

American Recovery and Reinvestment Act of 2009

Title IV: Health Information Technology and Quality

Subtitle B: Incentives for the Use of Health Information Technology

Part I: Medicaid Program

SEC. 4311: INCENTIVES FOR ELIGIBLE PROFESSIONALS.

(a) Incentive Payments- Section 1848 of the Social Security Act (42 U.S.C. 1395w-4) is amended by adding at the end the following new subsection:

“(o) Incentives for Adoption and Meaningful Use of Certified EHR Technology-

“(1) INCENTIVE PAYMENTS-

“(A) IN GENERAL- Subject to the succeeding subparagraphs of this paragraph, with respect to covered professional services furnished by an eligible professional during a payment year (as defined in subparagraph (E)), if the eligible professional is a meaningful EHR user (as determined under paragraph (2)) for the reporting period with respect to such year, in addition to the amount otherwise paid under this part, there also shall be paid to the eligible professional (or to an employer or facility in the cases described in clause (A) of section 1842(b)(6)), from the Federal Supplementary Medical Insurance Trust Fund established under section 1841 an amount equal to 75 percent of the Secretary's estimate (based on claims submitted not later than 2 months after the end of the payment year) of the allowed charges under this part for all such covered professional services furnished by the eligible professional during such year.

“(B) LIMITATIONS ON AMOUNTS OF INCENTIVE PAYMENTS-

“(i) IN GENERAL- In no case shall the amount of the incentive payment provided under this paragraph for an eligible professional for a payment year exceed the applicable amount specified under this subparagraph with respect to such eligible professional and such year.

“(ii) AMOUNT- Subject to clause (iii), the applicable amount specified in this subparagraph for an eligible professional is as follows:

“(I) For the first payment year for such professional, \$15,000.

“(II) For the second payment year for such professional, \$12,000.

“(III) For the third payment year for such professional, \$8,000.

`(IV) For the fourth payment year for such professional, \$4,000.

`(V) For the fifth payment year for such professional, \$2,000.

`(VI) For any succeeding payment year for such professional, \$0.

`(iii) PHASE DOWN FOR ELIGIBLE PROFESSIONALS FIRST ADOPTING EHR AFTER 2013- If the first payment year for an eligible professional is after 2013, then the amount specified in this subparagraph for a payment year for such professional is the same as the amount specified in clause (ii) for such payment year for an eligible professional whose first payment year is 2013. If the first payment year for an eligible professional is after 2015 then the applicable amount specified in this subparagraph for such professional for such year and any subsequent year shall be \$0.

`(C) NON-APPLICATION TO HOSPITAL-BASED ELIGIBLE PROFESSIONALS-

`(i) IN GENERAL- No incentive payment may be made under this paragraph in the case of a hospital-based eligible professional.

`(ii) HOSPITAL-BASED ELIGIBLE PROFESSIONAL- For purposes of clause (i), the term `hospital-based eligible professional' means, with respect to covered professional services furnished by an eligible professional during the reporting period for a payment year, an eligible professional, such as a pathologist, anesthesiologist, or emergency physician, who furnishes substantially all of such services in a hospital setting (whether inpatient or outpatient) and through the use of the facilities and equipment, including computer equipment, of the hospital.

`(D) PAYMENT-

`(i) FORM OF PAYMENT- The payment under this paragraph may be in the form of a single consolidated payment or in the form of such periodic installments as the Secretary may specify.

`(ii) COORDINATION OF APPLICATION OF LIMITATION FOR PROFESSIONALS IN DIFFERENT PRACTICES- In the case of an eligible professional furnishing covered professional services in more than one practice (as specified by the Secretary), the Secretary shall establish rules to coordinate the incentive payments, including the application of the limitation on amounts of such incentive payments under this paragraph, among such practices.

`(iii) COORDINATION WITH MEDICAID- The Secretary shall seek, to the maximum extent practicable, to avoid duplicative requirements from Federal and State Governments to demonstrate meaningful use of certified EHR technology under this title and title XIX. The Secretary may also adjust the reporting periods under such title and such subsections in order to carry out this clause.

`(E) PAYMENT YEAR DEFINED-

`(i) IN GENERAL- For purposes of this subsection, the term `payment year' means a year beginning with 2011.

`(ii) FIRST, SECOND, ETC. PAYMENT YEAR- The term `first payment year' means, with respect to covered professional services furnished by an eligible professional, the first year for which an incentive payment is made for such services under this subsection. The terms `second payment year', `third payment year', `fourth payment year', and `fifth payment year' mean, with respect to covered professional services furnished by such eligible professional, each successive year immediately following the first payment year for such professional.

`(2) MEANINGFUL EHR USER-

`(A) IN GENERAL- For purposes of paragraph (1), an eligible professional shall be treated as a meaningful EHR user for a reporting period for a payment year (or, for purposes of subsection (a)(7), for a reporting period under such subsection for a year) if each of the following requirements is met:

`(i) MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY- The eligible professional demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period the professional is using certified EHR technology in a meaningful manner, which shall include the use of electronic prescribing as determined to be appropriate by the Secretary.

