

105TH CONGRESS
2D SESSION

S. 2335

To amend title XVIII of the Social Security Act to improve efforts to combat medicare fraud, waste, and abuse.

IN THE SENATE OF THE UNITED STATES

JULY 21, 1998

Mr. HARKIN (for himself and Mr. HOLLINGS) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to improve efforts to combat medicare fraud, waste, and abuse.

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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Medicare Waste Tax Reduction Act of 1998”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Increased antifraud audits and medical reviews.
- Sec. 3. Expansion of medicare senior waste patrol nationwide.
- Sec. 4. Application of inherent reasonableness to all part B services other than physicians’ services.
- Sec. 5. Oversight of home health agencies.
- Sec. 6. No mark-up for drugs or biologicals.

- Sec. 7. Ensuring that the medicare program does not reimburse claims owed by other payers.
- Sec. 8. Repeal of expanded exception for risk-sharing contract to anti-kickback provisions.
- Sec. 9. Expansion of criminal penalties for kickbacks.
- Sec. 10. Extension of subpoena and injunction authority.
- Sec. 11. Civil monetary penalties for services ordered or prescribed by an excluded individual or entity.
- Sec. 12. Civil monetary penalties for false certification of eligibility to receive partial hospitalization and hospice services.
- Sec. 13. Application of certain provisions of the bankruptcy code.
- Sec. 14. Improving private sector coordination in combatting health care fraud.
- Sec. 15. Fees for agreements with medicare providers and suppliers.
- Sec. 16. Increased medicare compliance, education, and assistance for health care providers.
- Sec. 17. Paperwork and administrative hassle reduction.
- Sec. 18. Clarification of application of sanctions to Federal health care programs.
- Sec. 19. Payments for durable medical equipment.
- Sec. 20. Implementation of commercial claims auditing systems.
- Sec. 21. Partial hospitalization payment reforms.

1 SEC. 2. INCREASED ANTIFRAUD AUDITS AND MEDICAL RE-
2 VIEWS.

3 (a) IN GENERAL.—Section 1893(d) of the Social Se-
4 curity Act (42 U.S.C. 1395ddd(d)) is amended by insert-
5 ing after paragraph (3) the following:

6 “(4) In the case of fiscal year 1999 and there-
7 after, procedures to ensure that—

8 “(A) the number of medical reviews, utili-
9 zation reviews, and fraud reviews in a fiscal
10 year of providers of services and other individ-
11 uals and entities furnishing items and services
12 for which payment may be made under this title
13 is equal to at least twice the number of such re-
14 views that were conducted in fiscal year 1998;

1 “(B) the number of provider cost reports
2 audited in a fiscal year is equal to at least—

3 “(i) 15 percent of those submitted by
4 a home health agency, a skilled nursing fa-
5 cility, or a supplier of durable medical
6 equipment; and

7 “(ii) twice the number of such reports
8 that were audited in fiscal year 1998 for
9 those submitted by any other provider of
10 services or any other individual or entity
11 furnishing items and services for which
12 payment may be made under this title; and

13 “(C) in determining which providers of
14 services, individuals, or cost reports to review or
15 audit, priority is placed on providers, individ-
16 uals, and areas that the Secretary determines
17 are subject to abuse and most likely to result in
18 mispayment or overpayment recoveries.”.

19 (b) INCREASE IN APPROPRIATED AMOUNTS TO AC-
20 COUNT FOR MEDICARE INTEGRITY PROGRAM.—Section
21 1817(k)(4) of the Social Security Act (42 U.S.C.
22 1395i(k)(4)) is amended—

23 (1) in subparagraph (A), by striking “subpara-
24 graph (B)” and inserting “subparagraphs (B) and
25 (C)”;

1 (2) in subparagraph (B)—

2 (A) in clause (iii), by striking
3 “\$550,000,000 and not more than
4 \$560,000,000” and inserting “\$650,000,000
5 and not more than \$660,000,000”;

6 (B) in clause (iv), by striking
7 “\$620,000,000 and not more than
8 \$630,000,000” and inserting “\$720,000,000
9 and not more than \$730,000,000”;

10 (C) in clause (v), by striking
11 “\$670,000,000 and not more than
12 \$680,000,000” and inserting “\$770,000,000
13 and not more than \$780,000,000”;

14 (D) in clause (vi), by striking
15 “\$690,000,000 and not more than
16 \$700,000,000” and inserting “\$790,000,000
17 and not more than \$800,000,000”; and

18 (E) in clause (vii), by striking
19 “\$710,000,000 and not more than
20 \$720,000,000” and inserting “\$810,000,000
21 and not more than \$820,000,000”; and

22 (3) by adding at the end the following:

23 “(C) ADDITIONAL AMOUNT.—

24 “(i) IN GENERAL.—For fiscal years
25 1999 and thereafter, the amount appro-

1 appropriated each fiscal year in accordance with
2 subparagraph (B) shall be increased by an
3 amount equal to the sum of—

4 “(I) 5 percent of the overpay-
5 ment and mispayment recoveries
6 made through activities associated
7 with the Medicare Integrity Program
8 under section 1893 during the pre-
9 vious fiscal year; and

10 “(II) 100 percent of the pay-
11 ments received by the Secretary dur-
12 ing the previous fiscal year from pro-
13 viders of services and other individ-
14 uals and entities furnishing items and
15 services for which payment may be
16 made under this title for the costs of
17 overpayment recovery activities that
18 were required to be paid because egre-
19 gious levels of payment errors were
20 identified by the Secretary.

21 “(ii) USE OF ADDITIONAL AMOUNT.—

22 The additional amount described in clause
23 (i) shall be used by the Secretary for the
24 costs associated with carrying out the pro-
25 cedures described in section 1893(d)(4).”.

1 **SEC. 3. EXPANSION OF MEDICARE SENIOR WASTE PATROL**
2 **NATIONWIDE.**

3 There are authorized to be appropriated \$25,000,000
4 in fiscal year 1999, and such sums as are necessary for
5 fiscal years 2000 through 2002, for the purpose of carry-
6 ing out, and expanding nationwide, the Health Care Anti-
7 Fraud, Waste and Abuse Community Volunteer Dem-
8 onstration Projects conducted by the Administration on
9 Aging pursuant to the Omnibus Consolidated Appropria-
10 tions Act, 1997 (Public Law 104–208).

