13 technology.

14 (2) Information identifying the practices that
15 are used to protect health information and to guar-
16 antee confidentiality and security of such informa-
17 tion.

18 (3) Information on the progress in—

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

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

23 (C) achieving interoperable electronic
24 health record adoption across health care pro-
25 viders; and

1 (D) making available technological and
2 other innovations to ensure the security and
3 confidentiality of health information in the pro-
4 motion of health information technology.

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

7 (A) a schedule for such transition;

8 (B) options for structuring the entity as ei-
9 ther a public-private or private sector entity;

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

12 (D) the ongoing responsibilities of the enti-
13 ty, such as providing the leadership and plan-
14 ning in establishing standards, certifying health
15 information technology, and providing long-term
16 governance for health care transformation
17 through technology.

18 **SEC. 8. STRATEGIC PLAN FOR COORDINATING IMPLEMEN-**
19 **TATION OF HEALTH INFORMATION TECH-**
20 **NOLOGY.**

21 (a) IN GENERAL.—Not later than 180 days after the
22 date of the enactment of this Act, the Secretary of Health
23 and Human Services, in consultation with public and pri-
24 vate entities involved in the area of health information

1 technology, shall develop a strategic plan related to the
2 need for coordination in such area.

3 (b) COORDINATION OF SPECIFIC IMPLEMENTATION
4 PROCESSES.—The strategic plan under subsection (a)
5 shall address the need for coordination in the implementa-
6 tion of the following:

7 (1) HEALTH INFORMATION TECHNOLOGY
8 STANDARDS.—Health information technology stand-
9 ards approved under section 271(c)(3)(B)(i) of the
10 Public Health Service Act, as added by section 2.

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

14 (3) UPDATED ICD CODES.—The International
15 Statistical Classification of Diseases and Related
16 Health Problems, 10th revision, Clinical Modifica-
17 tion (ICD–10–CM) and the International Statistical
18 Classification of Diseases and Related Health Prob-
19 lems, 10th revision, Procedure Coding System
20 (ICD–10–PCS) described in section 5.

21 (c) COORDINATION AMONG SPECIFIC FEDERAL EN-
22 TITIES.—The strategic plan under subsection (a) shall ad-
23 dress any methods to coordinate, with respect to the elec-
24 tronic exchange of health information, actions taken by
25 the following entities:

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

3 (2) The American Health Information Commu-
4 nity.

5 (3) The Office of Electronic Standards and Se-
6 curity of the Centers for Medicare and Medicaid
7 Services.

8 (4) The National Committee on Vital Health
9 Statistics.

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