



Side by Side of HR 6898 (W&M) and HR 6357 (E&C) in the 110th Congress

As of September 16, 2008

| Title | H.R. 6898* The Health-e Information Technology Act of 2008 | H.R. 6357** Protecting Records, Optimizing Treatment, and Easing Communication through Healthcare Technology Act of 2008 |
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| Sponsor(s) | Representatives Stark, Schwartz, McDermott, McNulty, Levin, Emanuel, Neal, Pascrell, and Lewis | Representatives Dingell, Barton, Pallone, Deal, Gordon, Hall, Towns, Upton, Engel, Wilson, Gonzalez, Gingrey and Biggert |
| Overview | To promote the adoption and meaningful use of health information technology, and for other purposes. | To amend the Public Health Service Act to promote the adoption of health information technology, and for other purposes. |
| Improving Healthcare Quality Safety and Efficiency | <ul style="list-style-type: none"> • Codify the Office of the National Coordinator for Health Information Technology in to statute within the US Department of Health and Human Services. Duties include: <ul style="list-style-type: none"> ○ Develop a strategic plan on how to achieve widespread adoption of interoperable secure and clinically useful EHRS, ○ Recommend standards and guidance to Secretary, ○ Develop program fro voluntary certification of products meeting the standards adopted by the Secretary, ○ Coordinate the development of an open source health it system that will be certified as meeting all standards for secure electronic exchange (system shall be available to providers for a nominal fee), ○ Ensure the development of a NHIN through the expansion of sub-national health information organizations. • Establish a federal advisory committed (HIT Advisory Committee) of private and public stakeholders to provide assistance to ONC, serve as forum for input and expertise, and make recommendations to ONC on how to best promote interoperability, privacy and security, and clinical utility of electronic health information • Directs the Secretary to review and adopt standards by the Government through the rulemaking process and adopt an initial set of standards for interoperability, privacy and security, and clinical utility no later than September 30, 2011. Not binding on private entities but may be voluntarily adopted. • Directs ONC to establish a HIT Resource Center • Requires Federal agencies implementing, acquiring or upgrading HIT systems use HIT products meeting standards adopted by Secretary | <ul style="list-style-type: none"> • Codify the Office of the National Coordinator for Health Information Technology in to statute within the US Department of Health and Human Services. Duties include: <ul style="list-style-type: none"> ○ Develop a strategic plan to include steps to encourage the utilization of EHRS for each person by 2014 and ensure privacy and security protections ○ Develop a program for the voluntary certification of products meeting the standards development for the secure electronic exchange of health information ○ \$66 Million is authorized in appropriations for FY09 for these purposes • Establish a federal advisory committee (HIT Policy Committee) to recommend a policy framework and prioritizes the technical standards necessary for the development of an HIT infrastructure. Must consider technology standards that protect privacy and promote security that will be forwarded on to the HIT Standards Committee • Establishes a second federal advisory committee (HIT Standards Committee) of public and private stakeholders to develop, recognize or harmonize the technical standards necessary. • Directs the Secretary to review and adopt standards by the Government through the rulemaking process. Not binding on private entities but may be voluntarily adopted. |

