

Federal Legislation on the Promotion of Health Information Technology

a. House Bill

On July 27, 2006, House Bill H.R. 4157, the “Health Information Technology Promotion Act of 2006,” was passed in the U.S. House of Representatives. This legislation will now go to conference to be reconciled with Senate Bill S.1418, the “Wired for Health Care Quality Act,” which was passed in the Senate on November 18, 2005.

H.R. 4157 includes a number of provisions aimed at promoting the coordination and adoption of interoperable health information technology (“HIT”) in the United States. The legislation includes, among other measures, provisions for restructuring the national HIT coordination and planning efforts, specifically the role and responsibilities of the Office of the National Coordinator for Health Information Technology. Under the legislation, the National Coordinator is tasked with the development of a “nationwide interoperable health information technology infrastructure.”

H.R. 4157 provides for grants to certain health systems and providers to promote HIT adoption, and provisions updating healthcare transactions standards, including the replacement of ICD-9 with the ICD-10 coding system. The ICD-10 upgrade is notable because the ICD-10 incorporates more detailed clinical content that will arguably provide better information for use in connection with (i) quality measurement, (ii) pay-for-performance programs, and (iii) reimbursement communications.

H.R. 4157 includes a statutory safe harbor and exception for the federal anti-kickback statute and the Stark law, respectively, that would apply to HIT donations by qualifying entities. The new regulatory safe harbors and exceptions for EHR and electronic prescribing systems will likely affect how these provisions are addressed in conference.

Among other measures, H.R. 4157 requires the establishment of processes for evaluating whether state and federal privacy laws can be made more uniform and predictable, measures for the promotion of telehealth services, and studies on state and regional health information exchanges.

b. Senate Bill

Senate Bill S. 1418, the “Wired for Health Care Quality Act,” like H.R. 4157, includes a number of provisions aimed at promoting the coordination and adoption of HIT in the United States. The legislation includes, among other measures, provisions for grants to health care entities to promote HIT, grants to regional HIT plans to promote the exchange of health information, grants to states to develop state loan programs to facilitate HIT adoption, and a demonstration program to integrate HIT into clinical education. It also delineates the responsibilities of the National Coordinator for Health Information Technology. As in the House Bill, the National Coordinator is tasked with the development of a “nationwide interoperable health information technology infrastructure.”

S. 1418 also requires the Secretary to establish the American Health Information Collaborative (AHIC) to advise HHS, serve as a forum on input on HIT, achieve the interoperability of HIT, and recommend standards for health care electronic data exchange. AHIC would be composed of consumer organizations, providers, health plans, vendors, and employer purchasers. The Secretary, based on the AHIC recommendations, would develop health information exchange standards to be voluntarily adopted by private entities.

S. 1418 requires the Secretary, through the Agency for Healthcare Quality and Research, to develop a HIT resource center to provide assistance and develop best practices to promote interoperable HIT. S.1418 also requires the secretary to develop evidence based quality measures, and requires a number of studies and reports related to the adoption of HIT.

c. Key Differences

In addition to the differences in scope and subject matter as described above, there are several key differences in the legislative approach taken by S. 1418 and H.R. 4157.

S. 1418 defines HIT which qualifies for its grant programs as “a computerized system (including hardware and software)” that meets certain requirements and standards, including privacy and security and quality standards. In the anti-kickback safe harbor and Stark law exception provisions in H.R. 4157, HIT is defined as “hardware, software, license, right, intellectual property, equipment, or other information technology (including new versions, upgrades, and connectivity) designed or provided primarily for the electronic creation, maintenance, or exchange of health information to better coordinate care or improve health care quality, efficiency, or research.” This definition of HIT included within H.R. 4157 appears somewhat broader than the definition contained in S.1418.

Specific requirements that systems and programs address patient privacy and the reduction of medical errors are salient themes in S. 1418. In general, H.R. 4157 relies more on existing privacy and security laws and regulations (such as HIPAA) to provide privacy protection.

H.R. 4157 includes provisions for a new statutory safe harbor and Stark law exception for the provision of HIT systems by qualifying entities, which S. 1418 does not address.

d. Additional Resource

eHealth Initiative has prepared a detailed side by side comparison of S. 1418 and H.R. 4157 which is available at .