

105TH CONGRESS  
1ST SESSION

# S. 945

To eliminate waste, fraud, and abuse in the medicaid program.

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IN THE SENATE OF THE UNITED STATES

JUNE 20, 1997

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

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## A BILL

To eliminate waste, fraud, and abuse in the medicaid  
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 “Medicaid Waste,  
5 Fraud, and Abuse Control Act of 1997”.

6 **SEC. 2. BAN ON SPENDING FOR NONHEALTH RELATED**  
7 **ITEMS.**

8 Section 1903(i) of the Social Security Act (42 U.S.C.  
9 1396b(i)) is amended—

10 (1) in paragraphs (2) and (15), by striking the  
11 period at the end and inserting “; or”;

1 (2) in paragraphs (10)(B), (11), and (13), by  
 2 adding “or” at the end; and

3 (3) by inserting after paragraph (15), the fol-  
 4 lowing:

5 “(16) with respect to any amount expended for  
 6 roads, bridges, stadiums, or any other item or serv-  
 7 ice not covered under a State plan under this title.”.

8 **SEC. 3. DISCLOSURE OF INFORMATION AND SURETY BOND**

9 **REQUIREMENT FOR SUPPLIERS OF DURABLE**

10 **MEDICAL EQUIPMENT.**

11 (a) REQUIREMENT.—Section 1902(a) of the Social  
 12 Security Act (42 U.S.C. 1396a(a)), as in effect on July  
 13 1, 1997, is amended—

14 (1) by striking “and” at the end of paragraph  
 15 (62);

16 (2) by striking the period at the end of para-  
 17 graph (63) and inserting “; and”; and

18 (3) by inserting after paragraph (63) the fol-  
 19 lowing:

20 “(64) provide that the State shall not issue or  
 21 renew a provider number for a supplier of medical  
 22 assistance consisting of durable medical equipment,  
 23 as defined in section 1861(n), for purposes of pay-  
 24 ment under this part for such assistance that is fur-

1       nished by the supplier, unless the supplier provides  
2       the State agency on a continuing basis with—

3               “(A)(i) full and complete information as to  
4       the identity of each person with an ownership  
5       or control interest (as defined in section  
6       1124(a)(3)) in the supplier or in any sub-  
7       contractor (as defined by the Secretary in regu-  
8       lations) in which the supplier directly or indi-  
9       rectly has a 5 percent or more ownership inter-  
10      est; and

11              (ii) to the extent determined to be feasible  
12      under regulations of the Secretary, the name of  
13      any disclosing entity (as defined in section  
14      1124(a)(2)) with respect to which a person with  
15      such an ownership or control interest in the  
16      supplier is a person with such an ownership or  
17      control interest in the disclosing entity; and

18              “(B) a surety bond in a form specified by  
19      the State and in an amount that is not less  
20      than \$50,000.”.

21      (b) EFFECTIVE DATE.—The amendment made by  
22      subsection (a) shall apply to suppliers of medical assist-  
23      ance consisting of durable medical equipment furnished on  
24      or after January 1, 1998.

1 **SEC. 4. SURETY BOND REQUIREMENT FOR HOME HEALTH**  
 2 **AGENCIES.**

3 (a) IN GENERAL.—Section 1905(a)(7) of the Social  
 4 Security Act (42 U.S.C. 1396d(a)(7) is amended by in-  
 5 serting “, provided that the agency or organization provid-  
 6 ing such services provides the State agency on a continu-  
 7 ing basis with a surety bond in a form specified by the  
 8 State and in an amount that is not less than \$50,000”  
 9 after “services”.

10 (b) EFFECTIVE DATE.—The amendment made by  
 11 subsection (a) shall apply to home health agencies with  
 12 respect to services furnished on or after January 1, 1998.

