

105TH CONGRESS
2D SESSION

H. R. 4186

To amend title XVIII of the Social Security Act to provide flexibility in contracting for claims processing under the Medicare program.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 1998

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

A BILL

To amend title XVIII of the Social Security Act to provide flexibility in contracting for claims processing under the Medicare program.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare Contracting
5 Flexibility Act of 1998”.

1 **SEC. 2. INCREASED FLEXIBILITY IN CONTRACTING FOR**
2 **MEDICARE CLAIMS PROCESSING.**

3 (a) CARRIERS TO INCLUDE ENTITIES THAT ARE
4 NOT INSURANCE COMPANIES.—Section 1842 of the Social
5 Security Act (42 U.S.C. 1395u) is amended—

6 (1) in subsection (a), in the matter preceding
7 paragraph (1) by striking “with carriers” and in-
8 serting “with agencies and organizations (referred to
9 in this part as ‘carriers’)”; and

10 (2) by striking subsection (f).

11 (b) CHOICE OF FISCAL INTERMEDIARIES BY PROVID-
12 ERS OF SERVICES; SECRETARIAL FLEXIBILITY IN ASSIGN-
13 ING FUNCTIONS TO INTERMEDIARIES AND CARRIERS.—
14 (1) Section 1816(a) of such Act (42 U.S.C. 1395h(a)) is
15 amended to read as follows:

16 “(a)(1) The Secretary may enter into contracts with
17 agencies or organizations to perform any or all of the fol-
18 lowing functions, or parts of those functions (or, to the
19 extent provided in a contract, to secure performance there-
20 of by other organizations):

21 “(A) Determine (subject to the provisions of
22 section 1878 and to such review by the Secretary as
23 may be provided for by the contracts) the amount of
24 the payments required pursuant to this part to be
25 made to providers of services.

1 “(B) Make payments described in subparagraph
2 (A).

3 “(C) Provide consultative services to institu-
4 tions or agencies to enable them to establish and
5 maintain fiscal records necessary for purposes of
6 this part and otherwise to qualify as providers of
7 services.

8 “(D) Serve as a center for, and communicate to
9 individuals entitled to benefits under this part and
10 to providers of services, any information or instruc-
11 tions furnished to the agency or organization by the
12 Secretary, and serve as a channel of communication
13 from individuals entitled to benefits under this part
14 and from providers of services to the Secretary.

15 “(E) Make such audits of the records of provid-
16 ers of services as may be necessary to insure that
17 proper payments are made under this part.

18 “(F) Perform the functions described by sub-
19 section (d).

20 “(G) Perform such other functions as are nec-
21 essary to carry out the purposes of this part.

22 “(2) As used in this title and title XI, the term ‘fiscal
23 intermediary’ means an agency or organization with a con-
24 tract under this section.”.

1 (2) Subsections (d) and (e) of section 1816 of such
2 Act (42 U.S.C. 1395h) are amended to read as follows:

3 “(d) Each provider of services shall have a fiscal
4 intermediary that—

5 “(1) acts as a single point of contact for the
6 provider of services under this part;

7 “(2) makes its services sufficiently available to
8 meet the needs of the provider of services; and

9 “(3) is responsible and accountable for arrang-
10 ing the resolution of issues raised under this part by
11 the provider of services.

12 “(e)(1)(A) The Secretary, at least every five years,
13 shall permit each provider of services (other than a home
14 health agency or a hospice program) to choose an agency
15 or organization (from among those proposed by the Sec-
16 retary, of which at least one has an office in the geo-
17 graphic area of the provider of services, except as provided
18 by subparagraph (B)(ii)(II)) as the fiscal intermediary
19 under subsection (d) for that provider of services. If a con-
20 tract with that fiscal intermediary is discontinued, the
21 Secretary shall permit the provider of services to choose
22 under the same conditions from among other agencies or
23 organizations.

24 “(B)(i) The Secretary, in carrying out subparagraph
25 (A), shall permit a group of hospitals or a group of an-

1 other class of providers (other than home health agencies
2 or hospice programs) under common ownership by, or con-
3 trol of, a particular entity to choose one agency or organi-
4 zation (from among those proposed by the Secretary) as
5 the fiscal intermediary under subsection (d) for all the
6 providers in that group if the conditions specified in clause
7 (ii) are met.

8 “(ii) The conditions specified in this clause for clause
9 (i) to apply are that—

10 “(I) the group includes all the providers of serv-
11 ices of that class that are under common ownership
12 by, or control of, that particular entity, and

13 “(II) all of the providers of services in that
14 group agree that none of the agencies or organiza-
15 tions proposed by the Secretary is required to have
16 an office in any particular geographic area.

17 “(2) The Secretary, in evaluating the performance of
18 a fiscal intermediary, shall solicit comments from provid-
19 ers of services.”.

