

109TH CONGRESS  
2D SESSION

# H. R. 6289

To establish a program to provide financial incentives for the establishment of interactive personal health records.

---

## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2006

Mr. KENNEDY of Rhode Island introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To establish a program to provide financial incentives for the establishment of interactive personal health records.

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.**

4 This Act may be cited as the “Personalized Health  
5 Information Act of 2006”.

6 **SEC. 2. PERSONAL HEALTH RECORD (PHR) INCENTIVE**  
7 **PROGRAM.**

8 (a) ESTABLISHMENT.—The Secretary of Health and  
9 Human Services (in this section referred to as the “Sec-

1 retary”) shall establish a program (in this section referred  
2 to as the “program”) to provide financial incentives for  
3 the establishment of interactive qualifying personal health  
4 records for Medicare and other patients and their health  
5 care providers in order to—

6           (1) provide patients (or their authorized rep-  
7           resentatives) access to and control over their per-  
8           sonal health data and information and educational  
9           information so as to become healthier and more in-  
10          formed and engaged health care consumers;

11          (2) make available to authorized health care  
12          providers a more accurate minimum data set of pa-  
13          tient information at all points of care;

14          (3) protect patient security and privacy;

15          (4) improve patients’ adherence to evidence-  
16          based care guidelines, preventive care, and screening  
17          protocols, thereby improving health outcomes and  
18          lowering health care costs;

19          (5) improve medication adherence by patients,  
20          thereby improving health outcomes and lowering  
21          health care costs;

22          (6) provide patients with more accurate, timely,  
23          and appropriate information related to their health  
24          care benefits and related administrative information;

1           (7) improve the quality and efficiency of com-  
2           munication between health care providers and pa-  
3           tients;

4           (8) create a direct communications channel to  
5           patients in the event of health emergencies; and

6           (9) provide access with appropriate privacy  
7           safeguards to de-identified health care information  
8           to evaluate and advance public health and health re-  
9           search goals.

10       (b) INCENTIVE PAYMENTS.—

11           (1) IN GENERAL.—Under the program, each  
12           qualified physician (as defined in subsection (c))  
13           that has a qualifying patient (as defined in sub-  
14           section (d)) shall receive an incentive payment from  
15           the PHR Incentive Fund established under sub-  
16           section (f). In the case of such a patient of more  
17           than one physician, each such physician (who does  
18           not share in the same group practice, as defined by  
19           the Secretary, with another qualifying physician of  
20           that patient) may receive such a payment.

21           (2) AMOUNT OF PAYMENT.—

22           (A) IN GENERAL.—Except as otherwise  
23           provided, the amount of the incentive payment  
24           to a qualifying physician under the program

1 shall be at least \$2 per year for each qualifying  
2 patient of the physician.

3 (B) ADJUSTMENT; LIMITATION.—The Sec-  
4 retary shall annually retrospectively set the in-  
5 centive payment amount based on the amount  
6 of the contributions into the PHR Incentive  
7 Fund. The Secretary shall pay PHR incentives  
8 payments only from such Fund.

9 (C) ANNUAL LIMITATION.—The Secretary  
10 shall establish a maximum annual payment  
11 under this section to any qualifying physician.

12 (3) DURATION.—Payments shall be made under  
13 the program during a 3-year period beginning on the  
14 date of implementation of the program, except that  
15 the Secretary may continue the program for an addi-  
16 tional two years if the Secretary determines that  
17 continuation of the program for such period would  
18 be a cost-effective way of achieving the goals of this  
19 Act.

20 (4) PROGRAM EDUCATION.—

21 (A) PUBLICATION OF NAMES QUALIFYING  
22 PHYSICIANS.—In order to assist patients in  
23 identifying health care providers that use quali-  
24 fying personal health records, Secretary shall  
25 publish on the official website for the Centers

1 for Medicare & Medicaid Services (CMS), or  
2 other online locations of the Secretary's choos-  
3 ing, a list of qualifying physicians who partici-  
4 pate in the Medicare program and who have re-  
5 ceived incentive payments under this section.

6 (B) EDUCATION.—

7 (i) PATIENT EDUCATION.—The Sec-  
8 retary shall, in consultation with appro-  
9 priate organizations that represent health  
10 care consumers, take steps to educate  
11 Medicare beneficiaries and other patients  
12 about the health and convenience benefits  
13 of qualifying personal health records.

14 (ii) PROVIDER EDUCATION.—The Sec-  
15 retary shall take steps to educate Medicare  
16 providers about the patient, provider and  
17 overall health care benefits of using quali-  
18 fying personal health records.

