

111TH CONGRESS  
1ST SESSION

# S. 264

To amend title XIX of the Social Security Act to encourage the use of certified health information technology by providers in the Medicaid program and the Children’s Health Insurance Program, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JANUARY 15, 2009

Ms. STABENOW introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XIX of the Social Security Act to encourage the use of certified health information technology by providers in the Medicaid program and the Children’s Health Insurance Program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “E–Centives Act of  
5 2009”.

1 **SEC. 2. INCREASED MATCHING PAYMENTS UNDER MED-**  
2 **ICAID FOR HEALTH INFORMATION TECH-**  
3 **NOLOGY.**

4 Section 1903 of the Social Security Act (42 U.S.C.  
5 1396b) is amended—

6 (1) in subsection (a)(3)(E), by inserting “(other  
7 than costs attributable to programs described in sub-  
8 section (bb))” after “costs incurred during such  
9 quarter”; and

10 (2) by adding at the end the following new sub-  
11 sections:

12 “(aa) **ENHANCED PAYMENTS FOR CERTIFIED**  
13 **HEALTH INFORMATION TECHNOLOGY INCENTIVES.—**

14 “(1) **IN GENERAL.—**The Secretary shall provide  
15 for payments to each State that provides incentive  
16 payments to physicians, hospitals, community health  
17 centers, rural health clinics, and community mental  
18 health centers that exhibit meaningful use of health  
19 information technology certified under this sub-  
20 section, as determined by the measures for meaning-  
21 ful use of health information technology under para-  
22 graph (5). No payment may be made to a State for  
23 incentive payments made by a State for meaningful  
24 use of health information technology that occurs be-  
25 fore January 1, 2010.

1           “(2) APPLICATION.—To qualify for payments  
2 under paragraph (1), a State shall submit an appli-  
3 cation in a time and manner specified by the Sec-  
4 retary and containing the following:

5           “(A) A description of the incentive pay-  
6 ments.

7           “(B) A description of the method the State  
8 will use to allocate such incentive payments  
9 among physicians, hospitals, community health  
10 centers, rural health clinics, and community  
11 mental health centers, including how the State  
12 will prioritize payments to providers serving a  
13 high percentage of Medicaid, SCHIP, and unin-  
14 sured patients.

15           “(C) A time line for implementing such  
16 payment incentives.

17           “(D) A plan for disseminating information  
18 to physicians, hospitals, community health cen-  
19 ters, rural health clinics, and community mental  
20 health centers about the availability of such  
21 payment incentives.

22           “(E) An assessment of the current level of  
23 use of health information technology by physi-  
24 cians, hospitals, community health centers,  
25 rural health clinics, and community mental

1 health centers in the State, using a standard  
2 assessment form developed by the Secretary.

3 “(F) Any other information required by  
4 the Secretary.

5 “(3) AMOUNT OF PAYMENTS TO STATES.—

6 “(A) IN GENERAL.—Subject to subpara-  
7 graph (B), the payment made to a State under  
8 this subsection for a quarter, with respect to  
9 sums expended by such State during such quar-  
10 ter that are attributable to providing incentive  
11 payments under paragraph (1), shall be in an  
12 amount equal to the following:

13 “(i) For any quarter in 2010, the en-  
14 hanced FMAP (as defined in section  
15 2105(b)) of such sums.

16 “(ii) For any quarter in 2011 or  
17 2012, such sums multiplied by a percent-  
18 age equal to such enhanced FMAP minus  
19 1.5 percentage points.

20 “(iii) For any quarter in 2013 or  
21 2014, such sums multiplied by a percent-  
22 age equal to such enhanced FMAP minus  
23 3 percentage points.

24 “(iv) For any quarter beginning after  
25 2014, 0.

1 “(B) LIMITATION.—

2 “(i) FISCAL YEAR LIMITATION.—The  
3 total amount of payments made under this  
4 subsection shall not exceed \$500,000,000  
5 for any fiscal year.