`(ii) INFORMATION EXCHANGE- The eligible professional demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period such certified EHR technology is connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to improve the quality of health care, such as promoting care coordination.

`(iii) REPORTING ON MEASURES USING EHR- Subject to subparagraph (B)(ii) and using such certified EHR technology, the eligible professional submits

information for such period, in a form and manner specified by the Secretary, on such clinical quality measures and such other measures as selected by the Secretary under subparagraph (B)(i).

The Secretary may provide for the use of alternative means for meeting the requirements of clauses (i), (ii), and (iii) in the case of an eligible professional furnishing covered professional services in a group practice (as defined by the Secretary). The Secretary shall seek to improve the use of electronic health records and health care quality over time by requiring more stringent measures of meaningful use selected under this paragraph.

(B) REPORTING ON MEASURES-

(i) SELECTION- The Secretary shall select measures for purposes of subparagraph (A)(iii) but only consistent with the following:

(I) The Secretary shall provide preference to clinical quality measures that have been endorsed by the entity with a contract with the Secretary under section 1890(a).

(II) Prior to any measure being selected under this subparagraph, the Secretary shall publish in the Federal Register such measure and provide for a period of public comment on such measure.

(ii) LIMITATION- The Secretary may not require the electronic reporting of information on clinical quality measures under subparagraph (A)(iii) unless the Secretary has the capacity to accept the information electronically, which may be on a pilot basis.

(iii) COORDINATION OF REPORTING OF INFORMATION- In selecting such measures, and in establishing the form and manner for reporting measures under subparagraph (A)(iii), the Secretary shall seek to avoid redundant or duplicative reporting otherwise required, including reporting under subsection (k)(2)(C).

(C) DEMONSTRATION OF MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY AND INFORMATION EXCHANGE-

(i) IN GENERAL- A professional may satisfy the demonstration requirement of clauses (i) and (ii) of subparagraph (A) through means specified by the Secretary, which may include--

(I) an attestation;

(II) the submission of claims with appropriate coding (such as a code indicating that a patient encounter was documented using certified EHR technology);

`(III) a survey response;

`(IV) reporting under subparagraph (A)(iii); and

`(V) other means specified by the Secretary.

`(ii) USE OF PART D DATA- Notwithstanding sections 1860D-15(d)(2)(B) and 1860D-15(f)(2), the Secretary may use data regarding drug claims submitted for purposes of section 1860D-15 that are necessary for purposes of subparagraph (A).

`(3) APPLICATION-

`(A) PHYSICIAN REPORTING SYSTEM RULES- Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this subsection in the same manner as they apply for purposes of such subsection.

`(B) COORDINATION WITH OTHER PAYMENTS- The provisions of this subsection shall not be taken into account in applying the provisions of subsection (m) of this section and of section 1833(m) and any payment under such provisions shall not be taken into account in computing allowable charges under this subsection.

`(C) LIMITATIONS ON REVIEW- There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the determination of any incentive payment under this subsection and the payment adjustment under subsection (a)(7), including the determination of a meaningful EHR user under paragraph (2), a limitation under paragraph (1)(B), and the exception under subsection (a)(7)(B).

`(D) POSTING ON WEBSITE- The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services, in an easily understandable format, a list of the names, business addresses, and business phone numbers of the eligible professionals who are meaningful EHR users and, as determined appropriate by the Secretary, of group practices receiving incentive payments under paragraph (1).

`(4) CERTIFIED EHR TECHNOLOGY DEFINED- For purposes of this section, the term 'certified EHR technology' means a qualified electronic health record (as defined in 3000(13) of the Public Health Service Act) that is certified pursuant to section 3001(c)(5) of such Act as meeting standards adopted under section 3004 of such Act that are applicable to the type of record involved (as determined by the Secretary, such as an ambulatory electronic health record for office-based physicians or an inpatient hospital electronic health record for hospitals).

`(5) DEFINITIONS- For purposes of this subsection:

`(A) COVERED PROFESSIONAL SERVICES- The term 'covered professional services' has the meaning given such term in subsection (k)(3).

`(B) ELIGIBLE PROFESSIONAL- The term `eligible professional' means a physician, as defined in section 1861(r).

`(C) REPORTING PERIOD- The term `reporting period' means any period (or periods), with respect to a payment year, as specified by the Secretary.'

(b) Incentive Payment Adjustment- Section 1848(a) of the Social Security Act (42 U.S.C. 1395w-4(a)) is amended by adding at the end the following new paragraph:

`(7) INCENTIVES FOR MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY-

`(A) ADJUSTMENT-

`(i) IN GENERAL- Subject to subparagraphs (B) and (D), with respect to covered professional services furnished by an eligible professional during 2016 or any subsequent payment year, if the eligible professional is not a meaningful EHR user (as determined under subsection (o)(2)) for a reporting period for the year, the fee schedule amount for such services furnished by such professional during the year (including the fee schedule amount for purposes of determining a payment based on such amount) shall be equal to the applicable percent of the fee schedule amount that would otherwise apply to such services under this subsection (determined after application of paragraph (3) but without regard to this paragraph).

