

# Union Calendar No. 43

108TH CONGRESS  
1ST SESSION

# H. R. 810

## [Report No. 108-74, Parts I and II]

To amend title XVIII of the Social Security Act to provide regulatory relief and contracting flexibility under the Medicare Program.

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### IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2003

Mrs. JOHNSON of Connecticut (for herself, Mr. STARK, Mr. BILIRAKIS, Mr. BROWN of Ohio, Mr. THOMAS, Mr. RANGEL, Mr. TAUZIN, Mr. DINGELL, Mr. RYAN of Wisconsin, Mr. PORTMAN, Mr. CARDIN, Ms. DUNN, Mr. GREENWOOD, Mr. KLECZKA, Mr. LEWIS of Kentucky, Mr. CAMP, Mr. POMEROY, Mr. SHAW, Mr. BURR, Mr. McNULTY, Mrs. JONES of Ohio, Mr. CRANE, Mr. McINNIS, Mr. RAMSTAD, Mr. ENGLISH, Mr. McDERMOTT, Mr. McCRERY, Mr. HAYWORTH, Mr. HOUGHTON, Mr. NUSSLE, Mr. NORWOOD, Mr. GORDON, Mr. UPTON, Mr. ENGEL, Mr. BUYER, Mr. PICKERING, Mr. BARTON of Texas, Mr. DOYLE, Mrs. CAPPS, Mr. WAXMAN, Mr. PALLONE, Mr. HALL, Mr. SAM JOHNSON of Texas, Mr. CANTOR, Mr. FOLEY, Mr. WELLER, and Mr. DEUTSCH) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and 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

APRIL 11, 2003

Reported from the Committee on Ways and Means with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

APRIL 11, 2003

Referral to the Committee on Energy and Commerce extended for a period ending not later than April 29, 2003

APRIL 29, 2003

Additional sponsors: Mrs. MCCARTHY of New York, Mrs. CUBIN, Mr.

TOOMEY, Mrs. MALONEY, Mr. ROGERS of Michigan, Mr. WYNN, Mr. KENNEDY of Minnesota, and Mr. DAVIS of Florida

APRIL 29, 2003

Reported from the Committee on Energy and Commerce with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in boldface roman]

[For text of introduced bill, see copy of bill as introduced on February 13, 2003]

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## A BILL

To amend title XVIII of the Social Security Act to provide regulatory relief and contracting flexibility under the Medicare Program.

1       *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*  
 3 **SECTION 1. SHORT TITLE; AMENDMENTS TO SOCIAL SECU-**  
 4 **RITY ACT; TABLE OF CONTENTS.**

5       (a) *SHORT TITLE.*—*This Act may be cited as the*  
 6 *“Medicare Regulatory and Contracting Reform Act of*  
 7 *2003”.*

8       (b) *AMENDMENTS TO SOCIAL SECURITY ACT.*—*Except*  
 9 *as otherwise specifically provided, whenever in this Act an*  
 10 *amendment is expressed in terms of an amendment to or*  
 11 *repeal of a section or other provision, the reference shall*  
 12 *be considered to be made to that section or other provision*  
 13 *of the Social Security Act.*

14       (c) *TABLE OF CONTENTS.*—*The table of contents of this*  
 15 *Act is as follows:*

- Sec. 1. Short title; amendments to Social Security Act; table of contents.*  
*Sec. 2. Findings and construction.*  
*Sec. 3. Definitions.*

*TITLE I—REGULATORY REFORM*

- Sec. 101. Issuance of regulations.*  
*Sec. 102. Compliance with changes in regulations and policies.*  
*Sec. 103. Reports and studies relating to regulatory reform.*

*TITLE II—CONTRACTING REFORM*

- Sec. 201. Increased flexibility in medicare administration.*  
*Sec. 202. Requirements for information security for medicare administrative contractors.*

*TITLE III—EDUCATION AND OUTREACH*

- Sec. 301. Provider education and technical assistance.*  
*Sec. 302. Small provider technical assistance demonstration program.*  
*Sec. 303. Medicare Provider Ombudsman; Medicare Beneficiary Ombudsman.*  
*Sec. 304. Beneficiary outreach demonstration program.*  
*Sec. 305. Inclusion of additional information in notices to beneficiaries about skilled nursing facility benefits.*  
*Sec. 306. Information on medicare-certified skilled nursing facilities in hospital discharge plans.*

*TITLE IV—APPEALS AND RECOVERY*

- Sec. 401. Transfer of responsibility for medicare appeals.*  
*Sec. 402. Process for expedited access to review.*  
*Sec. 403. Revisions to medicare appeals process.*  
*Sec. 404. Prepayment review.*  
*Sec. 405. Recovery of overpayments.*  
*Sec. 406. Provider enrollment process; right of appeal.*  
*Sec. 407. Process for correction of minor errors and omissions without pursuing appeals process.*  
*Sec. 408. Prior determination process for certain items and services; advance beneficiary notices.*

*TITLE V—MISCELLANEOUS PROVISIONS*

- Sec. 501. Policy development regarding evaluation and management (E & M) documentation guidelines.*  
*Sec. 502. Improvement in oversight of technology and coverage.*  
*Sec. 503. Treatment of hospitals for certain services under medicare secondary payor (MSP) provisions.*  
*Sec. 504. EMTALA improvements.*  
*Sec. 505. Emergency Medical Treatment and Active Labor Act (EMTALA) Technical Advisory Group.*  
*Sec. 506. Authorizing use of arrangements to provide core hospice services in certain circumstances.*  
*Sec. 507. Application of OSHA bloodborne pathogens standard to certain hospitals.*  
*Sec. 508. BIPA-related technical amendments and corrections.*  
*Sec. 509. Conforming authority to waive a program exclusion.*  
*Sec. 510. Treatment of certain dental claims.*

*Sec. 511. Furnishing hospitals with information to compute DSH formula.*

*Sec. 512. Revisions to reassignment provisions.*

*Sec. 513. Specialized Medicare+Choice plans for special needs beneficiaries.*

*Sec. 514. Temporary suspension of OASIS requirement for collection of data on non-medicare and non-medicaid patients.*

*Sec. 515. Miscellaneous reports, studies, and publication requirements.*

1 **SEC. 2. FINDINGS AND CONSTRUCTION.**

2 (a) *FINDINGS.*—Congress finds the following:

3 (1) *The overwhelming majority of providers of*  
4 *services and suppliers in the United States are law-*  
5 *abiding persons who provide important health care*  
6 *services to patients each day.*

7 (2) *The Secretary of Health and Human Serv-*  
8 *ices should work to streamline paperwork require-*  
9 *ments under the medicare program and communicate*  
10 *clearer instructions to providers of services and sup-*  
11 *pliers so that they may spend more time caring for*  
12 *patients.*

13 (b) *CONSTRUCTION.*—*Nothing in this Act shall be con-*  
14 *strued—*

15 (1) *to compromise or affect existing legal rem-*  
16 *edies for addressing fraud or abuse, whether it be*  
17 *criminal prosecution, civil enforcement, or adminis-*  
18 *trative remedies, including under sections 3729*  
19 *through 3733 of title 31, United States Code (known*  
20 *as the False Claims Act); or*

21 (2) *to prevent or impede the Department of*  
22 *Health and Human Services in any way from its on-*



1     **TITLE I—REGULATORY REFORM**

2     **SEC. 101. ISSUANCE OF REGULATIONS.**

3           (a) *LIMITATIONS ON NEW MATTER IN FINAL REGULA-*  
4     *TIONS.*—Section 1871(a) (42 U.S.C. 1395hh(a)) is amended  
5     by adding at the end the following new paragraph:

6           “(3) If the Secretary publishes a final regulation that  
7     includes a provision that is not a logical outgrowth of a  
8     previously published notice of proposed rulemaking or in-  
9     terim final rule, such provision shall be treated as a pro-  
10    posed regulation and shall not take effect until there is the  
11    further opportunity for public comment and a publication  
12    of the provision again as a final regulation.”.

13          (b) *EFFECTIVE DATE.*—The amendment made by sub-  
14    section (a) shall apply to final regulations published on or  
15    after the date of the enactment of this Act.

16     **SEC. 102. COMPLIANCE WITH CHANGES IN REGULATIONS**  
17                           **AND POLICIES.**

18          (a) *NO RETROACTIVE APPLICATION OF SUBSTANTIVE*  
19    *CHANGES.*—

20           (1) *IN GENERAL.*—Section 1871 (42 U.S.C.  
21    1395hh), as amended by section 101(a), is amended  
22    by adding at the end the following new subsection:

23           “(d)(1)(A) A substantive change in regulations, man-  
24    ual instructions, interpretative rules, statements of policy,  
25    or guidelines of general applicability under this title shall

1 *not be applied (by extrapolation or otherwise) retroactively*  
2 *to items and services furnished before the effective date of*  
3 *the change, unless the Secretary determines that—*

4 *“(i) such retroactive application is necessary to*  
5 *comply with statutory requirements; or*

6 *“(ii) failure to apply the change retroactively*  
7 *would be contrary to the public interest.”*

8 *(2) EFFECTIVE DATE.—The amendment made by*  
9 *paragraph (1) shall apply to substantive changes*  
10 *issued on or after the date of the enactment of this*  
11 *Act.*

12 *(b) TIMELINE FOR COMPLIANCE WITH SUBSTANTIVE*  
13 *CHANGES AFTER NOTICE.—*

14 *(1) IN GENERAL.—Section 1871(d)(1), as added*  
15 *by subsection (a), is amended by adding at the end*  
16 *the following:*

17 *“(B)(i) Except as provided in clause (ii), a substantive*  
18 *change referred to in subparagraph (A) shall not become*  
19 *effective before the end of the 30-day period that begins on*  
20 *the date that the Secretary has issued or published, as the*  
21 *case may be, the substantive change.*

22 *“(ii) The Secretary may provide for such a substantive*  
23 *change to take effect on a date that precedes the end of the*  
24 *30-day period under clause (i) if the Secretary finds that*  
25 *waiver of such 30-day period is necessary to comply with*

1 *statutory requirements or that the application of such 30-*  
2 *day period is contrary to the public interest. If the Sec-*  
3 *retary provides for an earlier effective date pursuant to this*  
4 *clause, the Secretary shall include in the issuance or publi-*  
5 *cation of the substantive change a finding described in the*  
6 *first sentence, and a brief statement of the reasons for such*  
7 *finding.*

8       “(C) *No action shall be taken against a provider of*  
9 *services or supplier with respect to noncompliance with*  
10 *such a substantive change for items and services furnished*  
11 *before the effective date of such a change.*”

12               (2) *EFFECTIVE DATE.*—*The amendment made by*  
13 *paragraph (1) shall apply to compliance actions un-*  
14 *dertaken on or after the date of the enactment of this*  
15 *Act.*

16       (c) *RELIANCE ON GUIDANCE.*—

17               (1) *IN GENERAL.*—*Section 1871(d), as added by*  
18 *subsection (a), is further amended by adding at the*  
19 *end the following new paragraph:*

20       “(2)(A) *If—*

21               “(i) *a provider of services or supplier follows the*  
22 *written guidance (which may be transmitted elec-*  
23 *tronically) provided by the Secretary or by a medi-*  
24 *care contractor (as defined in section 1889(g)) acting*  
25 *within the scope of the contractor’s contract authority,*

1 *with respect to the furnishing of items or services and*  
2 *submission of a claim for benefits for such items or*  
3 *services with respect to such provider or supplier;*

4 *“(ii) the Secretary determines that the provider*  
5 *of services or supplier has accurately presented the*  
6 *circumstances relating to such items, services, and*  
7 *claim to the contractor in writing; and*

8 *“(iii) the guidance was in error;*  
9 *the provider of services or supplier shall not be subject to*  
10 *any sanction (including any penalty or requirement for re-*  
11 *payment of any amount) if the provider of services or sup-*  
12 *plier reasonably relied on such guidance.*

13 *“(B) Subparagraph (A) shall not be construed as pre-*  
14 *venting the recoupment or repayment (without any addi-*  
15 *tional penalty) relating to an overpayment insofar as the*  
16 *overpayment was solely the result of a clerical or technical*  
17 *operational error.”.*

18 *(2) EFFECTIVE DATE.—The amendment made by*  
19 *paragraph (1) shall take effect on the date of the en-*  
20 *actment of this Act but shall not apply to any sanc-*  
21 *tion for which notice was provided on or before the*  
22 *date of the enactment of this Act.*

23 **SEC. 103. REPORTS AND STUDIES RELATING TO REGU-**  
24 **LATORY REFORM.**

25 *(a) GAO STUDY ON ADVISORY OPINION AUTHORITY.—*

1           (1) *STUDY.*—*The Comptroller General of the*  
2           *United States shall conduct a study to determine the*  
3           *feasibility and appropriateness of establishing in the*  
4           *Secretary authority to provide legally binding advi-*  
5           *sory opinions on appropriate interpretation and ap-*  
6           *plication of regulations to carry out the medicare pro-*  
7           *gram under title XVIII of the Social Security Act.*  
8           *Such study shall examine the appropriate timeframe*  
9           *for issuing such advisory opinions, as well as the need*  
10          *for additional staff and funding to provide such opin-*  
11          *ions.*

12          (2) *REPORT.*—*The Comptroller General shall*  
13          *submit to Congress a report on the study conducted*  
14          *under paragraph (1) by not later than one year after*  
15          *the date of the enactment of this Act.*

16          (b) *REPORT ON LEGAL AND REGULATORY INCONSIST-*  
17          *ENCIES.*—*Section 1871 (42 U.S.C. 1395hh), as amended by*  
18          *section 2(a), is amended by adding at the end the following*  
19          *new subsection:*

20                 “(e)(1) *Not later than 2 years after the date of the en-*  
21                 *actment of this subsection, and every 2 years thereafter, the*  
22                 *Secretary shall submit to Congress a report with respect*  
23                 *to the administration of this title and areas of inconsistency*  
24                 *or conflict among the various provisions under law and reg-*  
25                 *ulation.*

1       “(2) *In preparing a report under paragraph (1), the*  
2 *Secretary shall collect—*

3               “(A) *information from individuals entitled to*  
4 *benefits under part A or enrolled under part B, or*  
5 *both, providers of services, and suppliers and from the*  
6 *Medicare Beneficiary Ombudsman and the Medicare*  
7 *Provider Ombudsman with respect to such areas of*  
8 *inconsistency and conflict; and*

9               “(B) *information from medicare contractors that*  
10 *tracks the nature of written and telephone inquiries.*

11       “(3) *A report under paragraph (1) shall include a de-*  
12 *scription of efforts by the Secretary to reduce such inconsist-*  
13 *ency or conflicts, and recommendations for legislation or*  
14 *administrative action that the Secretary determines appro-*  
15 *priate to further reduce such inconsistency or conflicts.”.*

16                               ***TITLE II—CONTRACTING***  
17   ***REFORM***

18       ***SEC. 201. INCREASED FLEXIBILITY IN MEDICARE ADMINIS-***  
19                               ***TRATION.***

20       ***(a) CONSOLIDATION AND FLEXIBILITY IN MEDICARE***  
21 ***ADMINISTRATION.—***

22               ***(1) IN GENERAL.—Title XVIII is amended by in-***  
23 ***serting after section 1874 the following new section:***

24               ***“CONTRACTS WITH MEDICARE ADMINISTRATIVE***  
25   ***CONTRACTORS***

26       ***“SEC. 1874A. (a) AUTHORITY.—***

1           “(1) *AUTHORITY TO ENTER INTO CONTRACTS.*—  
2           *The Secretary may enter into contracts with any eli-*  
3           *gible entity to serve as a medicare administrative*  
4           *contractor with respect to the performance of any or*  
5           *all of the functions described in paragraph (4) or*  
6           *parts of those functions (or, to the extent provided in*  
7           *a contract, to secure performance thereof by other en-*  
8           *tities).*

9           “(2) *ELIGIBILITY OF ENTITIES.*—*An entity is eli-*  
10          *gible to enter into a contract with respect to the per-*  
11          *formance of a particular function described in para-*  
12          *graph (4) only if—*

13                   “(A) *the entity has demonstrated capability*  
14                   *to carry out such function;*

15                   “(B) *the entity complies with such conflict*  
16                   *of interest standards as are generally applicable*  
17                   *to Federal acquisition and procurement;*

18                   “(C) *the entity has sufficient assets to fi-*  
19                   *nancially support the performance of such func-*  
20                   *tion; and*

21                   “(D) *the entity meets such other require-*  
22                   *ments as the Secretary may impose.*

23           “(3) *MEDICARE ADMINISTRATIVE CONTRACTOR*  
24          *DEFINED.*—*For purposes of this title and title XI—*

1           “(A) *IN GENERAL.*—*The term ‘medicare ad-*  
2           *ministrative contractor’ means an agency, orga-*  
3           *nization, or other person with a contract under*  
4           *this section.*

5           “(B) *APPROPRIATE MEDICARE ADMINISTRA-*  
6           *TIVE CONTRACTOR.*—*With respect to the perform-*  
7           *ance of a particular function in relation to an*  
8           *individual entitled to benefits under part A or*  
9           *enrolled under part B, or both, a specific pro-*  
10          *vider of services or supplier (or class of such pro-*  
11          *viders of services or suppliers), the ‘appropriate’*  
12          *medicare administrative contractor is the medi-*  
13          *care administrative contractor that has a con-*  
14          *tract under this section with respect to the per-*  
15          *formance of that function in relation to that in-*  
16          *dividual, provider of services or supplier or class*  
17          *of provider of services or supplier.*

18          “(4) *FUNCTIONS DESCRIBED.*—*The functions re-*  
19          *ferred to in paragraphs (1) and (2) are payment*  
20          *functions, provider services functions, and functions*  
21          *relating to services furnished to individuals entitled*  
22          *to benefits under part A or enrolled under part B, or*  
23          *both, as follows:*

24                 “(A) *DETERMINATION OF PAYMENT*  
25                 *AMOUNTS.*—*Determining (subject to the provi-*

1           sions of section 1878 and to such review by the  
2           Secretary as may be provided for by the con-  
3           tracts) the amount of the payments required pur-  
4           suant to this title to be made to providers of  
5           services, suppliers and individuals.

6           “(B) *MAKING PAYMENTS.*—Making pay-  
7           ments described in subparagraph (A) (including  
8           receipt, disbursement, and accounting for funds  
9           in making such payments).

10          “(C) *BENEFICIARY EDUCATION AND ASSIST-*  
11          *ANCE.*—Providing education and outreach to in-  
12          dividuals entitled to benefits under part A or en-  
13          rolled under part B, or both, and providing as-  
14          sistance to those individuals with specific issues,  
15          concerns or problems.

16          “(D) *PROVIDER CONSULTATIVE SERV-*  
17          *ICES.*—Providing consultative services to institu-  
18          tions, agencies, and other persons to enable them  
19          to establish and maintain fiscal records nec-  
20          essary for purposes of this title and otherwise to  
21          qualify as providers of services or suppliers.

22          “(E) *COMMUNICATION WITH PROVIDERS.*—  
23          Communicating to providers of services and sup-  
24          pliers any information or instructions furnished  
25          to the medicare administrative contractor by the

1           *Secretary, and facilitating communication be-*  
2           *tween such providers and suppliers and the Sec-*  
3           *retary.*

4           “(F) *PROVIDER EDUCATION AND TECHNICAL*  
5           *ASSISTANCE.—Performing the functions relating*  
6           *to provider education, training, and technical*  
7           *assistance.*

8           “(G) *ADDITIONAL FUNCTIONS.—Performing*  
9           *such other functions as are necessary to carry*  
10           *out the purposes of this title.*

11           “(5) *RELATIONSHIP TO MIP CONTRACTS.—*

12           “(A) *NONDUPLICATION OF DUTIES.—In en-*  
13           *tering into contracts under this section, the Sec-*  
14           *retary shall assure that functions of medicare*  
15           *administrative contractors in carrying out ac-*  
16           *tivities under parts A and B do not duplicate*  
17           *activities carried out under the Medicare Integ-*  
18           *rity Program under section 1893. The previous*  
19           *sentence shall not apply with respect to the ac-*  
20           *tivity described in section 1893(b)(5) (relating to*  
21           *prior authorization of certain items of durable*  
22           *medical equipment under section 1834(a)(15)).*

23           “(B) *CONSTRUCTION.—An entity shall not*  
24           *be treated as a medicare administrative con-*  
25           *tractor merely by reason of having entered into*

1           *a contract with the Secretary under section*  
2           *1893.*

3           “(6) *APPLICATION OF FEDERAL ACQUISITION*  
4           *REGULATION.—Except to the extent inconsistent with*  
5           *a specific requirement of this title, the Federal Acqui-*  
6           *sition Regulation applies to contracts under this title.*

7           “(b) *CONTRACTING REQUIREMENTS.—*

8           “(1) *USE OF COMPETITIVE PROCEDURES.—*

9           “(A) *IN GENERAL.—Except as provided in*  
10           *laws with general applicability to Federal acqui-*  
11           *sition and procurement or in subparagraph (B),*  
12           *the Secretary shall use competitive procedures*  
13           *when entering into contracts with medicare ad-*  
14           *ministrative contractors under this section, tak-*  
15           *ing into account performance quality as well as*  
16           *price and other factors.*

17           “(B) *RENEWAL OF CONTRACTS.—The Sec-*  
18           *retary may renew a contract with a medicare*  
19           *administrative contractor under this section*  
20           *from term to term without regard to section 5 of*  
21           *title 41, United States Code, or any other provi-*  
22           *sion of law requiring competition, if the medi-*  
23           *care administrative contractor has met or ex-*  
24           *ceeded the performance requirements applicable*  
25           *with respect to the contract and contractor, ex-*

1           *cept that the Secretary shall provide for the ap-*  
2           *plication of competitive procedures under such a*  
3           *contract not less frequently than once every five*  
4           *years.*

5           “(C) *TRANSFER OF FUNCTIONS.*—*The Sec-*  
6           *retary may transfer functions among medicare*  
7           *administrative contractors consistent with the*  
8           *provisions of this paragraph. The Secretary shall*  
9           *ensure that performance quality is considered in*  
10          *such transfers. The Secretary shall provide pub-*  
11          *lic notice (whether in the Federal Register or*  
12          *otherwise) of any such transfer (including a de-*  
13          *scription of the functions so transferred, a de-*  
14          *scription of the providers of services and sup-*  
15          *pliers affected by such transfer, and contact in-*  
16          *formation for the contractors involved).*

17          “(D) *INCENTIVES FOR QUALITY.*—*The Sec-*  
18          *retary shall provide incentives for medicare ad-*  
19          *ministrative contractors to provide quality serv-*  
20          *ice and to promote efficiency.*

21          “(2) *COMPLIANCE WITH REQUIREMENTS.*—*No*  
22          *contract under this section shall be entered into with*  
23          *any medicare administrative contractor unless the*  
24          *Secretary finds that such medicare administrative*  
25          *contractor will perform its obligations under the con-*

1 *tract efficiently and effectively and will meet such re-*  
2 *quirements as to financial responsibility, legal au-*  
3 *thority, quality of services provided, and other mat-*  
4 *ters as the Secretary finds pertinent.*

5 *“(3) PERFORMANCE REQUIREMENTS.—*

6 *“(A) DEVELOPMENT OF SPECIFIC PERFORM-*  
7 *ANCE REQUIREMENTS.—In developing contract*  
8 *performance requirements, the Secretary shall*  
9 *develop performance requirements applicable to*  
10 *functions described in subsection (a)(4).*

11 *“(B) CONSULTATION.—In developing such*  
12 *requirements, the Secretary may consult with*  
13 *providers of services and suppliers, organizations*  
14 *representing individuals entitled to benefits*  
15 *under part A or enrolled under part B, or both,*  
16 *and organizations and agencies performing func-*  
17 *tions necessary to carry out the purposes of this*  
18 *section with respect to such performance require-*  
19 *ments.*

20 *“(C) INCLUSION IN CONTRACTS.—All con-*  
21 *tractor performance requirements shall be set*  
22 *forth in the contract between the Secretary and*  
23 *the appropriate medicare administrative con-*  
24 *tractor. Such performance requirements—*

1           “(i) shall reflect the performance re-  
2           quirements developed under subparagraph  
3           (A), but may include additional perform-  
4           ance requirements;

5           “(ii) shall be used for evaluating con-  
6           tractor performance under the contract; and

7           “(iii) shall be consistent with the writ-  
8           ten statement of work provided under the  
9           contract.

10           “(4) *INFORMATION REQUIREMENTS.*—The Sec-  
11           retary shall not enter into a contract with a medicare  
12           administrative contractor under this section unless  
13           the contractor agrees—

14           “(A) to furnish to the Secretary such timely  
15           information and reports as the Secretary may  
16           find necessary in performing his functions under  
17           this title; and

18           “(B) to maintain such records and afford  
19           such access thereto as the Secretary finds nec-  
20           essary to assure the correctness and verification  
21           of the information and reports under subpara-  
22           graph (A) and otherwise to carry out the pur-  
23           poses of this title.

24           “(5) *SURETY BOND.*—A contract with a medi-  
25           care administrative contractor under this section may

1       *require the medicare administrative contractor, and*  
2       *any of its officers or employees certifying payments or*  
3       *disbursing funds pursuant to the contract, or other-*  
4       *wise participating in carrying out the contract, to*  
5       *give surety bond to the United States in such amount*  
6       *as the Secretary may deem appropriate.*

7       “(c) *TERMS AND CONDITIONS.*—

8               “(1) *IN GENERAL.*—*A contract with any medi-*  
9       *care administrative contractor under this section may*  
10       *contain such terms and conditions as the Secretary*  
11       *finds necessary or appropriate and may provide for*  
12       *advances of funds to the medicare administrative con-*  
13       *tractor for the making of payments by it under sub-*  
14       *section (a)(4)(B).*

15               “(2) *PROHIBITION ON MANDATES FOR CERTAIN*  
16       *DATA COLLECTION.*—*The Secretary may not require,*  
17       *as a condition of entering into, or renewing, a con-*  
18       *tract under this section, that the medicare adminis-*  
19       *trative contractor match data obtained other than in*  
20       *its activities under this title with data used in the ad-*  
21       *ministration of this title for purposes of identifying*  
22       *situations in which the provisions of section 1862(b)*  
23       *may apply.*

24               “(d) *LIMITATION ON LIABILITY OF MEDICARE ADMIN-*  
25       *ISTRATIVE CONTRACTORS AND CERTAIN OFFICERS.*—

1           “(1) *CERTIFYING OFFICER.*—No individual des-  
2           ignated pursuant to a contract under this section as  
3           a certifying officer shall, in the absence of the reckless  
4           disregard of the individual’s obligations or the intent  
5           by that individual to defraud the United States, be  
6           liable with respect to any payments certified by the  
7           individual under this section.

8           “(2) *DISBURSING OFFICER.*—No disbursing offi-  
9           cer shall, in the absence of the reckless disregard of the  
10          officer’s obligations or the intent by that officer to de-  
11          fraud the United States, be liable with respect to any  
12          payment by such officer under this section if it was  
13          based upon an authorization (which meets the appli-  
14          cable requirements for such internal controls estab-  
15          lished by the Comptroller General) of a certifying offi-  
16          cer designated as provided in paragraph (1) of this  
17          subsection.

