

106TH CONGRESS  
1ST SESSION

# H. R. 2229

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

---

## IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 1999

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

---

## A BILL

To amend 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Medicare Fraud and Reimbursement Reform Act of  
6 1999”.

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

Sec. 1. Short title; table of contents.

Sec. 2. No mark-up for drugs, biologicals, or parenteral nutrients.

Sec. 3. Elimination of overpayments for epogen.  
 Sec. 4. Mental health partial hospitalization services.  
 Sec. 5. Information requirements.  
 Sec. 6. Centers of excellence.

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

3 (a) IN GENERAL.—Section 1842(o) of the Social Se-  
 4 curity Act (42 U.S.C. 1395u(o)) is amended to read as  
 5 follows:

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

15 “(A) The actual acquisition cost, as defined in  
 16 paragraph (2), to the person submitting the claim  
 17 for payment for the drug, biological, or parenteral  
 18 nutrient.

19 “(B) 95 percent of the average wholesale price  
 20 of such drug, biological, or parenteral nutrient, as  
 21 determined by the Secretary.

22 “(C) For payments for drugs, biologicals, or  
 23 parenteral nutrients furnished on or after January

1       1, 2000, the median actual acquisition cost of all  
2       claims for payment for such drugs, biologicals, or  
3       parenteral nutrients for the 12-month period begin-  
4       ning July 1, 1998 (and adjusted, as the Secretary  
5       determines appropriate, to reflect changes in the  
6       cost of such drugs, biologicals, or parenteral nutri-  
7       ents due to inflation, and such other factors as the  
8       Secretary determines appropriate).

9               “(D) The amount otherwise determined under  
10       this part.

11       “(2) For purposes of paragraph (1)(A), the term ‘ac-  
12       tual acquisition cost’ means, with respect to such drugs,  
13       biologicals, or parenteral nutrients the cost of the drugs,  
14       biologicals, or parenteral nutrients based on the most eco-  
15       nomical case size in inventory on the date of dispensing  
16       or, if less, the most economical case size purchased within  
17       six months of the date of dispensing whether or not that  
18       specific drug, biological, or nutrient was furnished to an  
19       individual whether or not enrolled under this part. Such  
20       term includes appropriate adjustments, as determined by  
21       the Secretary, for all discounts, rebates, or any other ben-  
22       efit in cash or in kind (including travel, equipment, or free  
23       products). The Secretary shall include an additional pay-  
24       ment for administrative, storage, and handling costs.

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

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

8               “(i) any amount other than the payment  
9 amount specified in paragraph (1), (4), or (5) (plus  
10 any applicable deductible and coinsurance amounts),  
11 or

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

15       “(C) If a person knowingly and willfully in repeated  
16 cases bills one or more individuals in violation of subpara-  
17 graph (B), the Secretary may apply sanctions against that  
18 person in accordance with subsection (j)(2).

19       “(4) The Secretary may pay a reasonable dispensing  
20 fee (less the applicable deductible and coinsurance  
21 amounts) for drugs or biologicals to a licensed pharmacy  
22 approved to dispense drugs or biologicals under this part,  
23 if payment for such drugs or biologicals is made to the  
24 pharmacy.

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

6       (b) EFFECTIVE DATE.—The amendments made by  
 7 subsection (a) apply to drugs, biologicals, and parenteral  
 8 nutrients furnished on or after January 1, 2000.

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

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

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

15 **SEC. 3. ELIMINATION OF OVERPAYMENTS FOR EPOGEN.**

16       Section 1881(b)(11)(B)(ii) of the Social Security Act  
 17 (42 U.S.C. 1395rr(b)(11)(B)(ii)) is amended—

18               (1) in subclause (I)—

19                       (A) by striking “provided during 1994”  
 20 and inserting “provided before fiscal year  
 21 2000”; and

22                       (B) by striking “and” at the end;

23               (2) by redesignating subclause (II) as subclause  
 24 (III);

1           (3) by inserting after subclause (I) the fol-  
 2           lowing new subclause:

3                   “(II) for erythropoietin provided during  
 4                   fiscal year 2000, in an amount equal to \$9 per  
 5                   thousand units (rounded to the nearest 100  
 6                   units), and”; and

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

10 **SEC. 4. MENTAL HEALTH PARTIAL HOSPITALIZATION SERV-**  
 11 **ICES**

12           (a) LIMITATION ON LOCATION OF PROVISION OF  
 13 SERVICES.—

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

17                   (A) by striking “and furnished” and in-  
 18                   serting “furnished”; and

19                   (B) by inserting before the period the fol-  
 20                   lowing: “, and furnished other than in a skilled  
 21                   nursing facility, residential treatment facility or  
 22                   other residential setting (as determined by the  
 23                   Secretary)”.

24           (2) EFFECTIVE DATE.—The amendments made  
 25           by paragraph (1) apply with respect to partial hos-

1       pitalization services furnished on or after the first  
2       day of the third month beginning after the date of  
3       the enactment of this Act.

4       (b) QUALIFICATIONS FOR COMMUNITY MENTAL  
5 HEALTH CENTERS.—

6           (1) IN GENERAL.—Section 1861(ff)(3)(B) of  
7       the Social Security Act (42 U.S.C. 1395x(ff)(3)(B))  
8       is amended by striking “entity” and all that follows  
9       and inserting the following: “entity that—

10           “(i)(I) provides the mental health services de-  
11       scribed in section 1913(c)(1) of the Public Health  
12       Service Act; or

13           “(II) in the case of an entity operating in a  
14       State that by law precludes the entity from pro-  
15       viding a service described in such section itself, pro-  
16       vides for such service by contract with an approved  
17       organization or entity (as determined by the Sec-  
18       retary);

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

22           “(iii) meets such additional conditions as the  
23       Secretary shall specify to ensure (I) the health and  
24       safety of individuals being furnished such services,  
25       (II) the effective and efficient furnishing of such

1 services, and (III) the compliance of such entity with  
2 the criteria described in such section.”.

3 (2) EFFECTIVE DATE.—The amendment made  
4 by paragraph (1) applies with respect to community  
5 mental health centers furnishing services under the  
6 medicare program on or after the first day of the  
7 third month beginning after the date of the enact-  
8 ment of this Act.

9 (c) GUIDELINES FOR ITEMS AND SERVICES COM-  
10 PRISING PARTIAL HOSPITALIZATION SERVICES.—Not  
11 later than 180 days after the date of the enactment of  
12 this Act, the Secretary shall first adopt national coverage  
13 and administrative policies for partial hospitalization serv-  
14 ices furnished under title XVIII of the Social Security Act,  
15 using a negotiated rulemaking process under subchapter  
16 III of chapter 5 of title 5, United States Code.

17 (d) REFINEMENT OF PERIODICITY OF REVIEW OF  
18 PLAN FOR PARTIAL HOSPITALIZATION SERVICES.—

19 (1) IN GENERAL.—Section 1835(a)(2)(F)(ii) of  
20 the Social Security Act (42 U.S.C.  
21 1395n(a)(2)(F)(ii)) is amended by inserting “at a  
22 reasonable rate (as determined by the Secretary)”  
23 after “is reviewed periodically”.

24 (2) EFFECTIVE DATE.—The amendment made  
25 by paragraph (1) applies with respect to plans for



1       furnishing partial hospitalization services established  
2       on or after the first day of the third month begin-  
3       ning after the date of the enactment of this Act.

4       (e) RECERTIFICATION OF PROVIDERS OF PARTIAL  
5 HOSPITALIZATION SERVICES.—

6           (1) IN GENERAL.—With respect to each com-  
7       munity mental health center that furnishes partial  
8       hospitalization services for which payment is made  
9       under title XVIII of the Social Security Act, the  
10      Secretary of Health and Human Services shall pro-  
11      vide for periodic recertification to ensure that the  
12      provision of such services complies with applicable  
13      requirements of such title.