19 (c) QUALIFIED PHYSICIAN DEFINED.—For purposes  
20 of this section, the term “qualified physician” means a li-  
21 censed physician (or other licensed health care provider,  
22 such as a clinic, designated by the Secretary) that meets  
23 the following requirements, with respect to a qualifying  
24 patient of that physician and the qualifying personal  
25 health record of that patient:

1           (1) The physician (or provider) uses the QPHR  
2           for electronic patient registration for encounters, in-  
3           cluding taking demographic information, insurance  
4           information, medication list, problems list, family  
5           history, and other information included within the  
6           QPHR.

7           (2) The physician (or provider) implements  
8           policies to authenticate the patient's identities pur-  
9           suant to standards established by the Secretary in  
10          order to enable the QPHR to receive electronic data  
11          feeds from appropriate third party sources, such as  
12          pharmacies, pharmacy benefit managers, labora-  
13          tories, and health plans, including the Medicare pro-  
14          gram.

15          (3) The physician (or provider), or authorized  
16          representative, updates the diagnosis and medication  
17          list (including all current medications and new medi-  
18          cations prescribed or provided as samples) in the  
19          QPHR after each patient encounter, if appropriate  
20          and authorized by the patient, either by direct entry  
21          or through a data sharing arrangement using an ap-  
22          propriate electronic means, such as an electronic  
23          medical record or e-prescribing.

24          (4) The physician (or provider) uses the QPHR  
25          as appropriate and authorized by the patient to com-

1       municate appropriate patient education and care  
2       management messages.

3           (5) There is submitted to the Secretary by the  
4       physician (or by the administrator of the QPHR on  
5       the physician's behalf) on a regular basis, but no  
6       less frequently than annually, a report documenting  
7       the number of such qualifying patients of the physi-  
8       cian (or provider) and the use of QPHRs of such pa-  
9       tients.

10          (6) The physician (or provider) meets other re-  
11       quirements as the Secretary may establish.

12       (d) QUALIFYING PATIENT DEFINED.—For purposes  
13       of this section, the term “qualifying patient” means an  
14       individual for whom a qualifying personal health record  
15       has been established and is in operation under the pro-  
16       gram and who is a Medicare beneficiary or is covered  
17       under a health benefits or other plan the sponsor of which  
18       is participating as a Fund partner under this section.

19       (e) QUALIFYING PERSONAL HEALTH RECORD  
20       (QPHR).—

21           (1) DEFINITION.—For purposes of this section,  
22       the terms “qualifying personal health record” and  
23       “QPHR” mean a record of health care related infor-  
24       mation that meets the following requirements:

25           (A) CONTROL.—

1 (i) IN GENERAL.—The record is con-  
2 trolled solely by the patient (or the pa-  
3 tient’s authorized representative), with the  
4 patient (or the patient’s authorized rep-  
5 resentative) able to access online, print,  
6 copy to electronic media, or provide online  
7 access to authorized third parties, includ-  
8 ing health care providers, to all individ-  
9 ually identifiable health information held in  
10 the record at any time.

11 (ii) ACCESS RIGHTS.—The record  
12 guarantees the control of the patient (or  
13 the patient’s authorized representative)  
14 over who accesses the patient’s individually  
15 identifiable information contained in the  
16 record.

17 (iii) TERMINATION RIGHTS.—The  
18 record allows a patient to terminate the  
19 further use of the record service at any  
20 time, including elimination of the patient’s  
21 personal health information in the control  
22 of the administrator of the record. Nothing  
23 in this clause shall require a health care  
24 provider to eliminate a patient’s personal

1 health information that is in a medical  
2 record maintained by the provider.

3 (iv) TRANSPORTABILITY.—The pa-  
4 tient’s rights to control of the record under  
5 this subparagraph are not affected by  
6 changes in relationships with particular  
7 providers or health plans.

8 (B) SECURITY.—The record meets min-  
9 imum security standards, including the rules  
10 promulgated under section 264(e) of the Health  
11 Insurance Portability and Accountability Act of  
12 1996 (HIPAA) and other such minimum stand-  
13 ards as identified by the Secretary under para-  
14 graph (2), and the administrator of the record  
15 complies with any security and privacy stand-  
16 ards, policies, and practices adopted under such  
17 paragraph.

18 (C) INTEROPERABILITY.—The record com-  
19 plies with interoperability data standards speci-  
20 fied by the Secretary, to ensure the capability  
21 to integrate with other QPHRs and other  
22 sources of individual data, such as electronic  
23 health records, pharmacies, pharmacy benefit  
24 managers, and health plans.

1 (D) WEB-BASED.—The record is web-  
2 based and capable of sharing information be-  
3 tween patients and their providers, and ena-  
4 bling patient-provider communication.

