

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4872

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## AN ACT

To provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13).

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the  
3 “Health Care and Education Reconciliation Act of 2010”.

4 (b) **TABLE OF CONTENTS.**—The table of contents of  
5 this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—COVERAGE, MEDICARE, MEDICAID, AND REVENUES**

**Subtitle A—Coverage**

Sec. 1001. Tax credits.  
Sec. 1002. Individual responsibility.  
Sec. 1003. Employer responsibility.  
Sec. 1004. Income definitions.  
Sec. 1005. Implementation funding.

**Subtitle B—Medicare**

Sec. 1101. Closing the medicare prescription drug “donut hole”.  
Sec. 1102. Medicare Advantage payments.  
Sec. 1103. Savings from limits on MA plan administrative costs.  
Sec. 1104. Disproportionate share hospital (DSH) payments.  
Sec. 1105. Market basket updates.  
Sec. 1106. Physician ownership-referral.  
Sec. 1107. Payment for imaging services.  
Sec. 1108. PE GPCI adjustment for 2010.  
Sec. 1109. Payment for qualifying hospitals.

**Subtitle C—Medicaid**

Sec. 1201. Federal funding for States.  
Sec. 1202. Payments to primary care physicians.  
Sec. 1203. Disproportionate share hospital payments.  
Sec. 1204. Funding for the territories.  
Sec. 1205. Delay in Community First Choice option.  
Sec. 1206. Drug rebates for new formulations of existing drugs.

**Subtitle D—Reducing Fraud, Waste, and Abuse**

Sec. 1301. Community mental health centers.  
Sec. 1302. Medicare prepayment medical review limitations.  
Sec. 1303. Funding to fight fraud, waste, and abuse.  
Sec. 1304. 90-day period of enhanced oversight for initial claims of DME sup-  
pliers.

**Subtitle E—Provisions Relating to Revenue**

Sec. 1401. High-cost plan excise tax.  
Sec. 1402. Unearned income Medicare contribution.  
Sec. 1403. Delay of limitation on health flexible spending arrangements under  
cafeteria plans.

- Sec. 1404. Brand name pharmaceuticals.
- Sec. 1405. Excise tax on medical device manufacturers.
- Sec. 1406. Health insurance providers.
- Sec. 1407. Delay of elimination of deduction for expenses allocable to medicare part D subsidy.
- Sec. 1408. Elimination of unintended application of cellulosic biofuel producer credit.
- Sec. 1409. Codification of economic substance doctrine and penalties.
- Sec. 1410. Time for payment of corporate estimated taxes.

#### Subtitle F—Other Provisions

- Sec. 1501. Community college and career training grant program.

### TITLE II—EDUCATION AND HEALTH

#### Subtitle A—Education

- Sec. 2001. Short title; references.

#### PART I—INVESTING IN STUDENTS AND FAMILIES

- Sec. 2101. Federal Pell Grants.
- Sec. 2102. College access challenge grant program.
- Sec. 2103. Investment in historically black colleges and universities and minority-serving institutions.

#### PART II—STUDENT LOAN REFORM

- Sec. 2201. Termination of Federal Family Education Loan appropriations.
- Sec. 2202. Termination of Federal loan insurance program.
- Sec. 2203. Termination of applicable interest rates.
- Sec. 2204. Termination of Federal payments to reduce student interest costs.
- Sec. 2205. Termination of FFEL PLUS Loans.
- Sec. 2206. Federal Consolidation Loans.
- Sec. 2207. Termination of Unsubsidized Stafford Loans for middle-income borrowers.
- Sec. 2208. Termination of special allowances.
- Sec. 2209. Origination of Direct Loans at institutions outside the United States.
- Sec. 2210. Conforming amendments.
- Sec. 2211. Terms and conditions of loans.
- Sec. 2212. Contracts; mandatory funds.
- Sec. 2213. Income-based repayment.

#### Subtitle B—Health

- Sec. 2301. Insurance reforms.
- Sec. 2302. Drugs purchased by covered entities.
- Sec. 2303. Community health centers.

1 **TITLE I—COVERAGE, MEDICARE,**  
 2 **MEDICAID, AND REVENUES**  
 3 **Subtitle A—Coverage**

4 **SEC. 1001. TAX CREDITS.**

5 (a) PREMIUM TAX CREDITS.—Section 36B of the In-  
 6 ternal Revenue Code of 1986, as added by section 1401  
 7 of the Patient Protection and Affordable Care Act and  
 8 amended by section 10105 of such Act, is amended—

9 (1) in subsection (b)(3)(A)—

10 (A) in clause (i), by striking “with respect  
 11 to any taxpayer” and all that follows up to the  
 12 end period and inserting: “for any taxable year  
 13 shall be the percentage such that the applicable  
 14 percentage for any taxpayer whose household  
 15 income is within an income tier specified in the  
 16 following table shall increase, on a sliding scale  
 17 in a linear manner, from the initial premium  
 18 percentage to the final premium percentage  
 19 specified in such table for such income tier:

“In the case of household in- come (expressed as a percent of poverty line) within the fol- lowing income tier:	The initial premium percentage is—	The final premium percentage is—
Up to 133%	2.0%	2.0%
133% up to 150%	3.0%	4.0%
150% up to 200%	4.0%	6.3%
200% up to 250%	6.3%	8.05%
250% up to 300%	8.05%	9.5%
300% up to 400%	9.5%	9.5%”;

20 and

1 (B) by striking clauses (ii) and (iii), and  
2 inserting the following:

3 “(ii) INDEXING.—

4 “(I) IN GENERAL.—Subject to  
5 subclause (II), in the case of taxable  
6 years beginning in any calendar year  
7 after 2014, the initial and final appli-  
8 cable percentages under clause (i) (as  
9 in effect for the preceding calendar  
10 year after application of this clause)  
11 shall be adjusted to reflect the excess  
12 of the rate of premium growth for the  
13 preceding calendar year over the rate  
14 of income growth for the preceding  
15 calendar year.

16 “(II) ADDITIONAL ADJUST-  
17 MENT.—Except as provided in sub-  
18 clause (III), in the case of any cal-  
19 endar year after 2018, the percent-  
20 ages described in subclause (I) shall,  
21 in addition to the adjustment under  
22 subclause (I), be adjusted to reflect  
23 the excess (if any) of the rate of pre-  
24 mium growth estimated under sub-  
25 clause (I) for the preceding calendar

1 year over the rate of growth in the  
2 consumer price index for the pre-  
3 ceding calendar year.

4 “(III) FAILSAFE.—Subclause (II)  
5 shall apply for any calendar year only  
6 if the aggregate amount of premium  
7 tax credits under this section and  
8 cost-sharing reductions under section  
9 1402 of the Patient Protection and  
10 Affordable Care Act for the preceding  
11 calendar year exceeds an amount  
12 equal to 0.504 percent of the gross  
13 domestic product for the preceding  
14 calendar year.”; and

15 (2) in subsection (c)(2)(C)—

16 (A) by striking “9.8 percent” in clauses  
17 (i)(II) and (iv) and inserting “9.5 percent”; and

18 (B) by striking “(b)(3)(A)(iii)” in clause  
19 (iv) and inserting “(b)(3)(A)(ii)”.

20 (b) COST SHARING.—Section 1402(c) of the Patient  
21 Protection and Affordable Care Act is amended—

22 (1) in paragraph (1)(B)(i)—

23 (A) in subclause (I), by striking “90” and  
24 inserting “94”;

25 (B) in subclause (II)—

1 (i) by striking “80” and inserting  
2 “87”; and

3 (ii) by striking “and”; and

4 (C) by striking subclause (III) and insert-  
5 ing the following:

6 “(III) 73 percent in the case of  
7 an eligible insured whose household  
8 income is more than 200 percent but  
9 not more than 250 percent of the pov-  
10 erty line for a family of the size in-  
11 volved; and

12 “(IV) 70 percent in the case of  
13 an eligible insured whose household  
14 income is more than 250 percent but  
15 not more than 400 percent of the pov-  
16 erty line for a family of the size in-  
17 volved.”; and

18 (2) in paragraph (2)—

19 (A) in subparagraph (A)—

20 (i) by striking “90” and inserting  
21 “94”; and

22 (ii) by striking “and”;

23 (B) in subparagraph (B)—

24 (i) by striking “80” and inserting  
25 “87”; and

1 (ii) by striking the period and insert-  
2 ing “; and”; and

3 (C) by inserting after subparagraph (B)  
4 the following new subparagraph:

5 “(C) in the case of an eligible insured  
6 whose household income is more than 200 per-  
7 cent but not more than 250 percent of the pov-  
8 erty line for a family of the size involved, in-  
9 crease the plan’s share of the total allowed  
10 costs of benefits provided under the plan to 73  
11 percent of such costs.”.

12 **SEC. 1002. INDIVIDUAL RESPONSIBILITY.**

13 (a) AMOUNTS.—Section 5000A(c) of the Internal  
14 Revenue Code of 1986, as added by section 1501(b) of  
15 the Patient Protection and Affordable Care Act and  
16 amended by section 10106 of such Act, is amended—

17 (1) in paragraph (2)(B)—

18 (A) in the matter preceding clause (i),  
19 by—

20 (i) inserting “the excess of” before  
21 “the taxpayer’s household income”; and

22 (ii) inserting “for the taxable year  
23 over the amount of gross income specified  
24 in section 6012(a)(1) with respect to the  
25 taxpayer” before “for the taxable year”;



1 (B) in clause (i), by striking “0.5” and in-  
2 serting “1.0”;

3 (C) in clause (ii), by striking “1.0” and in-  
4 serting “2.0”; and

5 (D) in clause (iii), by striking “2.0” and  
6 inserting “2.5”; and

7 (2) in paragraph (3)—

8 (A) in subparagraph (A), by striking  
9 “\$750” and inserting “\$695”;

10 (B) in subparagraph (B), by striking  
11 “\$495” and inserting “\$325”; and

12 (C) in subparagraph (D)—

13 (i) in the matter preceding clause (i),  
14 by striking “\$750” and inserting “\$695”;  
15 and

16 (ii) in clause (i), by striking “\$750”  
17 and inserting “\$695”.

18 (b) THRESHOLD.—Section 5000A of such Code, as  
19 so added and amended, is amended—

20 (1) by striking subsection (c)(4)(D); and

21 (2) in subsection (e)(2)—

22 (A) by striking “UNDER 100 PERCENT OF  
23 POVERTY LINE” and inserting “BELOW FILING  
24 THRESHOLD”; and

1 (B) by striking all that follows “less than”  
2 and inserting “the amount of gross income  
3 specified in section 6012(a)(1) with respect to  
4 the taxpayer.”.

5 **SEC. 1003. EMPLOYER RESPONSIBILITY.**

6 (a) PAYMENT CALCULATION.—Subparagraph (D) of  
7 subsection (d)(2) of section 4980H of the Internal Rev-  
8 enue Code of 1986, as added by section 1513 of the Pa-  
9 tient Protection and Affordable Care Act and amended by  
10 section 10106 of such Act, is amended to read as follows:

11 “(D) APPLICATION OF EMPLOYER SIZE TO  
12 ASSESSABLE PENALTIES.—

13 “(i) IN GENERAL.—The number of in-  
14 dividuals employed by an applicable large  
15 employer as full-time employees during any  
16 month shall be reduced by 30 solely for  
17 purposes of calculating—

18 “(I) the assessable payment  
19 under subsection (a), or

20 “(II) the overall limitation under  
21 subsection (b)(2).

22 “(ii) AGGREGATION.—In the case of  
23 persons treated as 1 employer under sub-  
24 paragraph (C)(i), only 1 reduction under  
25 subclause (I) or (II) shall be allowed with

1           respect to such persons and such reduction  
2           shall be allocated among such persons rat-  
3           ably on the basis of the number of full-  
4           time employees employed by each such per-  
5           son.”.

6           (b) **APPLICABLE PAYMENT AMOUNT.**—Section  
7 4980H of such Code, as so added and amended, is amend-  
8 ed—

9           (1) in the flush text following subsection  
10 (c)(1)(B), by striking “400 percent of the applicable  
11 payment amount” and inserting “an amount equal  
12 to  $\frac{1}{12}$  of \$3,000”;

13           (2) in subsection (d)(1), by striking “\$750”  
14 and inserting “\$2,000”; and

15           (3) in subsection (d)(5)(A), in the matter pre-  
16 ceding clause (i), by striking “subsection (b)(2) and  
17 (d)(1)” and inserting “subsection (b) and paragraph  
18 (1)”.

19           (c) **COUNTING PART-TIME WORKERS IN SETTING**  
20 **THE THRESHOLD FOR EMPLOYER RESPONSIBILITY.**—  
21 Section 4980H(d)(2) of such Code, as so added and  
22 amended and as amended by subsection (a), is amended  
23 by adding at the end the following new subparagraph:

24                   “(E) **FULL-TIME EQUIVALENTS TREATED**  
25                   **AS FULL-TIME EMPLOYEES.**—Solely for pur-

1           poses of determining whether an employer is an  
2           applicable large employer under this paragraph,  
3           an employer shall, in addition to the number of  
4           full-time employees for any month otherwise de-  
5           termined, include for such month a number of  
6           full-time employees determined by dividing the  
7           aggregate number of hours of service of employ-  
8           ees who are not full-time employees for the  
9           month by 120.”.

10           (d) **ELIMINATING WAITING PERIOD ASSESSMENT.**—  
11           Section 4980H of such Code, as so added and amended  
12           and as amended by the preceding subsections, is amended  
13           by striking subsection (b) and redesignating subsections  
14           (c), (d), and (e) as subsections (b), (c), and (d), respec-  
15           tively.

16           **SEC. 1004. INCOME DEFINITIONS.**

17           (a) **MODIFIED ADJUSTED GROSS INCOME.**—

18                   (1) **IN GENERAL.**—The following provisions of  
19           the Internal Revenue Code of 1986 are each amend-  
20           ed by striking “modified gross” each place it ap-  
21           pears and inserting “modified adjusted gross”:

22                           (A) Clauses (i) and (ii) of section  
23                           36B(d)(2)(A), as added by section 1401 of the  
24                           Patient Protection and Affordable Care Act.

1 (B) Section 6103(l)(21)(A)(iv), as added  
2 by section 1414 of such Act.

3 (C) Clauses (i) and (ii) of section  
4 5000A(c)(4), as added by section 1501(b) of  
5 such Act.

6 (2) DEFINITION.—

7 (A) Section 36B(d)(2)(B) of such Code, as  
8 so added, is amended to read as follows:

9 “(B) MODIFIED ADJUSTED GROSS IN-  
10 COME.—The term ‘modified adjusted gross in-  
11 come’ means adjusted gross income increased  
12 by—

13 “(i) any amount excluded from gross  
14 income under section 911, and

15 “(ii) any amount of interest received  
16 or accrued by the taxpayer during the tax-  
17 able year which is exempt from tax.”.

18 (B) Section 5000A(c)(4)(C) of such Code,  
19 as so added, is amended to read as follows:

20 “(C) MODIFIED ADJUSTED GROSS IN-  
21 COME.—The term ‘modified adjusted gross in-  
22 come’ means adjusted gross income increased  
23 by—

24 “(i) any amount excluded from gross  
25 income under section 911, and

1                   “(ii) any amount of interest received  
2                   or accrued by the taxpayer during the tax-  
3                   able year which is exempt from tax.”.

4           (b) MODIFIED ADJUSTED GROSS INCOME DEFINI-  
5 TION.—

6           (1) MEDICAID.—Section 1902 of the Social Se-  
7           curity Act (42 U.S.C. 1396a) is amended by striking  
8           “modified gross income” each place it appears in the  
9           text and headings of the following provisions and in-  
10          serting “modified adjusted gross income”:

11                   (A) Paragraph (14) of subsection (e), as  
12                   added by section 2002(a) of the Patient Protec-  
13                   tion and Affordable Care Act.

14                   (B) Subsection (gg)(4)(A), as added by  
15                   section 2001(b) of such Act.

16          (2) CHIP.—

17                   (A) STATE PLAN REQUIREMENTS.—Section  
18                   2102(b)(1)(B)(v) of the Social Security Act (42  
19                   U.S.C. 1397bb(b)(1)(B)(v)), as added by sec-  
20                   tion 2101(d)(1) of the Patient Protection and  
21                   Affordable Care Act, is amended by striking  
22                   “modified gross income” and inserting “modi-  
23                   fied adjusted gross income”.

24                   (B) PLAN ADMINISTRATION.—Section  
25                   2107(e)(1)(E) of the Social Security Act (42

1 U.S.C. 1397gg(e)(1)(E)), as added by section  
2 2101(d)(2) of the Patient Protection and Af-  
3 fordable Care Act, is amended by striking  
4 “modified gross income” and inserting “modi-  
5 fied adjusted gross income”.

6 (c) NO EXCESS PAYMENTS.—Section 36B(f) of the  
7 Internal Revenue Code of 1986, as added by section  
8 1401(a) of the Patient Protection and Affordable Care  
9 Act, is amended by adding at the end the following new  
10 paragraph:

11 “(3) INFORMATION REQUIREMENT.—Each Ex-  
12 change (or any person carrying out 1 or more re-  
13 sponsibilities of an Exchange under section  
14 1311(f)(3) or 1321(e) of the Patient Protection and  
15 Affordable Care Act) shall provide the following in-  
16 formation to the Secretary and to the taxpayer with  
17 respect to any health plan provided through the Ex-  
18 change:

19 “(A) The level of coverage described in sec-  
20 tion 1302(d) of the Patient Protection and Af-  
21 fordable Care Act and the period such coverage  
22 was in effect.

23 “(B) The total premium for the coverage  
24 without regard to the credit under this section

1 or cost-sharing reductions under section 1402  
2 of such Act.

3 “(C) The aggregate amount of any ad-  
4 vance payment of such credit or reductions  
5 under section 1412 of such Act.

6 “(D) The name, address, and TIN of the  
7 primary insured and the name and TIN of each  
8 other individual obtaining coverage under the  
9 policy.

10 “(E) Any information provided to the Ex-  
11 change, including any change of circumstances,  
12 necessary to determine eligibility for, and the  
13 amount of, such credit.

14 “(F) Information necessary to determine  
15 whether a taxpayer has received excess advance  
16 payments.”.

17 (d) ADULT DEPENDENTS.—

18 (1) EXCLUSION OF AMOUNTS EXPENDED FOR  
19 MEDICAL CARE.—The first sentence of section  
20 105(b) of the Internal Revenue Code of 1986 (relat-  
21 ing to amounts expended for medical care) is amend-  
22 ed—

23 (A) by striking “and his dependents” and  
24 inserting “his dependents”; and



1 (B) by inserting before the period the fol-  
2 lowing: “, and any child (as defined in section  
3 152(f)(1)) of the taxpayer who as of the end of  
4 the taxable year has not attained age 27”.

5 (2) SELF-EMPLOYED HEALTH INSURANCE DE-  
6 DUCTION.—Section 162(l)(1) of such Code is  
7 amended to read as follows:

8 “(1) ALLOWANCE OF DEDUCTION.—In the case  
9 of a taxpayer who is an employee within the mean-  
10 ing of section 401(c)(1), there shall be allowed as a  
11 deduction under this section an amount equal to the  
12 amount paid during the taxable year for insurance  
13 which constitutes medical care for—

14 “(A) the taxpayer,

15 “(B) the taxpayer’s spouse,

16 “(C) the taxpayer’s dependents, and

17 “(D) any child (as defined in section  
18 152(f)(1)) of the taxpayer who as of the end of  
19 the taxable year has not attained age 27.”.

20 (3) COVERAGE UNDER SELF-EMPLOYED DEDUC-  
21 TION.—Section 162(l)(2)(B) of such Code is amend-  
22 ed by inserting “, or any dependent, or individual  
23 described in subparagraph (D) of paragraph (1)  
24 with respect to,” after “spouse of”.

1           (4) SICK AND ACCIDENT BENEFITS PROVIDED  
2           TO MEMBERS OF A VOLUNTARY EMPLOYEES' BENE-  
3           FICIARY ASSOCIATION AND THEIR DEPENDENTS.—  
4           Section 501(c)(9) of such Code is amended by add-  
5           ing at the end the following new sentence: “For pur-  
6           poses of providing for the payment of sick and acci-  
7           dent benefits to members of such an association and  
8           their dependents, the term ‘dependent’ shall include  
9           any individual who is a child (as defined in section  
10          152(f)(1)) of a member who as of the end of the cal-  
11          endar year has not attained age 27.”.

12           (5) MEDICAL AND OTHER BENEFITS FOR RE-  
13          TIRED EMPLOYEES.—Section 401(h) of such Code is  
14          amended by adding at the end the following: “For  
15          purposes of this subsection, the term ‘dependent’  
16          shall include any individual who is a child (as de-  
17          fined in section 152(f)(1)) of a retired employee who  
18          as of the end of the calendar year has not attained  
19          age 27.”.