18          “(3) *LIABILITY OF MEDICARE ADMINISTRATIVE*  
19          *CONTRACTOR.*—

20                 “(A) *IN GENERAL.*—No medicare adminis-  
21                 trative contractor shall be liable to the United  
22                 States for a payment by a certifying or dis-  
23                 bursing officer unless, in connection with such  
24                 payment, the medicare administrative contractor  
25                 acted with reckless disregard of its obligations

1           *under its medicare administrative contract or*  
2           *with intent to defraud the United States.*

3           “(B) *RELATIONSHIP TO FALSE CLAIMS*  
4           *ACT.—Nothing in this subsection shall be con-*  
5           *strued to limit liability for conduct that would*  
6           *constitute a violation of sections 3729 through*  
7           *3731 of title 31, United States Code (commonly*  
8           *known as the ‘False Claims Act’).*

9           “(4) *INDEMNIFICATION BY SECRETARY.—*

10           “(A) *IN GENERAL.—Subject to subpara-*  
11           *graphs (B) and (D), in the case of a medicare*  
12           *administrative contractor (or a person who is a*  
13           *director, officer, or employee of such a contractor*  
14           *or who is engaged by the contractor to partici-*  
15           *pate directly in the claims administration proc-*  
16           *ess) who is made a party to any judicial or ad-*  
17           *ministrative proceeding arising from or relating*  
18           *directly to the claims administration process*  
19           *under this title, the Secretary may, to the extent*  
20           *the Secretary determines to be appropriate and*  
21           *as specified in the contract with the contractor,*  
22           *indemnify the contractor and such persons.*

23           “(B) *CONDITIONS.—The Secretary may not*  
24           *provide indemnification under subparagraph (A)*  
25           *insofar as the liability for such costs arises di-*

1           rectly from conduct that is determined by the ju-  
2           dicial proceeding or by the Secretary to be crimi-  
3           nal in nature, fraudulent, or grossly negligent. If  
4           indemnification is provided by the Secretary  
5           with respect to a contractor before a determina-  
6           tion that such costs arose directly from such con-  
7           duct, the contractor shall reimburse the Secretary  
8           for costs of indemnification.

9           “(C) *SCOPE OF INDEMNIFICATION.*—Indem-  
10          nification by the Secretary under subparagraph  
11          (A) may include payment of judgments, settle-  
12          ments (subject to subparagraph (D)), awards,  
13          and costs (including reasonable legal expenses).

14          “(D) *WRITTEN APPROVAL FOR SETTLE-*  
15          *MENTS.*—A contractor or other person described  
16          in subparagraph (A) may not propose to nego-  
17          tiate a settlement or compromise of a proceeding  
18          described in such subparagraph without the  
19          prior written approval of the Secretary to nego-  
20          tiate such settlement or compromise. Any indem-  
21          nification under subparagraph (A) with respect  
22          to amounts paid under a settlement or com-  
23          promise of a proceeding described in such sub-  
24          paragraph are conditioned upon prior written

1 approval by the Secretary of the final settlement  
2 or compromise.

3 “(E) CONSTRUCTION.—Nothing in this  
4 paragraph shall be construed—

5 “(i) to change any common law immu-  
6 nity that may be available to a medicare  
7 administrative contractor or person de-  
8 scribed in subparagraph (A); or

9 “(ii) to permit the payment of costs  
10 not otherwise allowable, reasonable, or allo-  
11 cable under the Federal Acquisition Regula-  
12 tions.”.

13 (2) CONSIDERATION OF INCORPORATION OF CUR-  
14 RENT LAW STANDARDS.—In developing contract per-  
15 formance requirements under section 1874A(b) of the  
16 Social Security Act, as inserted by paragraph (1), the  
17 Secretary shall consider inclusion of the performance  
18 standards described in sections 1816(f)(2) of such Act  
19 (relating to timely processing of reconsiderations and  
20 applications for exemptions) and section  
21 1842(b)(2)(B) of such Act (relating to timely review  
22 of determinations and fair hearing requests), as such  
23 sections were in effect before the date of the enactment  
24 of this Act.

1           (b) *CONFORMING AMENDMENTS TO SECTION 1816 (RE-*  
2 *LATING TO FISCAL INTERMEDIARIES).*—*Section 1816 (42*  
3 *U.S.C. 1395h) is amended as follows:*

4           (1) *The heading is amended to read as follows:*  
5 *“PROVISIONS RELATING TO THE ADMINISTRATION OF PART*  
6 *A”.*

7           (2) *Subsection (a) is amended to read as follows:*  
8 *“(a) The administration of this part shall be conducted*  
9 *through contracts with medicare administrative contractors*  
10 *under section 1874A.”.*

11           (3) *Subsection (b) is repealed.*

12           (4) *Subsection (c) is amended—*

13                 (A) *by striking paragraph (1); and*

14                 (B) *in each of paragraphs (2)(A) and*  
15 *(3)(A), by striking “agreement under this sec-*  
16 *tion” and inserting “contract under section*  
17 *1874A that provides for making payments under*  
18 *this part”.*

19           (5) *Subsections (d) through (i) are repealed.*

20           (6) *Subsections (j) and (k) are each amended—*

21                 (A) *by striking “An agreement with an*  
22 *agency or organization under this section” and*  
23 *inserting “A contract with a medicare adminis-*  
24 *trative contractor under section 1874A with re-*  
25 *spect to the administration of this part”; and*



1           (i) in the matter before subparagraph  
2           (A), by striking “Each such contract shall  
3           provide that the carrier” and inserting  
4           “*The Secretary*”;

5           (ii) by striking “will” the first place it  
6           appears in each of subparagraphs (A), (B),  
7           (F), (G), (H), and (L) and inserting  
8           “shall”;

9           (iii) in subparagraph (B), in the mat-  
10          ter before clause (i), by striking “to the pol-  
11          icyholders and subscribers of the carrier”  
12          and inserting “to the policyholders and sub-  
13          scribers of the medicare administrative con-  
14          tractor”;

15          (iv) by striking subparagraphs (C),  
16          (D), and (E);

17          (v) in subparagraph (H)—

18               (I) by striking “if it makes deter-  
19               minations or payments with respect to  
20               physicians’ services,” in the matter  
21               preceding clause (i); and

22               (II) by striking “carrier” and in-  
23               serting “medicare administrative con-  
24               tractor” in clause (i);

25          (vi) by striking subparagraph (I);

1                   (vii) in subparagraph (L), by striking  
2                   the semicolon and inserting a period;

3                   (viii) in the first sentence, after sub-  
4                   paragraph (L), by striking “and shall con-  
5                   tain” and all that follows through the pe-  
6                   riod; and

7                   (ix) in the seventh sentence, by insert-  
8                   ing “medicare administrative contractor,”  
9                   after “carrier,”; and

10                  (D) by striking paragraph (5);

11                  (E) in paragraph (6)(D)(iv), by striking  
12                  “carrier” and inserting “medicare administra-  
13                  tive contractor”; and

14                  (F) in paragraph (7), by striking “the car-  
15                  rier” and inserting “the Secretary” each place it  
16                  appears.

17                  (4) Subsection (c) is amended—

18                         (A) by striking paragraph (1);

19                         (B) in paragraph (2)(A), by striking “con-  
20                         tract under this section which provides for the  
21                         disbursement of funds, as described in subsection  
22                         (a)(1)(B),” and inserting “contract under section  
23                         1874A that provides for making payments under  
24                         this part”;

1           (C) in paragraph (3)(A), by striking “sub-  
2           section (a)(1)(B)” and inserting “section  
3           1874A(a)(3)(B)”;

4           (D) in paragraph (4), in the matter pre-  
5           ceding subparagraph (A), by striking “carrier”  
6           and inserting “medicare administrative con-  
7           tractor”; and

8           (E) by striking paragraphs (5) and (6).

9           (5) Subsections (d), (e), and (f) are repealed.

10          (6) Subsection (g) is amended by striking “car-  
11          rier or carriers” and inserting “medicare administra-  
12          tive contractor or contractors”.

13          (7) Subsection (h) is amended—

14           (A) in paragraph (2)—

15           (i) by striking “Each carrier having  
16           an agreement with the Secretary under sub-  
17           section (a)” and inserting “The Secretary”;  
18           and

19           (ii) by striking “Each such carrier”  
20           and inserting “The Secretary”;

21           (B) in paragraph (3)(A)—

22           (i) by striking “a carrier having an  
23           agreement with the Secretary under sub-  
24           section (a)” and inserting “medicare ad-  
25           ministrative contractor having a contract

1                   under section 1874A that provides for mak-  
2                   ing payments under this part”; and

3                   (ii) by striking “such carrier” and in-  
4                   serting “such contractor”;

5                   (C) in paragraph (3)(B)—

6                   (i) by striking “a carrier” and insert-  
7                   ing “a medicare administrative contractor”  
8                   each place it appears; and

9                   (ii) by striking “the carrier” and in-  
10                  serting “the contractor” each place it ap-  
11                  pears; and

12                  (D) in paragraphs (5)(A) and (5)(B)(iii),  
13                  by striking “carriers” and inserting “medicare  
14                  administrative contractors” each place it ap-  
15                  pears.

16                  (8) Subsection (l) is amended—

17                  (A) in paragraph (1)(A)(iii), by striking  
18                  “carrier” and inserting “medicare administra-  
19                  tive contractor”; and

20                  (B) in paragraph (2), by striking “carrier”  
21                  and inserting “medicare administrative con-  
22                  tractor”.

23                  (9) Subsection (p)(3)(A) is amended by striking  
24                  “carrier” and inserting “medicare administrative  
25                  contractor”.

1           (10) Subsection (q)(1)(A) is amended by striking  
2           “carrier”.

3           (d) *EFFECTIVE DATE; TRANSITION RULE.*—

4                 (1) *EFFECTIVE DATE.*—

5                     (A) *IN GENERAL.*—*Except as otherwise pro-*  
6                     *vided in this subsection, the amendments made*  
7                     *by this section shall take effect on October 1,*  
8                     *2005, and the Secretary is authorized to take*  
9                     *such steps before such date as may be necessary*  
10                    *to implement such amendments on a timely*  
11                    *basis.*

12                    (B) *CONSTRUCTION FOR CURRENT CON-*  
13                    *TRACTS.*—*Such amendments shall not apply to*  
14                    *contracts in effect before the date specified under*  
15                    *subparagraph (A) that continue to retain the*  
16                    *terms and conditions in effect on such date (ex-*  
17                    *cept as otherwise provided under this Act, other*  
18                    *than under this section) until such date as the*  
19                    *contract is let out for competitive bidding under*  
20                    *such amendments.*

21                    (C) *DEADLINE FOR COMPETITIVE BID-*  
22                    *DING.*—*The Secretary shall provide for the let-*  
23                    *ting by competitive bidding of all contracts for*  
24                    *functions of medicare administrative contractors*

1           *for annual contract periods that begin on or*  
2           *after October 1, 2010.*

3                   (D) *WAIVER OF PROVIDER NOMINATION*  
4           *PROVISIONS DURING TRANSITION.—During the*  
5           *period beginning on the date of the enactment of*  
6           *this Act and before the date specified under sub-*  
7           *paragraph (A), the Secretary may enter into*  
8           *new agreements under section 1816 of the Social*  
9           *Security Act (42 U.S.C. 1395h) without regard*  
10          *to any of the provider nomination provisions of*  
11          *such section.*

12                   (2) *GENERAL TRANSITION RULES.—The Sec-*  
13          *retary shall take such steps, consistent with para-*  
14          *graph (1)(B) and (1)(C), as are necessary to provide*  
15          *for an appropriate transition from contracts under*  
16          *section 1816 and section 1842 of the Social Security*  
17          *Act (42 U.S.C. 1395h, 1395u) to contracts under sec-*  
18          *tion 1874A, as added by subsection (a)(1).*

19                   (3) *AUTHORIZING CONTINUATION OF MIP FUNC-*  
20          *TIONS UNDER CURRENT CONTRACTS AND AGREE-*  
21          *MENTS AND UNDER ROLLOVER CONTRACTS.—The pro-*  
22          *visions contained in the exception in section*  
23          *1893(d)(2) of the Social Security Act (42 U.S.C.*  
24          *1395ddd(d)(2)) shall continue to apply notwith-*  
25          *standing the amendments made by this section, and*

1        *any reference in such provisions to an agreement or*  
2        *contract shall be deemed to include a contract under*  
3        *section 1874A of such Act, as inserted by subsection*  
4        *(a)(1), that continues the activities referred to in such*  
5        *provisions.*

6        *(e) REFERENCES.—On and after the effective date pro-*  
7        *vided under subsection (d)(1), any reference to a fiscal*  
8        *intermediary or carrier under title XI or XVIII of the So-*  
9        *cial Security Act (or any regulation, manual instruction,*  
10       *interpretative rule, statement of policy, or guideline issued*  
11       *to carry out such titles) shall be deemed a reference to an*  
12       *appropriate medicare administrative contractor (as pro-*  
13       *vided under section 1874A of the Social Security Act).*

14       *(f) REPORTS ON IMPLEMENTATION.—*

15                *(1) PLAN FOR IMPLEMENTATION.—By not later*  
16        *than October 1, 2004, the Secretary shall submit a re-*  
17        *port to Congress and the Comptroller General of the*  
18        *United States that describes the plan for implementa-*  
19        *tion of the amendments made by this section. The*  
20        *Comptroller General shall conduct an evaluation of*  
21        *such plan and shall submit to Congress, not later*  
22        *than 6 months after the date the report is received, a*  
23        *report on such evaluation and shall include in such*  
24        *report such recommendations as the Comptroller Gen-*  
25        *eral deems appropriate.*

1           (2) *STATUS OF IMPLEMENTATION.*—*The Sec-*  
 2           *retary shall submit a report to Congress not later*  
 3           *than October 1, 2008, that describes the status of im-*  
 4           *plementation of such amendments and that includes*  
 5           *a description of the following:*

6                   (A) *The number of contracts that have been*  
 7                   *competitively bid as of such date.*

8                   (B) *The distribution of functions among*  
 9                   *contracts and contractors.*

10                  (C) *A timeline for complete transition to*  
 11                  *full competition.*

12                  (D) *A detailed description of how the Sec-*  
 13                  *retary has modified oversight and management*  
 14                  *of medicare contractors to adapt to full competi-*  
 15                  *tion.*

16 ***SEC. 202. REQUIREMENTS FOR INFORMATION SECURITY***  
 17 ***FOR MEDICARE ADMINISTRATIVE CONTRAC-***  
 18 ***TORS.***

19           (a) *IN GENERAL.*—*Section 1874A, as added by section*  
 20 *201(a)(1), is amended by adding at the end the following*  
 21 *new subsection:*

22                   “(e) *REQUIREMENTS FOR INFORMATION SECURITY.*—

23                   “(1) *DEVELOPMENT OF INFORMATION SECURITY*  
 24                   *PROGRAM.*—*A medicare administrative contractor*  
 25                   *that performs the functions referred to in subpara-*

1 *graphs (A) and (B) of subsection (a)(4) (relating to*  
2 *determining and making payments) shall implement*  
3 *a contractor-wide information security program to*  
4 *provide information security for the operation and*  
5 *assets of the contractor with respect to such functions*  
6 *under this title. An information security program*  
7 *under this paragraph shall meet the requirements for*  
8 *information security programs imposed on Federal*  
9 *agencies under paragraphs (1) through (8) of section*  
10 *3544(b) of title 44, United States Code (other than re-*  
11 *quirements under paragraphs (2)(D)(i), (5)(A), and*  
12 *(5)(B) of such section).*

13 *“(2) INDEPENDENT AUDITS.—*

14 *“(A) PERFORMANCE OF ANNUAL EVALUA-*  
15 *TIONS.—Each year a medicare administrative*  
16 *contractor that performs the functions referred to*  
17 *in subparagraphs (A) and (B) of subsection*  
18 *(a)(4) (relating to determining and making pay-*  
19 *ments) shall undergo an evaluation of the infor-*  
20 *mation security of the contractor with respect to*  
21 *such functions under this title. The evaluation*  
22 *shall—*

23 *“(i) be performed by an entity that*  
24 *meets such requirements for independence as*  
25 *the Inspector General of the Department of*

1           *Health and Human Services may establish;*  
2           *and*

3           “(ii) *test the effectiveness of informa-*  
4           *tion security policies, procedures, and prac-*  
5           *tices of a representative subset of the con-*  
6           *tractor’s information systems (as defined in*  
7           *section 3502(8) of title 44, United States*  
8           *Code) relating to such functions under this*  
9           *title and an assessment of compliance with*  
10           *the requirements of this subsection and re-*  
11           *lated information security policies, proce-*  
12           *dures, standards and guidelines, including*  
13           *policies and procedures as may be pre-*  
14           *scribed by the Director of the Office of Man-*  
15           *agement and Budget and applicable infor-*  
16           *mation security standards promulgated*  
17           *under section 11331 of title 40, United*  
18           *States Code.*

19           “(B) *DEADLINE FOR INITIAL EVALUA-*  
20           *TION.—*

21           “(i) *NEW CONTRACTORS.—In the case*  
22           *of a medicare administrative contractor*  
23           *covered by this subsection that has not pre-*  
24           *viously performed the functions referred to*  
25           *in subparagraphs (A) and (B) of subsection*

1           (a)(4) (relating to determining and making  
2           payments) as a fiscal intermediary or car-  
3           rier under section 1816 or 1842, the first  
4           independent evaluation conducted pursuant  
5           subparagraph (A) shall be completed prior  
6           to commencing such functions.

7           “(i) OTHER CONTRACTORS.—In the  
8           case of a medicare administrative con-  
9           tractor covered by this subsection that is not  
10          described in clause (i), the first independent  
11          evaluation conducted pursuant subpara-  
12          graph (A) shall be completed within 1 year  
13          after the date the contractor commences  
14          functions referred to in clause (i) under this  
15          section.

16          “(C) REPORTS ON EVALUATIONS.—

17                 “(i) TO THE DEPARTMENT OF HEALTH  
18                 AND HUMAN SERVICES.—The results of  
19                 independent evaluations under subpara-  
20                 graph (A) shall be submitted promptly to  
21                 the Inspector General of the Department of  
22                 Health and Human Services and to the Sec-  
23                 retary.

24                 “(ii) TO CONGRESS.—The Inspector  
25                 General of Department of Health and

1            *Human Services shall submit to Congress*  
2            *annual reports on the results of such eval-*  
3            *uations, including assessments of the scope*  
4            *and sufficiency of such evaluations.*

5            *“(iii) AGENCY REPORTING.—The Sec-*  
6            *retary shall address the results of such eval-*  
7            *uations in reports required under section*  
8            *3544(c) of title 44, United States Code.”.*

9            *(b) APPLICATION OF REQUIREMENTS TO FISCAL*  
10          *INTERMEDIARIES AND CARRIERS.—*

11            *(1) IN GENERAL.—The provisions of section*  
12            *1874A(e)(2) of the Social Security Act (other than*  
13            *subparagraph (B)), as added by subsection (a), shall*  
14            *apply to each fiscal intermediary under section 1816*  
15            *of the Social Security Act (42 U.S.C. 1395h) and*  
16            *each carrier under section 1842 of such Act (42*  
17            *U.S.C. 1395u) in the same manner as they apply to*  
18            *medicare administrative contractors under such pro-*  
19            *visions.*

20            *(2) DEADLINE FOR INITIAL EVALUATION.—In the*  
21            *case of such a fiscal intermediary or carrier with an*  
22            *agreement or contract under such respective section in*  
23            *effect as of the date of the enactment of this Act, the*  
24            *first evaluation under section 1874A(e)(2)(A) of the*  
25            *Social Security Act (as added by subsection (a)), pur-*

1        *suant to paragraph (1), shall be completed (and a re-*  
 2        *port on the evaluation submitted to the Secretary) by*  
 3        *not later than 1 year after such date.*

4        ***TITLE III—EDUCATION AND***  
 5        ***OUTREACH***

6        ***SEC. 301. PROVIDER EDUCATION AND TECHNICAL ASSIST-***  
 7        ***ANCE.***

8        *(a) COORDINATION OF EDUCATION FUNDING.—*

9            *(1) IN GENERAL.—The Social Security Act is*  
 10        *amended by inserting after section 1888 the following*  
 11        *new section:*

12        *“PROVIDER EDUCATION AND TECHNICAL ASSISTANCE*

13        *“SEC. 1889. (a) COORDINATION OF EDUCATION FUND-*  
 14        *ING.—The Secretary shall coordinate the educational activi-*  
 15        *ties provided through medicare contractors (as defined in*  
 16        *subsection (g), including under section 1893) in order to*  
 17        *maximize the effectiveness of Federal education efforts for*  
 18        *providers of services and suppliers.”.*

19            *(2) EFFECTIVE DATE.—The amendment made by*  
 20        *paragraph (1) shall take effect on the date of the en-*  
 21        *actment of this Act.*

22            *(3) REPORT.—Not later than October 1, 2004,*  
 23        *the Secretary shall submit to Congress a report that*  
 24        *includes a description and evaluation of the steps*  
 25        *taken to coordinate the funding of provider education*

1        *under section 1889(a) of the Social Security Act, as*  
2        *added by paragraph (1).*

3        *(b) INCENTIVES TO IMPROVE CONTRACTOR PERFORM-*  
4        *ANCE.—*

5                *(1) IN GENERAL.—Section 1874A, as added by*  
6        *section 201(a)(1) and as amended by section 202(a),*  
7        *is amended by adding at the end the following new*  
8        *subsection:*

9                *“(f) INCENTIVES TO IMPROVE CONTRACTOR PERFORM-*  
10        *ANCE IN PROVIDER EDUCATION AND OUTREACH.—The Sec-*  
11        *retary shall use specific claims payment error rates or simi-*  
12        *lar methodology of medicare administrative contractors in*  
13        *the processing or reviewing of medicare claims in order to*  
14        *give such contractors an incentive to implement effective*  
15        *education and outreach programs for providers of services*  
16        *and suppliers.”.*

17                *(2) APPLICATION TO FISCAL INTERMEDIARIES*  
18        *AND CARRIERS.—The provisions of section 1874A(f) of*  
19        *the Social Security Act, as added by paragraph (1),*  
20        *shall apply to each fiscal intermediary under section*  
21        *1816 of the Social Security Act (42 U.S.C. 1395h)*  
22        *and each carrier under section 1842 of such Act (42*  
23        *U.S.C. 1395u) in the same manner as they apply to*  
24        *medicare administrative contractors under such pro-*  
25        *visions.*

1           (3) *GAO REPORT ON ADEQUACY OF METHOD-*  
2           *LOGY.—Not later than October 1, 2004, the Comp-*  
3           *troller General of the United States shall submit to*  
4           *Congress and to the Secretary a report on the ade-*  
5           *quacy of the methodology under section 1874A(f) of*  
6           *the Social Security Act, as added by paragraph (1),*  
7           *and shall include in the report such recommendations*  
8           *as the Comptroller General determines appropriate*  
9           *with respect to the methodology.*

10           (4) *REPORT ON USE OF METHODOLOGY IN AS-*  
11           *SESSING CONTRACTOR PERFORMANCE.—Not later*  
12           *than October 1, 2004, the Secretary shall submit to*  
13           *Congress a report that describes how the Secretary in-*  
14           *tends to use such methodology in assessing medicare*  
15           *contractor performance in implementing effective edu-*  
16           *cation and outreach programs, including whether to*  
17           *use such methodology as a basis for performance bo-*  
18           *nuses. The report shall include an analysis of the*  
19           *sources of identified errors and potential changes in*  
20           *systems of contractors and rules of the Secretary that*  
21           *could reduce claims error rates.*

22           (c) *PROVISION OF ACCESS TO AND PROMPT RE-*  
23           *SPONSES FROM MEDICARE ADMINISTRATIVE CONTRAC-*  
24           *TORS.—*

1           (1) *IN GENERAL.*—Section 1874A, as added by  
2           section 201(a)(1) and as amended by section 202(a)  
3           and subsection (b), is further amended by adding at  
4           the end the following new subsection:

5           “(g) *COMMUNICATIONS WITH BENEFICIARIES, PRO-*  
6           *VIDERS OF SERVICES AND SUPPLIERS.*—

7           “(1) *COMMUNICATION STRATEGY.*—The Secretary  
8           shall develop a strategy for communications with in-  
9           dividuals entitled to benefits under part A or enrolled  
10          under part B, or both, and with providers of services  
11          and suppliers under this title.

12          “(2) *RESPONSE TO WRITTEN INQUIRIES.*—Each  
13          medicare administrative contractor shall, for those  
14          providers of services and suppliers which submit  
15          claims to the contractor for claims processing and for  
16          those individuals entitled to benefits under part A or  
17          enrolled under part B, or both, with respect to whom  
18          claims are submitted for claims processing, provide  
19          general written responses (which may be through elec-  
20          tronic transmission) in a clear, concise, and accurate  
21          manner to inquiries of providers of services, suppliers  
22          and individuals entitled to benefits under part A or  
23          enrolled under part B, or both, concerning the pro-  
24          grams under this title within 45 business days of the  
25          date of receipt of such inquiries.