6 “(ii) ALLOCATION.—If the amounts  
7 otherwise payable under this subsection for  
8 a fiscal year exceed the amount specified in  
9 clause (i), the Secretary shall reduce the  
10 amounts payable under this subsection, in  
11 a manner specified by the Secretary, to  
12 comply with the limitation under such  
13 clause.

14 “(iii) DUPLICATIVE PAYMENTS PRO-  
15 HIBITED.—No payment shall be made  
16 under any other provision of this title for  
17 expenditures for which payment is made  
18 under this subsection.

19 “(C) MANNER OF PAYMENT.—Payment to  
20 a State under this subsection shall be made in  
21 the same manner as payments under subsection  
22 (a).

23 “(4) CERTIFICATION REQUIREMENTS FOR  
24 HEALTH INFORMATION TECHNOLOGY.—

1           “(A) IN GENERAL.—The Secretary, in con-  
2           sultation with the Office of the National Coor-  
3           dinator for Health Information Technology and  
4           the Certification Commission of Health Infor-  
5           mation Technology, shall determine the require-  
6           ments for certification of health information  
7           technology under this subsection.

8           “(B) INTERIM CERTIFICATION REQUIRE-  
9           MENTS.—During any period in which the Sec-  
10          retary has not determined such certification re-  
11          quirements, the Secretary, for purposes of this  
12          subsection, shall use the certification require-  
13          ments for health information technology estab-  
14          lished by the Certification Commission for  
15          Health Information Technology.

16          “(5) MEASURES FOR MEANINGFUL USE OF  
17          HEALTH INFORMATION TECHNOLOGY.—

18                 “(A) IN GENERAL.—For purposes of this  
19                 subsection, the Secretary shall publish standard  
20                 measures of meaningful use of health informa-  
21                 tion technology to be used by providers to dem-  
22                 onstrate meaningful use of certified health in-  
23                 formation technology. Such measures may in-  
24                 clude—

1           “(i) self-certification of operational  
2           use of such technology;

3           “(ii) the submission of (or ability to  
4           submit), in a form and manner specified  
5           by the Secretary, such information on clin-  
6           ical measures and data (that do not in-  
7           clude individually identifiable health infor-  
8           mation) from such technology as indicates  
9           a meaningful utilization of such tech-  
10          nology; and

11          “(iii) such other means as the Sec-  
12          retary may specify.

13          “(B) ALTERNATIVE MEASURES.—The Sec-  
14          retary may establish and apply different meas-  
15          ures based on the stage of implementation or  
16          adoption of the certified health information  
17          technology involved.

18          “(bb) PAYMENTS FOR ELECTRONIC INFORMATION  
19          AND ELIGIBILITY SYSTEMS AND PATIENT REGISTRIES.—

20                 “(1) IN GENERAL.—In addition to the pay-  
21                 ments provided under subsection (a), the Secretary  
22                 shall provide for payments to each State that estab-  
23                 lishes a program to—

24                         “(A) design, develop, install, maintain, and  
25                         operate—

1           “(i) electronic information and eligi-  
2           bility systems; and

3           “(ii) patient registries for the purpose  
4           of disease screening;

5           “(B) coordinate benefits and services  
6           under this title and under title XVIII for indi-  
7           viduals under the State plan who are full-ben-  
8           efit dual eligible individuals.

9           “(C) train providers in the use of such sys-  
10          tems and registries.

11          “(2) APPLICATION.—To qualify for payments  
12          under paragraph (1), a State shall submit an appli-  
13          cation in such time and manner as required by the  
14          Secretary and containing such information as the  
15          Secretary specifies and include, at a minimum, a de-  
16          scription of the electronic information and eligibility  
17          systems and patient registries covered by the pro-  
18          gram described in paragraph (1).

