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112TH CONGRESS
2D SESSION

# H. R. 6598

To amend certain requirements and penalties implemented under the Medicare and Medicaid programs by the HITECH Act of 2009, which would otherwise impede eligible professionals from adopting electronic health records to improve patient care.

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IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 16, 2012

Mrs. BLACK (for herself, Mr. ROSKAM, Mr. CHABOT, and Mr. BROUN of Georgia) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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# A BILL

To amend certain requirements and penalties implemented under the Medicare and Medicaid programs by the HITECH Act of 2009, which would otherwise impede eligible professionals from adopting electronic health records to improve patient care.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Electronic Health Records Improvement Act''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Exception for certain eligible professionals from application of Medicare payment adjustment for not demonstrating EHR meaningful use.
Sec. 3. Shortening EHR reporting period for application of Medicare EHR payment adjustment to eligible professionals.
Sec. 4. Additional exceptions to application of Medicare payment adjustment for certain Medicaid and hospital-based eligible professionals not demonstrating EHR meaningful use.
Sec. 5. Certain specialty registry systems for purposes of eligible professionals satisfying meaningful use requirements under Medicare.
Sec. 6. Enhancing Medicare EHR meaningful use among eligible professionals who are rural health care providers.
Sec. 7. Improving EHR meaningful use under Medicare by ambulatory surgical centers.
Sec. 8. Exemption from certain EHR meaningful use requirements for certain eligible professionals for purposes of Medicare payment adjustment.
Sec. 9. Additional administrative provisions relating to Medicare eligible professionals' EHR incentives.
Sec. 10. Non-application of provisions and amendments to eligible professional Medicare incentives for certain MA organizations and Medicaid incentives for adoption and meaningful use of certified EHR technology.

**SEC. 2. EXCEPTION FOR CERTAIN ELIGIBLE PROFESSIONALS FROM APPLICATION OF MEDICARE PAYMENT ADJUSTMENT FOR NOT DEMONSTRATING EHR MEANINGFUL USE.**

(a) EXCEPTION FOR CERTAIN SMALL PHYSICIAN PRACTICES.—Section 1848(a)(7) of the Social Security Act (42 U.S.C. 1395w–4(a)(7)) is amended—

(1) in subparagraph (A)(i), by striking ''subparagraphs (B) and (D)'' and inserting ''subparagraphs (B), (D), and (F)''; and

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

"(F) 3-YEAR EXCEPTION FOR CERTAIN ELIGIBLE PROFESSIONALS.—

"(i) IN GENERAL.—The Secretary shall exempt an eligible professional whom the Secretary determines is described in clause (ii) from the application of the payment adjustment under subparagraph (A) for each of the payment years 2015 through 2017. The Secretary shall make a determination under the previous sentence, with respect to such an exemption for an eligible professional, only if such eligible professional submits a request for such exemption. The Secretary shall determine whether or not an eligible professional is described in clause (ii) not later than 30 days after the date such eligible professional submits a request pursuant to the previous sentence.

"(ii) ELIGIBLE PROFESSIONALS IN SMALL PHYSICIAN PRACTICES.—An eligible professional described in this clause is an eligible professional furnishing covered professional services during the EHR report-

ing period for 2015 in a physician practice that is a solo practice.''.

(b) EXCEPTION FOR CERTAIN PHYSICIANS NEAR RETIREMENT AGE.—Subparagraph (F) of section 1848(a)(7) of the Social Security Act (42 U.S.C. 1395w–4(a)(7)), as added by subsection (a), is amended—

(1) in clause (i), in the first and third sentences, by striking ''clause (ii)'' and inserting ''clause (ii) or (iii)''; and

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

''(iii) ELIGIBLE PROFESSIONALS AT OR NEAR RETIREMENT AGE.—An eligible professional described in this clause is an eligible professional who as of the last day of 2015 has attained early retirement age (as defined in section 216(l)(2)) or who will attain such age during the 5-year period following such day.''.