20 (3)(A) Section 1816(b)(1)(A) of such Act (42 U.S.C.
21 1395h(b)(1)(A)) is amended by striking “after applying
22 the standards, criteria, and procedures” and inserting
23 “after evaluating the ability of the agency or organization
24 to fulfill the contract performance requirements”.

1 (B) The first sentence of section 1816(f)(1) of such
2 Act (42 U.S.C. 1395h(f)(1)) is amended—

3 (i) by striking “develop standards, criteria, and
4 procedures” and inserting “, after public notice and
5 opportunity for comment, develop contract perform-
6 ance requirements”, and

7 (ii) by striking “, and the Secretary shall estab-
8 lish standards and criteria with respect to the effi-
9 cient and effective administration of this part”.

10 (C) Section 1842(b)(2) of such Act (42 U.S.C.
11 1395u(b)(2)) is amended—

12 (i) in subparagraph (A)—

13 (I) in the second sentence to read as fol-
14 lows: “The Secretary shall, after public notice
15 and opportunity for comment, develop contract
16 performance requirements for the efficient and
17 effective performance of contract obligations
18 under this section.”, and

19 (II) by striking the third sentence;

20 (ii) in subparagraph (B), in the matter preced-
21 ing clause (i), by striking “establish standards” and
22 inserting “develop contract performance require-
23 ments”, and

1 (iii) in subparagraph (D), by striking “stand-
2 ards and criteria” each place it appears and insert-
3 ing “contract performance requirements”.

4 (4)(A) The matter in section 1816(b) of such Act (42
5 U.S.C. 1395h(b)) preceding paragraph (1) is amended by
6 striking “an agreement” and inserting “a contract”.

7 (B) Paragraphs (1)(B) and (2)(A) of section 1816(b)
8 of such Act (42 U.S.C. 1395h(b)) are each amended by
9 striking “agreement” and inserting “contract”.

10 (C) The first sentence of section 1816(c)(1) of such
11 Act (42 U.S.C. 1395h(c)(1)) is amended by striking “An
12 agreement” and inserting “A contract”.

13 (D) The last sentence of section 1816(c)(1) of such
14 Act (42 U.S.C. 1395h(c)(1)) is amended by striking “an
15 agreement” and inserting “a contract”.

16 (E) The matter in section 1816(c)(2)(A) of such Act
17 (42 U.S.C. 1395h(c)(2)(A)) preceding clause (i) is amend-
18 ed by striking “agreement” and inserting “contract”.

19 (F) Section 1816(c)(3)(A) of such Act (42 U.S.C.
20 1395h(c)(3)(A)) is amended by striking “agreement” and
21 inserting “contract”.

22 (G) The first sentence of section 1816(f)(1) of such
23 Act (42 U.S.C. 1395h(f)(1)) is amended by striking “an
24 agreement” and inserting “a contract”.

1 (H) Section 1816(h) of such Act (42 U.S.C.
2 1395h(h)) is amended—

3 (i) by striking “An agreement” and inserting
4 “A contract”; and

5 (ii) by striking “the agreement” each place it
6 occurs and inserting “the contract”.

7 (I) Section 1816(i)(1) of such Act (42 U.S.C.
8 1395h(i)(1)) is amended by striking “an agreement” and
9 inserting “a contract”.

10 (J) Section 1816(j) of such Act (42 U.S.C. 1395h(j))
11 is amended by striking “An agreement” and inserting “A
12 contract”.

13 (K) Section 1816(k) of such Act (42 U.S.C.
14 1395h(k)) is amended by striking “An agreement” and
15 inserting “A contract”.

16 (L) Section 1816(l) of such Act (42 U.S.C. 1395h(l))
17 is amended by striking “an agreement” and inserting “a
18 contract”.

19 (M) The matter in section 1842(a) of such Act (42
20 U.S.C. 1395u(a)) preceding paragraph (1) is amended by
21 striking “agreements” and inserting “contracts”.

22 (N) Section 1842(h)(3)(A) of such Act (42 U.S.C.
23 1395u(h)(3)(A)) is amended by striking “an agreement”
24 and inserting “a contract”.

1 (5) Section 1816(f)(1) of such Act (42 U.S.C.
2 1395h(f)(1)) is amended by striking the second sentence.

3 (6)(A) The matter in section 1816(c)(2)(A) of such
4 Act (42 U.S.C. 1395h(c)(2)(A)) preceding clause (i) is
5 amended by inserting “that provides for making payments
6 under this part” after “this section”.

7 (B) Section 1816(c)(3)(A) of such Act (42 U.S.C.
8 1395h(c)(3)(A)) is amended by inserting “that provides
9 for making payments under this part” after “this sec-
10 tion”.