`(ii) APPLICABLE PERCENT- Subject to clause (iii), for purposes of clause (i), the term `applicable percent' means--

`(I) for 2016, 99 percent;

`(II) for 2017, 98 percent; and

`(III) for 2018 and each subsequent year, 97 percent.

`(iii) AUTHORITY TO DECREASE APPLICABLE PERCENTAGE FOR 2019 AND SUBSEQUENT YEARS-

For 2019 and each subsequent year, if the Secretary finds that the proportion of eligible professionals who are meaningful EHR users (as determined under subsection (o)(2)) is less than 75 percent, the applicable percent shall be decreased by 1 percentage point from the applicable percent in the preceding year, but in no case shall the applicable percent be less than 95 percent.

`(B) SIGNIFICANT HARDSHIP EXCEPTION- The Secretary may, on a case-by-case basis, exempt an eligible professional from the application of the payment adjustment under subparagraph (A) if the Secretary determines, subject to annual renewal, that compliance with the requirement for being a meaningful EHR user would result in a significant hardship, such as in the case of an eligible professional who practices in a rural area without

sufficient Internet access. In no case may an eligible professional be granted an exemption under this subparagraph for more than 5 years.

`(C) APPLICATION OF PHYSICIAN REPORTING SYSTEM RULES- Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this paragraph in the same manner as they apply for purposes of such subsection.

`(D) NON-APPLICATION TO HOSPITAL-BASED ELIGIBLE PROFESSIONALS- No payment adjustment may be made under subparagraph (A) in the case of hospital-based eligible professionals (as defined in subsection (o)(1)(C)(ii)).

`(E) DEFINITIONS- For purposes of this paragraph:

`(i) COVERED PROFESSIONAL SERVICES- The term `covered professional services' has the meaning given such term in subsection (k)(3).

`(ii) ELIGIBLE PROFESSIONAL- The term `eligible professional' means a physician, as defined in section 1861(r).

`(iii) REPORTING PERIOD- The term `reporting period' means, with respect to a year, a period specified by the Secretary.'

(c) Application to Certain HMO-Affiliated Eligible Professionals- Section 1853 of the Social Security Act (42 U.S.C. 1395w-23) is amended by adding at the end the following new subsection:

`(l) Application of Eligible Professional Incentives for Certain MA Organizations for Adoption and Meaningful Use of Certified EHR Technology-

`(1) IN GENERAL- Subject to paragraphs (3) and (4), in the case of a qualifying MA organization, the provisions of sections 1848(o) and 1848(a)(7) shall apply with respect to eligible professionals described in paragraph (2) of the organization who the organization attests under paragraph (6) to be meaningful EHR users in a similar manner as they apply to eligible professionals under such sections. Incentive payments under paragraph (3) shall be made to and payment adjustments under paragraph (4) shall apply to such qualifying organizations.

`(2) ELIGIBLE PROFESSIONAL DESCRIBED- With respect to a qualifying MA organization, an eligible professional described in this paragraph is an eligible professional (as defined for purposes of section 1848(o)) who--

`(A)(i) is employed by the organization; or

`(ii)(I) is employed by, or is a partner of, an entity that through contract with the organization furnishes at least 80 percent of the entity's patient care services to enrollees of such organization; and
(II) furnishes at least 80 percent of the professional services of the eligible professional to enrollees of the organization; and

`(B) furnishes, on average, at least 20 hours per week of patient care services.

`(3) ELIGIBLE PROFESSIONAL INCENTIVE PAYMENTS-

`(A) IN GENERAL- In applying section 1848(o) under paragraph (1), instead of the additional payment amount under section 1848(o)(1)(A) and subject to subparagraph (B), the Secretary may substitute an amount determined by the Secretary to the extent feasible and practical to be similar to the estimated amount in the aggregate that would be payable if payment for services furnished by such professionals was payable under part B instead of this part.

`(B) AVOIDING DUPLICATION OF PAYMENTS-

`(i) IN GENERAL- If an eligible professional described in paragraph (2) is eligible for the maximum incentive payment under section 1848(o)(1)(A) for the same payment period, the payment incentive shall be made only under such section and not under this subsection.

`(ii) METHODS- In the case of an eligible professional described in paragraph (2) who is eligible for an incentive payment under section 1848(o)(1)(A) but is not described in clause (i) for the same payment period, the Secretary shall develop a process--

`(I) to ensure that duplicate payments are not made with respect to an eligible professional both under this subsection and under section 1848(o)(1)(A);
and

`(II) to collect data from Medicare Advantage organizations to ensure against such duplicate payments.

`(C) FIXED SCHEDULE FOR APPLICATION OF LIMITATION ON INCENTIVE PAYMENTS FOR ALL ELIGIBLE PROFESSIONALS-

In applying section 1848(o)(1)(B)(ii) under subparagraph (A), in accordance with rules specified by the Secretary, a qualifying MA organization shall specify a year (not earlier than 2011) that shall be treated as the first payment year for all eligible professionals with respect to such organization.