5 (E) MESSAGING CAPABILITIES.—

6 (i) EDUCATION REMINDERS.—Subject  
7 to clause (v), the record is capable of send-  
8 ing patient-specific patient education, re-  
9 minders, and clinical messages to patients  
10 based upon data in the record, but such  
11 messages shall not be sent unless such  
12 messages comply with standards adopted  
13 under paragraph (3). The Secretary shall  
14 work with the Secretary of Homeland Se-  
15 curity and the Director of the Centers for  
16 Disease Control and Prevention to opti-  
17 mize the public health and emergency re-  
18 sponse capabilities of the networks created  
19 by QPHRs.

20 (ii) FEDERAL REMINDERS.—Subject  
21 to clause (v), the record provides for the  
22 sending on behalf of Federal agencies of  
23 objective, accurate, patient-specific mes-  
24 sages to patients concerning their health  
25 care or benefits, but such messages shall

1 not be sent unless the messages comply  
2 with standards adopted under paragraph  
3 (3).

4 (iii) FUND PARTNER MESSAGES.—  
5 Subject to clause (v), the record provides  
6 for the sending, on behalf of Fund part-  
7 ners who contribute to the Fund, appro-  
8 priate patient-specific messages to con-  
9 sumers (with whom such partners have  
10 pre-existing relationships) concerning the  
11 patients' health care, medications, treat-  
12 ments, medical devices or benefits, but  
13 such messages shall not be sent unless  
14 such messages comply with standards  
15 adopted under paragraph (3).

16 (iv) HEALTH PLAN NOTIFICATION.—  
17 The QPHR service notifies, no less fre-  
18 quently than quarterly, each Fund partner  
19 that administers a health benefit plan of  
20 the individuals who are enrolled in the plan  
21 and who have a QPHR established.

22 (v) LIMITATION ON COMMERCIAL SO-  
23 LICITATION.—The record does not allow  
24 any commercial solicitations, marketing, or  
25 messages to patients unless the patient is

1 a patient or beneficiary of the sender, uses  
2 the sender's product with a prescription or  
3 recommendation of a provider, or has some  
4 other pre-existing relationship (as defined  
5 by the Secretary), or other messages that  
6 do not comply with standards adopted  
7 under paragraph (3), and the record en-  
8 sures that every message clearly identifies  
9 the source of the content.

10 (vi) PATIENT OPT-OUT.—The record  
11 allow a patient (or patient's authorized  
12 representative) to opt out of receiving mes-  
13 sages entirely or from particular sources.

14 (F) PUBLIC HEALTH ANALYSIS AND RE-  
15 SEARCH.—The record is capable of providing  
16 de-identified data for public health analysis and  
17 for research purposes. The Secretary shall con-  
18 sult with the Commissioner of the Food and  
19 Drug Administration, the Director of the Na-  
20 tional Institutes of Health, the Director of the  
21 Centers for Disease Control and Prevention,  
22 and the Administrator of the Agency for  
23 Healthcare Research and Quality to optimize  
24 the public health and post-market surveillance  
25 capabilities of the networks created by QPHRs.

1           (2) PRIVACY AND CONSUMER PROTECTION  
2 STANDARDS.—

3           (A) IN GENERAL.—The Secretary shall set  
4 minimum security, privacy and data use stand-  
5 ards for QPHRs, in addition to such standards  
6 as required under regulations promulgated  
7 under section 264(e) of the Health Insurance  
8 Portability and Accountability Act of 1996  
9 (HIPAA), in order to optimally protect and  
10 safeguard patient health care information.

11           (B) CONSUMER PROTECTION BOARD.—The  
12 Secretary shall establish a consumer protection  
13 board, a majority of whose members represent  
14 health care consumers, including individuals  
15 with chronic diseases and with mental and ad-  
16 dictive disorders. Such board shall—

17           (i) recommend to the Secretary min-  
18 imum standards to protect patient-identifi-  
19 able information stored in or transmitted  
20 from a QPHR;

21           (ii) recommend procedures to ensure  
22 the objectivity, relevance, and accuracy of  
23 messages sent to patients via their  
24 QPHRs; and

1 (iii) have the right to request and re-  
2 view the security and privacy capabilities,  
3 policies and practices of those entities ad-  
4 ministering QPHRs.

5 (3) MESSAGE STANDARDS.—The Secretary  
6 shall establish minimum standards to ensure the ob-  
7 jectivity, accuracy and relevance of messages sent to  
8 individual patients under paragraph (1)(E) from a  
9 QPHR and to protect against the use of such  
10 records by Fund partners for commercial sollicita-  
11 tions or marketing. Such standards shall incorporate  
12 existing standards established by the Food and Drug  
13 Administration or other Federal agencies.

