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(Original Signature of Member)

114TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

To amend titles XVIII and XIX of the Social Security Act to improve the electronic health records meaningful use programs under the Medicare and Medicaid programs, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mrs. ELLMERS introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To amend titles XVIII and XIX of the Social Security Act to improve the electronic health records meaningful use programs under the Medicare and Medicaid programs, 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 “Further Flexibility in HIT Reporting and Advancing  
6 Interoperability Act” or the “Flex-IT 2 Act”.

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

Sec. 1. Short title; table of contents.

TITLE I—ALIGNMENT OF MEANINGFUL USE RULEMAKING TO  
MERIT-BASED INCENTIVE PAYMENT SYSTEM RULEMAKING

Sec. 101. Pausing meaningful use rulemaking.

TITLE I—IMPROVING MEANINGFUL USE

Sec. 201. Removing the pass-fail approach of the Medicare and Medicaid mean-  
ingful use program.

Sec. 202. Aligning quality reporting in the Medicare and Medicaid meaningful  
use program.

Sec. 203. Expanding the hardship exception to the Medicare EHR payment ad-  
justments.

Sec. 204. Promoting interoperability through EHR certification process.

Sec. 205. Improving the timing of the adoption of more stringent measures of  
meaningful use under the Medicare and Medicaid meaningful  
use program.

Sec. 206. Three-month EHR reporting periods for the Medicare and Medicaid  
EHR incentive payment programs.

Sec. 207. Providing eligible professionals and eligible hospitals the option to  
meet a more advanced stage of meaningful use.

3 **TITLE I—ALIGNMENT OF MEAN-**  
4 **INGFUL USE RULEMAKING TO**  
5 **MERIT-BASED INCENTIVE**  
6 **PAYMENT SYSTEM RULE-**  
7 **MAKING**

8 **SEC. 101. PAUSING MEANINGFUL USE RULEMAKING.**

9 (a) SENSE OF THE CONGRESS.—It is the sense of  
10 Congress that the Secretary of Health and Human Serv-  
11 ices (in this section referred to as the “Secretary”) should  
12 not finalize the proposed rules relating to Stage 3 criteria  
13 for the meaningful use of certified EHR technology (as  
14 defined in section 3000 of the Public Health Service Act  
15 (42 U.S.C. 300jj)) and the issuance of 2015 EHR certifi-

1 cation criteria and should instead encourage interoper-  
2 ability, usability, and improved outcomes with respect to  
3 electronic health records.

4 (b) NO ISSUANCE OF STAGE 3 CRITERIA OR OF EHR  
5 CERTIFICATION CRITERIA BEFORE 2017 UNLESS CONDI-  
6 TIONS MET.—Unless one of the conditions described in  
7 subsection (c) has been met, the Secretary shall not issue,  
8 prior to January 1, 2017—

9 (1) any proposed or final rule that would mod-  
10 ify the definition of the term “Meaningful EHR  
11 user” under section 495.4 of title 42, Code of Fed-  
12 eral Regulations (or any successor regulation), by  
13 adding Stage 3 criteria for eligible professionals or  
14 eligible hospitals; or

15 (2) any proposed or final rule that would add  
16 new certification criteria for certified EHR tech-  
17 nology under part 170 of title 45, Code of Federal  
18 Regulations.

19 (c) CONDITIONS.—The conditions described in this  
20 subsection are the following:

21 (1) The Secretary certifies that 75 percent of  
22 both eligible hospitals and eligible professionals have  
23 successfully attested to the Stage 2 criteria estab-  
24 lished under section 495.6 of title 42, Code of Fed-  
25 eral Regulations.

1           (2) The Secretary promulgates a final rule to  
2           implement the Merit-Based Incentive Payment Sys-  
3           tem established under section 1848(q) of the Social  
4           Security Act (42 U.S.C. 1395w-4(q)).