20          (e) FIVE PERCENT INCOME DISREGARD FOR CER-  
21          TAIN INDIVIDUALS.—Section 1902(e)(14) of the Social  
22          Security Act (42 U.S.C. 1396a(e)(14)), as amended by  
23          subsection (b)(1), is further amended—

1           (1) in subparagraph (B), by striking “No type”  
2           and inserting “Subject to subparagraph (I), no  
3           type”; and

4           (2) by adding at the end the following new sub-  
5           paragraph:

6                   “(I) TREATMENT OF PORTION OF MODI-  
7                   FIED ADJUSTED GROSS INCOME.—For purposes  
8                   of determining the income eligibility of an indi-  
9                   vidual for medical assistance whose eligibility is  
10                  determined based on the application of modified  
11                  adjusted gross income under subparagraph (A),  
12                  the State shall—

13                   “(i) determine the dollar equivalent of  
14                   the difference between the upper income  
15                   limit on eligibility for such an individual  
16                   (expressed as a percentage of the poverty  
17                   line) and such upper income limit in-  
18                   creased by 5 percentage points; and

19                   “(ii) notwithstanding the requirement  
20                   in subparagraph (A) with respect to use of  
21                   modified adjusted gross income, utilize as  
22                   the applicable income of such individual, in  
23                   determining such income eligibility, an  
24                   amount equal to the modified adjusted  
25                   gross income applicable to such individual

1 reduced by such dollar equivalent  
2 amount.”.

3 **SEC. 1005. IMPLEMENTATION FUNDING.**

4 (a) IN GENERAL.—There is hereby established a  
5 Health Insurance Reform Implementation Fund (referred  
6 to in this section as the “Fund”) within the Department  
7 of Health and Human Services to carry out the Patient  
8 Protection and Affordable Care Act and this Act (and the  
9 amendments made by such Acts).

10 (b) FUNDING.—There is appropriated to the Fund,  
11 out of any funds in the Treasury not otherwise appro-  
12 priated, \$1,000,000,000 for Federal administrative ex-  
13 penses to carry out such Act (and the amendments made  
14 by such Acts).

15 **Subtitle B—Medicare**

16 **SEC. 1101. CLOSING THE MEDICARE PRESCRIPTION DRUG**  
17 **“DONUT HOLE”.**

18 (a) COVERAGE GAP REBATE FOR 2010.—

19 (1) IN GENERAL.—Section 1860D–42 of the  
20 Social Security Act (42 U.S.C. 1395w–152) is  
21 amended by adding at the end the following new  
22 subsection:

23 “(c) COVERAGE GAP REBATE FOR 2010.—

24 “(1) IN GENERAL.—In the case of an individual  
25 described in subparagraphs (A) through (D) of sec-

1       tion 1860D–14A(g)(1) who as of the last day of a  
2       calendar quarter in 2010 has incurred costs for cov-  
3       ered part D drugs so that the individual has exceed-  
4       ed the initial coverage limit under section 1860D–  
5       2(b)(3) for 2010, the Secretary shall provide for  
6       payment from the Medicare Prescription Drug Ac-  
7       count of \$250 to the individual by not later than the  
8       15th day of the third month following the end of  
9       such quarter.

10           “(2) LIMITATION.—The Secretary shall provide  
11       only 1 payment under this subsection with respect to  
12       any individual.”.

13           (2) REPEAL OF PROVISION.—Section 3315 of  
14       the Patient Protection and Affordable Care Act (in-  
15       cluding the amendments made by such section) is re-  
16       pealed, and any provision of law amended or re-  
17       pealed by such sections is hereby restored or revived  
18       as if such section had not been enacted into law.

19       (b) CLOSING THE DONUT HOLE.—Part D of title  
20       XVIII of the Social Security Act (42 U.S.C. 1395w–101  
21       et seq.), as amended by section 3301 of the Patient Pro-  
22       tection and Affordable Care Act, is further amended—

23           (1) in section 1860D–43—

24               (A) in subsection (b), by striking “July 1,  
25               2010” and inserting “January 1, 2011”; and

1 (B) in subsection (c)(2), by striking “July  
2 1, 2010, and ending on December 31, 2010,”  
3 and inserting “January 1, 2011, and December  
4 31, 2011,”;

5 (2) in section 1860D–14A—

6 (A) in subsection (a)—

7 (i) by striking “July 1, 2010” and in-  
8 serting “January 1, 2011”; and

9 (ii) by striking “April 1, 2010” and  
10 inserting “180 days after the date of the  
11 enactment of this section”;

12 (B) in subsection (b)(1)(C)—

13 (i) in the heading, by striking “2010  
14 AND”;

15 (ii) by striking “July 1, 2010” and in-  
16 serting “January 1, 2011”; and

17 (iii) by striking “May 1, 2010” and  
18 inserting “not later than 30 days after the  
19 date of the establishment of a model agree-  
20 ment under subsection (a)”;

21 (C) in subsection (c)—

22 (i) in paragraph (1)(A)(iii), by strik-  
23 ing “July 1, 2010, and ending on Decem-  
24 ber 31, 2011” and inserting “January 1,

1                   2011, and ending on December 31, 2011”;

2                   and

3                   (ii) in paragraph (2), by striking

4                   “2010” and inserting “2011”;

5                   (D) in subsection (d)(2)(B), by striking

6                   “July 1, 2010, and ending on December 31,

7                   2010” and inserting “January 1, 2011, and

8                   ending on December 31, 2011”; and

9                   (E) in subsection (g)(1)—

10                   (i) in the matter before subparagraph

11                   (A), by striking “an applicable drug” and

12                   inserting “a covered part D drug”;

13                   (ii) by adding “and” at the end of

14                   subparagraph (C);

15                   (iii) by striking subparagraph (D);

16                   and

17                   (iv) by redesignating subparagraph

18                   (E) as subparagraph (D); and

19                   (3) in section 1860D–2(b)—

20                   (A) in paragraph (2)(A), by striking “The

21                   coverage” and inserting “Subject to subpara-

22                   graphs (C) and (D), the coverage”;

23                   (B) in paragraph (2)(B), by striking “sub-

24                   paragraph (A)(ii)” and inserting “subpara-

25                   graphs (A)(ii), (C), and (D)”;

1 (C) by adding at the end of paragraph (2)  
2 the following new subparagraphs:

3 “(C) COVERAGE FOR GENERIC DRUGS IN  
4 COVERAGE GAP.—

5 “(i) IN GENERAL.—Except as pro-  
6 vided in paragraph (4), the coverage for an  
7 applicable beneficiary (as defined in section  
8 1860D–14A(g)(1)) has coinsurance (for  
9 costs above the initial coverage limit under  
10 paragraph (3) and below the out-of-pocket  
11 threshold) for covered part D drugs that  
12 are not applicable drugs under section  
13 1860D–14A(g)(2) that is—

14 “(I) equal to the generic-gap co-  
15 insurance percentage (specified in  
16 clause (ii)) for the year; or

17 “(II) actuarially equivalent  
18 (using processes and methods estab-  
19 lished under section 1860D–11(c)) to  
20 an average expected payment of such  
21 percentage of such costs for covered  
22 part D drugs that are not applicable  
23 drugs under section 1860D–  
24 14A(g)(2).



1           “(ii) GENERIC-GAP COINSURANCE  
2           PERCENTAGE.—The generic-gap coinsur-  
3           ance percentage specified in this clause  
4           for—

5                       “(I) 2011 is 93 percent;

6                       “(II) 2012 and each succeeding  
7                       year before 2020 is the generic-gap  
8                       coinsurance percentage under this  
9                       clause for the previous year decreased  
10                      by 7 percentage points; and

11                      “(III) 2020 and each subsequent  
12                      year is 25 percent.

13                      “(D) COVERAGE FOR APPLICABLE DRUGS  
14           IN COVERAGE GAP.—

15                      “(i) IN GENERAL.—Except as pro-  
16                      vided in paragraph (4), the coverage for an  
17                      applicable beneficiary (as defined in section  
18                      1860D–14A(g)(1)) has coinsurance (for  
19                      costs above the initial coverage limit under  
20                      paragraph (3) and below the out-of-pocket  
21                      threshold) for the negotiated price (as de-  
22                      fined in section 1860D–14A(g)(6)) of cov-  
23                      ered part D drugs that are applicable  
24                      drugs under section 1860D–14A(g)(2) that  
25                      is—

1           “(I) equal to the difference be-  
2           tween the applicable gap percentage  
3           (specified in clause (ii) for the year)  
4           and the discount percentage specified  
5           in section 1860D–14A(g)(4)(A) for  
6           such applicable drugs; or

7           “(II) actuarially equivalent  
8           (using processes and methods estab-  
9           lished under section 1860D–11(c)) to  
10          an average expected payment of such  
11          percentage of such costs, for covered  
12          part D drugs that are applicable  
13          drugs under section 1860D–  
14          14A(g)(2).

15          “(ii) APPLICABLE GAP PERCENT-  
16          AGE.—The applicable gap percentage spec-  
17          ified in this clause for—

18                 “(I) 2013 and 2014 is 97.5 per-  
19                 cent;

20                 “(II) 2015 and 2016 is 95 per-  
21                 cent;

22                 “(III) 2017 is 90 percent;

23                 “(IV) 2018 is 85 percent;

24                 “(V) 2019 is 80 percent; and

1 “(VI) 2020 and each subsequent  
2 year is 75 percent.”;

3 (D) in paragraph (3)(A), as restored under  
4 subsection (a)(2), by striking “paragraph (4)”  
5 and inserting “paragraphs (2)(C), (2)(D), and  
6 (4)”;

7 (E) in paragraph (4)(E), by inserting be-  
8 fore the period at the end the following: “, ex-  
9 cept that incurred costs shall not include the  
10 portion of the negotiated price that represents  
11 the reduction in coinsurance resulting from the  
12 application of paragraph (2)(D)”;

13 (4) in section 1860D–22(a)(2)(A), by inserting  
14 before the period at the end the following: “, not  
15 taking into account the value of any discount or cov-  
16 erage provided during the gap in prescription drug  
17 coverage that occurs between the initial coverage  
18 limit under section 1860D–2(b)(3) during the year  
19 and the out-of-pocket threshold specified in section  
20 1860D–2(b)(4)(B)”.

21 (c) CONFORMING AMENDMENT TO AMP UNDER  
22 MEDICAID.—Section 1927(k)(1)(B)(i) of the Social Secu-  
23 rity Act (42 U.S.C. 1396r–8(k)(1)(B)(i)), as amended by  
24 section 2503(a)(2)(B) of the Patient Protection and Af-  
25 fordable Care Act, is amended—



1           “(III) for 2014 and 2015, is  
2           equal to the amount specified in this  
3           subparagraph for the previous year,  
4           increased by the annual percentage in-  
5           crease described in paragraph (6) for  
6           the year involved, minus 0.25 percent-  
7           age point;

8           “(IV) for each of years 2016  
9           through 2019, is equal to the amount  
10          specified in this subparagraph for the  
11          previous year, increased by the lesser  
12          of—

13                   “(aa) the annual percentage  
14                   increase described in paragraph  
15                   (7) for the year involved, plus 2  
16                   percentage points; or

17                   “(bb) the annual percentage  
18                   increase described in paragraph  
19                   (6) for the year;

20          “(V) for 2020, is equal to the  
21          amount that would have been applied  
22          under this subparagraph for 2020 if  
23          the amendments made by section  
24          1101(d)(1) of the Health Care and

1 Education Reconciliation Act of 2010  
2 had not been enacted; or”;

3 (2) by adding at the end the following new  
4 paragraph:

5 “(7) ADDITIONAL ANNUAL PERCENTAGE IN-  
6 CREASE.—The annual percentage increase specified  
7 in this paragraph for a year is equal to the annual  
8 percentage increase in the consumer price index for  
9 all urban consumers (United States city average) for  
10 the 12-month period ending in July of the previous  
11 year.”.

12 **SEC. 1102. MEDICARE ADVANTAGE PAYMENTS.**

13 (a) REPEAL.—Effective as if included in the enact-  
14 ment of the Patient Protection and Affordable Care Act,  
15 sections 3201 and 3203 of such Act (and the amendments  
16 made by such sections) are repealed.

17 (b) PHASE-IN OF MODIFIED BENCHMARKS.—Section  
18 1853 of the Social Security Act (42 U.S.C. 1395w–23)  
19 is amended—

20 (1) in subsection (j)(1)(A), by striking “(or, be-  
21 ginning with 2007,  $\frac{1}{12}$  of the applicable amount de-  
22 termined under subsection (k)(1)) for the area for  
23 the year” and inserting “for the area for the year  
24 (or, for 2007, 2008, 2009, and 2010,  $\frac{1}{12}$  of the ap-  
25 plicable amount determined under subsection (k)(1)

1 for the area for the year; for 2011,  $\frac{1}{12}$  of the appli-  
2 cable amount determined under subsection (k)(1) for  
3 the area for 2010; and, beginning with 2012,  $\frac{1}{12}$  of  
4 the blended benchmark amount determined under  
5 subsection (n)(1) for the area for the year”); and

6 (2) by adding at the end the following new sub-  
7 section:

8 “(n) DETERMINATION OF BLENDED BENCHMARK  
9 AMOUNT.—

10 “(1) IN GENERAL.—For purposes of subsection  
11 (j), subject to paragraphs (3), (4), and (5), the term  
12 ‘blended benchmark amount’ means for an area—

13 “(A) for 2012 the sum of—

14 “(i)  $\frac{1}{2}$  of the applicable amount for  
15 the area and year; and

16 “(ii)  $\frac{1}{2}$  of the amount specified in  
17 paragraph (2)(A) for the area and year;  
18 and

19 “(B) for a subsequent year the amount  
20 specified in paragraph (2)(A) for the area and  
21 year.

22 “(2) SPECIFIED AMOUNT.—

23 “(A) IN GENERAL.—The amount specified  
24 in this subparagraph for an area and year is  
25 the product of—

1           “(i) the base payment amount speci-  
2           fied in subparagraph (E) for the area and  
3           year adjusted to take into account the  
4           phase-out in the indirect costs of medical  
5           education from capitation rates described  
6           in subsection (k)(4); and

7           “(ii) the applicable percentage for the  
8           area for the year specified under subpara-  
9           graph (B).

10           “(B) APPLICABLE PERCENTAGE.—Subject  
11           to subparagraph (D), the applicable percentage  
12           specified in this subparagraph for an area for  
13           a year in the case of an area that is ranked—

14           “(i) in the highest quartile under sub-  
15           paragraph (C) for the previous year is 95  
16           percent;

17           “(ii) in the second highest quartile  
18           under such subparagraph for the previous  
19           year is 100 percent;

20           “(iii) in the third highest quartile  
21           under such subparagraph for the previous  
22           year is 107.5 percent; or

23           “(iv) in the lowest quartile under such  
24           subparagraph for the previous year is 115  
25           percent.



1           “(C) PERIODIC RANKING.—For purposes  
2 of this paragraph in the case of an area lo-  
3 cated—

4           “(i) in 1 of the 50 States or the Dis-  
5 trict of Columbia, the Secretary shall rank  
6 such area in each year specified under sub-  
7 section (c)(1)(D)(ii) based upon the level  
8 of the amount specified in subparagraph  
9 (A)(i) for such areas; or

10          “(ii) in a territory, the Secretary shall  
11 rank such areas in each such year based  
12 upon the level of the amount specified in  
13 subparagraph (A)(i) for such area relative  
14 to quartile rankings computed under clause  
15 (i).

16          “(D) 1-YEAR TRANSITION FOR CHANGES IN  
17 APPLICABLE PERCENTAGE.—If, for a year after  
18 2012, there is a change in the quartile in which  
19 an area is ranked compared to the previous  
20 year, the applicable percentage for the area in  
21 the year shall be the average of—

22          “(i) the applicable percentage for the  
23 area for the previous year; and

1           “(ii) the applicable percentage that  
2           would otherwise apply for the area for the  
3           year.

4           “(E) BASE PAYMENT AMOUNT.—Subject  
5           to subparagraph (F), the base payment amount  
6           specified in this subparagraph—

7                   “(i) for 2012 is the amount specified  
8                   in subsection (c)(1)(D) for the area for the  
9                   year; or

10                   “(ii) for a subsequent year that—

11                           “(I) is not specified under sub-  
12                           section (c)(1)(D)(ii), is the base  
13                           amount specified in this subparagraph  
14                           for the area for the previous year, in-  
15                           creased by the national per capita MA  
16                           growth percentage, described in sub-  
17                           section (c)(6) for that succeeding  
18                           year, but not taking into account any  
19                           adjustment under subparagraph (C)  
20                           of such subsection for a year before  
21                           2004; and

22                           “(II) is specified under sub-  
23                           section (c)(1)(D)(ii), is the amount  
24                           specified in subsection (c)(1)(D) for  
25                           the area for the year.

1           “(F) APPLICATION OF INDIRECT MEDICAL  
2 EDUCATION PHASE-OUT.—The base payment  
3 amount specified in subparagraph (E) for a  
4 year shall be adjusted in the same manner  
5 under paragraph (4) of subsection (k) as the  
6 applicable amount is adjusted under such sub-  
7 section.

8           “(3) ALTERNATIVE PHASE-INS.—

9           “(A) 4-YEAR PHASE-IN FOR CERTAIN  
10 AREAS.—If the difference between the applica-  
11 ble amount (as defined in subsection (k)) for an  
12 area for 2010 and the projected 2010 bench-  
13 mark amount (as defined in subparagraph (C))  
14 for the area is at least \$30 but less than \$50,  
15 the blended benchmark amount for the area  
16 is—

17                   “(i) for 2012 the sum of—

18                           “(I)  $\frac{3}{4}$  of the applicable amount  
19 for the area and year; and

20                           “(II)  $\frac{1}{4}$  of the amount specified  
21 in paragraph (2)(A) for the area and  
22 year;

23                   “(ii) for 2013 the sum of—

24                           “(I)  $\frac{1}{2}$  of the applicable amount  
25 for the area and year; and

1                   “(II)  $\frac{1}{2}$  of the amount specified  
2                   in paragraph (2)(A) for the area and  
3                   year;

4                   “(iii) for 2014 the sum of—

5                   “(I)  $\frac{1}{4}$  of the applicable amount  
6                   for the area and year; and

7                   “(II)  $\frac{3}{4}$  of the amount specified  
8                   in paragraph (2)(A) for the area and  
9                   year; and

10                  “(iv) for a subsequent year the  
11                  amount specified in paragraph (2)(A) for  
12                  the area and year.

13                  “(B) 6-YEAR PHASE-IN FOR CERTAIN  
14                  AREAS.—If the difference between the applica-  
15                  ble amount (as defined in subsection (k)) for an  
16                  area for 2010 and the projected 2010 bench-  
17                  mark amount (as defined in subparagraph (C))  
18                  for the area is at least \$50, the blended bench-  
19                  mark amount for the area is—

20                  “(i) for 2012 the sum of—

21                  “(I)  $\frac{5}{6}$  of the applicable amount  
22                  for the area and year; and

23                  “(II)  $\frac{1}{6}$  of the amount specified  
24                  in paragraph (2)(A) for the area and  
25                  year;

- 1 “(ii) for 2013 the sum of—
- 2 “(I)  $\frac{2}{3}$  of the applicable amount
- 3 for the area and year; and
- 4 “(II)  $\frac{1}{3}$  of the amount specified
- 5 in paragraph (2)(A) for the area and
- 6 year;
- 7 “(iii) for 2014 the sum of—
- 8 “(I)  $\frac{1}{2}$  of the applicable amount
- 9 for the area and year; and
- 10 “(II)  $\frac{1}{2}$  of the amount specified
- 11 in paragraph (2)(A) for the area and
- 12 year;
- 13 “(iv) for 2015 the sum of—
- 14 “(I)  $\frac{1}{3}$  of the applicable amount
- 15 for the area and year; and
- 16 “(II)  $\frac{2}{3}$  of the amount specified
- 17 in paragraph (2)(A) for the area and
- 18 year; and
- 19 “(v) for 2016 the sum of—
- 20 “(I)  $\frac{1}{6}$  of the applicable amount
- 21 for the area and year; and
- 22 “(II)  $\frac{5}{6}$  of the amount specified
- 23 in paragraph (2)(A) for the area and
- 24 year; and

1           “(vi) for a subsequent year the  
2           amount specified in paragraph (2)(A) for  
3           the area and year.

