

TO: House and Senate Conference Committee  
CC: Dr. Karen M. Bell, Acting Deputy National Coordinator for Health Information Technology  
FROM: Abby Liebeskind, Policy Analyst, Office of the National Coordinator for Health Information Technology (ONCHIT)  
RE: Text of a Unified H.R. 4157 (the Health Information Technology Promotion Act)/ S.1418 (the Wired for Health Care Quality Act)  
DATE: 12/2/06

This memo presents recommendations for language to be included in the unified bill resulting from H.R. 4157, the Health Information Technology Promotion Act, passed in the House on 27 July 2006 and S. 1418, the Wired for Health Care Quality Act, passed in the Senate on 18 November 2005. Our primary goal is the speedy passage of a bill that authorizes the Office of the National Coordinator for Health Information Technology to begin delegating responsibilities and taking action towards facilitating an interoperable electronic healthcare system.

## **GENERAL LANGUAGE**

### **PRIVACY:**

Since privacy is such a contentious issue, and ideally we would like a unified bill to be passed in both houses before the 109<sup>th</sup> Congress adjourns, it would be best to be more vague about privacy precautions. Both bills assert that nothing in the act "...shall be construed to affect the scope, substance, or applicability of section 265 of HIPAA, sections 1171-1179 of the SSA or any regulation issued pursuant to such section," (THOMAS- S. 1418, 2005, Sec. 4; THOMAS- H.R. 4157, 2006, Sec. 2). S. 1418 also includes additional privacy language requiring the Comptroller General to submit a report regarding privacy protection for individuals whose identifiable health information is wrongfully disclosed (eHealth Initiative- S. 1418, 2005, PRIVACY). This language should be included in the unified bill so that the Department of Health and Human

Services can determine a course of action to best suit the problems we see as the system is developed. Including this language will quell some of the opposition from privacy protection groups and allow the Department to take action at a later date.

#### ICD-10 CODES:

The mandatory update of the medical industry's computer systems from ICD-9 to ICD-10 (International Statistical Classification of Diseases and Related Health Problems, commonly known as ICD) codes is undoubtedly important for the field to stay current, but insurance companies have expressed discontent with the 2010 deadline set in H.R. 4157 (Insurance Networking News, 2006, 1). By including the strategic plan to implement the ICD codes but not mandating a date by which they are implemented, the Secretary has the discretion to determine an appropriate date for insurance companies to abide by (THOMAS- H.R. 4157, 2006, Sec. 203-204).

#### **SPECIFIC LANGUAGE**

#### AUTHORIZATION OF ONCHIT:

Both H.R. 4157 and S. 1418 include language authorizing ONCHIT, since we are currently functioning under an Executive Order, so the ultimate goals of our office should be defined in this unified legislation (THOMAS- H.R. 4157, 2006, Sec. 271; THOMAS- H.R. 1418, 2005, Sec. 2902).

#### GRANTS TO BE DISTRIBUTED:

S. 1418 details the appropriation of \$280 million for grants in 2006 and 2007, and "such sums as necessary for 2008 through 2010 for those activities," (GovTrack- S. 1418, 2005, 1); H.R. 4157 authorizes the appropriation of \$20 million in 2007 and 2008, (GovTrack- H.R. 4157, 2006, 1). Since the Senate passed S. 1418 unanimously, clearly

all the Senators on the conference committee will support the larger sum for grants, which our office would strongly prefer; also, with the larger quantity of funds, S. 1418 includes programs for ongoing sustainability which share some of the responsibilities with state governments (eHealth Initiative- S. 1418, 2005, ONGOING SUSTAINABILITY). The President expressed strong support for H.R. 4157 during the House voting process, so he would be more likely to approve a bill that will cost less of his discretionary funding (Executive Office, 2006, 1). Even if the bill is passed with only \$20 million a year authorized for grants, it is important to publicize this grant money to the greater medical community so they support their legislators in approving this bill. Some Congressional representatives might be hesitant to authorize so much funding, but ideally a new CBO budget report on the unified bill will demonstrate budget neutrality, as it has for both H.R. 4157 and S. 1418.

#### STANDARDS OF IMPLEMENTATION

It is important to have specific standards of implementation included in the legislation so that competitive grants can be awarded soon after the bill is passed and different systems can be implemented in many different types of offices (rural, urban, physician, hospital, regional, local) to determine the most important qualities to include in the final interoperable system. H.R. 4157 includes a provision for the evaluation of the American Health Information Community (AHIC) and its success as a public/private sector link to develop national guidelines for a health information technology (HIT) system (THOMAS- H.R. 4157, 2006, Sec. 102). S. 1418 includes a similar provision to establish the American Health Information Collaborative (AHIC) as a public-private sector advisory board for the Department of Health and Human Services (THOMAS- S.

1418, 2005, Sec. 2903); while it would be preferable to have AHIC serve as an advisory board than a decision making entity, this board would serve as a valuable resource and their authorization and purpose must be specifically stated to demonstrate to the private medical community that their voice will be heard.

### **IMPLEMENTATION ISSUES**

Once the unified bill is passed, the resources for its provisions will be available. Both H.R. 4157 and S. 1418 are budget neutral, so in theory the budget will be able to support a unified bill (GovTrack- S. 1418, 2005, 1; GovTrack- H.R. 4157, 2006, 1). ONCHIT and AHIC are already established and staffed via Executive Order, and we are ready to carry out provisions written in the bill.

### **DECISION-MAKING BODIES WITH RULEMAKING DISCRETION**

The Department of Health and Human Services will be the primary rulemaking body once the unified bill is passed, but within that process the Office of Management and Budget will also have a great deal of discretion over the exact funds to be appropriated. Our office hopes to have discretion over awarding competitive grants and final rulemaking while AHIC serves as an advisory body for the Secretary.

## Works Cited

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