5           (d) FLEXIBILITY TO ADJUST EXISTING MEANING-  
6           FUL USE AND CERTIFICATION CRITERIA.—Nothing in  
7           this section shall be construed as affecting the authority  
8           of the Secretary to change, modify, suspend, or revoke  
9           meaningful use and certification criteria effective on the  
10          date of the enactment of this Act, including the Stage 2  
11          criteria established under section 495.6 of title 42, Code  
12          of Federal Regulations, and the 2014 Edition certified  
13          health record criteria under subpart C, part 170 of title  
14          45, Code of Federal Regulations, for any of the following  
15          reasons:

16           (1) The change, modification, suspension, or  
17           revocation relates to the recommendations for  
18           achieving widespread interoperability made by the  
19           Secretary pursuant to section 106 of the Medicare  
20           Access and CHIP Reauthorization Act of 2015.

21           (2) The criteria may negatively impact the  
22           quality of care for, or may risk harm to, a patient.

23           (3) The change, modification, suspension, or  
24           revocation is necessary to reflect advances in science  
25           or technology, or to improve transparency.

1                   **TITLE I—IMPROVING**  
2                   **MEANINGFUL USE**

3   **SEC. 201. REMOVING THE PASS-FAIL APPROACH OF THE**  
4                   **MEDICARE AND MEDICAID MEANINGFUL USE**  
5                   **PROGRAM.**

6           (a) ELIGIBLE PROFESSIONALS.—

7                   (1) IN GENERAL.—Section 1848(o)(2) of the  
8           Social Security Act (42 U.S.C. 1395w–4(o)(2)) is  
9           amended by adding at the end the following new  
10          subparagraph:

11                           “(E) CONSIDERATION OF TECHNOLOGICAL  
12                           AND COST BARRIERS.—In applying clauses (i),  
13                           (ii), and (iii) of subparagraph (A) to determine  
14                           whether a professional is using certified EHR  
15                           technology in a meaningful manner for a period  
16                           described in such subparagraph for a year after  
17                           2015, the Secretary—

18                                   “(i) may not require that the profes-  
19                                   sional, in order to be considered a mean-  
20                                   ingful EHR user for such period, meet  
21                                   every requirement or objective specified  
22                                   pursuant to such clauses but instead shall  
23                                   apply a linear scale;

24                                   “(ii) shall establish a method to deter-  
25                                   mine if an eligible professional is a partial

1 meaningful user consistent with such linear  
2 scale; and

3 “(iii) shall consider differences among  
4 professionals (such as differences in the  
5 specialties and patient populations of pro-  
6 fessionals) as well as technological and cost  
7 barriers in determining which of the re-  
8 quirements or objectives must be met by  
9 the professional during such period in  
10 order for the professional to be so consid-  
11 ered.”.

12 (2) INCENTIVE PAYMENT.—Section  
13 1848(o)(1)(A)(i) of the Social Security Act (42  
14 U.S.C. 1395w-4(o)(1)(A)(i)) is amended—

15 (A) by inserting “or, for 2016, partial  
16 meaningful EHR user” after “meaningful EHR  
17 user”; and

18 (B) by inserting “(or, for 2016, in accord-  
19 ance with the linear scale applied pursuant to  
20 paragraph (2)(E), equal to not more than)”  
21 after “equal to”.

22 (3) PAYMENT ADJUSTMENT.—Section  
23 1848(a)(7)(A)(i) of the Social Security Act (42  
24 U.S.C. 1395w-4(a)(7)(A)(i)) is amended—

1 (A) by inserting “or, for such a year after  
2 2015, partial meaningful EHR user” after  
3 “meaningful EHR user”; and

4 (B) by inserting “(or, for such a year after  
5 2015, in accordance with the linear scale ap-  
6 plied pursuant to paragraph (2)(E), equal to at  
7 least)” after “equal to”.