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| | <ul style="list-style-type: none"> Requires private entities contracting with the Federal Government to carry out health activities adopt the standards established under this bill for electronic exchange of health information. | <ul style="list-style-type: none"> Directs ONC to establish a HIT Resource Center Requires Federal agencies implementing, acquiring or upgrading HIT systems use HIT products meeting standards adopted by Secretary Requires private entities contracting with the Federal Government to carry out health activities adopt the standards established under this bill for electronic exchange of health information. Requires Secretary to submit an annual report to Congress on efforts toward, and barriers to, facilitating the electronic exchange of health IT. Also requires Secretary to study methods to create efficient reimbursement incentives for improving healthcare quality in Federally-qualified health centers, rural health clinics and free clinics. Establishes three competitive grant programs <ul style="list-style-type: none"> First grant offers matching funds to eligible healthcare providers for the purchase of qualified health IT Second grant offers funds to States and Indian tribes to develop loan programs that will leverage private-sector funds to provide low interest loans to healthcare providers to purchase health IT Third grant provides support for local or regional organizations to develop health information technology plans. These plans must provide for the exchange of health information among physicians, pharmacies, hospitals, health centers, health plans and others. \$115 million is authorized for these grants with preference given to small healthcare providers, medically underserved or rural areas, or those who may have difficulty acquiring EHRs on their own. Creates a demonstration program to integrate HIT into clinical education of healthcare professionals with authorization of \$10 million in FY09-FY11 on a competitive basis to healthcare educational institutions to provide training on the use of HIT. |
| Testing of Health Information Technology | <ul style="list-style-type: none"> Requires the National Institute for Standards and Technology (NIST) work in coordination with ONC to test standards. Also requires director of NIST in coordination with ONC to support establishment of accredited testing labs for the voluntary testing of products for certification by the National Coordinator. | <ul style="list-style-type: none"> Requires the National Institute for Standards and Technology (NIST) work in coordination with the HIT Standards Committee to test standards. Also requires director of NIST in coordination with the HIT Standards Committee to support establishment of accredited testing labs for the voluntary testing of products for certification by the National Coordinator. Requires that NIST in coordination with the Director of the National Science Foundation to award competitive grants to institutes of higher education to research innovative approaches for the use of HIT in the delivery of healthcare. Also directs the national High-Performance Computing Program, to |

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| | | coordinate Federal research and programs related to the development and deployment of HIT. |
| Incentives for Adoption of Health Information Technology | <ul style="list-style-type: none"> • Provides incentive payments to certain physicians who adopt and utilized a certified EMR system. Following the availability of the open source electronic health record developed by HHS but no later than 2013, physicians who demonstrate they have adopted a certified HIT system are eligible for incentive payments through Medicare Part B. In addition, pro-rate incentive payments are made available and payments would be phased out over five years. The GAO is instructed to study the incentives scheme. <ul style="list-style-type: none"> ○ Provides incentive payments to Section 1886(d) hospitals that adopt and use a certified EMR system. Following the availability of the open source electronic health record developed by HHS but no later than 2013, physicians who demonstrate they have adopted a certified HIT system are eligible for incentive payments through Medicare Part A. In addition, payments are based on such measures as: meaningful levels of use, total discharges, and charity care. Payments can be prorated and are to be phased out over three years. The GAO is directed to study the incentives scheme. • Provides incentives payments to certain Medicare Advantage plans that adopt and utilize a certified EMR. Only closed network or staff model plans whose Medicare providers would otherwise not receive payments are eligible for payments. Following the availability of the open source electronic health record developed by HHS but no later than 2013, plans that demonstrate they have adopted a certified HIT system are eligible for incentive payments. <ul style="list-style-type: none"> ○ Payments will be phased out over time and payments will be reduced for these plans that have not adopted a certified system by 2016 • Establishes three competitive grant programs <ul style="list-style-type: none"> ○ First grant offers matching funds to eligible healthcare providers for the purchase of qualified health IT. Preferences given to providers who serve a low-income area, rural areas, medically underserved areas, as well as non-profit facilities, and providers who receive little or no Medicare incentives. ○ Second grant offers funds to States and Indian tribes to develop loan programs that will leverage private-sector funds to provide low interest loans to healthcare providers to purchase health IT ○ Third grant provides support for local or regional organizations to develop health information technology plans. These plans must provide for the exchange of health information among physicians, pharmacies, hospitals, health centers, health plans an others. ○ \$115 million is authorized for these grants with preference given to small healthcare providers, medically underserved or rural areas, or those who may have difficulty acquiring EHRS on their own. • Creates a demonstration program to integrate HIT into clinical education of healthcare professionals with authorization of \$10 million in FY09-FY11 on a competitive basis to healthcare educational institutions to provide training on the use of HIT | <ul style="list-style-type: none"> • Establishes three competitive grant programs <ul style="list-style-type: none"> ○ First grant offers matching funds to eligible healthcare providers for the purchase of qualified health IT ○ Second grant offers funds to States and Indian tribes to develop loan programs that will leverage private-sector funds to provide low interest loans to healthcare providers to purchase health IT ○ Third grant provides support for local or regional organizations to develop health information technology plans. These plans must provide for the exchange of health information among physicians, pharmacies, hospitals, health centers, health plans an others. ○ \$115 million is authorized for these grants with preference given to small healthcare providers, medically underserved or rural areas, or those who may have difficulty acquiring EHRS on their own. • Creates a demonstration program to integrate HIT into clinical education of healthcare professionals with authorization of \$10 million in FY09-FY11 on a competitive basis to healthcare educational institutions to provide training on the use of HIT. |
| Privacy and Security Provisions | <ul style="list-style-type: none"> • Requires that security safeguards promulgated pursuant to HIPAA and the penalties for violation of those safeguards apply to business associates under HIPAA in the same manner as applied to covered entities. | <ul style="list-style-type: none"> • Requires that security safeguards promulgated pursuant to HIPAA and the penalties for violation of those safeguards apply to business associates under HIPAA in the same manner as |

