

105TH CONGRESS  
1ST SESSION

# S. 264

To amend title XI of the Social Security Act to provide an incentive for the reporting of inaccurate Medicare claims for payment, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 5, 1997

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

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## A BILL

To amend title XI of the Social Security Act to provide an incentive for the reporting of inaccurate Medicare claims for payment, and for other purposes.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Medicare Whistle-  
5       blower Act of 1997”.

6       **SEC. 2. PURPOSE.**

7       The purpose of this Act is to—

8               (1) reduce and eliminate fraud and abuse under  
9       the Medicare program;

1           (2) reduce negligent and fraudulent Medicare  
2 billings by providers;

3           (3) provide Medicare beneficiaries with incen-  
4 tives to report inappropriate billing practices; and

5           (4) provide savings to the Medicare trust funds  
6 by increasing the recovery of Medicare overpay-  
7 ments.

8 **SEC. 3. REQUEST FOR ITEMIZED BILL FOR MEDICARE**  
9 **ITEMS AND SERVICES.**

10       (a) IN GENERAL.—Section 1128A of the Social Secu-  
11 rity Act (42 U.S.C. 1320a–7a) is amended by adding at  
12 the end the following new subsection:

13       “(n) WRITTEN REQUEST FOR ITEMIZED BILL.—

14           “(1) IN GENERAL.—A beneficiary may submit a  
15 written request for an itemized bill for medical or  
16 other items or services provided to such beneficiary  
17 by any person (including an organization, agency, or  
18 other entity) that receives payment under title XVIII  
19 for providing such items or services to such bene-  
20 ficiary.

21       “(2) 30-DAY PERIOD TO RECEIVE BILL.—

22           “(A) IN GENERAL.—Not later than 30  
23 days after the date on which a request under  
24 paragraph (1) has been received, a person de-  
25 scribed in such paragraph shall furnish an

1 itemized bill describing each medical or other  
 2 item or service provided to the beneficiary re-  
 3 questing the itemized bill.

4 “(B) PENALTY.—Whoever knowingly fails  
 5 to furnish an itemized bill in accordance with  
 6 subparagraph (A) shall be subject to a civil fine  
 7 of not more than \$100 for each such failure.

8 “(3) REVIEW OF ITEMIZED BILL.—

9 “(A) IN GENERAL.—Not later than 90  
 10 days after the receipt of an itemized bill fur-  
 11 nished under paragraph (1), a beneficiary may  
 12 submit a written request for a review of the  
 13 itemized bill to the appropriate fiscal  
 14 intermediary or carrier with a contract under  
 15 section 1816 or 1842.

16 “(B) SPECIFIC ALLEGATIONS.—A request  
 17 for a review of the itemized bill shall identify—

18 “(i) specific medical or other items or  
 19 services that the beneficiary believes were  
 20 not provided as claimed, or

21 “(ii) any other billing irregularity (in-  
 22 cluding duplicate billing).

23 “(4) FINDINGS OF FISCAL INTERMEDIARY OR  
 24 CARRIER.—Each fiscal intermediary or carrier with  
 25 a contract under section 1816 or 1842 shall, with

1       respect to each claim submitted to the fiscal  
2       intermediary or carrier under paragraph (3), make  
3       one of the following determinations:

4               “(A) The itemized bill accurately reflects  
5       medical or other items or services provided to  
6       the beneficiary.

7               “(B) The itemized bill does not accurately  
8       reflect medical or other items or services pro-  
9       vided to the beneficiary or contains a billing ir-  
10      regularity but the inaccuracy or irregularity is  
11      inadvertent or is the result of a misinterpreta-  
12      tion of law.

13              “(C) The itemized bill negligently describes  
14      medical or other items or services not provided  
15      to the beneficiary or contains a negligent billing  
16      irregularity.

17              “(D) The itemized bill fraudulently de-  
18      scribes medical or other items or services not  
19      provided to the beneficiary or contains a fraud-  
20      ulent billing irregularity.

21              “(5) REVIEW OF FINDINGS OF FISCAL  
22      INTERMEDIARY OR CARRIER.—

23              “(A) IN GENERAL.—If a fiscal  
24      intermediary or carrier makes a finding de-  
25      scribed in subparagraph (B), (C), or (D) of

paragraph (4), the fiscal intermediary or carrier shall submit to the Secretary a report containing such findings and the basis for such findings.