14       (2) DEADLINE FOR FIRST RECERTIFICATION.—  
15      The first recertification under paragraph (1) shall be  
16      completed not later than one year after the date of  
17      the enactment of this Act.

18       (f) CIVIL MONETARY PENALTIES FOR FALSE CER-  
19 TIFICATION OF ELIGIBILITY FOR HOSPICE CARE OR PAR-  
20 TIAL HOSPITALIZATION SERVICES.—

21           (1) IN GENERAL.—Section 1128A(b)(3) of the  
22      Social Security Act (42 U.S.C. 1320a–7a(b)(3)) is  
23      amended—

1 (A) in subparagraph (A)(ii), by inserting “,  
 2 hospice care, or partial hospitalization services”  
 3 after “home health services”; and

4 (B) in subparagraph (B), by inserting “,  
 5 section 1814(a)(7) in the case of hospice care,  
 6 or section 1835(a)(2)(F) in the case of partial  
 7 hospitalization services” after “in the case of  
 8 home health services”.

9 (2) EFFECTIVE DATE.—The amendments made  
 10 by paragraph (1) apply with respect to certifications  
 11 of eligibility for hospice care or partial hospitaliza-  
 12 tion services under the medicare program made on  
 13 or after the first day of the third month beginning  
 14 after the date of the enactment of this Act.

15 (g) DEMONSTRATION FOR COST EFFECTIVE WRAP  
 16 AROUND MENTAL HEALTH SERVICES.—

17 (1) ESTABLISHMENT.—

18 (A) IN GENERAL.—The Secretary of Health  
 19 and Human Services shall implement a demonstra-  
 20 tion project (in this subsection referred to as the  
 21 “project”) under part B of title XVIII of the Social  
 22 Security Act under which community mental health  
 23 centers may offer wrap around mental health serv-  
 24 ices (as defined in subparagraph (B)(i)) for purposes

1 of providing for a full continuum of ambulatory be-  
2 havioral health care services.

3 (B) DEFINITIONS.—

4 (i) WRAP AROUND MENTAL HEALTH  
5 SERVICES DEFINED.—The term “wrap  
6 around mental health services” means  
7 comprehensive outpatient mental health  
8 services furnished to an individual pursu-  
9 ant to an individualized treatment plan de-  
10 veloped by a mental health professional, in  
11 consultation with the family of the indi-  
12 vidual (if available). Such services are fur-  
13 nished to the individual through a com-  
14 prehensive, multidisciplinary health and so-  
15 cial services delivery system that provides  
16 coordinated therapeutic interventions, in-  
17 cluding medical services, psychotherapy  
18 services, occupational therapy services, and  
19 social work services.

20 (ii) LICENSED MENTAL HEALTH PRO-  
21 FESSIONAL.—The term “mental health  
22 professional” means any of the following  
23 individuals who are licensed by the State in  
24 which the individual furnishes services (as  
25 that term is described in paragraphs (1),

1 (2)(M), and (2)(N) (as the case may be) of  
2 section 1861(s) of the Social Security Act  
3 (42 U.S.C. 1395x(s))) to design and exe-  
4 cute treatment plans described in clause (i)  
5 without the supervision of another health  
6 care practitioner:

7 (I) A physician, as defined in sec-  
8 tion 1861(r)(1) of such Act (42  
9 U.S.C. 1395x(r)(1)).

10 (II) A clinical psychologist, as de-  
11 fined by the Secretary pursuant to  
12 section 1861(ii) of such Act (42  
13 U.S.C. 1395x(ii)).

14 (III) A clinical social worker, as  
15 defined in section 1861(hh) of such  
16 Act (42 U.S.C. 1395x(hh)).

17 (2) SELECTION OF CENTERS.—For purposes of  
18 implementing such project, the Secretary shall select  
19 for participation in the project community mental  
20 health centers that serve populations in three dif-  
21 ferent States, one of which predominantly serves  
22 rural populations.

