Comparison of Ways & Means and Energy & Commerce Versions of HR 4157 as reported by the Health Subcommittees

Subject	Ways & Means Health Subcommittee	Energy & Commerce Health Subcommittee
Short Title	**Section 1.** Health Information Technology Promotion Act of 2006	**Section 1**. Better Health Information System Act of 2006
Codification of ONC	**Section 2.** National Coordinator and office are codified. Establishes goals of a nationwide interoperable HIT infrastructure: 1) Improves health care quality, reduces medical errors, increases the efficiency of care, and advances the delivery of appropriate, evidence-based health care services; 2) Promotes wellness, disease prevention, and management of chronic illnesses by increasing the availability and transparency of information related to the health care needs of an individual for such individual; 3) Ensures that appropriate information necessary to make medical decisions is available in a usable form at the time and in the location that the medical service involved is provided; 4) Produces greater value for health care expenditures by reducing health care costs that result from inefficiency, medical errors, inappropriate care, and incomplete information; 5) Promotes a more effective marketplace, greater competition, greater systems analysis, increased choice, enhanced quality, and improved outcomes in health care services; 6) Improves the coordination of information and the provision of such services through an effective infrastructure for the secure and authorized exchange and use of health care information; and 7) Ensures that the confidentiality of individually identifiable health information of a patient is secure and protected. Duties of the National Coordinator include: 1) Strategic planner for Interoperable HIT (maintaining, directing, & overseeing the continuous improvement of a strategic plan to guide nationwide implementation of interoperable HIT in public & private sector) 2) Principal Advisor to HHS Secretary 3) Coordinator of Federal Government activities	**Section 2. Title I. Section 101.** ONC codification language is identical. Goals of a nationwide interoperable HIT infrastructure are similar, but not identical: 1) Includes identical language of # 2, 4, 5, 6 2) #1 is virtually identical, but also includes "promotes data accuracy." 3) #3 is similar, but rather than ensuring appropriation information, goal would "promote the availability of appropriation and accurate information." 4) #7 is similar, but rather than ensuring confidentiality, provides that a structure "is consistent with legally applicable requirements with respect to securing and protecting" confidentiality 5) Contains additional goals: a) With respect to health information of consumers, advances the portability of such information and the ability of such consumers to share and use such information to assist in the management of their health care; b) Promotes the creation and maintenance of transportable, secure, internet-based personal health records, including promoting the efforts of health care payers and health plan administrators to provide such records on behalf of plan members; c) Promotes access to and review of the EHR of a patient by such patient; d) Promotes health research and health care quality research and assessment; and e) Promotes the efficient and streamlined development, submission, and maintenance of EHR clinical trial data. Duties of the National Coordinator are identical, except that there is no duty regarding development and certification of standards. E&C did not include any language in the bill regarding certification of standards or products.

	This role includes providing for "development and approval of standards" and "certification and inspection of HIT products, exchanges and architectures." These standards would preempt State standards. 4) Intragovernmental Coordinator (using the missions and expertise of various federal agencies to avoid duplication of efforts) 5) Advisor to Office of Management and Budget	
Stark/Anti-Kickback	**Section 3.** Provides exceptions and safe harbors for entities to provide physicians HIT if made without condition that: 1) limits or restricts the use of HIT to services by the physician to individuals receiving services at location of entity providing technology; 2) limits or restricts use of HIT in conjunction with other HIT; or 3) takes into account volume or value of referrals if there is a written agreement signed by the entity and physician that specifies remuneration and that remuneration is made for the "primary purpose of better coordination of care or improvement of health care quality or efficiency." Defines HIT as: hardware, software, license, intellectual property, equipment or other IT (including new versions, upgrades, & connectivity) or related services used for the electronic creation, maintenance, and exchange of clinical health information No interoperability requirement. State laws are preempted. Civil monetary provisions apply only to hospitals and critical access hospitals, consistent with current law. Criminal penalties apply to all entities. Effective 180 days after enactment. Not later than the effective date, HHS must promulgate rules to implement. Within 3 years of enactment, HHS directed to study & report to Congress re impact of safe harbors, in particular: effectiveness in increasing HIT adoption; types of HIT provided under the exceptions; and extent to which business or financial relationships between providers have changed as a result of safe harbors and exception in a way that affects health care system, choices of consumers; or health care expenditures.	**Section 2. Title III. Sections 301-302.** Provisions related to transfers to physicians virtually identical, but explicitly applies to HIT or related installation, maintenance, support, or training services. Includes additional conditions: In #3, would be "primary purpose of better coordination of care or improvement of health care quality, efficiency or research." Adds #4 - the entity providing the remuneration (or a representative of such entity) has not taken any action to disable any basic feature of hardware or software component that would permit interoperability. Definition of HIT similar. Almost identical in list of items (it also includes "rights") but rather than "use" clause at the end, requires that the item be "designed primarily for the electronic creation maintenance, or exchange of health information to better coordinate care or improve health care quality, efficiency, or research." No interoperability requirement. State laws are preempted. Applicability of civil and criminal penalties identical. Effective date 120 days after enactment. Additionally, would allow any person to provide HIT or related installation, maintenance, support, or training services to Medicare beneficiaries without an agreement or condition that limits or restricts the use of HIT in conjunction with other HIT, so long as the providing entity "has not taken any action to disable any basic feature of any hardware or software that would permit interoperability, and if the remuneration will assist with the individual's health care." Civil monetary penalties would apply for violation. Reporting requirement virtually identical, but explicitly requires the study to examine how the business or financial relationships either "adversely affects or benefits" the health care