8 (b) ELIGIBLE HOSPITALS.—

9 (1) IN GENERAL.—Section 1886(n)(3) of the  
10 Social Security Act (42 U.S.C. 1395ww(n)(3)) is  
11 amended by adding at the end the following new  
12 subparagraph:

13 “(D) CONSIDERATION OF TECHNOLOGICAL  
14 AND COST BARRIERS.—In applying clauses (i),  
15 (ii), and (iii) of subparagraph (A) to determine  
16 whether a hospital is using certified EHR tech-  
17 nology in a meaningful manner for an EHR re-  
18 porting period for a fiscal year after fiscal year  
19 2015, the Secretary—

20 “(i) may not require that the hospital,  
21 in order to be considered a meaningful  
22 EHR user for such period, meet every such  
23 requirement or objective specified pursuant  
24 to such clauses but instead shall apply a  
25 linear scale;

1           “(ii) shall establish a method to deter-  
2           mine if an eligible professional is a partial  
3           meaningful user consistent with such linear  
4           scale; and

5           “(iii) shall consider differences among  
6           hospitals (such as differences in the type of  
7           hospital, specialties available at and pa-  
8           tient populations of hospitals) in deter-  
9           mining which of the requirements or objec-  
10          tives must be met by the hospital during  
11          such period in order for the hospital to be  
12          so considered.”.

13           (2) INCENTIVE PAYMENT.—Section 1886(n)(1)  
14          of the Social Security Act (42 U.S.C. 1395ww(n)(1))  
15          is amended—

16           (A) by inserting “or, for a fiscal year after  
17          fiscal year 2015, partial meaningful EHR user”  
18          after “meaningful EHR user”; and

19           (B) by inserting “(or, for a fiscal year  
20          after fiscal year 2015, in accordance with the  
21          linear scale applied pursuant to paragraph  
22          (2)(D), equal to not more than)” after “equal  
23          to”.



1           (3)       PAYMENT       ADJUSTMENT.—Section  
2       1886(b)(3)(B)(ix)(I) of the Social Security Act (42  
3       U.S.C. 1395ww(b)(3)(B)(ix)(I)) is amended—

4           (A) in subclause (I)—

5               (i) by inserting “or, for a fiscal year  
6               after fiscal year 2015, partial meaningful  
7               EHR user” after “meaningful EHR user”;  
8               and

9               (ii) by inserting “(or, for a fiscal year  
10              after fiscal year 2015, in accordance with  
11              the linear scale applied pursuant to section  
12              1886(n)(2)(D), equal to at least)” after  
13              “equal to”; and

14           (B) in subclause (III), by inserting “or, for  
15           a fiscal year after fiscal year 2015, partial  
16           meaningful EHR user” after “meaningful EHR  
17           user”.

18       (c)       APPLICATION    UNDER    MEDICAID.—Section  
19       1903(t)(8) of the Social Security Act (42 U.S.C.  
20       1396b(t)(8)) is amended by inserting after the second sen-  
21       tence the following: “In doing so, the Secretary shall en-  
22       sure that the provisions of subparagraph (E) of section  
23       1848(o)(2) and subparagraph (D) of section 1886(n)(3)  
24       apply under this title with respect to demonstrating mean-

1 ingful use in a similar manner as such provisions apply  
2 under title XVIII.”.

3 (d) APPLICATION TO MEDICARE ADVANTAGE.—Sec-  
4 tion 1853 of the Social Security Act (42 U.S.C. 1395w-  
5 23) is amended—

6 (1) in subsection (l)—

7 (A) in paragraph (1), by inserting “or, for  
8 a year after 2015, partial meaningful EHR  
9 users,” after “meaningful EHR users”;

10 (B) in paragraph (4)(A), by inserting “(or,  
11 for a year after 2015, in accordance with the  
12 linear scale applied pursuant to section  
13 1848(o)(2)(E), equal to at least)” after “equal  
14 to”; and

15 (C) in paragraph (6), in each of subpara-  
16 graphs (A) and (B), by inserting “or, for a year  
17 after 2015, partial meaningful EHR user,”  
18 after “meaningful EHR user”; and

19 (2) in subsection (m)—

20 (A) in paragraph (1), by inserting “or, for  
21 a fiscal year after fiscal year 2015, partial  
22 meaningful EHR users,” after “meaningful  
23 EHR users”; and

24 (B) in paragraph (4)(A), by inserting “or,  
25 for a fiscal year after fiscal year 2015, partial

1 meaningful EHR users,” after “meaningful  
2 EHR users”.