1           “(3) *RESPONSE TO TOLL-FREE LINES.*—*The Sec-*  
2           *retary shall ensure that each medicare administrative*  
3           *contractor shall provide, for those providers of services*  
4           *and suppliers which submit claims to the contractor*  
5           *for claims processing and for those individuals enti-*  
6           *tled to benefits under part A or enrolled under part*  
7           *B, or both, with respect to whom claims are submitted*  
8           *for claims processing, a toll-free telephone number at*  
9           *which such individuals, providers of services and sup-*  
10           *pliers may obtain information regarding billing, cod-*  
11           *ing, claims, coverage, and other appropriate informa-*  
12           *tion under this title.*

13           “(4) *MONITORING OF CONTRACTOR RE-*  
14           *SPONSES.*—

15           “(A) *IN GENERAL.*—*Each medicare admin-*  
16           *istrative contractor shall, consistent with stand-*  
17           *ards developed by the Secretary under subpara-*  
18           *graph (B)—*

19                   “(i) *maintain a system for identifying*  
20                   *who provides the information referred to in*  
21                   *paragraphs (2) and (3); and*

22                   “(ii) *monitor the accuracy, consist-*  
23                   *ency, and timeliness of the information so*  
24                   *provided.*

25           “(B) *DEVELOPMENT OF STANDARDS.*—

1           “(i) *IN GENERAL.*—*The Secretary shall*  
2           *establish and make public standards to*  
3           *monitor the accuracy, consistency, and*  
4           *timeliness of the information provided in*  
5           *response to written and telephone inquiries*  
6           *under this subsection. Such standards shall*  
7           *be consistent with the performance require-*  
8           *ments established under subsection (b)(3).*

9           “(ii) *EVALUATION.*—*In conducting*  
10          *evaluations of individual medicare admin-*  
11          *istrative contractors, the Secretary shall*  
12          *take into account the results of the moni-*  
13          *toring conducted under subparagraph (A)*  
14          *taking into account as performance require-*  
15          *ments the standards established under*  
16          *clause (i). The Secretary shall, in consulta-*  
17          *tion with organizations representing pro-*  
18          *viders of services, suppliers, and individuals*  
19          *entitled to benefits under part A or enrolled*  
20          *under part B, or both, establish standards*  
21          *relating to the accuracy, consistency, and*  
22          *timeliness of the information so provided.*

23          “(C) *DIRECT MONITORING.*—*Nothing in this*  
24          *paragraph shall be construed as preventing the*  
25          *Secretary from directly monitoring the accuracy,*

1           *consistency, and timeliness of the information so*  
2           *provided.”.*

3           (2) *EFFECTIVE DATE.*—*The amendment made by*  
4           *paragraph (1) shall take effect October 1, 2004.*

5           (3) *APPLICATION TO FISCAL INTERMEDIARIES*  
6           *AND CARRIERS.*—*The provisions of section 1874A(g)*  
7           *of the Social Security Act, as added by paragraph*  
8           *(1), shall apply to each fiscal intermediary under sec-*  
9           *tion 1816 of the Social Security Act (42 U.S.C.*  
10           *1395h) and each carrier under section 1842 of such*  
11           *Act (42 U.S.C. 1395u) in the same manner as they*  
12           *apply to medicare administrative contractors under*  
13           *such provisions.*

14           (d) *IMPROVED PROVIDER EDUCATION AND TRAIN-*  
15           *ING.*—

16           (1) *IN GENERAL.*—*Section 1889, as added by*  
17           *subsection (a), is amended by adding at the end the*  
18           *following new subsections:*

19           “(b) *ENHANCED EDUCATION AND TRAINING.*—

20           “(1) *ADDITIONAL RESOURCES.*—*There are au-*  
21           *thorized to be appropriated to the Secretary (in ap-*  
22           *propriate part from the Federal Hospital Insurance*  
23           *Trust Fund and the Federal Supplementary Medical*  
24           *Insurance Trust Fund) \$25,000,000 for each of fiscal*

1        *years 2005 and 2006 and such sums as may be nec-*  
2        *essary for succeeding fiscal years.*

3            *“(2) USE.—The funds made available under*  
4        *paragraph (1) shall be used to increase the conduct by*  
5        *medicare contractors of education and training of*  
6        *providers of services and suppliers regarding billing,*  
7        *coding, and other appropriate items and may also be*  
8        *used to improve the accuracy, consistency, and timeli-*  
9        *ness of contractor responses.*

10        *“(c) TAILORING EDUCATION AND TRAINING ACTIVI-*  
11        *TIES FOR SMALL PROVIDERS OR SUPPLIERS.—*

12            *“(1) IN GENERAL.—Insofar as a medicare con-*  
13        *tractor conducts education and training activities, it*  
14        *shall tailor such activities to meet the special needs*  
15        *of small providers of services or suppliers (as defined*  
16        *in paragraph (2)).*

17            *“(2) SMALL PROVIDER OF SERVICES OR SUP-*  
18        *PLIER.—In this subsection, the term ‘small provider*  
19        *of services or supplier’ means—*

20            *“(A) a provider of services with fewer than*  
21        *25 full-time-equivalent employees; or*

22            *“(B) a supplier with fewer than 10 full-*  
23        *time-equivalent employees.”.*

24            *(2) EFFECTIVE DATE.—The amendment made by*  
25        *paragraph (1) shall take effect on October 1, 2004.*

1       (e) *REQUIREMENT TO MAINTAIN INTERNET SITES.*—

2             (1) *IN GENERAL.*—Section 1889, as added by  
3       subsection (a) and as amended by subsection (d), is  
4       further amended by adding at the end the following  
5       new subsection:

6       “(d) *INTERNET SITES; FAQs.*—The Secretary, and  
7       each medicare contractor insofar as it provides services (in-  
8       cluding claims processing) for providers of services or sup-  
9       pliers, shall maintain an Internet site which—

10            “(1) provides answers in an easily accessible for-  
11           mat to frequently asked questions, and

12            “(2) includes other published materials of the  
13           contractor,

14       that relate to providers of services and suppliers under the  
15       programs under this title (and title XI insofar as it relates  
16       to such programs).”.

17            (2) *EFFECTIVE DATE.*—The amendment made by  
18       paragraph (1) shall take effect on October 1, 2004.

19       (f) *ADDITIONAL PROVIDER EDUCATION PROVISIONS.*—

20            (1) *IN GENERAL.*—Section 1889, as added by  
21       subsection (a) and as amended by subsections (d) and  
22       (e), is further amended by adding at the end the fol-  
23       lowing new subsections:

24       “(e) *ENCOURAGEMENT OF PARTICIPATION IN EDU-*  
25       *CATION PROGRAM ACTIVITIES.*—A medicare contractor

1 *may not use a record of attendance at (or failure to attend)*  
2 *educational activities or other information gathered during*  
3 *an educational program conducted under this section or*  
4 *otherwise by the Secretary to select or track providers of*  
5 *services or suppliers for the purpose of conducting any type*  
6 *of audit or prepayment review.*

7       “(f) *CONSTRUCTION.*—*Nothing in this section or sec-*  
8 *tion 1893(g) shall be construed as providing for disclosure*  
9 *by a medicare contractor of information that would com-*  
10 *promise pending law enforcement activities or reveal find-*  
11 *ings of law enforcement-related audits.*

12       “(g) *DEFINITIONS.*—*For purposes of this section, the*  
13 *term ‘medicare contractor’ includes the following:*

14               “(1) *A medicare administrative contractor with*  
15 *a contract under section 1874A, including a fiscal*  
16 *intermediary with a contract under section 1816 and*  
17 *a carrier with a contract under section 1842.*

18               “(2) *An eligible entity with a contract under sec-*  
19 *tion 1893.*

20 *Such term does not include, with respect to activities of a*  
21 *specific provider of services or supplier an entity that has*  
22 *no authority under this title or title IX with respect to such*  
23 *activities and such provider of services or supplier.”.*

1           (2) *EFFECTIVE DATE.*—*The amendment made by*  
2           *paragraph (1) shall take effect on the date of the en-*  
3           *actment of this Act.*

4   **SEC. 302. SMALL PROVIDER TECHNICAL ASSISTANCE DEM-**  
5                                   **ONSTRATION PROGRAM.**

6           (a) *ESTABLISHMENT.*—

7           (1) *IN GENERAL.*—*The Secretary shall establish*  
8           *a demonstration program (in this section referred to*  
9           *as the “demonstration program”) under which tech-*  
10           *nical assistance described in paragraph (2) is made*  
11           *available, upon request and on a voluntary basis, to*  
12           *small providers of services or suppliers in order to*  
13           *improve compliance with the applicable requirements*  
14           *of the programs under medicare program under title*  
15           *XVIII of the Social Security Act (including provi-*  
16           *sions of title XI of such Act insofar as they relate to*  
17           *such title and are not administered by the Office of*  
18           *the Inspector General of the Department of Health*  
19           *and Human Services).*

20           (2) *FORMS OF TECHNICAL ASSISTANCE.*—*The*  
21           *technical assistance described in this paragraph is—*

22                           (A) *evaluation and recommendations re-*  
23                           *garding billing and related systems; and*

1           (B) information and assistance regarding  
2           policies and procedures under the medicare pro-  
3           gram, including coding and reimbursement.

4           (3) *SMALL PROVIDERS OF SERVICES OR SUP-*  
5           *PLIERS.—In this section, the term “small providers of*  
6           *services or suppliers” means—*

7                   (A) a provider of services with fewer than  
8                   25 full-time-equivalent employees; or

9                   (B) a supplier with fewer than 10 full-time-  
10                  equivalent employees.

11          (b) *QUALIFICATION OF CONTRACTORS.—In conducting*  
12          *the demonstration program, the Secretary shall enter into*  
13          *contracts with qualified organizations (such as peer review*  
14          *organizations or entities described in section 1889(g)(2) of*  
15          *the Social Security Act, as inserted by section 5(f)(1)) with*  
16          *appropriate expertise with billing systems of the full range*  
17          *of providers of services and suppliers to provide the tech-*  
18          *nical assistance. In awarding such contracts, the Secretary*  
19          *shall consider any prior investigations of the entity’s work*  
20          *by the Inspector General of Department of Health and*  
21          *Human Services or the Comptroller General of the United*  
22          *States.*

23          (c) *DESCRIPTION OF TECHNICAL ASSISTANCE.—The*  
24          *technical assistance provided under the demonstration pro-*  
25          *gram shall include a direct and in-person examination of*

1 *billing systems and internal controls of small providers of*  
2 *services or suppliers to determine program compliance and*  
3 *to suggest more efficient or effective means of achieving such*  
4 *compliance.*

5       (d) *AVOIDANCE OF RECOVERY ACTIONS FOR PROBLEMS IDENTIFIED AS CORRECTED.*—*The Secretary shall*  
6 *provide that, absent evidence of fraud and notwithstanding*  
7 *any other provision of law, any errors found in a compli-*  
8 *ance review for a small provider of services or supplier that*  
9 *participates in the demonstration program shall not be sub-*  
10 *ject to recovery action if the technical assistance personnel*  
11 *under the program determine that—*

12               (1) *the problem that is the subject of the compli-*  
13 *ance review has been corrected to their satisfaction*  
14 *within 30 days of the date of the visit by such per-*  
15 *sonnel to the small provider of services or supplier;*  
16 *and*

17               (2) *such problem remains corrected for such pe-*  
18 *riod as is appropriate.*

19 *The previous sentence applies only to claims filed as part*  
20 *of the demonstration program and lasts only for the dura-*  
21 *tion of such program and only as long as the small provider*  
22 *of services or supplier is a participant in such program.*

23       (e) *GAO EVALUATION.*—*Not later than 2 years after*  
24 *the date of the date the demonstration program is first im-*  
25

1 *plemented, the Comptroller General, in consultation with*  
2 *the Inspector General of the Department of Health and*  
3 *Human Services, shall conduct an evaluation of the dem-*  
4 *onstration program. The evaluation shall include a deter-*  
5 *mination of whether claims error rates are reduced for*  
6 *small providers of services or suppliers who participated*  
7 *in the program and the extent of improper payments made*  
8 *as a result of the demonstration program. The Comptroller*  
9 *General shall submit a report to the Secretary and the Con-*  
10 *gress on such evaluation and shall include in such report*  
11 *recommendations regarding the continuation or extension*  
12 *of the demonstration program.*

13 *(f) FINANCIAL PARTICIPATION BY PROVIDERS.—The*  
14 *provision of technical assistance to a small provider of serv-*  
15 *ices or supplier under the demonstration program is condi-*  
16 *tioned upon the small provider of services or supplier pay-*  
17 *ing an amount estimated (and disclosed in advance of a*  
18 *provider's or supplier's participation in the program) to*  
19 *be equal to 25 percent of the cost of the technical assistance.*

20 *(g) AUTHORIZATION OF APPROPRIATIONS.—There are*  
21 *authorized to be appropriated to the Secretary (in appro-*  
22 *priate part from the Federal Hospital Insurance Trust*  
23 *Fund and the Federal Supplementary Medical Insurance*  
24 *Trust Fund) to carry out the demonstration program—*

25 *(1) for fiscal year 2005, \$1,000,000, and*

1           (2) for fiscal year 2006, \$6,000,000.

2   **SEC. 303. MEDICARE PROVIDER OMBUDSMAN; MEDICARE**  
 3                           **BENEFICIARY OMBUDSMAN.**

4           (a) *MEDICARE PROVIDER OMBUDSMAN*.—Section 1868  
 5 (42 U.S.C. 1395ee) is amended—

6           (1) by adding at the end of the heading the fol-  
 7           lowing: “; *MEDICARE PROVIDER OMBUDSMAN*”;

8           (2) by inserting “*PRACTICING PHYSICIANS ADVI-*  
 9           *SORY COUNCIL.—(1)*” after “(a)”;

10           (3) in paragraph (1), as so redesignated under  
 11           paragraph (2), by striking “in this section” and in-  
 12           serting “in this subsection”;

13           (4) by redesignating subsections (b) and (c) as  
 14           paragraphs (2) and (3), respectively; and

15           (5) by adding at the end the following new sub-  
 16           section:

17           “(b) *MEDICARE PROVIDER OMBUDSMAN*.—The Sec-  
 18           retary shall appoint within the Department of Health and  
 19           Human Services a Medicare Provider Ombudsman. The  
 20           Ombudsman shall—

21           “(1) provide assistance, on a confidential basis,  
 22           to providers of services and suppliers with respect to  
 23           complaints, grievances, and requests for information  
 24           concerning the programs under this title (including  
 25           provisions of title XI insofar as they relate to this

1 *title and are not administered by the Office of the In-*  
2 *pector General of the Department of Health and*  
3 *Human Services) and in the resolution of unclear or*  
4 *conflicting guidance given by the Secretary and medi-*  
5 *care contractors to such providers of services and sup-*  
6 *pliers regarding such programs and provisions and*  
7 *requirements under this title and such provisions;*  
8 *and*

9 *“(2) submit recommendations to the Secretary*  
10 *for improvement in the administration of this title*  
11 *and such provisions, including—*

12 *“(A) recommendations to respond to recur-*  
13 *ring patterns of confusion in this title and such*  
14 *provisions (including recommendations regard-*  
15 *ing suspending imposition of sanctions where*  
16 *there is widespread confusion in program ad-*  
17 *ministration), and*

18 *“(B) recommendations to provide for an ap-*  
19 *propriate and consistent response (including not*  
20 *providing for audits) in cases of self-identified*  
21 *overpayments by providers of services and sup-*  
22 *pliers.*

23 *The Ombudsman shall not serve as an advocate for any in-*  
24 *creases in payments or new coverage of services, but may*

1 *identify issues and problems in payment or coverage poli-*  
2 *cies.”.*

3 (b) *MEDICARE BENEFICIARY OMBUDSMAN.*—Title  
4 *XVIII is amended by inserting after section 1806 the fol-*  
5 *lowing new section:*

6 “*MEDICARE BENEFICIARY OMBUDSMAN*

7 “*SEC. 1807. (a) IN GENERAL.*—The Secretary shall  
8 *appoint within the Department of Health and Human*  
9 *Services a Medicare Beneficiary Ombudsman who shall*  
10 *have expertise and experience in the fields of health care*  
11 *and education of (and assistance to) individuals entitled*  
12 *to benefits under this title.*

13 “(b) *DUTIES.*—The Medicare Beneficiary Ombudsman  
14 *shall—*

15 “(1) *receive complaints, grievances, and requests*  
16 *for information submitted by individuals entitled to*  
17 *benefits under part A or enrolled under part B, or*  
18 *both, with respect to any aspect of the medicare pro-*  
19 *gram;*

20 “(2) *provide assistance with respect to com-*  
21 *plaints, grievances, and requests referred to in para-*  
22 *graph (1), including—*

23 “(A) *assistance in collecting relevant infor-*  
24 *mation for such individuals, to seek an appeal of*  
25 *a decision or determination made by a fiscal*

1           intermediary, carrier, Medicare+Choice organi-  
2           zation, or the Secretary; and

3                   “(B) assistance to such individuals with  
4           any problems arising from disenrollment from a  
5           Medicare+Choice plan under part C; and

6                   “(3) submit annual reports to Congress and the  
7           Secretary that describe the activities of the Office and  
8           that include such recommendations for improvement  
9           in the administration of this title as the Ombudsman  
10          determines appropriate.

11   *The Ombudsman shall not serve as an advocate for any in-*  
12   *creases in payments or new coverage of services, but may*  
13   *identify issues and problems in payment or coverage poli-*  
14   *cies.*

15          “(c) *WORKING WITH HEALTH INSURANCE COUN-*  
16    *SELING PROGRAMS.—To the extent possible, the Ombuds-*  
17    *man shall work with health insurance counseling programs*  
18    *(receiving funding under section 4360 of Omnibus Budget*  
19    *Reconciliation Act of 1990) to facilitate the provision of in-*  
20    *formation to individuals entitled to benefits under part A*  
21    *or enrolled under part B, or both regarding*  
22    *Medicare+Choice plans and changes to those plans. Noth-*  
23    *ing in this subsection shall preclude further collaboration*  
24    *between the Ombudsman and such programs.”.*

1           (c) *DEADLINE FOR APPOINTMENT.*—*The Secretary*  
2 *shall appoint the Medicare Provider Ombudsman and the*  
3 *Medicare Beneficiary Ombudsman, under the amendments*  
4 *made by subsections (a) and (b), respectively, by not later*  
5 *than 1 year after the date of the enactment of this Act.*

6           (d) *FUNDING.*—*There are authorized to be appro-*  
7 *priated to the Secretary (in appropriate part from the Fed-*  
8 *eral Hospital Insurance Trust Fund and the Federal Sup-*  
9 *plementary Medical Insurance Trust Fund) to carry out*  
10 *the provisions of subsection (b) of section 1868 of the Social*  
11 *Security Act (relating to the Medicare Provider Ombuds-*  
12 *man), as added by subsection (a)(5) and section 1807 of*  
13 *such Act (relating to the Medicare Beneficiary Ombuds-*  
14 *man), as added by subsection (b), such sums as are nec-*  
15 *essary for fiscal year 2004 and each succeeding fiscal year.*

16           (e) *USE OF CENTRAL, TOLL-FREE NUMBER (1-800-*  
17 *MEDICARE).*—

18                   (1) *PHONE TRIAGE SYSTEM; LISTING IN MEDI-*  
19 *CARE HANDBOOK INSTEAD OF OTHER TOLL-FREE*  
20 *NUMBERS.*—*Section 1804(b) (42 U.S.C. 1395b-2(b))*  
21 *is amended by adding at the end the following: “The*  
22 *Secretary shall provide, through the toll-free number*  
23 *1-800-MEDICARE, for a means by which individ-*  
24 *uals seeking information about, or assistance with,*  
25 *such programs who phone such toll-free number are*

1       *transferred (without charge) to appropriate entities*  
2       *for the provision of such information or assistance.*  
3       *Such toll-free number shall be the toll-free number*  
4       *listed for general information and assistance in the*  
5       *annual notice under subsection (a) instead of the list-*  
6       *ing of numbers of individual contractors.”.*

7               (2) *MONITORING ACCURACY.—*

8               (A) *STUDY.—The Comptroller General of*  
9       *the United States shall conduct a study to mon-*  
10       *itor the accuracy and consistency of information*  
11       *provided to individuals entitled to benefits under*  
12       *part A or enrolled under part B, or both,*  
13       *through the toll-free number 1–800–MEDICARE,*  
14       *including an assessment of whether the informa-*  
15       *tion provided is sufficient to answer questions of*  
16       *such individuals. In conducting the study, the*  
17       *Comptroller General shall examine the education*  
18       *and training of the individuals providing infor-*  
19       *mation through such number.*

20              (B) *REPORT.—Not later than 1 year after*  
21       *the date of the enactment of this Act, the Comp-*  
22       *troller General shall submit to Congress a report*  
23       *on the study conducted under subparagraph (A).*

1 **SEC. 304. BENEFICIARY OUTREACH DEMONSTRATION PRO-**  
2 **GRAM.**

3 (a) *IN GENERAL.*—*The Secretary shall establish a*  
4 *demonstration program (in this section referred to as the*  
5 *“demonstration program”)* *under which medicare special-*  
6 *ists employed by the Department of Health and Human*  
7 *Services provide advice and assistance to individuals enti-*  
8 *tled to benefits under part A of title XVIII of the Social*  
9 *Security Act, or enrolled under part B of such title, or both,*  
10 *regarding the medicare program at the location of existing*  
11 *local offices of the Social Security Administration.*

12 (b) *LOCATIONS.*—

13 (1) *IN GENERAL.*—*The demonstration program*  
14 *shall be conducted in at least 6 offices or areas. Sub-*  
15 *ject to paragraph (2), in selecting such offices and*  
16 *areas, the Secretary shall provide preference for offices*  
17 *with a high volume of visits by individuals referred*  
18 *to in subsection (a).*

19 (2) *ASSISTANCE FOR RURAL BENEFICIARIES.*—  
20 *The Secretary shall provide for the selection of at*  
21 *least 2 rural areas to participate in the demonstra-*  
22 *tion program. In conducting the demonstration pro-*  
23 *gram in such rural areas, the Secretary shall provide*  
24 *for medicare specialists to travel among local offices*  
25 *in a rural area on a scheduled basis.*

1       (c) *DURATION.*—*The demonstration program shall be*  
2 *conducted over a 3-year period.*

3       (d) *EVALUATION AND REPORT.*—

4           (1) *EVALUATION.*—*The Secretary shall provide*  
5 *for an evaluation of the demonstration program. Such*  
6 *evaluation shall include an analysis of—*

7               (A) *utilization of, and satisfaction of those*  
8 *individuals referred to in subsection (a) with, the*  
9 *assistance provided under the program; and*

10               (B) *the cost-effectiveness of providing bene-*  
11 *ficiary assistance through out-stationing medi-*  
12 *care specialists at local offices of the Social Secu-*  
13 *rity Administration.*

14           (2) *REPORT.*—*The Secretary shall submit to*  
15 *Congress a report on such evaluation and shall in-*  
16 *clude in such report recommendations regarding the*  
17 *feasibility of permanently out-stationing medicare*  
18 *specialists at local offices of the Social Security Ad-*  
19 *ministration.*

20 ***SEC. 305. INCLUSION OF ADDITIONAL INFORMATION IN NO-***  
21 ***TICES TO BENEFICIARIES ABOUT SKILLED***  
22 ***NURSING FACILITY BENEFITS.***

23       (a) *IN GENERAL.*—*The Secretary shall provide that in*  
24 *medicare beneficiary notices provided (under section*  
25 *1806(a) of the Social Security Act, 42 U.S.C. 1395b–7(a))*

1 *with respect to the provision of post-hospital extended care*  
 2 *services under part A of title XVIII of the Social Security*  
 3 *Act, there shall be included information on the number of*  
 4 *days of coverage of such services remaining under such part*  
 5 *for the medicare beneficiary and spell of illness involved.*

6 (b) *EFFECTIVE DATE.*—*Subsection (a) shall apply to*  
 7 *notices provided during calendar quarters beginning more*  
 8 *than 6 months after the date of the enactment of this Act.*

9 **SEC. 306. INFORMATION ON MEDICARE-CERTIFIED SKILLED**  
 10 **NURSING FACILITIES IN HOSPITAL DIS-**  
 11 **CHARGE PLANS.**

12 (a) *AVAILABILITY OF DATA.*—*The Secretary shall pub-*  
 13 *licly provide information that enables hospital discharge*  
 14 *planners, medicare beneficiaries, and the public to identify*  
 15 *skilled nursing facilities that are participating in the medi-*  
 16 *care program.*

17 (b) *INCLUSION OF INFORMATION IN CERTAIN HOS-*  
 18 *PITAL DISCHARGE PLANS.*—

19 (1) *IN GENERAL.*—*Section 1861(ee)(2)(D) (42*  
 20 *U.S.C. 1395x(ee)(2)(D)) is amended—*

21 (A) *by striking “hospice services” and in-*  
 22 *serting “hospice care and post-hospital extended*  
 23 *care services”; and*

24 (B) *by inserting before the period at the end*  
 25 *the following: “and, in the case of individuals*

1           *who are likely to need post-hospital extended care*  
2           *services, the availability of such services through*  
3           *facilities that participate in the program under*  
4           *this title and that serve the area in which the*  
5           *patient resides”.*

6           (2) *EFFECTIVE DATE.*—*The amendments made*  
7           *by paragraph (1) shall apply to discharge plans made*  
8           *on or after such date as the Secretary shall specify,*  
9           *but not later than 6 months after the date the Sec-*  
10          *retary provides for availability of information under*  
11          *subsection (a).*

## 12                           **TITLE IV—APPEALS AND** 13                           **RECOVERY**

### 14   **SEC. 401. TRANSFER OF RESPONSIBILITY FOR MEDICARE** 15                           **APPEALS.**

16           (a) *TRANSITION PLAN.*—

17           (1) *IN GENERAL.*—*Not later than October 1,*  
18           *2004, the Commissioner of Social Security and the*  
19           *Secretary shall develop and transmit to Congress and*  
20           *the Comptroller General of the United States a plan*  
21           *under which the functions of administrative law*  
22           *judges responsible for hearing cases under title XVIII*  
23           *of the Social Security Act (and related provisions in*  
24           *title XI of such Act) are transferred from the responsi-*  
25           *bility of the Commissioner and the Social Security*

1       *Administration to the Secretary and the Department*  
2       *of Health and Human Services.*

3               (2) *GAO EVALUATION.*—*The Comptroller Gen-*  
4       *eral of the United States shall evaluate the plan and,*  
5       *not later than the date that is 6 months after the date*  
6       *on which the plan is received by the Comptroller Gen-*  
7       *eral, shall submit to Congress a report on such eval-*  
8       *uation.*

9       (b) *TRANSFER OF ADJUDICATION AUTHORITY.*—

10              (1) *IN GENERAL.*—*Not earlier than July 1, 2005,*  
11       *and not later than October 1, 2005, the Commissioner*  
12       *of Social Security and the Secretary shall implement*  
13       *the transition plan under subsection (a) and transfer*  
14       *the administrative law judge functions described in*  
15       *such subsection from the Social Security Administra-*  
16       *tion to the Secretary.*

17              (2) *ASSURING INDEPENDENCE OF JUDGES.*—*The*  
18       *Secretary shall assure the independence of adminis-*  
19       *trative law judges performing the administrative law*  
20       *judge functions transferred under paragraph (1) from*  
21       *the Centers for Medicare & Medicaid Services and its*  
22       *contractors. In order to assure such independence, the*  
23       *Secretary shall place such judges in an administra-*  
24       *tive office that is organizationally and functionally*  
25       *separate from such Centers. Such judges shall report*

1       to, and be under the general supervision of, the Sec-  
2       retary (or, to the extent the Secretary delegates such  
3       authority, the officer next in rank below the Sec-  
4       retary), but shall not report to, or be subject to super-  
5       vision by, any other officer of the Department.

6               (3) *GEOGRAPHIC DISTRIBUTION.*—The Secretary  
7       shall provide for an appropriate geographic distribu-  
8       tion of administrative law judges performing the ad-  
9       ministrative law judge functions transferred under  
10      paragraph (1) throughout the United States to ensure  
11      timely access to such judges.

12              (4) *HIRING AUTHORITY.*—Subject to the amounts  
13      provided in advance in appropriations Act, the Sec-  
14      retary shall have authority to hire administrative law  
15      judges to hear such cases, giving priority to those  
16      judges with prior experience in handling medicare  
17      appeals and in a manner consistent with paragraph  
18      (3), and to hire support staff for such judges.