(c) NOTIFICATION OF ELIGIBILITY FOR EXCEPTIONS FROM PAYMENT ADJUSTMENT.—Section 1848(a)(7) of the Social Security Act (42 U.S.C. 1395w–4(a)(7)), as amended by subsection (a), is further amended by adding at the end the following new subparagraph:

"(G) NOTIFICATION.—Not later than 30 days after the date on which the Secretary determines an eligible professional is exempt pursuant to subparagraph (F) from the application of the payment adjustment under subparagraph (A), the Secretary shall provide such eligible professional notice of such determination.".

**SEC. 3. SHORTENING EHR REPORTING PERIOD FOR APPLICATION OF MEDICARE EHR PAYMENT ADJUSTMENT TO ELIGIBLE PROFESSIONALS.**

(a) IN GENERAL.—Section 1848(a)(7)(E)(ii) of the Social Security Act (42 U.S.C. 1395w–4(a)(7)(E)(ii)) is amended by inserting ", so long as all of such period (or periods) occurs during the year in which the corresponding adjustment, if any, under this paragraph would be applied to the eligible professional involved" after "a period (or periods) specified by the Secretary".

(b) REBATES.—Section 1848(a)(7)(A) of the Social Security Act (42 U.S.C. 1395w–4(a)(7)(A)) is amended by adding at the end the following new clause:

"(iii) SPECIAL RULE.—The Secretary shall establish a process under which if for a calendar year, beginning with 2015, an adjustment is made under this paragraph with respect to covered professional serv-

ices furnished by an eligible professional and then during such calendar year the eligible professional meets the criteria for establishing meaningful use of certified EHR technology, the Secretary shall provide to the eligible professional a rebated amount such that the total amount of payment that the provider receives under this subsection for such services for such year is the fee schedule amount that would otherwise apply to such services under this subsection without application of this paragraph.''.

(c) CONFORMING AMENDMENT.—Section 1848(o)(5)(B) of the Social Security Act is amended by adding at the end the following new sentence: ''Such term, as used under this subsection with respect to subsection (a)(7) and a year beginning with 2015, shall have the meaning given such term under subsection (a)(7)(E)(ii).''.

**SEC. 4. ADDITIONAL EXCEPTIONS TO APPLICATION OF MEDICARE PAYMENT ADJUSTMENT FOR CERTAIN MEDICAID AND HOSPITAL-BASED ELIGIBLE PROFESSIONALS NOT DEMONSTRATING EHR MEANINGFUL USE.**

(a) ELIGIBLE PROFESSIONALS PARTICIPATING IN MEDICAID EHR INCENTIVE PROGRAM.—Section 1848(a)(7) of the Social Security Act (42 U.S.C. 1395w–4(a)(7)), as amended by section 2, is further amended—

(1) in subparagraph (A)(i), by striking "(D), and (F)" and inserting "(D), (F), and (G)";

(2) by redesignating subparagraph (G) as subparagraph (H); and

(3) by inserting after subparagraph (F) the following new subparagraph:

"(G) ADDITIONAL EXCEPTIONS FOR CERTAIN MEDICAID PROVIDERS PARTICIPATING IN MEDICAID EHR INCENTIVE PROGRAM.—In the case of an eligible professional who is a Medicaid provider described in section 1903(t)(2)(A), the Secretary shall exempt such eligible professional from the application of the Medicare payment adjustment under subparagraph (A), with respect to a year, if such year is the first year that such professional received payment under section 1903(t).".

(b) HOSPITAL-BASED ELIGIBLE PROFESSIONALS.—Section 1848(a)(7)(D) of the Social Security Act (42 U.S.C. 1395w–4(a)(7)(D)) is amended by adding at the end the following new sentence: ''In applying the definition under subsection (o)(1)(C)(ii) for purposes of the previous sentence, the reference to 'substantially all' under such subsection shall mean 90 percent or more and a determination described in such subsection, with respect to an eligible professional, may only be made by the Secretary pursuant to a request of the professional that is submitted to the Secretary before 2015, and shall be effective for such professional for 2015 and each subsequent year.''.