13 **SEC. 5. CONFLICT OF INTEREST SAFEGUARDS.**

14 Section 1902(a)(4) of the Social Security Act (42  
 15 U.S.C. 1396a(a)(4)) is amended to read as follows:

16 “(4) provide—

17 “(A) such methods of administration (in-  
 18 cluding methods relating to the establishment  
 19 and maintenance of personnel standards on a  
 20 merit basis, except that the Secretary shall ex-  
 21 ercise no authority with respect to the selection,  
 22 tenure of office, and compensation of any indi-  
 23 vidual employed in accordance with such meth-  
 24 ods, and including provision for utilization of  
 25 professional medical personnel in the adminis-  
 26 tration and, where administered locally, super-

1 vision of administration of the plan) as are  
2 found by the Secretary to be necessary for the  
3 proper and efficient operation of the plan;

4 “(B) for the training and effective use of  
5 paid subprofessional staff, with particular em-  
6 phasis on the full-time or part-time employment  
7 of recipients and other persons of low income,  
8 as community service aides, in the administra-  
9 tion of the plan and for the use of nonpaid or  
10 partially paid volunteers in a social service vol-  
11 unteer program in providing services to appli-  
12 cants and recipients and in assisting any advi-  
13 sory committees established by the State agen-  
14 cy; and

15 “(C) that each State or local officer or em-  
16 ployee, or independent contractor—

17 “(i) who is responsible for the expend-  
18 iture of substantial amounts of funds  
19 under the State plan, or who is responsible  
20 for administering the State plan under this  
21 title, each individual who formerly was  
22 such an officer, employee, or independent  
23 contractor, and each partner of such an of-  
24 ficer, employee, or independent contractor  
25 shall be prohibited from committing any

act, in relation to any activity under the plan, the commission of which, in connection with any activity concerning the United States Government, by an officer or employee of the United States Government, an individual who was such an officer or employee, or a partner of such an officer or employee is prohibited by section 207 or 208 of title 18, United States Code; and

“(ii) who is responsible for selecting, awarding, or otherwise obtaining items and services under the State plan shall be subject to safeguards against conflicts of interest that are at least as stringent as the safeguards that apply under section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) to persons described in subsection (a)(2) of such section of that Act;”.

**SEC. 6. AUTHORITY TO REFUSE TO ENTER INTO MEDICAID AGREEMENTS WITH INDIVIDUALS OR ENTITIES CONVICTED OF FELONIES.**

Section 1902(a)(23) of the Social Security Act (42 U.S.C. 1396a(a)(23)) is amended to read as follows:

“(23) provide that—

1           “(A) any individual eligible for medical as-  
2           sistance (including drugs) may obtain such as-  
3           sistance from any institution, agency, commu-  
4           nity pharmacy, or person, qualified to perform  
5           the service or services required (including an or-  
6           ganization which provides such services, or ar-  
7           ranges for their availability, on a prepayment  
8           basis), who undertakes to provide him such  
9           services; and

10           “(B) an enrollment of an individual eligible  
11           for medical assistance in a primary care case-  
12           management system (described in section  
13           1915(b)(1)), a health maintenance organization,  
14           or a similar entity shall not restrict the choice  
15           of the qualified person from whom the individ-  
16           ual may receive services under section  
17           1905(a)(4)(C),

18           except as provided in subsection (g) and in section  
19           1915, except in the case of Puerto Rico, the Virgin  
20           Islands, and Guam, and except that nothing in this  
21           paragraph shall be construed as requiring a State to  
22           provide medical assistance for items or services fur-  
23           nished by a person or entity convicted of a felony  
24           under Federal or State law for an offense which the

1 State agency determines is inconsistent with the best  
 2 interest of beneficiaries under the State plan;”.

3 **SEC. 7. PROHIBITING AFFILIATIONS BY MANAGED CARE**  
 4 **ENTITIES WITH INDIVIDUALS DEBARRED BY**  
 5 **FEDERAL AGENCIES.**

6 Section 1903(m) of the Social Security Act (42  
 7 U.S.C. 1396b(m)) is amended by adding at the end the  
 8 following:

9 “(7)(A) An entity with a contract under this sub-  
 10 section may not knowingly—

11 “(i) have a person or entity described in sub-  
 12 paragraph (C) as a director, officer, partner, or per-  
 13 son with beneficial ownership of more than 5 percent  
 14 of the entity’s equity; or

15 “(ii) have an employment, consulting, or other  
 16 agreement with a person or entity described in such  
 17 subparagraph for the provision of items and services  
 18 that are significant and material to the entity’s obli-  
 19 gations under its contract with the State.