23 (3) CAPITATED PAYMENT.—The Secretary shall  
24 establish and make prospective monthly payments of

1 a capitation amount for individuals receiving wrap  
2 around mental health services under this project.

3 (4) EVALUATION AND REPORT.—

4 (A) EVALUATION.—The Secretary shall  
5 evaluate the project. Such evaluation shall in-  
6 clude an examination of—

7 (i) the project's effect on the health,  
8 well-being, condition, and functional level  
9 of beneficiaries receiving wrap around  
10 mental health services;

11 (ii) any savings to the medicare pro-  
12 gram by reason of capitated payments for  
13 wrap around medical services consisting of  
14 partial hospitalization services (as that  
15 term is defined in section 1861(ff) of the  
16 Social Security Act (42 U.S.C. 1395x(ff));

17 (iii) the impact of basing payment for  
18 such services on a capitated basis; and

19 (iv) the project's effect on utilization  
20 of inpatient services (including inpatient  
21 mental health services) and associated  
22 costs.

23 (B) REPORT.—Not later than four years  
24 after the date of the enactment of this Act, the  
25 Secretary shall submit to Congress a report

1 containing a statement of the findings and con-  
2 clusions of the Secretary pursuant to the eval-  
3 uation conducted under subparagraph (A), to-  
4 gether with any recommendations for legislation  
5 the Secretary considers appropriate with respect  
6 to—

7 (i) the provision of additional mental  
8 health services by community mental  
9 health centers under partial hospitalization  
10 services; and

11 (ii) payment for such services on a  
12 capitated basis.

13 (5) DURATION.—The project shall be conducted  
14 for a three year period.

15 (6) FUNDING.—The Secretary shall provide for  
16 the transfer from the Federal Hospital Insurance  
17 Trust Fund, established under section 1817 of the  
18 Social Security Act (42 U.S.C. 1395i), of such funds  
19 as are necessary for the costs of carrying out the  
20 demonstration project under this subsection.

21 **SEC. 5. INFORMATION REQUIREMENTS.**

22 (a) INFORMATION FROM GROUP HEALTH PLANS.—  
23 Section 1862(b) of the Social Security Act (42 U.S.C.  
24 1395y(b)) is amended by adding at the end the following:

1           “(7) INFORMATION FROM GROUP HEALTH  
2 PLANS.—

3           “(A) PROVISION OF INFORMATION BY  
4 GROUP HEALTH PLANS.—The administrator of  
5 a group health plan subject to the requirements  
6 of paragraph (1) shall provide to the Secretary  
7 such of the information elements described in  
8 subparagraph (C) as the Secretary specifies,  
9 and in such manner and at such times as the  
10 Secretary may specify (but not more frequently  
11 than four times per year), with respect to each  
12 individual covered under the plan who is enti-  
13 tled to any benefits under this title.

14           “(B) PROVISION OF INFORMATION BY EM-  
15 PLOYERS AND EMPLOYEE ORGANIZATIONS.—An  
16 employer (or employee organization) that main-  
17 tains or participates in a group health plan sub-  
18 ject to the requirements of paragraph (1) shall  
19 provide to the administrator of the plan such of  
20 the information elements required to be pro-  
21 vided under subparagraph (A), and in such  
22 manner and at such times as the Secretary may  
23 specify, at a frequency consistent with that re-  
24 quired under subparagraph (A) with respect to  
25 each individual described in subparagraph (A)

1           who is covered under the plan by reason of em-  
2           ployment with that employer or membership in  
3           the organization.

4           “(C) INFORMATION ELEMENTS.—The in-  
5           formation elements described in this subpara-  
6           graph are the following:

7                   “(i) ELEMENTS CONCERNING THE IN-  
8                   DIVIDUAL.—

9                           “(I) The individual’s name.

10                          “(II) The individual’s date of  
11                          birth.

12                          “(III) The individual’s sex.

13                          “(IV) The individual’s social se-  
14                          curity insurance number.

15                          “(V) The number assigned by the  
16                          Secretary to the individual for claims  
17                          under this title.