- Also requires Secretary annual issue guidance on the latest safeguard technologies for protecting information.
- Requires that in the case of a breach of unencrypted 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 business associate, the 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
 - Provision includes instruction for require methods which an individual must be notified and the content of the notification.
 - Notification can be delayed if it impedes a criminal investigation or damages national security.
 - Secretary required to issue guidance within 60 days and annually thereafter as to the technologies that need the standard of making information secure. If the Secretary fails PHI will be considered secure if it is protected by technology standards developed or endorsed by a standards developing organization that is accredited by ANSI
 - Secretary is also required annual to compile and analyze the number and natures of breaches reported to the secretary an issue a report to Congress and the steps that have or will be taken to address it at a federal level.
- Requires Secretary to designate an individual in each regional HHS office to offer education and guidance on privacy requirements regarding PHI
- Requires Secretary to annually report to Congress on complaints of alleged violations, how they were resolved including the imposition and amount of civil money penalties, the number of covered entities receiving technical assistance from the Secretary in order to achieve compliance as well as the types of technical assistance provided..
- Requires HHS implement an education program to enhance public transparency regarding uses of health information
- Penalties for violating the business associate contract standard in the HIPAA Privacy Rule apply to the business associates under HIPAA in the same manner as applied to covered entities
- Permits patients to request that their PHI regarding a specific healthcare item or service not be disclosed by a covered entity to a health plan for purposed of payment or health operations, unless otherwise required by law if that patient has paid in full out-of-pocket for that item or service. In this circumstance, the covered entity is required to honor the patients request
 - Covered entities shall make a reasonable effort to restrict the use, disclosure or request of PHI to a limited data set of information.
 - In the event of a disagreement, the entity which holds the PHI- rather than the entity requesting the PHI- retains the discretion to make its own minimum necessary determination in a manner that is consistent with and does not override professional judgment.
 - The individual may request an accounting of disclosures of PHI made by a covered entity to another party for treatment, payment, and healthcare operations in the three years prior to the request if the entity is utilizing an EMR. Covered

applied to covered entities.

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 - Provision includes instruction for require methods which an individual must be notified and the content of the notification.
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- Requires Secretary to designate an individual in each regional HHS office to offer education and guidance on privacy requirements regarding PHI.
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 - Covered entities shall make a reasonable effort to restrict the use, disclosure or request of PHI to a limited data set of information. If it is insufficient, the covered entity must restrict the use disclosure or request of PHI to the minimum necessary to achieve the purpose.
 - The individual may request an accounting of disclosures of PHI made by a covered entity to another party for treatment, payment, and healthcare operations in the three years prior to the request if the entity is utilizing an EMR.
 - Requires that a healthcare provider receive a patients consent to use or disclose their protected health information or healthcare operations if that provider is utilizing an EMR.
- Clarifies the definition of marketing under HIPAA and

entities would not be required to make an accounting for uses of PHI or oral disclosures of such information