19              (5) *FINANCING.*—Amounts payable under law to  
20      the Commissioner for administrative law judges per-  
21      forming the administrative law judge functions trans-  
22      ferred under paragraph (1) from the Federal Hospital  
23      Insurance Trust Fund and the Federal Supple-  
24      mentary Medical Insurance Trust Fund shall become

1        *payable to the Secretary for the functions so trans-*  
2        *ferred.*

3            (6) *SHARED RESOURCES.*—*The Secretary shall*  
4        *enter into such arrangements with the Commissioner*  
5        *as may be appropriate with respect to transferred*  
6        *functions of administrative law judges to share office*  
7        *space, support staff, and other resources, with appro-*  
8        *priate reimbursement from the Trust Funds described*  
9        *in paragraph (5).*

10        (c) *INCREASED FINANCIAL SUPPORT.*—*In addition to*  
11        *any amounts otherwise appropriated, to ensure timely ac-*  
12        *tion on appeals before administrative law judges and the*  
13        *Departmental Appeals Board consistent with section 1869*  
14        *of the Social Security Act (as amended by section 521 of*  
15        *BIPA, 114 Stat. 2763A–534), there are authorized to be ap-*  
16        *propriated (in appropriate part from the Federal Hospital*  
17        *Insurance Trust Fund and the Federal Supplementary*  
18        *Medical Insurance Trust Fund) to the Secretary such sums*  
19        *as are necessary for fiscal year 2005 and each subsequent*  
20        *fiscal year to—*

21            (1) *increase the number of administrative law*  
22        *judges (and their staffs) under subsection (b)(4);*

23            (2) *improve education and training opportuni-*  
24        *ties for administrative law judges (and their staffs);*  
25        *and*

1           (3) increase the staff of the Departmental Ap-  
2           peals Board.

3           (d)           CONFORMING           AMENDMENT.—Section  
4 1869(f)(2)(A)(i) (42 U.S.C. 1395ff(f)(2)(A)(i)), as added by  
5 section 522(a) of BIPA (114 Stat. 2763A–543), is amended  
6 by striking “of the Social Security Administration”.

7 **SEC. 402. PROCESS FOR EXPEDITED ACCESS TO REVIEW.**

8           (a) EXPEDITED ACCESS TO JUDICIAL REVIEW.—Sec-  
9 tion 1869(b) (42 U.S.C. 1395ff(b)) as amended by BIPA,  
10 is amended—

11           (1) in paragraph (1)(A), by inserting “, subject  
12 to paragraph (2),” before “to judicial review of the  
13 Secretary’s final decision”;

14           (2) in paragraph (1)(F)—

15                   (A) by striking clause (i);

16                   (B) by striking “PROCEEDING” and all that  
17 follows through “DETERMINATION” and inserting  
18 “DETERMINATIONS AND RECONSIDERATIONS”;

19                   and

20                   (C) by redesignating subclauses (I) and (II)  
21 as clauses (i) and (ii) and by moving the inden-  
22 tation of such subclauses (and the matter that  
23 follows) 2 ems to the left; and

24           (3) by adding at the end the following new para-  
25 graph:

1           “(2) *EXPEDITED ACCESS TO JUDICIAL RE-*  
2 *VIEW.—*

3           “(A) *IN GENERAL.—The Secretary shall es-*  
4 *tablish a process under which a provider of serv-*  
5 *ices or supplier that furnishes an item or service*  
6 *or an individual entitled to benefits under part*  
7 *A or enrolled under part B, or both, who has*  
8 *filed an appeal under paragraph (1) may obtain*  
9 *access to judicial review when a review panel*  
10 *(described in subparagraph (D)), on its own mo-*  
11 *tion or at the request of the appellant, deter-*  
12 *mines that no entity in the administrative ap-*  
13 *peals process has the authority to decide the*  
14 *question of law or regulation relevant to the mat-*  
15 *ters in controversy and that there is no material*  
16 *issue of fact in dispute. The appellant may make*  
17 *such request only once with respect to a question*  
18 *of law or regulation in a case of an appeal.*

19           “(B) *PROMPT DETERMINATIONS.—If, after*  
20 *or coincident with appropriately filing a request*  
21 *for an administrative hearing, the appellant re-*  
22 *quests a determination by the appropriate review*  
23 *panel that no review panel has the authority to*  
24 *decide the question of law or regulations relevant*  
25 *to the matters in controversy and that there is*

1           *no material issue of fact in dispute and if such*  
2           *request is accompanied by the documents and*  
3           *materials as the appropriate review panel shall*  
4           *require for purposes of making such determina-*  
5           *tion, such review panel shall make a determina-*  
6           *tion on the request in writing within 60 days*  
7           *after the date such review panel receives the re-*  
8           *quest and such accompanying documents and*  
9           *materials. Such a determination by such review*  
10          *panel shall be considered a final decision and*  
11          *not subject to review by the Secretary.*

12                   “(C) ACCESS TO JUDICIAL REVIEW.—

13                           “(i) IN GENERAL.—If the appropriate  
14                           review panel—

15                                   “(I) determines that there are no  
16                                   material issues of fact in dispute and  
17                                   that the only issue is one of law or reg-  
18                                   ulation that no review panel has the  
19                                   authority to decide; or

20                                   “(II) fails to make such deter-  
21                                   mination within the period provided  
22                                   under subparagraph (B);

23                           *then the appellant may bring a civil action*  
24                           *as described in this subparagraph.*

1           “(ii) *DEADLINE FOR FILING.*—Such  
2           *action shall be filed, in the case described*  
3           *in—*

4                     “(I) *clause (i)(I), within 60 days*  
5                     *of date of the determination described*  
6                     *in such subparagraph; or*

7                     “(II) *clause (i)(II), within 60*  
8                     *days of the end of the period provided*  
9                     *under subparagraph (B) for the deter-*  
10                    *mination.*

11           “(iii) *VENUE.*—Such action shall be  
12           *brought in the district court of the United*  
13           *States for the judicial district in which the*  
14           *appellant is located (or, in the case of an*  
15           *action brought jointly by more than one ap-*  
16           *plicant, the judicial district in which the*  
17           *greatest number of applicants are located)*  
18           *or in the district court for the District of*  
19           *Columbia.*

20           “(iv) *INTEREST ON AMOUNTS IN CON-*  
21           *TROVERSY.*—Where a provider of services or  
22           *supplier seeks judicial review pursuant to*  
23           *this paragraph, the amount in controversy*  
24           *shall be subject to annual interest beginning*  
25           *on the first day of the first month beginning*

1           *after the 60-day period as determined pur-*  
2           *suant to clause (ii) and equal to the rate of*  
3           *interest on obligations issued for purchase*  
4           *by the Federal Hospital Insurance Trust*  
5           *Fund and by the Federal Supplementary*  
6           *Medical Insurance Trust Fund for the*  
7           *month in which the civil action authorized*  
8           *under this paragraph is commenced, to be*  
9           *awarded by the reviewing court in favor of*  
10          *the prevailing party. No interest awarded*  
11          *pursuant to the preceding sentence shall be*  
12          *deemed income or cost for the purposes of*  
13          *determining reimbursement due providers of*  
14          *services or suppliers under this Act.*

15           “(D) *REVIEW PANELS.*—*For purposes of*  
16          *this subsection, a ‘review panel’ is a panel con-*  
17          *sisting of 3 members (who shall be administra-*  
18          *tive law judges, members of the Departmental*  
19          *Appeals Board, or qualified individuals associ-*  
20          *ated with a qualified independent contractor (as*  
21          *defined in subsection (c)(2)) or with another*  
22          *independent entity) designated by the Secretary*  
23          *for purposes of making determinations under*  
24          *this paragraph.”.*

1           (b) *APPLICATION TO PROVIDER AGREEMENT DETER-*  
2 *MINATIONS.—Section 1866(h)(1) (42 U.S.C. 1395cc(h)(1))*  
3 *is amended—*

4           (1) *by inserting “(A)” after “(h)(1)”;* and

5           (2) *by adding at the end the following new sub-*  
6 *paragraph:*

7           “(B) *An institution or agency described in subpara-*  
8 *graph (A) that has filed for a hearing under subparagraph*  
9 *(A) shall have expedited access to judicial review under this*  
10 *subparagraph in the same manner as providers of services,*  
11 *suppliers, and individuals entitled to benefits under part*  
12 *A or enrolled under part B, or both, may obtain expedited*  
13 *access to judicial review under the process established under*  
14 *section 1869(b)(2). Nothing in this subparagraph shall be*  
15 *construed to affect the application of any remedy imposed*  
16 *under section 1819 during the pendency of an appeal under*  
17 *this subparagraph.”.*

18           (c) *EFFECTIVE DATE.—The amendments made by this*  
19 *section shall apply to appeals filed on or after October 1,*  
20 *2004.*

21           (d) *EXPEDITED REVIEW OF CERTAIN PROVIDER*  
22 *AGREEMENT DETERMINATIONS.—*

23           (1) *TERMINATION AND CERTAIN OTHER IMME-*  
24 *DIATE REMEDIES.—The Secretary shall develop and*  
25 *implement a process to expedite proceedings under*

1        *sections 1866(h) of the Social Security Act (42 U.S.C.*  
2        *1395cc(h)) in which the remedy of termination of*  
3        *participation, or a remedy described in clause (i) or*  
4        *(iii) of section 1819(h)(2)(B) of such Act (42 U.S.C.*  
5        *1395i-3(h)(2)(B)) which is applied on an immediate*  
6        *basis, has been imposed. Under such process priority*  
7        *shall be provided in cases of termination.*

8                (2) *INCREASED FINANCIAL SUPPORT.—In addi-*  
9        *tion to any amounts otherwise appropriated, to re-*  
10        *duce by 50 percent the average time for administra-*  
11        *tive determinations on appeals under section 1866(h)*  
12        *of the Social Security Act (42 U.S.C. 1395cc(h)),*  
13        *there are authorized to be appropriated (in appro-*  
14        *priate part from the Federal Hospital Insurance*  
15        *Trust Fund and the Federal Supplementary Medical*  
16        *Insurance Trust Fund) to the Secretary such addi-*  
17        *tional sums for fiscal year 2005 and each subsequent*  
18        *fiscal year as may be necessary. The purposes for*  
19        *which such amounts are available include increasing*  
20        *the number of administrative law judges (and their*  
21        *staffs) and the appellate level staff at the Depart-*  
22        *mental Appeals Board of the Department of Health*  
23        *and Human Services and educating such judges and*  
24        *staffs on long-term care issues.*

1       (e) *PROCESS FOR REINSTATEMENT OF APPROVAL OF*  
2 *CERTAIN SNF TRAINING PROGRAMS.—*

3           (1) *IN GENERAL.—In the case of a termination*  
4 *of approval of a nurse aide training program de-*  
5 *scribed in paragraph (2) of a skilled nursing facility,*  
6 *the Secretary shall develop and implement a process*  
7 *for the reinstatement of approval of such program be-*  
8 *fore the end of the mandatory 2 year disapproval pe-*  
9 *riod if the facility and program is certified by the*  
10 *Secretary, in coordination with the applicable State*  
11 *survey and certification agency and after public no-*  
12 *tice, as being in compliance with applicable require-*  
13 *ments and as having remedied any deficiencies in the*  
14 *facility or program that resulted in noncompliance.*

15           (2) *TERMINATION OF APPROVAL DESCRIBED.—A*  
16 *termination of approval of a training program de-*  
17 *scribed in this paragraph is a mandatory 2-year dis-*  
18 *approval provided for under section 1819(f)(2)(B)(iii)*  
19 *of the Social Security Act (42 U.S.C. 1395i-*  
20 *3(f)(2)(B)(iii)) if the only basis for the mandatory*  
21 *disapproval was the assessment of a civil money pen-*  
22 *alty of not less than \$5,000.*

23 **SEC. 403. REVISIONS TO MEDICARE APPEALS PROCESS.**

24       (a) *REQUIRING FULL AND EARLY PRESENTATION OF*  
25 *EVIDENCE.—*

1           (1) *IN GENERAL.*—Section 1869(b) (42 U.S.C.  
2           1395ff(b)), as amended by BIPA and as amended by  
3           section 402(a), is further amended by adding at the  
4           end the following new paragraph:

5           “(3) *REQUIRING FULL AND EARLY PRESEN-*  
6           *TATION OF EVIDENCE BY PROVIDERS.*—A provider of  
7           services or supplier may not introduce evidence in  
8           any appeal under this section that was not presented  
9           at the reconsideration conducted by the qualified  
10          independent contractor under subsection (c), unless  
11          there is good cause which precluded the introduction  
12          of such evidence at or before that reconsideration.”.

13          (2) *EFFECTIVE DATE.*—The amendment made by  
14          paragraph (1) shall take effect on October 1, 2004.

15          (b) *USE OF PATIENTS’ MEDICAL RECORDS.*—Section  
16          1869(c)(3)(B)(i) (42 U.S.C. 1395ff(c)(3)(B)(i)), as amended  
17          by BIPA, is amended by inserting “(including the medical  
18          records of the individual involved)” after “clinical experi-  
19          ence”.

20          (c) *NOTICE REQUIREMENTS FOR MEDICARE AP-*  
21          *PEALS.*—

22          (1) *INITIAL DETERMINATIONS AND REDETER-*  
23          *MINATIONS.*—Section 1869(a) (42 U.S.C. 1395ff(a)),  
24          as amended by BIPA, is amended by adding at the  
25          end the following new paragraphs:

1           “(4) *REQUIREMENTS OF NOTICE OF DETERMINA-*  
2           *TIONS.—With respect to an initial determination in-*  
3           *sofar as it results in a denial of a claim for benefits—*

4                   “(A) *the written notice on the determina-*  
5                   *tion shall include—*

6                           “(i) *the reasons for the determination,*  
7                           *including whether a local medical review*  
8                           *policy or a local coverage determination*  
9                           *was used;*

10                           “(ii) *the procedures for obtaining addi-*  
11                           *tional information concerning the deter-*  
12                           *mination, including the information de-*  
13                           *scribed in subparagraph (B); and*

14                           “(iii) *notification of the right to seek a*  
15                           *redetermination or otherwise appeal the de-*  
16                           *termination and instructions on how to ini-*  
17                           *tiate such a redetermination under this sec-*  
18                           *tion; and*

19                           “(B) *the person provided such notice may*  
20                           *obtain, upon request, the specific provision of the*  
21                           *policy, manual, or regulation used in making*  
22                           *the determination.*

23           “(5) *REQUIREMENTS OF NOTICE OF REDETER-*  
24           *MINATIONS.—With respect to a redetermination inso-*  
25           *far as it results in a denial of a claim for benefits—*

1           “(A) the written notice on the redetermina-  
2           tion shall include—

3                   “(i) the specific reasons for the redeter-  
4                   mination;

5                   “(ii) as appropriate, a summary of the  
6                   clinical or scientific evidence used in mak-  
7                   ing the redetermination;

8                   “(iii) a description of the procedures  
9                   for obtaining additional information con-  
10                  cerning the redetermination; and

11                  “(iv) notification of the right to appeal  
12                  the redetermination and instructions on  
13                  how to initiate such an appeal under this  
14                  section;

15                  “(B) such written notice shall be provided  
16                  in printed form and written in a manner cal-  
17                  culated to be understood by the individual enti-  
18                  tled to benefits under part A or enrolled under  
19                  part B, or both; and

20                  “(C) the person provided such notice may  
21                  obtain, upon request, information on the specific  
22                  provision of the policy, manual, or regulation  
23                  used in making the redetermination.”.

1           (2) *RECONSIDERATIONS.*—Section 1869(c)(3)(E)  
2           (42 U.S.C. 1395ff(c)(3)(E)), as amended by BIPA, is  
3           amended—

4                   (A) by inserting “be written in a manner  
5                   calculated to be understood by the individual en-  
6                   titled to benefits under part A or enrolled under  
7                   part B, or both, and shall include (to the extent  
8                   appropriate)” after “in writing, ”; and

9                   (B) by inserting “and a notification of the  
10                  right to appeal such determination and instruc-  
11                  tions on how to initiate such appeal under this  
12                  section” after “such decision,”.

13           (3) *APPEALS.*—Section 1869(d) (42 U.S.C.  
14           1395ff(d)), as amended by BIPA, is amended—

15                   (A) in the heading, by inserting “; NOTICE”  
16                   after “SECRETARY”; and

17                   (B) by adding at the end the following new  
18                   paragraph:

19                   “(4) *NOTICE.*—Notice of the decision of an ad-  
20                   ministrative law judge shall be in writing in a man-  
21                   ner calculated to be understood by the individual en-  
22                   titled to benefits under part A or enrolled under part  
23                   B, or both, and shall include—

24                           “(A) the specific reasons for the determina-  
25                           tion (including, to the extent appropriate, a

1           *summary of the clinical or scientific evidence*  
2           *used in making the determination);*

3           “(B) *the procedures for obtaining addi-*  
4           *tional information concerning the decision; and*

5           “(C) *notification of the right to appeal the*  
6           *decision and instructions on how to initiate such*  
7           *an appeal under this section.”.*

8           (4) *SUBMISSION OF RECORD FOR APPEAL.—Sec-*  
9           *tion 1869(c)(3)(J)(i) (42 U.S.C. 1395ff(c)(3)(J)(i)) by*  
10          *striking “prepare” and inserting “submit” and by*  
11          *striking “with respect to” and all that follows through*  
12          *“and relevant policies”.*

13          (d) *QUALIFIED INDEPENDENT CONTRACTORS.—*

14                 (1) *ELIGIBILITY REQUIREMENTS OF QUALIFIED*  
15                 *INDEPENDENT CONTRACTORS.—Section 1869(c)(3) (42*  
16                 *U.S.C. 1395ff(c)(3)), as amended by BIPA, is amend-*  
17                 *ed—*

18                         (A) *in subparagraph (A), by striking “suffi-*  
19                         *cient training and expertise in medical science*  
20                         *and legal matters” and inserting “sufficient*  
21                         *medical, legal, and other expertise (including*  
22                         *knowledge of the program under this title) and*  
23                         *sufficient staffing”; and*

24                         (B) *by adding at the end the following new*  
25                         *subparagraph:*

1                   “(K) *INDEPENDENCE REQUIREMENTS.*—

2                   “(i) *IN GENERAL.*—*Subject to clause*  
3                   *(ii), a qualified independent contractor*  
4                   *shall not conduct any activities in a case*  
5                   *unless the entity—*

6                   “(I) *is not a related party (as de-*  
7                   *finied in subsection (g)(5));*

8                   “(II) *does not have a material fa-*  
9                   *miliar, financial, or professional rela-*  
10                   *tionship with such a party in relation*  
11                   *to such case; and*

12                   “(III) *does not otherwise have a*  
13                   *conflict of interest with such a party.*

14                   “(ii) *EXCEPTION FOR REASONABLE*  
15                   *COMPENSATION.*—*Nothing in clause (i) shall*  
16                   *be construed to prohibit receipt by a quali-*  
17                   *fied independent contractor of compensation*  
18                   *from the Secretary for the conduct of activi-*  
19                   *ties under this section if the compensation*  
20                   *is provided consistent with clause (iii).*

21                   “(iii) *LIMITATIONS ON ENTITY COM-*  
22                   *PENSATION.*—*Compensation provided by the*  
23                   *Secretary to a qualified independent con-*  
24                   *tractor in connection with reviews under*  
25                   *this section shall not be contingent on any*

1           *decision rendered by the contractor or by*  
2           *any reviewing professional.”.*

3           (2) *ELIGIBILITY REQUIREMENTS FOR REVIEW-*  
4           *ERS.—Section 1869 (42 U.S.C. 1395ff), as amended*  
5           *by BIPA, is amended—*

6           (A) *by amending subsection (c)(3)(D) to*  
7           *read as follows:*

8           “(D) *QUALIFICATIONS FOR REVIEWERS.—*  
9           *The requirements of subsection (g) shall be met*  
10           *(relating to qualifications of reviewing profes-*  
11           *sionals).”; and*

12           (B) *by adding at the end the following new*  
13           *subsection:*

14           “(g) *QUALIFICATIONS OF REVIEWERS.—*

15           “(1) *IN GENERAL.—In reviewing determinations*  
16           *under this section, a qualified independent contractor*  
17           *shall assure that—*

18           (A) *each individual conducting a review*  
19           *shall meet the qualifications of paragraph (2);*

20           (B) *compensation provided by the con-*  
21           *tractor to each such reviewer is consistent with*  
22           *paragraph (3); and*

23           (C) *in the case of a review by a panel de-*  
24           *scribed in subsection (c)(3)(B) composed of phy-*  
25           *sicians or other health care professionals (each in*

1           *this subsection referred to as a ‘reviewing profes-*  
2           *sional’), a reviewing professional meets the*  
3           *qualifications described in paragraph (4) and,*  
4           *where a claim is regarding the furnishing of*  
5           *treatment by a physician (allopathic or osteo-*  
6           *pathic) or the provision of items or services by*  
7           *a physician (allopathic or osteopathic), a review-*  
8           *ing professional shall be a physician (allopathic*  
9           *or osteopathic).*

10           “(2) *INDEPENDENCE.—*

11                   “(A) *IN GENERAL.—Subject to subpara-*  
12                   *graph (B), each individual conducting a review*  
13                   *in a case shall—*

14                           “(i) *not be a related party (as defined*  
15                           *in paragraph (5));*

16                           “(ii) *not have a material familial, fi-*  
17                           *nancial, or professional relationship with*  
18                           *such a party in the case under review; and*

19                           “(iii) *not otherwise have a conflict of*  
20                           *interest with such a party.*

21                   “(B) *EXCEPTION.—Nothing in subpara-*  
22                   *graph (A) shall be construed to—*

23                           “(i) *prohibit an individual, solely on*  
24                           *the basis of a participation agreement with*  
25                           *a fiscal intermediary, carrier, or other con-*

1            *tractor, from serving as a reviewing profes-*  
2            *sional if—*

3                    *“(I) the individual is not involved*  
4                    *in the provision of items or services in*  
5                    *the case under review;*

6                    *“(II) the fact of such an agree-*  
7                    *ment is disclosed to the Secretary and*  
8                    *the individual entitled to benefits*  
9                    *under part A or enrolled under part B,*  
10                   *or both, (or authorized representative)*  
11                   *and neither party objects; and*

12                   *“(III) the individual is not an*  
13                   *employee of the intermediary, carrier,*  
14                   *or contractor and does not provide*  
15                   *services exclusively or primarily to or*  
16                   *on behalf of such intermediary, carrier,*  
17                   *or contractor;*

18                   *“(ii) prohibit an individual who has*  
19                   *staff privileges at the institution where the*  
20                   *treatment involved takes place from serving*  
21                   *as a reviewer merely on the basis of having*  
22                   *such staff privileges if the existence of such*  
23                   *privileges is disclosed to the Secretary and*  
24                   *such individual (or authorized representa-*  
25                   *tive), and neither party objects; or*

1                   “(iii) prohibit receipt of compensation  
2                   by a reviewing professional from a con-  
3                   tractor if the compensation is provided con-  
4                   sistent with paragraph (3).

5                   For purposes of this paragraph, the term ‘par-  
6                   ticipation agreement’ means an agreement relat-  
7                   ing to the provision of health care services by the  
8                   individual and does not include the provision of  
9                   services as a reviewer under this subsection.

10                  “(3) *LIMITATIONS ON REVIEWER COMPENSA-*  
11                  *TION.—*Compensation provided by a qualified inde-  
12                  pendent contractor to a reviewer in connection with  
13                  a review under this section shall not be contingent on  
14                  the decision rendered by the reviewer.

15                  “(4) *LICENSURE AND EXPERTISE.—*Each review-  
16                  ing professional shall be—

17                         “(A) a physician (allopathic or osteopathic)  
18                         who is appropriately credentialed or licensed in  
19                         one or more States to deliver health care services  
20                         and has medical expertise in the field of practice  
21                         that is appropriate for the items or services at  
22                         issue; or

23                         “(B) a health care professional who is le-  
24                         gally authorized in one or more States (in ac-  
25                         cordance with State law or the State regulatory

1           *mechanism provided by State law) to furnish the*  
2           *health care items or services at issue and has*  
3           *medical expertise in the field of practice that is*  
4           *appropriate for such items or services.*

5           “(5) *RELATED PARTY DEFINED.*—*For purposes*  
6           *of this section, the term ‘related party’ means, with*  
7           *respect to a case under this title involving a specific*  
8           *individual entitled to benefits under part A or en-*  
9           *rolled under part B, or both, any of the following:*

10                   “(A) *The Secretary, the medicare adminis-*  
11                   *trative contractor involved, or any fiduciary, of-*  
12                   *ficer, director, or employee of the Department of*  
13                   *Health and Human Services, or of such con-*  
14                   *tractor.*

15                   “(B) *The individual (or authorized rep-*  
16                   *resentative).*

17                   “(C) *The health care professional that pro-*  
18                   *vides the items or services involved in the case.*

19                   “(D) *The institution at which the items or*  
20                   *services (or treatment) involved in the case are*  
21                   *provided.*

22                   “(E) *The manufacturer of any drug or*  
23                   *other item that is included in the items or serv-*  
24                   *ices involved in the case.*

1                   “(F) Any other party determined under any  
2                   regulations to have a substantial interest in the  
3                   case involved.”.

4                   (3) *REDUCING MINIMUM NUMBER OF QUALIFIED*  
5                   *INDEPENDENT CONTRACTORS.*—Section 1869(c)(4) (42  
6                   U.S.C. 1395ff(c)(4)) is amended by striking “not  
7                   fewer than 12 qualified independent contractors under  
8                   this subsection” and inserting “a sufficient number of  
9                   qualified independent contractors (but not fewer than  
10                  4 such contractors) to conduct reconsiderations con-  
11                  sistent with the timeframes applicable under this sub-  
12                  section”.

13                  (4) *EFFECTIVE DATE.*—The amendments made  
14                  by paragraphs (1) and (2) shall be effective as if in-  
15                  cluded in the enactment of the respective provisions of  
16                  subtitle C of title V of BIPA, (114 Stat. 2763A–534).

17                  (5) *TRANSITION.*—In applying section 1869(g) of  
18                  the Social Security Act (as added by paragraph (2)),  
19                  any reference to a medicare administrative contractor  
20                  shall be deemed to include a reference to a fiscal  
21                  intermediary under section 1816 of the Social Secu-  
22                  rity Act (42 U.S.C. 1395h) and a carrier under sec-  
23                  tion 1842 of such Act (42 U.S.C. 1395u).

1 **SEC. 404. PREPAYMENT REVIEW.**

2 (a) *IN GENERAL.*—Section 1874A, as added by section  
3 201(a)(1) and as amended by sections 202(b), 301(b)(1),  
4 and 301(c)(1), is further amended by adding at the end the  
5 following new subsection:

6 “(h) *CONDUCT OF PREPAYMENT REVIEW.*—

7 “(1) *CONDUCT OF RANDOM PREPAYMENT RE-*  
8 *VIEW.*—

9 “(A) *IN GENERAL.*—A medicare adminis-  
10 trative contractor may conduct random prepay-  
11 ment review only to develop a contractor-wide or  
12 program-wide claims payment error rates or  
13 under such additional circumstances as may be  
14 provided under regulations, developed in con-  
15 sultation with providers of services and sup-  
16 pliers.

17 “(B) *USE OF STANDARD PROTOCOLS WHEN*  
18 *CONDUCTING PREPAYMENT REVIEWS.*—When a  
19 medicare administrative contractor conducts a  
20 random prepayment review, the contractor may  
21 conduct such review only in accordance with a  
22 standard protocol for random prepayment audits  
23 developed by the Secretary.

