

104TH CONGRESS
1ST SESSION

S. 872

To provide for the establishment of a modernized and simplified health information network for medicare and medicaid, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 26 (legislative day, MAY 15), 1995

Mr. BOND (for himself and Mr. LIEBERMAN) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To provide for the establishment of a modernized and simplified health information network for medicare and medicaid, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Health Information Modernization and Security Act”.

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

Sec. 1. Short title; table of contents.

TITLE I—PURPOSE AND REPEAL OF DATA BANK

Sec. 101. Purpose.

Sec. 102. Repeal of data bank.

TITLE II—ADMINISTRATIVE SIMPLIFICATION

Sec. 201. Administrative simplification.

TITLE III—EFFECTIVE DATES

Sec. 301. Effective dates.

1 **TITLE I—PURPOSE AND REPEAL**
 2 **OF DATA BANK**

3 **SEC. 101. PURPOSE.**

4 It is the purpose of this Act to improve the medicare
 5 program under title XVIII of the Social Security Act, the
 6 medicaid program under title XIX of such Act, and the
 7 efficiency and effectiveness of the health care system, by
 8 encouraging the development of a health information net-
 9 work through the establishment of standards and require-
 10 ments for the electronic transmission of certain health in-
 11 formation.

12 **SEC. 102. REPEAL OF DATA BANK.**

13 (a) IN GENERAL.—Section 1144 of the Social Secu-
 14 rity Act (42 U.S.C. 1320b–14) and section 101(f) of the
 15 Employee Retirement Income Security Act of 1974 (29
 16 U.S.C. 1021(f)) are repealed.

17 (b) INTERNAL REVENUE CODE PROVISION.—Section
 18 6103(l) of the Internal Revenue Code of 1986 is amended
 19 by striking paragraph (12).

20 (c) IDENTIFICATION OF MEDICARE SECONDARY
 21 PAYER SITUATIONS.—Section 1862(b) of the Social Secu-

1 rity Act (42 U.S.C. 1395y(b)) is amended by striking
2 paragraph (5).

3 (d) CONFORMING AMENDMENTS.—

4 (1) Section 1902(a)(25)(A)(i) of the Social Se-
5 curity Act (42 U.S.C. 1396a(a)(25)(A)(i)) is amend-
6 ed by striking “including the use of information col-
7 lected by the Medicare and Medicaid Coverage Data
8 Bank under section 1144 and any additional meas-
9 ures”.

10 (2) Subsection (a)(8)(B) of section 552a of title
11 5, United States Code, is amended—

12 (A) in clause (v), by inserting “; or” at the
13 end;

14 (B) in clause (vi), by striking “or” at the
15 end; and

16 (C) by striking clause (vii).

17 **TITLE II—ADMINISTRATIVE**
18 **SIMPLIFICATION**

19 **SEC. 201. ADMINISTRATIVE SIMPLIFICATION.**

20 (a) IN GENERAL.—Title XI of the Social Security Act
21 (42 U.S.C. 1301 et seq.) is amended by adding at the end
22 the following new part:

23 **“PART C—ADMINISTRATIVE SIMPLIFICATION**

24 **“SEC. 1171. DEFINITIONS.**

25 “For purposes of this part:

1 “(1) CODE SET.—The term ‘code set’ means
2 any set of codes used for encoding data elements,
3 such as tables of terms, medical concepts, medical
4 diagnostic codes, or medical procedure codes.

5 “(2) COORDINATION OF BENEFITS.—The term
6 ‘coordination of benefits’ means determining and co-
7 ordinating the financial obligations of health plans
8 when health care benefits are payable under 2 or
9 more health plans.

10 “(3) EQUIVALENT HEALTH CARE PROGRAM.—
11 The term ‘equivalent health care program’ means—

12 “(A) the health care program for active
13 military personnel under title 10, United States
14 Code;

15 “(B) the veterans health care program
16 under chapter 17 of title 38, United States
17 Code;

18 “(C) the Civilian Health and Medical Pro-
19 gram of the Uniformed Services (CHAMPUS),
20 as defined in section 1073(4) of title 10, United
21 States Code;

22 “(D) the Indian health service program
23 under the Indian Health Care Improvement Act
24 (25 U.S.C. 1601 et seq.); and

1 “(E) the Federal Employees Health Bene-
2 fit Plan under chapter 89 of title 5, United
3 States Code.

4 “(4) HEALTH CARE PROVIDER.—The term
5 ‘health care provider’ includes a provider of services
6 (as defined in section 1861(u), a provider of medical
7 or other health services (as defined in section
8 1861(s))), and any other person furnishing health
9 care services or supplies.