18                          “(VI) The family relationship of  
19                          the individual to the person who has  
20                          or had current or employment status  
21                          with the employer.

22                          “(ii) ELEMENTS CONCERNING THE  
23                          FAMILY MEMBER WITH CURRENT OR  
24                          FORMER EMPLOYMENT STATUS.—



1           “(I) The name of the person in  
2           the individual’s family who has cur-  
3           rent or former employment status  
4           with the employer.

5           “(II) That person’s social secu-  
6           rity insurance number.

7           “(III) The number or other iden-  
8           tifier assigned by the plan to that per-  
9           son.

10          “(IV) The periods of coverage for  
11          that person under the plan.

12          “(V) The employment status of  
13          that person (current or former) dur-  
14          ing those periods of coverage.

15          “(VI) The classes (of that per-  
16          son’s family members) covered under  
17          the plan.

18          “(iii) PLAN ELEMENTS.—

19               “(I) The items and services cov-  
20               ered under the plan.

21               “(II) The name and address to  
22               which claims under the plan are to be  
23               sent.

24               “(iv) ELEMENTS CONCERNING THE  
25               EMPLOYER.—

1 “(I) The employer’s name.

2 “(II) The employer’s address.

3 “(III) The employer identifica-  
4 tion number of the employer.

5 “(D) USE OF IDENTIFIERS.—The adminis-  
6 trator of a group health plan shall utilize a  
7 unique identifier for the plan in providing infor-  
8 mation under subparagraph (A) and in other  
9 transactions, as may be specified by the Sec-  
10 retary, related to the provisions of this sub-  
11 section. The Secretary may provide to the ad-  
12 ministrator the unique identifier described in  
13 the preceding sentence.

14 “(E) PENALTY FOR NONCOMPLIANCE.—  
15 Any entity that knowingly and willfully fails to  
16 comply with a requirement imposed by the pre-  
17 vious subparagraphs shall be subject to a civil  
18 money penalty not to exceed \$1,000 for each in-  
19 cident of such failure. The provisions of section  
20 1128A (other than subsections (a) and (b))  
21 shall apply to a civil money penalty under the  
22 previous sentence in the same manner as those  
23 provisions apply to a penalty or proceeding  
24 under section 1128A(a).”.

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

4 **SEC. 6. CENTERS OF EXCELLENCE.**

5 (a) IN GENERAL.—Title XVIII of the Social Security  
6 Act is amended by inserting after section 1896 the fol-  
7 lowing new section:

8 “CENTERS OF EXCELLENCE

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

18 “(b) QUALITY STANDARDS.—Only entities that meet  
19 quality standards established by the Secretary shall be eli-  
20 gible to contract under this section. In considering quality,  
21 the Secretary shall take into account the quality, experi-  
22 ence, and quantity of services of physicians who provide  
23 services in more than one entity. Contracting entities shall  
24 implement a quality improvement plan approved by the  
25 Secretary.

1       “(c) PAYMENT.—Payment under this section shall be  
2 made on the basis of negotiated all-inclusive rates. The  
3 amount of payment made by the Secretary to an entity  
4 under this title for services covered under a contract shall  
5 be less than the aggregate amount of the payments that  
6 the Secretary would have otherwise made for the services.

7       “(d) CONTRACT PERIOD.—A contract period shall be  
8 3 years (subject to renewal), as long as the entity con-  
9 tinues to meet quality and other contractual standards.

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

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

18       (b) EFFECTIVE DATES.—

19               (1) The amendment made by subsection (a) ap-  
20 plies to services furnished on or after October 1,  
21 2001.

22               (2) By October 1, 2001, the Secretary shall  
23 enter into contracts under the amendment made by  
24 subsection (a) for coronary artery by-pass surgery  
25 and other heart procedures, knee replacement sur-

1 gery, and hip replacement surgery, in geographic  
2 areas nationwide such that at least 20 percent of the  
3 projected number of those procedures can be pro-  
4 vided under such contracts.

○