`(4) PAYMENT ADJUSTMENT-

`(A) IN GENERAL- In applying section 1848(a)(7) under paragraph (1), instead of the payment adjustment being an applicable percent of the fee schedule amount for a year under such section, subject to subparagraph (D), the payment adjustment under paragraph (1) shall be equal to the percent specified in subparagraph (B) for such year of the payment amount otherwise provided under this section for such year.

`(B) SPECIFIED PERCENT- The percent specified under this subparagraph for a year is 100 percent minus a number of percentage points equal to the product of--

`(i) the number of percentage points by which the applicable percent (under section 1848(a)(7)(A)(ii)) for the year is less than 100 percent; and

`(ii) the Medicare physician expenditure proportion specified in subparagraph (C) for the year.

`(C) MEDICARE PHYSICIAN EXPENDITURE PROPORTION-

The Medicare physician expenditure proportion under this subparagraph for a year is the Secretary's estimate of the proportion, of the expenditures under parts A and B that are not attributable to this part, that are attributable to expenditures for physicians' services.

`(D) APPLICATION OF PAYMENT ADJUSTMENT- In the case that a qualifying MA organization attests that not all eligible professionals are meaningful EHR users with respect to a year, the Secretary shall apply the payment adjustment under this paragraph based on the proportion of such eligible professionals that are not meaningful EHR users for such year.

`(5) QUALIFYING MA ORGANIZATION DEFINED- In this subsection and subsection (m), the term `qualifying MA organization' means a Medicare Advantage organization that is organized as a health maintenance organization (as defined in section 2791(b)(3) of the Public Health Service Act).

`(6) MEANINGFUL EHR USER ATTESTATION- For purposes of this subsection and subsection (m), a qualifying MA organization shall submit an attestation, in a form and manner specified by the Secretary which may include the submission of such attestation as part of submission of the initial bid under section 1854(a)(1)(A)(iv), identifying--

`(A) whether each eligible professional described in paragraph (2), with respect to such organization is a meaningful EHR user (as defined in section 1848(o)(2)) for a year specified by the Secretary; and

`(B) whether each eligible hospital described in subsection (m)(1), with respect to such organization, is a meaningful EHR user (as defined in section 1886(n)(3)) for an applicable period specified by the Secretary.'.

(d) Conforming Amendments- Section 1853 of the Social Security Act (42 U.S.C. 1395w-23) is amended--

(1) in subsection (a)(1)(A), by striking `and (i)' and inserting `(i), and (l)';

(2) in subsection (c)--

(A) in paragraph (1)(D)(i), by striking `section 1886(h)' and inserting `sections 1848(o) and 1886(h)'; and

(B) in paragraph (6)(A), by inserting after `under part B,' the following: `excluding expenditures attributable to subsections (a)(7) and (o) of section 1848,'; and

(3) in subsection (f), by inserting `and for payments under subsection (l)' after `with the organization'.

(e) Conforming Amendments to e-Prescribing-

(1) Section 1848(a)(5)(A) of the Social Security Act (42 U.S.C. 1395w-4(a)(5)(A)) is amended--

(A) in clause (i), by striking `or any subsequent year' and inserting `
, 2013, 2014, or 2015'; and

(B) in clause (ii), by striking `and each subsequent year' and inserting `and 2015'.

(2) Section 1848(m)(2) of such Act (42 U.S.C. 1395w-4(m)(2)) is amended--

(A) in subparagraph (A), by striking `For 2009' and inserting `
Subject to subparagraph (D), for 2009'; and

(B) by adding at the end the following new subparagraph:

`(D) LIMITATION WITH RESPECT TO EHR INCENTIVE PAYMENTS- The provisions of this paragraph shall not apply to an eligible professional (or, in the case of a group practice under paragraph (3)(C), to the group practice) if, for the reporting period the eligible professional (or group practice) receives an incentive payment under subsection (o)(1)(A) with respect to a certified EHR technology (as defined in subsection (o)(4)) that has the capability of electronic prescribing.'.

SEC. 4312. INCENTIVES FOR HOSPITALS.

(a) Incentive Payment- Section 1886 of the Social Security Act (42 U.S.C. 1395ww) is amended by adding at the end the following new subsection:

`(n) Incentives for Adoption and Meaningful Use of Certified EHR Technology-

`(1) IN GENERAL- Subject to the succeeding provisions of this subsection, with respect to inpatient hospital services furnished by an eligible hospital during a payment year (as defined in paragraph (2)(G)), if the eligible hospital is a meaningful EHR user (as determined under paragraph (3)) for the reporting period with respect to such year, in addition to the amount otherwise paid under this section, there also shall be paid to the eligible hospital, from the Federal Hospital Insurance Trust Fund established under section 1817, an amount equal to the applicable amount specified in paragraph (2)(A) for the hospital for such payment year.

`(2) PAYMENT AMOUNT-

`(A) IN GENERAL- Subject to the succeeding subparagraphs of this paragraph, the applicable amount specified in this subparagraph for an eligible hospital for a payment year is equal to the product of the following:

`(i) INITIAL AMOUNT- The sum of--

`(I) the base amount specified in subparagraph (B);
plus

`(II) the discharge related amount specified in subparagraph (C) for a 12-month period selected by the Secretary with respect to such payment year.