11 (C) Section 1816(k) of such Act (42 U.S.C.
12 1395h(k)) is amended by inserting “(as appropriate)”
13 after “submit”.

14 (D) The matter in section 1842(a) of such Act (42
15 U.S.C. 1395u(a)) preceding paragraph (1) is amended by
16 striking “some or all of the following functions” and in-
17 serting “any or all of the following functions, or parts of
18 those functions”.

19 (E) The first sentence of section 1842(b)(2)(C) of
20 such Act (42 U.S.C. 1395u(b)(2)(C)) is amended by in-
21 serting “(as appropriate)” after “carriers”.

22 (F) The matter preceding subparagraphs (A) in the
23 first sentence of section 1842(b)(3) of such Act (42 U.S.C.
24 1395u(b)(3)) is amended by inserting “(as appropriate)”
25 after “contract”.

1 (G) The matter in section 1842(b)(7)(A) of such Act
2 (42 U.S.C. 1395u(b)(7)(A)) preceding clause (i) is amend-
3 ed by striking “the carrier” and inserting “a carrier”.

4 (H) The matter in section 1842(b)(11)(A) of such
5 Act (42 U.S.C. 1395u(b)(11)(A)) preceding clause (i) is
6 amended by inserting “(as appropriate)” after “each car-
7 rier”.

8 (I) The first sentence of section 1842(h)(2) of such
9 Act (42 U.S.C. 1395u(h)(2)) is amended by inserting “(as
10 appropriate)” after “shall”.

11 (J) Section 1842(h)(5)(A) of such Act (42 U.S.C.
12 1395u(h)(5)(A)) is amended by inserting “(as appro-
13 priate)” after “carriers”.

14 (7)(A) Section 1816(c)(2)(C) of such Act (42 U.S.C.
15 1395h(c)(2)(C)) is amended by striking “hospital, rural
16 primary care hospital, skilled nursing facility, home health
17 agency, hospice program, comprehensive outpatient reha-
18 bilitation facility, or rehabilitation agency” and inserting
19 “provider of services”.

20 (B) The matter in section 1816(j) of such Act (42
21 U.S.C. 1395h(j)) preceding paragraph (1) is amended by
22 striking “for home health services, extended care services,
23 or post-hospital extended care services”.

24 (8) Section 1842(a)(3) of such Act (42 U.S.C.
25 1395u(a)(3)) is amended by inserting “(to and from indi-

viduals enrolled under this part and to and from physi-
cians and other entities that furnish items and services)”
after “communication”.

(9) The matter in section 1842(a) of such Act (42
U.S.C. 1395u(a)) preceding paragraph (1), as amended
by subsection (b)(4)(M), is amended by striking “carriers
with which contracts” and inserting “single contracts
under section 1816 and this section together, or separate
contracts with eligible agencies and organizations with
which contracts”.

(c) ELIMINATION OF SPECIAL PROVISIONS FOR TER-
MINATIONS OF CONTRACTS.—(1) Section 1816 of such
Act (42 U.S.C. 1395h) is amended—

(A) in subsection (b), in the matter preceding
paragraph (1), by striking “or renew”;

(B) in the last sentence of subsection (c)(1), by
striking “or renewing”;

(C) in subsection (f)(1) by striking “, renew, or
terminate” and “, whether the Secretary should as-
sign or reassign a provider of services to an agency
or organization,”; and

(D) by striking subsection (g).

(2) The last sentence of section 1842(b)(2)(A) of
such Act (42 U.S.C. 1395u(b)(2)(A)) is amended by strik-
ing “or renewing”.

1 (3) Section 1842(b) of such Act (42 U.S.C.
2 1395u(b)) is amended by striking paragraph (5).

3 (d) REPEAL OF FISCAL INTERMEDIARY REQUIRE-
4 MENTS THAT ARE NOT COST-EFFECTIVE.—Section
5 1816(f)(2) of such Act (42 U.S.C. 1395h(f)(2)) is amend-
6 ed to read as follows:

7 “(2) The contract performance requirements devel-
8 oped under paragraph (1) shall include, with respect to
9 claims for services furnished under this part by any pro-
10 vider of services other than a hospital, whether such agen-
11 cy or organization is able to process 75 percent of recon-
12 siderations within 60 days and 90 percent of reconsider-
13 ations within 90 days.”.

14 (e) REPEAL OF COST REIMBURSEMENT REQUIRE-
15 MENTS.—(1) The first sentence of section 1816(c)(1) of
16 such Act (42 U.S.C. 1395h(c)(1)) is amended—

17 (A) by striking the comma after “appropriate”
18 and inserting “and”;

19 (B) by striking all that follows “subsection (a)”
20 up to the period; and

21 (C) by striking the second and third sentences.