10 “(5) HEALTH INFORMATION.—The term ‘health
11 information’ means any information, whether oral or
12 recorded in any form or medium that—

13 “(A) is created or received by a health care
14 provider, health plan, public health authority,
15 employer, life insurer, school or university, or
16 health information network service; and

17 “(B) relates to the past, present, or future
18 physical or mental health or condition of an in-
19 dividual, the provision of health care to an indi-
20 vidual, or the past, present, or future payment
21 for the provision of health care to an individual.

22 “(6) HEALTH INFORMATION NETWORK.—The
23 term ‘health information network’ means the health
24 information system that is formed through the appli-

1 cation of the requirements and standards established
2 under this part.

3 “(7) HEALTH INFORMATION NETWORK SERV-
4 ICE.—The term ‘health information network service’
5 means a public or private entity that—

6 “(A) processes or facilitates the processing
7 of nonstandard data elements of health infor-
8 mation into standard data elements;

9 “(B) provides the means by which persons
10 may meet the requirements of this part; or

11 “(C) provides specific information process-
12 ing services.

13 “(8) HEALTH PLAN.—The term ‘health plan’
14 means a plan which provides, or pays the cost of,
15 health benefits. Such term includes the following, or
16 any combination thereof:

17 “(A) Part A or part B of the medicare
18 program under title XVIII.

19 “(B) The medicaid program under title
20 XIX.

21 “(C) A medicare supplemental policy (as
22 defined in section 1882(g)(1)).

23 “(D) Coverage issued as a supplement to
24 liability insurance.

25 “(E) General liability insurance.

1 “(F) Worker’s compensation or similar in-
2 surance.

3 “(G) Automobile or automobile medical-
4 payment insurance.

5 “(H) A long-term care policy, including a
6 nursing home fixed indemnity policy (unless the
7 Secretary determines that such a policy does
8 not provide sufficiently comprehensive coverage
9 of a benefit so that the policy should be treated
10 as a health plan).

11 “(I) A hospital or fixed indemnity income-
12 protection policy.

13 “(J) An equivalent health care program.

14 “(K) An employee welfare benefit plan, as
15 defined in section 3(1) of the Employee Retirement
16 Income Security Act of 1974 (29 U.S.C.
17 1002(1)), but only to the extent the plan is es-
18 tablished or maintained for the purpose of pro-
19 viding health benefits and has 50 or more par-
20 ticipating employees.

21 “(L) An employee welfare benefit plan or
22 any other arrangement which is established or
23 maintained for the purpose of offering or pro-
24 viding health benefits to the employees of 2 or
25 more employers.

1 “(M) Such other plan or arrangement as
2 the Secretary determines is a health plan.

3 “(9) INDIVIDUALLY IDENTIFIABLE HEALTH IN-
4 FORMATION.—The term ‘individually identifiable
5 health information’ means any information, includ-
6 ing demographic information collected from an indi-
7 vidual, that—

8 “(A) is created or received by a health care
9 provider, health plan, employer, or health infor-
10 mation network service; and

11 “(B) relates to the past, present, or future
12 physical or mental health or condition of an in-
13 dividual, the provision of health care to an indi-
14 vidual, or the past, present, or future payment
15 for the provision of health care to an individual,
16 and—

17 “(i) identifies an individual; or

18 “(ii) with respect to which there is a
19 reasonable basis to believe that the infor-
20 mation can be used to identify an individ-
21 ual.

22 “(10) SECRETARY.—The term ‘Secretary’
23 means the Secretary of Health and Human Services.

24 “(11) STANDARD SETTING ORGANIZATION.—
25 The term ‘standard setting organization’ means a

1 standard setting organization accredited by the
2 American National Standards Institute or any other
3 private organization (including the National Council
4 for Prescription Drug Programs and the Health In-
5 formation Standards Planning Panel) that develops
6 standards for information transactions, data ele-
7 ments, or any other standard that is necessary to or
8 will facilitate the implementation of this part, if the
9 standard development procedures of the organization
10 are open to the public and are based on a broad con-
11 sensus of opinion.

12 “(12) STANDARD TRANSACTION.—The term
13 ‘standard transaction’ means, when referring to an
14 information transaction or to data elements of
15 health information, any transaction that meets the
16 requirements and implementation specifications
17 adopted by the Secretary under sections 1172 and
18 1173.

