

105TH CONGRESS
2D SESSION

S. 1788

To amend titles XI and XVIII of the Social Security Act to combat waste, fraud, and abuse in the medicare program.

IN THE SENATE OF THE UNITED STATES

MARCH 17, 1998

Mr. MOYNIHAN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles XI and XVIII of the Social Security Act to combat waste, fraud, and abuse in 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; AMENDMENTS TO SOCIAL SECU-**
4 **RITY ACT; TABLE OF CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Medicare Fraud and Overpayment Act of 1998”.

7 (b) AMENDMENTS TO SOCIAL SECURITY ACT.—Ex-
8 cept as otherwise specifically provided, whenever in this
9 Act an amendment is expressed in terms of an amendment
10 to or repeal of a section or other provision, the reference

1 shall be considered to be made to that section or other
 2 provision of the Social Security Act.

3 (c) TABLE OF CONTENTS.—The table of contents of
 4 this Act is as follows:

- Sec. 1. Short title; amendments to Social Security Act; table of contents.
- Sec. 2. No mark-up for drugs, biologicals, or parenteral nutrients.
- Sec. 3. Mental health partial hospitalization services.
- Sec. 4. Information requirements.
- Sec. 5. Eliminate overpayments for epogen.
- Sec. 6. Centers of excellence.
- Sec. 7. Repeal of clarification concerning levels of knowledge required for imposition of civil monetary penalties.
- Sec. 8. Repeal of expanded exception for risk-sharing contract to anti-kickback provisions.
- Sec. 9. Limiting the use of automatic stays and discharge in bankruptcy proceedings for provider liability for health care fraud.
- Sec. 10. Administrative fees for medicare overpayment collection.

5 **SEC. 2. NO MARK-UP FOR DRUGS, BIOLOGICALS, OR PAREN-**
 6 **TERAL NUTRIENTS.**

7 (a) IN GENERAL.—Section 1842(o) (42 U.S.C.
 8 1395u(o)), as added by section 4556(a) of the Balanced
 9 Budget Act of 1997, is amended to read as follows:

10 “(o)(1) If a physician’s, supplier’s, or any other per-
 11 son’s bill or request for payment for services includes a
 12 charge for a drug, biological, or parenteral nutrient for
 13 which payment may be made under this part and the drug,
 14 biological, or parenteral nutrient is not paid on a cost or
 15 prospective payment basis as otherwise provided in this
 16 part, the payment amount established in this subsection
 17 for the drug, biological, or parenteral nutrient shall be the
 18 lowest of the following:

1 “(A) The actual acquisition cost, as defined in
2 paragraph (2), to the person submitting the claim
3 for payment for the drug, biological, or parenteral
4 nutrient.

5 “(B) 95 percent of the average wholesale price
6 of such drug, biological, or parenteral nutrient, as
7 determined by the Secretary.

8 “(C) For payments for drugs, biologicals, or
9 parenteral nutrients furnished on or after January
10 1, 2000, the median actual acquisition cost of all
11 claims for payment for such drugs, biologicals, or
12 parenteral nutrients for the 12-month period begin-
13 ning July 1, 1998 (and adjusted, as the Secretary
14 determines appropriate, to reflect changes in the
15 cost of such drugs, biologicals, or parenteral nutri-
16 ents due to inflation, and such other factors as the
17 Secretary determines appropriate).

18 “(D) The amount otherwise determined under
19 this part.

20 “(2) For purposes of paragraph (1)(A), the term ‘ac-
21 tual acquisition cost’ means, with respect to such drugs,
22 biologicals, or parenteral nutrients the cost of the drugs,
23 biologicals, or parenteral nutrients based on the most eco-
24 nomical case size in inventory on the date of dispensing
25 or, if less, the most economical case size purchased within

1 six months of the date of dispensing whether or not that
2 specific drug, biological, or nutrient was furnished to an
3 individual whether or not enrolled under this part. Such
4 term includes appropriate adjustments, as determined by
5 the Secretary, for all discounts, rebates, or any other bene-
6 fit in cash or in kind (including travel, equipment, or free
7 products). The Secretary shall include an additional pay-
8 ment for administrative, storage, and handling costs.