24 “(C) *CONSTRUCTION.*—Nothing in this  
25 paragraph shall be construed as preventing the

1           *denial of payments for claims actually reviewed*  
2           *under a random prepayment review.*

3           “(D) *RANDOM PREPAYMENT REVIEW.*—*For*  
4           *purposes of this subsection, the term ‘random*  
5           *prepayment review’ means a demand for the*  
6           *production of records or documentation absent*  
7           *cause with respect to a claim.*

8           “(2) *LIMITATIONS ON NON-RANDOM PREPAYMENT*  
9           *REVIEW.*—

10           “(A) *LIMITATIONS ON INITIATION OF NON-*  
11           *RANDOM PREPAYMENT REVIEW.*—*A medicare ad-*  
12           *ministrative contractor may not initiate non-*  
13           *random prepayment review of a provider of serv-*  
14           *ices or supplier based on the initial identifica-*  
15           *tion by that provider of services or supplier of*  
16           *an improper billing practice unless there is a*  
17           *likelihood of sustained or high level of payment*  
18           *error (as defined in subsection (i)(3)(A)).*

19           “(B) *TERMINATION OF NON-RANDOM PRE-*  
20           *PAYMENT REVIEW.*—*The Secretary shall issue*  
21           *regulations relating to the termination, includ-*  
22           *ing termination dates, of non-random prepay-*  
23           *ment review. Such regulations may vary such a*  
24           *termination date based upon the differences in*

1           *the circumstances triggering prepayment re-*  
2           *view.”.*

3           **(b) EFFECTIVE DATE.—**

4           **(1) IN GENERAL.—***Except as provided in this*  
5           *subsection, the amendment made by subsection (a)*  
6           *shall take effect 1 year after the date of the enactment*  
7           *of this Act.*

8           **(2) DEADLINE FOR PROMULGATION OF CERTAIN**  
9           **REGULATIONS.—***The Secretary shall first issue regula-*  
10           *tions under section 1874A(h) of the Social Security*  
11           *Act, as added by subsection (a), by not later than 1*  
12           *year after the date of the enactment of this Act.*

13           **(3) APPLICATION OF STANDARD PROTOCOLS FOR**  
14           **RANDOM           PREPAYMENT           REVIEW.—***Section*  
15           *1874A(h)(1)(B) of the Social Security Act, as added*  
16           *by subsection (a), shall apply to random prepayment*  
17           *reviews conducted on or after such date (not later*  
18           *than 1 year after the date of the enactment of this*  
19           *Act) as the Secretary shall specify.*

20           **(c) APPLICATION TO FISCAL INTERMEDIARIES AND**  
21           **CARRIERS.—***The provisions of section 1874A(h) of the So-*  
22           *cial Security Act, as added by subsection (a), shall apply*  
23           *to each fiscal intermediary under section 1816 of the Social*  
24           *Security Act (42 U.S.C. 1395h) and each carrier under sec-*  
25           *tion 1842 of such Act (42 U.S.C. 1395u) in the same man-*

1 *ner as they apply to medicare administrative contractors*  
2 *under such provisions.*

3 **SEC. 405. RECOVERY OF OVERPAYMENTS.**

4 *(a) IN GENERAL.—Section 1893 (42 U.S.C. 1395ddd)*  
5 *is amended by adding at the end the following new sub-*  
6 *section:*

7 *“(f) RECOVERY OF OVERPAYMENTS.—*

8 *“(1) USE OF REPAYMENT PLANS.—*

9 *“(A) IN GENERAL.—If the repayment, with-*  
10 *in 30 days by a provider of services or supplier,*  
11 *of an overpayment under this title would con-*  
12 *stitute a hardship (as defined in subparagraph*  
13 *(B)), subject to subparagraph (C), upon request*  
14 *of the provider of services or supplier the Sec-*  
15 *retary shall enter into a plan with the provider*  
16 *of services or supplier for the repayment*  
17 *(through offset or otherwise) of such overpayment*  
18 *over a period of at least 6 months but not longer*  
19 *than 3 years (or not longer than 5 years in the*  
20 *case of extreme hardship, as determined by the*  
21 *Secretary). Interest shall accrue on the balance*  
22 *through the period of repayment. Such plan shall*  
23 *meet terms and conditions determined to be ap-*  
24 *propriate by the Secretary.*

25 *“(B) HARDSHIP.—*

1           “(i) *IN GENERAL.*—For purposes of  
2           *subparagraph (A), the repayment of an*  
3           *overpayment (or overpayments) within 30*  
4           *days is deemed to constitute a hardship if—*

5                     “(I) *in the case of a provider of*  
6                     *services that files cost reports, the ag-*  
7                     *gregate amount of the overpayments*  
8                     *exceeds 10 percent of the amount paid*  
9                     *under this title to the provider of serv-*  
10                    *ices for the cost reporting period cov-*  
11                    *ered by the most recently submitted*  
12                    *cost report; or*

13                   “(II) *in the case of another pro-*  
14                    *vider of services or supplier, the aggre-*  
15                    *gate amount of the overpayments ex-*  
16                    *ceeds 10 percent of the amount paid*  
17                    *under this title to the provider of serv-*  
18                    *ices or supplier for the previous cal-*  
19                    *endar year.*

20                   “(ii) *RULE OF APPLICATION.*—*The*  
21                    *Secretary shall establish rules for the appli-*  
22                    *cation of this subparagraph in the case of a*  
23                    *provider of services or supplier that was not*  
24                    *paid under this title during the previous*

1            *year or was paid under this title only dur-*  
2            *ing a portion of that year.*

3            *“(iii) TREATMENT OF PREVIOUS OVER-*  
4            *PAYMENTS.—If a provider of services or*  
5            *supplier has entered into a repayment plan*  
6            *under subparagraph (A) with respect to a*  
7            *specific overpayment amount, such payment*  
8            *amount under the repayment plan shall not*  
9            *be taken into account under clause (i) with*  
10           *respect to subsequent overpayment amounts.*

11           *“(C) EXCEPTIONS.—Subparagraph (A)*  
12           *shall not apply if—*

13           *“(i) the Secretary has reason to suspect*  
14           *that the provider of services or supplier*  
15           *may file for bankruptcy or otherwise cease*  
16           *to do business or discontinue participation*  
17           *in the program under this title; or*

18           *“(ii) there is an indication of fraud or*  
19           *abuse committed against the program.*

20           *“(D) IMMEDIATE COLLECTION IF VIOLATION*  
21           *OF REPAYMENT PLAN.—If a provider of services*  
22           *or supplier fails to make a payment in accord-*  
23           *ance with a repayment plan under this para-*  
24           *graph, the Secretary may immediately seek to*  
25           *offset or otherwise recover the total balance out-*

1           *standing (including applicable interest) under*  
2           *the repayment plan.*

3           “(E) *RELATION TO NO FAULT PROVISION.—*  
4           *Nothing in this paragraph shall be construed as*  
5           *affecting the application of section 1870(c) (re-*  
6           *lating to no adjustment in the cases of certain*  
7           *overpayments).*

8           “(2) *LIMITATION ON RECOUPMENT.—*

9           “(A) *IN GENERAL.—In the case of a pro-*  
10          *vider of services or supplier that is determined to*  
11          *have received an overpayment under this title*  
12          *and that seeks a reconsideration by a qualified*  
13          *independent contractor on such determination*  
14          *under section 1869(b)(1), the Secretary may not*  
15          *take any action (or authorize any other person,*  
16          *including any medicare contractor, as defined in*  
17          *subparagraph (C)) to recoup the overpayment*  
18          *until the date the decision on the reconsideration*  
19          *has been rendered. If the provisions of section*  
20          *1869(b)(1) (providing for such a reconsideration*  
21          *by a qualified independent contractor) are not in*  
22          *effect, in applying the previous sentence any ref-*  
23          *erence to such a reconsideration shall be treated*  
24          *as a reference to a redetermination by the fiscal*  
25          *intermediary or carrier involved.*

1           “(B) *COLLECTION WITH INTEREST.*—*Inso-*  
2           *far as the determination on such appeal is*  
3           *against the provider of services or supplier, in-*  
4           *terest on the overpayment shall accrue on and*  
5           *after the date of the original notice of overpay-*  
6           *ment. Insofar as such determination against the*  
7           *provider of services or supplier is later reversed,*  
8           *the Secretary shall provide for repayment of the*  
9           *amount recouped plus interest at the same rate*  
10           *as would apply under the previous sentence for*  
11           *the period in which the amount was recouped.*

12           “(C) *MEDICARE CONTRACTOR DEFINED.*—  
13           *For purposes of this subsection, the term ‘medi-*  
14           *care contractor’ has the meaning given such term*  
15           *in section 1889(g).*

16           “(3) *LIMITATION ON USE OF EXTRAPOLATION.*—  
17           *A medicare contractor may not use extrapolation to*  
18           *determine overpayment amounts to be recovered by*  
19           *recoupment, offset, or otherwise unless—*

20                   “(A) *there is a sustained or high level of*  
21                   *payment error (as defined by the Secretary by*  
22                   *regulation); or*

23                   “(B) *documented educational intervention*  
24                   *has failed to correct the payment error (as deter-*  
25                   *mined by the Secretary).*

1           “(4) *PROVISION OF SUPPORTING DOCUMENTA-*  
2           *TION.—In the case of a provider of services or sup-*  
3           *plier with respect to which amounts were previously*  
4           *overpaid, a medicare contractor may request the peri-*  
5           *odic production of records or supporting documenta-*  
6           *tion for a limited sample of submitted claims to en-*  
7           *sure that the previous practice is not continuing.*

8           “(5) *CONSENT SETTLEMENT REFORMS.—*

9           “(A) *IN GENERAL.—The Secretary may use*  
10           *a consent settlement (as defined in subparagraph*  
11           *(D)) to settle a projected overpayment.*

12           “(B) *OPPORTUNITY TO SUBMIT ADDITIONAL*  
13           *INFORMATION BEFORE CONSENT SETTLEMENT*  
14           *OFFER.—Before offering a provider of services or*  
15           *supplier a consent settlement, the Secretary*  
16           *shall—*

17           “(i) *communicate to the provider of*  
18           *services or supplier—*

19           “(I) *that, based on a review of the*  
20           *medical records requested by the Sec-*  
21           *retary, a preliminary evaluation of*  
22           *those records indicates that there would*  
23           *be an overpayment;*

24           “(II) *the nature of the problems*  
25           *identified in such evaluation; and*

1                   “(III) the steps that the provider  
2                   of services or supplier should take to  
3                   address the problems; and

4                   “(ii) provide for a 45-day period dur-  
5                   ing which the provider of services or sup-  
6                   plier may furnish additional information  
7                   concerning the medical records for the  
8                   claims that had been reviewed.

9                   “(C) CONSENT SETTLEMENT OFFER.—The  
10                  Secretary shall review any additional informa-  
11                  tion furnished by the provider of services or sup-  
12                  plier under subparagraph (B)(ii). Taking into  
13                  consideration such information, the Secretary  
14                  shall determine if there still appears to be an  
15                  overpayment. If so, the Secretary—

16                  “(i) shall provide notice of such deter-  
17                  mination to the provider of services or sup-  
18                  plier, including an explanation of the rea-  
19                  son for such determination; and

20                  “(ii) in order to resolve the overpay-  
21                  ment, may offer the provider of services or  
22                  supplier—

23                          “(I) the opportunity for a statis-  
24                          tically valid random sample; or

25                          “(II) a consent settlement.

1           *The opportunity provided under clause (ii)(I)*  
2           *does not waive any appeal rights with respect to*  
3           *the alleged overpayment involved.*

4           “(D) *CONSENT SETTLEMENT DEFINED.*—  
5           *For purposes of this paragraph, the term ‘con-*  
6           *sent settlement’ means an agreement between the*  
7           *Secretary and a provider of services or supplier*  
8           *whereby both parties agree to settle a projected*  
9           *overpayment based on less than a statistically*  
10           *valid sample of claims and the provider of serv-*  
11           *ices or supplier agrees not to appeal the claims*  
12           *involved.*

13           “(6) *NOTICE OF OVER-UTILIZATION OF CODES.*—  
14           *The Secretary shall establish, in consultation with or-*  
15           *ganizations representing the classes of providers of*  
16           *services and suppliers, a process under which the Sec-*  
17           *retary provides for notice to classes of providers of*  
18           *services and suppliers served by the contractor in*  
19           *cases in which the contractor has identified that par-*  
20           *ticular billing codes may be overutilized by that class*  
21           *of providers of services or suppliers under the pro-*  
22           *grams under this title (or provisions of title XI inso-*  
23           *far as they relate to such programs).*

24           “(7) *PAYMENT AUDITS.*—

1           “(A) *WRITTEN NOTICE FOR POST-PAYMENT*  
2           *AUDITS.—Subject to subparagraph (C), if a*  
3           *medicare contractor decides to conduct a post-*  
4           *payment audit of a provider of services or sup-*  
5           *plier under this title, the contractor shall provide*  
6           *the provider of services or supplier with written*  
7           *notice (which may be in electronic form) of the*  
8           *intent to conduct such an audit.*

9           “(B) *EXPLANATION OF FINDINGS FOR ALL*  
10           *AUDITS.—Subject to subparagraph (C), if a*  
11           *medicare contractor audits a provider of services*  
12           *or supplier under this title, the contractor*  
13           *shall—*

14                   “(i) *give the provider of services or*  
15                   *supplier a full review and explanation of*  
16                   *the findings of the audit in a manner that*  
17                   *is understandable to the provider of services*  
18                   *or supplier and permits the development of*  
19                   *an appropriate corrective action plan;*

20                   “(ii) *inform the provider of services or*  
21                   *supplier of the appeal rights under this title*  
22                   *as well as consent settlement options (which*  
23                   *are at the discretion of the Secretary);*

1           “(iii) give the provider of services or  
2           supplier an opportunity to provide addi-  
3           tional information to the contractor; and

4           “(iv) take into account information  
5           provided, on a timely basis, by the provider  
6           of services or supplier under clause (iii).

7           “(C) *EXCEPTION.*—Subparagraphs (A) and  
8           (B) shall not apply if the provision of notice or  
9           findings would compromise pending law enforce-  
10          ment activities, whether civil or criminal, or re-  
11          veal findings of law enforcement-related audits.

12          “(8) *STANDARD METHODOLOGY FOR PROBE SAM-*  
13          *PLING.*—The Secretary shall establish a standard  
14          methodology for medicare contractors to use in select-  
15          ing a sample of claims for review in the case of an  
16          abnormal billing pattern.”.

17          (b) *EFFECTIVE DATES AND DEADLINES.*—

18                 (1) *USE OF REPAYMENT PLANS.*—Section  
19                 1893(f)(1) of the Social Security Act, as added by  
20                 subsection (a), shall apply to requests for repayment  
21                 plans made after the date of the enactment of this Act.

22                 (2) *LIMITATION ON RECOUPMENT.*—Section  
23                 1893(f)(2) of the Social Security Act, as added by  
24                 subsection (a), shall apply to actions taken after the  
25                 date of the enactment of this Act.

1           (3) *USE OF EXTRAPOLATION.*—Section  
2           1893(f)(3) of the Social Security Act, as added by  
3           subsection (a), shall apply to statistically valid ran-  
4           dom samples initiated after the date that is 1 year  
5           after the date of the enactment of this Act.

6           (4) *PROVISION OF SUPPORTING DOCUMENTA-*  
7           *TION.*—Section 1893(f)(4) of the Social Security Act,  
8           as added by subsection (a), shall take effect on the  
9           date of the enactment of this Act.

10          (5) *CONSENT SETTLEMENT.*—Section 1893(f)(5)  
11          of the Social Security Act, as added by subsection (a),  
12          shall apply to consent settlements entered into after  
13          the date of the enactment of this Act.

14          (6) *NOTICE OF OVERUTILIZATION.*—Not later  
15          than 1 year after the date of the enactment of this  
16          Act, the Secretary shall first establish the process for  
17          notice of overutilization of billing codes under section  
18          1893A(f)(6) of the Social Security Act, as added by  
19          subsection (a).

20          (7) *PAYMENT AUDITS.*—Section 1893A(f)(7) of  
21          the Social Security Act, as added by subsection (a),  
22          shall apply to audits initiated after the date of the  
23          enactment of this Act.

24          (8) *STANDARD FOR ABNORMAL BILLING PAT-*  
25          *TERNS.*—Not later than 1 year after the date of the



1           *formance of medicare administrative contractors*  
2           *in meeting the deadlines established under this*  
3           *subparagraph.*

4           “(C) *CONSULTATION BEFORE CHANGING*  
5           *PROVIDER ENROLLMENT FORMS.—The Secretary*  
6           *shall consult with providers of services and sup-*  
7           *pliers before making changes in the provider en-*  
8           *rollment forms required of such providers and*  
9           *suppliers to be eligible to submit claims for*  
10           *which payment may be made under this title.*

11           “(2) *HEARING RIGHTS IN CASES OF DENIAL OR*  
12           *NON-RENEWAL.—A provider of services or supplier*  
13           *whose application to enroll (or, if applicable, to renew*  
14           *enrollment) under this title is denied may have a*  
15           *hearing and judicial review of such denial under the*  
16           *procedures that apply under subsection (h)(1)(A) to a*  
17           *provider of services that is dissatisfied with a deter-*  
18           *mination by the Secretary.”.*

19           (b) *EFFECTIVE DATES.—*

20           (1) *ENROLLMENT PROCESS.—The Secretary shall*  
21           *provide for the establishment of the enrollment process*  
22           *under section 1866(j)(1) of the Social Security Act, as*  
23           *added by subsection (a)(2), within 6 months after the*  
24           *date of the enactment of this Act.*

1           (2) *CONSULTATION.*—Section 1866(j)(1)(C) of  
2     *the Social Security Act, as added by subsection*  
3     *(a)(2), shall apply with respect to changes in provider*  
4     *enrollment forms made on or after January 1, 2004.*

5           (3) *HEARING RIGHTS.*—Section 1866(j)(2) of the  
6     *Social Security Act, as added by subsection (a)(2),*  
7     *shall apply to denials occurring on or after such date*  
8     *(not later than 1 year after the date of the enactment*  
9     *of this Act) as the Secretary specifies.*

10 ***SEC. 407. PROCESS FOR CORRECTION OF MINOR ERRORS***  
11                           ***AND OMISSIONS WITHOUT PURSUING AP-***  
12                           ***PEALS PROCESS.***

13           (a) *CLAIMS.*—The Secretary shall develop, in consulta-  
14     *tion with appropriate medicare contractors (as defined in*  
15     *section 1889(g) of the Social Security Act, as inserted by*  
16     *section 301(a)(1)) and representatives of providers of serv-*  
17     *ices and suppliers, a process whereby, in the case of minor*  
18     *errors or omissions (as defined by the Secretary) that are*  
19     *detected in the submission of claims under the programs*  
20     *under title XVIII of such Act, a provider of services or sup-*  
21     *plier is given an opportunity to correct such an error or*  
22     *omission without the need to initiate an appeal. Such proc-*  
23     *ess shall include the ability to resubmit corrected claims.*

24           (b) *PERMITTING USE OF CORRECTED AND SUPPLE-*  
25     *MENTARY DATA.*—

1           (1) *IN GENERAL.*—Section 1886(d)(10)(D)(vi)  
2           (42 U.S.C. 1395ww(d)(10)(D)(vi)) is amended by  
3           adding after subclause (II) at the end the following:  
4           “Notwithstanding subclause (I), a hospital may submit,  
5           and the Secretary may accept upon verification, data that  
6           corrects or supplements the data described in such subclause  
7           without regard to whether the corrected or supplementary  
8           data relate to a cost report that has been settled.”.

9           (2) *EFFECTIVE DATE.*—The amendment made by  
10          paragraph (1) shall apply to fiscal years beginning  
11          with fiscal year 2004.

12          (3) *SUBMITTAL AND RESUBMITTAL OF APPLICA-*  
13          *TIONS PERMITTED FOR FISCAL YEAR 2004.*—

14           (A) *IN GENERAL.*—Notwithstanding any  
15           other provision of law, a hospital may submit  
16           (or resubmit) an application for a change de-  
17           scribed in section 1886(d)(10)(C)(i)(II) of the  
18           Social Security Act for fiscal year 2004 if the  
19           hospital demonstrates on a timely basis to the  
20           satisfaction of the Secretary that the use of cor-  
21           rected or supplementary data under the amend-  
22           ment made by paragraph (1) would materially  
23           affect the approval of such an application.

24           (B) *APPLICATION OF BUDGET NEU-*  
25           *TRALITY.*—If one or more hospital’s applications

1           are approved as a result of paragraph (1) and  
 2           subparagraph (A) for fiscal year 2004, the Sec-  
 3           retary shall make a proportional adjustment in  
 4           the standardized amounts determined under sec-  
 5           tion 1886(d)(3) of the Social Security Act (42  
 6           U.S.C. 1395ww(d)(3)) for fiscal year 2004 to as-  
 7           sure that approval of such applications does not  
 8           result in aggregate payments under section  
 9           1886(d) of such Act that are greater or less than  
 10          those that would otherwise be made if paragraph  
 11          (1) and subparagraph (A) did not apply.

12   **SEC. 408. PRIOR DETERMINATION PROCESS FOR CERTAIN**  
 13                   **ITEMS AND SERVICES; ADVANCE BENE-**  
 14                   **FICIARY NOTICES.**

15           (a) *IN GENERAL.*—Section 1869 (42 U.S.C. 1395ff(b)),  
 16   as amended by sections 521 and 522 of BIPA and section  
 17   403(d)(2)(B), is further amended by adding at the end the  
 18   following new subsection:

19           “(h) *PRIOR DETERMINATION PROCESS FOR CERTAIN*  
 20   *ITEMS AND SERVICES.*—

21                   “(1) *ESTABLISHMENT OF PROCESS.*—

22                           “(A) *IN GENERAL.*—With respect to a medi-  
 23   care administrative contractor that has a con-  
 24   tract under section 1874A that provides for mak-  
 25   ing payments under this title with respect to eli-

1           gible items and services described in subpara-  
2           graph (C), the Secretary shall establish a prior  
3           determination process that meets the require-  
4           ments of this subsection and that shall be applied  
5           by such contractor in the case of eligible request-  
6           ers.

7           “(B) *ELIGIBLE REQUESTER.*—For purposes  
8           of this subsection, each of the following shall be  
9           an eligible requester:

10                   “(i) *A physician, but only with respect*  
11                   *to eligible items and services for which the*  
12                   *physician may be paid directly.*

13                   “(ii) *An individual entitled to benefits*  
14                   *under this title, but only with respect to an*  
15                   *item or service for which the individual re-*  
16                   *ceives, from the physician who may be paid*  
17                   *directly for the item or service, an advance*  
18                   *beneficiary notice under section 1879(a)*  
19                   *that payment may not be made (or may no*  
20                   *longer be made) for the item or service*  
21                   *under this title.*

22           “(C) *ELIGIBLE ITEMS AND SERVICES.*—For  
23           purposes of this subsection and subject to para-  
24           graph (2), eligible items and services are items  
25           and services which are physicians’ services (as

1           *defined in paragraph (4)(A) of section 1848(f)*  
2           *for purposes of calculating the sustainable*  
3           *growth rate under such section).*

4           “(2) *SECRETARIAL FLEXIBILITY.*—*The Secretary*  
5           *shall establish by regulation reasonable limits on the*  
6           *categories of eligible items and services for which a*  
7           *prior determination of coverage may be requested*  
8           *under this subsection. In establishing such limits, the*  
9           *Secretary may consider the dollar amount involved*  
10           *with respect to the item or service, administrative*  
11           *costs and burdens, and other relevant factors.*

12           “(3) *REQUEST FOR PRIOR DETERMINATION.*—

13           “(A) *IN GENERAL.*—*Subject to paragraph*  
14           *(2), under the process established under this sub-*  
15           *section an eligible requester may submit to the*  
16           *contractor a request for a determination, before*  
17           *the furnishing of an eligible item or service in-*  
18           *volved as to whether the item or service is cov-*  
19           *ered under this title consistent with the applica-*  
20           *ble requirements of section 1862(a)(1)(A) (relat-*  
21           *ing to medical necessity).*

22           “(B) *ACCOMPANYING DOCUMENTATION.*—  
23           *The Secretary may require that the request be*  
24           *accompanied by a description of the item or*  
25           *service, supporting documentation relating to the*

1       *medical necessity for the item or service, and*  
2       *any other appropriate documentation. In the*  
3       *case of a request submitted by an eligible re-*  
4       *quester who is described in paragraph (1)(B)(ii),*  
5       *the Secretary may require that the request also*  
6       *be accompanied by a copy of the advance bene-*  
7       *ficiary notice involved.*

8       “(4) *RESPONSE TO REQUEST.*—

9               “(A) *IN GENERAL.*—*Under such process, the*  
10       *contractor shall provide the eligible requester*  
11       *with written notice of a determination as to*  
12       *whether—*

13                       “(i) *the item or service is so covered;*

14                       “(ii) *the item or service is not so cov-*  
15                       *ered; or*

16                       “(iii) *the contractor lacks sufficient in-*  
17                       *formation to make a coverage determina-*  
18                       *tion.*

19       *If the contractor makes the determination de-*  
20       *scribed in clause (iii), the contractor shall in-*  
21       *clude in the notice a description of the addi-*  
22       *tional information required to make the coverage*  
23       *determination.*

24               “(B) *DEADLINE TO RESPOND.*—*Such notice*  
25       *shall be provided within the same time period as*

1           *the time period applicable to the contractor pro-*  
2           *viding notice of initial determinations on a*  
3           *claim for benefits under subsection (a)(2)(A).*

4           “(C) *INFORMING BENEFICIARY IN CASE OF*  
5           *PHYSICIAN REQUEST.—In the case of a request*  
6           *in which an eligible requester is not the indi-*  
7           *vidual described in paragraph (1)(B)(ii), the*  
8           *process shall provide that the individual to*  
9           *whom the item or service is proposed to be fur-*  
10           *nished shall be informed of any determination*  
11           *described in clause (ii) (relating to a determina-*  
12           *tion of non-coverage) and the right (referred to*  
13           *in paragraph (6)(B)) to obtain the item or serv-*  
14           *ice and have a claim submitted for the item or*  
15           *service.*

16           “(5) *EFFECT OF DETERMINATIONS.—*

17           “(A) *BINDING NATURE OF POSITIVE DETER-*  
18           *MINATION.—If the contractor makes the deter-*  
19           *mination described in paragraph (4)(A)(i), such*  
20           *determination shall be binding on the contractor*  
21           *in the absence of fraud or evidence of misrepre-*  
22           *sentation of facts presented to the contractor.*

23           “(B) *NOTICE AND RIGHT TO REDETERMINA-*  
24           *TION IN CASE OF A DENIAL.—*

1           “(i) *IN GENERAL.*—If the contractor  
2           makes the determination described in para-  
3           graph (4)(A)(ii)—

4                   “(I) *the eligible requester has the*  
5                   *right to a redetermination by the con-*  
6                   *tractor on the determination that the*  
7                   *item or service is not so covered; and*

8                   “(II) *the contractor shall include*  
9                   *in notice under paragraph (4)(A) a*  
10                  *brief explanation of the basis for the*  
11                  *determination, including on what na-*  
12                  *tional or local coverage or noncoverage*  
13                  *determination (if any) the determina-*  
14                  *tion is based, and the right to such a*  
15                  *redetermination.*

16           “(ii) *DEADLINE FOR REDETERMINA-*  
17           *TIONS.*—*The contractor shall complete and*  
18           *provide notice of such redetermination with-*  
19           *in the same time period as the time period*  
20           *applicable to the contractor providing notice*  
21           *of redeterminations relating to a claim for*  
22           *benefits under subsection (a)(3)(C)(ii).*

23           “(6) *LIMITATION ON FURTHER REVIEW.*—

24                   “(A) *IN GENERAL.*—*Contractor determina-*  
25                   *tions described in paragraph (4)(A)(ii) or*

1           (4)(A)(iii) (and redeterminations made under  
2           paragraph (5)(B)), relating to pre-service claims  
3           are not subject to further administrative appeal  
4           or judicial review under this section or other-  
5           wise.

