

115TH CONGRESS  
1ST SESSION

# S. 2059

To amend title XVIII of the Social Security Act to provide for a 90-day period for the determination of whether a MIPS eligible professional or eligible hospital is a meaningful EHR user and to remove the all-or-nothing approach to meaningful use, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 2, 2017

Mr. THUNE (for himself, Mr. ALEXANDER, Mr. BURR, Mr. ENZI, Mr. ROBERTS, and Mr. CASSIDY) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to provide for a 90-day period for the determination of whether a MIPS eligible professional or eligible hospital is a meaningful EHR user and to remove the all-or-nothing approach to meaningful use, 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.**

4 This Act may be cited as the “EHR Regulatory Relief  
5 Act”.

1 **SEC. 2. 90-DAY PERIOD FOR DETERMINATION OF WHETHER**  
2 **A MIPS ELIGIBLE PROFESSIONAL OR AN ELI-**  
3 **GIBLE HOSPITAL IS A MEANINGFUL EHR**  
4 **USER.**

5 (a) INCLUSION OF 90-DAY PERFORMANCE PERIOD  
6 FOR ADVANCING CARE INFORMATION PERFORMANCE  
7 CATEGORY UNDER MIPS.—Section 1848(q)(4) of the So-  
8 cial Security Act (42 U.S.C. 1395w-4(q)(4)) is amended  
9 by adding at the end the following new sentence: “For  
10 purposes of determining a performance period for the per-  
11 formance category described in paragraph (2)(A)(iv), and  
12 for purposes of the performance period described in sub-  
13 section (o)(2)(D), such term shall also include a contin-  
14 uous 90-day period (as specified by the Secretary in rule-  
15 making), in addition to any other period (or periods) speci-  
16 fied by the Secretary.”.

17 (b) FOR AN ELIGIBLE HOSPITAL FOR THE 2017  
18 EHR REPORTING PERIOD AND SUBSEQUENT REPORTING  
19 PERIODS AND PAYMENT ADJUSTMENTS FOR FISCAL  
20 YEAR 2019 AND SUBSEQUENT FISCAL YEARS.—Section  
21 1886(b)(3)(B)(ix)(IV) of the Social Security Act (42  
22 U.S.C. 1395ww(b)(3)(B)(ix)(IV)) is amended by adding at  
23 the end the following new sentence: “For the EHR report-  
24 ing period with respect to fiscal year 2019 and each subse-  
25 quent fiscal year, such term shall also include any contin-  
26 uous 90-day period (as specified by the Secretary in rule-

1 making), in addition to any other period (or periods) speci-  
2 fied by the Secretary.”.

3 **SEC. 3. REMOVING THE ALL-OR-NOTHING APPROACH TO**  
4 **MEANINGFUL USE.**

5 (a) **ENSURING FLEXIBILITY FOR ADVANCING CARE**  
6 **INFORMATION PERFORMANCE CATEGORY SCORE.**—The  
7 Secretary of Health and Human Services shall take into  
8 consideration any findings or recommendations of the  
9 Comptroller General of the United States in the report  
10 under section 101(c)(2)(A) of the Medicare Access and  
11 CHIP Reauthorization Act of 2015 (Public Law 114–10)  
12 with respect to ensuring flexibility in assessing the per-  
13 formance of MIPS eligible professionals under the Merit-  
14 based Incentive Payment System under section 1848(q)  
15 of the Social Security Act (42 U.S.C. 1395w–4(q)) for the  
16 performance category described in paragraph (2)(A)(iv) of  
17 such section, as applicable and appropriate.

18 (b) **FOR ELIGIBLE HOSPITALS.**—Section 1886(n)(3)  
19 of the Social Security Act (42 U.S.C. 1395ww(n)(3)) is  
20 amended by adding at the end the following new para-  
21 graph:

22 “(D) **FLEXIBILITY FOR MEANINGFUL USE**  
23 **DETERMINATIONS FOR ELIGIBLE HOSPITALS.**—  
24 In applying clauses (i), (ii), and (iii) of sub-  
25 paragraph (A), for purposes of subsection

1 (b)(3)(B)(ix) for an EHR reporting period  
2 under such subsection with respect to fiscal  
3 years after 2019, the Secretary shall determine  
4 that an eligible hospital is a meaningful EHR  
5 user for the EHR reporting period for such fis-  
6 cal years using a methodology specified by the  
7 Secretary through rulemaking based on per-  
8 formance with respect to objectives and meas-  
9 ures established by the Secretary that are met  
10 by an eligible hospital. Such methodology shall  
11 allow an eligible hospital to be a meaningful  
12 EHR user if they achieve 70 percent (or a por-  
13 tion between 50 and 70 percent) of such meas-  
14 ures or if they achieve a composite score (as de-  
15 termined by the Secretary through rulemaking)  
16 based on such measures.”.

17 **SEC. 4. REDUCING VOLUME OF FUTURE EHR-RELATED SIG-**  
18 **NIFICANT HARDSHIP REQUESTS.**

19 The last sentence of sections 1848(o)(2)(A) and  
20 1886(n)(3)(A) of the Social Security Act (42 U.S.C.  
21 1395w-4(o)(2)(A), 1395ww(n)(3)(A)) are each amended  
22 by striking “by” and all that follows before the period at  
23 the end.

1 **SEC. 5. EXTENDING FLEXIBILITY IN APPLYING HARDSHIP**  
2 **EXCEPTION FOR MEANINGFUL USE FOR AN**  
3 **ELIGIBLE HOSPITAL FOR THE 2017 EHR RE-**  
4 **PORTING PERIOD AND PAYMENT ADJUST-**  
5 **MENT FOR FISCAL YEAR 2019.**

6 Section 1886(b)(3)(B)(ix) of the Social Security Act  
7 (42 U.S.C. 1395ww(b)(3)(B)(ix)) is amended—

8 (1) in the first sentence of subclause (II)—

9 (A) by striking “fiscal year 2017” and in-  
10 serting “each of fiscal years 2017 and 2019”;  
11 and

12 (B) by striking “April 1, 2016” and insert-  
13 ing “the applicable date (as defined in sub-  
14 clause (V))”; and

15 (2) by adding at the end the following new sub-  
16 clause:

17 “(V) For purposes of this clause, the term ‘applicable  
18 date’ means—

19 “(aa) with respect to the payment reduction  
20 under subclause (I) for fiscal year 2017, April 1,  
21 2016; and

22 “(bb) with respect to the payment reduction  
23 under subclause (I) for fiscal year 2019, April 1,  
24 2018.”.

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