3 (e) APPLICATION TO CRITICAL ACCESS HOS-  
4 PITALS.—Section 1814(l) of the Social Security Act (42  
5 U.S.C. 1395f(l)) is amended—

6 (1) in paragraph (3)(A), by inserting “or, for a  
7 fiscal year after 2015, partial meaningful EHR  
8 user,” after “meaningful EHR user”;

9 (2) in paragraph (3)(A)(ii)(I), by inserting “(or,  
10 for a fiscal year after fiscal year 2015, in accordance  
11 with the linear scale applied pursuant to section  
12 1886(n)(2)(D), equal to not more than)” after  
13 “equal to”; and

14 (3) in paragraph (4)—

15 (A) in subparagraph (A), by inserting “or,  
16 for a fiscal year after 2015, partial meaningful  
17 EHR user,” after “meaningful EHR user”; and

18 (B) in subparagraph (B), by inserting  
19 “(or, for a fiscal year after fiscal year 2015, in  
20 accordance with the linear scale applied pursu-  
21 ant to section 1886(n)(2)(D), a percent equal  
22 to at least the applicable percent)” after “appli-  
23 cable percent”.

1 **SEC. 202. ALIGNING QUALITY REPORTING IN THE MEDI-**  
2 **CARE AND MEDICAID MEANINGFUL USE PRO-**  
3 **GRAM.**

4 (a) ELIGIBLE PROFESSIONALS.—

5 (1) TESTING OF MEASURES.—Section  
6 1848(k)(2)(C) of the Social Security Act (42 U.S.C.  
7 1395w-4(k)(2)(C)) is amended by adding at the end  
8 the following new clause:

9 “(iii) TESTING.—After December 31,  
10 2015, the Secretary may only specify a  
11 clinical quality measure under this sub-  
12 paragraph if the Secretary has dem-  
13 onstrated, through field tests among mul-  
14 tiple and varied eligible professionals, that  
15 it is feasible for such professionals to elec-  
16 tronically submit valid and accurate infor-  
17 mation on the measure.”.

18 (2) DEEMED COMPLIANCE IF SATISFY PQRS.—  
19 Section 1848(o)(2)(B)(iii) of the Social Security Act  
20 (42 U.S.C. 1395w-4(o)(2)(B)(iii)) is amended by  
21 adding at the end the following:

22 “In implementing the preceding sentence, the Sec-  
23 retary shall treat an eligible professional who, for a period  
24 under subsection (k) for covered professional services fur-  
25 nished in a year after 2015, satisfies the requirements of  
26 clauses (i) or (ii) of subsection (k)(2)(C), or who satisfac-

1 torily participates in a qualified clinical data registry for  
2 a reporting period (as defined in subsection (m)(6)(C)) as  
3 determined by the Secretary pursuant to subsection  
4 (k)(2)(C) and subsection (m)(3)(D), as satisfying the re-  
5 quirement of subparagraph (A) for the corresponding pe-  
6 riod described in such subparagraph for such year.”.

7 (b) ELIGIBLE HOSPITALS.—

8 (1) TESTING OF MEASURES.—Section  
9 1886(n)(3)(B)(i) of the Social Security Act (42  
10 U.S.C. 1395ww(n)(3)(B)(i)) is amended by adding  
11 at the end the following new subclause:

12 “(III) After September 30, 2015,  
13 the Secretary may only select a clin-  
14 ical quality measure under this sub-  
15 paragraph if the Secretary has dem-  
16 onstrated, through field tests in mul-  
17 tiple and varied hospitals, that it is  
18 feasible for such hospitals to electroni-  
19 cally submit valid and accurate infor-  
20 mation on the measure.”.