19 **“SEC. 1172. GENERAL REQUIREMENTS ON SECRETARY.**

20 “(a) ADOPTION OF STANDARDS.—

21 “(1) IN GENERAL.—Pursuant to section 1173,
22 the Secretary shall adopt standards for information
23 transactions and data elements of health information
24 and modifications to the standards under this part
25 that are—

1 “(A) consistent with the objective of reduc-
2 ing the administrative costs of providing and
3 paying for health care; and

4 “(B) developed or modified by a standards
5 setting organization.

6 “(2) ADDITIONAL STANDARDS UNDER CERTAIN
7 CONDITIONS.—If the Secretary determines that a
8 standard developed or modified by a standard set-
9 ting organization is impractical and more costly to
10 implement than a standard that is in use and gen-
11 erally accepted, the Secretary may adopt the stand-
12 ard that is in use and generally accepted in addition
13 to the standard developed or modified by the stand-
14 ard setting organization. The Secretary shall publish
15 in the Federal Register the analysis upon which the
16 Secretary based the determination to adopt such ad-
17 ditional standard.

18 “(3) SPECIAL RULE RELATING TO DATA ELE-
19 MENTS.—The Secretary may adopt or modify a
20 standard relating to data elements that is different
21 from the standard developed by a standard setting
22 organization, if—

23 “(A) the different standard or modification
24 will substantially reduce administrative costs to

1 health care providers and health plans com-
2 pared to the alternative; and

3 “(B) the standard or modification is pro-
4 mulgated in accordance with the rulemaking
5 procedures of subchapter III of chapter 5 of
6 title 5, United States Code.

7 “(b) SECURITY STANDARDS FOR HEALTH INFORMA-
8 TION NETWORK.—

9 “(1) IN GENERAL.—Each person, who main-
10 tains or transmits health information or data ele-
11 ments of health information and is subject to this
12 part, shall maintain reasonable and appropriate ad-
13 ministrative, technical, and physical safeguards—

14 “(A) to ensure the integrity and confiden-
15 tiality of the information;

16 “(B) to protect against any reasonably an-
17 ticipated—

18 “(i) threats or hazards to the security
19 or integrity of the information; and

20 “(ii) unauthorized uses or disclosures
21 of the information; and

22 “(C) to otherwise ensure compliance with
23 this part by the officers and employees of such
24 person.

1 “(2) SECURITY STANDARDS.—The Secretary
2 shall establish security standards and modifications
3 to such standards with respect to health information
4 network services, health plans, and health care pro-
5 viders that—

6 “(A) take into account—

7 “(i) the technical capabilities of record
8 systems used to maintain health informa-
9 tion;

10 “(ii) the costs of security measures;

11 “(iii) the need for training persons
12 who have access to health information;

13 “(iv) the value of audit trails in com-
14 puterized record systems; and

15 “(v) the needs and capabilities of
16 small health care providers and rural
17 health care providers (as such providers
18 are defined by the Secretary); and

19 “(B) ensure that a health information net-
20 work service, if it is part of a larger organiza-
21 tion, has policies and security procedures which
22 isolate the activities of such service with respect
23 to processing information in a manner that pre-
24 vents unauthorized access to such information
25 by such larger organization.

1 The security standards established by the Secretary
2 shall be based on the standards developed or modi-
3 fied by standard setting organizations. If such
4 standards do not exist, the Secretary shall rely on
5 the recommendations of the Health Information Ad-
6 visory Committee and shall consult with appropriate
7 government agencies and private organizations in ac-
8 cordance with subsection (e).

9 “(c) PRIVACY STANDARDS FOR HEALTH INFORMA-
10 TION NETWORK.—The Secretary shall establish standards
11 and modifications to such standards with respect to the
12 privacy of individually identifiable health information that
13 is in the health information network. Such standards shall
14 include standards concerning at least the following:

15 “(1) The rights of an individual who is the sub-
16 ject of such information.

17 “(2) The procedures to be established for the
18 exercise of such rights.

19 “(3) The uses and disclosures of such informa-
20 tion that are authorized or required.

21 “(4) Safeguards for the security of such infor-
22 mation and adequate security practices.

23 “(d) IMPLEMENTATION SPECIFICATIONS.—The Sec-
24 retary shall establish specifications for implementing each

1 of the standards and the modifications to the standards
2 adopted pursuant to subsection (a).

3 “(e) ASSISTANCE TO THE SECRETARY.—In comply-
4 ing with the requirements of this part, the Secretary shall
5 rely on recommendations of the Health Information Advi-
6 sory Committee established under section 1179 and shall
7 consult with appropriate Federal and State agencies and
8 private organizations. The Secretary shall publish in the
9 Federal Register the recommendations of the Health In-
10 formation Advisory Committee regarding the adoption of
11 a standard under this part.