4           “(C) PROJECTED 2010 BENCHMARK  
5           AMOUNT.—The projected 2010 benchmark  
6           amount described in this subparagraph for an  
7           area is equal to the sum of—

8                   “(i)  $\frac{1}{2}$  of the applicable amount (as  
9                   defined in subsection (k)) for the area for  
10                  2010; and

11                   “(ii)  $\frac{1}{2}$  of the amount specified in  
12                   paragraph (2)(A) for the area for 2010 but  
13                   determined as if there were substituted for  
14                   the applicable percentage specified in  
15                   clause (ii) of such paragraph the sum of—

16                           “(I) the applicable percent that  
17                           would be specified under subpara-  
18                           graph (B) of paragraph (2) (deter-  
19                           mined without regard to subpara-  
20                           graph (D) of such paragraph) for the  
21                           area for 2010 if any reference in such  
22                           paragraph to ‘the previous year’ were  
23                           deemed a reference to 2010; and

24                           “(II) the applicable percentage  
25                           increase that would apply to a quali-

1                   fying plan in the area under sub-  
2                   section (o) as if any reference in such  
3                   subsection to 2012 were deemed a ref-  
4                   erence to 2010 and as if the deter-  
5                   mination of a qualifying county under  
6                   paragraph (3)(B) of such subsection  
7                   were made for 2010.

8                   “(4) CAP ON BENCHMARK AMOUNT.—In no  
9                   case shall the blended benchmark amount for an  
10                  area for a year (determined taking into account sub-  
11                  section (o)) be greater than the applicable amount  
12                  that would (but for the application of this sub-  
13                  section) be determined under subsection (k)(1) for  
14                  the area for the year.

15                  “(5) NON-APPLICATION TO PACE PLANS.—This  
16                  subsection shall not apply to payments to a PACE  
17                  program under section 1894.”.

18                  (c) APPLICABLE PERCENTAGE QUALITY IN-  
19                  CREASES.—Section 1853 of such Act (42 U.S.C. 1395w-  
20                  23), as amended by subsection (b), is amended—

21                   (1) in subsection (j), by inserting “subject to  
22                   subsection (o),” after “For purposes of this part,”;

23                   (2) in subsection (n)(2)(B), as added by sub-  
24                   section (b), by inserting “, subject to subsection (o)”  
25                   after “as follows”; and

1           (3) by adding at the end the following new sub-  
2 section:

3           “(o) APPLICABLE PERCENTAGE QUALITY IN-  
4 CREASES.—

5           “(1) IN GENERAL.—Subject to the succeeding  
6 paragraphs, in the case of a qualifying plan with re-  
7 spect to a year beginning with 2012, the applicable  
8 percentage under subsection (n)(2)(B) shall be in-  
9 creased on a plan or contract level, as determined by  
10 the Secretary—

11                   “(A) for 2012, by 1.5 percentage points;

12                   “(B) for 2013, by 3.0 percentage points;

13           and

14                   “(C) for 2014 or a subsequent year, by 5.0  
15 percentage points.

16           “(2) INCREASE FOR QUALIFYING PLANS IN  
17 QUALIFYING COUNTIES.—The increase applied under  
18 paragraph (1) for a qualifying plan located in a  
19 qualifying county for a year shall be doubled.

20           “(3) QUALIFYING PLANS AND QUALIFYING  
21 COUNTY DEFINED; APPLICATION OF INCREASES TO  
22 LOW ENROLLMENT AND NEW PLANS.—For purposes  
23 of this subsection:

24                   “(A) QUALIFYING PLAN.—



1           “(i) IN GENERAL.—The term ‘quali-  
2           fying plan’ means, for a year and subject  
3           to paragraph (4), a plan that had a quality  
4           rating under paragraph (4) of 4 stars or  
5           higher based on the most recent data avail-  
6           able for such year.

7           “(ii) APPLICATION OF INCREASES TO  
8           LOW ENROLLMENT PLANS.—

9           “(I) 2012.—For 2012, the term  
10          ‘qualifying plan’ includes an MA plan  
11          that the Secretary determines is not  
12          able to have a quality rating under  
13          paragraph (4) because of low enroll-  
14          ment.

15          “(II) 2013 AND SUBSEQUENT  
16          YEARS.—For 2013 and subsequent  
17          years, for purposes of determining  
18          whether an MA plan with low enroll-  
19          ment (as defined by the Secretary) is  
20          included as a qualifying plan, the Sec-  
21          retary shall establish a method to  
22          apply to MA plans with low enroll-  
23          ment (as defined by the Secretary)  
24          the computation of quality rating and

1 the rating system under paragraph  
2 (4).

3 “(iii) APPLICATION OF INCREASES TO  
4 NEW PLANS.—

5 “(I) IN GENERAL.—A new MA  
6 plan that meets criteria specified by  
7 the Secretary shall be treated as a  
8 qualifying plan, except that in apply-  
9 ing paragraph (1), the applicable per-  
10 centage under subsection (n)(2)(B)  
11 shall be increased—

12 “(aa) for 2012, by 1.5 per-  
13 centage points;

14 “(bb) for 2013, by 2.5 per-  
15 centage points; and

16 “(cc) for 2014 or a subse-  
17 quent year, by 3.5 percentage  
18 points.

19 “(II) NEW MA PLAN DEFINED.—  
20 The term ‘new MA plan’ means, with  
21 respect to a year, a plan offered by an  
22 organization or sponsor that has not  
23 had a contract as a Medicare Advan-  
24 tage organization in the preceding 3-  
25 year period.

1           “(B) QUALIFYING COUNTY.—The term  
2           ‘qualifying county’ means, for a year, a coun-  
3           ty—

4                   “(i) that has an MA capitation rate  
5                   that, in 2004, was based on the amount  
6                   specified in subsection (c)(1)(B) for a Met-  
7                   ropolitan Statistical Area with a population  
8                   of more than 250,000;

9                   “(ii) for which, as of December 2009,  
10                   of the Medicare Advantage eligible individ-  
11                   uals residing in the county at least 25 per-  
12                   cent of such individuals were enrolled in  
13                   Medicare Advantage plans; and

14                   “(iii) that has per capita fee-for-serv-  
15                   ice spending that is lower than the na-  
16                   tional monthly per capita cost for expendi-  
17                   tures for individuals enrolled under the  
18                   original medicare fee-for-service program  
19                   for the year.

20           “(4) QUALITY DETERMINATIONS FOR APPLICA-  
21           TION OF INCREASE.—

22                   “(A) QUALITY DETERMINATION.—The  
23                   quality rating for a plan shall be determined ac-  
24                   cording to a 5-star rating system (based on the  
25                   data collected under section 1852(e)).

1           “(B) PLANS THAT FAILED TO REPORT.—

2           An MA plan which does not report data that  
3           enables the Secretary to rate the plan for pur-  
4           poses of this paragraph shall be counted as hav-  
5           ing a rating of fewer than 3.5 stars.

6           “(5) EXCEPTION FOR PACE PLANS.—This sub-  
7           section shall not apply to payments to a PACE pro-  
8           gram under section 1894.”.

9           (4) DETERMINATION OF MEDICARE PART D  
10          LOW-INCOME BENCHMARK PREMIUM.—Section  
11          1860D–14(b)(2)(B)(iii) of the Social Security Act  
12          (42 U.S.C. 1395w–114(b)(2)(B)(iii)) as amended by  
13          section 3302 of the Patient Protection and Afford-  
14          able Care Act, is amended by striking “, determined  
15          without regard to any reduction in such premium as  
16          a result of any beneficiary rebate under section  
17          1854(b)(1)(C) or bonus payment under section  
18          1853(n)” and inserting the following: “and deter-  
19          mined before the application of the monthly rebate  
20          computed under section 1854(b)(1)(C)(i) for that  
21          plan and year involved and, in the case of a quali-  
22          fying plan, before the application of the increase  
23          under section 1853(o) for that plan and year in-  
24          volved”.

1 (d) BENEFICIARY REBATES.—Section 1854(b)(1)(C)  
2 of such Act (42 U.S.C. 1395w-24(b)(1)(C)), as amended  
3 by section 3202(b) of the Patient Protection and Afford-  
4 able Care Act, is further amended—

5 (1) in clause (i), by inserting “(or the applica-  
6 ble rebate percentage specified in clause (iii) in the  
7 case of plan years beginning on or after January 1,  
8 2012)” after “75 percent”; and

9 (2) by striking clause (iii), by redesignating  
10 clauses (iv) and (v) as clauses (vii) and (viii), respec-  
11 tively, and by inserting after clause (ii) the following  
12 new clauses:

13 “(iii) APPLICABLE REBATE PERCENT-  
14 AGE.—The applicable rebate percentage  
15 specified in this clause for a plan for a  
16 year, based on the system under section  
17 1853(o)(4)(A), is the sum of—

18 “(I) the product of the old phase-  
19 in proportion for the year under  
20 clause (iv) and 75 percent; and

21 “(II) the product of the new  
22 phase-in proportion for the year under  
23 clause (iv) and the final applicable re-  
24 bate percentage under clause (v).

1                   “(iv) OLD AND NEW PHASE-IN PRO-  
2                   PORTIONS.—For purposes of clause (iv)—

3                   “(I) for 2012, the old phase-in  
4                   proportion is  $\frac{2}{3}$  and the new phase-in  
5                   proportion is  $\frac{1}{3}$ ;

6                   “(II) for 2013, the old phase-in  
7                   proportion is  $\frac{1}{3}$  and the new phase-in  
8                   proportion is  $\frac{2}{3}$ ; and

9                   “(III) for 2014 and any subse-  
10                  quent year, the old phase-in propor-  
11                  tion is 0 and the new phase-in propor-  
12                  tion is 1.

13                  “(v) FINAL APPLICABLE REBATE PER-  
14                  CENTAGE.—Subject to clause (vi), the final  
15                  applicable rebate percentage under this  
16                  clause is—

17                  “(I) in the case of a plan with a  
18                  quality rating under such system of at  
19                  least 4.5 stars, 70 percent;

20                  “(II) in the case of a plan with  
21                  a quality rating under such system of  
22                  at least 3.5 stars and less than 4.5  
23                  stars, 65 percent; and

1                   “(III) in the case of a plan with  
2                   a quality rating under such system of  
3                   less than 3.5 stars, 50 percent.

4                   “(vi) TREATMENT OF LOW ENROLL-  
5                   MENT AND NEW PLANS.—For purposes of  
6                   clause (v)—

7                   “(I) for 2012, in the case of a  
8                   plan described in subclause (I) of sub-  
9                   section (o)(3)(A)(ii), the plan shall be  
10                  treated as having a rating of 4.5  
11                  stars; and

12                  “(II) for 2012 or a subsequent  
13                  year, in the case of a new MA plan  
14                  (as defined under subclause (III) of  
15                  subsection (o)(3)(A)(iii)) that is  
16                  treated as a qualifying plan pursuant  
17                  to subclause (I) of such subsection,  
18                  the plan shall be treated as having a  
19                  rating of 3.5 stars.”.

20                  (e) CODING INTENSITY ADJUSTMENT.—Section  
21                  1853(a)(1)(C)(ii) of such Act (42 U.S.C. 1395w-  
22                  23(a)(1)(C)(ii)) is amended—

23                         (1) in the heading, by striking “DURING PHASE-  
24                         OUT OF BUDGET NEUTRALITY FACTOR” and insert-  
25                         ing “OF CODING ADJUSTMENT”;

1           (2) in the matter before subclause (I), by strik-  
2           ing “through 2010” and inserting “and each subse-  
3           quent year”; and

4           (3) in subclause (II)—

5           (A) in the first sentence, by inserting “an-  
6           nually” before “conduct an analysis”;

7           (B) in the second sentence—

8           (i) by inserting “on a timely basis”  
9           after “are incorporated”; and

10          (ii) by striking “only for 2008, 2009,  
11          and 2010” and inserting “for 2008 and  
12          subsequent years”;

13          (C) in the third sentence, by inserting  
14          “and updated as appropriate” before the period  
15          at the end; and

16          (D) by adding at the end the following new  
17          subclauses:

18                   “(III) In calculating each year’s  
19                   adjustment, the adjustment factor  
20                   shall be for 2014, not less than the  
21                   adjustment factor applied for 2010,  
22                   plus 1.3 percentage points; for each of  
23                   years 2015 through 2018, not less  
24                   than the adjustment factor applied for  
25                   the previous year, plus 0.25 percent-



1 age point; and for 2019 and each sub-  
2 sequent year, not less than 5.7 per-  
3 cent.

4 “(IV) Such adjustment shall be  
5 applied to risk scores until the Sec-  
6 retary implements risk adjustment  
7 using Medicare Advantage diagnostic,  
8 cost, and use data.”.

9 (f) REPEAL OF COMPARATIVE COST ADJUSTMENT  
10 PROGRAM.—Section 1860C–1 of the Social Security Act  
11 (42 U.S.C. 1395w–29), as added by section 241(a) of the  
12 Medicare Prescription Drug, Improvement, and Mod-  
13 ernization Act of 2003 (Public Law 108–173), is repealed.

14 **SEC. 1103. SAVINGS FROM LIMITS ON MA PLAN ADMINIS-**  
15 **TRATIVE COSTS.**

16 Section 1857(e) of the Social Security Act (42 U.S.C.  
17 1395w–27(e)) is amended by adding at the end the fol-  
18 lowing new paragraph:

19 “(4) REQUIREMENT FOR MINIMUM MEDICAL  
20 LOSS RATIO.—If the Secretary determines for a con-  
21 tract year (beginning with 2014) that an MA plan  
22 has failed to have a medical loss ratio of at least  
23 .85—

24 “(A) the MA plan shall remit to the Sec-  
25 retary an amount equal to the product of—

1 “(i) the total revenue of the MA plan  
2 under this part for the contract year; and

3 “(ii) the difference between .85 and  
4 the medical loss ratio;

5 “(B) for 3 consecutive contract years, the  
6 Secretary shall not permit the enrollment of  
7 new enrollees under the plan for coverage dur-  
8 ing the second succeeding contract year; and

9 “(C) the Secretary shall terminate the plan  
10 contract if the plan fails to have such a medical  
11 loss ratio for 5 consecutive contract years.”.

12 **SEC. 1104. DISPROPORTIONATE SHARE HOSPITAL (DSH)**  
13 **PAYMENTS.**

14 Section 1886(r) of the Social Security Act (42 U.S.C.  
15 1395ww(r)), as added by section 3133 of the Patient Pro-  
16 tection and Affordable Care Act and as amended by sec-  
17 tion 10316 of such Act, is amended—

18 (1) in paragraph (1), by striking “2015” and  
19 inserting “2014”; and

20 (2) in paragraph (2)—

21 (A) in the matter preceding subparagraph  
22 (A), by striking “2015” and inserting “2014”;

23 (B) in subparagraph (B)(i)—

24 (i) in the heading, by inserting “2014,”  
25 after “YEARS”;

1 (ii) in the matter preceding subclause  
2 (I), by inserting “2014,” after “each of fis-  
3 cal years”;

4 (iii) in subclause (I), by striking “on  
5 such Act” and inserting “on the Health  
6 Care and Education Reconciliation Act of  
7 2010”; and

8 (iv) in the matter following subclause  
9 (II), by striking “minus 1.5 percentage  
10 points” and inserting “minus 0.1 percent-  
11 age points for fiscal year 2014 and minus  
12 0.2 percentage points for each of fiscal  
13 years 2015, 2016, and 2017”; and

14 (C) in subparagraph (B)(ii), in the matter  
15 following subclause (II), by striking “and, for  
16 each of 2018 and 2019, minus 1.5 percentage  
17 points” and inserting “minus 0.2 percentage  
18 points for each of fiscal years 2018 and 2019”.

19 **SEC. 1105. MARKET BASKET UPDATES.**

20 (a) IPPS.—Section 1886(b)(3)(B) of the Social Se-  
21 curity Act (42 U.S.C. 1395ww(b)(3)(B)), as amended by  
22 sections 3401(a)(4) and 10319(a) of the Patient Protec-  
23 tion and Affordable Care Act, is amended—

24 (1) in clause (xii)—

1 (A) by placing the subclause (II) (inserted  
2 by section 10319(a)(3) of the Patient Protec-  
3 tion and Affordable Care Act) immediately after  
4 subclause (I) and, in such subclause (II), by  
5 striking “and” at the end; and

6 (B) by striking subclause (III) and insert-  
7 ing the following:

8 “(III) for fiscal year 2014, by 0.3 percentage  
9 point;

10 “(IV) for each of fiscal years 2015 and 2016,  
11 by 0.2 percentage point; and

12 “(V) for each of fiscal years 2017, 2018, and  
13 2019, by 0.75 percentage point.”; and

14 (2) by striking clause (xiii).

15 (b) LONG-TERM CARE HOSPITALS.—Section  
16 1886(m)(4) of the Social Security Act (42 U.S.C.  
17 1395ww(m)(4)), as added by section 3401(c) of the Pa-  
18 tient Protection and Affordable Care Act and amended by  
19 section 10319(b) of such Act, is amended—

20 (1) in subparagraph (A)—

21 (A) in clause (iii), by striking “and” at the  
22 end; and

23 (B) by striking clause (iv) and inserting  
24 the following:

1 “(iv) for rate year 2014, 0.3 percent-  
2 age point;

3 “(v) for each of rate years 2015 and  
4 2016, 0.2 percentage point; and

5 “(vi) for each of rate years 2017,  
6 2018, and 2019, 0.75 percentage point.”;

7 (2) by striking subparagraph (B); and

8 (3) by striking “(4) OTHER ADJUSTMENT.—”  
9 and all that follows through “For purposes” and in-  
10 sserting “(4) OTHER ADJUSTMENT.—For purposes”  
11 (and redesignating clauses (i) through (vi) as sub-  
12 paragraphs (A) through (F), respectively, with ap-  
13 propriate indentation).

14 (c) INPATIENT REHABILITATION FACILITIES.—Sec-  
15 tion 1886(j)(3)(D) of the Social Security Act (42 U.S.C.  
16 1395ww(j)(3)(D)), as added by section 3401(d)(2) of the  
17 Patient Protection and Affordable Care Act and amended  
18 by section 10319(c) of such Act, is amended—

19 (1) in clause (i)—

20 (A) by placing the subclause (II) (inserted  
21 by section 10319(c)(3) of the Patient Protec-  
22 tion and Affordable Care Act) immediately after  
23 subclause (I) and, in such subclause (II), by  
24 striking “and” at the end; and

1 (B) by striking subclause (III) and insert-  
2 ing the following:

3 “(III) for fiscal year 2014, 0.3  
4 percentage point;

5 “(IV) for each of fiscal years  
6 2015 and 2016, 0.2 percentage point;  
7 and

8 “(V) for each of fiscal years  
9 2017, 2018, and 2019, 0.75 percent-  
10 age point.”;

11 (2) by striking clause (ii); and

12 (3) by striking “(D) OTHER ADJUSTMENT.—”

13 and all that follows through “For purposes” and in-  
14 sserting “(D) OTHER ADJUSTMENT.—For purposes”  
15 (and redesignating subclauses (I) through (V) as  
16 clauses (i) through (v), respectively, with appropriate  
17 indentation).

18 (d) PSYCHIATRIC HOSPITALS.—Section 1886(s)(3) of  
19 the Social Security Act, as added by section 3401(f) of  
20 the Patient Protection and Affordable Care Act and  
21 amended by section 10319(e) of such Act, is amended—

22 (1) in subparagraph (A)—

23 (A) by placing the clause (ii) (inserted by  
24 section 10319(e)(3) of the Patient Protection  
25 and Affordable Care Act) immediately after

1 clause (i) and, in such clause (ii), by striking  
2 “and” at the end; and

3 (B) by striking clause (iii) and inserting  
4 the following:

5 “(iii) for the rate year beginning in  
6 2014, 0.3 percentage point;

7 “(iv) for each of the rate years begin-  
8 ning in 2015 and 2016, 0.2 percentage  
9 point; and

10 “(v) for each of the rate years begin-  
11 ning in 2017, 2018, and 2019, 0.75 per-  
12 centage point.”;

13 (2) by striking subparagraph (B); and

14 (3) by striking “(3) OTHER ADJUSTMENT.—”  
15 and all that follows through “For purposes” and in-  
16 serting “(3) OTHER ADJUSTMENT.—For purposes”  
17 (and redesignating clauses (i) through (v) as sub-  
18 paragraphs (A) through (E), respectively, with ap-  
19 propriate indentation).