19          “(3) AMOUNT OF PAYMENTS TO STATES.—

20                 “(A) IN GENERAL.—The payments made a  
21                 State under this subsection shall be an amount  
22                 equal to—

23                         “(i) 90 percent of so much of the  
24                         sums expended by such State during any



1 quarter commencing on or after January  
2 1, 2010, as are attributable to—

3 “(I) the design, development, or  
4 installation of electronic information  
5 and eligibility systems and patient  
6 registries under paragraph (1); and

7 “(II) training staff employed by  
8 providers on the use of such system or  
9 registry during the three-year period  
10 beginning on the date such system or  
11 registry is installed; and

12 “(ii) 75 percent of so much of the  
13 sums expended by such State during any  
14 quarter commencing on or after January  
15 1, 2010, as are attributable to—

16 “(I) the maintenance of such sys-  
17 tems and registries; and

18 “(II) training for staff employed  
19 by providers on the use of a system or  
20 registry that occurs after the last day  
21 of the end of the period described in  
22 clause (i)(II).

23 “(B) MANNER OF PAYMENT.—Payment to  
24 a State under this subsection shall be made in

1           the same manner as payments under subsection  
2           (a).

3           “(4) ELECTRONIC INFORMATION AND ELIGI-  
4           BILITY SYSTEM DEFINED.—For purposes of this  
5           subsection, the term ‘electronic information and eli-  
6           gibility system’ means a system for determining eli-  
7           gibility and exchanging information that meets such  
8           requirements as the Secretary shall specify. Such re-  
9           quirements for a system shall include a requirement  
10          that the system—

11                   “(A) be interconnected and interoperable  
12                   with other electronic systems and registries, in-  
13                   cluding—

14                           “(i) systems administered by the Cen-  
15                           ters for Disease Control for disease report-  
16                           ing purposes;

17                           “(ii) systems that exist for the pur-  
18                           pose of determining eligibility for the Medi-  
19                           care program under title XVIII; and

20                           “(iii) systems that exist for the pur-  
21                           pose of determining eligibility for the Tem-  
22                           porary Assistance for Needy Families pro-  
23                           gram under title IV, free and reduced price  
24                           lunches under the Richard B. Russell Na-  
25                           tional School Lunch Act (42 U.S.C. 1751

1 et seq.), or other federally funded pro-  
 2 grams targeted to low-income populations;  
 3 and

4 “(B) can be used to automatically send, re-  
 5 ceive, and integrate data (including laboratory  
 6 results and medical histories) from systems and  
 7 registries administered by other providers or or-  
 8 ganizations or through a health information ex-  
 9 change.”.

10 **SEC. 3. MEDICAID TRANSFORMATION PAYMENTS REPORT.**

11 (a) IN GENERAL.—Not later than June 30, 2009, the  
 12 Secretary of Health and Human Services shall submit to  
 13 Congress a report on Medicaid transformation payments  
 14 under section 1903(z) of the Social Security Act (42  
 15 U.S.C. 1396b(z)).

16 (b) CONTENTS.—The report under subsection (a)  
 17 shall include—

18 (1) a description—

19 (A) of the financial costs and benefits of  
 20 the Medicaid transformation payments;

21 (B) of the entities to which such costs and  
 22 benefits accrue; and

23 (C) of any reduction in duplicative or un-  
 24 necessary care resulting from methods adopted  
 25 by States and funded by such payments; and

1           (2) an analysis of the information contained in  
2 the reports submitted to the Secretary by States  
3 under section 1903(z)(3)(C) of the Social Security  
4 Act during the two-year period ending on December  
5 31, 2008, including—

6           (A) the impact of the methods funded by  
7 the payments on—

8           (i) health care quality and safety; and

9           (ii) the privacy and security of identi-  
10 fiable health information;

11          (B) the effect of such methods on fur-  
12 thering interconnectedness between—

13          (i) providers and State Medicaid pro-  
14 grams; and

15          (ii) State Medicaid programs and  
16 other programs for low-income populations  
17 administered by State and Federal entities;

18          (C) the extent to which such methods re-  
19 duce the administrative burden on such pro-  
20 grams; and

21          (D) the contribution of the payments to  
22 the goals of public health and public health re-  
23 porting.

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