12 **“SEC. 1173. STANDARDS FOR INFORMATION TRANSACTIONS**
13 **AND DATA ELEMENTS.**

14 “(a) IN GENERAL.—

15 “(1) GENERAL REQUIREMENTS.—The Secretary
16 shall adopt standards for transactions and data ele-
17 ments to make health information uniformly avail-
18 able to be exchanged electronically, that is—

19 “(A) appropriate for the following financial
20 and administrative transactions: claims (includ-
21 ing coordination of benefits) or equivalent en-
22 counter information, claims attachments, enroll-
23 ment and disenrollment, eligibility, health care
24 payment and remittance advice, premium pay-

1 ments, first report of injury, claims status, and
2 referral certification and authorization; and

3 “(B) related to other financial and admin-
4 istrative transactions determined appropriate by
5 the Secretary consistent with the goals of im-
6 proving the operation of the health care system
7 and reducing administrative costs.

8 “(2) ACCOMMODATION OF SPECIFIC PROVID-
9 ERS.—Nothing in this part shall prevent the Sec-
10 retary from adopting standards that accommodate
11 the specific needs of different types of health care
12 providers.

13 “(b) UNIQUE HEALTH IDENTIFIERS.—

14 “(1) ADOPTION OF STANDARDS.—The Sec-
15 retary shall adopt standards providing for a stand-
16 ard unique health identifier for each individual, em-
17 ployer, health plan, and health care provider for use
18 in the health care system. In developing unique
19 health identifiers for each health plan and health
20 care provider, the Secretary shall take into account
21 multiple uses for identifiers and multiple locations
22 and specialty classifications for health care provid-
23 ers.

24 “(2) PENALTIES.—For provision regarding
25 criminal penalties, see section 1177.

1 “(c) CODE SETS.—

2 “(1) IN GENERAL.—The Secretary, in consulta-
3 tion with the Health Information Advisory Commit-
4 tee, experts from the private sector, and Federal and
5 State agencies, shall—

6 “(A) select code sets for appropriate data
7 elements from among the code sets that have
8 been developed by private and public entities; or

9 “(B) establish code sets for such data ele-
10 ments if no code sets for the data elements
11 have been developed.

12 “(2) DISTRIBUTION.—The Secretary shall es-
13 tablish efficient and low-cost procedures for distribu-
14 tion (including electronic distribution) of code sets
15 and modifications made to such code sets under sec-
16 tion 1174(b).

17 “(d) ELECTRONIC SIGNATURE.—

18 “(1) IN GENERAL.—The Secretary, in coordina-
19 tion with the Secretary of Commerce and after con-
20 sultation with the Health Information Advisory
21 Committee, shall promulgate regulations specifying
22 procedures for the electronic transmission and au-
23 thentication of signatures, compliance with which
24 will be deemed to satisfy Federal and State statu-
25 tory requirements for written signatures with respect

1 to information transactions required by this part
2 and written signatures on medical records and pre-
3 scriptions.

4 “(2) PAYMENTS FOR SERVICES AND PRE-
5 MIUMS.—Nothing in this part shall be construed to
6 prohibit the payment of health care services or
7 health plan premiums by debit, credit, payment card
8 or numbers, or other electronic means.

9 “(e) TRANSFER OF INFORMATION BETWEEN
10 HEALTH PLANS.—The Secretary shall develop rules and
11 procedures—

12 “(1) for determining the financial liability of
13 health plans when health care benefits are payable
14 under two or more health plans; and

15 “(2) for transferring among health plans appro-
16 priate standard data elements needed for the coordi-
17 nation of benefits, the sequential processing of
18 claims, and other data elements for individuals who
19 have more than one health plan.

20 “(f) COORDINATION OF BENEFITS.—If, at the end of
21 the 5-year period beginning on the date of the enactment
22 of this part, the Secretary determines that additional
23 transaction standards for coordinating benefits are nec-
24 essary to reduce administrative costs or duplicative (or in-
25 appropriate) payment of claims, the Secretary shall estab-

1 lish further transaction standards for the coordination of
2 benefits between health plans.

3 “(g) PROTECTION OF TRADE SECRETS.—Except as
4 otherwise required by law, the standards adopted under
5 this part, shall not require disclosure of trade secrets or
6 confidential commercial information by an entity operat-
7 ing a health information network.