20 (e) OUTPATIENT HOSPITALS.—Section  
21 1833(t)(3)(G) of the Social Security Act (42 U.S.C.  
22 1395l(t)(3)(G)), as added by section 3401(i)(2) of the Pa-  
23 tient Protection and Affordable Care Act and amended by  
24 section 10319(g) of such Act, is amended—

25 (1) in clause (i)—

1 (A) by placing the subclause (II) (inserted  
 2 by section 10319(g)(3) of the Patient Protec-  
 3 tion and Affordable Care Act) immediately after  
 4 subclause (I) and, in such subclause (II), by  
 5 striking “and” at the end; and

6 (B) by striking subclause (III) and insert-  
 7 ing the following:

8 “(III) for 2014, 0.3 percentage  
 9 point;

10 “(IV) for each of 2015 and 2016,  
 11 0.2 percentage point; and

12 “(V) for each of 2017, 2018, and  
 13 2019, 0.75 percentage point.”;

14 (2) by striking clause (ii); and

15 (3) by striking “(G) OTHER ADJUSTMENT.—”  
 16 and all that follows through “For purposes” and in-  
 17 serting “(G) OTHER ADJUSTMENT.—For purposes”  
 18 (and redesignating subclauses (I) through (V) as  
 19 clauses (i) through (v), respectively, with appropriate  
 20 indentation).

21 **SEC. 1106. PHYSICIAN OWNERSHIP-REFERRAL.**

22 Section 1877(i) of the Social Security Act (42 U.S.C.  
 23 1395nn(i)), as added by section 6001(a)(3) of the Patient  
 24 Protection and Affordable Care Act and as amended by  
 25 section 10601(a) of such Act, is amended—



1 (1) in paragraph (1)(A)(i), by striking “August  
2 1, 2010” and inserting “December 31, 2010”; and

3 (2) in paragraph (3)—

4 (A) in subparagraph (A)(i), by striking  
5 “an applicable hospital (as defined in subpara-  
6 graph (E))” and inserting “a hospital that is an  
7 applicable hospital (as defined in subparagraph  
8 (E)) or is a high Medicaid facility described in  
9 subparagraph (F)”;

10 (B) in subparagraph (C)(iii), by inserting  
11 after “date of enactment of this subsection” the  
12 following: “(or, in the case of a hospital that  
13 did not have a provider agreement in effect as  
14 of such date but does have such an agreement  
15 in effect on December 31, 2010, the effective  
16 date of such provider agreement)”;

17 (C) by redesignating subparagraphs (F)  
18 through (H) as subparagraphs (G) through (I),  
19 respectively; and

20 (D) by inserting after subparagraph (E)  
21 the following new subparagraph:

22 “(F) HIGH MEDICAID FACILITY DE-  
23 SCRIBED.—A high Medicaid facility described in  
24 this subparagraph is a hospital that—

1           “(i) is not the sole hospital in a coun-  
2           ty;

3           “(ii) with respect to each of the 3  
4           most recent years for which data are avail-  
5           able, has an annual percent of total inpa-  
6           tient admissions that represent inpatient  
7           admissions under title XIX that is esti-  
8           mated to be greater than such percent with  
9           respect to such admissions for any other  
10          hospital located in the county in which the  
11          hospital is located; and

12          “(iii) meets the conditions described  
13          in subparagraph (E)(iii).”.

14 **SEC. 1107. PAYMENT FOR IMAGING SERVICES.**

15          Section 1848 of the Social Security Act (42 U.S.C.  
16 1395w-4), as amended by section 3135(a) of the Patient  
17 Protection and Affordable Care Act, is amended—

18           (1) in subsection (b)(4)—

19           (A) in subparagraph (B), by striking “this  
20           paragraph” and inserting “subparagraph (A)”;  
21           and

22           (B) by amending subparagraph (C) to read  
23           as follows:

24           “(C) **ADJUSTMENT IN IMAGING UTILIZA-**  
25           **TION RATE.**—With respect to fee schedules es-



1 the Patient Protection and Affordable Care Act, is amend-  
2 ed by striking “ $\frac{3}{4}$ ” and inserting “ $\frac{1}{2}$ ”.

3 **SEC. 1109. PAYMENT FOR QUALIFYING HOSPITALS.**

4 (a) IN GENERAL.—From the amount available under  
5 subsection (b), the Secretary of Health and Human Serv-  
6 ices shall provide for a payment to qualifying hospitals (as  
7 defined in subsection (d)) for fiscal years 2011 and 2012  
8 of the amount determined under subsection (c).

9 (b) AMOUNTS AVAILABLE.—There shall be available  
10 from the Federal Hospital Insurance Trust Fund  
11 \$400,000,000 for payments under this section for fiscal  
12 years 2011 and 2012.

13 (c) PAYMENT AMOUNT.—The amount of payment  
14 under this section for a qualifying hospital shall be deter-  
15 mined, in a manner consistent with the amount available  
16 under subsection (b), in proportion to the portion of the  
17 amount of the aggregate payments under section 1886(d)  
18 of the Social Security Act to the hospital for fiscal year  
19 2009 bears to the sum of all such payments to all quali-  
20 fying hospitals for such fiscal year.

21 (d) QUALIFYING HOSPITAL DEFINED.—In this sec-  
22 tion, the term “qualifying hospital” means a subsection  
23 (d) hospital (as defined for purposes of section 1886(d)  
24 of the Social Security Act) that is located in a county that  
25 ranks, based upon its ranking in age, sex, and race ad-

1 justed spending for benefits under parts A and B under  
2 title XVIII of such Act per enrollee, within the lowest  
3 quartile of such counties in the United States.

## 4 **Subtitle C—Medicaid**

### 5 **SEC. 1201. FEDERAL FUNDING FOR STATES.**

6 Section 1905 of the Social Security Act (42 U.S.C.  
7 1396d), as amended by sections 2001(a)(3) and 10201(c)  
8 of the Patient Protection and Affordable Care Act, is  
9 amended—

10 (1) in subsection (y)—

11 (A) by redesignating subclause (II) of  
12 paragraph (1)(B)(ii) as paragraph (5) of sub-  
13 section (z) and realigning the left margins ac-  
14 cordingly; and

15 (B) by striking paragraph (1) and insert-  
16 ing the following:

17 “(1) AMOUNT OF INCREASE.—Notwithstanding  
18 subsection (b), the Federal medical assistance per-  
19 centage for a State that is one of the 50 States or  
20 the District of Columbia, with respect to amounts  
21 expended by such State for medical assistance for  
22 newly eligible individuals described in subclause  
23 (VIII) of section 1902(a)(10)(A)(i), shall be equal  
24 to—

1           “(A) 100 percent for calendar quarters in  
2           2014, 2015, and 2016;

3           “(B) 95 percent for calendar quarters in  
4           2017;

5           “(C) 94 percent for calendar quarters in  
6           2018;

7           “(D) 93 percent for calendar quarters in  
8           2019; and

9           “(E) 90 percent for calendar quarters in  
10          2020 and each year thereafter.”; and

11          (2) in subsection (z)—

12                 (A) in paragraph (1), by striking “Sep-  
13                 tember 30, 2019” and inserting “December 31,  
14                 2015” and by striking “subsection  
15                 (y)(1)(B)(ii)(II)” and inserting “paragraph  
16                 (3)”;

17                 (B) by striking paragraphs (2) through (4)  
18                 and inserting the following:

19                 “(2)(A) For calendar quarters in 2014 and  
20                 each year thereafter, the Federal medical assistance  
21                 percentage otherwise determined under subsection  
22                 (b) for an expansion State described in paragraph  
23                 (3) with respect to medical assistance for individuals  
24                 described in section 1902(a)(10)(A)(i)(VIII) who are  
25                 nonpregnant childless adults with respect to whom

1 the State may require enrollment in benchmark cov-  
2 erage under section 1937 shall be equal to the per-  
3 cent specified in subparagraph (B)(i) for such year.

4 “(B)(i) The percent specified in this subpara-  
5 graph for a State for a year is equal to the Federal  
6 medical assistance percentage (as defined in the first  
7 sentence of subsection (b)) for the State increased  
8 by a number of percentage points equal to the tran-  
9 sition percentage (specified in clause (ii) for the  
10 year) of the number of percentage points by which—

11 “(I) such Federal medical assistance per-  
12 centage for the State, is less than

13 “(II) the percent specified in subsection  
14 (y)(1) for the year.

15 “(ii) The transition percentage specified in this  
16 clause for—

17 “(I) 2014 is 50 percent;

18 “(II) 2015 is 60 percent;

19 “(III) 2016 is 70 percent;

20 “(IV) 2017 is 80 percent;

21 “(V) 2018 is 90 percent; and

22 “(VI) 2019 and each subsequent year is  
23 100 percent.”; and

24 (C) by redesignating paragraph (5) (as  
25 added by paragraph (1)(A) of this section) as

1 paragraph (3), realigning the left margins to  
2 align with paragraph (2), and striking the  
3 heading and all that follows through “a State  
4 is” and inserting “A State is”.

5 **SEC. 1202. PAYMENTS TO PRIMARY CARE PHYSICIANS.**

6 (a) IN GENERAL.—

7 (1) FEE-FOR-SERVICE PAYMENTS.—Section  
8 1902 of the Social Security Act (42 U.S.C. 1396a),  
9 as amended by section 2303(a)(2) of the Patient  
10 Protection and Affordable Care Act, is amended—

11 (A) in subsection (a)(13)—

12 (i) by striking “and” at the end of  
13 subparagraph (A);

14 (ii) by adding “and” at the end of  
15 subparagraph (B); and

16 (iii) by adding at the end the fol-  
17 lowing new subparagraph:

18 “(C) payment for primary care services (as  
19 defined in subsection (jj)) furnished in 2013  
20 and 2014 by a physician with a primary spe-  
21 cialty designation of family medicine, general  
22 internal medicine, or pediatric medicine at a  
23 rate not less than 100 percent of the payment  
24 rate that applies to such services and physician  
25 under part B of title XVIII (or, if greater, the



1 payment rate that would be applicable under  
2 such part if the conversion factor under section  
3 1848(d) for the year involved were the conver-  
4 sion factor under such section for 2009);”;

5 (B) by adding at the end the following new  
6 subsection:

7 “(jj) PRIMARY CARE SERVICES DEFINED.—For pur-  
8 poses of subsection (a)(13)(C), the term ‘primary care  
9 services’ means—

10 “(1) evaluation and management services that  
11 are procedure codes (for services covered under title  
12 XVIII) for services in the category designated Eval-  
13 uation and Management in the Healthcare Common  
14 Procedure Coding System (established by the Sec-  
15 retary under section 1848(c)(5) as of December 31,  
16 2009, and as subsequently modified); and

17 “(2) services related to immunization adminis-  
18 tration for vaccines and toxoids for which CPT codes  
19 90465, 90466, 90467, 90468, 90471, 90472, 90473,  
20 or 90474 (as subsequently modified) apply under  
21 such System.”.

22 (2) UNDER MEDICAID MANAGED CARE  
23 PLANS.—Section 1932(f) of such Act (42 U.S.C.  
24 1396u-2(f)) is amended—

1 (A) in the heading, by adding at the end  
2 the following: “; ADEQUACY OF PAYMENT FOR  
3 PRIMARY CARE SERVICES”; and

4 (B) by inserting before the period at the  
5 end the following: “and, in the case of primary  
6 care services described in section  
7 1902(a)(13)(C), consistent with the minimum  
8 payment rates specified in such section (regard-  
9 less of the manner in which such payments are  
10 made, including in the form of capitation or  
11 partial capitation)”.

12 (b) INCREASE IN PAYMENT USING INCREASED  
13 FMAP.—Section 1905 of the Social Security Act, as  
14 amended by section 1004(b) of this Act and section  
15 10201(c)(6) of the Patient Protection and Affordable Care  
16 Act, is amended by adding at the end the following new  
17 subsection:

18 “(dd) INCREASED FMAP FOR ADDITIONAL EXPEND-  
19 ITURES FOR PRIMARY CARE SERVICES.—Notwithstanding  
20 subsection (b), with respect to the portion of the amounts  
21 expended for medical assistance for services described in  
22 section 1902(a)(13)(C) furnished on or after January 1,  
23 2013, and before January 1, 2015, that is attributable to  
24 the amount by which the minimum payment rate required  
25 under such section (or, by application, section 1932(f)) ex-

1 ceeds the payment rate applicable to such services under  
 2 the State plan as of July 1, 2009, the Federal medical  
 3 assistance percentage for a State that is one of the 50  
 4 States or the District of Columbia shall be equal to 100  
 5 percent. The preceding sentence does not prohibit the pay-  
 6 ment of Federal financial participation based on the Fed-  
 7 eral medical assistance percentage for amounts in excess  
 8 of those specified in such sentence.”.

9 **SEC. 1203. DISPROPORTIONATE SHARE HOSPITAL PAY-**  
 10 **MENTS.**

11 (a) IN GENERAL.—Section 1923(f) of the Social Se-  
 12 curity Act (42 U.S.C. 1396r-4(f)), as amended by sections  
 13 2551(a)(4) and 10201(e)(1) of the Patient Protection and  
 14 Affordable Care Act, is amended—

15 (1) in paragraph (6)(B)(iii), in the matter pre-  
 16 ceding subclause (I), by striking “or paragraph (7)”;  
 17 and

18 (2) by striking paragraph (7) and inserting the  
 19 following:

20 “(7) MEDICAID DSH REDUCTIONS.—

21 “(A) REDUCTIONS.—

22 “(i) IN GENERAL.—For each of fiscal  
 23 years 2014 through 2020 the Secretary  
 24 shall effect the following reductions:

1                   “(I) REDUCTION IN DSH ALLOT-  
2                   MENTS.—The Secretary shall reduce  
3                   DSH allotments to States in the  
4                   amount specified under the DSH  
5                   health reform methodology under sub-  
6                   paragraph (B) for the State for the  
7                   fiscal year.

8                   “(II) REDUCTIONS IN PAY-  
9                   MENTS.—The Secretary shall reduce  
10                  payments to States under section  
11                  1903(a) for each calendar quarter in  
12                  the fiscal year, in the manner speci-  
13                  fied in clause (iii), in an amount equal  
14                  to  $\frac{1}{4}$  of the DSH allotment reduction  
15                  under subclause (I) for the State for  
16                  the fiscal year.

17                  “(ii) AGGREGATE REDUCTIONS.—The  
18                  aggregate reductions in DSH allotments  
19                  for all States under clause (i)(I) shall be  
20                  equal to—

21                                 “(I) \$500,000,000 for fiscal year  
22                                 2014;

23                                 “(II) \$600,000,000 for fiscal  
24                                 year 2015;

1                   “(III) \$600,000,000 for fiscal  
2                   year 2016;

3                   “(IV) \$1,800,000,000 for fiscal  
4                   year 2017;

5                   “(V) \$5,000,000,000 for fiscal  
6                   year 2018;

7                   “(VI) \$5,600,000,000 for fiscal  
8                   year 2019; and

9                   “(VII) \$4,000,000,000 for fiscal  
10                  year 2020.

11                  The Secretary shall distribute such aggre-  
12                  gate reductions among States in accord-  
13                  ance with subparagraph (B).

14                  “(iii) MANNER OF PAYMENT REDUC-  
15                  TION.—The amount of the payment reduc-  
16                  tion under clause (i)(II) for a State for a  
17                  quarter shall be deemed an overpayment to  
18                  the State under this title to be disallowed  
19                  against the State’s regular quarterly draw  
20                  for all spending under section 1903(d)(2).  
21                  Such a disallowance is not subject to a re-  
22                  consideration under subsections (d) and (e)  
23                  of section 1116.

1                   “(iv) DEFINITION.—In this para-  
2                   graph, the term ‘State’ means the 50  
3                   States and the District of Columbia.

4                   “(B) DSH HEALTH REFORM METHODOD-  
5                   OLOGY.—The Secretary shall carry out sub-  
6                   paragraph (A) through use of a DSH Health  
7                   Reform methodology that meets the following  
8                   requirements:

9                   “(i) The methodology imposes the  
10                  largest percentage reductions on the States  
11                  that—

12                   “(I) have the lowest percentages  
13                   of uninsured individuals (determined  
14                   on the basis of data from the Bureau  
15                   of the Census, audited hospital cost  
16                   reports, and other information likely  
17                   to yield accurate data) during the  
18                   most recent year for which such data  
19                   are available; or

20                   “(II) do not target their DSH  
21                   payments on—

22                   “(aa) hospitals with high  
23                   volumes of Medicaid inpatients  
24                   (as defined in subsection  
25                   (b)(1)(A)); and

1                   “(bb) hospitals that have  
2                   high levels of uncompensated  
3                   care (excluding bad debt).

4                   “(ii) The methodology imposes a  
5                   smaller percentage reduction on low DSH  
6                   States described in paragraph (5)(B).

7                   “(iii) The methodology takes into ac-  
8                   count the extent to which the DSH allot-  
9                   ment for a State was included in the budg-  
10                  et neutrality calculation for a coverage ex-  
11                  pansion approved under section 1115 as of  
12                  July 31, 2009.”.

13           (b) EXTENSION OF DSH ALLOTMENT.—Section  
14 1923(f)(6)(A) of the Social Security Act (42 U.S.C.  
15 1396r-4(f)(6)(A)) is amended by adding at the end the  
16 following:

17                   “(v) ALLOTMENT FOR 2D, 3RD, AND  
18                   4TH QUARTERS OF FISCAL YEAR 2012 AND  
19                   FOR FISCAL YEAR 2013.—Notwithstanding  
20                   the table set forth in paragraph (2):

21                   “(I) 2D, 3RD, AND 4TH QUAR-  
22                   TERS OF FISCAL YEAR 2012.—In the  
23                   case of a State that has a DSH allot-  
24                   ment of \$0 for the 2d, 3rd, and 4th  
25                   quarters of fiscal year 2012, the DSH

1 allotment shall be \$47,200,000 for  
2 such quarters.

3 “(II) FISCAL YEAR 2013.—In the  
4 case of a State that has a DSH allot-  
5 ment of \$0 for fiscal year 2013, the  
6 DSH allotment shall be \$53,100,000  
7 for such fiscal year.”.

8 **SEC. 1204. FUNDING FOR THE TERRITORIES.**

9 (a) IN GENERAL.—Part III of subtitle D of title I  
10 of the Patient Protection and Affordable Care Act, as  
11 amended by section 10104(m) of such Act, is amended  
12 by inserting after section 1322 the following section:

13 **“SEC. 1323. FUNDING FOR THE TERRITORIES.**

14 “(a) IN GENERAL.—A territory that—

15 “(1) elects consistent with subsection (b) to es-  
16 tablish an Exchange in accordance with part II of  
17 this subtitle and establishes such an Exchange in ac-  
18 cordance with such part shall be treated as a State  
19 for purposes of such part and shall be entitled to  
20 payment from the amount allocated to the territory  
21 under subsection (c); or

22 “(2) does not make such election shall be enti-  
23 tled to an increase in the dollar limitation applicable  
24 to the territory under subsections (f) and (g) of sec-  
25 tion 1108 of the Social Security Act (42 U.S.C.



1 1308) for such period in such amount for such terri-  
2 tory and such increase shall not be taken into ac-  
3 count in computing any other amount under such  
4 subsections.

5 “(b) TERMS AND CONDITIONS.—An election under  
6 subsection (a)(1) shall—

7 “(1) not be effective unless the election is con-  
8 sistent with section 1321 and is received not later  
9 than October 1, 2013; and

10 “(2) be contingent upon entering into an agree-  
11 ment between the territory and the Secretary that  
12 requires that—

13 “(A) funds provided under the agreement  
14 shall be used only to provide premium and cost-  
15 sharing assistance to residents of the territory  
16 obtaining health insurance coverage through the  
17 Exchange; and

18 “(B) the premium and cost-sharing assist-  
19 ance provided under such agreement shall be  
20 structured in such a manner so as to prevent  
21 any gap in assistance for individuals between  
22 the income level at which medical assistance is  
23 available through the territory’s Medicaid plan  
24 under title XIX of the Social Security Act and  
25 the income level at which premium and cost-

1 sharing assistance is available under the agree-  
2 ment.

3 “(c) APPROPRIATION AND ALLOCATION.—

4 “(1) APPROPRIATION.—Out of any funds in the  
5 Treasury not otherwise appropriated, there is appro-  
6 priated for purposes of payment pursuant to sub-  
7 section (a) \$1,000,000,000, to be available during  
8 the period beginning with 2014 and ending with  
9 2019.

10 “(2) ALLOCATION.—The Secretary shall allo-  
11 cate the amount appropriated under paragraph (1)  
12 among the territories for purposes of carrying out  
13 this section as follows:

14 “(A) For Puerto Rico, \$925,000,000.

15 “(B) For another territory, the portion of  
16 \$75,000,000 specified by the Secretary.”.