9 “(3)(A) No payment shall be made under this part
10 for drugs, biologicals, or parenteral nutrients to a person
11 whose bill or request for payment for such drugs,
12 biologicals, or parenteral nutrients does not include a
13 statement of the person’s actual acquisition cost.

14 “(B) A person may not bill an individual enrolled
15 under this part—

16 “(i) any amount other than the payment
17 amount specified in paragraph (1), (4), or (5) (plus
18 any applicable deductible and coinsurance amounts),
19 or

20 “(ii) any amount for such drugs, biologicals, or
21 parenteral nutrients for which payment may not be
22 made pursuant to subparagraph (A).

23 “(C) If a person knowingly and willfully in repeated
24 cases bills one or more individuals in violation of subpara-

1 graph (B), the Secretary may apply sanctions against that
2 person in accordance with subsection (j)(2).

3 “(4) The Secretary may pay a reasonable dispensing
4 fee (less the applicable deductible and coinsurance
5 amounts) for drugs or biologicals to a licensed pharmacy
6 approved to dispense drugs or biologicals under this part,
7 if payment for such drugs or biologicals is made to the
8 pharmacy.

9 “(5) The Secretary shall pay a reasonable amount
10 (less the applicable deductible and coinsurance amounts)
11 for the services associated with the furnishing of paren-
12 teral nutrients for which payment is determined under this
13 subsection.”.

14 (b) EFFECTIVE DATE.—The amendments made by
15 subsection (a) apply to drugs, biologicals, and parenteral
16 nutrients furnished on or after January 1, 1999.

17 (c) ELIMINATION OF REPORT ON AVERAGE WHOLE-
18 SALE PRICE.—Section 4556 of the Balanced Budget Act
19 of 1997 is amended—

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

21 (2) by redesignating subsection (d) as sub-
22 section (c).

1 **SEC. 3. MENTAL HEALTH PARTIAL HOSPITALIZATION SERV-**
 2 **ICES.**

3 (a) LIMITATION ON LOCATION OF PROVISION OF
 4 SERVICES.—

5 (1) IN GENERAL.—Section 1861(ff)(2) (42
 6 U.S.C. 1395x(ff)(2)) is amended in the matter fol-
 7 lowing subparagraph (I)—

8 (A) by striking “and furnished” and in-
 9 serting “furnished”; and

10 (B) by inserting before the period the fol-
 11 lowing: “, and furnished other than in a skilled
 12 nursing facility or in an individual’s home or
 13 other residential setting”.

14 (2) EFFECTIVE DATE.—The amendments made
 15 by paragraph (1) shall apply to partial hospitaliza-
 16 tion services furnished on or after the first day of
 17 the sixth month beginning after the date of the en-
 18 actment of this Act.

19 (b) QUALIFICATIONS FOR COMMUNITY MENTAL
 20 HEALTH CENTERS.—Section 1861(ff)(3)(B) (42 U.S.C.
 21 1395x(ff)(3)(B)) is amended by striking “entity” and all
 22 that follows and inserting the following: “entity that—

23 “(i) provides the mental health services de-
 24 scribed in paragraph (1) of section 1913(c) of the
 25 Public Health Service Act;

1 “(ii) meets applicable licensing or certification
 2 requirements for community mental health centers
 3 in the State in which it is located; and

4 “(iii) meets such additional standards as the
 5 Secretary shall specify to ensure (I) the health and
 6 safety of individuals being furnished such services,
 7 (II) the effective or efficient furnishing of such serv-
 8 ices, and (III) the compliance of such entity with the
 9 criteria described in such section.”.