`(ii) MEDICARE SHARE- The Medicare share as specified in subparagraph (D) for the hospital for a period selected by the Secretary with respect to such payment year.

`(iii) TRANSITION FACTOR- The transition factor specified in subparagraph (E) for the hospital for the payment year.

`(B) BASE AMOUNT- The base amount specified in this subparagraph is \$2,000,000.

`(C) DISCHARGE RELATED AMOUNT- The discharge related amount specified in this subparagraph for a 12-month period selected by the Secretary shall be determined as the sum of the amount, based upon total discharges (regardless of any source of payment) for the period, for each discharge up to the 23,000th discharge as follows:

`(i) For the 1,150th through the 23,000th discharge, \$200.

`(ii) For any discharge greater than the 23,000th, \$0.

`(D) MEDICARE SHARE- The Medicare share specified under this subparagraph for a hospital for a period selected by the Secretary for a payment year is equal to the fraction--

`(i) the numerator of which is the sum (for such period and with respect to the hospital) of--

`(I) the number of inpatient-bed-days (as established by the Secretary) which are attributable to individuals with respect to whom payment may be made under part A; and

`(II) the number of inpatient-bed-days (as so established) which are attributable to individuals who are enrolled with a Medicare Advantage organization under part C; and

`(ii) the denominator of which is the product of--

`(I) the total number of inpatient-bed-days with respect to the hospital during such period; and

`(II) the total amount of the hospital's charges during such period, not including any charges that are attributable to charity care (as such term is used for purposes of hospital cost reporting under this title), divided by the total amount of the hospital's charges during such period.

Insofar as the Secretary determines that data are not available on charity care necessary to calculate the portion of the formula specified in clause (ii)(II), the Secretary shall use data on uncompensated care and may adjust such data so as to be an

appropriate proxy for charity care including a downward adjustment to eliminate bad debt data from uncompensated care data. In the absence of the data necessary, with respect to a hospital, for the Secretary to compute the amount described in clause (ii)(II), the amount under such clause shall be deemed to be 1. In the absence of data, with respect to a hospital, necessary to compute the amount described in clause (i)(II), the amount under such clause shall be deemed to be 0.

^(E) TRANSITION FACTOR SPECIFIED-

^(i) IN GENERAL- Subject to clause (ii), the transition factor specified in this subparagraph for an eligible hospital for a payment year is as follows:

^(I) For the first payment year for such hospital, 1.

^(II) For the second payment year for such hospital, 3/4 .

^(III) For the third payment year for such hospital, 1/2 .

^(IV) For the fourth payment year for such hospital, 1/4 .

^(V) For any succeeding payment year for such hospital, 0.

^(ii) PHASE DOWN FOR ELIGIBLE HOSPITALS FIRST ADOPTING EHR AFTER 2013- If the first payment year for an eligible hospital is after 2013, then the transition factor specified in this subparagraph for a payment year for such hospital is the same as the amount specified in clause (i) for such payment year for an eligible hospital for which the first payment year is 2013. If the first payment year for an eligible hospital is after 2015 then the transition factor specified in this subparagraph for such hospital and for such year and any subsequent year shall be 0.

^(F) FORM OF PAYMENT- The payment under this subsection for a payment year may be in the form of a single consolidated payment or in the form of such periodic installments as the Secretary may specify.

^(G) PAYMENT YEAR DEFINED-

^(i) IN GENERAL- For purposes of this subsection, the term 'payment year' means a fiscal year beginning with fiscal year 2011.

^(ii) FIRST, SECOND, ETC. PAYMENT YEAR- The term 'first payment year' means, with respect to inpatient hospital services furnished by an eligible hospital, the first fiscal year for which an incentive payment is made for such services under this subsection. The terms 'second payment year', 'third payment year', and 'fourth payment year' mean, with respect to an eligible hospital, each successive year

immediately following the first payment year for that hospital.

`(3) MEANINGFUL EHR USER-

`(A) IN GENERAL- For purposes of paragraph (1), an eligible hospital shall be treated as a meaningful EHR user for a reporting period for a payment year (or, for purposes of subsection (b)(3)(B)(ix), for a reporting period under such subsection for a fiscal year) if each of the following requirements are met:

`(i) MEANINGFUL USE OF CERTIFIED EHR

TECHNOLOGY- The eligible hospital demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period the hospital is using certified EHR technology in a meaningful manner.

`(ii) INFORMATION EXCHANGE- The eligible hospital demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period such certified EHR technology is connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to improve the quality of health care, such as promoting care coordination.

`(iii) REPORTING ON MEASURES USING EHR-

Subject to subparagraph (B)(ii) and using such certified EHR technology, the eligible hospital submits information for such period, in a form and manner specified by the Secretary, on such clinical quality measures and such other measures as selected by the Secretary under subparagraph (B)(i).

The Secretary shall seek to improve the use of electronic health records and health care quality over time by requiring more stringent measures of meaningful use selected under this paragraph.

