



Matrix of Select Healthcare Information Technology and Privacy Legislation, 110th Congress

As of June 2, 2008

Title	<p style="text-align: center;">S. 1693 <u>Wired for Healthcare Quality Act</u> and H.R. 3800 <u>Promoting Health Information</u> <u>Technology Act</u></p>	<p style="text-align: center;">S. 1814 <u>Health Information Privacy and</u> <u>Security Act</u></p>	<p style="text-align: center;">H.R. 2991 <u>Independent Health Record Trust</u> <u>Act of 2007</u></p>	<p style="text-align: center;">H.R. 5442 <u>"TRUST" in Health Information</u> <u>Act of 2008</u></p>
Sponsor(s)	Senators Kennedy, Enzi, Clinton, Hatch and Representatives Eshoo and Rogers	Senators Leahy and Kennedy	Representatives Moore and Ryan	Representatives Markey, Capps, and Emanuel
Overview	Includes a number of provisions to aid the advancement of a nationwide interoperable HIT system, such as authorizing funding, codifying the Office of the National Coordinator, and directing standards development.	A bill to provide individuals with access to health information of which they are a subject, ensure personal privacy with respect to health related information, promote the use of non-identifiable information for health research, impose criminal and civil penalties for unauthorized use of protected health information, to provide for the strong enforcement of these rights, and to protect States' rights.	To improve the availability of health information and the provision of health care by encouraging the creation, use, and maintenance of lifetime electronic health records of individuals in Independent Health Record Trusts (IHRT) and by providing a secure and privacy-protected framework in which such records are made available only by the affirmative consent of such individuals and are used to build a nationwide health information technology infrastructure.	To provide individuals with access to health information of which they are a subject, to ensure personal privacy, security, and confidentiality with respect to health related information in promoting the development of a nationwide interoperable health information infrastructure, to impose criminal and civil penalties for unauthorized use of personal health information, to provide for the strong enforcement of these rights, to protect States' rights, and for other purposes.
Privacy and Security Summary	<p>1) AHIC must recommend a policy framework for HIT that includes protection of individually identifiable health information, including how patients will be notified if information is wrongly disclosed;</p> <p>2) HIT systems, to be eligible for federal grants, must protect the privacy and security of health information and preserve an audit record of individual access to record sets;</p> <p>3) Operators of "health information electronic databases" will be considered "covered entities" under HIPAA, and subject to the HIPAA privacy regulations;</p>	<p>1) The Office of Health Information Privacy (the Office) is charged with outlining punishments for knowingly distributing protected health information (PHI) in violation of the privacy provisions in the bill;</p> <p>2) Title 1 outlines specific individual rights, such as: recognizes individuals' right to privacy and security, control or withhold protected health information, to opt out of any local, regional, or nationwide health information network, revoke access to anyone possessing their health data, and bring</p>	<p>1) To participate in an IHRT, an individual must voluntarily submit their information to the IHRT and enter into a privacy protection agreement. No employer, insurance issuer or other entity can require an individual to participate. Membership in the IHRT cannot be restricted, including on the basis of health conditions;</p> <p>2) Affirmative express consent of patient required for access to individual information;</p> <p>3) IHRT has a fiduciary duty to act for</p>	<p>1) Sets forth specific requirements regarding maintaining a HIT system that is private, secure, and confidential. Title 1 outlines explicit privacy rights for the consumer, such as:</p> <ul style="list-style-type: none"> - Recognition of individuals' right to health information privacy and security - Opportunity to exercise the right through informed consent - Choice of health plan cannot be conditioned upon providing informed consent - Individuals can inspect, copy, or correct inaccuracies in their health information

<p>and</p> <p>4) Within a year of enactment, GAO will report on the necessity and feasibility of requiring health providers, including providers of HIT, to notify patients of the wrongful disclosure of their identifiable information.*</p>	<p>civil charges to anyone knowingly violating privacy and security provisions;</p> <p>3) Requires a data disclosure form to explain to patients: who handles their personal health data, risks inherent to health data exchange, the process by which patients may modify their authorization of who may view or distribute any part of their health information, and calls for the Secretary of HHS to explore the extent to which secondary data use is important to further health research;</p> <p>4) Requires informed consent from patient for disclosure of PHI for treatment and payment. A single authorization can authorize multiple disclosures; and</p> <p>5) Requires informed consent and authorization for use of PHI other than for treatment and payment. Separate authorization required for marketing.*</p>	<p>the benefit and interest of the participant. Penalties for breach include loss of certification, fines of \$50,000 or less, prison terms of 5 years or less;</p> <p>4) The IHRT has no legal or equitable interest in the electronic health record;</p> <p>5) A privacy protection agreement is developed between the IHRT and the individual to govern the access and transfer of information, including use and reuse of the information;</p> <p>6) An audit trail of any data user must be maintained in the record; and</p> <p>7) Health entities must be in compliance with HIPAA privacy regulations by providing the participant's electronic health record directly to the IHRT.*</p>	<ul style="list-style-type: none"> - Sensitive health information can be segregated to limit access - Notification of actual or suspected security breaches - Audit trails of all electronic disclosures - Individuals must receive written notification of the privacy practices of entities using or disclosing their information - Entities must establish and maintain appropriate security safeguards - Entity must publicize all data partners with which they have entered into contracts - Entities must establish and update their risk management process to protect against vulnerabilities to privacy and security of such information - Personal health information can only be used for marketing if explicit, specific, and separate authorization is provided; <p>2) Required informed consent from patient for disclosure of personal health information for treatment and payment. A single authorization can authorize multiple disclosures; and</p> <p>3) Requires informed consent and authorization for use of personal health information other than for treatment and payment. Separate authorization required for marketing.*</p>
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* National Partnership for Women & Families, *Side-by-Side Summary of Selected Health Information Technology and Privacy Legislation*. As of February 25, 2008.