6           “(B) DECISION NOT TO SEEK PRIOR DETER-  
7           MINATION OR NEGATIVE DETERMINATION DOES  
8           NOT IMPACT RIGHT TO OBTAIN SERVICES, SEEK  
9           REIMBURSEMENT, OR APPEAL RIGHTS.—Nothing  
10          in this subsection shall be construed as affecting  
11          the right of an individual who—

12                 “(i) decides not to seek a prior deter-  
13                 mination under this subsection with respect  
14                 to items or services; or

15                 “(ii) seeks such a determination and  
16                 has received a determination described in  
17                 paragraph (4)(A)(ii),  
18          from receiving (and submitting a claim for) such  
19          items services and from obtaining administrative  
20          or judicial review respecting such claim under  
21          the other applicable provisions of this section.  
22          Failure to seek a prior determination under this  
23          subsection with respect to items and services  
24          shall not be taken into account in such adminis-  
25          trative or judicial review.

1           “(C) *NO PRIOR DETERMINATION AFTER RE-*  
2           *CEIPT OF SERVICES.*—Once an individual is pro-  
3           *vided items and services, there shall be no prior*  
4           *determination under this subsection with respect*  
5           *to such items or services.”.*

6           **(b) *EFFECTIVE DATE; TRANSITION.***—

7           **(1) *EFFECTIVE DATE.***—The Secretary shall es-  
8           *tablish the prior determination process under the*  
9           *amendment made by subsection (a) in such a manner*  
10           *as to provide for the acceptance of requests for deter-*  
11           *minations under such process filed not later than 18*  
12           *months after the date of the enactment of this Act.*

13           **(2) *TRANSITION.***—During the period in which  
14           *the amendment made by subsection (a) has become ef-*  
15           *fective but contracts are not provided under section*  
16           *1874A of the Social Security Act with medicare ad-*  
17           *ministrative contractors, any reference in section*  
18           *1869(g) of such Act (as added by such amendment) to*  
19           *such a contractor is deemed a reference to a fiscal*  
20           *intermediary or carrier with an agreement under sec-*  
21           *tion 1816, or contract under section 1842, respec-*  
22           *tively, of such Act.*

23           **(3) *LIMITATION ON APPLICATION TO SGR.***—For  
24           *purposes of applying section 1848(f)(2)(D) of the So-*  
25           *cial Security Act (42 U.S.C. 1395w-4(f)(2)(D)), the*

1        *amendment made by subsection (a) shall not be con-*  
2        *sidered to be a change in law or regulation.*

3        *(c) PROVISIONS RELATING TO ADVANCE BENEFICIARY*  
4        *NOTICES; REPORT ON PRIOR DETERMINATION PROCESS.—*

5            *(1) DATA COLLECTION.—The Secretary shall es-*  
6            *tablish a process for the collection of information on*  
7            *the instances in which an advance beneficiary notice*  
8            *(as defined in paragraph (4)) has been provided and*  
9            *on instances in which a beneficiary indicates on such*  
10          *a notice that the beneficiary does not intend to seek*  
11          *to have the item or service that is the subject of the*  
12          *notice furnished.*

13          *(2) OUTREACH AND EDUCATION.—The Secretary*  
14          *shall establish a program of outreach and education*  
15          *for beneficiaries and providers of services and other*  
16          *persons on the appropriate use of advance beneficiary*  
17          *notices and coverage policies under the medicare pro-*  
18          *gram.*

19          *(3) GAO REPORT ON USE OF ADVANCE BENE-*  
20          *FICIARY NOTICES.—Not later than 18 months after*  
21          *the date on which section 1869(g) of the Social Secu-*  
22          *rity Act (as added by subsection (a)) takes effect, the*  
23          *Comptroller General of the United States shall submit*  
24          *to Congress a report on the use of advance beneficiary*  
25          *notices under title XVIII of such Act. Such report*

1 *shall include information concerning the providers of*  
2 *services and other persons that have provided such no-*  
3 *tices and the response of beneficiaries to such notices.*

4 (4) *GAO REPORT ON USE OF PRIOR DETERMINA-*  
5 *TION PROCESS.—Not later than 18 months after the*  
6 *date on which section 1869(g) of the Social Security*  
7 *Act (as added by subsection (a)) takes effect, the*  
8 *Comptroller General of the United States shall submit*  
9 *to Congress a report on the use of the prior deter-*  
10 *mination process under such section. Such report*  
11 *shall include—*

12 (A) *information concerning the types of*  
13 *procedures for which a prior determination has*  
14 *been sought, determinations made under the*  
15 *process, and changes in receipt of services result-*  
16 *ing from the application of such process; and*

17 (B) *an evaluation of whether the process*  
18 *was useful for physicians (and other suppliers)*  
19 *and beneficiaries, whether it was timely, and*  
20 *whether the amount of information required was*  
21 *burdensome to physicians and beneficiaries.*

22 (5) *ADVANCE BENEFICIARY NOTICE DEFINED.—*  
23 *In this subsection, the term “advance beneficiary no-*  
24 *tice” means a written notice provided under section*  
25 *1879(a) of the Social Security Act (42 U.S.C.*

1       1395pp(a)) to an individual entitled to benefits under  
2       part A or B of title XVIII of such Act before items  
3       or services are furnished under such part in cases  
4       where a provider of services or other person that  
5       would furnish the item or service believes that pay-  
6       ment will not be made for some or all of such items  
7       or services under such title.

8                   **TITLE V—MISCELLANEOUS**  
9                   **PROVISIONS**

10   **SEC. 501. POLICY DEVELOPMENT REGARDING EVALUATION**  
11                   **AND MANAGEMENT (E & M) DOCUMENTATION**  
12                   **GUIDELINES.**

13       (a) *IN GENERAL.*—The Secretary may not implement  
14       any new documentation guidelines for, or clinical examples  
15       of, evaluation and management physician services under  
16       the title XVIII of the Social Security Act on or after the  
17       date of the enactment of this Act unless the Secretary—

18               (1) has developed the guidelines in collaboration  
19       with practicing physicians (including both generalists  
20       and specialists) and provided for an assessment of the  
21       proposed guidelines by the physician community;

22               (2) has established a plan that contains specific  
23       goals, including a schedule, for improving the use of  
24       such guidelines;

1           (3) *has conducted appropriate and representative*  
2           *pilot projects under subsection (b) to test modifica-*  
3           *tions to the evaluation and management documenta-*  
4           *tion guidelines;*

5           (4) *finds that the objectives described in sub-*  
6           *section (c) will be met in the implementation of such*  
7           *guidelines; and*

8           (5) *has established, and is implementing, a pro-*  
9           *gram to educate physicians on the use of such guide-*  
10          *lines and that includes appropriate outreach.*

11 *The Secretary shall make changes to the manner in which*  
12 *existing evaluation and management documentation guide-*  
13 *lines are implemented to reduce paperwork burdens on phy-*  
14 *sicians.*

15          **(b) PILOT PROJECTS TO TEST EVALUATION AND MAN-**  
16 **AGEMENT DOCUMENTATION GUIDELINES.—**

17           (1) **IN GENERAL.—***The Secretary shall conduct*  
18           *under this subsection appropriate and representative*  
19           *pilot projects to test new evaluation and management*  
20           *documentation guidelines referred to in subsection*  
21           *(a).*

22           (2) **LENGTH AND CONSULTATION.—***Each pilot*  
23           *project under this subsection shall—*

24                    (A) *be voluntary;*

1           (B) be of sufficient length as determined by  
2           the Secretary to allow for preparatory physician  
3           and medicare contractor education, analysis,  
4           and use and assessment of potential evaluation  
5           and management guidelines; and

6           (C) be conducted, in development and  
7           throughout the planning and operational stages  
8           of the project, in consultation with practicing  
9           physicians (including both generalists and spe-  
10          cialists).

11          (3) *RANGE OF PILOT PROJECTS.*—Of the pilot  
12          projects conducted under this subsection—

13               (A) at least one shall focus on a peer review  
14               method by physicians (not employed by a medi-  
15               care contractor) which evaluates medical record  
16               information for claims submitted by physicians  
17               identified as statistical outliers relative to defini-  
18               tions published in the Current Procedures Ter-  
19               minology (CPT) code book of the American Med-  
20               ical Association;

21               (B) at least one shall focus on an alter-  
22               native method to detailed guidelines based on  
23               physician documentation of face to face encoun-  
24               ter time with a patient;

1           (C) at least one shall be conducted for serv-  
2           ices furnished in a rural area and at least one  
3           for services furnished outside such an area; and

4           (D) at least one shall be conducted in a set-  
5           ting where physicians bill under physicians'  
6           services in teaching settings and at least one  
7           shall be conducted in a setting other than a  
8           teaching setting.

9           (4) *BANNING OF TARGETING OF PILOT PROJECT*  
10          *PARTICIPANTS.*—Data collected under this subsection  
11          shall not be used as the basis for overpayment de-  
12          mands or post-payment audits. Such limitation ap-  
13          plies only to claims filed as part of the pilot project  
14          and lasts only for the duration of the pilot project  
15          and only as long as the provider is a participant in  
16          the pilot project.

17          (5) *STUDY OF IMPACT.*—Each pilot project shall  
18          examine the effect of the new evaluation and manage-  
19          ment documentation guidelines on—

20                 (A) different types of physician practices,  
21                 including those with fewer than 10 full-time-  
22                 equivalent employees (including physicians); and

23                 (B) the costs of physician compliance, in-  
24                 cluding education, implementation, auditing,  
25                 and monitoring.

1           (6) *PERIODIC REPORTS.*—*The Secretary shall*  
2           *submit to Congress periodic reports on the pilot*  
3           *projects under this subsection.*

4           (c) *OBJECTIVES FOR EVALUATION AND MANAGEMENT*  
5           *GUIDELINES.*—*The objectives for modified evaluation and*  
6           *management documentation guidelines developed by the*  
7           *Secretary shall be to—*

8                   (1) *identify clinically relevant documentation*  
9                   *needed to code accurately and assess coding levels ac-*  
10                  *curately;*

11                  (2) *decrease the level of non-clinically pertinent*  
12                  *and burdensome documentation time and content in*  
13                  *the physician's medical record;*

14                  (3) *increase accuracy by reviewers; and*

15                  (4) *educate both physicians and reviewers.*

16           (d) *STUDY OF SIMPLER, ALTERNATIVE SYSTEMS OF*  
17           *DOCUMENTATION FOR PHYSICIAN CLAIMS.*—

18                   (1) *STUDY.*—*The Secretary shall carry out a*  
19                   *study of the matters described in paragraph (2).*

20                   (2) *MATTERS DESCRIBED.*—*The matters referred*  
21                   *to in paragraph (1) are—*

22                           (A) *the development of a simpler, alter-*  
23                           *native system of requirements for documentation*  
24                           *accompanying claims for evaluation and man-*  
25                           *agement physician services for which payment is*

1           *made under title XVIII of the Social Security*  
2           *Act; and*

3                     *(B) consideration of systems other than cur-*  
4                     *rent coding and documentation requirements for*  
5                     *payment for such physician services.*

6           (3) *CONSULTATION WITH PRACTICING PHYSI-*  
7           *CIANs.—In designing and carrying out the study*  
8           *under paragraph (1), the Secretary shall consult with*  
9           *practicing physicians, including physicians who are*  
10           *part of group practices and including both generalists*  
11           *and specialists.*

12           (4) *APPLICATION OF HIPAA UNIFORM CODING RE-*  
13           *QUIREMENTS.—In developing an alternative system*  
14           *under paragraph (2), the Secretary shall consider re-*  
15           *quirements of administrative simplification under*  
16           *part C of title XI of the Social Security Act.*

17           (5) *REPORT TO CONGRESS.—(A) Not later than*  
18           *October 1, 2005, the Secretary shall submit to Con-*  
19           *gress a report on the results of the study conducted*  
20           *under paragraph (1).*

21                     *(B) The Medicare Payment Advisory Commis-*  
22                     *sion shall conduct an analysis of the results of the*  
23                     *study included in the report under subparagraph (A)*  
24                     *and shall submit a report on such analysis to Con-*  
25                     *gress.*

1           (e) *STUDY ON APPROPRIATE CODING OF CERTAIN EX-*  
2 *TENDED OFFICE VISITS.—The Secretary shall conduct a*  
3 *study of the appropriateness of coding in cases of extended*  
4 *office visits in which there is no diagnosis made. Not later*  
5 *than October 1, 2005, the Secretary shall submit a report*  
6 *to Congress on such study and shall include recommenda-*  
7 *tions on how to code appropriately for such visits in a man-*  
8 *ner that takes into account the amount of time the physi-*  
9 *cian spent with the patient.*

10           (f) *DEFINITIONS.—In this section—*

11                   (1) *the term “rural area” has the meaning given*  
12 *that term in section 1886(d)(2)(D) of the Social Secu-*  
13 *rity Act, 42 U.S.C. 1395ww(d)(2)(D); and*

14                   (2) *the term “teaching settings” are those set-*  
15 *tings described in section 415.150 of title 42, Code of*  
16 *Federal Regulations.*

17 **SEC. 502. IMPROVEMENT IN OVERSIGHT OF TECHNOLOGY**  
18 **AND COVERAGE.**

19           (a) *COUNCIL FOR TECHNOLOGY AND INNOVATION.—*  
20 *Section 1868 (42 U.S.C. 1395ee), as amended by section*  
21 *301(a), is amended by adding at the end the following new*  
22 *subsection:*

23                   “(c) *COUNCIL FOR TECHNOLOGY AND INNOVATION.—*

24                           “(1) *ESTABLISHMENT.—The Secretary shall es-*  
25 *tablish a Council for Technology and Innovation*

1       *within the Centers for Medicare & Medicaid Services*  
2       *(in this section referred to as ‘CMS’).*

3               “(2) *COMPOSITION.*—*The Council shall be com-*  
4       *posed of senior CMS staff and clinicians and shall be*  
5       *chaired by the Executive Coordinator for Technology*  
6       *and Innovation (appointed or designated under para-*  
7       *graph (4)).*

8               “(3) *DUTIES.*—*The Council shall coordinate the*  
9       *activities of coverage, coding, and payment processes*  
10       *under this title with respect to new technologies and*  
11       *procedures, including new drug therapies, and shall*  
12       *coordinate the exchange of information on new tech-*  
13       *nologies between CMS and other entities that make*  
14       *similar decisions.*

15               “(4) *EXECUTIVE COORDINATOR FOR TECH-*  
16       *NOLOGY AND INNOVATION.*—*The Secretary shall ap-*  
17       *point (or designate) a noncareer appointee (as defined*  
18       *in section 3132(a)(7) of title 5, United States Code)*  
19       *who shall serve as the Executive Coordinator for Tech-*  
20       *nology and Innovation. Such executive coordinator*  
21       *shall report to the Administrator of CMS, shall chair*  
22       *the Council, shall oversee the execution of its duties,*  
23       *and shall serve as a single point of contact for outside*  
24       *groups and entities regarding the coverage, coding,*  
25       *and payment processes under this title.”.*

1           **(b) METHODS FOR DETERMINING PAYMENT BASIS FOR**  
2 **NEW LAB TESTS.—Section 1833(h) (42 U.S.C. 1395l(h))**  
3 *is amended by adding at the end the following:*

4           “(8)(A) *The Secretary shall establish by regulation*  
5 *procedures for determining the basis for, and amount of,*  
6 *payment under this subsection for any clinical diagnostic*  
7 *laboratory test with respect to which a new or substantially*  
8 *revised HCPCS code is assigned on or after January 1,*  
9 *2005 (in this paragraph referred to as ‘new tests’).*

10           “(B) *Determinations under subparagraph (A) shall be*  
11 *made only after the Secretary—*

12                   “(i) *makes available to the public (through an*  
13 *Internet site and other appropriate mechanisms) a*  
14 *list that includes any such test for which establish-*  
15 *ment of a payment amount under this subsection is*  
16 *being considered for a year;*

17                   “(ii) *on the same day such list is made avail-*  
18 *able, causes to have published in the Federal Register*  
19 *notice of a meeting to receive comments and rec-*  
20 *ommendations (and data on which recommendations*  
21 *are based) from the public on the appropriate basis*  
22 *under this subsection for establishing payment*  
23 *amounts for the tests on such list;*

24                   “(iii) *not less than 30 days after publication of*  
25 *such notice convenes a meeting, that includes rep-*

1        *representatives of officials of the Centers for Medicare &*  
2        *Medicaid Services involved in determining payment*  
3        *amounts, to receive such comments and recommenda-*  
4        *tions (and data on which the recommendations are*  
5        *based);*

6                *“(iv) taking into account the comments and rec-*  
7                *ommendations (and accompanying data) received at*  
8                *such meeting, develops and makes available to the*  
9                *public (through an Internet site and other appro-*  
10               *prate mechanisms) a list of proposed determinations*  
11               *with respect to the appropriate basis for establishing*  
12               *a payment amount under this subsection for each*  
13               *such code, together with an explanation of the reasons*  
14               *for each such determination, the data on which the*  
15               *determinations are based, and a request for public*  
16               *written comments on the proposed determination; and*

17               *“(v) taking into account the comments received*  
18               *during the public comment period, develops and*  
19               *makes available to the public (through an Internet*  
20               *site and other appropriate mechanisms) a list of final*  
21               *determinations of the payment amounts for such tests*  
22               *under this subsection, together with the rationale for*  
23               *each such determination, the data on which the deter-*  
24               *minations are based, and responses to comments and*  
25               *suggestions received from the public.*

1       “(C) Under the procedures established pursuant to sub-  
2 paragraph (A), the Secretary shall—

3               “(i) set forth the criteria for making determina-  
4 tions under subparagraph (A); and

5               “(ii) make available to the public the data (other  
6 than proprietary data) considered in making such de-  
7 terminations.

8       “(D) The Secretary may convene such further public  
9 meetings to receive public comments on payment amounts  
10 for new tests under this subsection as the Secretary deems  
11 appropriate.

12       “(E) For purposes of this paragraph:

13               “(i) The term ‘HCPCS’ refers to the Health Care  
14 Procedure Coding System.

15               “(ii) A code shall be considered to be ‘substan-  
16 tially revised’ if there is a substantive change to the  
17 definition of the test or procedure to which the code  
18 applies (such as a new analyte or a new methodology  
19 for measuring an existing analyte-specific test).”.

20       (c) *GAO STUDY ON IMPROVEMENTS IN EXTERNAL*  
21 *DATA COLLECTION FOR USE IN THE MEDICARE INPATIENT*  
22 *PAYMENT SYSTEM.*—

23               (1) *STUDY.*—*The Comptroller General of the*  
24 *United States shall conduct a study that analyzes*  
25 *which external data can be collected in a shorter time*

1 *frame by the Centers for Medicare & Medicaid Serv-*  
2 *ices for use in computing payments for inpatient hos-*  
3 *pital services. The study may include an evaluation*  
4 *of the feasibility and appropriateness of using of*  
5 *quarterly samples or special surveys or any other*  
6 *methods. The study shall include an analysis of*  
7 *whether other executive agencies, such as the Bureau*  
8 *of Labor Statistics in the Department of Commerce,*  
9 *are best suited to collect this information.*

10 (2) *REPORT.—By not later than October 1,*  
11 *2004, the Comptroller General shall submit a report*  
12 *to Congress on the study under paragraph (1).*

13 (d) *PROCESS FOR ADOPTION OF ICD CODES AS DATA*  
14 *STANDARD.—Section 1172(f) (42 U.S.C. 1320d–1(f)) is*  
15 *amended by inserting after the first sentence the following:*  
16 *“Notwithstanding the preceding sentence, if the National*  
17 *Committee on Vital and Health Statistics has not made a*  
18 *recommendation to the Secretary before the date of the en-*  
19 *actment of this sentence, with respect to the adoption of the*  
20 *International Classification of Diseases, 10th Revision,*  
21 *Procedure Coding System (‘ICD–10–PCS’) and the Inter-*  
22 *national Classification of Diseases, 10th Revision, Clinical*  
23 *Modification (‘ICD–10–CM’) as a standard under this part*  
24 *for the reporting of services, the Secretary may adopt ICD–*

1 10-PCS and ICD-10-CM as such a standard on or after  
2 such date without receiving such a recommendation.”.

3 **SEC. 503. TREATMENT OF HOSPITALS FOR CERTAIN SERV-**  
4 **ICES UNDER MEDICARE SECONDARY PAYOR**  
5 **(MSP) PROVISIONS.**

6 (a) *IN GENERAL.*—The Secretary shall not require a  
7 hospital (including a critical access hospital) to ask ques-  
8 tions (or obtain information) relating to the application of  
9 section 1862(b) of the Social Security Act (relating to medi-  
10 care secondary payor provisions) in the case of reference  
11 laboratory services described in subsection (b), if the Sec-  
12 retary does not impose such requirement in the case of such  
13 services furnished by an independent laboratory.

14 (b) *REFERENCE LABORATORY SERVICES DE-*  
15 *SCRIBED.*—Reference laboratory services described in this  
16 subsection are clinical laboratory diagnostic tests (or the  
17 interpretation of such tests, or both) furnished without a  
18 face-to-face encounter between the individual entitled to  
19 benefits under part A or enrolled under part B, or both,  
20 and the hospital involved and in which the hospital submits  
21 a claim only for such test or interpretation.

22 **SEC. 504. EMTALA IMPROVEMENTS.**

23 (a) *PAYMENT FOR EMTALA-MANDATED SCREENING*  
24 *AND STABILIZATION SERVICES.*—

1           (1) *IN GENERAL.*—Section 1862 (42 U.S.C.  
2           1395y) is amended by inserting after subsection (c)  
3           the following new subsection:

4           “(d) For purposes of subsection (a)(1)(A), in the case  
5           of any item or service that is required to be provided pursu-  
6           ant to section 1867 to an individual who is entitled to bene-  
7           fits under this title, determinations as to whether the item  
8           or service is reasonable and necessary shall be made on the  
9           basis of the information available to the treating physician  
10          or practitioner (including the patient’s presenting symp-  
11          toms or complaint) at the time the item or service was or-  
12          dered or furnished by the physician or practitioner (and  
13          not on the patient’s principal diagnosis). When making  
14          such determinations with respect to such an item or service,  
15          the Secretary shall not consider the frequency with which  
16          the item or service was provided to the patient before or  
17          after the time of the admission or visit.”.

18           (2) *EFFECTIVE DATE.*—The amendment made by  
19          paragraph (1) shall apply to items and services fur-  
20          nished on or after January 1, 2004.

21          (b) *NOTIFICATION OF PROVIDERS WHEN EMTALA IN-*  
22          *VESTIGATION CLOSED.*—Section 1867(d) (42 U.S.C. 42  
23          U.S.C. 1395dd(d)) is amended by adding at the end the  
24          following new paragraph:

1           “(4) NOTICE UPON CLOSING AN INVESTIGA-  
2           TION.—The Secretary shall establish a procedure to  
3           notify hospitals and physicians when an investigation  
4           under this section is closed.”.

5           (c) PRIOR REVIEW BY PEER REVIEW ORGANIZATIONS  
6           IN EMTALA CASES INVOLVING TERMINATION OF PARTICI-  
7           PATION.—

8           (1) IN GENERAL.—Section 1867(d)(3) (42 U.S.C.  
9           1395dd(d)(3)) is amended—

10           (A) in the first sentence, by inserting “or in  
11           terminating a hospital’s participation under this  
12           title” after “in imposing sanctions under para-  
13           graph (1)”; and

14           (B) by adding at the end the following new  
15           sentences: “Except in the case in which a delay  
16           would jeopardize the health or safety of individ-  
17           uals, the Secretary shall also request such a re-  
18           view before making a compliance determination  
19           as part of the process of terminating a hospital’s  
20           participation under this title for violations re-  
21           lated to the appropriateness of a medical screen-  
22           ing examination, stabilizing treatment, or an  
23           appropriate transfer as required by this section,  
24           and shall provide a period of 5 days for such re-  
25           view. The Secretary shall provide a copy of the

1           organization’s report to the hospital or physician  
2           consistent with confidentiality requirements im-  
3           posed on the organization under such part B.”.

4           (2) *EFFECTIVE DATE.*—The amendments made  
5           by paragraph (1) shall apply to terminations of par-  
6           ticipation initiated on or after the date of the enact-  
7           ment of this Act.

8   **SEC. 505. EMERGENCY MEDICAL TREATMENT AND ACTIVE**  
9                           **LABOR ACT (EMTALA) TECHNICAL ADVISORY**  
10                          **GROUP.**

11           (a) *ESTABLISHMENT.*—The Secretary shall establish a  
12           Technical Advisory Group (in this section referred to as the  
13           “Advisory Group”) to review issues related to the Emer-  
14           gency Medical Treatment and Labor Act (EMTALA) and  
15           its implementation. In this section, the term “EMTALA”  
16           refers to the provisions of section 1867 of the Social Security  
17           Act (42 U.S.C. 1395dd).

18           (b) *MEMBERSHIP.*—The Advisory Group shall be com-  
19           posed of 19 members, including the Administrator of the  
20           Centers for Medicare & Medicaid Services and the Inspector  
21           General of the Department of Health and Human Services  
22           and of which—

23                   (1) 4 shall be representatives of hospitals, includ-  
24           ing at least one public hospital, that have experience

1       with the application of *EMTALA* and at least 2 of  
2       which have not been cited for *EMTALA* violations;

3               (2) 7 shall be practicing physicians drawn from  
4       the fields of emergency medicine, cardiology or  
5       cardiothoracic surgery, orthopedic surgery, neuro-  
6       surgery, pediatrics or a pediatric subspecialty, obstet-  
7       rics-gynecology, and psychiatry, with not more than  
8       one physician from any particular field;

9               (3) 2 shall represent patients;

10              (4) 2 shall be staff involved in *EMTALA* inves-  
11       tigations from different regional offices of the Centers  
12       for Medicare & Medicaid Services; and

13              (5) 1 shall be from a State survey office involved  
14       in *EMTALA* investigations and 1 shall be from a  
15       peer review organization, both of whom shall be from  
16       areas other than the regions represented under para-  
17       graph (4).

18       In selecting members described in paragraphs (1) through  
19       (3), the Secretary shall consider qualified individuals nomi-  
20       nated by organizations representing providers and patients.