17 (b) MEDICAID FUNDING.—

18 (1) INCREASE IN FUNDING CAPS.—Section  
19 1108(g) of the Social Security Act (42 U.S.C.  
20 1308(g)), as amended by section 2005(a) of the Pa-  
21 tient Protection and Affordable Care Act, is amend-  
22 ed—

23 (A) in paragraph (2), by inserting “and  
24 section 1323(a)(2) of the Patient Protection

1           and Affordable Care Act” after “subject to”;  
2           and

3                   (B) by striking paragraph (5) and insert-  
4           ing the following:

5           “(5) ADDITIONAL INCREASE.—The Secretary  
6           shall increase the amounts otherwise determined  
7           under this subsection for Puerto Rico, the Virgin Is-  
8           lands, Guam, the Northern Mariana Islands, and  
9           American Samoa (after the application of subsection  
10          (f) and the preceding paragraphs of this subsection)  
11          for the period beginning July 1, 2011, and ending  
12          on September 30, 2019, by such amounts that the  
13          total additional payments under title XIX to such  
14          territories equals \$6,300,000,000 for such period.  
15          The Secretary shall increase such amounts in pro-  
16          portion to the amounts applicable to such territories  
17          under this subsection and subsection (f) on the date  
18          of enactment of this paragraph.”.

19                   (2) DISREGARD OF PAYMENTS; INCREASED  
20          FMAP.—Section 2005 of the Patient Protection and  
21          Affordable Care Act is amended—

22                           (A) by repealing subsection (b) (and the  
23                           amendments made by that subsection) and sec-  
24                           tion 1108(g)(4) of the Social Security Act shall

1 be applied as if such amendments had never  
2 been enacted; and

3 (B) in subsection (c)(2), by striking “Jan-  
4 uary” and inserting “July”.

5 **SEC. 1205. DELAY IN COMMUNITY FIRST CHOICE OPTION.**

6 Section 1915(k)(1) of the Social Security Act (42  
7 U.S.C. 1396n(k)), as added by section 2401 of the Patient  
8 Protection and Affordable Care Act, is amended by strik-  
9 ing “October 1, 2010” and inserting “October 1, 2011”.

10 **SEC. 1206. DRUG REBATES FOR NEW FORMULATIONS OF**  
11 **EXISTING DRUGS.**

12 (a) TREATMENT OF NEW FORMULATIONS.—Sub-  
13 paragraph (C) of section 1927(c)(2) of the Social Security  
14 Act (42 U.S.C. 1396r–8(c)(2)), as added by section  
15 2501(d) of the Patient Protection and Affordable Care  
16 Act, is amended to read as follows:

17 “(C) TREATMENT OF NEW FORMULA-  
18 TIONS.—In the case of a drug that is a line ex-  
19 tension of a single source drug or an innovator  
20 multiple source drug that is an oral solid dos-  
21 age form, the rebate obligation with respect to  
22 such drug under this section shall be the  
23 amount computed under this section for such  
24 new drug or, if greater, the product of—

1           “(i) the average manufacturer price of  
2           the line extension of a single source drug  
3           or an innovator multiple source drug that  
4           is an oral solid dosage form;

5           “(ii) the highest additional rebate  
6           (calculated as a percentage of average  
7           manufacturer price) under this section for  
8           any strength of the original single source  
9           drug or innovator multiple source drug;  
10          and

11          “(iii) the total number of units of  
12          each dosage form and strength of the line  
13          extension product paid for under the State  
14          plan in the rebate period (as reported by  
15          the State).

16          In this subparagraph, the term ‘line extension’  
17          means, with respect to a drug, a new formula-  
18          tion of the drug, such as an extended release  
19          formulation.”.

20          (b) EFFECTIVE DATE.—The amendment made by  
21          subsection (a) shall take effect as if included in the enact-  
22          ment of the Patient Protection and Affordable Care Act.

1           **Subtitle D—Reducing Fraud,**  
2                           **Waste, and Abuse**

3   **SEC. 1301. COMMUNITY MENTAL HEALTH CENTERS.**

4           (a) IN GENERAL.—Section 1861(ff)(3)(B) of the So-  
5   cial Security Act (42 U.S.C. 1395x(ff)(3)(B)) is amend-  
6   ed—

7                   (1) in clause (ii), by striking “and” at the end;

8                   (2) by redesignating clause (iii) as clause (iv);

9           and

10                   (3) by inserting after clause (ii) the following:

11                   “(iii) provides at least 40 percent of its services  
12           to individuals who are not eligible for benefits under  
13           this title; and”.

14           (b) RESTRICTION.—Section 1861(ff)(3)(A) of such  
15   Act (42 U.S.C. 1395x(ff)(3)(A)) is amended by inserting  
16   “other than in an individual’s home or in an inpatient or  
17   residential setting” before the period.

18           (c) EFFECTIVE DATE.—The amendments made by  
19   this section shall apply to items and services furnished on  
20   or after the first day of the first calendar quarter that  
21   begins at least 12 months after the date of the enactment  
22   of this Act.

1 **SEC. 1302. MEDICARE PREPAYMENT MEDICAL REVIEW LIM-**  
2 **ITATIONS.**

3 Section 1874A(h) of the Social Security Act (42  
4 U.S.C. 1395w-3a(h)) is repealed.

5 **SEC. 1303. FUNDING TO FIGHT FRAUD, WASTE, AND ABUSE.**

6 (a) FUNDING TO FIGHT FRAUD, WASTE, AND  
7 ABUSE.—

8 (1) IN GENERAL.—Section 1817(k) of the So-  
9 cial Security Act (42 U.S.C. 1395i(k)), as amended  
10 by section 6402(i) of the Patient Protection and Af-  
11 fordable Care Act, is further amended—

12 (A) by adding at the end the following new  
13 paragraph:

14 “(8) ADDITIONAL FUNDING.—

15 “(A) IN GENERAL.—In addition to the  
16 funds otherwise appropriated to the Account  
17 from the Trust Fund under paragraphs (3)(C)  
18 and (4)(A) and for purposes described in para-  
19 graphs (3)(C) and (4)(A), there are hereby ap-  
20 propriated to such Account from such Trust  
21 Fund the following additional amounts:

22 “(i) For fiscal year 2011,  
23 \$95,000,000.

24 “(ii) For fiscal year 2012,  
25 \$55,000,000.

1                   “(iii) For each of fiscal years 2013  
2                   and 2014, \$30,000,000.

3                   “(iv) For each of fiscal years 2015  
4                   and 2016, \$20,000,000.

5                   “(B) ALLOCATION.—The funds appro-  
6                   priated under this paragraph shall be allocated  
7                   in the same proportion as the total funding ap-  
8                   propriated with respect to paragraphs (3)(A)  
9                   and (4)(A) was allocated with respect to fiscal  
10                  year 2010, and shall be available without fur-  
11                  ther appropriation until expended.”; and

12                  (B) in paragraph (4)(A), by inserting “for  
13                  activities described in paragraph (3)(C) and”  
14                  after “necessary”.

15                  (b) MEDICAID INTEGRITY PROGRAM.—Section  
16                  1936(e)(1) of such Act (42 U.S.C. 1396–u6(e)(1)) is  
17                  amended—

18                  (1) in subparagraph (B), by striking at the end  
19                  “and”;

20                  (2) in subparagraph (C)—

21                          (A) by striking “for each fiscal year there-  
22                          after” and inserting “for each of fiscal years  
23                          2009 and 2010”; and

24                          (B) by striking the period and inserting “;  
25                          and”; and



1           (3) by adding at the end the following new sub-  
2 paragraph:

3           “(D) for each fiscal year after fiscal year  
4 2010, the amount appropriated under this para-  
5 graph for the previous fiscal year, increased by  
6 the percentage increase in the consumer price  
7 index for all urban consumers (all items; United  
8 States city average) over the previous year.”.

9 **SEC. 1304. 90-DAY PERIOD OF ENHANCED OVERSIGHT FOR**  
10 **INITIAL CLAIMS OF DME SUPPLIERS.**

11       Section 1866(j), as amended by section 6401 of the  
12 Patient Protection and Affordable Care Act, is further  
13 amended—

14           (1) by redesignating paragraphs (4) through  
15 (7) as paragraphs (5) through (8), respectively; and

16           (2) by inserting after paragraph (3) the fol-  
17 lowing new paragraph:

18           “(4) 90-DAY PERIOD OF ENHANCED OVERSIGHT  
19 FOR INITIAL CLAIMS OF DME SUPPLIERS.—For peri-  
20 ods beginning after January 1, 2011, if the Sec-  
21 retary determines that there is a significant risk of  
22 fraudulent activity among suppliers of durable med-  
23 ical equipment, in the case of a supplier of durable  
24 medical equipment who is within a category or geo-  
25 graphic area under title XVIII identified pursuant to

1 such determination and who is initially enrolling  
2 under such title, the Secretary shall, notwith-  
3 standing sections 1816(c), 1842(c), and 1869(a)(2),  
4 withhold payment under such title with respect to  
5 durable medical equipment furnished by such sup-  
6 plier during the 90-day period beginning on the date  
7 of the first submission of a claim under such title  
8 for durable medical equipment furnished by such  
9 supplier.”.

## 10 **Subtitle E—Provisions Relating to** 11 **Revenue**

### 12 **SEC. 1401. HIGH-COST PLAN EXCISE TAX.**

13 (a) IN GENERAL.—Section 4980I of the Internal  
14 Revenue Code of 1986, as added by section 9001 of the  
15 Patient Protection and Affordable Care Act and amended  
16 by section 10901 of such Act, is amended—

17 (1) in subsection (b)(3)(B)—

18 (A) by striking “The annual” and insert-  
19 ing the following:

20 “(i) IN GENERAL.—Except as pro-  
21 vided in clause (ii), the annual”; and

22 (B) by adding at the end the following new  
23 clause:

24 “(ii) MULTIEMPLOYER PLAN COV-  
25 ERAGE.—Any coverage provided under a

1 multiemployer plan (as defined in section  
2 414(f)) shall be treated as coverage other  
3 than self-only coverage.”;

4 (2) in subsection (b)(3)(C)—

5 (A) by striking “Except as provided in  
6 subparagraph (D)—”;

7 (B) in clause (i)—

8 (i) by striking “2013” each place it  
9 appears in the heading and the text and  
10 inserting “2018”;

11 (ii) by striking “\$8,500” in subclause  
12 (I) and inserting “\$10,200 multiplied by  
13 the health cost adjustment percentage (de-  
14 termined by only taking into account self-  
15 only coverage)”;

16 (iii) by striking “\$23,000” in sub-  
17 clause (II) and inserting “\$27,500 multi-  
18 plied by the health cost adjustment per-  
19 centage (determined by only taking into  
20 account coverage other than self-only cov-  
21 erage)”;

22 (C) by redesignating clauses (ii) and (iii)  
23 as clauses (iv) and (v), respectively, and by in-  
24 serting after clause (i) the following new  
25 clauses:

1           “(ii) HEALTH COST ADJUSTMENT  
2           PERCENTAGE.—For purposes of clause (i),  
3           the health cost adjustment percentage is  
4           equal to 100 percent plus the excess (if  
5           any) of—

6                   “(I) the percentage by which the  
7                   per employee cost for providing cov-  
8                   erage under the Blue Cross/Blue  
9                   Shield standard benefit option under  
10                  the Federal Employees Health Bene-  
11                  fits Plan for plan year 2018 (deter-  
12                  mined by using the benefit package  
13                  for such coverage in 2010) exceeds  
14                  such cost for plan year 2010, over

15                   “(II) 55 percent.

16           “(iii) AGE AND GENDER ADJUST-  
17           MENT.—

18                   “(I) IN GENERAL.—The amount  
19                   determined under subclause (I) or (II)  
20                   of clause (i), whichever is applicable,  
21                   for any taxable period shall be in-  
22                   creased by the amount determined  
23                   under subclause (II).

24                   “(II) AMOUNT DETERMINED.—

25                   The amount determined under this

1 subclause is an amount equal to the  
2 excess (if any) of—

3 “(aa) the premium cost of  
4 the Blue Cross/Blue Shield  
5 standard benefit option under the  
6 Federal Employees Health Bene-  
7 fits Plan for the type of coverage  
8 provided such individual in such  
9 taxable period if priced for the  
10 age and gender characteristics of  
11 all employees of the individual’s  
12 employer, over

13 “(bb) that premium cost for  
14 the provision of such coverage  
15 under such option in such taxable  
16 period if priced for the age and  
17 gender characteristics of the na-  
18 tional workforce.”.

19 (D) in clause (iv), as redesignated by sub-  
20 paragraph (C)—

21 (i) by inserting “covered by the plan”  
22 after “whose employees”; and

23 (ii) by striking subclauses (I) and (II)  
24 and inserting the following:

1                   “(I) the dollar amount in clause  
2                   (i)(I) shall be increased by \$1,650,  
3                   and

4                   “(II) the dollar amount in clause  
5                   (i)(II) shall be increased by \$3,450,”  
6                   and

7                   (E) in clause (v), as redesignated by sub-  
8                   paragraph (C)—

9                   (i) by striking “2013” and inserting  
10                  “2018”;

11                  (ii) by striking “clauses (i) and (ii)”  
12                  and inserting “clauses (i) (after the appli-  
13                  cation of clause (ii)) and (iv)”;

14                  (iii) by inserting “in the case of deter-  
15                  minations for calendar years beginning be-  
16                  fore 2020” after “1 percentage point” in  
17                  subclause (II) thereof;

18                  (3) by striking subparagraph (D) of subsection  
19                  (b)(3);

20                  (4) in subsection (d)(1)(B), by redesignating  
21                  clause (ii) as clause (iii) and by inserting after  
22                  clause (i) the following new clause:

23                         “(ii) any coverage under a separate  
24                         policy, certificate, or contract of insurance  
25                         which provides benefits substantially all of

1           which are for treatment of the mouth (in-  
 2           cluding any organ or structure within the  
 3           mouth) or for treatment of the eye, or”;  
 4           and

5           (5) in subsection (d), by adding at the end the  
 6           following new paragraph:

7           “(3) EMPLOYEE.—The term ‘employee’ includes  
 8           any former employee, surviving spouse, or other pri-  
 9           mary insured individual.”.

10          (b) EFFECTIVE DATES.—

11           (1) Section 9001(c) of the Patient Protection  
 12           and Affordable Care Act is amended by striking  
 13           “2012” and inserting “2017”.

14           (2) Section 10901(c) of the Patient Protection  
 15           and Affordable Care Act is amended by striking  
 16           “2012” and inserting “2017”.

17 **SEC. 1402. UNEARNED INCOME MEDICARE CONTRIBUTION.**

18          (a) INVESTMENT INCOME.—

19           (1) IN GENERAL.—Subtitle A of the Internal  
 20           Revenue Code of 1986 is amended by inserting after  
 21           chapter 2 the following new chapter:

22           **“CHAPTER 2A—UNEARNED INCOME**  
 23           **MEDICARE CONTRIBUTION**

“Sec. 1411. Imposition of tax.

1 **“SEC. 1411. IMPOSITION OF TAX.**

2 “(a) IN GENERAL.—Except as provided in subsection  
3 (e)—

4 “(1) APPLICATION TO INDIVIDUALS.—In the  
5 case of an individual, there is hereby imposed (in ad-  
6 dition to any other tax imposed by this subtitle) for  
7 each taxable year a tax equal to 3.8 percent of the  
8 lesser of—

9 “(A) net investment income for such tax-  
10 able year, or

11 “(B) the excess (if any) of—

12 “(i) the modified adjusted gross in-  
13 come for such taxable year, over

14 “(ii) the threshold amount.

15 “(2) APPLICATION TO ESTATES AND TRUSTS.—  
16 In the case of an estate or trust, there is hereby im-  
17 posed (in addition to any other tax imposed by this  
18 subtitle) for each taxable year a tax of 3.8 percent  
19 of the lesser of—

20 “(A) the undistributed net investment in-  
21 come for such taxable year, or

22 “(B) the excess (if any) of—

23 “(i) the adjusted gross income (as de-  
24 fined in section 67(e)) for such taxable  
25 year, over



1                   “(ii) the dollar amount at which the  
2                   highest tax bracket in section 1(e) begins  
3                   for such taxable year.

4           “(b) THRESHOLD AMOUNT.—For purposes of this  
5 chapter, the term ‘threshold amount’ means—

6                   “(1) in the case of a taxpayer making a joint  
7                   return under section 6013 or a surviving spouse (as  
8                   defined in section 2(a)), \$250,000,

9                   “(2) in the case of a married taxpayer (as de-  
10                  fined in section 7703) filing a separate return,  $\frac{1}{2}$  of  
11                  the dollar amount determined under paragraph (1),  
12                  and

13                  “(3) in any other case, \$200,000.

14           “(c) NET INVESTMENT INCOME.—For purposes of  
15 this chapter—

16                  “(1) IN GENERAL.—The term ‘net investment  
17                  income’ means the excess (if any) of—

18                          “(A) the sum of—

19                                  “(i) gross income from interest, divi-  
20                                  dends, annuities, royalties, and rents, other  
21                                  than such income which is derived in the  
22                                  ordinary course of a trade or business not  
23                                  described in paragraph (2),

1           “(ii) other gross income derived from  
2           a trade or business described in paragraph  
3           (2), and

4           “(iii) net gain (to the extent taken  
5           into account in computing taxable income)  
6           attributable to the disposition of property  
7           other than property held in a trade or  
8           business not described in paragraph (2),  
9           over

10          “(B) the deductions allowed by this sub-  
11          title which are properly allocable to such gross  
12          income or net gain.

13          “(2) TRADES AND BUSINESSES TO WHICH TAX  
14          APPLIES.—A trade or business is described in this  
15          paragraph if such trade or business is—

16                 “(A) a passive activity (within the meaning  
17                 of section 469) with respect to the taxpayer, or

18                 “(B) a trade or business of trading in fi-  
19                 nancial instruments or commodities (as defined  
20                 in section 475(e)(2)).

21          “(3) INCOME ON INVESTMENT OF WORKING  
22          CAPITAL SUBJECT TO TAX.—A rule similar to the  
23          rule of section 469(e)(1)(B) shall apply for purposes  
24          of this subsection.

1           “(4) EXCEPTION FOR CERTAIN ACTIVE INTER-  
2           ESTS IN PARTNERSHIPS AND S CORPORATIONS.—In  
3           the case of a disposition of an interest in a partner-  
4           ship or S corporation—

5                   “(A) gain from such disposition shall be  
6                   taken into account under clause (iii) of para-  
7                   graph (1)(A) only to the extent of the net gain  
8                   which would be so taken into account by the  
9                   transferor if all property of the partnership or  
10                  S corporation were sold for fair market value  
11                  immediately before the disposition of such inter-  
12                  est, and

13                   “(B) a rule similar to the rule of subpara-  
14                   graph (A) shall apply to a loss from such dis-  
15                   position.

16           “(5) EXCEPTION FOR DISTRIBUTIONS FROM  
17           QUALIFIED PLANS.—The term ‘net investment in-  
18           come’ shall not include any distribution from a plan  
19           or arrangement described in section 401(a), 403(a),  
20           403(b), 408, 408A, or 457(b).

21           “(6) SPECIAL RULE.—Net investment income  
22           shall not include any item taken into account in de-  
23           termining self-employment income for such taxable  
24           year on which a tax is imposed by section 1401(b).

1       “(d) MODIFIED ADJUSTED GROSS INCOME.—For  
2 purposes of this chapter, the term ‘modified adjusted gross  
3 income’ means adjusted gross income increased by the ex-  
4 cess of—

5               “(1) the amount excluded from gross income  
6 under section 911(a)(1), over

7               “(2) the amount of any deductions (taken into  
8 account in computing adjusted gross income) or ex-  
9 clusions disallowed under section 911(d)(6) with re-  
10 spect to the amounts described in paragraph (1).

11       “(e) NONAPPLICATION OF SECTION.—This section  
12 shall not apply to—

13               “(1) a nonresident alien, or

14               “(2) a trust all of the unexpired interests in  
15 which are devoted to one or more of the purposes  
16 described in section 170(c)(2)(B).”

17       (2) ESTIMATED TAXES.—Section 6654 of the  
18 Internal Revenue Code of 1986 is amended—

19               (A) in subsection (a), by striking “and the  
20 tax under chapter 2” and inserting “the tax  
21 under chapter 2, and the tax under chapter  
22 2A”; and

23               (B) in subsection (f)—

24                       (i) by striking “minus” at the end of  
25 paragraph (2) and inserting “plus”; and

1 (ii) by redesignating paragraph (3) as  
2 paragraph (4) and inserting after para-  
3 graph (2) the following new paragraph:

4 “(3) the taxes imposed by chapter 2A, minus”.

5 (3) CLERICAL AMENDMENT.—The table of  
6 chapters for subtitle A of chapter 1 of the Internal  
7 Revenue Code of 1986 is amended by inserting after  
8 the item relating to chapter 2 the following new  
9 item:

“CHAPTER 2A—UNEARNED INCOME MEDICARE CONTRIBUTION”.

10 (4) EFFECTIVE DATES.—The amendments  
11 made by this subsection shall apply to taxable years  
12 beginning after December 31, 2012.