“(B) DETERMINATION BY SECRETARY.—

The Secretary shall determine whether the findings of the fiscal intermediary or carrier submitted under subparagraph (A) are correct.

“(6) RECOVERY OF AMOUNTS.—The Secretary

shall require fiscal intermediaries and carriers to take all appropriate measures to recover amounts inappropriately paid under title XVIII with respect to a bill for which the Secretary makes a determination of correctness under paragraph (5)(B).

“(7) ANTIFRAUD INCENTIVE PAYMENTS.—

“(A) IN GENERAL.—If the Secretary makes a determination of correctness under paragraph (5)(B) with respect to a finding described in subparagraph (C) or (D) of paragraph (4), the Secretary shall make an anti-fraud incentive payment (in an amount determined under subparagraph (B)) to the beneficiary who submitted the request for the itemized bill under paragraph (1) that resulted in such findings.

1                   “(B) ANTIFRAUD INCENTIVE PAYMENT  
2                   DETERMINED.—

3                   “(i) IN GENERAL.—The amount of  
4                   the antifraud incentive payment deter-  
5                   mined under this subparagraph is equal to  
6                   the lesser of—

7                                 “(I) 1 percent of the amount that  
8                                 the bill negligently or fraudulently  
9                                 charged for medical or other items or  
10                                services; or

11                               “(II) \$10,000.

12                   “(ii) LIMITATION OF AMOUNT.—The  
13                   amount determined under this subpara-  
14                   graph may not exceed—

15                               “(I) in the case of a negligent  
16                                bill, the total amounts recovered with  
17                                respect to the bill in accordance with  
18                                paragraph (6); or

19                               “(II) in the case of a fraudulent  
20                                bill, the sum of the amounts assessed  
21                                and collected with respect to the bill  
22                                under paragraph (8).

23                   “(8) PENALTY.—If the Secretary makes a de-  
24                   termination of correctness with respect to a finding

described in paragraph (4)(D) (relating to fraudulent billing), the provider or other person responsible for providing the beneficiary with the itemized bill that is the subject of such findings, shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty equal to the lesser of—

“(A) 1 percent of the amount that the bill fraudulently charged for medical or other items or services; or

“(B) \$10,000.

“(9) PREVENTION OF ABUSE BY BENEFICIARIES.—The Secretary shall—

“(A) address abuses of the incentive system established under this subsection; and

“(B) establish appropriate procedures to prevent such abuses.

“(10) REQUIREMENT THAT BENEFICIARY DISCOVER NEGLIGENT OR FRAUDULENT BILL TO RECEIVE INCENTIVE PAYMENT.—No incentive payment shall be made under paragraph (7) to a beneficiary if the Secretary or the appropriate fiscal intermediary or carrier identified the bill that was the subject of the beneficiary’s request for review

1 under this subsection as being negligent or fraudu-  
 2 lent prior to such request.”.

3 (b) PAYMENT OF ANTIFRAUD INCENTIVE TO MEDI-  
 4 CARE BENEFICIARY.—Section 1128A(f) of the Social Se-  
 5 curity Act (42 U.S.C. 1320a–7a(f)) is amended—

6 (1) in paragraph (4), by striking “(4)” and in-  
 7 serting “(5)”; and

8 (2) by inserting after paragraph (3) the follow-  
 9 ing:

10 “(4) Any penalty recovered under subsection  
 11 (m)(8) shall be paid as an antifraud incentive pay-  
 12 ment to the beneficiary who submitted the request  
 13 for the itemized bill under subsection (m)(1) that re-  
 14 sulted in the imposition of the penalty.”.

15 (c) CONFORMING AMENDMENTS.—

16 (1) PROCEDURAL REQUIREMENTS.—Sub-  
 17 sections (c), (d), (g), and (h) of section 1128A of the  
 18 Social Security Act (42 U.S.C. 1320a–7a) are each  
 19 amended by striking “(a) or (b)” each place it ap-  
 20 pears and inserting “(a), (b), or (n)”.

21 (2) INCENTIVE PROGRAMS.—Section 203(b)(1)  
 22 of the Health Insurance Portability and Accountabil-  
 23 ity Act of 1996 (Public Law 104–191, 110 Stat.  
 24 1999) is amended by adding at the end the follow-  
 25 ing: “The program shall not include any information



1       obtained through the process described in section  
2       1128A(n) of such Act.”.

3       (d) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply with respect to medical or other  
5 items or services provided on or after January 1, 1998.

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