8 **“SEC. 1174. TIMETABLES FOR ADOPTION OF STANDARDS.**

9 “(a) INITIAL STANDARDS.—Not later than 18
10 months after the date of the enactment of this part, the
11 Secretary shall adopt standards relating to the informa-
12 tion transactions, data elements of health information, se-
13 curity, and privacy described in sections 1172 and 1173.
14 Standards relating to claims attachments shall be adopted
15 not later than 30 months after such date.

16 “(b) ADDITIONS AND MODIFICATIONS TO STAND-
17 ARDS.—

18 “(1) IN GENERAL.—Except as provided in para-
19 graph (2), the Secretary shall review the standards
20 adopted under this part and shall adopt additional
21 or modified standards, that have been developed or
22 modified by a standard setting organization, as de-
23 termined appropriate, but not more frequently than
24 once every 6 months. Any addition or modification
25 to such standards shall be completed in a manner

1 which minimizes the disruption and cost of compli-
2 ance.

3 “(2) SPECIAL RULES.—

4 “(A) FIRST 12-MONTH PERIOD.—Except
5 with respect to additions and modifications to
6 code sets under subparagraph (B), the Sec-
7 retary shall not adopt any modifications to the
8 standards adopted under this part during the
9 12-month period beginning on the date such
10 standards are initially adopted under paragraph
11 (1) unless the Secretary determines that a
12 modification is necessary in order to permit
13 compliance with requirements relating to the
14 standards.

15 “(B) ADDITIONS AND MODIFICATIONS TO
16 CODE SETS.—

17 “(i) IN GENERAL.—The Secretary
18 shall ensure that procedures exist for the
19 routine maintenance, testing, enhancement,
20 and expansion of code sets.

21 “(ii) ADDITIONAL RULES.—If a code
22 set is modified under this subsection, the
23 modified code set shall include instructions
24 on how data elements of health informa-
25 tion that were encoded prior to the modi-

1 fication may be converted or translated so
2 as to preserve the informational value of
3 the data elements that existed before the
4 modification. Any modification to a code
5 set under this subsection shall be imple-
6 mented in a manner that minimizes the
7 disruption and cost of complying with such
8 modification.

9 **“SEC. 1175. REQUIREMENTS FOR HEALTH PLANS.**

10 “(a) IN GENERAL.—If a person desires to conduct
11 any of the information transactions described in section
12 1173(a) with a health plan as a standard transaction, the
13 health plan shall conduct such standard transaction in a
14 timely manner and the information transmitted or re-
15 ceived in connection with such transaction shall be in the
16 form of standard data elements of health information.

17 “(b) SATISFACTION OF REQUIREMENTS.—A health
18 plan may satisfy the requirement imposed on such plan
19 under subsection (a) by directly transmitting standard
20 data elements of health information or submitting non-
21 standard data elements to a health information network
22 service for processing into standard data elements and
23 transmission.

1 “(c) PERSONS DEALING WITH HEALTH PLANS.—A
2 person conducting an information transaction with a
3 health plan may not—

4 “(1) adversely affect the time, manner, or
5 amount of payment of a claim because an informa-
6 tion transaction is conducted as a standard trans-
7 action pursuant to this part; or

8 “(2) in any other manner discourage the use of
9 a standard adopted under this part.

10 “(d) TIMETABLES FOR COMPLIANCE WITH RE-
11 QUIREMENTS.—

12 “(1) INITIAL COMPLIANCE.—

13 “(A) IN GENERAL.—Not later than 24
14 months after the date on which standards are
15 adopted under sections 1172 and 1173 with re-
16 spect to any type of information transaction or
17 data element of health information or with re-
18 spect to security or privacy, a health plan shall
19 comply with the requirements of this part with
20 respect to such transaction or data element.

21 “(B) SPECIAL RULE FOR SMALL HEALTH
22 PLANS.—In the case of a small health plan,
23 paragraph (1) shall be applied by substituting
24 “36 months” for “24 months”. For purposes of

1 this subsection, the Secretary shall determine
2 the plans that qualify as small health plans.

3 “(e) COMPLIANCE WITH MODIFIED STANDARDS.—If
4 the Secretary adopts a modified standard under section
5 1172 or 1173, a health plan shall be required to comply
6 with the modified standard at such time as the Secretary
7 determines appropriate taking into account the time need-
8 ed to comply due to the nature and extent of the modifica-
9 tion. However, the time determined appropriate under the
10 preceding sentence shall be not earlier than the last day
11 of the 180-day period beginning on the date such modified
12 standard is adopted. The Secretary may extend the time
13 for compliance for small health plans, if the Secretary de-
14 termines such extension is appropriate.