13 (b) EARNED INCOME.—

14 (1) THRESHOLD.—

15 (A) FICA.—Paragraph (2) of section  
16 3101(b) of the Internal Revenue Code of 1986,  
17 as added by section 9015 of the Patient Protec-  
18 tion and Affordable Care Act and amended by  
19 section 10906 of such Act, is amended by strik-  
20 ing “and” at the end of subparagraph (A), by  
21 redesignating subparagraph (B) as subpara-  
22 graph (C), and by inserting after subparagraph  
23 (A) the following new subparagraph:

24 “(B) in the case of a married taxpayer (as  
25 defined in section 7703) filing a separate re-

1 turn,  $\frac{1}{2}$  of the dollar amount determined under  
2 subparagraph (A), and”.

3 (B) SECA.—Section 1401(b)(2) of the In-  
4 ternal Revenue Code of 1986, as added by sec-  
5 tion 9015 of the Patient Protection and Afford-  
6 able Care Act and amended by section 10906 of  
7 such Act, is amended—

8 (i) in subparagraph (A), by striking  
9 “and” at the end of clause (i), by redesign-  
10 ating clause (ii) as clause (iii), and by in-  
11 sserting after clause (i) the following new  
12 clause:

13 “(ii) in the case of a married taxpayer  
14 (as defined in section 7703) filing a sepa-  
15 rate return,  $\frac{1}{2}$  of the dollar amount deter-  
16 mined under clause (i), and”; and

17 (ii) in subparagraph (B), by striking  
18 “under clauses (i) and (ii)” and inserting  
19 “under clause (i), (ii), or (iii) (whichever is  
20 applicable)”.

21 (2) ESTIMATED TAXES.—Section 6654 of the  
22 Internal Revenue Code of 1986 is amended by redesi-  
23 gnating subsection (m) as subsection (n) and by in-  
24 sserting after subsection (l) the following new sub-  
25 section:

1 “(m) SPECIAL RULE FOR MEDICARE TAX.—For pur-  
2 poses of this section, the tax imposed under section  
3 3101(b)(2) (to the extent not withheld) shall be treated  
4 as a tax imposed under chapter 2.”.

5 (3) EFFECTIVE DATE.—The amendments made  
6 by this subsection shall apply with respect to remu-  
7 nation received, and taxable years beginning after,  
8 December 31, 2012.

9 **SEC. 1403. DELAY OF LIMITATION ON HEALTH FLEXIBLE**  
10 **SPENDING ARRANGEMENTS UNDER CAFE-**  
11 **TERIA PLANS.**

12 (a) IN GENERAL.—Section 10902(b) of the Patient  
13 Protection and Affordable Care Act is amended by strik-  
14 ing “December 31, 2010” and inserting “December 31,  
15 2012”.

16 (b) INFLATION ADJUSTMENT.—Paragraph (2) of sec-  
17 tion 125(i) of the Internal Revenue Code of 1986, as  
18 added by section 9005 of the Patient Protection and Af-  
19 fordable Care Act and amended by section 10902 of such  
20 Act, is amended—

21 (1) in the matter preceding subparagraph (A),  
22 by striking “December 31, 2011” and inserting  
23 “December 31, 2013”; and

24 (2) in subparagraph (B), by striking “2010”  
25 and inserting “2012”.

1 **SEC. 1404. BRAND NAME PHARMACEUTICALS.**

2 (a) IN GENERAL.—Section 9008 of the Patient Pro-  
 3 tection and Affordable Care Act is amended—

4 (1) in subsection (a)(1), by striking “2009” and  
 5 inserting “2010”;

6 (2) in subsection (b)—

7 (A) by striking “\$2,300,000,000” in para-  
 8 graph (1) and inserting “the applicable  
 9 amount”; and

10 (B) by adding at the end the following new  
 11 paragraph:

12 “(4) APPLICABLE AMOUNT.—For purposes of  
 13 paragraph (1), the applicable amount shall be deter-  
 14 mined in accordance with the following table:

<b>“Calendar year</b>	<b>Applicable amount</b>
2011 .....	\$2,500,000,000
2012 .....	\$2,800,000,000
2013 .....	\$2,800,000,000
2014 .....	\$3,000,000,000
2015 .....	\$3,000,000,000
2016 .....	\$3,000,000,000
2017 .....	\$4,000,000,000
2018 .....	\$4,100,000,000
2019 and thereafter .....	\$2,800,000,000.”;

15 (3) in subsection (d), by adding at the end the  
 16 following new paragraph:

17 “(3) JOINT AND SEVERAL LIABILITY.—If more  
 18 than one person is liable for payment of the fee  
 19 under subsection (a) with respect to a single covered  
 20 entity by reason of the application of paragraph (2),



1 all such persons shall be jointly and severally liable  
2 for payment of such fee.”; and

3 (4) by striking subsection (j) and inserting the  
4 following new subsection:

5 “(j) EFFECTIVE DATE.—This section shall apply to  
6 calendar years beginning after December 31, 2010.”.

7 (b) EFFECTIVE DATE.—The amendments made by  
8 this section shall take effect as if included in section 9008  
9 of the Patient Protection and Affordable Care Act.

10 **SEC. 1405. EXCISE TAX ON MEDICAL DEVICE MANUFACTUR-**  
11 **ERS.**

12 (a) IN GENERAL.—Chapter 32 of the Internal Rev-  
13 enue Code of 1986 is amended—

14 (1) by inserting after subchapter D the fol-  
15 lowing new subchapter:

16 **“Subchapter E—Medical Devices**

“Sec. 4191. Medical devices.

17 **“SEC. 4191. MEDICAL DEVICES.**

18 “(a) IN GENERAL.—There is hereby imposed on the  
19 sale of any taxable medical device by the manufacturer,  
20 producer, or importer a tax equal to 2.3 percent of the  
21 price for which so sold.

22 “(b) TAXABLE MEDICAL DEVICE.—For purposes of  
23 this section—

1           “(1) IN GENERAL.—The term ‘taxable medical  
2 device’ means any device (as defined in section  
3 201(h) of the Federal Food, Drug, and Cosmetic  
4 Act) intended for humans.

5           “(2) EXEMPTIONS.—Such term shall not in-  
6 clude—

7                   “(A) eyeglasses,

8                   “(B) contact lenses,

9                   “(C) hearing aids, and

10                   “(D) any other medical device determined  
11 by the Secretary to be of a type which is gen-  
12 erally purchased by the general public at retail  
13 for individual use.”, and

14           (2) by inserting after the item relating to sub-  
15 chapter D in the table of subchapters for such chap-  
16 ter the following new item:

                  “SUBCHAPTER E. MEDICAL DEVICES”.

17           (b) CERTAIN EXEMPTIONS NOT TO APPLY.—

18                   (1) Section 4221(a) of the Internal Revenue  
19 Code of 1986 is amended by adding at the end the  
20 following new sentence: “In the case of the tax im-  
21 posed by section 4191, paragraphs (3), (4), (5), and  
22 (6) shall not apply.”.

23                   (2) Section 6416(b)(2) of such Code is amend-  
24 ed by adding at the end the following: “In the case

1 of the tax imposed by section 4191, subparagraphs  
2 (B), (C), (D), and (E) shall not apply.”.

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to sales after December 31, 2012.

5 (d) REPEAL OF SECTION 9009 OF THE PATIENT  
6 PROTECTION AND AFFORDABLE CARE ACT.—Section  
7 9009 of the Patient Protection and Affordable Care Act,  
8 as amended by section 10904 of such Act, is repealed ef-  
9 fective as of the date of enactment of that Act.

10 **SEC. 1406. HEALTH INSURANCE PROVIDERS.**

11 (a) IN GENERAL.—Section 9010 of the Patient Pro-  
12 tection and Affordable Care Act, as amended by section  
13 10905 of such Act, is amended—

14 (1) in subsection (a)(1), by striking “2010” and  
15 inserting “2013”;

16 (2) in subsection (b)(2)—

17 (A) by striking “For purposes of para-  
18 graph (1), the net premiums” and inserting  
19 “For purposes of paragraph (1)—

20 “(A) IN GENERAL.—The net premiums”;  
21 and

22 (B) by adding at the end the following sub-  
23 paragraph:

24 “(B) PARTIAL EXCLUSION FOR CERTAIN  
25 EXEMPT ACTIVITIES.—After the application of

1           subparagraph (A), only 50 percent of the re-  
2           remaining net premiums written with respect to  
3           health insurance for any United States health  
4           risk that are attributable to the activities (other  
5           than activities of an unrelated trade or business  
6           as defined in section 513 of the Internal Rev-  
7           enue Code of 1986) of any covered entity quali-  
8           fying under paragraph (3), (4), (26), or (29) of  
9           section 501(c) of such Code and exempt from  
10          tax under section 501(a) of such Code shall be  
11          taken into account.”;

12          (3) in subsection (c)—

13                 (A) by inserting “during the calendar year  
14                 in which the fee under this section is due” in  
15                 paragraph (1) after “risk”;

16                 (B) in paragraph (2), by striking subpara-  
17                 graphs (C), (D), and (E) and inserting the fol-  
18                 lowing new subparagraphs:

19                         “(C) any entity—

20                                 “(i) which is incorporated as a non-  
21                                 profit corporation under a State law,

22                                 “(ii) no part of the net earnings of  
23                                 which inures to the benefit of any private  
24                                 shareholder or individual, no substantial  
25                                 part of the activities of which is carrying

1 on propaganda, or otherwise attempting, to  
2 influence legislation (except as otherwise  
3 provided in section 501(h) of the Internal  
4 Revenue Code of 1986), and which does  
5 not participate in, or intervene in (includ-  
6 ing the publishing or distributing of state-  
7 ments), any political campaign on behalf of  
8 (or in opposition to) any candidate for  
9 public office, and

10 “(iii) more than 80 percent of the  
11 gross revenues of which is received from  
12 government programs that target low-in-  
13 come, elderly, or disabled populations  
14 under titles XVIII, XIX, and XXI of the  
15 Social Security Act, and

16 “(D) any entity which is described in sec-  
17 tion 501(e)(9) of such Code and which is estab-  
18 lished by an entity (other than by an employer  
19 or employers) for purposes of providing health  
20 care benefits.”;

21 (C) in paragraph (3)(A), by striking “sub-  
22 paragraph (C)(i)(I), (D)(i)(I), or (E)(i)” and  
23 inserting “subparagraph (C) or (D)”; and

24 (D) by adding at the end the following new  
25 paragraph:

1           “(4) JOINT AND SEVERAL LIABILITY.—If more  
2 than one person is liable for payment of the fee  
3 under subsection (a) with respect to a single covered  
4 entity by reason of the application of paragraph (3),  
5 all such persons shall be jointly and severally liable  
6 for payment of such fee.”;

7           (4) by striking subsection (e) and inserting the  
8 following:

9           “(e) APPLICABLE AMOUNT.—For purposes of sub-  
10 section (b)(1)—

11           “(1) YEARS BEFORE 2019.—In the case of cal-  
12 endar years beginning before 2019, the applicable  
13 amount shall be determined in accordance with the  
14 following table:

<b>“Calendar year</b>	<b>Applicable amount</b>
2014 .....	\$8,000,000,000
2015 .....	\$11,300,000,000
2016 .....	\$11,300,000,000
2017 .....	\$13,900,000,000
2018 .....	\$14,300,000,000.

15           “(2) YEARS AFTER 2018.—In the case of any  
16 calendar year beginning after 2018, the applicable  
17 amount shall be the applicable amount for the pre-  
18 ceding calendar year increased by the rate of pre-  
19 mium growth (within the meaning of section  
20 36B(b)(3)(A)(ii) of the Internal Revenue Code of  
21 1986) for such preceding calendar year.”;

1 (5) in subsection (g), by adding at the end the  
2 following new paragraphs:

3 “(3) ACCURACY-RELATED PENALTY.—

4 “(A) IN GENERAL.—In the case of any un-  
5 derstatement of a covered entity’s net premiums  
6 written with respect to health insurance for any  
7 United States health risk for any calendar year,  
8 there shall be paid by the covered entity making  
9 such understatement, an amount equal to the  
10 excess of—

11 “(i) the amount of the covered entity’s  
12 fee under this section for the calendar year  
13 the Secretary determines should have been  
14 paid in the absence of any such under-  
15 statement, over

16 “(ii) the amount of such fee the Sec-  
17 retary determined based on such under-  
18 statement.

19 “(B) UNDERSTATEMENT.—For purposes  
20 of this paragraph, an understatement of a cov-  
21 ered entity’s net premiums written with respect  
22 to health insurance for any United States  
23 health risk for any calendar year is the dif-  
24 ference between the amount of such net pre-  
25 miums written as reported on the return filed

1 by the covered entity under paragraph (1) and  
2 the amount of such net premiums written that  
3 should have been reported on such return.

4 “(C) TREATMENT OF PENALTY.—The pen-  
5 alty imposed under subparagraph (A) shall be  
6 subject to the provisions of subtitle F of the In-  
7 ternal Revenue Code of 1986 that apply to as-  
8 sessable penalties imposed under chapter 68 of  
9 such Code.

10 “(4) TREATMENT OF INFORMATION.—Section  
11 6103 of the Internal Revenue Code of 1986 shall not  
12 apply to any information reported under this sub-  
13 section.”; and

14 (6) by striking subsection (j) and inserting the  
15 following new subsection:

16 “(j) EFFECTIVE DATE.—This section shall apply to  
17 calendar years beginning after December 31, 2013.”.

18 (b) EFFECTIVE DATE.—The amendments made by  
19 this section shall take effect as if included in section 9010  
20 of the Patient Protection and Affordable Care Act.



1 **SEC. 1407. DELAY OF ELIMINATION OF DEDUCTION FOR EX-**  
2 **PENSES ALLOCABLE TO MEDICARE PART D**  
3 **SUBSIDY.**

4 Section 9012(b) of the Patient Protection and Af-  
5 fordable Care Act is amended by striking “2010” and in-  
6 serting “2012”.

7 **SEC. 1408. ELIMINATION OF UNINTENDED APPLICATION OF**  
8 **CELLULOSIC BIOFUEL PRODUCER CREDIT.**

9 (a) IN GENERAL.—Section 40(b)(6)(E) of the Inter-  
10 nal Revenue Code of 1986 is amended by adding at the  
11 end the following new clause:

12 “(iii) EXCLUSION OF UNPROCESSED  
13 FUELS.—The term ‘cellulosic biofuel’ shall  
14 not include any fuel if—

15 “(I) more than 4 percent of such  
16 fuel (determined by weight) is any  
17 combination of water and sediment, or

18 “(II) the ash content of such fuel  
19 is more than 1 percent (determined by  
20 weight).”.

21 (b) EFFECTIVE DATE.—The amendment made by  
22 this section shall apply to fuels sold or used on or after  
23 January 1, 2010.

1 **SEC. 1409. CODIFICATION OF ECONOMIC SUBSTANCE DOC-**  
2 **TRINE AND PENALTIES.**

3 (a) IN GENERAL.—Section 7701 of the Internal Rev-  
4 enue Code of 1986 is amended by redesignating subsection  
5 (o) as subsection (p) and by inserting after subsection (n)  
6 the following new subsection:

7 “(o) CLARIFICATION OF ECONOMIC SUBSTANCE  
8 DOCTRINE.—

9 “(1) APPLICATION OF DOCTRINE.—In the case  
10 of any transaction to which the economic substance  
11 doctrine is relevant, such transaction shall be treated  
12 as having economic substance only if—

13 “(A) the transaction changes in a mean-  
14 ingful way (apart from Federal income tax ef-  
15 fects) the taxpayer’s economic position, and

16 “(B) the taxpayer has a substantial pur-  
17 pose (apart from Federal income tax effects)  
18 for entering into such transaction.

19 “(2) SPECIAL RULE WHERE TAXPAYER RELIES  
20 ON PROFIT POTENTIAL.—

21 “(A) IN GENERAL.—The potential for  
22 profit of a transaction shall be taken into ac-  
23 count in determining whether the requirements  
24 of subparagraphs (A) and (B) of paragraph (1)  
25 are met with respect to the transaction only if  
26 the present value of the reasonably expected

1 pre-tax profit from the transaction is substan-  
2 tial in relation to the present value of the ex-  
3 pected net tax benefits that would be allowed if  
4 the transaction were respected.

5 “(B) TREATMENT OF FEES AND FOREIGN  
6 TAXES.—Fees and other transaction expenses  
7 shall be taken into account as expenses in de-  
8 termining pre-tax profit under subparagraph  
9 (A). The Secretary shall issue regulations re-  
10 quiring foreign taxes to be treated as expenses  
11 in determining pre-tax profit in appropriate  
12 cases.

13 “(3) STATE AND LOCAL TAX BENEFITS.—For  
14 purposes of paragraph (1), any State or local income  
15 tax effect which is related to a Federal income tax  
16 effect shall be treated in the same manner as a Fed-  
17 eral income tax effect.

18 “(4) FINANCIAL ACCOUNTING BENEFITS.—For  
19 purposes of paragraph (1)(B), achieving a financial  
20 accounting benefit shall not be taken into account as  
21 a purpose for entering into a transaction if the ori-  
22 gin of such financial accounting benefit is a reduc-  
23 tion of Federal income tax.

24 “(5) DEFINITIONS AND SPECIAL RULES.—For  
25 purposes of this subsection—

1           “(A) ECONOMIC SUBSTANCE DOCTRINE.—  
2           The term ‘economic substance doctrine’ means  
3           the common law doctrine under which tax bene-  
4           fits under subtitle A with respect to a trans-  
5           action are not allowable if the transaction does  
6           not have economic substance or lacks a business  
7           purpose.

8           “(B) EXCEPTION FOR PERSONAL TRANS-  
9           ACTIONS OF INDIVIDUALS.—In the case of an  
10          individual, paragraph (1) shall apply only to  
11          transactions entered into in connection with a  
12          trade or business or an activity engaged in for  
13          the production of income.

14          “(C) DETERMINATION OF APPLICATION OF  
15          DOCTRINE NOT AFFECTED.—The determination  
16          of whether the economic substance doctrine is  
17          relevant to a transaction shall be made in the  
18          same manner as if this subsection had never  
19          been enacted.

20          “(D) TRANSACTION.—The term ‘trans-  
21          action’ includes a series of transactions.”.

22          (b) PENALTY FOR UNDERPAYMENTS ATTRIBUTABLE  
23          TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE.—

1           (1) IN GENERAL.—Subsection (b) of section  
2           6662 is amended by inserting after paragraph (5)  
3           the following new paragraph:

4           “(6) Any disallowance of claimed tax benefits  
5           by reason of a transaction lacking economic sub-  
6           stance (within the meaning of section 7701(o)) or  
7           failing to meet the requirements of any similar rule  
8           of law.”.

9           (2) INCREASED PENALTY FOR NONDISCLOSED  
10          TRANSACTIONS.—Section 6662 is amended by add-  
11          ing at the end the following new subsection:

12          “(i) INCREASE IN PENALTY IN CASE OF NONDIS-  
13          CLOSED NONECONOMIC SUBSTANCE TRANSACTIONS.—

14                 “(1) IN GENERAL.—In the case of any portion  
15                 of an underpayment which is attributable to one or  
16                 more nondisclosed noneconomic substance trans-  
17                 actions, subsection (a) shall be applied with respect  
18                 to such portion by substituting ‘40 percent’ for ‘20  
19                 percent’.

20                 “(2) NONDISCLOSED NONECONOMIC SUB-  
21                 STANCE TRANSACTIONS.—For purposes of this sub-  
22                 section, the term ‘nondisclosed noneconomic sub-  
23                 stance transaction’ means any portion of a trans-  
24                 action described in subsection (b)(6) with respect to  
25                 which the relevant facts affecting the tax treatment

1 are not adequately disclosed in the return nor in a  
2 statement attached to the return.

3 “(3) SPECIAL RULE FOR AMENDED RE-  
4 TURNS.—In no event shall any amendment or sup-  
5 plement to a return of tax be taken into account for  
6 purposes of this subsection if the amendment or sup-  
7 plement is filed after the earlier of the date the tax-  
8 payer is first contacted by the Secretary regarding  
9 the examination of the return or such other date as  
10 is specified by the Secretary.”

11 (3) CONFORMING AMENDMENT.—Subparagraph  
12 (B) of section 6662A(e)(2) is amended—

13 (A) by striking “section 6662(h)” and in-  
14 serting “subsections (h) or (i) of section 6662”;  
15 and

16 (B) by striking “GROSS VALUATION  
17 MISSTATEMENT PENALTY” in the heading and  
18 inserting “CERTAIN INCREASED UNDER-  
19 PAYMENT PENALTIES”.