		system or choices available to consumers.
Privacy	**Section 4.** HHS directed to study the "impact of variation" in current Federal and State security and confidentiality laws. Specifically, the degree to which the laws are "consistent"; if there are variations, the strengths and weaknesses of the laws; and the extent to which the variation may adversely affect the privacy of individually identifiable information or the reliability of the information. Within 18 months of enactment, HHS must report to Congress regarding the need for improving consistency in the laws and, if there is a need, recommendations for doing so. If Congress doesn't act on the HHS recommendations within 18 months of receiving the report, then HHS can, by rule, implement the recommendations if HHS determines that changes in the law are needed "to be more consistent and to better protect or strengthen the security and confidentiality of patient health information" exchanged electronically. Any federal rules adopted would preempt State laws.	**Section 2.** Includes a HIPAA savings provision, meaning that more stringent State laws will continue to apply. No other provisions.
ICD-10	**Section 5**. HHS directed to issue final rules by April 1, 2007 to provide for moving to ASC X12, version 5010 (as reviewed by NCVHS), NCPDP (as reviewed by NCVHS), and ICD-10. Compliance with the new 5010 and NCPDP standards would be required beginning April 1, 2009 for 5010 and October 1, 2009 for ICD-10.	**Section 2. Title 2. Section 202.** HHS must notice in the Federal Register, the applicability of ASC X12 version 5010 (as reviewed by NCVHS) and NCPDP (as reviewed by NCVHS as of 4/1/2008) to apply to transactions on or after 4/1/2009. No ICD-10 provisions.
Procedures for Updating Standards	**Section 6.** Establishes a new expedited consideration for additions and modifications of HIPAA standards on data exchange. Modifications include new versions and upgrades. HHS must provide for expedited process to develop and approve standard additions and modifications. HHS may use expedited process if HHS determines that: 1) Standards setting body requests publication in the Federal Register for a proposed standard modification or addition, and the organization receives and responds to the comments before submitting the proposal to NCVHS and makes the responses to comments publicly available, and submits the final proposal to NCVHS for consideration. If an organization requests publication, HHS must do so within 30 days of receipt. 2) NCVHS notices the receipt of a proposal and allows reasonable time for public testimony and recommends approval of the proposal. Within 90 days of receipt	**Section 2. Title 2. Section 201.** Virtually identical provisions. The standards setting body also would have to make the public comments received available to HHS. Does not have "no judicial review" provision.