10 **SEC. 4. INFORMATION REQUIREMENTS.**

11 (a) INFORMATION FROM GROUP HEALTH PLANS.—
 12 Section 1862(b) is amended by adding at the end the fol-
 13 lowing:

14 “(7) INFORMATION FROM GROUP HEALTH
 15 PLANS.—

16 “(A) PROVISION OF INFORMATION BY
 17 GROUP HEALTH PLANS.—The administrator of
 18 a group health plan subject to the requirements
 19 of paragraph (1) shall provide to the Secretary
 20 such of the information elements described in
 21 subparagraph (C) as the Secretary specifies,
 22 and in such manner and at such times as the
 23 Secretary may specify (but not more frequently
 24 than four times per year), with respect to each

individual covered under the plan who is entitled to any benefits under this title.

“(B) PROVISION OF INFORMATION BY EMPLOYERS AND EMPLOYEE ORGANIZATIONS.—An employer (or employee organization) that maintains or participates in a group health plan subject to the requirements of paragraph (1) shall provide to the administrator of the plan such of the information elements required to be provided under subparagraph (A), and in such manner and at such times as the Secretary may specify, at a frequency consistent with that required under subparagraph (A) with respect to each individual described in subparagraph (A) who is covered under the plan by reason of employment with that employer or membership in the organization.

“(C) INFORMATION ELEMENTS.—The information elements described in this subparagraph are the following:

“(i) ELEMENTS CONCERNING THE INDIVIDUAL.—

“(I) The individual’s name.

“(II) The individual’s date of birth.

1 “(III) The individual’s sex.

2 “(IV) The individual’s social se-
3 curity insurance number.

4 “(V) The number assigned by the
5 Secretary to the individual for claims
6 under this title.

7 “(VI) The family relationship of
8 the individual to the person who has
9 or had current or employment status
10 with the employer.

11 “(ii) ELEMENTS CONCERNING THE
12 FAMILY MEMBER WITH CURRENT OR
13 FORMER EMPLOYMENT STATUS.—

14 “(I) The name of the person in
15 the individual’s family who has cur-
16 rent or former employment status
17 with the employer.

18 “(II) That person’s social secu-
19 rity insurance number.

20 “(III) The number or other iden-
21 tifier assigned by the plan to that per-
22 son.

23 “(IV) The periods of coverage for
24 that person under the plan.

1 “(V) The employment status of
2 that person (current or former) dur-
3 ing those periods of coverage.

4 “(VI) The classes (of that per-
5 son’s family members) covered under
6 the plan.

7 “(iii) PLAN ELEMENTS.—

8 “(I) The items and services cov-
9 ered under the plan.

10 “(II) The name and address to
11 which claims under the plan are to be
12 sent.

13 “(iv) ELEMENTS CONCERNING THE
14 EMPLOYER.—

15 “(I) The employer’s name.

16 “(II) The employer’s address.

17 “(III) The employer identifica-
18 tion number of the employer.

19 “(D) USE OF IDENTIFIERS.—The adminis-
20 trator of a group health plan shall utilize a
21 unique identifier for the plan in providing infor-
22 mation under subparagraph (A) and in other
23 transactions, as may be specified by the Sec-
24 retary, related to the provisions of this sub-
25 section. The Secretary may provide to the ad-

1 ministrator the unique identifier described in
2 the preceding sentence.

3 “(E) PENALTY FOR NONCOMPLIANCE.—
4 Any entity that knowingly and willfully fails to
5 comply with a requirement imposed by the pre-
6 vious subparagraphs shall be subject to a civil
7 money penalty not to exceed \$1,000 for each in-
8 cident of such failure. The provisions of section
9 1128A (other than subsections (a) and (b))
10 shall apply to a civil money penalty under the
11 previous sentence in the same manner as those
12 provisions apply to a penalty or proceeding
13 under section 1128A(a).”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 subsection (a) shall take effect 180 days after the date
16 of enactment of this Act.