11 **SEC. 4. APPLICATION OF INHERENT REASONABLENESS TO**
12 **ALL PART B SERVICES OTHER THAN PHYSI-**
13 **CIANs' SERVICES.**

14 (a) REPEAL OF CERTAIN PROVISIONS OF THE BAL-
15 ANCED BUDGET ACT OF 1997.—

16 (1) REPEAL.—Section 4316 the Balanced
17 Budget Act of 1997 (Public Law 105–33; 111 Stat.
18 390), and the amendments made by such section, is
19 repealed effective August 5, 1997.

20 (2) APPLICABILITY.—Effective August 5, 1997,
21 the Social Security Act shall be applied and adminis-
22 tered as if section 4316 of the Balanced Budget Act
23 of 1997 (Public Law 105–33; 111 Stat. 390), and
24 the amendments made by such section, had not been
25 enacted.

1 (b) APPLICATION OF INHERENT REASONABLENESS
 2 TO ALL PART B SERVICES OTHER THAN PHYSICIANS'
 3 SERVICES.—

4 (1) IN GENERAL.—Section 1842(b)(8) of the
 5 Social Security Act (42 U.S.C. 1395u(b)(8)) is
 6 amended to read as follows:

7 “(8) The Secretary shall describe by regulation the
 8 factors to be used in determining the cases (of particular
 9 items or services) in which the application of this part
 10 (other than to physicians’ services paid under section
 11 1848) results in the determination of an amount that, be-
 12 cause of its being grossly excessive or grossly deficient,
 13 is not inherently reasonable, and provide in those cases
 14 for the factors to be considered in establishing an amount
 15 that is realistic and equitable.”.

16 (2) EFFECTIVE DATE.—The amendments made
 17 by this subsection shall take effect August 5, 1997.

18 **SEC. 5. OVERSIGHT OF HOME HEALTH AGENCIES.**

19 (a) VALIDATION SURVEYS OF HOME HEALTH AGEN-
 20 CIES.—Section 1891(c) of the Social Security Act (42
 21 U.S.C. 1395bbb(c)) is amended by adding at the end the
 22 following:

23 “(3)(A) The Secretary shall conduct onsite surveys
 24 of a representative sample of home health agencies in each
 25 State, within 2 months of the date of surveys conducted

1 under this subsection by the State, in a sufficient number
2 to allow inferences about the adequacies of each State's
3 surveys conducted under this subsection. In conducting
4 such surveys, the Secretary shall use the same survey pro-
5 tocols as the State is required to use under this subsection.
6 If the State has determined that a home health agency
7 is in compliance with the requirements specified in or pur-
8 suant to section 1861(o), this section, or this title, but
9 the Secretary determines that the facility does not meet
10 such requirements, the Secretary's determination as to the
11 facility's noncompliance with such requirements is binding
12 and supersedes that of the State survey.

13 “(B) SCOPE.—With respect to each State, the Sec-
14 retary shall conduct surveys under subparagraph (A) each
15 year with respect to at least 5 percent of the number of
16 home health agencies surveyed by the State in the year,
17 but in no case less than 5 home health agencies in the
18 State.

19 “(C) REMEDIES FOR SUBSTANDARD PERFORM-
20 ANCE.—If the Secretary finds, on the basis of such sur-
21 veys, that a State has failed to perform surveys as re-
22 quired under this subsection or that a State's survey and
23 certification performance otherwise is not adequate, the
24 Secretary shall provide for an appropriate remedy, which
25 may include the training of survey teams in the State.

1 “(D) SPECIAL SURVEYS OF COMPLIANCE.—Where
2 the Secretary has reason to question the compliance of a
3 home health agency with any of the requirements specified
4 in or pursuant to section 1861(o), this section, or this
5 title, the Secretary may conduct a survey of the agency
6 and, on the basis of that survey, make independent and
7 binding determinations concerning the extent to which the
8 home health agency meets such requirements.”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 subsection (a) shall take effect on the date of enactment
11 of this Act.

12 **SEC. 6. NO MARKUP FOR DRUGS OR BIOLOGICALS.**

13 (a) IN GENERAL.—Section 1842(o) (42 U.S.C.
14 1395u(o)), as added by section 4556(a) of the Balanced
15 Budget Act of 1997, is amended to read as follows:

16 “(o)(1) If a physician’s, supplier’s, or any other per-
17 son’s bill or request for payment for services includes a
18 charge for a drug or biological for which payment may
19 be made under this part and the drug or biological is not
20 paid on a cost or prospective payment basis as otherwise
21 provided in this part, the payment amount established in
22 this subsection for the drug or biological shall be the low-
23 est 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 or biological.

4 “(B) 95 percent of the average wholesale price
5 of such drug or biological, as determined by the Sec-
6 retary.

7 “(C) For payments for drugs or biologicals fur-
8 nished on or after January 1, 2000, the median ac-
9 tual acquisition cost of all claims for payment for
10 such drugs or biologicals for the 12-month period
11 beginning July 1, 1998 (and adjusted, as the Sec-
12 retary determines appropriate, to reflect changes in
13 the cost of such drugs or biologicals due to inflation,
14 and such other factors as the Secretary determines
15 appropriate).

16 “(D) The amount otherwise determined under
17 this part.

18 “(2) For purposes of paragraph (1)(A), the term ‘ac-
19 tual acquisition cost’ means, with respect to such drugs
20 or biologicals the cost of the drugs or biologicals based
21 on the most economical case size in inventory on the date
22 of dispensing or, if less, the most economical case size pur-
23 chased within 6 months of the date of dispensing whether
24 or not that specific drug or biological was furnished to
25 an individual whether or not enrolled under this part.

1 Such term includes appropriate adjustments, as deter-
2 mined by the Secretary, for all discounts, rebates, or any
3 other benefit in cash or in kind (including travel, equip-
4 ment, or free products). The Secretary shall include an
5 additional payment for administrative, storage, and han-
6 dling costs.

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

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

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

17 “(ii) any amount for such drugs or biologicals
18 for which payment may not be made pursuant to
19 subparagraph (A).

20 “(C) If a person knowingly and willfully in repeated
21 cases bills 1 or more individuals in violation of subpara-
22 graph (B), the Secretary may apply sanctions against that
23 person in accordance with subsection (j)(2).

24 “(4) The Secretary may pay a reasonable dispensing
25 fee (less the applicable deductible and coinsurance

1 amounts) for drugs or biologicals to a licensed pharmacy
 2 approved to dispense drugs or biologicals under this part,
 3 if payment for such drugs or biologicals is made to the
 4 pharmacy.”.