14 (f) PHR INCENTIVE FUND.—

15 (1) IN GENERAL.—The Secretary shall establish  
16 a PHR Incentive Fund (in this section referred to  
17 as the “PHR Incentive Fund” or “Fund”). The  
18 Fund may receive contributions from Fund partners  
19 for the sole purpose of paying PHR incentives under  
20 subsection (a), conducting annual studies under sub-  
21 section (g), and otherwise carrying out the program.

22 (2) FUNDING PARTNERS.—

23 (A) IN GENERAL.—The Secretary may  
24 enter into contracts with public or private pay-  
25 ers, drug manufacturers, device manufacturers,

1 or other public or private entities (in this sec-  
2 tion referred to as “Fund partners”) to allow  
3 the Fund to receive contributions in accordance  
4 with this subsection and other terms deter-  
5 mined by the Secretary.

6 (B) FEDERAL PARTNERS.—The Secretary  
7 shall seek the involvement and contributions of  
8 the Food and Drug Administration, the Centers  
9 for Disease Control and Prevention, the Agency  
10 for Healthcare Research and Quality, and the  
11 Department of Homeland Security to maximize  
12 the effectiveness of the QPHRs in meeting the  
13 health, national security, emergency response,  
14 biosurveillance, and research goals of the Fed-  
15 eral government in a manner consistent with  
16 this Act.

17 (C) PARTNER ACCOUNTS.—The Fund shall  
18 include an account for each Fund partner, in-  
19 cluding Medicare, separately accounting for  
20 each Fund partner’s contributions to the Fund.  
21 Incentive payments shall be debited from each  
22 account in accordance with this subsection.  
23 Amounts in the account of a Fund partner that  
24 are not paid in fiscal year remain available for

1 payment from such account in the subsequent  
2 fiscal year.

3 (D) CONTRIBUTION LEVELS.—Contribu-  
4 tion levels to the Fund by Fund partners shall  
5 be set annually by the Secretary, except that  
6 the contribution level for the first year shall be  
7 as follows:

8 (i) MEDICARE CONTRIBUTION.—The  
9 Secretary shall contribute \$2 for each  
10 Medicare beneficiary for whom any PHR  
11 incentive payment is made during such  
12 year by transferring the appropriate  
13 amount from the Medicare trust funds  
14 under parts A and B of the Medicare pro-  
15 gram, in such proportion as the Secretary  
16 may specify.

17 (ii) FDA-MESSAGING CONTRIBU-  
18 TIONS.—Each manufacturer shall con-  
19 tribute \$2 for each qualifying patient for  
20 each medication adherence program for  
21 which one or more messages are sent  
22 under subsection (e)(1)(E)(iii) in the year.

23 (iii) OTHER CONTRIBUTIONS.—Any  
24 other fund partner shall contribute \$2 for  
25 each qualifying patient for whom a PHR

1           incentive payment is made, except that the  
2           Secretary may establish other contribution  
3           levels for device manufacturers or other  
4           Fund partners that employ messages sent  
5           under subsection (e)(1)(D)(iii).

6           (E) CHARGING FUND PARTNERS.—Each  
7           Fund partner’s account shall be debited accord-  
8           ing to the same formula with which contribu-  
9           tions were determined. In the event that a  
10          Fund partner’s account does not have a suffi-  
11          cient balance to cover the Fund partner’s liabil-  
12          ity, the Fund partner shall make a supple-  
13          mental contribution to the Fund to cover the  
14          shortfall plus such penalty as the Secretary may  
15          assess.

16          (F) LIMITATION ON BENEFITS.—Contribu-  
17          tions by a Fund partner to the Fund shall con-  
18          fer no preferential access to data or information  
19          or any other benefit to the partner other than  
20          public acknowledgment under paragraph (5)  
21          and the ability to have messages sent to quali-  
22          fying patients under subsection (e)(1)(D)(iii).

23          (3) PUBLICATION OF FUND CONTRIBUTORS.—  
24          The Secretary shall publish on the official website of

1 the Centers for Medicare & Medicaid Services a list  
2 of Fund partners that have contributed to the Fund.

3 (g) ANNUAL STUDY.—

4 (1) IN GENERAL.—The Secretary shall provide  
5 for an annual study to assess changes patient en-  
6 gagement in their QPHR, behavior changes, changes  
7 in health outcomes, and cost savings resulting from  
8 implementation of the program. The study shall in-  
9 clude collection of aggregate data documenting the  
10 number of qualifying patient, number and kind of  
11 messages sent to patients, the percentage of mes-  
12 sages opened by patients, and other measures of the  
13 program’s effectiveness.

14 (2) FUNDING.—There are available from the  
15 PHR Incentive Fund not to exceed \$2,000,000 each  
16 year to pay for the annual study under paragraph  
17 (1). Amounts so used shall be debited from each  
18 Fund partner’s account on a pro-rata basis.

○