17 **SEC. 5. ELIMINATE OVERPAYMENTS FOR EPOGEN.**

18 Section 1881(b)(11)(B)(ii) (42 U.S.C.
19 1395rr(b)(11)(B)(ii)) is amended—

20 (1) in subclause (I)—

21 (A) by striking “provided during 1994”
22 and inserting “provided before fiscal year
23 1999”; and

24 (B) by striking “and” at the end;

1 (2) by redesignating subclause (II) as subclause
2 (III);

3 (3) by inserting after subclause (I) the follow-
4 ing new subclause:

5 “(II) for erythropoietin provided during
6 fiscal year 1999, in an amount equal to \$9 per
7 thousand units (rounded to the nearest 100
8 units), and”; and

9 (4) in subclause (III), as so redesignated, by
10 striking “year” each place it occurs and inserting
11 “fiscal year”.

12 **SEC. 6. CENTERS OF EXCELLENCE.**

13 (a) IN GENERAL.—Title XVIII is amended by insert-
14 ing after section 1896 the following new section:

15 “CENTERS OF EXCELLENCE

16 “SEC. 1897. (a) IN GENERAL.—The Secretary shall
17 use a competitive process to contract with specific hos-
18 pitals or other entities for furnishing services related to
19 surgical procedures, and for furnished services (unrelated
20 to surgical procedures) to hospital inpatients that the Sec-
21 retary determines to be appropriate. Such services may in-
22 clude any services covered under this title that the Sec-
23 retary determines to be appropriate, including post-hos-
24 pital services.

25 “(b) QUALITY STANDARDS.—Only entities that meet
26 quality standards established by the Secretary shall be eli-

1 gible to contract under this section. In considering quality,
 2 the Secretary shall take into account the quality, experi-
 3 ence, and quantity of services of physicians who provide
 4 services in more than one entity. Contracting entities shall
 5 implement a quality improvement plan approved by the
 6 Secretary.

7 “(c) PAYMENT.—Payment under this section shall be
 8 made on the basis of negotiated all-inclusive rates. The
 9 amount of payment made by the Secretary to an entity
 10 under this title for services covered under a contract shall
 11 be less than the aggregate amount of the payments that
 12 the Secretary would have otherwise made for the services.

13 “(d) CONTRACT PERIOD.—A contract period shall be
 14 3 years (subject to renewal), as long as the entity contin-
 15 ues to meet quality and other contractual standards.

16 “(e) INCENTIVES FOR USE OF CENTERS.—The Sec-
 17 retary may permit entities under a contract under this sec-
 18 tion to furnish additional services or waive beneficiary
 19 cost-sharing, subject to the approval of the Secretary.

20 “(f) LIMIT ON NUMBER OF CENTERS.—The Sec-
 21 retary shall limit the number of centers in a geographic
 22 area to the number needed to meet projected demand for
 23 contracted services.”.

24 (b) EFFECTIVE DATES.—

1 (1) The amendment made by subsection (a) ap-
2 plies to services furnished on or after October 1,
3 1998.

4 (2) By October 1, 1998, the Secretary shall
5 enter into contracts under the amendment made by
6 subsection (a) for coronary artery by-pass surgery
7 and other heart procedures, knee replacement sur-
8 gery, and hip replacement surgery, in geographic
9 areas nationwide such that at least 20 percent of the
10 projected number of those procedures can be pro-
11 vided under such contracts.

12 **SEC. 7. REPEAL OF CLARIFICATION CONCERNING LEVELS**
13 **OF KNOWLEDGE REQUIRED FOR IMPOSITION**
14 **OF CIVIL MONETARY PENALTIES.**

15 (a) ELIMINATION OF “KNOWING” STANDARD.—Sec-
16 tion 1128A(a) (42 U.S.C. 1320a–7a(a)) is amended by
17 striking “knowingly” in paragraphs (1), (2), and (3).

18 (b) ELIMINATION OF STATUTORY DEFINITION OF
19 “SHOULD KNOW”.—Section 1128A(i) (42 U.S.C. 1320a–
20 7a(i)) is amended by striking paragraph (7).

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to acts or omissions occurring on
23 or after the date of the enactment of this Act.