21 (2) DEEMED COMPLIANCE IF SATISFY HOS-  
22 PITAL INPATIENT QUALITY REPORTING REQUIRE-  
23 MENTS.—Section 1886(n)(3)(B)(iii) of the Social  
24 Security Act (42 U.S.C. 1395ww(n)(3)(B)(iii)) is  
25 amended by adding at the end the following: “In im-

1       plementing the preceding sentence, the Secretary  
2       shall treat an eligible hospital that, for a period  
3       under subsection (b)(3)(B)(viii) for a fiscal year  
4       after fiscal year 2015, satisfies the requirements of  
5       such subsection as satisfying the requirement of sub-  
6       paragraph (A) for the corresponding reporting pe-  
7       riod for such fiscal year.”.

8       (c) APPLICATION UNDER MEDICAID.—Section  
9       1903(t)(8) of the Social Security Act (42 U.S.C.  
10       1396b(t)(8)), as amended by section 201(c), is further  
11       amended in the third sentence—

12               (1) by inserting “and the last sentence of sub-  
13       paragraph (B)(iii)” after “subparagraph (E)”; and

14               (2) by inserting “and the last sentence of sub-  
15       paragraph (B)(i)(III)” after “subparagraph (D)”.

16       **SEC. 203. EXPANDING THE HARDSHIP EXCEPTION TO THE**  
17               **MEDICARE EHR PAYMENT ADJUSTMENTS.**

18       (a) ELIGIBLE PROFESSIONALS.—Section  
19       1848(a)(7)(B) of the Social Security Act (42 U.S.C.  
20       1395w-4(a)(7)(B)) is amended to read as follows:

21               “(B) SIGNIFICANT HARDSHIP EXCEP-  
22       TION.—

23                       “(i) IN GENERAL.—Subject to clause  
24                       (ii), the Secretary may, on a case-by-case  
25                       basis, exempt an eligible professional from

1 the application of the payment adjustment  
2 under subparagraph (A) if the Secretary  
3 determines, subject to annual renewal, that  
4 compliance with the requirement for being  
5 a meaningful EHR user would result in a  
6 significant hardship, such as in the case of  
7 an eligible professional who practices in a  
8 rural area without sufficient Internet ac-  
9 cess.

10 “(ii) REQUIRED EXCEPTION.—Subject  
11 to clause (iii), beginning for 2015, the Sec-  
12 retary shall, on a case-by-case basis, ex-  
13 empt an eligible professional from the ap-  
14 plication of the payment adjustment under  
15 subparagraph (A) if the Secretary deter-  
16 mines, subject to annual renewal, the eligi-  
17 ble professional—

18 “(I) encounters unforeseen cir-  
19 cumstances (including technological  
20 difficulties and other disruptive situa-  
21 tions) that present barriers to compli-  
22 ance with the requirement for being a  
23 meaningful EHR user;

24 “(II) changes certified EHR  
25 technology vendors, or changes from

1 self-developed electronic health  
2 records to certified EHR technology  
3 from a vendor;

4 “(III) is an anesthesiologist, ra-  
5 diologist, pathologist, hospitalist, or is  
6 in any other physician specialty or  
7 subspecialty identified through rule-  
8 making as a specialty or subspecialty  
9 that presents physicians in the spe-  
10 cialty or subspecialty with unique dif-  
11 ficulties in complying with such re-  
12 quirement;

13 “(IV) is at or near retirement  
14 age (as defined by the Secretary); or

15 “(V) is not able to be in compli-  
16 ance with any such requirement be-  
17 cause the certified EHR technology  
18 used by such professional is not capa-  
19 ble of sending, receiving, and  
20 seamlessly incorporating data from  
21 other certified EHR technology.

22 “(iii) LIMITATION.—In no case may  
23 an eligible professional be granted an ex-  
24 emption under this subparagraph for more  
25 than 5 years.”.