20 (c) REASONABLE CAUSE EXCEPTION NOT APPLICA-  
21 BLE TO NONECONOMIC SUBSTANCE TRANSACTIONS.—

22 (1) REASONABLE CAUSE EXCEPTION FOR UN-  
23 DERPAYMENTS.—Subsection (c) of section 6664 is  
24 amended—

1 (A) by redesignating paragraphs (2) and  
2 (3) as paragraphs (3) and (4), respectively;

3 (B) by striking “paragraph (2)” in para-  
4 graph (4)(A), as so redesignated, and inserting  
5 “paragraph (3)”;

6 (C) by inserting after paragraph (1) the  
7 following new paragraph:

8 “(2) EXCEPTION.—Paragraph (1) shall not  
9 apply to any portion of an underpayment which is  
10 attributable to one or more transactions described in  
11 section 6662(b)(6).”.

12 (2) REASONABLE CAUSE EXCEPTION FOR RE-  
13 PORTABLE TRANSACTION UNDERSTATEMENTS.—  
14 Subsection (d) of section 6664 is amended—

15 (A) by redesignating paragraphs (2) and  
16 (3) as paragraphs (3) and (4), respectively;

17 (B) by striking “paragraph (2)(C)” in  
18 paragraph (4), as so redesignated, and inserting  
19 “paragraph (3)(C)”;

20 (C) by inserting after paragraph (1) the  
21 following new paragraph:

22 “(2) EXCEPTION.—Paragraph (1) shall not  
23 apply to any portion of a reportable transaction un-  
24 derstatement which is attributable to one or more  
25 transactions described in section 6662(b)(6).”.

1 (d) APPLICATION OF PENALTY FOR ERRONEOUS  
2 CLAIM FOR REFUND OR CREDIT TO NONECONOMIC SUB-  
3 STANCE TRANSACTIONS.—Section 6676 is amended by re-  
4 designating subsection (e) as subsection (d) and inserting  
5 after subsection (b) the following new subsection:

6 “(c) NONECONOMIC SUBSTANCE TRANSACTIONS  
7 TREATED AS LACKING REASONABLE BASIS.—For pur-  
8 poses of this section, any excessive amount which is attrib-  
9 utable to any transaction described in section 6662(b)(6)  
10 shall not be treated as having a reasonable basis.”.

11 (e) EFFECTIVE DATE.—

12 (1) IN GENERAL.—Except as otherwise pro-  
13 vided in this subsection, the amendments made by  
14 this section shall apply to transactions entered into  
15 after the date of the enactment of this Act.

16 (2) UNDERPAYMENTS.—The amendments made  
17 by subsections (b) and (c)(1) shall apply to under-  
18 payments attributable to transactions entered into  
19 after the date of the enactment of this Act.

20 (3) UNDERSTATEMENTS.—The amendments  
21 made by subsection (c)(2) shall apply to understate-  
22 ments attributable to transactions entered into after  
23 the date of the enactment of this Act.

24 (4) REFUNDS AND CREDITS.—The amendment  
25 made by subsection (d) shall apply to refunds and



1 credits attributable to transactions entered into after  
2 the date of the enactment of this Act.

3 **SEC. 1410. TIME FOR PAYMENT OF CORPORATE ESTIMATED**  
4 **TAXES.**

5 The percentage under paragraph (1) of section  
6 202(b) of the Corporate Estimated Tax Shift Act of 2009  
7 in effect on the date of the enactment of this Act is in-  
8 creased by 15.75 percentage points.

9 **Subtitle F—Other Provisions**

10 **SEC. 1501. COMMUNITY COLLEGE AND CAREER TRAINING**  
11 **GRANT PROGRAM.**

12 Section 279(b) of the Trade Act of 1974 (19 U.S.C.  
13 2372a(b)) is amended by striking “SUPPLEMENT” and all  
14 that follows through “Funds” and inserting “There are”  
15 and by striking “pursuant” and all that follows and insert-  
16 ing “\$500,000,000 for each of fiscal years 2011, 2012,  
17 2013, and 2014 to carry out this subchapter, except that  
18 the limitations contained in section 278(a)(2) shall not  
19 apply to such funds and each State shall receive not less  
20 than 0.5 percent of the amount appropriated pursuant to  
21 this subsection for each such fiscal year.”.

1           **TITLE II—EDUCATION AND**  
2                                   **HEALTH**

3                           **Subtitle A—Education**

4   **SEC. 2001. SHORT TITLE; REFERENCES.**

5           (a) **SHORT TITLE.**—This subtitle may be cited as the  
6 “SAFRA Act”.

7           (b) **REFERENCES.**—Except as otherwise expressly  
8 provided, whenever in this subtitle an amendment or re-  
9 peal is expressed in terms of an amendment to, or repeal  
10 of, a section or other provision, the reference shall be con-  
11 sidered to be made to a section or other provision of the  
12 Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

13   **PART I—INVESTING IN STUDENTS AND FAMILIES**

14   **SEC. 2101. FEDERAL PELL GRANTS.**

15           (a) **AMOUNT OF GRANTS.**—Section 401(b) (20  
16 U.S.C. 1070a(b)) is amended—

17                   (1) by amending paragraph (2)(A) to read as  
18 follows:

19                           “(A) The amount of the Federal Pell  
20 Grant for a student eligible under this part  
21 shall be—

22                                   “(i) the maximum Federal Pell Grant,  
23 as specified in the last enacted appropria-  
24 tion Act applicable to that award year,  
25 plus

1           “(ii) the amount of the increase cal-  
2           culated under paragraph (8)(B) for that  
3           year, less

4           “(iii) an amount equal to the amount  
5           determined to be the expected family con-  
6           tribution with respect to that student for  
7           that year.”; and

8           (2) in paragraph (8)—

9           (A) in subparagraph (A)—

10           (i) in the matter preceding clause (i),  
11           by striking “, to carry out subparagraph  
12           (B) of this paragraph”; and

13           (ii) by striking clauses (iii) through  
14           (x) and inserting the following:

15           “(iii) to carry out subparagraph (B)  
16           of this paragraph, such sums as may be  
17           necessary for fiscal year 2010 and each  
18           subsequent fiscal year to provide the  
19           amount of increase of the maximum Fed-  
20           eral Pell Grant required by clauses (ii) and  
21           (iii) of subparagraph (B); and

22           “(iv) to carry out this section,  
23           \$13,500,000,000 for fiscal year 2011.”;

24           (B) in subparagraph (B)—

1 (i) in the matter preceding clause (i),  
2 by striking “subparagraph (A)” and insert-  
3 ing “clauses (i) through (iii) of subpara-  
4 graph (A)”;

5 (ii) in clause (ii), by striking “and  
6 2011–2012” and inserting “, 2011–2012,  
7 and 2012–2013”; and

8 (iii) by striking clause (iii) and insert-  
9 ing the following:

10 “(iii) the amount determined under  
11 subparagraph (C) for each succeeding  
12 award year.”;

13 (C) by striking subparagraph (C) and in-  
14 serting the following:

15 “(C) ADJUSTMENT AMOUNTS.—

16 “(i) AWARD YEAR 2013–2014.—For  
17 award year 2013–2014, the amount deter-  
18 mined under this subparagraph for pur-  
19 poses of subparagraph (B)(iii) shall be  
20 equal to—

21 “(I) \$5,550 or the total max-  
22 imum Federal Pell Grant for the pre-  
23 ceding award year (as determined  
24 under clause (v)(II)), whichever is  
25 greater, increased by a percentage

1 equal to the annual adjustment per-  
2 centage for award year 2013–2014,  
3 reduced by

4 “(II) \$4,860 or the maximum  
5 Federal Pell Grant for which a stu-  
6 dent was eligible for the preceding  
7 award year, as specified in the last en-  
8 acted appropriation Act applicable to  
9 that year, whichever is greater; and

10 “(III) rounded to the nearest \$5.

11 “(ii) AWARD YEARS 2014–2015  
12 THROUGH 2017–2018.—For each of the  
13 award years 2014–2015 through 2017–  
14 2018, the amount determined under this  
15 subparagraph for purposes of subpara-  
16 graph (B)(iii) shall be equal to—

17 “(I) the total maximum Federal  
18 Pell Grant for the preceding award  
19 year (as determined under clause  
20 (v)(II)), increased by a percentage  
21 equal to the annual adjustment per-  
22 centage for the award year for which  
23 the amount under this subparagraph  
24 is being determined, reduced by

1           “(II) \$4,860 or the maximum  
2           Federal Pell Grant for which a stu-  
3           dent was eligible for the preceding  
4           award year, as specified in the last en-  
5           acted appropriation Act applicable to  
6           that year, whichever is greater; and

7           “(III) rounded to the nearest \$5.

8           “(iii) SUBSEQUENT AWARD YEARS.—  
9           For award year 2018–2019 and each sub-  
10          sequent award year, the amount deter-  
11          mined under this subparagraph for pur-  
12          poses of subparagraph (B)(iii) shall be  
13          equal to the amount determined under  
14          clause (ii) for award year 2017–2018.

15          “(iv) LIMITATION ON DECREASES.—  
16          Notwithstanding clauses (i), (ii), and (iii),  
17          if the amount determined under clause (i),  
18          (ii), or (iii) for a particular award year is  
19          less than the amount determined under  
20          this paragraph for the award year pre-  
21          ceding that particular award year, then the  
22          amount determined under such clause for  
23          that particular award year shall be the  
24          amount determined under this paragraph  
25          for the preceding award year.

1           “(v) DEFINITIONS.—For purposes of  
2 this subparagraph—

3           “(I) the term ‘annual adjustment  
4 percentage’ as applied to an award  
5 year, is equal to the estimated per-  
6 centage change in the Consumer Price  
7 Index (as determined by the Sec-  
8 retary, using the definition in section  
9 478(f)) for the most recent calendar  
10 year ending prior to the beginning of  
11 that award year; and

12           “(II) the term ‘total maximum  
13 Federal Pell Grant’ as applied to a  
14 preceding award year, is equal to the  
15 sum of—

16           “(aa) the maximum Federal  
17 Pell Grant for which a student is  
18 eligible during an award year, as  
19 specified in the last enacted ap-  
20 propriation Act applicable to that  
21 preceding award year; and

22           “(bb) the amount of the in-  
23 crease in the maximum Federal  
24 Pell Grant required by this para-

1 graph for that preceding award  
2 year.”;

3 (D) by striking subparagraph (E); and

4 (E) by redesignating subparagraph (F) as  
5 subparagraph (E).

6 (b) CONFORMING AMENDMENTS.—Title IV (20  
7 U.S.C. 1070 et seq.) is further amended—

8 (1) in section 401(b) (20 U.S.C. 1070a(b))—

9 (A) in paragraph (4)—

10 (i) by striking “maximum basic grant  
11 level specified in the appropriate appro-  
12 priation Act” and inserting “maximum  
13 amount of a Federal Pell Grant award de-  
14 termined under paragraph (2)(A)”;

15 (ii) by striking “such level” each place  
16 it appears and inserting “such Federal Pell  
17 Grant amount” in each such place; and

18 (B) in paragraph (6), by striking “the  
19 grant level specified in the appropriate Appro-  
20 priation Act for this subpart for such year” and  
21 inserting “the maximum amount of a Federal  
22 Pell Grant award determined under paragraph  
23 (2)(A), for which a student is eligible during  
24 such award year”;



1           (2) in section 402D(d)(1) (20 U.S.C. 1070a–  
2           14(d)(1)), by striking “exceed the maximum” and  
3           all that follows through “Grant, for” and inserting  
4           “exceed the Federal Pell Grant amount, determined  
5           under section 401(b)(2)(A), for which a student is  
6           eligible, or be less than the minimum Federal Pell  
7           Grant amount described in section 401(b)(4), for”;

8           (3) in section 435(a)(5)(A)(i)(I) (20 U.S.C.  
9           1085(a)(5)(A)(i)(I)), by striking “one-half the max-  
10          imum Federal Pell Grant award for which a student  
11          would be eligible” and inserting “one-half the Fed-  
12          eral Pell Grant amount, determined under section  
13          401(b)(2)(A), for which a student would be eligible”;

14          (4) in section 483(e)(3)(A)(ii) (20 U.S.C.  
15          1090(e)(3)(A)(ii)), by striking “based on the max-  
16          imum Federal Pell Grant award at the time of appli-  
17          cation” and inserting “based on the Federal Pell  
18          Grant amount, determined under section  
19          401(b)(2)(A), for which a student is eligible at the  
20          time of application”;

21          (5) in section 485E(b)(1)(A) (20 U.S.C.  
22          1092f(b)(1)(A)), by striking “of such students’ po-  
23          tential eligibility for a maximum Federal Pell Grant  
24          under subpart 1 of part A” and inserting “of such  
25          students’ potential eligibility for the Federal Pell

1 Grant amount, determined under section  
2 401(b)(2)(A), for which the student would be eligi-  
3 ble”; and

4 (6) in section 894(f)(2)(C)(ii)(I) (20 U.S.C.  
5 1161y(f)(2)(C)(ii)(I)), by striking “the maximum  
6 Federal Pell Grant for each award year” and insert-  
7 ing “the Federal Pell Grant amount, determined  
8 under section 401(b)(2)(A), for which a student may  
9 be eligible for each award year”.

10 (c) EFFECTIVE DATE.—The amendments made by  
11 subsections (a) and (b) shall take effect on July 1, 2010.

12 **SEC. 2102. COLLEGE ACCESS CHALLENGE GRANT PRO-**  
13 **GRAM.**

14 Section 781 (20 U.S.C. 1141) is amended—

15 (1) in the first sentence of subsection (a), by  
16 striking “\$66,000,000” and all that follows through  
17 the period and inserting “\$150,000,000 for each of  
18 the fiscal years 2010 through 2014. The authority  
19 to award grants under this section shall expire at  
20 the end of fiscal year 2014.”; and

21 (2) in subsection (c)(2), by striking “0.5 per-  
22 cent” and inserting “1.0 percent”.

1 **SEC. 2103. INVESTMENT IN HISTORICALLY BLACK COL-**  
2 **LEGES AND UNIVERSITIES AND MINORITY-**  
3 **SERVING INSTITUTIONS.**

4 Section 371(b)(1)(A) (20 U.S.C. 1067q(b)(1)(A)) is  
5 amended by striking “and 2009.” and all that follows and  
6 inserting “through 2019. The authority to award grants  
7 under this section shall expire at the end of fiscal year  
8 2019.”.

9 **PART II—STUDENT LOAN REFORM**

10 **SEC. 2201. TERMINATION OF FEDERAL FAMILY EDUCATION**  
11 **LOAN APPROPRIATIONS.**

12 Section 421 (20 U.S.C. 1071) is amended—

13 (1) in subsection (b), in the first sentence of  
14 the matter following paragraph (6), by inserting “,  
15 except that no sums may be expended after June 30,  
16 2010, with respect to loans under this part for which  
17 the first disbursement is after such date” after “ex-  
18 pended”; and

19 (2) by adding at the end the following new sub-  
20 section:

21 “(d) **TERMINATION OF AUTHORITY TO MAKE OR IN-**  
22 **SURE NEW LOANS.**—Notwithstanding paragraphs (1)  
23 through (6) of subsection (b) or any other provision of  
24 law—



1 (3) in paragraph (2), by inserting “and before  
2 July 1, 2010,” after “July 1, 2006,”;

3 (4) in paragraph (3), by inserting “and that  
4 was disbursed before July 1, 2010,” after “July 1,  
5 2006,”; and

6 (5) in paragraph (4)—

7 (A) in the matter preceding subparagraph  
8 (A), by striking “July 1, 2012” and inserting  
9 “July 1, 2010”; and

10 (B) by repealing subparagraphs (D) and  
11 (E).

12 **SEC. 2204. TERMINATION OF FEDERAL PAYMENTS TO RE-**  
13 **DUCE STUDENT INTEREST COSTS.**

14 (a) HIGHER EDUCATION ACT OF 1965.—Section 428  
15 (20 U.S.C. 1078) is amended—

16 (1) in subsection (a)—

17 (A) in paragraph (1), in the matter pre-  
18 ceding subparagraph (A), by inserting “for  
19 which the first disbursement is made before  
20 July 1, 2010, and” after “eligible institution”;  
21 and

22 (B) in paragraph (5), by striking “Sep-  
23 tember 30, 2014,” and all that follows through  
24 the period and inserting “June 30, 2010.”;

25 (2) in subsection (b)(1)—

1 (A) in subparagraph (G)(ii), by inserting  
2 “and before July 1, 2010,” after “July 1,  
3 2006,”; and

4 (B) in subparagraph (H)(ii), by inserting  
5 “and that are first disbursed before July 1,  
6 2010,” after “July 1, 2006,”;

7 (3) in subsection (f)(1)(A)(ii)—

8 (A) by striking “during fiscal years begin-  
9 ning”; and

10 (B) by inserting “and first disbursed be-  
11 fore July 1, 2010,” after “October 1, 2003,”;  
12 and

13 (4) in subsection (j)(1), by inserting “, before  
14 July 1, 2010,” after “section 435(d)(1)(D) of this  
15 Act shall”.

16 (b) COLLEGE COST REDUCTION AND ACCESS ACT.—  
17 Section 303 of the College Cost Reduction and Access Act  
18 (Public Law 110–84) is repealed.

19 **SEC. 2205. TERMINATION OF FFEL PLUS LOANS.**

20 Section 428B(a)(1) (20 U.S.C. 1078–2(a)(1)) is  
21 amended by striking “A graduate” and inserting “Prior  
22 to July 1, 2010, a graduate”.

23 **SEC. 2206. FEDERAL CONSOLIDATION LOANS.**

24 (a) IN GENERAL.—Section 428C (20 U.S.C. 1078–  
25 3) is amended—

1 (1) in subsection (a)(4)(A), by inserting “, and  
2 first disbursed before July 1, 2010” after “under  
3 this part”;

4 (2) in subsection (b)—

5 (A) in paragraph (1)(E), by inserting be-  
6 fore the semicolon “, and before July 1, 2010”;  
7 and

8 (B) in paragraph (5), by striking “In the  
9 event that” and inserting “If, before July 1,  
10 2010,”;

11 (3) in subsection (c)(1)—

12 (A) in subparagraph (A)(ii), by inserting  
13 “and that is disbursed before July 1, 2010,”  
14 after “2006,”; and

15 (B) in subparagraph (C), by inserting  
16 “and disbursed before July 1, 2010,” after  
17 “1994,”; and

18 (4) in subsection (e), by striking “September  
19 30, 2014.” and inserting “June 30, 2010. No loan  
20 may be made under this section for which the dis-  
21 bursement is on or after July 1, 2010.”.

22 (b) TEMPORARY LOAN CONSOLIDATION AUTHOR-  
23 ITY.—Part D of title IV (20 U.S.C. 1087a et seq.) is  
24 amended by inserting after section 459A (20 U.S.C.  
25 1087i) the following:

1 **“SEC. 459B. TEMPORARY LOAN CONSOLIDATION AUTHOR-**  
2 **ITY.**

3 “(a) TEMPORARY LOAN CONSOLIDATION AUTHOR-  
4 ITY.—

5 “(1) IN GENERAL.—A borrower who has 1 or  
6 more loans in 2 or more of the categories described  
7 in paragraph (2), and who has not yet entered re-  
8 payment on 1 or more of those loans in any of the  
9 categories, may consolidate all of the loans of the  
10 borrower that are described in paragraph (2) into a  
11 Federal Direct Consolidation Loan during the period  
12 described in paragraph (3).

13 “(2) CATEGORIES OF LOANS THAT MAY BE  
14 CONSOLIDATED.—The categories of loans that may  
15 be consolidated under paragraph (1) are—

16 “(A) loans made under this part;

17 “(B) loans purchased by the Secretary  
18 pursuant to section 459A; and

19 “(C) loans made under part B that are  
20 held by an eligible lender, as such term is de-  
21 fined in section 435(d).

22 “(3) TIME PERIOD IN WHICH LOANS MAY BE  
23 CONSOLIDATED.—The Secretary may make a Fed-  
24 eral Direct Consolidation Loan under this section to  
25 a borrower whose application for such Federal Di-



1       rect Consolidation Loan is received on or after July  
2       1, 2010, and before July 1, 2011.

3       “(b) TERMS OF LOANS.—A Federal Direct Consoli-  
4       dation Loan made under this section shall have the same  
5       terms and conditions as a Federal Direct Consolidation  
6       Loan made under section 455(g), except that—

7               “(1) in determining the applicable rate of inter-  
8       est on the Federal Direct Consolidation Loan made  
9       under this section (other than on a Federal Direct  
10       Consolidation Loan described in paragraph (2)), sec-  
11       tion 427A(l)(3) shall be applied without rounding  
12       the weighted average of the interest rate on the  
13       loans consolidated to the nearest higher one-eighth  
14       of 1 percent as described in subparagraph (A) of  
15       section 427A(l)(3); and

16               “(2) if a Federal Direct Consolidation Loan  
17       made under this section that repays a loan which is  
18       subject to an interest rate determined under section  
19       427A(g)(2), (j)(2), or (k)(2), then the interest rate  
20       for such Federal Direct Consolidation Loan shall be  
21       calculated—

22                       “(A) by using the applicable rate of inter-  
23       est described in section 427A(g)(2), (j)(2), or  
24       (k)(2), respectively; and

1           “(B) in accordance with section  
2           427A(1)(3).”.