5 (b) EFFECTIVE DATE.—The amendments made by
 6 subsection (a) apply to drugs or biologicals furnished on
 7 or after January 1, 1999.

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

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

12 (2) by redesignating subsection (d) as sub-
 13 section (c).

14 **SEC. 7. ENSURING THAT THE MEDICARE PROGRAM DOES**
 15 **NOT REIMBURSE CLAIMS OWED BY OTHER**
 16 **PAYERS.**

17 (a) INFORMATION FROM GROUP HEALTH PLANS.—
 18 Section 1862(b) of the Social Security Act (42 U.S.C.
 19 1395y(b)) is amended by adding at the end the following:

20 “(7) INFORMATION FROM GROUP HEALTH
 21 PLANS.—

22 “(A) PROVISION OF INFORMATION BY
 23 GROUP HEALTH PLANS.—The administrator of
 24 a group health plan subject to the requirements
 25 of paragraph (1) shall provide the Secretary

1 with the information described in subsection (C)
 2 for each individual covered under the plan who
 3 is entitled to any benefits under this title. Such
 4 information shall be provided in such manner
 5 and at such times as the Secretary may specify
 6 (but in no case more frequently than 4 times
 7 per year).

8 “(B) PROVISION OF INFORMATION BY EM-
 9 PLOYERS AND EMPLOYEE ORGANIZATIONS.—An
 10 employer (or employee organization) that main-
 11 tains or participates in a group health plan sub-
 12 ject to the requirements of paragraph (1) shall
 13 provide to the administrator of the plan the in-
 14 formation described in subsection (C) for each
 15 individual covered under the plan who is enti-
 16 tled to any benefits under this title. Such infor-
 17 mation shall be provided in such manner and at
 18 such times as the Secretary may specify (but in
 19 no case more frequently than 4 times per year).

20 “(C) INFORMATION.—The information de-
 21 scribed in this subparagraph is as follows:

22 “(i) ELEMENTS CONCERNING THE IN-
 23 DIVIDUAL.—

24 “(I) The individual’s name.

1 “(II) The individual’s date of
2 birth.

3 “(III) The individual’s sex.

4 “(IV) The individual’s social se-
5 curity insurance number.

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

9 “(VI) The family relationship of
10 the individual to the person who has
11 current or prior employment status
12 with the employer.

13 “(ii) ELEMENTS CONCERNING THE
14 FAMILY MEMBER WITH CURRENT OR PRIOR
15 EMPLOYMENT STATUS.—

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

20 “(II) That person’s social secu-
21 rity insurance number.

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

1 “(IV) The periods of coverage for
2 that person under the plan.

3 “(V) The employment status of
4 that person (current or former em-
5 ployee) during those periods of cov-
6 erage.

7 “(VI) The classes (of that per-
8 son’s family members) covered under
9 the plan.

10 “(iii) PLAN ELEMENTS.—

11 “(I) The items and services cov-
12 ered under the plan.

13 “(II) The name and address to
14 which claims under the plan are to be
15 sent.

16 “(iv) ELEMENTS CONCERNING THE
17 EMPLOYER.—

18 “(I) The employer’s name.

19 “(II) The employer’s address.

20 “(III) The employer identifica-
21 tion number of the employer.

22 “(D) USE OF IDENTIFIERS.—The adminis-
23 trator of a group health plan shall utilize a
24 unique identifier for the plan in providing infor-
25 mation under subparagraph (A) and in other

1 transactions, as may be specified by the Sec-
2 retary, related to the provisions of this sub-
3 section. The Secretary may provide to the ad-
4 ministrator the unique identifier described in
5 the preceding sentence.

6 “(E) PENALTY FOR NONCOMPLIANCE.—
7 Any entity that knowingly and willfully fails to
8 comply with a requirement imposed by this
9 paragraph shall be subject to a civil money pen-
10 alty not to exceed \$1,000 for each incident of
11 such failure. The provisions of section 1128A
12 (other than subsections (a) and (b)) shall apply
13 to a civil money penalty under the previous sen-
14 tence in the same manner as those provisions
15 apply to a penalty or proceeding under section
16 1128A(a).

17 “(F) GROUP HEALTH PLAN DEFINED.—In
18 this paragraph, the term ‘group health plan’
19 has the meaning given such term in paragraph
20 (1)(A)(v).”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall take effect on January 1, 1999.

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) of the Social
5 Security Act (42 U.S.C. 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 RULEMAKING AND REPORT.—
12 Subsection (b) of section 216 of the Health Insurance
13 Portability and Accountability Act of 1996 (42 U.S.C.
14 1320a–7b note) is repealed.

15 (c) EFFECTIVE DATES.—

16 (1) REPEAL OF EXCEPTION.—The amendments
17 made by subsection (a) shall apply to remuneration
18 provided on or after the date of enactment of this
19 Act, regardless of whether it is pursuant to an
20 agreement or arrangement entered into before such
21 date.

22 (2) ELIMINATION OF RULEMAKING AND RE-
23 PORT.—Subsection (b) shall take effect on the date
24 of enactment of this Act.

1 **SEC. 9. EXPANSION OF CRIMINAL PENALTIES FOR KICK-**
 2 **BACKS.**

3 (a) APPLICATION OF CRIMINAL PENALTY AUTHOR-
 4 ITY TO ALL HEALTH CARE BENEFIT PROGRAMS.—

5 (1) IN GENERAL.—Section 1128B(b) of the So-
 6 cial Security Act (42 U.S.C. 1320a–7b(b)) is amend-
 7 ed by striking “Federal health care program” each
 8 place it appears and inserting “health care benefit
 9 program”.

10 (2) DEFINITION OF HEALTH CARE BENEFIT
 11 PROGRAM.—Section 1128B(f) of the Social Security
 12 Act (42 U.S.C. 1320a–7b(f)) is amended—

13 (A) by redesignating paragraphs (1) and
 14 (2) as subparagraphs (A) and (B) respectively;

15 (B) by striking “(f)” and inserting
 16 “(f)(1)”; and

17 (C) by adding at the end the following:

18 “(2) For purposes of this section, the term ‘health
 19 care benefit program’ has the meaning given such term
 20 in section 24(b) of title 18, United States Code.”.

21 (3) CONFORMING AMENDMENT.—

22 (A) IN GENERAL.—Section 1128A(a) of
 23 the Social Security Act (42 U.S.C. 1320a–
 24 7a(a)) is amended in the final sentence by
 25 striking “1128B(f)(1)” and inserting
 26 “1128B(f)(1)(A)”.