21       (c) *GENERAL RESPONSIBILITIES.*—*The Advisory*  
22       *Group—*

23              (1) shall review *EMTALA* regulations;

1           (2) *may provide advice and recommendations to*  
2 *the Secretary with respect to those regulations and*  
3 *their application to hospitals and physicians;*

4           (3) *shall solicit comments and recommendations*  
5 *from hospitals, physicians, and the public regarding*  
6 *the implementation of such regulations; and*

7           (4) *may disseminate information on the applica-*  
8 *tion of such regulations to hospitals, physicians, and*  
9 *the public.*

10 (d) *ADMINISTRATIVE MATTERS.—*

11           (1) *CHAIRPERSON.—The members of the Advi-*  
12 *sory Group shall elect a member to serve as chair-*  
13 *person of the Advisory Group for the life of the Advi-*  
14 *sory Group.*

15           (2) *MEETINGS.—The Advisory Group shall first*  
16 *meet at the direction of the Secretary. The Advisory*  
17 *Group shall then meet twice per year and at such*  
18 *other times as the Advisory Group may provide.*

19           (e) *TERMINATION.—The Advisory Group shall termi-*  
20 *nate 30 months after the date of its first meeting.*

21           (f) *WAIVER OF ADMINISTRATIVE LIMITATION.—The*  
22 *Secretary shall establish the Advisory Group notwith-*  
23 *standing any limitation that may apply to the number of*  
24 *advisory committees that may be established (within the*  
25 *Department of Health and Human Services or otherwise).*

1 **SEC. 506. AUTHORIZING USE OF ARRANGEMENTS TO PRO-**  
2 **VIDE CORE HOSPICE SERVICES IN CERTAIN**  
3 **CIRCUMSTANCES.**

4 (a) *IN GENERAL.*—Section 1861(dd)(5) (42 U.S.C.  
5 1395x(dd)(5)) is amended by adding at the end the fol-  
6 lowing:

7 “(D) *In extraordinary, exigent, or other non-routine*  
8 *circumstances, such as unanticipated periods of high pa-*  
9 *tient loads, staffing shortages due to illness or other events,*  
10 *or temporary travel of a patient outside a hospice pro-*  
11 *gram’s service area, a hospice program may enter into ar-*  
12 *rangements with another hospice program for the provision*  
13 *by that other program of services described in paragraph*  
14 *(2)(A)(ii)(I). The provisions of paragraph (2)(A)(ii)(II)*  
15 *shall apply with respect to the services provided under such*  
16 *arrangements.*

17 “(E) *A hospice program may provide services de-*  
18 *scribed in paragraph (1)(A) other than directly by the pro-*  
19 *gram if the services are highly specialized services of a reg-*  
20 *istered professional nurse and are provided non-routinely*  
21 *and so infrequently so that the provision of such services*  
22 *directly would be impracticable and prohibitively expen-*  
23 *sive.*”.

24 (b) *CONFORMING PAYMENT PROVISION.*—Section  
25 1814(i) (42 U.S.C. 1395f(i)) is amended by adding at the  
26 end the following new paragraph:



1 *eral Regulations (or as subsequently redesignated).”;*  
2 *and*

3 *(2) by adding at the end of subsection (b) the fol-*  
4 *lowing new paragraph:*

5 *“(4)(A) A hospital that fails to comply with the re-*  
6 *quirement of subsection (a)(1)(T) (relating to the*  
7 *Bloodborne Pathogens standard) is subject to a civil money*  
8 *penalty in an amount described in subparagraph (B), but*  
9 *is not subject to termination of an agreement under this*  
10 *section.*

11 *“(B) The amount referred to in subparagraph (A) is*  
12 *an amount that is similar to the amount of civil penalties*  
13 *that may be imposed under section 17 of the Occupational*  
14 *Safety and Health Act of 1970 for a violation of the*  
15 *Bloodborne Pathogens standard referred to in subsection*  
16 *(a)(1)(T) by a hospital that is subject to the provisions of*  
17 *such Act.*

18 *“(C) A civil money penalty under this paragraph shall*  
19 *be imposed and collected in the same manner as civil money*  
20 *penalties under subsection (a) of section 1128A are imposed*  
21 *and collected under that section.”.*

22 *(b) EFFECTIVE DATE.—The amendments made by this*  
23 *subsection (a) shall apply to hospitals as of July 1, 2004.*

1 **SEC. 508. BIPA-RELATED TECHNICAL AMENDMENTS AND**  
 2 **CORRECTIONS.**

3 (a) *TECHNICAL AMENDMENTS RELATING TO ADVISORY*  
 4 *COMMITTEE UNDER BIPA SECTION 522.—(1) Subsection*  
 5 *(i) of section 1114 (42 U.S.C. 1314)—*

6 (A) *is transferred to section 1862 and added at*  
 7 *the end of such section; and*

8 (B) *is redesignated as subsection (j).*

9 (2) *Section 1862 (42 U.S.C. 1395y) is amended—*

10 (A) *in the last sentence of subsection (a), by*  
 11 *striking “established under section 1114(f)”;* and

12 (B) *in subsection (j), as so transferred and red-*  
 13 *ignated—*

14 (i) *by striking “under subsection (f)”;* and

15 (ii) *by striking “section 1862(a)(1)” and*  
 16 *inserting “subsection (a)(1)”.*

17 (b) *TERMINOLOGY CORRECTIONS.—(1) Section*  
 18 *1869(c)(3)(I)(ii) (42 U.S.C. 1395ff(c)(3)(I)(ii)), as amend-*  
 19 *ed by section 521 of BIPA, is amended—*

20 (A) *in subclause (III), by striking “policy” and*  
 21 *inserting “determination”;* and

22 (B) *in subclause (IV), by striking “medical re-*  
 23 *view policies” and inserting “coverage determina-*  
 24 *tions”.*

25 (2) *Section 1852(a)(2)(C) (42 U.S.C. 1395w-*  
 26 *22(a)(2)(C)) is amended by striking “policy” and “POLICY”*

1 and inserting “determination” each place it appears and  
2 “DETERMINATION”, respectively.

3 (c) *REFERENCE CORRECTIONS*.—Section 1869(f)(4)  
4 (42 U.S.C. 1395ff(f)(4)), as added by section 522 of BIPA,  
5 is amended—

6 (1) in subparagraph (A)(iv), by striking “sub-  
7 clause (I), (II), or (III)” and inserting “clause (i),  
8 (ii), or (iii)”;

9 (2) in subparagraph (B), by striking “clause  
10 (i)(IV)” and “clause (i)(III)” and inserting “sub-  
11 paragraph (A)(iv)” and “subparagraph (A)(iii)”, re-  
12 spectively; and

13 (3) in subparagraph (C), by striking “clause  
14 (i)”, “subclause (IV)” and “subparagraph (A)” and  
15 inserting “subparagraph (A)”, “clause (iv)” and  
16 “paragraph (1)(A)”, respectively each place it ap-  
17 pears.

18 (d) *OTHER CORRECTIONS*.—Effective as if included in  
19 the enactment of section 521(c) of BIPA, section 1154(e)  
20 (42 U.S.C. 1320c–3(e)) is amended by striking paragraph  
21 (5).

22 (e) *EFFECTIVE DATE*.—Except as otherwise provided,  
23 the amendments made by this section shall be effective as  
24 if included in the enactment of BIPA.

1 **SEC. 509. CONFORMING AUTHORITY TO WAIVE A PROGRAM**

2 **EXCLUSION.**

3 *The first sentence of section 1128(c)(3)(B) (42 U.S.C.*  
4 *1320a-7(c)(3)(B)) is amended to read as follows: “Subject*  
5 *to subparagraph (G), in the case of an exclusion under sub-*  
6 *section (a), the minimum period of exclusion shall be not*  
7 *less than five years, except that, upon the request of the ad-*  
8 *ministrator of a Federal health care program (as defined*  
9 *in section 1128B(f)) who determines that the exclusion*  
10 *would impose a hardship on individuals entitled to benefits*  
11 *under part A of title XVIII or enrolled under part B of*  
12 *such title, or both, the Secretary may waive the exclusion*  
13 *under subsection (a)(1), (a)(3), or (a)(4) with respect to*  
14 *that program in the case of an individual or entity that*  
15 *is the sole community physician or sole source of essential*  
16 *specialized services in a community.”.*

17 **SEC. 510. TREATMENT OF CERTAIN DENTAL CLAIMS.**

18 *(a) IN GENERAL.—Section 1862 (42 U.S.C. 1395y), as*  
19 *amended by section 508(a)(1), is amended by adding at the*  
20 *end the following new subsection:*

21 *“(k)(1) Subject to paragraph (2), a group health plan*  
22 *(as defined in subsection (a)(1)(A)(v)) providing supple-*  
23 *mental or secondary coverage to individuals also entitled*  
24 *to services under this title shall not require a medicare*  
25 *claims determination under this title for dental benefits spe-*  
26 *cifically excluded under subsection (a)(12) as a condition*

1 of making a claims determination for such benefits under  
2 the group health plan.

3 “(2) A group health plan may require a claims deter-  
4 mination under this title in cases involving or appearing  
5 to involve inpatient dental hospital services or dental serv-  
6 ices expressly covered under this title pursuant to actions  
7 taken by the Secretary.”

8 (b) *EFFECTIVE DATE.*—The amendment made by sub-  
9 section (a) shall take effect on the date that is 60 days after  
10 the date of the enactment of this Act.

11 **SEC. 511. FURNISHING HOSPITALS WITH INFORMATION TO**  
12 **COMPUTE DSH FORMULA.**

13 Beginning not later than 1 year after the date of the  
14 enactment of this Act, the Secretary shall furnish to sub-  
15 section (d) hospitals (as defined in section 1886(d)(1)(B)  
16 of the Social Security Act, 42 U.S.C. 1395ww(d)(1)(B)) the  
17 data necessary for such hospitals to compute the number  
18 of patient days described in subclause (II) of section  
19 1886(d)(5)(F)(vi) of the Social Security Act (42 U.S.C.  
20 1395ww(d)(5)(F)(vi)) used in computing the dispropor-  
21 tionate patient percentage under such section for that hos-  
22 pital. Such data shall also be furnished to other hospitals  
23 which would qualify for additional payments under part  
24 A of title XVIII of the Social Security Act on the basis of  
25 such data.

1 **SEC. 512. REVISIONS TO REASSIGNMENT PROVISIONS.**

2 (a) *IN GENERAL.*—Section 1842(b)(6)(A)(ii) (42  
 3 U.S.C. 1395u(b)(6)(A)(ii)) is amended to read as follows:  
 4 “(ii) where the service was provided under a contractual  
 5 arrangement between such physician or other person and  
 6 a qualified entity (as defined by the Secretary) or other per-  
 7 son, to the entity or other person if under such arrangement  
 8 such entity or individual submits the bill for such service  
 9 and such arrangement (I) includes joint and several liabil-  
 10 ity for overpayment by such physician or other person and  
 11 such entity or other person, and (II) meets such other pro-  
 12 gram integrity and other safeguards as the Secretary may  
 13 determine to be appropriate.”

14 (b) *CONFORMING AMENDMENT.*—The second sentence  
 15 of section 1842(b)(6) (42 U.S.C. 1395u(b)(6)) is amended  
 16 by striking “except to an employer or facility as described  
 17 in clause (A)” and inserting “except to an employer, entity,  
 18 or other person as described in subparagraph (A)”.

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

22 **SEC. 513. SPECIALIZED MEDICARE+CHOICE PLANS FOR SPE-**  
 23 **CIAL NEEDS BENEFICIARIES.**

24 (a) *TREATMENT AS COORDINATED CARE PLAN.*—Sec-  
 25 tion 1851(a)(2)(A) (42 U.S.C. 1395w-21(a)(2)(A)) is  
 26 amended by adding at the end the following new sentence:

1 “Specialized Medicare+Choice plans for special needs bene-  
 2 ficiaries (as defined in section 1859(b)(4)) may be any type  
 3 of coordinated care plan.”.

4 (b) *SPECIALIZED MEDICARE+CHOICE PLAN FOR SPE-*  
 5 *CIAL NEEDS BENEFICIARIES DEFINED.*—Section 1859(b)  
 6 (42 U.S.C. 1395w–29(b)) is amended by adding at the end  
 7 the following new paragraph:

8 “(4) *SPECIALIZED MEDICARE+CHOICE PLANS*  
 9 *FOR SPECIAL NEEDS BENEFICIARIES.*—

10 “(A) *IN GENERAL.*—The term ‘specialized  
 11 Medicare+Choice plan for special needs bene-  
 12 ficiaries’ means a Medicare+Choice plan that  
 13 exclusively serves special needs beneficiaries (as  
 14 defined in subparagraph (B)).

15 “(B) *SPECIAL NEEDS BENEFICIARY.*—The  
 16 term ‘special needs beneficiary’ means a  
 17 Medicare+Choice eligible individual who—

18 “(i) is institutionalized (as defined by  
 19 the Secretary);

20 “(ii) is entitled to medical assistance  
 21 under a State plan under title XIX; or

22 “(iii) meets such requirements as the  
 23 Secretary may determine would benefit  
 24 from enrollment in such a specialized  
 25 Medicare+Choice plan described in sub-

1                    *paragraph (A) for individuals with severe*  
2                    *or disabling chronic conditions.”.*

3            *(c) RESTRICTION ON ENROLLMENT PERMITTED.—Sec-*  
4 *tion 1859 (42 U.S.C. 1395w–29) is amended by adding at*  
5 *the end the following new subsection:*

6            *“(f) RESTRICTION ON ENROLLMENT FOR SPECIALIZED*  
7 *MEDICARE+CHOICE PLANS FOR SPECIAL NEEDS BENE-*  
8 *FICIARIES.—In the case of a specialized Medicare+Choice*  
9 *plan (as defined in subsection (b)(4)), notwithstanding any*  
10 *other provision of this part and in accordance with regula-*  
11 *tions of the Secretary and for periods before January 1,*  
12 *2008, the plan may restrict the enrollment of individuals*  
13 *under the plan to individuals who are within one or more*  
14 *classes of special needs beneficiaries.”.*

15            *(d) REPORT TO CONGRESS.—Not later than December*  
16 *31, 2006, the Secretary shall submit to Congress a report*  
17 *that assesses the impact of specialized Medicare+Choice*  
18 *plans for special needs beneficiaries on the cost and quality*  
19 *of services provided to enrollees. Such report shall include*  
20 *an assessment of the costs and savings to the medicare pro-*  
21 *gram as a result of amendments made by subsections (a),*  
22 *(b), and (c).*

23            *(e) EFFECTIVE DATES.—*

1           (1) *IN GENERAL.*—*The amendments made by*  
2           *subsections (a), (b), and (c) shall take effect upon the*  
3           *date of the enactment of this Act.*

4           (2) *DEADLINE FOR ISSUANCE OF REQUIREMENTS*  
5           *FOR SPECIAL NEEDS BENEFICIARIES; TRANSITION.*—  
6           *No later than 6 months after the date of the enact-*  
7           *ment of this Act, the Secretary shall issue final regu-*  
8           *lations to establish requirements for special needs*  
9           *beneficiaries under section 1859(b)(4)(B)(iii) of the*  
10          *Social Security Act, as added by subsection (b).*

11 ***SEC. 514. TEMPORARY SUSPENSION OF OASIS REQUIRE-***  
12                                   ***MENT FOR COLLECTION OF DATA ON NON-***  
13                                   ***MEDICARE AND NON-MEDICAID PATIENTS.***

14          (a) *IN GENERAL.*—*During the period described in sub-*  
15          *section (b), the Secretary may not require, under section*  
16          *4602(e) of the Balanced Budget Act of 1997 or otherwise*  
17          *under OASIS, a home health agency to gather or submit*  
18          *information that relates to an individual who is not eligible*  
19          *for benefits under either title XVIII or title XIX of the So-*  
20          *cial Security Act (such information in this section referred*  
21          *to as “non-medicare/medicaid OASIS information”).*

22          (b) *PERIOD OF SUSPENSION.*—*The period described in*  
23          *this subsection—*

24                  (1) *begins on the date of the enactment of this*  
25          *Act; and*

1           (2) ends on the last day of the 2nd month begin-  
2           ning after the date as of which the Secretary has pub-  
3           lished final regulations regarding the collection and  
4           use by the Centers for Medicare & Medicaid Services  
5           of non-medicare/medicaid OASIS information fol-  
6           lowing the submission of the report required under  
7           subsection (c).

8           (c) *REPORT.*—

9           (1) *STUDY.*—The Secretary shall conduct a study  
10          on how non-medicare/medicaid OASIS information is  
11          and can be used by large home health agencies. Such  
12          study shall examine—

13               (A) whether there are unique benefits from  
14               the analysis of such information that cannot be  
15               derived from other information available to, or  
16               collected by, such agencies; and

17               (B) the value of collecting such information  
18               by small home health agencies compared to the  
19               administrative burden related to such collection.

20          In conducting the study the Secretary shall obtain  
21          recommendations from quality assessment experts in  
22          the use of such information and the necessity of small,  
23          as well as large, home health agencies collecting such  
24          information.

1           (2) *REPORT.*—*The Secretary shall submit to*  
2           *Congress a report on the study conducted under para-*  
3           *graph (1) by not later than 18 months after the date*  
4           *of the enactment of this Act.*

5           (d) *CONSTRUCTION.*—*Nothing in this section shall be*  
6           *construed as preventing home health agencies from col-*  
7           *lecting non-medicare/medicaid OASIS information for*  
8           *their own use.*

9           **SEC. 515. MISCELLANEOUS REPORTS, STUDIES, AND PUBLI-**  
10           **CATION REQUIREMENTS.**

11           (a) *GAO REPORTS ON THE PHYSICIAN COMPENSA-*  
12           *TION.*—

13           (1) *SUSTAINABLE GROWTH RATE AND UP-*  
14           *DATES.*—*Not later than 6 months after the date of the*  
15           *enactment of this Act, the Comptroller General of the*  
16           *United States shall submit to Congress a report on*  
17           *the appropriateness of the updates in the conversion*  
18           *factor under subsection (d)(3) of section 1848 of the*  
19           *Social Security Act (42 U.S.C. 1395w-4), including*  
20           *the appropriateness of the sustainable growth rate for-*  
21           *mula under subsection (f) of such section for 2002*  
22           *and succeeding years. Such report shall examine the*  
23           *stability and predictability of such updates and rate*  
24           *and alternatives for the use of such rate in the up-*  
25           *dates.*

1           (2) *PHYSICIAN COMPENSATION GENERALLY.*—Not  
2           *later than 12 months after the date of the enactment*  
3           *of this Act, the Comptroller General shall submit to*  
4           *Congress a report on all aspects of physician com-*  
5           *ensation for services furnished under title XVIII of*  
6           *the Social Security Act, and how those aspects inter-*  
7           *act and the effect on appropriate compensation for*  
8           *physician services. Such report shall review alter-*  
9           *natives for the physician fee schedule under section*  
10          *1848 of such title (42 U.S.C. 1395w-4).*

11          (b) *ANNUAL PUBLICATION OF LIST OF NATIONAL COV-*  
12          *ERAGE DETERMINATIONS.*—*The Secretary shall provide, in*  
13          *an appropriate annual publication available to the public,*  
14          *a list of national coverage determinations made under title*  
15          *XVIII of the Social Security Act in the previous year and*  
16          *information on how to get more information with respect*  
17          *to such determinations.*

18          (c) *GAO REPORT ON FLEXIBILITY IN APPLYING HOME*  
19          *HEALTH CONDITIONS OF PARTICIPATION TO PATIENTS*  
20          *WHO ARE NOT MEDICARE BENEFICIARIES.*—*Not later than*  
21          *6 months after the date of the enactment of this Act, the*  
22          *Comptroller General of the United States shall submit to*  
23          *Congress a report on the implications if there were flexi-*  
24          *bility in the application of the medicare conditions of par-*  
25          *ticipation for home health agencies with respect to groups*

1 *or types of patients who are not medicare beneficiaries. The*  
 2 *report shall include an analysis of the potential impact of*  
 3 *such flexible application on clinical operations and the re-*  
 4 *ipients of such services and an analysis of methods for*  
 5 *monitoring the quality of care provided to such recipients.*

6 *(d) OIG REPORT ON NOTICES RELATING TO USE OF*  
 7 *HOSPITAL LIFETIME RESERVE DAYS.—Not later than 1*  
 8 *year after the date of the enactment of this Act, the Inspec-*  
 9 *tor General of the Department of Health and Human Serv-*  
 10 *ices shall submit a report to Congress on—*

11 *(1) the extent to which hospitals provide notice*  
 12 *to medicare beneficiaries in accordance with applica-*  
 13 *ble requirements before they use the 60 lifetime reserve*  
 14 *days described in section 1812(a)(1) of the Social Se-*  
 15 *curity Act (42 U.S.C. 1395d(a)(1)); and*

16 *(2) the appropriateness and feasibility of hos-*  
 17 *pitals providing a notice to such beneficiaries before*  
 18 *they completely exhaust such lifetime reserve days.*

19 **SECTION 1. SHORT TITLE; AMENDMENTS TO SOCIAL SECU-**  
 20 **RITY ACT; TABLE OF CONTENTS.**

21 **(a) SHORT TITLE.—This Act may be cited as**  
 22 **the “Medicare Regulatory and Contracting**  
 23 **Reform Act of 2003”.**

24 **(b) AMENDMENTS TO SOCIAL SECURITY**  
 25 **ACT.—Except as otherwise specifically pro-**

1 **vided, whenever in this Act an amendment is**  
 2 **expressed in terms of an amendment to or re-**  
 3 **peal of a section or other provision, the ref-**  
 4 **erence shall be considered to be made to that**  
 5 **section or other provision of the Social Secu-**  
 6 **rity Act.**

7 **(c) TABLE OF CONTENTS.—The table of con-**  
 8 **tents of this Act is as follows:**

**Sec. 1. Short title; amendments to Social Security Act; table of contents.**

**Sec. 2. Findings and construction.**

**Sec. 3. Definitions.**

#### **TITLE I—REGULATORY REFORM**

**Sec. 101. Issuance of regulations.**

**Sec. 102. Compliance with changes in regulations and policies.**

**Sec. 103. Reports and studies relating to regulatory reform.**

#### **TITLE II—CONTRACTING REFORM**

**Sec. 201. Increased flexibility in medicare administration.**

**Sec. 202. Requirements for information security for medicare administrative contractors.**

#### **TITLE III—EDUCATION AND OUTREACH**

**Sec. 301. Provider education and technical assistance.**

**Sec. 302. Small provider technical assistance demonstration program.**

**Sec. 303. Medicare Provider Ombudsman; Medicare Beneficiary Ombudsman.**

**Sec. 304. Beneficiary outreach demonstration program.**

**Sec. 305. Inclusion of additional information in notices to beneficiaries about skilled nursing facility benefits.**

**Sec. 306. Information on medicare-certified skilled nursing facilities in hospital discharge plans.**

#### **TITLE IV—APPEALS AND RECOVERY**

**Sec. 401. Transfer of responsibility for medicare appeals.**

**Sec. 402. Process for expedited access to review.**

**Sec. 403. Revisions to medicare appeals process.**

**Sec. 404. Prepayment review.**

**Sec. 405. Recovery of overpayments.**

**Sec. 406. Provider enrollment process; right of appeal.**

**Sec. 407. Process for correction of minor errors and omissions on claims without pursuing appeals process.**

**Sec. 408. Prior determination process for certain items and services; advance beneficiary notices.**

#### **TITLE V—MISCELLANEOUS PROVISIONS**

**Sec. 501. Policy development regarding evaluation and management (E & M) documentation guidelines.**

**Sec. 502. Improvement in oversight of technology and coverage.**

**Sec. 503. Treatment of hospitals for certain services under medicare secondary payor (MSP) provisions.**

**Sec. 504. EMTALA improvements.**

**Sec. 505. Emergency Medical Treatment and Active Labor Act (EMTALA) Technical Advisory Group.**

**Sec. 506. Authorizing use of arrangements to provide core hospice services in certain circumstances.**

**Sec. 507. Application of OSHA bloodborne pathogens standard to certain hospitals.**

**Sec. 508. BIPA-related technical amendments and corrections.**

**Sec. 509. Conforming authority to waive a program exclusion.**

**Sec. 510. Treatment of certain dental claims.**

**Sec. 511. Enhancement of program integrity efforts in medicare provider enrollment.**

**Sec. 512. Other provisions.**

#### **1 SEC. 2. FINDINGS AND CONSTRUCTION.**

**2 (a) FINDINGS.—Congress finds the fol-**  
**3 lowing:**

**4 (1) The overwhelming majority of**  
**5 providers of services and suppliers in the**  
**6 United States are law-abiding persons**  
**7 who provide important health care serv-**  
**8 ices to patients each day.**

**9 (2) The Secretary of Health and**  
**10 Human Services should work to stream-**  
**11 line paperwork requirements under the**  
**12 medicare program and communicate**  
**13 clearer instructions to providers of serv-**

1       **ices and suppliers so that they may spend**  
2       **more time caring for patients.**

3       **(b) CONSTRUCTION.—Nothing in this Act**  
4       **shall be construed—**

5               **(1) to compromise or affect existing**  
6       **legal remedies for addressing fraud or**  
7       **abuse, whether it be criminal prosecu-**  
8       **tion, civil enforcement, or administrative**  
9       **remedies, including under sections 3729**  
10       **through 3733 of title 31, United States**  
11       **Code (known as the False Claims Act); or**

12               **(2) to prevent or impede the Depart-**  
13       **ment of Health and Human Services in**  
14       **any way from its ongoing efforts to elimi-**  
15       **nate waste, fraud, and abuse in the medi-**  
16       **care program.**

17       **Furthermore, the consolidation of medicare**  
18       **administrative contracting set forth in this**  
19       **Act does not constitute consolidation of the**  
20       **Federal Hospital Insurance Trust Fund and**  
21       **the Federal Supplementary Medical Insur-**  
22       **ance Trust Fund or reflect any position on**  
23       **that issue.**

1 **SEC. 3. DEFINITIONS.**

2 **(a) USE OF TERM SUPPLIER IN MEDICARE.—**  
3 **Section 1861 (42 U.S.C. 1395x) is amended by**  
4 **inserting after subsection (c) the following**  
5 **new subsection:**

6 **“Supplier**

7 **“(d) The term ‘supplier’ means, unless the**  
8 **context otherwise requires, a physician or**  
9 **other practitioner, a facility, or other entity**  
10 **(other than a provider of services) that fur-**  
11 **nishes items or services under this title.”.**

12 **(b) OTHER TERMS USED IN ACT.—In this**  
13 **Act:**

14 **(1) BIPA.—The term “BIPA” means**  
15 **the Medicare, Medicaid, and SCHIP Bene-**  
16 **fits Improvement and Protection Act of**  
17 **2000, as enacted into law by section**  
18 **1(a)(6) of Public Law 106–554.**

19 **(2) SECRETARY.—The term “Secretary”**  
20 **means the Secretary of Health and**  
21 **Human Services.**

22 **TITLE I—REGULATORY REFORM**

23 **SEC. 101. ISSUANCE OF REGULATIONS.**

24 **(a) REGULAR TIMELINE FOR PUBLICATION OF**  
25 **FINAL RULES.—**

1           **(1) IN GENERAL.—Section 1871(a) (42**  
2           **U.S.C. 1395hh(a)) is amended by adding**  
3           **at the end the following new paragraph:**