(c) APPLICATION OF NOTIFICATION REQUIREMENT.—Subparagraph (H) of section 1848(a)(7) of the Social Security Act (42 U.S.C. 1395w–4(a)(7)), as added by section 2(c) and redesignated by subsection (a)(2), is amended by striking ''subparagraph (F)'' and inserting ''subparagraph (B), (D), (F), or (G)''.

**SEC. 5. CERTAIN SPECIALTY REGISTRY SYSTEMS FOR PURPOSES OF ELIGIBLE PROFESSIONALS SATISFYING MEANINGFUL USE REQUIREMENTS UNDER MEDICARE.**

(a) MEANINGFUL USE OF CERTIFIED REGISTRIES TREATED AS MEANINGFUL USE OF CERTIFIED EHR

TECHNOLOGY.—Section 1848(o)(2) of the Social Security Act (42 U.S.C. 1395w–4(o)(2)) is amended—

(1) in subparagraph (A), in the matter preceding clause (i), by inserting ''and subject to subparagraph (D)'' after ''paragraph (1)''; and

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

''(D) MEANINGFUL USE OF CERTIFIED NATIONAL SPECIALTY REGISTRIES.—

''(i) In applying paragraph (1) for purposes of subsection (a)(7), an eligible professional shall be treated as a meaningful EHR user for an EHR reporting period for a year if, in lieu of the requirements under subparagraph (A), the eligible professional demonstrates to the satisfaction of the Secretary, in accordance with such criteria specified by the Secretary, that during such period the professional is using a certified national specialty registry system (as defined in clause (iv)) in a meaningful manner, including by submitting clinical data through such system to measure quality improvement and patient safety.

"(ii) By not later than January 1, 2015, for purposes of clause (i), the Secretary shall pursuant to rulemaking specify measures for determining meaningful use of a certified national specialty registry system.

"(iii) Not later than January 1, 2015, the Secretary shall certify registry systems as certified national specialty registry systems for specialties of eligible professionals.

"(iv) For purposes clause (i), the term 'certified national specialty registry system' means, with respect to a specialty of eligible professionals, an electronic health record system certified for such specialty by the Secretary under clause (iii).".

(b) CONFORMING AMENDMENTS.—

(1) Section 1848(m)(2)(D) of the Social Security Act (42 U.S.C. 1395w–4(m)(2)(D)), as amended by section 5(b), is further amended by striking "subsection (o)(4)" and inserting "subsection (o)(4)(A)".

(2) Section 1886(n)(5) of the Social Security Act (42 U.S.C. 1395ww(n)(5)), as amended by sec-

tion 5(b), is further amended by striking ''section 1848(o)(4)'' and inserting ''section 1848(o)(4)(A)''.

**SEC. 6. ENHANCING MEDICARE EHR MEANINGFUL USE AMONG ELIGIBLE PROFESSIONALS WHO ARE RURAL HEALTH CARE PROVIDERS.**

(a) EXTENSION OF MEDICARE EHR INCENTIVES TO ELIGIBLE PROFESSIONALS PRACTICING IN RURAL HEALTH CLINICS.—

(1) EHR PAYMENT ADJUSTMENT.—Section 1848(a)(7)(E)(i) of the Social Security Act (42 U.S.C. 1395w–4(a)(7)(E)(i)) is amended by inserting before the period at the end the following: ''and, with respect to payment years after 2014, includes rural health clinic services (as defined in section 1861(aa)(1)) furnished by an eligible professional''.

(2) EHR INCREASED PAYMENTS.—Section 1848(o)(5)(A) of the Social Security Act (42 U.S.C. 1395w–4(o)(5)(A)) is amended by inserting before the period at the end the following: ''and, with respect to payment years after 2014, includes rural health clinic services (as defined in section 1861(aa)(1)) furnished by an eligible professional''.