1 (B) HEADING.—The heading of section
 2 1128B of the Social Security Act (42 U.S.C.
 3 1320a–7b) is amended by striking “FEDERAL
 4 HEALTH CARE” and inserting “FEDERAL
 5 HEALTH CARE AND HEALTH CARE BENEFIT”.

6 (b) EFFECTIVE DATE.—The amendments made by
 7 subsection (a) apply to offenses occurring on and after the
 8 date of enactment of this Act.

9 **SEC. 10. EXTENSION OF SUBPOENA AND INJUNCTION AU-**
 10 **THORITY.**

11 (a) SUBPOENA AUTHORITY.—Section 1128A(j)(1) of
 12 the Social Security Act (42 U.S.C. 1320a–7a(j)(1)) is
 13 amended by inserting “and section 1128” after “with re-
 14 spect to this section”.

15 (b) INJUNCTION AUTHORITY.—Section 1128A(k) of
 16 the Social Security Act (42 U.S.C. 1320a–7a(k)) is
 17 amended by inserting “or an exclusion under section
 18 1128,” after “subject to a civil monetary penalty under
 19 this section,”.

20 (c) CLARIFYING AMENDMENTS.—

21 (1) IN GENERAL.—Section 1128A(j)(1) of the
 22 Social Security Act (42 U.S.C. 1320a–7a(j)(1)) is
 23 amended—

24 (A) by inserting “, except that, in so ap-
 25 plying such sections, any reference therein to

1 the Commissioner of Social Security or the So-
2 cial Security Administration shall be considered
3 a reference to the Secretary or the Department
4 of Health and Human Services, respectively”
5 after “with respect to title II”; and

6 (B) by striking the second sentence.

7 (2) AUTHORITY.—Section 1128A(j)(2) of the
8 Social Security Act (42 U.S.C. 1320a–7a(j)(2)) is
9 amended to read as follows:

10 “(2) The Secretary may delegate to the Inspector
11 General of the Department of Health and Human Services
12 any or all authority granted under this section or under
13 section 1128.”.

14 (d) CONFORMING AMENDMENT.—Section 1128 of the
15 Social Security Act (42 U.S.C. 1320a–7) (as amended by
16 section 4303(a)(2) of the Balanced Budget Act of 1997
17 (Public Law 105–33; 111 Stat. 383)) is amended by add-
18 ing at the end the following:

19 “(k) For provisions of law concerning the Secretary’s
20 subpoena and injunction authority with respect to activi-
21 ties under this section, see subsections (j) and (k) of sec-
22 tion 1128A.”.

1 **SEC. 11. CIVIL MONETARY PENALTIES FOR SERVICES OR-**
2 **DERED OR PRESCRIBED BY AN EXCLUDED IN-**
3 **DIVIDUAL OR ENTITY.**

4 Section 1128A(a)(1) of the Social Security Act (42
5 U.S.C. 1320a–7a(a)(1)) is amended—

6 (1) in subparagraph (D)—

7 (A) by inserting “, ordered, or prescribed
8 by such person” after “other item or service
9 furnished”;

10 (B) by inserting “(pursuant to this title or
11 title XVIII)” after “period in which the person
12 was excluded”;

13 (C) by striking “pursuant to a determina-
14 tion by the Secretary” and all that follows
15 through “the provisions of section 1842(j)(2)”;
16 and

17 (D) by striking “or” at the end;

18 (2) by redesignating subparagraph (E) as sub-
19 paragraph (F); and

20 (3) by adding after subparagraph (D) the fol-
21 lowing:

22 “(E) is for a medical or other item or serv-
23 ice ordered or prescribed by a person excluded
24 (pursuant to this title or title XVIII) from the
25 program under which the claim was made, and

1 the person furnishing such item or service
 2 knows or should know of such exclusion, or”.

3 **SEC. 12. CIVIL MONETARY PENALTIES FOR FALSE CERTIFI-**
 4 **CATION OF ELIGIBILITY TO RECEIVE PAR-**
 5 **TIAL HOSPITALIZATION AND HOSPICE SERV-**
 6 **ICES.**

7 Section 1128A(b)(3) of the Social Security Act (42
 8 U.S.C. 1320a–7a(b)(3)) is amended—

9 (1) in subparagraph (A)(ii), by inserting “, hos-
 10 pice care, or partial hospitalization services” after
 11 “home health services”; and

12 (2) in subparagraph (B), by inserting “, section
 13 1814(a)(7) in the case of hospice care, or section
 14 1835(a)(2)(F) in the case of partial hospitalization
 15 services” after “home health services”.

16 **SEC. 13. APPLICATION OF CERTAIN PROVISIONS OF THE**
 17 **BANKRUPTCY CODE.**

18 (a) RESTRICTED APPLICABILITY OF BANKRUPTCY
 19 STAY, DISCHARGE, AND PREFERENTIAL TRANSFER PRO-
 20 VISIONS TO MEDICARE AND MEDICAID DEBTS.—Title XI
 21 of the Social Security Act (42 U.S.C. 1301 et seq.) is
 22 amended by inserting after section 1143 the following:

23 “APPLICATION OF CERTAIN PROVISIONS OF THE
 24 BANKRUPTCY CODE

25 “SEC. 1144. (a) MEDICARE- AND MEDICAID-RELAT-
 26 ED ACTIONS NOT STAYED BY BANKRUPTCY PROCEED-

1 INGS.—The commencement or continuation of any action
 2 against a debtor under this title or title XVIII or XIX
 3 (other than an action with respect to health care services
 4 for the debtor under title XVIII), including any action or
 5 proceeding to exclude or suspend the debtor from program
 6 participation, assess civil money penalties, recoup or set
 7 off overpayments, or deny or suspend payment of claims
 8 shall not be subject to the provisions of section 362(a) of
 9 title 11, United States Code.

10 “(b) MEDICARE- AND MEDICAID-RELATED DEBT
 11 NOT DISCHARGEABLE IN BANKRUPTCY.—A debt owed to
 12 the United States or to a State for an overpayment under
 13 title XVIII or XIX (other than an overpayment for health
 14 care services for the debtor under title XVIII), or for a
 15 penalty, fine, or assessment under this title or title XVIII
 16 or XIX, shall not be dischargeable under any provision
 17 of title 11, United States Code.