1           (b)           ELIGIBLE           HOSPITALS.—Section  
2 1886(b)(3)(B)(ix)(II) of the Social Security Act (42  
3 U.S.C. 1395ww(b)(3)(B)(ix)(II)) is amended to read as  
4 follows:

5                           “(II)(aa) Subject to item (cc),  
6                           the Secretary may, on a case-by-case  
7                           basis, exempt a subsection (d) hos-  
8                           pital from the application of subclause  
9                           (I) with respect to a fiscal year if the  
10                          Secretary determines, subject to an-  
11                          nual renewal, that requiring such hos-  
12                          pital to be a meaningful EHR user  
13                          during such fiscal year would result in  
14                          a significant hardship, such as in the  
15                          case of a hospital in a rural area with-  
16                          out sufficient Internet access.

17                          “(bb) Subject to item (cc), begin-  
18                          ning for fiscal year 2015, the Sec-  
19                          retary shall, on a case-by-case basis,  
20                          exempt a subsection (d) hospital from  
21                          the application of subclause (I) with  
22                          respect to a fiscal year if the Sec-  
23                          retary determines, subject to annual  
24                          renewal, that the hospital encounters  
25                          unforeseen circumstances (including

1 technological difficulties and other dis-  
2 ruptive situations) that present bar-  
3 riers to compliance with the require-  
4 ment for such hospital to be a mean-  
5 ingful EHR user during such fiscal  
6 year, changes certified EHR tech-  
7 nology vendors, changes from self-de-  
8 veloped electronic health records to  
9 certified EHR technology from a ven-  
10 dor, or is not able to be in compliance  
11 with any such requirement because  
12 the certified EHR technology used by  
13 such hospital is not capable of send-  
14 ing, receiving, and seamlessly incor-  
15 porating data from other certified  
16 EHR technology.

17 “(cc) In no case may a hospital  
18 be granted an exemption under this  
19 subclause for more than 5 years.”.

20 **SEC. 204. PROMOTING INTEROPERABILITY THROUGH EHR**  
21 **CERTIFICATION PROCESS.**

22 Section 3004(a)(1) of the Public Health Service Act  
23 (42 U.S.C. 300jj-14(a)(1)) is amended by adding at the  
24 end the following new sentence: “The Secretary may not  
25 propose adoption of such standards, implementation speci-

1 fications, or certification criteria unless such standards,  
2 implementation specifications, or certification criteria, re-  
3 spectively, have been successfully tested for widespread  
4 use by end users for at least a one-year period.”.

5 **SEC. 205. IMPROVING THE TIMING OF THE ADOPTION OF**  
6 **MORE STRINGENT MEASURES OF MEANING-**  
7 **FUL USE UNDER THE MEDICARE AND MED-**  
8 **ICAID MEANINGFUL USE PROGRAM.**

9 (a) ELIGIBLE PROFESSIONALS.—Section 1848(o)(2)  
10 of the Social Security Act (42 U.S.C. 1395w–4(o)(2)), as  
11 amended by sections 201(a), is further amended—

12 (1) in subparagraph (A), in the matter fol-  
13 lowing clause (iii), by striking “shall seek” and in-  
14 serting “shall, in accordance with subparagraph (F),  
15 seek”; and

16 (2) by adding at the end the following new sub-  
17 paragraph:

18 “(F) PROVISIONS RELATING TO IN-  
19 CREASED STRINGENCY OF MEASURES.—The  
20 Secretary shall implement the last sentence of  
21 subparagraph (A) (relating to requirements for  
22 more stringent measures of meaningful use se-  
23 lected under this paragraph) in accordance with  
24 the following:

1                   “(i) ENSURING PREDICTABILITY.—  
2                   Subject to clause (ii), in the case that the  
3                   Secretary selects measures of meaningful  
4                   use, including any objectives associated  
5                   with such measures, the Secretary may not  
6                   change or modify such selection for a pe-  
7                   riod of three years.