20 “(B) If a State finds that an entity is not in compli-  
 21 ance with clause (i) or (ii) of subparagraph (A), the  
 22 State—

23 “(i) shall notify the Secretary of such non-  
 24 compliance;



1           “(ii) may continue an existing agreement with  
2           the entity unless the Secretary (in consultation with  
3           the Inspector General of the Department of Health  
4           and Human Services) directs otherwise; and

5           “(iii) may not renew or otherwise extend the  
6           duration of an existing agreement with the entity  
7           unless the Secretary (in consultation with the In-  
8           spector General of the Department of Health and  
9           Human Services) provides to the State and to the  
10          Congress a written statement describing compelling  
11          reasons that exist for renewing or extending the  
12          agreement.

13          “(C) A person or entity is described in this subpara-  
14          graph if such person or entity—

15               “(i) is debarred, suspended, or excluded under  
16               any Federal procurement or nonprocurement pro-  
17               gram or activity, as provided for in the Federal Ac-  
18               quisition Streamlining Act of 1994 (Public Law 103-  
19               355; 108 Stat. 3243); or

20               “(ii) is an affiliate (within the meaning of the  
21               Federal acquisition regulation) of a person described  
22               in subparagraph (A).”.

1 **SEC. 8. MODIFICATION OF MMIS REQUIREMENTS.**

2 (a) IN GENERAL.—Section 1903(r) of the Social Se-  
 3 curity Act (42 U.S.C. 1396b(r)) is amended to read as  
 4 follows:

5 “(r) MEDICAID MANAGEMENT INFORMATION SYS-  
 6 TEMS (MMIS).—

7 “(1) IN GENERAL.—In order to receive pay-  
 8 ments under subsection (a) for use of automated  
 9 data systems in administration of the State plan  
 10 under this title, a State must have in operation  
 11 mechanized claims processing and information re-  
 12 trieval systems that meet the requirements described  
 13 in paragraph (2) and that the Secretary has found—

14 “(A) are adequate to provide efficient, eco-  
 15 nomical, and effective administration of such  
 16 State plan;

17 “(B) are compatible with the claims proc-  
 18 essing and information retrieval systems used in  
 19 the administration of title XVIII, and for this  
 20 purpose—

21 “(i) have a uniform identification cod-  
 22 ing system for providers, other payees, and  
 23 beneficiaries under this title or title XVIII;

24 “(ii) provide liaison between States  
 25 and carriers and intermediaries with agree-

ments under title XVIII to facilitate timely exchange of appropriate data; and

“(iii) provide for the exchange of data between the States and the Secretary with respect to persons sanctioned under this title or title XVIII;

“(C) are capable of providing accurate and timely data;

“(D) are designed to receive provider claims in standard formats to the extent specified by the Secretary; and

“(E) provide for electronic transmission of claims data in the format specified by the Secretary and consistent with the Medicaid Statistical Information System (MSIS) (including detailed individual enrollee encounter data and other information that the Secretary may find necessary).

“(2) REQUIREMENTS.—In order to meet the requirements of this subsection, mechanized claims processing and information retrieval systems must meet the following requirements:

“(A) The systems must be capable of developing provider, physician, and patient profiles which are sufficient to provide specific in-

1           formation as to the use of covered types of serv-  
 2           ices and items, including prescribed drugs.

3           “(B) The State must provide that informa-  
 4           tion on probable fraud or abuse which is ob-  
 5           tained from, or developed by, the systems, is  
 6           made available to the State’s medicaid fraud  
 7           control unit (if any) certified under subsection  
 8           (q) of this section.

9           “(C) The systems must meet all perform-  
 10          ance standards and other requirements for ini-  
 11          tial approval developed by the Secretary.”.