15 **“SEC. 1176. GENERAL PENALTY FOR FAILURE TO COMPLY**
16 **WITH REQUIREMENTS AND STANDARDS.**

17 “(a) GENERAL PENALTY.—

18 “(1) IN GENERAL.—Except as provided in sub-
19 section (b), the Secretary shall impose on any person
20 that violates a requirement or standard—

21 “(A) with respect to information trans-
22 actions, data elements of health information, or
23 security imposed under section 1172 or 1173;
24 or

1 “(B) with respect to health plans imposed
2 under section 1175;
3 a penalty of not more than \$100 for each such viola-
4 tion of a specific standard or requirement, but the
5 total amount imposed for all such violations of a
6 specific standard or requirement during the calendar
7 year shall not exceed \$25,000.

8 “(2) PROCEDURES.—The provisions of section
9 1128A (other than subsections (a) and (b) and the
10 second sentence of subsection (f)) shall apply to the
11 imposition of a civil money penalty under this sub-
12 section in the same manner as such provisions apply
13 to the imposition of a penalty under such section
14 1128A.

15 “(b) LIMITATIONS.—

16 “(1) NONCOMPLIANCE NOT DISCOVERED.—A
17 penalty may not be imposed under subsection (a) if
18 it is established to the satisfaction of the Secretary
19 that the person liable for the penalty did not know,
20 and by exercising reasonable diligence would not
21 have known, that such person failed to comply with
22 the requirement or standard described in subsection
23 (a).

24 “(2) FAILURES DUE TO REASONABLE CAUSE.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), a penalty may not be im-
3 posed under subsection (a) if—

4 “(i) the failure to comply was due to
5 reasonable cause and not to willful neglect;
6 and

7 “(ii) the failure to comply is corrected
8 during the 30-day period beginning on the
9 1st date the person liable for the penalty
10 knew, or by exercising reasonable diligence
11 would have known, that the failure to com-
12 ply occurred.

13 “(B) EXTENSION OF PERIOD.—

14 “(i) NO PENALTY.—The period re-
15 ferred to in subparagraph (A)(ii) may be
16 extended as determined appropriate by the
17 Secretary based on the nature and extent
18 of the failure to comply.

19 “(ii) ASSISTANCE.—If the Secretary
20 determines that a health plan failed to
21 comply because such plan was unable to
22 comply, the Secretary may provide tech-
23 nical assistance to such plan during the pe-
24 riod described in clause (i). Such assist-

1 ance shall be provided in any manner de-
2 termined appropriate by the Secretary.

3 “(3) REDUCTION.—In the case of a failure to
4 comply which is due to reasonable cause and not to
5 willful neglect, any penalty under subsection (a) that
6 is not entirely waived under paragraph (2) may be
7 waived to the extent that the payment of such pen-
8 alty would be excessive relative to the compliance
9 failure involved.

10 **“SEC. 1177. WRONGFUL DISCLOSURE OF INDIVIDUALLY**
11 **IDENTIFIABLE HEALTH INFORMATION.**

12 “(a) OFFENSE.—A person who knowingly—

13 “(1) uses or causes to be used a unique health
14 identifier for a purpose that is not authorized by the
15 Secretary;

16 “(2) obtains individually identifiable health in-
17 formation relating to an individual in violation of the
18 privacy standards established pursuant to this part;
19 or

20 “(3) discloses individually identifiable health in-
21 formation to another person in violation of the pri-
22 vacy standards established pursuant to this part,
23 shall be punished as provided in subsection (b).

24 “(b) PENALTIES.—A person described in subsection
25 (a) shall—

1 “(1) be fined not more than \$50,000, impris-
2 oned not more than 1 year, or both;

3 “(2) if the offense is committed under false pre-
4 tenses, be fined not more than \$100,000, imprisoned
5 not more than 5 years, or both; and

6 “(3) if the offense is committed with intent to
7 sell, transfer, or use individually identifiable health
8 information for commercial advantage, personal
9 gain, or malicious harm, fined not more than
10 \$250,000, imprisoned not more than 10 years, or
11 both.

12 **“SEC. 1178. EFFECT ON STATE LAW.**

13 “(a) GENERAL EFFECT.—

14 “(1) GENERAL RULE.—Except as provided in
15 paragraph (2), a provision, requirement, or standard
16 under this part shall supersede any contrary provi-
17 sion of State law, including a provision of State law
18 that requires medical or health plan records (includ-
19 ing billing information) to be maintained or trans-
20 mitted in written rather than electronic form.