(b) EXTENSION OF MEDICARE ERX AND QUALITY REPORTING INCENTIVES TO RURAL HEALTH CLINICS.—Section 1848(m)(6)(A) of the Social Security Act (42

U.S.C. 1395w–4(m)(6)(A)) is amended by inserting before the period at the end the following: ''except that the term 'covered professional services' shall, with respect to reporting periods for 2015 or a subsequent year, include rural health clinic services (as defined in section 1861(aa)(1)) furnished by an eligible professional''.

**SEC. 7. IMPROVING EHR MEANINGFUL USE UNDER MEDICARE BY AMBULATORY SURGICAL CENTERS.**

(a) 3-YEAR EXEMPTION FROM ENCOUNTERS CALCULATION TO DEMONSTRATE EHR MEANINGFUL USE FOR PURPOSES OF PAYMENT ADJUSTMENT.—Section 1848(o)(2) of the Social Security Act (42 U.S.C. 1395w–4(o)(2)) is amended by adding at the end the following new subparagraph:

''(D) TREATMENT OF PATIENT ENCOUNTERS AT AMBULATORY SURGICAL CENTERS.—

''(i) IN GENERAL.—Subject to clause (ii), in applying this paragraph for purposes of subsection (a)(7), any patient encounter of an eligible professional occurring during the performance years for the 2015, 2016, or 2017 payment determinations at an ambulatory surgical center shall not be treated as a patient encounter

in determining whether an eligible professional qualifies as a meaningful EHR user.

"(ii) RULE OF CONSTRUCTION.—Nothing in clause (i) shall prohibit an eligible professional from receiving an additional payment under paragraph (1) with respect to covered professional services furnished in a payment year if the eligible professional is determined to be a meaningful EHR user under this paragraph for the reporting period for such year.

"(iii) LIMITATION OF PAYMENT ADJUSTMENT.—In applying clause (i) for purposes of subsection (a)(7) and a year, if an eligible professional is not a meaningful EHR user pursuant to such clause for an EHR reporting period for the year, any adjustment under such subsection shall not apply to the fee schedule amount for covered professional services furnished by such eligible professional during the year in an ambulatory surgical center.".

(b) REINSTATEMENT OF BATCHING PROCESS.—Subparagraph (D) of section 1848(o)(2) of the Social Security Act (42 U.S.C. 1395w–4(o)(2)), as added by subsection

(a), is amended by adding at the end the following new clause:

"(iv) USE OF BATCHING PROCESS.—In applying this paragraph for purposes of subsection (a)(7) and with respect to a patient encounter occurring at an ambulatory surgical center, if an eligible professional creates a record of such patient encounter without using certified EHR technology at the ambulatory surgical center and subsequently inputs the information of such record of such encounter into certified EHR technology at a different location, certified EHR technology shall be treated as being available at such patient encounter.".

**SEC. 8. EXEMPTION FROM CERTAIN EHR MEANINGFUL USE REQUIREMENTS FOR CERTAIN ELIGIBLE PROFESSIONALS FOR PURPOSES OF MEDICARE PAYMENT ADJUSTMENT.**

Section 1848(o)(2) of the Social Security Act (42 U.S.C. 1395w–4(o)(2)), as amended by section 8, is further amended by adding at the end the following new subparagraph:

"(E) EXCEPTIONS FOR CERTAIN ELIGIBLE PROFESSIONALS.—In applying this paragraph for purposes of subsection (a)(7), the following shall apply:

"(i) In the case of an eligible professional who is an anesthesiologist or physician of any other specialty or subspecialty identified through rulemaking as not conducting traditional office visits, in order to be treated as a meaningful EHR user for an EHR reporting period under such subsection for a year such eligible professional shall not be required to—

"(I) provide clinical summaries to patients; or

"(II) provide patients, upon request, with an electronic copy of the health information of such patients (including diagnostic test results, problem lists, medication lists, and medication allergies).

"(ii) In the case of an eligible professional who is an anesthesiologist or physician of any other specialty that does not traditionally order prescription drugs be-

fore administration of such drugs, as specified through rulemaking, in order to be treated as a meaningful EHR user for an EHR reporting period under such subsection for a year such eligible professional shall not be required to utilize EHR technology that provides for checks on prescription drug interactions until—

"(I) EHR technology is available to accommodate checks on interactions between prescription drugs administered in operating rooms or other anesthetizing locations.