1 **SEC. 8. REPEAL OF EXPANDED EXCEPTION FOR RISK-SHAR-**
 2 **ING CONTRACT TO ANTI-KICKBACK PROVI-**
 3 **SIONS.**

4 (a) IN GENERAL.—Section 1128B(b)(3) (42 U.S.C.
 5 1320a–7b(b)(3)) is amended—

6 (1) by adding “and” at the end of subpara-
 7 graph (D);

8 (2) by striking “; and” at the end of subpara-
 9 graph (E) and inserting a period; and

10 (3) by striking subparagraph (F).

11 (b) ELIMINATION OF REPORT.—Subsection (b) of
 12 section 216 of the Health Insurance Portability and Ac-
 13 countability Act of 1996 is repealed.

14 (c) EFFECTIVE DATES.—(1) The amendments made
 15 by subsection (a) shall apply to remuneration provided on
 16 or after the date of the enactment of this Act, regardless
 17 of whether it is pursuant to an agreement or arrangement
 18 entered into before such date.

19 (2) Subsection (b) shall take effect on the date of the
 20 enactment of this Act.

21 **SEC. 9. LIMITING THE USE OF AUTOMATIC STAYS AND DIS-**
 22 **CHARGE IN BANKRUPTCY PROCEEDINGS FOR**
 23 **PROVIDER LIABILITY FOR HEALTH CARE**
 24 **FRAUD.**

25 (a) NONAPPLICABILITY OF AUTOMATIC STAY PROVI-
 26 SIONS.—

1 (1) IN EXCLUSION PROCEEDINGS.—Section
 2 1128 (42 U.S.C. 1320a–7), as amended by section
 3 4303(a) of the Balanced Budget Act of 1997, is
 4 amended by adding at the end the following new
 5 subsection:

6 “(k) NONAPPLICABILITY OF BANKRUPTCY STAY.—
 7 An exclusion imposed under this section or a proceeding
 8 seeking an exclusion under this section is not subject to
 9 the automatic stay under section 362(a) of title 11, United
 10 States Code.”.

11 (2) IN CIVIL MONEY PENALTY PROCEEDINGS.—
 12 Section 1128A(a) (42 U.S.C. 1320a–7a(a)) is
 13 amended by adding at the end the following: “An ex-
 14 clusion, penalty, or assessment imposed under this
 15 section or a proceeding that seeks an exclusion, pen-
 16 alty, or assessment under this section, is not subject
 17 to the automatic stay under section 362(a) of title
 18 11, United States Code. Notwithstanding any other
 19 provision of law, amounts made payable under this
 20 section are not dischargeable under any provision of
 21 such title.”.

22 (3) IN RECOUPMENT UNDER PART A OF MEDI-
 23 CARE.—Section 1815(d) (42 U.S.C. 1395g(d)) is
 24 amended—

25 (A) by inserting “(1)” after “(d)”, and

1 (B) by adding at the end the following:

2 “(2) The recoupment of an overpayment under this
3 section is not subject to the automatic stay under section
4 362(a) of title 11, United States Code. Notwithstanding
5 any other provision of law, amounts due to the Secretary
6 under this section are not dischargeable under any provi-
7 sion of such title.”.

8 (4) IN RECOUPMENT UNDER PART B OF MEDI-
9 CARE.—Section 1833(j) (42 U.S.C. 1395l(j)) is
10 amended—

11 (A) by inserting “(1)” after“(j)”, and

12 (B) by adding at the end the following:

13 “(2) The recoupment of an overpayment under this
14 section is not subject to the automatic stay under section
15 362(a) of title 11, United States Code. Notwithstanding
16 any other provision of law, amounts due to the Secretary
17 under this section are not dischargeable under any provi-
18 sion of such title.”.