`(B) REPORTING ON MEASURES-

`(i) SELECTION- The Secretary shall select measures for purposes of subparagraph (A)(iii) but only consistent with the following:

`(I) The Secretary shall provide preference to clinical quality measures that have been selected for purposes of applying subsection (b)(3)(B)(viii) or that have been endorsed by the entity with a contract with the Secretary under section 1890(a).

`(II) Prior to any measure (other than a clinical quality measure that has been selected for purposes of applying subsection (b)(3)(B)(viii)) being selected under this subparagraph, the Secretary shall publish in the Federal Register such measure and

provide for a period of public comment on such measure.

`(ii) LIMITATIONS- The Secretary may not require the electronic reporting of information on clinical quality measures under subparagraph (A)(iii) unless the Secretary has the capacity to accept the information electronically, which may be on a pilot basis.

`(iii) COORDINATION OF REPORTING OF INFORMATION- In selecting such measures, and in establishing the form and manner for reporting measures under subparagraph (A)(iii), the Secretary shall seek to avoid redundant or duplicative reporting with reporting otherwise required, including reporting under subsection (b)(3)(B)(viii).

`(C) DEMONSTRATION OF MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY AND INFORMATION EXCHANGE-

`(i) IN GENERAL- A hospital may satisfy the demonstration requirement of clauses (i) and (ii) of subparagraph (A) through means specified by the Secretary, which may include--

`(I) an attestation;

`(II) the submission of claims with appropriate coding (such as a code indicating that inpatient care was documented using certified EHR technology);

`(III) a survey response;

`(IV) reporting under subparagraph (A)(iii); and

`(V) other means specified by the Secretary.

`(ii) USE OF PART D DATA- Notwithstanding sections 1860D-15(d)(2)(B) and 1860D-15(f)(2), the Secretary may use data regarding drug claims submitted for purposes of section 1860D-15 that are necessary for purposes of subparagraph (A).

`(4) APPLICATION-

`(A) LIMITATIONS ON REVIEW- There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the determination of any incentive payment under this subsection and the payment adjustment under subsection (b)(3)(B)(ix), including the determination of a meaningful EHR user under paragraph (3), determination of measures applicable to services furnished by eligible hospitals under this subsection, and the exception under subsection (b)(3)(B)(ix)(II).

`(B) POSTING ON WEBSITE- The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services, in an easily understandable format, a list of the names of the eligible hospitals that are meaningful EHR users under this

subsection or subsection (b)(3)(B)(ix) and other relevant data as determined appropriate by the Secretary. The Secretary shall ensure that a hospital has the opportunity to review the other relevant data that are to be made public with respect to the hospital prior to such data being made public.

`(5) CERTIFIED EHR TECHNOLOGY DEFINED- The term `certified EHR technology' has the meaning given such term in section 1848(o)(4).

`(6) DEFINITIONS- For purposes of this subsection:

`(A) ELIGIBLE HOSPITAL- The term `eligible hospital' means a subsection (d) hospital.

`(B) REPORTING PERIOD- The term `reporting period' means any period (or periods), with respect to a payment year, as specified by the Secretary.'

(b) Incentive Market Basket Adjustment- Section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)) is amended--

(1) in clause (viii)(I), by inserting `(or, beginning with fiscal year 2016, by one-quarter)' after `2.0 percentage points'; and

(2) by adding at the end the following new clause:

`(ix)(I) For purposes of clause (i) for fiscal year 2016 and each subsequent fiscal year, in the case of an eligible hospital (as defined in subsection (n)(6)(A)) that is not a meaningful EHR user (as defined in subsection (n)(3)) for the reporting period for such fiscal year, three-quarters of the applicable percentage increase otherwise applicable under clause (i) for such fiscal year shall be reduced by 33 1/3 percent for fiscal year 2016, 66 2/3 percent for fiscal year 2017, and 100 percent for fiscal year 2018 and each subsequent fiscal year. Such reduction shall apply only with respect to the fiscal year involved and the Secretary shall not take into account such reduction in computing the applicable percentage increase under clause (i) for a subsequent fiscal year.

`(II) The Secretary may, on a case-by-case basis, exempt a subsection (d) hospital from the application of subclause (I) with respect to a fiscal year if the Secretary determines, subject to annual renewal, that requiring such hospital to be a meaningful EHR user during such fiscal year would result in a significant hardship, such as in the case of a hospital in a rural area without sufficient Internet access. In no case may a hospital be granted an exemption under this subclause for more than 5 years.

`(III) For fiscal year 2016 and each subsequent fiscal year, a State in which hospitals are paid for services under section 1814(b)(3) shall adjust the payments to each subsection (d) hospital in the State that is not a meaningful EHR user (as defined in subsection (n)(3)) in a manner that is designed to result in an aggregate reduction in payments to hospitals in the State that is equivalent to the aggregate reduction that would have occurred if payments had been reduced to each subsection (d) hospital in the State in a manner comparable to the reduction under the previous provisions of this clause. The State shall report to the Secretary the methodology it will use to make the payment adjustment under the previous sentence.

`(IV) For purposes of this clause, the term `reporting period' means, with respect to a fiscal year, any period (or periods), with respect to the fiscal year, as specified by the Secretary.'