3 **SEC. 2207. TERMINATION OF UNSUBSIDIZED STAFFORD**  
4 **LOANS FOR MIDDLE-INCOME BORROWERS.**

5 Section 428H (20 U.S.C. 1078–8) is amended—

6           (1) in subsection (a), by inserting “that are  
7           first disbursed before July 1, 2010,” after “under  
8           this part”;

9           (2) in subsection (b)—

10                  (A) by striking “Any student” and insert-  
11                  ing “Prior to July 1, 2010, any student”; and

12                  (B) by inserting “for which the first dis-  
13                  bursement is made before such date” after “un-  
14                  subsidized Federal Stafford Loan”; and

15           (3) in subsection (h), by inserting “and that are  
16           first disbursed before July 1, 2010,” after “July 1,  
17           2006,”.

18 **SEC. 2208. TERMINATION OF SPECIAL ALLOWANCES.**

19 Section 438 (20 U.S.C. 1087–1) is amended—

20           (1) in subsection (b)(2)(I)—

21                  (A) in the subclause heading, by inserting  
22                  “, AND BEFORE JULY 1, 2010” after “2000”;

23                  (B) in clause (i), by inserting “and before  
24                  July 1, 2010,” after “2000,”;

1 (C) in clause (ii)(II), by inserting “and be-  
2 fore July 1, 2010,” after “2006,”;

3 (D) in clause (iii), by inserting “and before  
4 July 1, 2010,” after “2000,”;

5 (E) in clause (iv), by inserting “and that  
6 is disbursed before July 1, 2010,” after  
7 “2000,”;

8 (F) in clause (v)(I), by inserting “and be-  
9 fore July 1, 2010,” after “2006,”; and

10 (G) in clause (vi)—

11 (i) in the clause heading, by inserting  
12 “, AND BEFORE JULY 1, 2010” after “2007”;  
13 and

14 (ii) in the matter preceding subclause  
15 (I), by inserting “and before July 1,  
16 2010,” after “2007,”;

17 (2) in subsection (c)—

18 (A) in paragraph (2)(B)—

19 (i) in clause (iii), by inserting “and”  
20 after the semicolon;

21 (ii) in clause (iv), by striking “; and”  
22 and inserting a period; and

23 (iii) by striking clause (v); and

1 (B) in paragraph (6), by inserting “and  
2 first disbursed before July 1, 2010,” after  
3 “1992,”; and  
4 (3) in subsection (d)(2)(B), by inserting “, and  
5 before July 1, 2010” after “2007”.

6 **SEC. 2209. ORIGINATION OF DIRECT LOANS AT INSTITU-**  
7 **TIONS OUTSIDE THE UNITED STATES.**

8 (a) **LOANS FOR STUDENTS ATTENDING INSTITU-**  
9 **TIONS OUTSIDE THE UNITED STATES.**—Section 452 (20  
10 U.S.C. 1087b) is amended by adding at the end the fol-  
11 lowing:

12 “(d) **INSTITUTIONS OUTSIDE THE UNITED**  
13 **STATES.**—Loan funds for students (and parents of stu-  
14 dents) attending institutions outside the United States  
15 shall be disbursed through a financial institution located  
16 or operating in the United States and designated by the  
17 Secretary to serve as the agent of such institutions with  
18 respect to the receipt of the disbursements of such loan  
19 funds and the transfer of such funds to such institutions.  
20 To be eligible to receive funds under this part, an institu-  
21 tion outside the United States shall make arrangements  
22 with the agent designated by the Secretary under this sub-  
23 section to receive funds under this part.”.

24 (b) **CONFORMING AMENDMENTS.**—

1           (1) AMENDMENTS.—Section 102 (20 U.S.C.  
2           1002), as amended by section 102 of the Higher  
3           Education Opportunity Act (Public Law 110–315)  
4           and section 101 of Public Law 111–39, is amend-  
5           ed—

6                   (A) by striking “part B” each place the  
7                   term appears and inserting “part D”;

8                   (B) in subsection (a)(1)(C), by inserting “,  
9                   consistent with the requirements of section  
10                  452(d)” before the period at the end; and

11                  (C) in subsection (a)(2)(A)—

12                          (i) in the second sentence of the mat-  
13                          ter preceding clause (i), by striking “made,  
14                          insured, or guaranteed” and inserting  
15                          “made”; and

16                          (ii) in clause (iii)—

17                                  (I) in subclause (III), by striking  
18                                  “only Federal Stafford” and all that  
19                                  follows through “section 428B” and  
20                                  inserting “only Federal Direct Staf-  
21                                  ford Loans under section  
22                                  455(a)(2)(A), Federal Direct Unsub-  
23                                  sidized Stafford Loans under section  
24                                  455(a)(2)(D), or Federal Direct

1 PLUS Loans under section  
2 455(a)(2)(B)”; and

3 (II) in subclause (V), by striking  
4 “a Federal Stafford” and all that fol-  
5 lows through “section 428B” and in-  
6 serting “a Federal Direct Stafford  
7 Loan under section 455(a)(2)(A), a  
8 Federal Direct Unsubsidized Stafford  
9 Loan under section 455(a)(2)(D), or a  
10 Federal Direct PLUS Loan under  
11 section 455(a)(2)(B)”.

12 (2) EFFECTIVE DATE.—The amendments made  
13 by subparagraph (C) of paragraph (1) shall be effec-  
14 tive on July 1, 2010, as if enacted as part of section  
15 102(a)(1) of the Higher Education Opportunity Act  
16 (Public Law 110–315) and subject to section 102(e)  
17 of such Act as amended by section 101(a)(2) of  
18 Public Law 111–39 (20 U.S.C. 1002 note).

19 **SEC. 2210. CONFORMING AMENDMENTS.**

20 (a) AMENDMENTS.—Section 454 (20 U.S.C. 1087d)  
21 is amended—

22 (1) in subsection (a)—

23 (A) by striking paragraph (4); and

1 (B) by redesignating paragraphs (5)  
2 through (7) as paragraphs (4) through (6), re-  
3 spectively; and

4 (2) in subsection (b)(2), by striking “(5), (6),  
5 and (7)” and inserting “(5), and (6)”.

6 (b) EFFECTIVE DATE.—The amendments made by  
7 subsection (a) shall take effect on July 1, 2010.

8 **SEC. 2211. TERMS AND CONDITIONS OF LOANS.**

9 (a) IN GENERAL.—Section 455 (20 U.S.C. 1087e) is  
10 amended—

11 (1) in subsection (a)(1), by inserting “, and  
12 first disbursed on June 30, 2010,” before “under  
13 sections 428”; and

14 (2) in subsection (g)—

15 (A) by inserting “, including any loan  
16 made under part B and first disbursed before  
17 July 1, 2010” after “section 428C(a)(4)”; and

18 (B) by striking the third sentence.

19 (b) EFFECTIVE DATE.—The amendment made by  
20 subsection (a)(1) shall apply with respect to loans first dis-  
21 bursed under part D of title IV of the Higher Education  
22 Act of 1965 (20 U.S.C. 1087a et seq.) on or after July  
23 1, 2010.

1 **SEC. 2212. CONTRACTS; MANDATORY FUNDS.**

2 (a) CONTRACTS.—Section 456 (20 U.S.C. 1087f) is  
3 amended—

4 (1) in subsection (a)—

5 (A) by inserting after paragraph (3) the  
6 following new paragraph:

7 “(4) SERVICING BY ELIGIBLE NOT-FOR-PROFIT  
8 SERVICERS.—

9 “(A) SERVICING CONTRACTS.—

10 “(i) IN GENERAL.—The Secretary  
11 shall contract with each eligible not-for-  
12 profit servicer to service loans originated  
13 under this part, if the servicer—

14 “(I) meets the standards for  
15 servicing Federal assets that apply to  
16 contracts awarded pursuant to para-  
17 graph (1); and

18 “(II) has the capacity to service  
19 the applicable loan volume allocation  
20 described in subparagraph (B).

21 “(ii) COMPETITIVE MARKET RATE DE-  
22 TERMINATION FOR FIRST 100,000 BOR-  
23 ROWER ACCOUNTS.—The Secretary shall  
24 establish a separate pricing tier for each of  
25 the first 100,000 borrower loan accounts  
26 at a competitive market rate.



1           “(iii) INELIGIBILITY.—An eligible not-  
2 for-profit servicer shall no longer be eligi-  
3 ble for a contract under this paragraph  
4 after July 1, 2014, if—

5           “(I) the servicer has not been  
6 awarded such a contract before that  
7 date; or

8           “(II) the servicer’s contract was  
9 terminated, and the servicer had not  
10 reapplied for, and been awarded, a  
11 contract under this paragraph.

12           “(B) ALLOCATIONS.—

13           “(i) IN GENERAL.—The Secretary  
14 shall (except as provided in clause (ii)) al-  
15 locate to an eligible not-for-profit servicer,  
16 subject to the contract of such servicer de-  
17 scribed in subparagraph (A), the servicing  
18 rights for the loan accounts of 100,000  
19 borrowers (including borrowers who bor-  
20 rowed loans in a prior year that were serv-  
21 iced by the servicer).

22           “(ii) SERVICER ALLOCATION.—The  
23 Secretary may reallocate, increase, reduce,  
24 or terminate an eligible not-for-profit  
25 servicer’s allocation of servicing rights

1 under clause (i) based on the performance  
2 of such servicer, on the same terms as loan  
3 allocations provided by contracts awarded  
4 pursuant to paragraph (1).”; and

5 (2) by adding at the end the following:

6 “(c) DEFINITION OF ELIGIBLE NOT-FOR-PROFIT  
7 SERVICER.—In this section:

8 “(1) IN GENERAL.—The term ‘eligible not-for-  
9 profit servicer’ means an entity—

10 “(A) that is not owned or controlled in  
11 whole or in part by—

12 “(i) a for profit entity; or

13 “(ii) a nonprofit entity having its  
14 principal place of business in another  
15 State; and

16 “(B) that—

17 “(i) as of July 1, 2009—

18 “(I) meets the definition of an el-  
19 igible not-for-profit holder under sec-  
20 tion 435(p), except that such term  
21 does not include eligible lenders de-  
22 scribed in paragraph (1)(D) of such  
23 section; and

24 “(II) was performing, or had en-  
25 tered into a contract with a third

1 party servicer (as such term is defined  
2 in section 481(c)) who was per-  
3 forming, student loan servicing func-  
4 tions for loans made under part B of  
5 this title;

6 “(ii) notwithstanding clause (i), as of  
7 July 1, 2009—

8 “(I) is the sole beneficial owner  
9 of a loan for which the special allow-  
10 ance rate is calculated under section  
11 438(b)(2)(I)(vi)(II) because the loan  
12 is held by an eligible lender trustee  
13 that is an eligible not-for-profit holder  
14 as defined under section  
15 435(p)(1)(D); and

16 “(II) was performing, or had en-  
17 tered into a contract with a third  
18 party servicer (as such term is defined  
19 in section 481(c)) who was per-  
20 forming, student loan servicing func-  
21 tions for loans made under part B of  
22 this title; or

23 “(iii) is an affiliated entity of an eligi-  
24 ble not-for-profit servicer described in  
25 clause (i) or (ii) that—

1           “(I) directly employs, or will di-  
2           rectly employ (on or before the date  
3           the entity begins servicing loans under  
4           a contract awarded by the Secretary  
5           pursuant to subsection (a)(3)(A)), the  
6           majority of individuals who perform  
7           borrower-specific student loan serv-  
8           icing functions; and

9           “(II) as of July 1, 2009, was  
10          performing, or had entered into a con-  
11          tract with a third party servicer (as  
12          such term is defined in section  
13          481(c)) who was performing, student  
14          loan servicing functions for loans  
15          made under part B of this title.

16           “(2) AFFILIATED ENTITY.—For the purposes of  
17          paragraph (1), the term ‘affiliated entity’—

18           “(A) means an entity contracted to per-  
19          form services for an eligible not-for-profit  
20          servicer that—

21           “(i) is a nonprofit entity or is wholly  
22          owned by a nonprofit entity; and

23           “(ii) is not owned or controlled, in  
24          whole or in part, by—

25           “(I) a for-profit entity; or

1                   “(II) an entity having its prin-  
2                   cipal place of business in another  
3                   State; and

4                   “(B) may include an affiliated entity that  
5                   is established by an eligible not-for-profit  
6                   servicer after the date of enactment of the  
7                   SAFRA Act, if such affiliated entity is other-  
8                   wise described in paragraph (1)(B)(iii)(I) and  
9                   subparagraph (A) of this paragraph.”.

10           (b) MANDATORY FUNDS.—

11                   (1) AMENDMENTS.—Section 458(a) (20 U.S.C.  
12                   1087h(a)) is amended—

13                           (A) by redesignating paragraph (5) as  
14                           paragraph (8);

15                           (B) by redesignating paragraphs (2)  
16                           through (4) as paragraphs (3) through (5), re-  
17                           spectively;

18                           (C) by inserting after paragraph (1) the  
19                           following new paragraph:

20                           “(2) MANDATORY FUNDS FOR ELIGIBLE NOT-  
21                   FOR-PROFIT-SERVICERS.—For fiscal years 2010  
22                   through 2019, there shall be available to the Sec-  
23                   retary, in addition to any other amounts appro-  
24                   priated to carry out this paragraph and out of any  
25                   money in the Treasury not otherwise appropriated,

1 funds to be obligated for administrative costs of  
2 servicing contracts with eligible not-for-profit  
3 servicers as described in section 456.”; and

4 (D) by inserting after paragraph (5), as  
5 redesignated by subparagraph (B) of this para-  
6 graph, the following:

7 “(6) TECHNICAL ASSISTANCE TO INSTITUTIONS  
8 OF HIGHER EDUCATION.—

9 “(A) PROVISION OF ASSISTANCE.—The  
10 Secretary shall provide institutions of higher  
11 education participating, or seeking to partici-  
12 pate, in the loan programs under this part with  
13 technical assistance in establishing and admin-  
14 istering such programs.

15 “(B) FUNDS.—There are authorized to be  
16 appropriated, and there are appropriated, to  
17 carry out this paragraph (in addition to any  
18 other amounts appropriated to carry out this  
19 paragraph and out of any money in the Treas-  
20 ury not otherwise appropriated), \$50,000,000  
21 for fiscal year 2010.

22 “(C) DEFINITION.—In this paragraph, the  
23 term ‘assistance’ means the provision of tech-  
24 nical support, training, materials, technical as-  
25 sistance, and financial assistance.

1 “(7) ADDITIONAL PAYMENTS.—

2 “(A) PROVISION OF ASSISTANCE.—The  
3 Secretary shall provide payments to loan  
4 servicers for retaining jobs at locations in the  
5 United States where such servicers were oper-  
6 ating under part B on January 1, 2010.

7 “(B) FUNDS.—There are authorized to be  
8 appropriated, and there are appropriated, to  
9 carry out this paragraph (in addition to any  
10 other amounts appropriated to carry out this  
11 paragraph and out of any money in the Treas-  
12 ury not otherwise appropriated), \$25,000,000  
13 for each of the fiscal years 2010 and 2011.”.

14 (2) CONFORMING AMENDMENT.—Section 458  
15 (20 U.S.C. 1087h) is further amended by striking  
16 “subsection (a)(3)” in subsection (b) and inserting  
17 “subsection (a)(4)”.

18 **SEC. 2213. INCOME-BASED REPAYMENT.**

19 Section 493C (20 U.S.C. 1098e) is amended by add-  
20 ing at the end the following new subsection:

21 “(e) SPECIAL TERMS FOR NEW BORROWERS ON AND  
22 AFTER JULY 1, 2014.—With respect to any loan made  
23 to a new borrower on or after July 1, 2014—

24 “(1) subsection (a)(3)(B) shall be applied by  
25 substituting ‘10 percent’ for ‘15 percent’; and





1           “(B) PROVISIONS APPLICABLE ONLY TO  
2           GROUP HEALTH PLANS.—

3           “(i) PROVISIONS DESCRIBED.—Those  
4           provisions of section 2711 relating to an-  
5           nual limits and the provisions of section  
6           2704 (relating to pre-existing condition ex-  
7           clusions) of the Public Health Service Act  
8           (as added by this subtitle) shall apply to  
9           grandfathered health plans that are group  
10          health plans for plan years beginning with  
11          the first plan year to which such provisions  
12          otherwise apply.

13          “(ii) ADULT CHILD COVERAGE.—For  
14          plan years beginning before January 1,  
15          2014, the provisions of section 2714 of the  
16          Public Health Service Act (as added by  
17          this subtitle) shall apply in the case of an  
18          adult child with respect to a grandfathered  
19          health plan that is a group health plan  
20          only if such adult child is not eligible to  
21          enroll in an eligible employer-sponsored  
22          health plan (as defined in section  
23          5000A(f)(2) of the Internal Revenue Code  
24          of 1986) other than such grandfathered  
25          health plan.”.

1 (b) CLARIFICATION REGARDING DEPENDENT COV-  
2 ERAGE.—Section 2714(a) of the Public Health Service  
3 Act, as added by section 1001(5) of the Patient Protection  
4 and Affordable Care Act, is amended by striking “(who  
5 is not married)”.

6 **SEC. 2302. DRUGS PURCHASED BY COVERED ENTITIES.**

7 Section 340B of the Public Health Service Act (42  
8 U.S.C. 256b), as amended by sections 7101 and 7102 of  
9 the Patient Protection and Affordable Care Act, is amend-  
10 ed—

11 (1) in subsection (a)—

12 (A) in paragraphs (1), (2), (5), (7), and  
13 (9), by striking the terms “covered drug” and  
14 “covered drugs” each place either term appears  
15 and inserting “covered outpatient drug” or  
16 “covered outpatient drugs”, respectively;

17 (B) in paragraph (4)(L)—

18 (i) in clause (i), by striking “and” at  
19 the end;

20 (ii) in clause (ii), by striking the pe-  
21 riod and inserting “; and”; and

22 (iii) by inserting after clause (ii), the  
23 following:

24 “(iii) does not obtain covered out-  
25 patient drugs through a group purchasing

1 organization or other group purchasing ar-  
2 rangement.”; and

3 (C) in paragraph (5)—

4 (i) by striking subparagraph (C);

5 (ii) by redesignating subparagraphs  
6 (D) and (E) as subparagraphs (C) and  
7 (D), respectively; and

8 (iii) in subparagraph (D), as so reded-  
9 ignated, by striking “subparagraph (D)”  
10 and inserting “subparagraph (C)”;

11 (2) by striking subsection (c);

12 (3) in subsection (d)—

13 (A) by striking “covered drugs” each place  
14 it appears and inserting “covered outpatient  
15 drugs”;

16 (B) by striking “(a)(5)(D)” each place it  
17 appears and inserting “(a)(5)(C)”;

18 (C) by striking “(a)(5)(E)” each place it  
19 appears and inserting “(a)(5)(D)”;

20 (4) by inserting after subsection (d) the fol-  
21 lowing:

22 “(e) EXCLUSION OF ORPHAN DRUGS FOR CERTAIN  
23 COVERED ENTITIES.—For covered entities described in  
24 subparagraph (M), (N), or (O) of subsection (a)(4), the  
25 term ‘covered outpatient drug’ shall not include a drug

1 designated by the Secretary under section 526 of the Fed-  
2 eral Food, Drug, and Cosmetic Act for a rare disease or  
3 condition.”.

4 **SEC. 2303. COMMUNITY HEALTH CENTERS.**

5 Section 10503(b)(1) of the Patient Protection and  
6 Affordable Care Act is amended—

7 (1) in subparagraph (A), by striking  
8 “700,000,000” and inserting “1,000,000,000”;

9 (2) in subparagraph (B), by striking  
10 “800,000,000” and inserting “1,200,000,000”;

11 (3) in subparagraph (C), by striking  
12 “1,000,000,000” and inserting “1,500,000,000”;

13 (4) in subparagraph (D), by striking  
14 “1,600,000,000” and inserting “2,200,000,000”;

15 and

16 (5) in subparagraph (E), by striking  
17 “2,900,000,000” and inserting “3,600,000,000”.

Passed the House of Representatives March 21,  
2010.

Attest:

*Clerk.*



111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 4872**

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**AN ACT**

To provide for reconciliation pursuant to Title II of  
the concurrent resolution on the budget for fiscal  
year 2010 (S. Con. Res. 13).