19 (5) IN COLLECTION OF OVERDUE PAYMENTS ON
20 SCHOLARSHIPS AND LOANS.—Section 1892(a)(4)
21 (42 U.S.C. 1395ccc(a)(4)) is amended by adding at
22 the end the following:

23 “(5) An exclusion imposed under paragraph
24 (2)(C)(ii) or (3)(B) is not subject to the automatic

1 stay under section 362(a) of title 11, United States
2 Code.”.

3 (b) NONDISCHARGABILITY.—

4 (1) IN CIVIL MONEY PENALTY PROCEEDINGS.—
5 Section 1128A(a) (42 U.S.C. 1320a–7a(a)), as
6 amended by subsection (a)(2), is further amended by
7 adding at the end the following: “Notwithstanding
8 any other provision of law, amounts made payable
9 under this section are not dischargeable under any
10 provision of such title.”.

11 (2) IN RECOUPMENT UNDER PART A OF MEDI-
12 CARE.—Section 1815(d) (42 U.S.C. 1395g(d)(2)),
13 as amended by subsection (a)(3), is further amended
14 by adding at the end the following:

15 “(3) Notwithstanding any other provision of law,
16 amounts due to the Secretary under this section are not
17 dischargeable under any provision of such title.”.

18 (3) IN RECOUPMENT UNDER PART B OF MEDI-
19 CARE.—Section 1833(j) (42 U.S.C. 1395l(j)), as
20 amended by subsection (a)(4), is further amended by
21 adding at the end the following: “Notwithstanding
22 any other provision of law, amounts due to the Sec-
23 retary under this section are not dischargeable under
24 any provision of such title.”.

25 (c) EFFECTIVE DATES.—

1 (1) The amendments made by subsection (a)
 2 shall apply to bankruptcy petitions filed after the
 3 date of the enactment of this Act.

4 (2) The amendments made by subsection (b)
 5 shall apply on and after the date of the enactment
 6 of this Act to any proceeding which has not been
 7 completed as of such date.

8 **SEC. 10. ADMINISTRATIVE FEES FOR MEDICARE OVERPAY-**
 9 **MENT COLLECTION.**

10 (a) ADMINISTRATIVE FEES FOR PROVIDERS OF
 11 SERVICES UNDER PART A.—Section 1815(d) (42 U.S.C.
 12 1395g(d)), as amended by section 9(a)(3), is amended by
 13 adding at the end the following new paragraph:

14 “(3)(A) Except as provided in subparagraph (B), if
 15 the payment of the excess described in paragraph (1) is
 16 not made (or effected by offset) within 30 days of the date
 17 of the determination, an administrative fee of 1 percent
 18 of the outstanding balance of the excess (after application
 19 of paragraph (1)), or such lower amount as an Adminis-
 20 trative Law Judge may determine upon an appeal of the
 21 initial determination of the excess, shall be imposed on the
 22 provider, for deposit into the Trust Fund under this part.

23 “(B) The administrative fee shall be imposed under
 24 subparagraph (A) on a provider of services paid on a pro-
 25 spective basis only if such provider’s cost report with re-

1 spect to the payment determined to be in excess of the
 2 payment due under this part indicates that the provider’s
 3 projected costs exceeded its actual costs by 30 percent or
 4 more.”.

5 (b) ADMINISTRATIVE FEES FOR PROVIDERS OF
 6 SERVICES OR OTHER PERSONS UNDER PART B.—Section
 7 1833(j) (42 U.S.C. 1395l(j)), as amended by section
 8 9(a)(4), is amended by adding at the end the following
 9 new paragraph:

10 “(3) If the excess described in paragraph (1) is not
 11 made (or effected by offset) within 30 days of the date
 12 of the determination, an administrative fee of 1 percent
 13 of the outstanding balance of the excess (after application
 14 of paragraph (1)), or such lower amount as an Adminis-
 15 trative Law Judge may determine upon an appeal of the
 16 initial determination of the excess, shall be imposed on the
 17 provider, or other person receiving the excess, for deposit
 18 into the Trust Fund under this part.”.

19 (c) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to final determinations made on
 21 or after the date of enactment of this Act.

○