22 (2) The first sentence of section 1842(c)(1) of such
23 Act (42 U.S.C. 1395u(c)(1)) is amended—

24 (A) by striking “shall provide” the first place it
25 appears and inserting “may provide”;

1 (B) by striking “this part” and all that follows
2 up to the period; and

3 (C) by striking the second and third sentences.

4 (3) Section 2326(a) of the Deficit Reduction Act of
5 1984 is repealed.

6 (f) COMPETITION REQUIRED FOR NEW CONTRACTS
7 AND IN CASES OF POOR PERFORMANCE.—(1) Section
8 1816(c) of such Act (42 U.S.C. 1395h(c)) is amended by
9 adding at the end the following:

10 “(4)(A) A contract with a fiscal intermediary under
11 this section may be renewed from term to term without
12 regard to any provision of law requiring competition if the
13 fiscal intermediary has met or exceeded the performance
14 requirements established in the current contract.

15 “(B) Functions may be transferred among fiscal
16 intermediaries without regard to any provision of law re-
17 quiring competition.”.

18 (2) Section 1842(b) of such Act (42 U.S.C.
19 1395u(b)) is amended by striking everything before para-
20 graph (2) and inserting the following:

21 “(b)(1)(A) A contract with a carrier under subsection
22 (a) may be renewed from term to term without regard to
23 any provision of law requiring competition if the carrier
24 has met or exceeded the performance requirements estab-
25 lished in the current contract.

1 “(B) Functions may be transferred among carriers
2 without regard to any provision of law requiring competi-
3 tion.”.

4 (g) WAIVER OF COMPETITIVE REQUIREMENTS FOR
5 INITIAL CONTRACTS.—(1) Contracts whose periods begin
6 during the 1-year period that begins on the first day of
7 the fourth calendar month that begins after the date of
8 the enactment of this Act may be entered into under sec-
9 tion 1816(a) of the Social Security Act without regard to
10 any provision of law requiring competition.

11 (2) The amendments made by subsection (f) apply
12 to contracts whose periods begin after the end of the 1-
13 year period specified in paragraph (1) of this subsection.

14 (h) YEAR 2000 COMPLIANCE.—

15 (1) FOR FISCAL INTERMEDIARIES.—Paragraph
16 (2) of section 1816(f) of such Act (42 U.S.C.
17 1395h(f)), as amended by subsection (d), is amend-
18 ed—

19 (A) by striking “shall include,” and insert-
20 ing “shall include—”;

21 (B) by designating the remainder of such
22 paragraph as subparagraph (A) and indenting
23 it accordingly;

24 (C) by striking the period at the end and
25 inserting “; and”; and

1 (D) by adding at the end the following new
2 subparagraph:

3 “(B) a requirement that, by such time as
4 the Secretary considers reasonable, the informa-
5 tion technology that is used or acquired by the
6 agency or organization to carry out its respon-
7 sibilities under this title (to the extent that the
8 Secretary finds such information technology is
9 under the control of such agency or organiza-
10 tion)—

11 “(i) meets the definition of ‘Year
12 2000 compliant’ under the Federal Acqui-
13 sition Regulation (concerning accurate
14 processing of date/time data (including cal-
15 culating, comparing, and sequencing) from,
16 into, and between the twentieth and twen-
17 ty-first centuries, and the years 1999 and
18 2000 and leap year calculations) but with-
19 out regard to whether the information
20 technology is being acquired; and

21 “(ii) meets such other criteria for year
22 2000 compliance as the Secretary consid-
23 ers appropriate.”.

24 (2) CARRIERS.—Section 1842(b)(2)(A) of such
25 Act (42 U.S.C. 1395u(b)(2)(A)) is amended in the

1 first sentence by inserting after “and other matters
2 as he finds pertinent” the following: “(including a
3 requirement that the carrier will meet the require-
4 ment of section 1816(f)(2)(B) (relating to year 2000
5 compliance) in the same manner as such require-
6 ment applies to a fiscal intermediary)”.

7 (i) EFFECTIVE DATES.—(1) The amendments made
8 by subsection (c) apply to contracts whose periods end at,
9 or after, the end of the third calendar month that begins
10 after the date of the enactment of this Act.

11 (2) The amendments made by subsections (a), (b),
12 (d), and (e) apply to contracts whose periods begin after
13 the third calendar month that begins after the date of the
14 enactment of this Act.

15 (3) The amendments made by subsection (h) apply
16 to contracts whose periods begin after the date of the en-
17 actment of this Act.

18 (j) SECRETARY’S AUTHORITY TO ISSUE INTERIM
19 FINAL REGULATIONS.—The Secretary of Health and
20 Human Services is authorized to issue any regulations
21 needed to implement the amendments made by this section
22 as interim final regulations.

○