- Uses and disclosures of PHI are not permitted without authorization in sales of PHI (except to recoup costs associated with preparing data for public health and research purposes) and unauthorized re-identification of de-identified data or the limited data set.
- Individuals have the right to receive electronic copies of PHI used or maintained by a covered entity in electronic format without charge if the entity uses an EMR
- The Secretary may revise the timeframes and deadlines by which covered entities will be required to act when individuals request amendments to their PHI maintained in an EMR
- Limits the conditions under which marketing is considered a health care operation, and precluding fundraising and direct payment to covered entities for the use of PHI to make certain communications without valid authorization
- Requires Secretary to promulgate regulations to eliminate from the definition of health care operations those activities that can reasonably and efficiently be conducted through the use of de-identified data or that should require a valid authorization for use and disclosure. Also, treatment cannot be conditioned on the provision of a valid authorization for these activities
- Requires Secretary in consultation with the FTC to submit recommendations to Congress regarding
 - Requirements relating to security, privacy, and notification in the case of a breach of PHI, including 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 PHR vendors
 - Federal agency best equipped to enforce those requirements
- If an individual's unsecured PHR identifiable health information is breached, requires that PHR vendors notify that individual along with the FTC.
 - FTC must notify HHS of breach notices received by FTC
 - Gives FTC enforcement authority regarding breaches of health information maintained by PHR vendors
 - Sunsets when either HHS or FTC adopt privacy and security standards specific to PHRs and other non-HIPAA covered entities and those standards take effect
- Requires organizations such as HIEs, RHIOs, e-Prescribing Gateways, and vendors of PHRs who have entered into contracts with covered entities to have business associate contracts
 - Also specifies Office for Civil Rights (OCR) within HHS determines that they reasonably should have known of a business associates pattern of activity or practice not in compliance with the terms of the contract and did not take the actions required under regulation to address it.
- Requires the Secretary, in consultation with stakeholders, to issue guidance on how to best implement regulatory requirements for the de-identification of PHI.
- GAO must submit a report to Congress on Best Practices related to the disclosure of PHI among healthcare providers for the purpose of treatment
- Criminal penalties for violation of HIPAA can be applied directly to individuals
- Improves enforcement of Federal health privacy law by the OCR at HHS by

precludes direct payment to covered entities for the use of PHI to make certain communications

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 - Requirements relating to security, privacy, and notification in the case of a breach of PHI, including 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 PHR vendors
 - Federal agency best equipped to enforce those requirements
- If an individual's unencrypted identifiable health information is breached, PHR vendors must notify that individual along with the FTC
 - Covered entities under Sec. 302 of the bill be applied to notifications required under this section and that FTC notify HHS of breach notices received by FTC
 - FTC has enforcement authority regarding breaches of health information maintained by PHR vendors.
 - Sunset after two years.
- Requires HIEs, RHIOs, or e-Prescribing gateways to have business associate contracts
- GAO must submit a report to Congress on Best Practices related to the disclosure of PHI among healthcare providers for the purpose of treatment
- Criminal penalties for violation of HIPAA can be applied directly to individuals
- Applies the preemption in Section 1178 of the SSA to provisions of title III of this bill and preserves the HIPAA and the regulations promulgated pursuant to the Act to the extent that they are consistent with Title III of this bill
- With exemption of certain specific provisions, this bill some become effective 12 months after the date of enactment of this Act.

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 within 30 days.

- Increase 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 OCRs current tools for informal resolution, technical assistance, and correction within 30 days without the imposition of a penalty in situations where the violation was due to a reasonable cause.
- Permits OCR to pursue and investigation and the imposition of civil monetary penalties against any individual for an alleged criminal violation of the Federal health privacy law if the DoJ has not prosecuted the individual
- Authorizes the state attorneys general to enforce Federal privacy and security laws
- Requires Secretary to appoint a chief privacy officer within ONC and designate chief privacy officers within HHS agencies to assist the National Coordinator in carrying out all duties relating to the privacy and security of health information
 - Encourages ONC Chief Privacy Officer to consult with other federal agencies who have primary responsibility relating to the privacy and security issues
- ONC to institute an ongoing process whereby standards and guidance related to ensuring privacy and security are continually recommended to the Secretary and periodically updated, as necessary to keep pace with issues.
- Applies the preemption in Section 1178 of the SSA to provisions of title III of this bill and preserves the HIPAA and the regulations promulgated pursuant to the Act to the extent that they are consistent with Title III of this bill
- With exemption of certain specific provisions, this bill some become effective 12 months after the date of enactment of this Act.

* Adapted from “*Section by Section of the Health-e IT Act of 2008*” from the House Ways and Means Committee

** Adapted from “*Implications of H.R. 6357, “Protecting Records, Optimizing Treatment, and Easing Communication through Healthcare Technology Act of 2008, July 8, 2008*” from the House Energy and Commerce Committee