12          (b)       CONFORMING        AMENDMENTS.—Section  
 13   1902(a)(25)(A)(ii) of the Social Security Act (42 U.S.C.  
 14   1396a(a)(25)(A)(ii)) is amended to read as follows:

15               “(ii) the submission to the Secretary  
 16               of a plan (subject to approval by the Sec-  
 17               retary) for pursuing claims against such  
 18               third parties, which plan shall be inte-  
 19               grated with, and be monitored as a part of  
 20               the Secretary’s review of, the State’s  
 21               mechanized claims processing and informa-  
 22               tion retrieval system under section  
 23               1903(r);”.

1 **SEC. 9. PUBLIC PROCESS FOR DEVELOPING STATE PLAN**  
 2 **AMENDMENTS AND WAIVER SUBMISSIONS.**

3 Section 1902(a) of the Social Security Act (42 U.S.C.  
 4 1396a(a)), as amended by section 2, is amended—

5 (1) by striking “and” at the end of paragraph  
 6 (63);

7 (2) by striking the period at the end of para-  
 8 graph (64) and inserting “; and”; and

9 (3) by inserting after paragraph (64) the fol-  
 10 lowing:

11 “(65) provide for a process for development of  
 12 amendments to the State plan and for waiver sub-  
 13 missions that affords an opportunity for review and  
 14 comment (in addition to any such opportunity pro-  
 15 vided through the State’s legislative process) to in-  
 16 terested persons and groups, including beneficiaries,  
 17 providers, federally authorized State planning coun-  
 18 cils, Indian tribes, tribal organizations, Indian  
 19 Health Service facilities, and urban Indian health or-  
 20 ganizations, and that a summary of comments sub-  
 21 mitted by entities established by Federal law shall be  
 22 forwarded to the Secretary along with the State plan  
 23 amendment.”.

24 **SEC. 10. MONITORING PAYMENTS FOR DUAL ELIGIBLES.**

25 The Administrator of the Health Care Financing Ad-  
 26 ministration shall—

1           (1) develop mechanisms to better monitor and  
 2           prevent inappropriate payments under the medicaid  
 3           program under title XIX of the Social Security Act  
 4           (42 U.S.C. 1396 et seq.) in the case of individuals  
 5           who are dually eligible for benefits under such pro-  
 6           gram and under the medicare program under title  
 7           XVIII of such Act (42 U.S.C. 1395 et seq.);

8           (2) study the use of case management or care  
 9           coordination in order to improve the appropriateness  
 10          of care, quality of care, and cost effectiveness of care  
 11          for individuals who are dually eligible for benefits  
 12          under such programs; and

13          (3) work with the States to ensure better care  
 14          coordination for dual eligibles and make rec-  
 15          ommendations to Congress as to any statutory  
 16          changes that would not compromise beneficiary pro-  
 17          tections and that would improve or facilitate such  
 18          care.

19 **SEC. 11. BENEFICIARY AND PROGRAM PROTECTION**  
 20 **AGAINST WASTE, FRAUD, AND ABUSE.**

21          Section 1902(a) of the Social Security Act (42 U.S.C.  
 22          1396a(a)), as amended by section 9, is amended—

23               (1) by striking “and” at the end of paragraph  
 24               (64);

1           (2) by striking the period at the end of para-  
2 graph (65) and inserting “; and”; and

3           (3) by inserting after paragraph (65) the fol-  
4 lowing:

5           “(66) provide programs—

6               “(A) to ensure program integrity, protect  
7 and advocate on behalf of individuals, and to  
8 report to the State data concerning beneficiary  
9 concerns and complaints and instances of bene-  
10 ficiary abuse or program waste or fraud by  
11 managed care plans operating in the State  
12 under contact with the State agency;

13               “(B) to provide assistance to beneficiaries,  
14 with particular emphasis on the families of spe-  
15 cial needs children and persons with disabilities  
16 to—

17                   “(i) explain the differences between  
18 managed care and fee-for-service plans;