(c) Application to Certain HMO-Affiliated Eligible Hospitals- Section 1853 of the Social Security Act (42 U.S.C. 1395w-23), as amended by section 4311(c), is further amended by adding at the end the following new subsection:

`(m) Application of Eligible Hospital Incentives for Certain MA Organizations for Adoption and Meaningful Use of Certified EHR Technology-

`(1) APPLICATION- Subject to paragraphs (3) and (4), in the case of a qualifying MA organization, the provisions of sections 1886(n) and 1886(b)(3)(B)(ix) shall apply with respect to eligible hospitals described in paragraph (2) of the organization which the organization attests under subsection (1)(6) to be meaningful EHR users in a similar manner as they apply to eligible hospitals under such sections. Incentive payments under paragraph (3) shall be made to and payment adjustments under paragraph (4) shall apply to such qualifying organizations.

`(2) ELIGIBLE HOSPITAL DESCRIBED- With respect to a qualifying MA organization, an eligible hospital described in this paragraph is an eligible hospital that is under common corporate governance with such organization and serves individuals enrolled under an MA plan offered by such organization.

`(3) ELIGIBLE HOSPITAL INCENTIVE PAYMENTS-

`(A) IN GENERAL- In applying section 1886(n)(2) under paragraph (1), instead of the additional payment amount under section 1886(n)(2), there shall be substituted an amount determined by the Secretary to be similar to the estimated amount in the aggregate that would be payable if payment for services furnished by such hospitals was payable under part A instead of this part. In implementing the previous sentence, the Secretary--

`(i) shall, insofar as data to determine the discharge related amount under section 1886(n)(2)(C) for an eligible hospital are not available to the Secretary, use such alternative data and methodology to estimate such discharge related amount as the Secretary determines appropriate; and

`(ii) shall, insofar as data to determine the medicare share described in section 1886(n)(2)(D) for an eligible hospital are not available to the Secretary, use such alternative data and methodology to estimate such share, which data and methodology may include use of the inpatient bed days (or discharges) with respect to an eligible hospital during the appropriate period which are attributable to both individuals for whom payment may be made under part A or individuals enrolled in an MA plan under a Medicare Advantage organization under this part as a proportion of the total number of patient-bed-days (or discharges) with respect to such hospital during such period.

`(B) AVOIDING DUPLICATION OF PAYMENTS-

`(i) IN GENERAL- In the case of a hospital that for a payment year is an eligible hospital described in paragraph (2), is an eligible hospital under section 1886(n), and for which at least one-third of their discharges (or bed-days) of Medicare patients for the year are covered under part A, payment for the payment year shall be made only under section 1886(n) and not under this subsection.

`(ii) METHODS- In the case of a hospital that is an eligible hospital described in paragraph (2) and also is eligible for an incentive payment under section 1886(n) but is not described in clause (i) for the same payment period, the Secretary shall develop a process--

`(I) to ensure that duplicate payments are not made with respect to an eligible hospital both under this subsection and under section 1886(n); and

`(II) to collect data from Medicare Advantage organizations to ensure against such duplicate payments.

`(4) PAYMENT ADJUSTMENT-

`(A) Subject to paragraph (3), in the case of a qualifying MA organization (as defined in section 1853(1)(5)), if, according to the attestation of the organization submitted under subsection (1)(6) for an applicable period, one or more eligible hospitals (as defined in section 1886(n)(6)(A)) that are under common corporate governance with such organization and that serve individuals enrolled under a plan offered by such organization are not meaningful EHR users (as defined in section 1886(n)(3)) with respect to a period, the payment amount payable under this section for such organization for such period shall be the percent specified in subparagraph (B) for such period of the payment amount otherwise provided under this section for such period.

`(B) SPECIFIED PERCENT- The percent specified under this subparagraph for a year is 100 percent minus a number of percentage points equal to the product of--

`(i) the number of the percentage point reduction effected under section 1886(b)(3)(B)(ix)(I) for the period; and

`(ii) the Medicare hospital expenditure proportion specified in subparagraph (C) for the year.

`(C) MEDICARE HOSPITAL EXPENDITURE PROPORTION-

The Medicare hospital expenditure proportion under this subparagraph for a year is the Secretary's estimate of the proportion, of the expenditures under parts A and B that are not attributable to this part, that are attributable to expenditures for inpatient hospital services.

(D) APPLICATION OF PAYMENT ADJUSTMENT- In the case that a qualifying MA organization attests that not all eligible hospitals are meaningful EHR users with respect to an applicable period, the Secretary shall apply the payment adjustment under this paragraph based on a methodology specified by the Secretary, taking into account the proportion of such eligible hospitals, or discharges from such hospitals, that are not meaningful EHR users for such period.'

(d) Conforming Amendments-

(1) Section 1814(b) of the Social Security Act (42 U.S.C. 1395f(b)) is amended--

(A) in paragraph (3), in the matter preceding subparagraph (A), by inserting ', subject to section 1886(d)(3)(B)(ix)(III),' after 'then'; and

(B) by adding at the end the following: 'For purposes of applying paragraph (3), there shall be taken into account incentive payments, and payment adjustments under subsection (b)(3)(B)(ix) or (n) of section 1886.'