	from a standards setting body, NCVHS must send recommendation to Secretary. The expedited process means that Secretary must accept or reject the proposal with in 90 days of receipt from NCVHS, and must publish notice of the decision with 30 days of the decision. Allows standards setting body to voluntarily request that HHS publish in the Federal Register a notice of: the initiation of a process to add or modify a standards or the preliminary draft of an addition or modification. No judicial review of the decision.	
AHIC	**Section 7.** Within 1 year of enactment, HHS must report to Congress on AHIC, including: 1) A description of the accomplishments of AHIC, with respect to the promotion of a NHIN and the increased adoption of HIT; 2) Information identifying the practices that are used to protect health information and to guarantee confidentiality and security of such information; 3) Information on the progress in: a) establishing uniform industry-wide HIT standards; b) achieving an internet-based NHIN; c) achieving interoperable HER adoption across health providers; and d) making available technological and other innovations to ensure the security and confidentiality of health information in the promotion of HIT; and 4) Recommendations for transition of AHIC to a permanent entity, including a) schedule for transition; b) options for structuring entity as either public-private or private; c) collaborative role of Federal Government; and d) ongoing responsibilities, such as providing leadership and planning in establishing standards, certifying HIT, and providing long-term governance for health care transformation through technology.	**Section 2. Title 1. Section 102.** Reporting provisions are similar, but not identical. Timing identical. To be included in the report: #1 is identical. #2 is different and reflects absence of privacy requirements. "Information on how model privacy and security policies may be used to protect confidentiality of health information, & an assessment of how existing policies compare to such model policies." #3 is virtually identical, but excludes 3(d) #4 describes AHIC transition to a "longer-term advisory and facilitation entity" and includes 4(a) – (c). (d) is replaced with: "steps for (i) continued leadership in the facilitation of guidelines or standards; (ii) the alignment of financial incentives; and (3) long-term plan for health care transformation through HIT" Adds (e): the elimination or revision of the functions of AHIC during the development of NHIN.
Strategic Plan for Coordinating HIT	**Section 8.** Within 180 of enactment, HHS, in consultation with public and private entities involved in HIT, must develop a strategic plan related to the need for coordination in implementing HIT standards, HIPAA transaction standards, ICD-10. It must include plan for federal agency coordination.	No provisions.
Telehealth	HHS directed to study the expansion of telemedicine technologies and services to home health agencies and other settings.	No provisions.

Interoperability Planning Process & Federal Collection Activities	No provisions.	**Section 2. Title 1. Section 103.** By 12/31/06, ONC must publish a strategic plan, including a schedule, for the assessment and the endorsement of "core interoperability guidelines" for "significant use cases". Must consult with AHIC and "other appropriate entities." It can be updated periodically. By 8/31/09, ONC must endorse core interoperability guidelines for significant use cases. Compliance is voluntary. Interoperability guidelines are those to improve and promote the interoperability of HIT for purposes of electronically accessing & exchanging health information. Includes standards, architectures, software for identification, authentication & security, and other information needed to ensure the reproducible development of common solutions across disparate entities. Significant use cases are categories identified by the ONC that are significant uses or purposes for interoperable HIT, such as exchange of lab info, e-prescribing, clinical research and EHRs. By 8/31/08, ONC must survey the capability of entities to exchange electronic health information by appropriate significant use case. Must include: the extent to which the type of health information, use of such information, or any other appropriate characterization that may relate capability of entities to exchange information consistent with ways to improve interoperability and core interoperability guidelines. Survey results are to be public. With 3 years of ONC endorsement of core interoperability guidelines, federal agencies must be able to receive information consistent with the guidelines. In consultation with federal agencies, HHS and President must take measures to advance health quality and research by using non-identifiable health information in health research. Must comply with applicable privacy laws. Must seek public comment. For the 5 years after federal health information collection activities begin, ONC must annually review the operation of federal collection and purchases (and planned purchases) of HIT. Each year of review, ONC must also report to the President & Congress on ways to streamline federal systems used for collection and submission of health information; improve efficiency; increase ability to assess health quality; and reduce health care costs.
Maintaining Electronic	No provisions.	**Section 2. Title I. Section 104.** Any health care provider that participates in a health care program that receives federal funds must be allowed to maintain their records electronically

Records		under the program. Doesn't require electronic maintenance of information. Doesn't require electronic maintenance or submission. Preempts contrary State laws. Doesn't prevent States from permitting or requiring providers to maintain or submit records electronically. There is no requirement that the system has to be interoperable initially.
Community Health Information Exchanges	No provisions.	**Section 2. Title I. Section 105.** HHS must study and report to Congress within 1 year regarding development, operation, and implementation of State, regional, and community health information exchanges. Including: 1) Profiles of current stages of exchanges re: development, operation, implementation, organization & governance; 2) Impact of exchanges on healthcare quality, safety, & efficiency, including: availability at point of care to make timely medical decisions; benefits re wellness, disease prevention & chronic disease management; public health preparedness & response; widespread adoption of interoperable HIT; contribution to achieving internet-based NHIN; consumer access & consumer use of their health information; 3) Best practice models for financing, incentivizing & sustaining exchanges; 4) Common principles, policies, tools & standards used by public & privates sector; 5) Description of areas in which federal govt leadership is needed to support growth and sustainability of exchanges.