19                   “(ii) clarify the coverage for such  
20 beneficiaries under any managed care plan  
21 offered under the State plan under this  
22 title;

23                   “(iii) explain the implications of the  
24 choices between competing plans;

1 “(iv) assist such beneficiaries in un-  
 2 derstanding their rights under any man-  
 3 aged care plan offered under the State  
 4 plan, including their right to—

5 “(I) access and benefits;

6 “(II) nondiscrimination;

7 “(III) grievance and appeal  
 8 mechanisms; and

9 “(IV) change plans, as des-  
 10 ignated in the State plan; and

11 “(v) exercise the rights described in  
 12 clause (iv); and

13 “(C) to collect and report to the State data  
 14 on the number of complaints or instances iden-  
 15 tified under subparagraph (A) and to report to  
 16 the State annually on any systematic problems  
 17 in the implementation of managed care entities  
 18 contracting with the State under the State plan  
 19 under this title.”.

20 **SEC. 12. STATE MEDICAID FRAUD CONTROL UNITS.**

21 (a) EXTENSION OF CONCURRENT AUTHORITY TO IN-  
 22 VESTIGATE AND PROSECUTE FRAUD IN OTHER FEDERAL  
 23 PROGRAMS.—Section 1903(q)(3) of the Social Security  
 24 Act (42 U.S.C. 1396b(q)(3)) is amended—



1           (1) by inserting “(A)” after “in connection  
2       with”; and

3           (2) by striking “title.” and inserting “title; and  
4       (B) upon the approval of the relevant Federal agen-  
5       cy, any aspect of the provision of health care serv-  
6       ices and activities of providers of such services under  
7       any Federal health care program (as defined in sec-  
8       tion 1128B(f)(1)), if the suspected fraud or violation  
9       of law is primarily related to the State plan under  
10      this title or the program under title XVIII.”.

11      (b) EXTENSION OF AUTHORITY TO INVESTIGATE  
12      AND PROSECUTE PATIENT ABUSE IN MEDICAID BOARD  
13      AND CARE FACILITIES.—Section 1903(q)(4) of such Act  
14      (42 U.S.C. 1396b(q)(4)) is amended to read as follows:

15           “(4)(A) The entity has—

16           “(i) procedures for reviewing complaints of  
17           abuse or neglect of patients in health care fa-  
18           cilities which receive payments under the State  
19           plan under this title;

20           “(ii) at the option of the entity, procedures  
21           for reviewing complaints of abuse or neglect of  
22           patients residing in board and care facilities;  
23           and

24           “(iii) where appropriate, procedures for  
25           acting upon such complaints under the criminal

1 laws of the State or for referring such com-  
 2 plaints to other State agencies for action.

3 “(B) For purposes of this paragraph, the term  
 4 ‘board and care facility’ means a residential setting  
 5 which receives payment from or on behalf of two or  
 6 more unrelated adults who reside in such facility,  
 7 and for whom one or both of the following is pro-  
 8 vided:

9 “(i) Nursing care services provided by, or  
 10 under the supervision of, a registered nurse, li-  
 11 censed practical nurse, or licensed nursing as-  
 12 sistant.

13 “(ii) Personal care services that assist resi-  
 14 dents with the activities of daily living, includ-  
 15 ing personal hygiene, dressing, bathing, eating,  
 16 toileting, ambulation, transfer, positioning, self-  
 17 medication, body care, travel to medical serv-  
 18 ices, essential shopping, meal preparation, laun-  
 19 dry, and housework.”.