The Secretary shall provide notice to each eligible professional to whom clause (i) or (ii) applies of such application.".

**SEC. 9. ADDITIONAL ADMINISTRATIVE PROVISIONS RELATING TO MEDICARE ELIGIBLE PROFESSIONALS' EHR INCENTIVES.**

(a) APPEALS PROCESS.—Section 1848(o)(3) of the Social Security Act (42 U.S.C. 1395w–4(o)(3)) is amended—

(1) in subparagraph (C), by striking "There shall be no" and inserting "Except as provided under subparagraph (E), there shall be no"; and

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

"(E) APPEALS PROCESS BEFORE APPLICATION OF PENALTIES.—The Secretary shall, by not later than January 1, 2015, establish and have in place a process for eligible professionals to seek, before application of a payment adjustment under subsection (a)(7)(A) with respect to such an eligible professional, a review of the determination that the eligible professional did not qualify as a meaningful EHR user under paragraph (2).".

(b) SEMI-ANNUAL PROGRESS REPORT.—

(1) IN GENERAL.—Not later than six months after the date of the enactment of this Act and every six months thereafter until the date specified in paragraph (2), the Secretary of Health and Human Services, through the Administrator of the Centers for Medicare & Medicaid Services, shall submit to Congress a report that contains the following information:

(A) Improvements in streamlining requirements among various programs under the Medicare program under title XVIII of the Social Security Act regarding similar information

(such as for purposes of meaningful use of certified EHR technology, physician quality reporting, and electronic prescribing).

(B) Improvements certified EHR technology vendors have made in interoperability.

(C) The progress of the adoption of certified EHR technology by physician specialty groups and the percentage of eligible professionals (as defined in section 1848(a)(7)(E)) who are eligible for incentive payments under the Medicare program for meaningful use of certified EHR technology.

(D) The reporting capabilities of certified national specialty reporting systems (as defined in section 1848(o)(4)(B) of the Social Security Act, as added by section 5) and recommendations for making such registries more interactive with EHR technology.

(2) DATE SPECIFIED.—For purposes of paragraph (1), the date specified in this paragraph is the date on which 75 percent of all eligible professionals (as defined in section 1848(o)(5) of the Social Security Act) have satisfied the requirements of stage 2 of meaningful use of certified EHR technology (as

defined by the Secretary of Health and Human Services).

**SEC. 10. NON-APPLICATION OF PROVISIONS AND AMENDMENTS TO ELIGIBLE PROFESSIONAL MEDICARE INCENTIVES FOR CERTAIN MA ORGANIZATIONS AND MEDICAID INCENTIVES FOR ADOPTION AND MEANINGFUL USE OF CERTIFIED EHR TECHNOLOGY.**

(a) ELIGIBLE PROFESSIONAL MEDICARE INCENTIVES FOR CERTAIN MA ORGANIZATIONS.—Section 1853(l) of the Social Security Act (42 U.S.C. 1395w–23(l)) is amended—

(1) in paragraph (1), by striking ''paragraphs (3) and (4)'' and inserting ''paragraphs (3), (4), and (9)''; and

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

''(9) NON-APPLICATION OF PROVISIONS OF ELECTRONIC HEALTH RECORDS IMPROVEMENT ACT.—The provisions of, including the amendments made by, the Electronic Health Records Improvement Act (other than sections 7 and 11 of such Act) shall not apply for purposes of this subsection to qualifying MA organizations or eligible professionals described in paragraph (2) of such organizations.''.

1 (b) MEDICAID INCENTIVES FOR ELIGIBLE INCEN-
2 TIVES.—Section 1903(t) of the Social Security Act is
3 amended by adding at the end the following new para-
4 graph:
5 ''(11) The provisions of, including the amendments
6 made by, the Electronic Health Records Improvement Act
7 (other than section 11 of such Act) shall not apply for
8 purposes of this subsection or subsection (a)(3)(F).''.

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