21 “(2) EXCEPTIONS.—A provision, requirement,
22 or standard under this part shall not supersede a
23 contrary provision of State law, if the provision of
24 State law—

1 “(A) provides requirements or standards
2 that are more stringent than the requirements
3 or standards under this part with respect to—

4 “(i) the transmission by health care
5 providers of financial or administrative
6 transactions in electronic form to health
7 plans and requires the use of the standards
8 adopted under this part relating to infor-
9 mation transactions and data elements; or

10 “(ii) the privacy of individually identi-
11 fiable health information;

12 “(B) provides for the coordination of bene-
13 fits and such provision is in effect on the date
14 of the enactment of this part; or

15 “(C) is a provision the Secretary deter-
16 mines is necessary to prevent fraud and abuse
17 with respect to controlled substances, or for
18 other purposes.

19 “(b) PUBLIC HEALTH REPORTING.—Nothing in this
20 part shall be construed to invalidate or limit the authority,
21 power, or procedures established under any law providing
22 for the reporting of disease or injury, child abuse, birth,
23 or death, public health surveillance, or public health inves-
24 tigation or intervention.

1 **“SEC. 1179. HEALTH INFORMATION ADVISORY COMMITTEE.**

2 “(a) ESTABLISHMENT.—There is established a com-
3 mittee to be known as the Health Information Advisory
4 Committee (hereafter in this section referred to as the
5 ‘committee’).

6 “(b) DUTIES.—The committee shall—

7 “(1) provide assistance to the Secretary in com-
8 plying with the requirements imposed on the Sec-
9 retary under this part;

10 “(2) study the issues related to the adoption of
11 uniform data standards for patient medical record
12 information and the electronic exchange of such in-
13 formation;

14 “(3) report to the Secretary not later than 4
15 years after the date of the enactment of this part
16 recommendations and legislative proposals for such
17 standards and electronic exchange; and

18 “(4) be generally responsible for advising the
19 Secretary and the Congress on the status and the
20 future of the health information network.

21 “(c) MEMBERSHIP.—

22 “(1) IN GENERAL.—The committee shall con-
23 sist of 15 members of whom—

24 “(A) 3 shall be appointed by the President;

25 “(B) 6 shall be appointed by the Speaker
26 of the House of Representatives after consulta-

1 tion with the minority leader of the House of
2 Representatives; and

3 “(C) 6 shall be appointed by the President
4 pro tempore of the Senate after consultation
5 with the minority leader of the Senate.

6 The appointments of the members shall be made not
7 later than 60 days after the date of the enactment
8 of this part. The President shall designate 1 member
9 as the Chair.

10 “(2) EXPERTISE.—The membership of the com-
11 mittee shall consist of individuals who are of recog-
12 nized standing and distinction in the areas of infor-
13 mation systems, information networking and inte-
14 gration, consumer health, health care financial man-
15 agement, or privacy, and who possess the dem-
16 onstrated capacity to discharge the duties imposed
17 on the committee.

18 “(3) TERMS.—Each member of the committee
19 shall be appointed for a term of 5 years, except that
20 the members first appointed shall serve staggered
21 terms such that the terms of not more than 3 mem-
22 bers expire at one time.

23 “(4) INITIAL MEETING.—Not later than 30
24 days after the date on which a majority of the mem-

1 bers have been appointed, the committee shall hold
2 its first meeting.

3 “(d) REPORTS.—Not later than 1 year after the date
4 of the enactment of this part, and annually thereafter, the
5 committee shall submit a report to Congress, health care
6 providers, health plans, and other entities that use the
7 health information network to exchange health informa-
8 tion regarding—

9 “(1) the extent to which entities using the
10 health information network are meeting the stand-
11 ards adopted under this part and working together
12 to form an integrated network that meets the needs
13 of its users;

14 “(2) the extent to which such entities are meet-
15 ing the privacy and security standards established
16 pursuant to this part and the types of penalties as-
17 sessed for noncompliance with such standards;

18 “(3) whether the Federal and State Govern-
19 ments are receiving information of sufficient quality
20 to meet their responsibilities under this part;

21 “(4) any problems that exist with respect to im-
22 plementation of the health information network; and

23 “(5) the extent to which timetables under this
24 part are being met.

1 **“SEC. 1180. STANDARDS FOR PATIENT MEDICAL RECORD**
2 **INFORMATION.**

3 “The Secretary shall, not earlier than 4 years and
4 not later than 6 years after the date of the enactment of
5 this part recommend to Congress a plan for developing
6 and implementing uniform data standards for patient
7 medical record information and the electronic exchange of
8 such information.