8                   “(ii) FLEXIBILITY TO ADJUST CER-  
9                   TAIN MEASURES.—

10                   “(I) PERMISSIBLE REASON FOR  
11                   CHANGES OR MODIFICATIONS TO  
12                   MEASURES.—The Secretary may  
13                   change or modify a measure of mean-  
14                   ingful use before the end of the three  
15                   year period described in paragraph (i)  
16                   if the Secretary makes one or more of  
17                   the following determinations:

18                   “(aa) The measure may neg-  
19                   atively impact the quality of care  
20                   for, or may risk harm to, a pa-  
21                   tient.

22                   “(bb) There is a new hard-  
23                   ship demonstrated by eligible  
24                   professionals specific to the  
25                   measure.

1                   “(cc) An adjustment to the  
2                   measure is necessary to reflect  
3                   advances in science or tech-  
4                   nology.

5                   “(II) REQUEST FOR REVIEW OF  
6                   CLINICAL QUALITY MEASURES.—The  
7                   Secretary shall establish a process  
8                   under which stakeholders may, in the  
9                   case that new information is available  
10                  with respect to a clinical quality meas-  
11                  ure selected by the Secretary for qual-  
12                  ity reporting under subparagraph  
13                  (A)(iii), request that the Secretary  
14                  change or modify such measure for a  
15                  reason described in subclause (I).”.

16                  (b) ELIGIBLE HOSPITALS.—Section 1886(n)(3) of  
17                  the Social Security Act (42 U.S.C. 1395ww(n)(3)), as  
18                  amended by sections 201(b), is further amended—

19                         (1) in subparagraph (A), in the matter fol-  
20                         lowing clause (iii), by striking “shall seek” and in-  
21                         serting “shall, in accordance with subparagraph (E),  
22                         seek” ; and

23                         (2) by adding at the end the following new sub-  
24                         paragraph:

1           “(E) PROVISIONS RELATING TO IN-  
2           CREASED STRINGENCY OF MEASURES.—The  
3           Secretary shall implement the last sentence of  
4           subparagraph (A) (relating to requirements for  
5           more stringent measures of meaningful use se-  
6           lected under this paragraph) in accordance with  
7           the following:

8           “(i) ENSURING PREDICTABILITY.—  
9           Subject to clause (ii), in the case that the  
10          Secretary, selects measures of meaningful  
11          use, including any objectives associated  
12          with such measures, the Secretary may not  
13          change or modify such selection for a pe-  
14          riod of three years.

15          “(ii) FLEXIBILITY TO ADJUST CER-  
16          TAIN MEASURES.—

17                 “(I) PERMISSIBLE REASON FOR  
18                 ADJUSTMENTS TO MEASURES.—The  
19                 Secretary may change or modify a  
20                 measure of meaningful use before the  
21                 end of the three year period described  
22                 in paragraph (i) if the Secretary  
23                 makes one or more of the following  
24                 determinations:

1                   “(aa) The measure may neg-  
2                   atively impact the quality of care  
3                   for, or may risk harm to, a pa-  
4                   tient.

5                   “(bb) There is a new hard-  
6                   ship demonstrated by eligible  
7                   hospitals specific to the measure.

8                   “(cc) An adjustment to the  
9                   measure is necessary to reflect  
10                  advances in science or tech-  
11                  nology.

12                  “(II) REQUEST FOR REVIEW OF  
13                  CLINICAL QUALITY MEASURES.—The  
14                  Secretary shall establish a process  
15                  under which stakeholders may, in the  
16                  case that new information is available  
17                  with respect to a clinical quality meas-  
18                  ure selected by the Secretary for qual-  
19                  ity reporting under subparagraph  
20                  (A)(iii), request that the Secretary  
21                  change or modify such measure for a  
22                  reason described in subclause (I).”.

23                  (c) APPLICATION UNDER MEDICAID.—Section  
24                  1903(t)(8) of the Social Security Act (42 U.S.C.