18 “(c) REPAYMENT OF CERTAIN DEBTS CONSIDERED
 19 FINAL.—Payments made to repay a debt to the United
 20 States or to a State with respect to items or services pro-
 21 vided, or claims for payment made, under title XVIII or
 22 XIX (including repayment of an overpayment (other than
 23 an overpayment for health care services for the debtor
 24 under such title XVIII)), or to pay a penalty, fine, or as-
 25 sessment under this title or title XVIII or XIX, shall be

1 considered final and not preferential transfers under sec-
 2 tion 547 of title 11, United States Code.”.

3 (b) MEDICARE RULES APPLICABLE TO BANKRUPTCY
 4 PROCEEDINGS.—Title XVIII of the Social Security Act
 5 (42 U.S.C. 1395 et seq.) (as amended by section 4015
 6 of the Balanced Budget Act of 1997 (Public Law 105–
 7 33; 111 Stat. 337)) is amended by adding at the end the
 8 following:

9 “APPLICATION OF PROVISIONS OF THE BANKRUPTCY
 10 CODE

11 “SEC. 1897. (a) USE OF MEDICARE STANDARDS AND
 12 PROCEDURES.—Notwithstanding any provision of title 11,
 13 United States Code, or any other provision of law, in the
 14 case of claims by a debtor in bankruptcy for payment
 15 under this title, the determination of whether the claim
 16 is allowable, and of the amount payable, shall be made
 17 in accordance with the provisions of this title and title XI
 18 and implementing regulations.

19 “(b) NOTICE TO CREDITOR OF BANKRUPTCY PETI-
 20 TIONER.—In the case of a debt owed to the United States
 21 with respect to items or services provided, or claims for
 22 payment made, under this title (including a debt arising
 23 from an overpayment or a penalty, fine, or assessment
 24 under title XI or this title), the notices to the creditor of
 25 bankruptcy petitions, proceedings, and relief required
 26 under title 11, United States Code (including under sec-

tion 342 of that title and section 2002(j) of the Federal Rules of Bankruptcy Procedure), shall be given to the Secretary. Provision of such notice to a fiscal agent of the Secretary shall not be considered to satisfy this requirement.

“(c) **TURNOVER OF PROPERTY TO THE BANKRUPTCY ESTATE.**—For purposes of section 542(b) of title 11, United States Code, a claim for payment under this title shall not be considered to be a matured debt payable to the estate of a debtor until such claim has been allowed by the Secretary in accordance with procedures under this title.”.

SEC. 14. IMPROVING PRIVATE SECTOR COORDINATION IN COMBATTING HEALTH CARE FRAUD.

(a) **IN GENERAL.**—Title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by inserting after section 1157 the following:

“**IMPROVING PRIVATE SECTOR COORDINATION IN COMBATTING HEALTH CARE FRAUD**

“**SEC. 1157A. (a) IN GENERAL.**—Notwithstanding any other provision of law, no health plan (as defined in section 1128C(e), issuer of a health plan, or employee of a health plan shall be held liable in any civil action with respect to the provision of information regarding suspected health care fraud, including but not limited to health care offenses (as defined in (18 U.S.C. 24)) to an

1 applicable individual unless such information is false and
 2 the person providing it knew, or had reason to believe, that
 3 such information was false.

4 “(b) APPLICABLE INDIVIDUAL.—In subsection (a),
 5 the term ‘applicable individual’ means—

6 “(1) a Federal, State, or local law enforcement
 7 official responsible for the investigation or prosecu-
 8 tion of suspected health care fraud offenses; or

9 “(2) an employee of a health plan or issuer of
 10 a health plan.

11 “(c) ATTORNEY’S FEES.—Any health plan, issuer of
 12 a health plan, or employee of a health plan against whom
 13 a civil action is brought, and who is found to be entitled
 14 to immunity from liability by reason of this section, shall
 15 be entitled to recover reasonable attorney’s fees and costs
 16 from the person who brought the civil action.”.

17 (b) EFFECTIVE DATE.—The amendment made by
 18 subsection (a) takes effect on the date of enactment of
 19 this Act.

20 **SEC. 15. FEES FOR AGREEMENTS WITH MEDICARE PROVID-**
 21 **ERS AND SUPPLIERS.**

22 (a) FEES RELATED TO MEDICARE PROVIDER AND
 23 SUPPLIER ENROLLMENT AND REENROLLMENT.—Section
 24 1866 of the Social Security Act (42 U.S.C. 1395cc) is
 25 amended by adding at the end the following:

1 “(j) ENROLLMENT PROCEDURES AND FEES.—

2 “(1) ENROLLMENT.—The Secretary may estab-
3 lish a procedure for enrollment (and periodic re-
4 enrollment) of individuals or entities that are not
5 providers of services subject to the provisions of sub-
6 section (a) but that furnish health care items or
7 services under this title.

8 “(2) FEES.—The Secretary may impose fees for
9 initiation and renewal of provider agreements and
10 for enrollment and periodic reenrollment of other in-
11 dividuals and entities furnishing health care items or
12 services under this title, in amounts up to the full
13 amount which the Secretary reasonably estimates to
14 be sufficient to cover the Secretary’s costs related to
15 the process for initiating and reviewing such agree-
16 ments and enrollments. Fees collected pursuant to
17 this paragraph shall be credited to a special fund of
18 the United States Treasury, and shall remain avail-
19 able until expended, to the extent and in such
20 amounts as provided in advance in appropriations
21 Acts, for necessary expenses for these purposes, in-
22 cluding costs of establishing and maintaining proce-
23 dures and records systems; processing applications;
24 and background investigations.”.

1 (b) CLERICAL AMENDMENT.—The heading of section
 2 1866 of the Social Security Act (42 U.S.C. 1395cc) is
 3 amended to read as follows:

4 “AGREEMENTS WITH PROVIDERS OF SERVICES AND EN-
 5 ROLLMENT OF OTHER PERSONS FURNISHING SERV-
 6 ICES”.