9 **“SEC. 1181. GRANTS FOR DEMONSTRATION PROJECTS.**

10 “(a) IN GENERAL.— The Secretary may make grants
11 for demonstration projects to promote the development
12 and use of electronically integrated clinical information
13 systems and computerized patient medical records.

14 “(b) APPLICATIONS.—

15 “(1) SUBMISSION.—To apply for a grant under
16 this section for any fiscal year, an applicant shall
17 submit an application to the Secretary in accordance
18 with the procedures established by the Secretary.

19 “(2) CRITERIA FOR APPROVAL.—The Secretary
20 may not approve an application submitted under
21 paragraph (1) unless the application includes assur-
22 ances satisfactory to the Secretary regarding the fol-
23 lowing:

24 “(A) USE OF EXISTING TECHNOLOGY.—
25 Funds received under this section will be used
26 to apply telecommunications and information

1 systems technology that is in existence on the
2 date the application is submitted in a manner
3 that improves the quality of health care, re-
4 duces the costs of such care, and protects the
5 privacy and confidentiality of information relat-
6 ing to the physical or mental condition of an in-
7 dividual.

8 “(B) USE OF EXISTING INFORMATION SYS-
9 TEMS.—Funds received under this section will
10 be used—

11 “(i) to enhance telecommunications or
12 information systems that are operating on
13 the date the application is submitted;

14 “(ii) to integrate telecommunications
15 or information systems that are operating
16 on such date; or

17 “(iii) to connect additional users to
18 telecommunications or information net-
19 works or systems that are operating on
20 such date.

21 “(C) MATCHING FUNDS.—The applicant
22 shall make available funds for the demonstra-
23 tion project in an amount that equals at least
24 20 percent of the cost of the project.

1 “(c) GEOGRAPHIC DIVERSITY.—In making grants
2 under this section, the Secretary shall, to the extent prac-
3 ticable, make grants to persons representing different geo-
4 graphic areas of the United States, including urban and
5 rural areas.

6 “(d) REVIEW AND SANCTIONS.—The Secretary shall
7 review at least annually the compliance of a person
8 receiving a grant under this section with the provisions
9 of this part. The Secretary shall establish a procedure for
10 determining whether such a person has failed to comply
11 substantially with the provisions of this part and the sanc-
12 tions to be imposed for any such noncompliance.

13 “(e) ANNUAL REPORT.—The Secretary shall submit
14 an annual report to the President for transmittal to Con-
15 gress containing a description of the activities carried out
16 under this section.

17 **“SEC. 1182. AUTHORIZATION OF APPROPRIATIONS.**

18 “There are authorized to be appropriated such sums
19 as may be necessary to carry out the purposes of this
20 part.”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) REQUIREMENT FOR MEDICARE PROVID-
23 ERS.—Section 1866(a)(1) of the Social Security Act
24 (42 U.S.C. 1395cc(a)(1)) is amended—

1 (A) by striking “and” at the end of sub-
2 paragraph (P);

3 (B) by striking the period at the end of
4 subparagraph (Q) and inserting “; and”; and

5 (C) by inserting immediately after sub-
6 paragraph (Q) the following new subparagraph:

7 “(R) to contract only with a health infor-
8 mation network service (as defined in section
9 1171(7)) that meets the standards established
10 under sections 1172 and 1173.”.

11 (2) CLERICAL AMENDMENTS.—

12 (A) Title XI of the Social Security Act (42
13 U.S.C. 1301 et seq.) is amended by striking the
14 title and inserting the following:

15 **“TITLE XI—GENERAL PROVI-**
16 **SIONS, PEER REVIEW, AND**
17 **ADMINISTRATIVE SIM-**
18 **PLIFICATION**

19 (B) Parts A and B of title XI of the Social
20 Security Act (42 U.S.C. 1301 et seq.) are
21 amended by striking “this title” each place it
22 appears and inserting “parts A and B of this
23 title”.

1 **TITLE III—EFFECTIVE DATES**

2 **SEC. 301. EFFECTIVE DATES.**

3 (a) IN GENERAL.—Except as provided in subsection
4 (b), the provisions of this Act shall take effect on the date
5 of the enactment of this Act.

6 (b) REPEAL OF DATA BANK.—The provisions of sec-
7 tion 102 shall take effect on the date the Secretary of
8 Health and Human Services provides written notice to the
9 Congress that the Medicare and Medicaid Coverage Data
10 Bank is no longer necessary because of the operation of
11 the health information network established pursuant to
12 this Act.

○

S 872 IS—2

S 872 IS—3