1 1396b(t)(8)), as amended by sections 201(c) and 202(c),  
2 is further amended in the third sentence—

3 (1) by striking “and the last sentence of sub-  
4 paragraph (B)(iii)” and inserting “, the last sen-  
5 tence of subparagraph (B)(iii), and subparagraph  
6 (F)” ; and

7 (2) by striking “and the last sentence of sub-  
8 paragraph (B)(i)(III)” and inserting “, the last sen-  
9 tence of subparagraph (B)(i)(III), and subparagraph  
10 (E)”.

11 **SEC. 206. THREE-MONTH EHR REPORTING PERIODS FOR**  
12 **THE MEDICARE AND MEDICAID EHR INCEN-**  
13 **TIVE PAYMENT PROGRAMS.**

14 (a) EHR REPORTING PERIOD.—

15 (1) ELIGIBLE PROFESSIONALS.—Section  
16 1848(a)(7)(E)(ii) of the Social Security Act (42  
17 U.S.C. 1395w–4(a)(7)(E)(ii)) is amended by adding  
18 at the end the following: “Such period (or periods)  
19 shall consist of a three-month reporting period, with-  
20 out regard to the payment year or the stage criteria  
21 (as established under section 495.6 of title 42, Code  
22 of Federal Regulations) involved.”.

23 (2) ELIGIBLE HOSPITALS.—Subsections  
24 (b)(3)(B)(ix)(IV) and (n)(6)(A) of section 1886 of  
25 the Social Security Act (42 U.S.C. 1395ww) are



1 each amended by adding at the end the following:  
2 “Such period (or periods) shall consist of a three-  
3 month reporting period, without regard to the pay-  
4 ment year or the stage criteria (as established under  
5 section 495.6 of title 42, Code of Federal Regula-  
6 tions) involved.”.

7 (3) APPLICATION UNDER MEDICAID.—Section  
8 1903(t)(8) of the Social Security Act (42 U.S.C.  
9 1396b(t)(8)), as amended by sections 201(c),  
10 202(c), and 205(c), is further amended by adding at  
11 the end the following new sentence: “Such reporting  
12 periods shall consist of a three-month reporting pe-  
13 riod, without regard to payment year or the stage  
14 criteria (as established under section 495.6 of title  
15 42, Code of Federal Regulations.”.

16 (b) REGULATIONS.—Not later than 3 months after  
17 the date of enactment of this Act, the Secretary of Health  
18 and Human Services shall promulgate regulations to carry  
19 out the amendments made by subsection (a). Such regula-  
20 tions shall apply beginning with the 2016 EHR reporting  
21 period.

1 **SEC. 207. PROVIDING ELIGIBLE PROFESSIONALS AND ELI-**  
2 **GIBLE HOSPITALS THE OPTION TO MEET A**  
3 **MORE ADVANCED STAGE OF MEANINGFUL**  
4 **USE.**

5 (a) MEANINGFUL EHR USER.—A “meaningful EHR  
6 user”, as defined under section 495.4 of title 24, Code  
7 of Federal Regulations, shall include eligible professionals  
8 and eligible hospitals who demonstrate meaningful use of  
9 certified EHR technology by meeting the applicable objec-  
10 tives and associated measures of either of the following:

11 (1) The stage of meaningful use that the eligi-  
12 ble professional or eligible hospital is scheduled to  
13 meet during the applicable “EHR reporting period”,  
14 as such term is defined under section 495.4 of title  
15 24, Code of Federal Regulations; or

16 (2) Any other stage of meaningful use, provided  
17 that such stage of meaningful use selected by the eli-  
18 gible professional or eligible hospital is more ad-  
19 vanced than the stage of meaningful use that the eli-  
20 gible professional or eligible hospital is scheduled to  
21 meet during the applicable EHR reporting period.

22 (b) DEFINITION.—In this subparagraph, the term  
23 “stage of meaningful use” means the stage criteria estab-  
24 lished by the Secretary of Health and Human Services  
25 under section 495.6 of title 42, Code of Federal Regula-  
26 tions.