7 **SEC. 16. INCREASED MEDICARE COMPLIANCE, EDUCATION,**
 8 **AND ASSISTANCE FOR HEALTH CARE PRO-**
 9 **VIDERS.**

10 (a) DEVELOPMENT OF PLAN.—Not later than 6
 11 months after the date of enactment of this Act, the Sec-
 12 retary of Health and Human Services shall, in consulta-
 13 tion with health care provider representatives, develop and
 14 implement a comprehensive plan of activities to—

15 (1) maximize health care provider knowledge of
 16 medicare program integrity requirements, including
 17 anti-fraud and abuse laws and administrative ac-
 18 tions;

19 (2) assist health care providers with medicare
 20 program integrity compliance, including educating
 21 such providers regarding compliance activities and
 22 procedures of the Health Care Financing Adminis-
 23 tration and the Inspector General of the Department
 24 of Health and Human Services;

25 (3) develop improved computer technology for
 26 health care providers to both reduce their adminis-

1 trative hassles and facilitate their compliance with
 2 medicare program requirements, including physician
 3 evaluation and management guidelines; and

4 (4) otherwise improve compliance among health
 5 care providers with rules and regulations under the
 6 medicare program.

7 (b) FUNDING.—Notwithstanding any other provision
 8 of law, of the amounts appropriated under section
 9 1817(k)(4) of the Social Security Act (42 U.S.C.
 10 1395i(k)(4) for a fiscal year, there shall be made available
 11 \$10,000,000 in fiscal year 1999 and such sums as are nec-
 12 essary in fiscal years 2000 through 2003 to carry out the
 13 purposes of this section.

14 **SEC. 17. PAPERWORK AND ADMINISTRATIVE HASSLE RE-**
 15 **DUCTION.**

16 (a) STUDY BY COMMITTEE.—

17 (1) ESTABLISHMENT.—Not later than 90 days
 18 after the date of enactment of this Act, the Sec-
 19 retary of Health and Human Services shall contract
 20 with the Institute of Medicine of the National Acad-
 21 emy of Sciences to establish a committee to study
 22 medicare program administrative requirements that
 23 are applicable to health care providers under such
 24 program.

1 (2) COMMITTEE.—The committee described in
2 paragraph (1) shall be composed of—

3 (A) at least 9 health care providers who
4 participate in, and have significant experience
5 working with, the medicare program;

6 (B) experts in paperwork reduction; and

7 (C) beneficiaries under the medicare pro-
8 gram or their representatives.

9 (b) RECOMMENDATIONS.—The committee described
10 in subsection (a) shall develop recommendations regarding
11 how paperwork and administrative requirements under the
12 medicare program can be minimized in a manner that—

13 (1) increases the time health care providers
14 that are subject to such requirements have to spend
15 in direct patient care; and

16 (2) maintains medicare program integrity and
17 compliance with anti-fraud and abuse requirements.

18 In developing such recommendations, the committee shall
19 seek to streamline variations in administrative and paper-
20 work requirements between the medicare programs and
21 other government health programs and private health
22 plans.

23 (c) REPORT.—Not later than June 1, 1999, the com-
24 mittee described in subsection (a) shall submit a report
25 to the Secretary of Health and Human Services, the Com-

1 mittees on Finance and Appropriations of the Senate and
 2 the Committees on Ways and Means, Commerce, and Ap-
 3 propriations of the House of Representatives. Such report
 4 shall contain a detailed description of the matters studied
 5 pursuant to subsection (a) and the recommendations de-
 6 veloped pursuant to subsection (b), including such legisla-
 7 tion and administrative actions as the committee considers
 8 appropriate.

9 (d) AUTHORIZATION OF APPROPRIATIONS.—

10 (1) IN GENERAL.—There are authorized to be
 11 appropriated \$1,000,000 for fiscal year 1999 to
 12 carry out the purposes of this section.

13 (2) AVAILABILITY.—Any sums appropriated
 14 under the authorization contained in this subsection
 15 shall remain available, without fiscal year limitation,
 16 until expended.

17 **SEC. 18. CLARIFICATION OF APPLICATION OF SANCTIONS**
 18 **TO FEDERAL HEALTH CARE PROGRAMS.**

19 (a) COVERAGE OF EMPLOYMENT.—Section 1128 of
 20 the Social Security Act (42 U.S.C. 1320a–7) is amend-
 21 ed—

22 (1) in subsection (a), in the matter preceding
 23 paragraph (1), by inserting “(including employment
 24 under)” after “participation in”; and

1 (2) in subsection (b), in the matter preceding
 2 paragraph (1), by inserting “(including employ-
 3 ment)” after “participation in”.

4 (b) APPLICATION UNDER CIVIL MONEY PENALTY
 5 AUTHORITY.—Section 1128A of the Social Security Act
 6 (42 U.S.C. 1320a–7a) is amended—

7 (1) in subsection (a)(4), by striking “program
 8 under title XVIII or a State health care program”
 9 and inserting “Federal health care program” each
 10 place it appears;

11 (2) in subsection (a)(5)—

12 (A) by striking “title XVIII of this Act, or
 13 under a State health care program (as defined
 14 in section 1128(h))” and inserting “a Federal
 15 health care program”; and

16 (B) by striking “title XVIII, or a State
 17 health care program (as so defined)” and in-
 18 serting “such program”;

19 (3) in the last sentence of subsection (a), by
 20 striking “and to direct the appropriate State agency
 21 to exclude the person from participation in any State
 22 health care program”; and

23 (4) in subsection (h), by striking “State agency
 24 or agencies administering or supervising the admin-
 25 istration of State health care programs (as defined

1 in section 1128(h))” and inserting “Federal or State
 2 agency or agencies administering or supervising the
 3 administration of Federal health care programs”.

4 (c) APPLICATION OF WAIVER PROVISIONS TO FED-
 5 ERAL HEALTH CARE PROGRAMS.—Section 1128 of the
 6 Social Security Act (42 U.S.C. 1320a–7) is amended—

7 (1) in subsection (c)(3)(B), by striking “upon
 8 the request of a State” and inserting “upon the re-
 9 quest of the director of a Federal health care pro-
 10 gram”;

11 (2) in subsection (d)(3)(B)(i)—

12 (A) by striking “State health care pro-
 13 gram” and inserting “Federal health care pro-
 14 gram”; and

15 (B) by striking “State agency” and insert-
 16 ing “Federal or State agency”; and

17 (3) in subsection (d)(3)(B)(ii), by striking
 18 “State health care program” and inserting “Federal
 19 health care program (other than under title
 20 XVIII)”.