(2) Section 1851(i)(1) of the Social Security Act (42 U.S.C. 1395w-21(i)(1)) is amended by striking 'and 1886(h)(3)(D)' and inserting '1886(h)(3)(D), and 1853(m)'

(3) Section 1853 of the Social Security Act (42 U.S.C. 1395w-23), as amended by section 4311(d)(1), is amended--

(A) in subsection (c)--

(i) in paragraph (1)(D)(i), by striking '1848(o)' and inserting ', 1848(o), and 1886(n)'; and

(ii) in paragraph (6)(A), by inserting 'and subsections (b)(3)(B)(ix) and (n) of section 1886' after 'section 1848'; and

(B) in subsection (f), by inserting 'and subsection (m)' after 'under subsection (l)'

**SEC. 4313. TREATMENT OF PAYMENTS AND SAVINGS;
IMPLEMENTATION FUNDING.**

(a) Premium Hold Harmless-

(1) IN GENERAL- Section 1839(a)(1) of the Social Security Act (42 U.S.C. 1395r(a)(1)) is amended by adding at the end the following: 'In applying this paragraph there shall not be taken into account additional payments under section 1848(o) and section 1853(l)(3) and the Government contribution under section 1844(a)(3).'

(2) PAYMENT- Section 1844(a) of such Act (42 U.S.C. 1395w(a)) is amended--

(A) in paragraph (2), by striking the period at the end and inserting '; plus'; and

(B) by adding at the end the following new paragraph:

(3) a Government contribution equal to the amount of payment incentives payable under sections 1848(o) and 1853(l)(3).'

(b) Medicare Improvement Fund- Section 1898 of the Social Security Act (42 U.S.C. 1395iii), as added by section 7002(a) of the Supplemental Appropriations Act, 2008 (Public Law 110-252) and as amended by section 188(a)(2) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275; 122 Stat. 2589) and by section 6 of the QI Program Supplemental Funding Act of 2008, is amended--

(1) in subsection (a)--

(A) by inserting 'medicare' before 'fee-for-service'; and

(B) by inserting before the period at the end the following:

'including, but not limited to, an increase in the conversion factor under section 1848(d) to address, in whole or in part, any projected shortfall in the conversion factor for 2014 relative to the conversion factor for 2008 and adjustments to payments for items and services furnished by providers of services and suppliers under such original medicare fee-for-service program'; and

(2) in subsection (b)--

(A) in paragraph (1), by striking 'during fiscal year 2014,' and all that follows and inserting the following: 'during--

(A) fiscal year 2014, \$22,290,000,000; and

(B) fiscal year 2020 and each subsequent fiscal year, the Secretary's estimate, as of July 1 of the fiscal year, of the aggregate reduction in expenditures under this title during the preceding fiscal year directly resulting from the reduction in payment amounts under sections 1848(a)(7), 1853(l)(4), 1853(m)(4), and 1886(b)(3)(B)(ix).'

(B) by adding at the end the following new paragraph:

(4) NO EFFECT ON PAYMENTS IN SUBSEQUENT YEARS- In the case that expenditures from the Fund are applied to, or otherwise affect, a payment rate for an item or service under this title for a year, the payment rate for such item or service shall be computed for a subsequent year as if such application or effect had never occurred.'

(c) Implementation Funding- In addition to funds otherwise available, out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary of Health and Human Services for the Center for Medicare & Medicaid Services Program Management Account, \$60,000,000 for each of fiscal years 2009 through 2015 and \$30,000,000 for each succeeding fiscal year through fiscal year 2019, which shall be available for purposes of carrying out the provisions of (and amendments made by) this part. Amounts appropriated under this subsection for a fiscal year shall be available until expended.

SEC. 4314. STUDY ON APPLICATION OF EHR PAYMENT INCENTIVES FOR PROVIDERS NOT RECEIVING OTHER INCENTIVE PAYMENTS.

(a) Study-

(1) IN GENERAL- The Secretary of Health and Human Services shall conduct a study to determine the extent to which and manner in which payment incentives (such as under title XVIII or XIX of the Social Security Act) and other funding for purposes of implementing and using certified EHR technology (as defined in section 3000 of the Public Health Service Act) should be made available to health care providers who are receiving minimal or no payment incentives or other funding under this Act, under title XVIII or XIX of the Social Security Act, or otherwise, for such purposes.

(2) DETAILS OF STUDY- Such study shall include an examination of--

(A) the adoption rates of certified EHR technology by such health care providers;

(B) the clinical utility of such technology by such health care providers;

(C) whether the services furnished by such health care providers are appropriate for or would benefit from the use of such technology;

(D) the extent to which such health care providers work in settings that might otherwise receive an incentive payment or other funding under this Act, title XVIII or XIX of the Social Security Act, or otherwise;

(E) the potential costs and the potential benefits of making payment incentives and other funding available to such health care providers; and

(F) any other issues the Secretary deems to be appropriate.

(b) Report- Not later than June 30, 2010, the Secretary shall submit to Congress a report on the findings and conclusions of the study conducted under subsection (a).