20 **SEC. 13. APPLICATION OF CERTAIN PROVISIONS OF THE**  
 21 **BANKRUPTCY CODE.**

22 (a) RESTRICTED APPLICABILITY OF BANKRUPTCY  
 23 STAY, DISCHARGE, AND PREFERENTIAL TRANSFER PRO-  
 24 VISIONS TO MEDICARE AND MEDICAID DEBTS.—Title XI  
 25 of the Social Security Act (42 U.S.C. 1301 et seq.) is

1 amended by inserting after section 1143 the following new  
2 section:

3 “APPLICATION OF CERTAIN PROVISIONS OF THE  
4 BANKRUPTCY CODE

5 “SEC. 1144. (a) MEDICAID-RELATED ACTIONS NOT  
6 STAYED BY BANKRUPTCY PROCEEDINGS.—The com-  
7 mencement or continuation of any action against a debtor  
8 under this title or title XIX relating to the medicaid pro-  
9 gram under title XIX, including any action or proceeding  
10 to exclude or suspend the debtor from program participa-  
11 tion, assess civil money penalties, recoup or set off over-  
12 payments, or deny or suspend payment of claims shall not  
13 be subject to the provisions of section 362(a) of title 11,  
14 United States Code.

15 “(b) MEDICAID-RELATED DEBT NOT DISCHARGE-  
16 ABLE IN BANKRUPTCY.—A debt owed to the United  
17 States or to a State for an overpayment under title XIX,  
18 or for a penalty, fine, or assessment under this title or  
19 title XIX relating to the medicaid program under title  
20 XIX, shall not be dischargeable under any provision of  
21 title 11, United States Code.

22 “(c) REPAYMENT OF CERTAIN DEBTS CONSIDERED  
23 FINAL.—Payments made to repay a debt to the United  
24 States or to a State with respect to items or services pro-  
25 vided, or claims for payment made, under title XIX (in-  
26 cluding repayment of an overpayment, or to pay a penalty,

1 fine, or assessment under this title or title XIX relating  
 2 to the medicaid program under title XIX, shall be consid-  
 3 ered final and not preferential transfers under section 547  
 4 of title 11, United States Code.”.

5 (b) CONFORMING AMENDMENTS.—

6 (1) Section 1128 of such Act (42 U.S.C.  
 7 1320a–7) is amended by adding at the end the fol-  
 8 lowing:

9 “(j) NONAPPLICABILITY OF BANKRUPTCY STAY.—  
 10 An exclusion imposed under this section or a proceeding  
 11 seeking an exclusion under this section relating to the  
 12 medicaid program under title XIX is not subject to the  
 13 automatic stay under section 362 of title 11, United  
 14 States Code.”.

15 (2) Section 1128A(a) of the Social Security Act  
 16 (42 U.S.C. 1320a–7a(a)) is amended by adding at  
 17 the end the following: “An exclusion, penalty, or as-  
 18 sessment imposed under this section or a proceeding  
 19 that seeks an exclusion, penalty, or assessment  
 20 under this section relating to the medicaid program  
 21 under title XIX is not subject to the automatic stay  
 22 under section 362 of title 11, United States Code.  
 23 Notwithstanding any other provision of law,  
 24 amounts due under this section relating to the med-  
 25 icaid program under title XIX are not dischargeable

1 under any provision of title 11, United States  
2 Code.”.

3 **SEC. 14. EFFECTIVE DATE.**

4 (a) IN GENERAL.—Except as otherwise specifically  
5 provided, the provisions of and amendments made by this  
6 Act shall apply with respect to State programs under title  
7 XIX of the Social Security Act (42 U.S.C. 1396 et seq.)  
8 on and after October 1, 1997.

9 (b) EXTENSION FOR STATE LAW AMENDMENT.—In  
10 the case of a State plan under title XIX of the Social Se-  
11 curity Act which the Secretary of Health and Human  
12 Services determines requires State legislation in order for  
13 the plan to meet the additional requirements imposed by  
14 the amendments made by this Act, the State plan shall  
15 not be regarded as failing to comply with the requirements  
16 of this subtitle solely on the basis of its failure to meet  
17 these additional requirements before the first day of the  
18 first calendar quarter beginning after the close of the first  
19 regular session of the State legislature that begins after  
20 the date of the enactment of this Act. For purposes of  
21 the previous sentence, in the case of a State that has a  
22 2-year legislative session, each year of the session is con-  
23 sidered to be a separate regular session of the State  
24 legislature.

○