21 (d) NOTICE PROVISION REGARDING FEDERAL
 22 HEALTH CARE PROGRAMS.—Section 1128 of the Social
 23 Security Act (42 U.S.C. 1320a–7) is amended—

24 (1) in the heading of subsection (d), by striking
 25 “TO STATE AGENCIES AND EXCLUSION UNDER

1 STATE HEALTH CARE PROGRAMS” and inserting
 2 “AND EXCLUSION UNDER FEDERAL HEALTH CARE
 3 PROGRAMS”;

4 (2) in subsection (d)(1), by striking “State”
 5 and inserting “Federal”;

6 (3) in subsection (d)(2)—

7 (A) by striking “State agency” and insert-
 8 ing “Federal or State agency” each place it ap-
 9 pears; and

10 (B) by striking “State health care pro-
 11 gram” and inserting “Federal health care pro-
 12 gram” each place it appears;

13 (4) in subsection (d)(3)(A), by striking “State”
 14 and inserting “Federal”; and

15 (5) in subsection (g)(3)—

16 (A) by striking “State agency” and insert-
 17 ing “Federal or State agency”; and

18 (B) by striking “State health care pro-
 19 gram” and inserting “Federal health care pro-
 20 gram”.

21 (e) USE OF DEFINITION OF FEDERAL HEALTH CARE
 22 PROGRAM AND TREATMENT OF FEDERAL EMPLOYEES
 23 HEALTH BENEFITS PROGRAM AS A FEDERAL HEALTH
 24 CARE PROGRAM.—Section 1128B(f)(1) of the Social Se-

1 curity Act (42 U.S.C. 1320a–7b(f)(1)), as amended by
 2 section 9(a)(2)(B), is amended—

3 (1) in the matter preceding subparagraph (A),
 4 by inserting “and sections 1128, 1128A, and
 5 1128B” after “this section”; and

6 (2) in subparagraph (A), by striking “(other
 7 than the health insurance program under chapter 89
 8 of title 5, United States Code)”.

9 (f) EFFECTIVE DATE.—(1) Subject to paragraph (2),
 10 the amendments made by this section shall take effect on
 11 the date of enactment of this Act.

12 (2) The amendment made by subsection (e)(2) shall
 13 apply, with respect to convictions under the health insur-
 14 ance program under chapter 89 of title 5, United States
 15 Code, to convictions that occur on or after the date of en-
 16 actment of this Act.

17 **SEC. 19. PAYMENTS FOR DURABLE MEDICAL EQUIPMENT.**

18 (a) IN GENERAL.—Section 1834(a)(1) of the Social
 19 Security Act (42 U.S.C. 1395m(a)(1)) is amended—

20 (1) in subparagraph (B)—

21 (A) in clause (i), by striking “, or” at the
 22 end and inserting a semicolon; and

23 (B) by inserting after clause (ii) the follow-
 24 ing:

1 “(iii) the least expensive amount that
 2 the supplier of the item is paid by a
 3 Medicare+Choice organization for such
 4 item; or

5 “(iv) the least expensive amount that
 6 the supplier of the item is paid by any
 7 Federal health care program for such
 8 item;”; and

9 (2) by adding the following at the end:

10 “(E) ADMINISTRATIVE COSTS.—

11 “(i) IN GENERAL.—Except as pro-
 12 vided in clause (ii), if—

13 “(I) the payment amount for an
 14 item is covered under clauses (iii) or
 15 (iv) of subparagraph (B); and

16 “(II) the Secretary determines
 17 that the administrative costs associ-
 18 ated with billing and receiving reim-
 19 bursement from the Secretary for the
 20 item exceeds the administrative costs
 21 associated with providing such item to
 22 a Medicare+Choice organization or
 23 another Federal health care program;

1 then the Secretary shall adjust the pay-
 2 ment rate for such item to reflect such ex-
 3 cess.

4 “(ii) LIMITATION.—In no case may
 5 the payment rate for an item that is ad-
 6 justed under clause (i) exceed the payment
 7 rate for such item determined in clauses (i)
 8 and (ii) of subparagraph (B).

9 (b) EFFECTIVE DATE.—The amendments made by
 10 subsection (a) shall apply to items provided on or after
 11 January 1, 1999.

12 **SEC. 20. IMPLEMENTATION OF COMMERCIAL CLAIMS AU-**
 13 **DITING SYSTEMS.**

14 (a) COMMERCIAL CLAIMS AUDITING SYSTEMS.—

15 (1) IN GENERAL.—Not later than 90 days after
 16 the date of enactment of this Act, the Secretary
 17 shall require medicare carriers to use commercial
 18 claims auditing systems in the processing of claims
 19 under part B of the medicare program under title
 20 XVIII of the Social Security Act (42 U.S.C. 1395j
 21 et seq.) for the purpose of identifying billing errors
 22 and abuses.

23 (2) SUPPLEMENT TO OTHER TECHNOLOGY.—
 24 Commercial claims auditing systems required under
 25 paragraph (1) shall be used as a supplement to any

1 other information technology used by medicare car-
2 riers in processing claims under the medicare pro-
3 gram.

4 (3) UNIFORMITY.—In order to ensure uniform-
5 ity in processing claims under the medicare pro-
6 gram, the Secretary may require that medicare car-
7 riers utilize 1 or more common commercial claims
8 auditing systems, provided that the selection of such
9 system or systems by the Secretary shall be—

10 (A) after due consideration of competing
11 alternative systems; but

12 (B) without regard to any provision of law
13 that requires the use of competitive procedures
14 (as defined in section 4 of the Office of Federal
15 Procurement Policy Act (41 U.S.C. 403)) or
16 the publication of notice of proposed procure-
17 ments.

18 (4) IMPLEMENTATION.—Commercial claims au-
19 diting systems required under paragraph (1) shall be
20 implemented by all medicare carriers by not later
21 than 180 days after the date of enactment of this
22 Act.

23 (b) MINIMUM SOFTWARE REQUIREMENTS.—Any
24 commercial claims auditing system required to be imple-
25 mented pursuant to subsection (a) shall, at a minimum—

1 (1) be a commercial item;

2 (2) surpass the capability of systems currently
3 used in the processing of claims under part B of the
4 medicare program; and

5 (3) be modifiable to—

6 (A) satisfy pertinent statutory require-
7 ments of the medicare program; and

8 (B) conform to policies of the Secretary re-
9 garding claims processing under such program.

10 (c) DISCLOSURE.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), notwithstanding any other provision of
13 law, any information technology (or data related
14 thereto) utilized by medicare carriers in establishing
15 a commercial claims auditing system pursuant to
16 subsection (a) shall not be subject to public disclo-
17 sure.

18 (2) AUTHORIZED DISCLOSURE.—The Secretary
19 may authorize the public disclosure of the informa-
20 tion described in paragraph (1) if the Secretary de-
21 termines that—

22 (A) release of such information is in the
23 public interest; and

1 (B) the information to be released is not
2 protected from disclosure under section 552(b)
3 of title 5, United States Code.

4 (d) DEFINITIONS.—In this section—

5 (1) COMMERCIAL CLAIMS AUDITING SYSTEM.—
6 The term “commercial claims auditing system”
7 means a commercial specialized auditing system that
8 includes edits which identify inappropriately coded
9 health care claims.

10 (2) COMMERCIAL ITEM.—The term “commer-
11 cial item” has the meaning given such term in sec-
12 tion 4 of the Office of Federal Procurement Policy
13 Act (41 U.S.C. 403).

14 (3) INFORMATION TECHNOLOGY.—The term
15 “information technology” has the meaning given
16 such term in subparagraphs (A) and (B) of section
17 5002(3) of the Information Technology Management
18 Reform Act of 1996 (40 U.S.C. 1401(3)), were such
19 information technology to be acquired by an execu-
20 tive agency.

21 (4) MEDICARE CARRIER.—The term “medicare
22 carrier” means an entity that has a contract with
23 the Secretary pursuant to section 1842(a) of the So-
24 cial Security Act (42 U.S.C. 1395u(a)).

1 (5) SECRETARY.—The term “Secretary” means
2 the Secretary of Health and Human Services.

3 **SEC. 21. PARTIAL HOSPITALIZATION PAYMENT REFORMS.**

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

6 (1) IN GENERAL.—Section 1861(ff)(2) of the
7 Social Security Act (42 U.S.C. 1395x(ff)(2)) is
8 amended in the matter following subparagraph (I)—

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

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

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

20 (b) QUALIFICATIONS FOR COMMUNITY MENTAL
21 HEALTH CENTERS.—Section 1861(ff)(3)(B) of the Social
22 Security Act (42 U.S.C. 1395x(ff)(3)(B)) is amended by
23 striking “entity” and all that follows and inserting the fol-
24 lowing: “entity that—

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

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

7 “(iii) meets such additional conditions as the
 8 Secretary may specify to ensure (I) the health and
 9 safety of individuals being furnished such services,
 10 (II) the effective or efficient furnishing of such serv-
 11 ices (including protecting against fraud, waste, and
 12 abuse), and (III) the compliance of such entity with
 13 the criteria described in such section.”.

14 (c) REENROLLMENT OF PROVIDERS OF CMHC PAR-
 15 TIAL HOSPITALIZATION SERVICES.—

16 (1) IN GENERAL.—With respect to each com-
 17 munity mental health center that furnishes partial
 18 hospitalization services for which payment is made
 19 under title XVIII of the Social Security Act, the
 20 Secretary of Health and Human Services shall pro-
 21 vide for periodic re-certification to ensure that the
 22 provision of such services complies with section
 23 1913(c) of the Public Health Service Act.

24 (2) DEADLINE FOR FIRST RE-CERTIFI-
 25 CATION.—The first re-certification under paragraph

1 (1) shall be completed not later than 1 year after
2 the date of the enactment of this Act.

3 (d) PROSPECTIVE PAYMENT SYSTEM FOR PARTIAL
4 HOSPITALIZATION SERVICES.—

5 (1) ESTABLISHMENT OF SYSTEM.—Section
6 1833 of the Social Security Act (42 U.S.C. 1395l)
7 is amended by inserting after subsection (o) the fol-
8 lowing:

9 “(p)(1) The Secretary may establish by regulation a
10 prospective payment system for partial hospitalization
11 services provided by a community mental health center or
12 by a hospital to its outpatients. The system shall provide
13 for appropriate payment levels for efficient centers and
14 hospitals and take into account payment levels for similar
15 services furnished by other efficient entities.

16 “(2) A prospective payment system established pur-
17 suant to paragraph (1) shall provide for payment amounts
18 for—

19 “(A) the first year in which such system ap-
20 plies, at a level so that, as estimated by the Sec-
21 retary, the total aggregate payments under this part
22 (including payments attributable to deductibles and
23 coinsurance) for such year are not greater than the
24 total aggregate payments that would have otherwise
25 been made under this part if such system had not

1 been implemented (assuming full implementation of
 2 the provisions contained in subsections (a) through
 3 (c) of section 21 of the Medicare Waste Tax Reduc-
 4 tion Act of 1998); and

5 “(B) each subsequent year, in an amount equal
 6 to the payment amount provided for under this
 7 paragraph for the preceding year updated by the
 8 percentage increase in the consumer price index for
 9 all urban consumers (all items; United States city
 10 average) for the 12-month period ending with Sep-
 11 tember of that preceding year.”.

12 (2) COINSURANCE.—Section 1866(a)(2)(A) of
 13 such Act (42 U.S.C. 1395cc(a)(2)(A)) is amended
 14 by adding at the end the following: “In the case of
 15 services described in section 1832(a)(2)(J), clause
 16 (ii) of the first sentence of this subparagraph shall
 17 be applied by substituting the payment basis estab-
 18 lished under section 1833(p) for the reasonable
 19 charges.”.

20 (3) CONFORMING AMENDMENTS.—(A) Section
 21 1832(a)(2) of such Act (42 U.S.C. 1395k(a)(2)) is
 22 amended—

23 (i) in subparagraph (B), by striking “or
 24 subparagraph (I)” and inserting “, (I), or (J)”;
 25 and

1 (ii) in subparagraph (J), by striking “pro-
 2 vided by a community mental health center (as
 3 described in section 1861(ff)(2)(B))”.

4 (B) Section 1833(a) of such Act (42 U.S.C.
 5 1395l(a)) is amended—

6 (i) in paragraph (2) in the matter preced-
 7 ing subparagraph (A), by striking “(H), and
 8 (I)” and inserting “(H), (I), and (J)”;

9 (ii) by striking “and” at the end of para-
 10 graph (8);

11 (iii) by striking the period at the end of
 12 paragraph (9) and inserting “; and”; and

13 (iv) by adding at the end the following:

14 “(10) in the case of partial hospitalization serv-
 15 ices, 80 percent of the payment basis under the pro-
 16 spective payment system established under section
 17 1833(p).”.

18 (4) EFFECTIVE DATE.—The amendments made
 19 by paragraphs (2) and (3) apply to services fur-
 20 nished on or after January 1 of the first year that
 21 begins at least 6 months after the date on which
 22 regulations are issued under section 1833(p) of such
 23 Act (42 U.S.C. 1395l(p)) as inserted by paragraph
 24 (1).

○