4           **“(3)(A) The Secretary, in consultation with**  
5           **the Director of the Office of Management and**  
6           **Budget, shall establish and publish a regular**  
7           **timeline for the publication of final regula-**  
8           **tions based on the previous publication of a**  
9           **proposed regulation or an interim final regu-**  
10          **lation.**

11          **“(B) Such timeline may vary among dif-**  
12          **ferent regulations based on differences in the**  
13          **complexity of the regulation, the number and**  
14          **scope of comments received, and other rel-**  
15          **evant factors, but shall not be longer than 3**  
16          **years except under exceptional cir-**  
17          **cumstances. If the Secretary intends to vary**  
18          **such timeline with respect to the publication**  
19          **of a final regulation, the Secretary shall cause**  
20          **to have published in the Federal Register no-**  
21          **tice of the different timeline by not later than**  
22          **the timeline previously established with re-**  
23          **spect to such regulation. Such notice shall in-**  
24          **clude a brief explanation of the justification**  
25          **for such variation.**

1       **“(C) In the case of interim final regula-**  
2 **tions, upon the expiration of the regular**  
3 **timeline established under this paragraph for**  
4 **the publication of a final regulation after op-**  
5 **portunity for public comment, the interim**  
6 **final regulation shall not continue in effect**  
7 **unless the Secretary publishes (at the end of**  
8 **the regular timeline and, if applicable, at the**  
9 **end of each succeeding 1-year period) a notice**  
10 **of continuation of the regulation that in-**  
11 **cludes an explanation of why the regular**  
12 **timeline (and any subsequent 1-year exten-**  
13 **sion) was not complied with. If such a notice**  
14 **is published, the regular timeline (or such**  
15 **timeline as previously extended under this**  
16 **paragraph) for publication of the final regula-**  
17 **tion shall be treated as having been extended**  
18 **for 1 additional year.**

19       **“(D) The Secretary shall annually submit**  
20 **to Congress a report that describes the in-**  
21 **stances in which the Secretary failed to pub-**  
22 **lish a final regulation within the applicable**  
23 **regular timeline under this paragraph and**  
24 **that provides an explanation for such fail-**  
25 **ures.”.**

1           **(2) EFFECTIVE DATE.—The amendment**  
2           **made by paragraph (1) shall take effect**  
3           **on the date of the enactment of this Act.**  
4           **The Secretary shall provide for an appro-**  
5           **propriate transition to take into account the**  
6           **backlog of previously published interim**  
7           **final regulations.**

8           **(b) LIMITATIONS ON NEW MATTER IN FINAL**  
9           **REGULATIONS.—**

10           **(1) IN GENERAL.—Section 1871(a) (42**  
11           **U.S.C. 1395hh(a)), as amended by sub-**  
12           **section (a), is amended by adding at the**  
13           **end the following new paragraph:**

14           **“(4) If the Secretary publishes a final reg-**  
15           **ulation that includes a provision that is not**  
16           **a logical outgrowth of a previously published**  
17           **notice of proposed rulemaking or interim**  
18           **final rule, such provision shall be treated as**  
19           **a proposed regulation and shall not take ef-**  
20           **fect until there is the further opportunity for**  
21           **public comment and a publication of the pro-**  
22           **vision again as a final regulation.”.**

23           **(2) EFFECTIVE DATE.—The amendment**  
24           **made by paragraph (1) shall apply to**

1 **final regulations published on or after**  
2 **the date of the enactment of this Act.**

3 **SEC. 102. COMPLIANCE WITH CHANGES IN REGULATIONS**  
4 **AND POLICIES.**

5 **(a) NO RETROACTIVE APPLICATION OF SUB-**  
6 **STANTIVE CHANGES.—**

7 **(1) IN GENERAL.—Section 1871 (42**  
8 **U.S.C. 1395hh), as amended by section**  
9 **101(a), is amended by adding at the end**  
10 **the following new subsection:**

11 **“(d)(1)(A) A substantive change in regula-**  
12 **tions, manual instructions, interpretative**  
13 **rules, statements of policy, or guidelines of**  
14 **general applicability under this title shall not**  
15 **be applied (by extrapolation or otherwise)**  
16 **retroactively to items and services furnished**  
17 **before the effective date of the change, unless**  
18 **the Secretary determines that—**

19 **“(i) such retroactive application is**  
20 **necessary to comply with statutory re-**  
21 **quirements; or**

22 **“(ii) failure to apply the change retro-**  
23 **actively would be contrary to the public**  
24 **interest.”.**

1           **(2) EFFECTIVE DATE.—**The amendment  
2           **made by paragraph (1) shall apply to sub-**  
3           **stantive changes issued on or after the**  
4           **date of the enactment of this Act.**

5           **(b) TIMELINE FOR COMPLIANCE WITH SUB-**  
6           **STANTIVE CHANGES AFTER NOTICE.—**

7           **(1) IN GENERAL.—**Section 1871(d)(1), as  
8           **added by subsection (a), is amended by**  
9           **adding at the end the following:**

10          **“(B)(i) Except as provided in clause (ii), a**  
11          **substantive change referred to in subpara-**  
12          **graph (A) shall not become effective before**  
13          **the end of the 30-day period that begins on**  
14          **the date that the Secretary has issued or pub-**  
15          **lished, as the case may be, the substantive**  
16          **change.**

17          **“(ii) The Secretary may provide for such**  
18          **a substantive change to take effect on a date**  
19          **that precedes the end of the 30-day period**  
20          **under clause (i) if the Secretary finds that**  
21          **waiver of such 30-day period is necessary to**  
22          **comply with statutory requirements or that**  
23          **the application of such 30-day period is con-**  
24          **trary to the public interest. If the Secretary**  
25          **provides for an earlier effective date pursu-**

1 ant to this clause, the Secretary shall include  
2 in the issuance or publication of the sub-  
3 stantive change a finding described in the  
4 first sentence, and a brief statement of the  
5 reasons for such finding.

6 “(C) No action shall be taken against a  
7 provider of services or supplier with respect  
8 to noncompliance with such a substantive  
9 change for items and services furnished be-  
10 fore the effective date of such a change.”.

11 (2) EFFECTIVE DATE.—The amendment  
12 made by paragraph (1) shall apply to  
13 compliance actions undertaken on or  
14 after the date of the enactment of this  
15 Act.

16 (c) RELIANCE ON GUIDANCE.—

17 (1) IN GENERAL.—Section 1871(d), as  
18 added by subsection (a), is further  
19 amended by adding at the end the fol-  
20 lowing new paragraph:

21 “(2)(A) If—

22 “(i) a provider of services or supplier  
23 follows the written guidance (which may  
24 be transmitted electronically) provided  
25 by the Secretary or by a medicare con-

1 **tractor (as defined in section 1889(g)) act-**  
2 **ing within the scope of the contractor’s**  
3 **contract authority, with respect to the**  
4 **furnishing of items or services and sub-**  
5 **mission of a claim for benefits for such**  
6 **items or services with respect to such**  
7 **provider or supplier;**

8 **“(ii) the Secretary determines that**  
9 **the provider of services or supplier has**  
10 **accurately presented the circumstances**  
11 **relating to such items, services, and claim**  
12 **to the contractor in writing; and**

13 **“(iii) the guidance was in error;**  
14 **the provider of services or supplier shall not**  
15 **be subject to any sanction (including any pen-**  
16 **alty or requirement for repayment of any**  
17 **amount) if the provider of services or supplier**  
18 **reasonably relied on such guidance.**

19 **“(B) Subparagraph (A) shall not be con-**  
20 **strued as preventing the recoupment or re-**  
21 **payment (without any additional penalty) re-**  
22 **lating to an overpayment insofar as the over-**  
23 **payment was solely the result of a clerical or**  
24 **technical operational error.”.**

1           **(2) EFFECTIVE DATE.—**The amendment  
2           **made by paragraph (1) shall take effect**  
3           **on the date of the enactment of this Act**  
4           **but shall not apply to any sanction for**  
5           **which notice was provided on or before**  
6           **the date of the enactment of this Act.**

7   **SEC. 103. REPORTS AND STUDIES RELATING TO REGU-**  
8           **LATORY REFORM.**

9           **(a) GAO STUDY ON ADVISORY OPINION AU-**  
10          **THORITY.—**

11           **(1) STUDY.—**The Comptroller General  
12           **of the United States shall conduct a study**  
13           **to determine the feasibility and appro-**  
14           **riateness of establishing in the Sec-**  
15           **retary authority to provide legally bind-**  
16           **ing advisory opinions on appropriate in-**  
17           **terpretation and application of regula-**  
18           **tions to carry out the medicare program**  
19           **under title XVIII of the Social Security**  
20           **Act. Such study shall examine the appro-**  
21           **priate timeframe for issuing such advi-**  
22           **sory opinions, as well as the need for ad-**  
23           **ditional staff and funding to provide such**  
24           **opinions.**

1           **(2) REPORT.—The Comptroller Gen-**  
2           **eral shall submit to Congress a report on**  
3           **the study conducted under paragraph (1)**  
4           **by not later than one year after the date**  
5           **of the enactment of this Act.**

6           **(b) REPORT ON LEGAL AND REGULATORY IN-**  
7           **CONSISTENCIES.—Section 1871 (42 U.S.C.**  
8           **1395hh), as amended by section 2(a), is**  
9           **amended by adding at the end the following**  
10          **new subsection:**

11          **“(e)(1) Not later than 2 years after the**  
12          **date of the enactment of this subsection, and**  
13          **every 2 years thereafter, the Secretary shall**  
14          **submit to Congress a report with respect to**  
15          **the administration of this title and areas of in-**  
16          **consistency or conflict among the various pro-**  
17          **visions under law and regulation.**

18          **“(2) In preparing a report under para-**  
19          **graph (1), the Secretary shall collect—**

20                 **“(A) information from individuals en-**  
21                 **titled to benefits under part A or enrolled**  
22                 **under part B, or both, providers of serv-**  
23                 **ices, and suppliers and from the Medi-**  
24                 **care Beneficiary Ombudsman and the**  
25                 **Medicare Provider Ombudsman with re-**

1       **spect to such areas of inconsistency and**  
2       **conflict; and**

3               **“(B) information from medicare con-**  
4       **tractors that tracks the nature of written**  
5       **and telephone inquiries.**

6       **“(3) A report under paragraph (1) shall in-**  
7       **clude a description of efforts by the Secretary**  
8       **to reduce such inconsistency or conflicts, and**  
9       **recommendations for legislation or adminis-**  
10       **trative action that the Secretary determines**  
11       **appropriate to further reduce such inconsis-**  
12       **tency or conflicts.”.**

13                       **TITLE II—CONTRACTING**  
14                       **REFORM**

15       **SEC. 201. INCREASED FLEXIBILITY IN MEDICARE ADMINIS-**  
16                       **TRATION.**

17               **(a) CONSOLIDATION AND FLEXIBILITY IN**  
18       **MEDICARE ADMINISTRATION.—**

19                       **(1) IN GENERAL.—Title XVIII is amend-**  
20       **ed by inserting after section 1874 the fol-**  
21       **lowing new section:**

22       **“CONTRACTS WITH MEDICARE ADMINISTRATIVE**  
23                       **CONTRACTORS**

24       **“SEC. 1874A. (a) AUTHORITY.—**

25                       **“(1) AUTHORITY TO ENTER INTO CON-**  
26       **TRACTS.—The Secretary may enter into**

1 **contracts with any eligible entity to serve**  
2 **as a medicare administrative contractor**  
3 **with respect to the performance of any or**  
4 **all of the functions described in para-**  
5 **graph (4) or parts of those functions (or,**  
6 **to the extent provided in a contract, to**  
7 **secure performance thereof by other enti-**  
8 **ties).**

9 **“(2) ELIGIBILITY OF ENTITIES.—An enti-**  
10 **ty is eligible to enter into a contract with**  
11 **respect to the performance of a par-**  
12 **ticular function described in paragraph**  
13 **(4) only if—**

14 **“(A) the entity has demonstrated**  
15 **capability to carry out such function;**

16 **“(B) the entity complies with such**  
17 **conflict of interest standards as are**  
18 **generally applicable to Federal acqui-**  
19 **sition and procurement;**

20 **“(C) the entity has sufficient as-**  
21 **sets to financially support the per-**  
22 **formance of such function; and**

23 **“(D) the entity meets such other**  
24 **requirements as the Secretary may**  
25 **impose.**

1           **“(3) MEDICARE ADMINISTRATIVE CON-**  
2           **TRACTOR DEFINED.—For purposes of this**  
3           **title and title XI—**

4           **“(A) IN GENERAL.—The term ‘medi-**  
5           **care administrative contractor’**  
6           **means an agency, organization, or**  
7           **other person with a contract under**  
8           **this section.**

9           **“(B) APPROPRIATE MEDICARE AD-**  
10           **MINISTRATIVE CONTRACTOR.—With re-**  
11           **spect to the performance of a par-**  
12           **ticular function in relation to an indi-**  
13           **vidual entitled to benefits under part**  
14           **A or enrolled under part B, or both, a**  
15           **specific provider of services or sup-**  
16           **plier (or class of such providers of**  
17           **services or suppliers), the ‘appro-**  
18           **priate’ medicare administrative con-**  
19           **tractor is the medicare administra-**  
20           **tive contractor that has a contract**  
21           **under this section with respect to the**  
22           **performance of that function in rela-**  
23           **tion to that individual, provider of**  
24           **services or supplier or class of pro-**  
25           **vider of services or supplier.**

1           **“(4) FUNCTIONS DESCRIBED.—The func-**  
2           **tions referred to in paragraphs (1) and (2)**  
3           **are payment functions, provider services**  
4           **functions, and functions relating to serv-**  
5           **ices furnished to individuals entitled to**  
6           **benefits under part A or enrolled under**  
7           **part B, or both, as follows:**

8           **“(A) DETERMINATION OF PAYMENT**  
9           **AMOUNTS.—Determining (subject to**  
10           **the provisions of section 1878 and to**  
11           **such review by the Secretary as may**  
12           **be provided for by the contracts) the**  
13           **amount of the payments required**  
14           **pursuant to this title to be made to**  
15           **providers of services, suppliers and**  
16           **individuals.**

17           **“(B) MAKING PAYMENTS.—Making**  
18           **payments described in subparagraph**  
19           **(A) (including receipt, disbursement,**  
20           **and accounting for funds in making**  
21           **such payments).**

22           **“(C) BENEFICIARY EDUCATION AND**  
23           **ASSISTANCE.—Providing education and**  
24           **outreach to individuals entitled to**  
25           **benefits under part A or enrolled**

1           **under part B, or both, and providing**  
2           **assistance to those individuals with**  
3           **specific issues, concerns or problems.**

4           **“(D) PROVIDER CONSULTATIVE SERV-**  
5           **ICES.—Providing consultative services**  
6           **to institutions, agencies, and other**  
7           **persons to enable them to establish**  
8           **and maintain fiscal records necessary**  
9           **for purposes of this title and other-**  
10           **wise to qualify as providers of serv-**  
11           **ices or suppliers.**

12           **“(E) COMMUNICATION WITH PRO-**  
13           **VIDERS.—Communicating to providers**  
14           **of services and suppliers any infor-**  
15           **mation or instructions furnished to**  
16           **the medicare administrative con-**  
17           **tractor by the Secretary, and facili-**  
18           **tating communication between such**  
19           **providers and suppliers and the Sec-**  
20           **retary.**

21           **“(F) PROVIDER EDUCATION AND**  
22           **TECHNICAL ASSISTANCE.—Performing**  
23           **the functions relating to provider**  
24           **education, training, and technical as-**  
25           **sistance.**

1           **“(G) ADDITIONAL FUNCTIONS.—Per-**  
2           **forming such other functions as are**  
3           **necessary to carry out the purposes**  
4           **of this title.**

5           **“(5) RELATIONSHIP TO MIP CON-**  
6           **TRACTS.—**

7           **“(A) NONDUPLICATION OF DUTIES.—**  
8           **In entering into contracts under this**  
9           **section, the Secretary shall assure**  
10           **that functions of medicare adminis-**  
11           **trative contractors in carrying out ac-**  
12           **tivities under parts A and B do not**  
13           **duplicate activities carried out under**  
14           **the Medicare Integrity Program**  
15           **under section 1893. The previous sen-**  
16           **tence shall not apply with respect to**  
17           **the activity described in section**  
18           **1893(b)(5) (relating to prior author-**  
19           **ization of certain items of durable**  
20           **medical equipment under section**  
21           **1834(a)(15)).**

22           **“(B) CONSTRUCTION.—An entity**  
23           **shall not be treated as a medicare ad-**  
24           **ministrative contractor merely by**  
25           **reason of having entered into a con-**

1           **tract with the Secretary under sec-**  
2           **tion 1893.**

3           **“(6) APPLICATION OF FEDERAL ACQUI-**  
4           **SION REGULATION.—Except to the extent**  
5           **inconsistent with a specific requirement**  
6           **of this title, the Federal Acquisition Reg-**  
7           **ulation applies to contracts under this**  
8           **title.**

9           **“(b) CONTRACTING REQUIREMENTS.—**

10           **“(1) USE OF COMPETITIVE PROCE-**  
11           **DURES.—**

12           **“(A) IN GENERAL.—Except as pro-**  
13           **vided in laws with general applica-**  
14           **bility to Federal acquisition and pro-**  
15           **urement or in subparagraph (B), the**  
16           **Secretary shall use competitive pro-**  
17           **cedures when entering into contracts**  
18           **with medicare administrative con-**  
19           **tractors under this section, taking**  
20           **into account performance quality as**  
21           **well as price and other factors.**

22           **“(B) RENEWAL OF CONTRACTS.—The**  
23           **Secretary may renew a contract with**  
24           **a medicare administrative contractor**  
25           **under this section from term to term**

1           **without regard to section 5 of title 41,**  
2           **United States Code, or any other pro-**  
3           **vision of law requiring competition, if**  
4           **the medicare administrative con-**  
5           **tractor has met or exceeded the per-**  
6           **formance requirements applicable**  
7           **with respect to the contract and con-**  
8           **tractor, except that the Secretary**  
9           **shall provide for the application of**  
10          **competitive procedures under such a**  
11          **contract not less frequently than once**  
12          **every five years.**

13           **“(C) TRANSFER OF FUNCTIONS.—The**  
14          **Secretary may transfer functions**  
15          **among medicare administrative con-**  
16          **tractors consistent with the provi-**  
17          **sions of this paragraph. The Sec-**  
18          **retary shall ensure that performance**  
19          **quality is considered in such trans-**  
20          **fers. The Secretary shall provide pub-**  
21          **lic notice (whether in the Federal**  
22          **Register or otherwise) of any such**  
23          **transfer (including a description of**  
24          **the functions so transferred, a de-**  
25          **scription of the providers of services**

1           **and suppliers affected by such trans-**  
2           **fer, and contact information for the**  
3           **contractors involved).**

4           **“(D) INCENTIVES FOR QUALITY.—The**  
5           **Secretary shall provide incentives for**  
6           **medicare administrative contractors**  
7           **to provide quality service and to pro-**  
8           **mote efficiency.**

9           **“(2) COMPLIANCE WITH REQUIRE-**  
10          **MENTS.—No contract under this section**  
11          **shall be entered into with any medicare**  
12          **administrative contractor unless the Sec-**  
13          **retary finds that such medicare adminis-**  
14          **trative contractor will perform its obliga-**  
15          **tions under the contract efficiently and**  
16          **effectively and will meet such require-**  
17          **ments as to financial responsibility, legal**  
18          **authority, quality of services provided,**  
19          **and other matters as the Secretary finds**  
20          **pertinent.**

21          **“(3) PERFORMANCE REQUIREMENTS.—**

22               **“(A) DEVELOPMENT OF SPECIFIC**  
23               **PERFORMANCE REQUIREMENTS.—In de-**  
24               **veloping contract performance re-**  
25               **quirements, the Secretary shall de-**

1        **velop performance requirements ap-**  
2        **plicable to functions described in**  
3        **subsection (a)(4).**

4            **“(B) CONSULTATION.— In devel-**  
5        **oping such requirements, the Sec-**  
6        **retary may consult with providers of**  
7        **services and suppliers, organizations**  
8        **representing individuals entitled to**  
9        **benefits under part A or enrolled**  
10       **under part B, or both, and organiza-**  
11       **tions and agencies performing func-**  
12       **tions necessary to carry out the pur-**  
13       **poses of this section with respect to**  
14       **such performance requirements.**

15           **“(C) INCLUSION IN CONTRACTS.—All**  
16       **contractor performance requirements**  
17       **shall be set forth in the contract be-**  
18       **tween the Secretary and the appro-**  
19       **priate medicare administrative con-**  
20       **tractor. Such performance require-**  
21       **ments—**

22           **“(i) shall reflect the perform-**  
23       **ance requirements developed**  
24       **under subparagraph (A), but may**

1           **include additional performance**  
2           **requirements;**

3           **“(ii) shall be used for evalu-**  
4           **ating contractor performance**  
5           **under the contract; and**

6           **“(iii) shall be consistent with**  
7           **the written statement of work**  
8           **provided under the contract.**

9           **“(4) INFORMATION REQUIREMENTS.—The**  
10          **Secretary shall not enter into a contract**  
11          **with a medicare administrative con-**  
12          **tractor under this section unless the con-**  
13          **tractor agrees—**

14               **“(A) to furnish to the Secretary**  
15               **such timely information and reports**  
16               **as the Secretary may find necessary**  
17               **in performing his functions under**  
18               **this title; and**

19               **“(B) to maintain such records and**  
20               **afford such access thereto as the Sec-**  
21               **retary finds necessary to assure the**  
22               **correctness and verification of the in-**  
23               **formation and reports under subpara-**  
24               **graph (A) and otherwise to carry out**  
25               **the purposes of this title.**

1           **“(5) SURETY BOND.—A contract with a**  
2           **medicare administrative contractor**  
3           **under this section may require the medi-**  
4           **care administrative contractor, and any**  
5           **of its officers or employees certifying**  
6           **payments or disbursing funds pursuant**  
7           **to the contract, or otherwise partici-**  
8           **pating in carrying out the contract, to**  
9           **give surety bond to the United States in**  
10           **such amount as the Secretary may deem**  
11           **appropriate.**

12           **“(c) TERMS AND CONDITIONS.—**

13           **“(1) IN GENERAL.—A contract with any**  
14           **medicare administrative contractor**  
15           **under this section may contain such**  
16           **terms and conditions as the Secretary**  
17           **finds necessary or appropriate and may**  
18           **provide for advances of funds to the**  
19           **medicare administrative contractor for**  
20           **the making of payments by it under sub-**  
21           **section (a)(4)(B).**

22           **“(2) PROHIBITION ON MANDATES FOR**  
23           **CERTAIN DATA COLLECTION.—The Secretary**  
24           **may not require, as a condition of enter-**  
25           **ing into, or renewing, a contract under**

1       **this section, that the medicare adminis-**  
2       **trative contractor match data obtained**  
3       **other than in its activities under this title**  
4       **with data used in the administration of**  
5       **this title for purposes of identifying situ-**  
6       **ations in which the provisions of section**  
7       **1862(b) may apply.**

8       **“(d) LIMITATION ON LIABILITY OF MEDICARE**  
9       **ADMINISTRATIVE CONTRACTORS AND CERTAIN**  
10       **OFFICERS.—**

11               **“(1) CERTIFYING OFFICER.—No indi-**  
12       **vidual designated pursuant to a contract**  
13       **under this section as a certifying officer**  
14       **shall, in the absence of the reckless dis-**  
15       **regard of the individual’s obligations or**  
16       **the intent by that individual to defraud**  
17       **the United States, be liable with respect**  
18       **to any payments certified by the indi-**  
19       **vidual under this section.**

20               **“(2) DISBURSING OFFICER.—No dis-**  
21       **bursing officer shall, in the absence of**  
22       **the reckless disregard of the officer’s ob-**  
23       **ligations or the intent by that officer to**  
24       **defraud the United States, be liable with**  
25       **respect to any payment by such officer**

1       **under this section if it was based upon an**  
2       **authorization (which meets the applica-**  
3       **ble requirements for such internal con-**  
4       **trols established by the Comptroller Gen-**  
5       **eral) of a certifying officer designated as**  
6       **provided in paragraph (1) of this sub-**  
7       **section.**

8               **“(3) LIABILITY OF MEDICARE ADMINIS-**  
9       **TRATIVE CONTRACTOR.—**

10               **“(A) IN GENERAL.—No medicare ad-**  
11       **ministrative contractor shall be liable**  
12       **to the United States for a payment by**  
13       **a certifying or disbursing officer un-**  
14       **less, in connection with such pay-**  
15       **ment, the medicare administrative**  
16       **contractor acted with reckless dis-**  
17       **regard of its obligations under its**  
18       **medicare administrative contract or**  
19       **with intent to defraud the United**  
20       **States.**

21               **“(B) RELATIONSHIP TO FALSE**  
22       **CLAIMS ACT.—Nothing in this sub-**  
23       **section shall be construed to limit li-**  
24       **ability for conduct that would con-**  
25       **stitute a violation of sections 3729**

1 through 3731 of title 31, United States  
2 Code (commonly known as the ‘False  
3 Claims Act’).

4 “(4) INDEMNIFICATION BY SECRETARY.—

5 “(A) IN GENERAL.—Subject to sub-  
6 paragraphs (B) and (D), in the case of  
7 a medicare administrative contractor  
8 (or a person who is a director, officer,  
9 or employee of such a contractor or  
10 who is engaged by the contractor to  
11 participate directly in the claims ad-  
12 ministration process) who is made a  
13 party to any judicial or administra-  
14 tive proceeding arising from or relat-  
15 ing directly to the claims administra-  
16 tion process under this title, the Sec-  
17 retary may, to the extent the Sec-  
18 retary determines to be appropriate  
19 and as specified in the contract with  
20 the contractor, indemnify the con-  
21 tractor and such persons.

22 “(B) CONDITIONS.—The Secretary  
23 may not provide indemnification  
24 under subparagraph (A) insofar as  
25 the liability for such costs arises di-

1           **rectly from conduct that is deter-**  
2           **mined by the judicial proceeding or**  
3           **by the Secretary to be criminal in na-**  
4           **ture, fraudulent, or grossly negligent.**  
5           **If indemnification is provided by the**  
6           **Secretary with respect to a con-**  
7           **tractor before a determination that**  
8           **such costs arose directly from such**  
9           **conduct, the contractor shall reim-**  
10          **burse the Secretary for costs of in-**  
11          **demnification.**

12           **“(C) SCOPE OF INDEMNIFICATION.—**  
13          **Indemnification by the Secretary**  
14          **under subparagraph (A) may include**  
15          **payment of judgments, settlements**  
16          **(subject to subparagraph (D)),**  
17          **awards, and costs (including reason-**  
18          **able legal expenses).**

19           **“(D) WRITTEN APPROVAL FOR SET-**  
20          **TLEMENTS.—A contractor or other per-**  
21          **son described in subparagraph (A)**  
22          **may not propose to negotiate a settle-**  
23          **ment or compromise of a proceeding**  
24          **described in such subparagraph with-**  
25          **out the prior written approval of the**

1           **Secretary to negotiate such settle-**  
2           **ment or compromise. Any indem-**  
3           **nification under subparagraph (A)**  
4           **with respect to amounts paid under a**  
5           **settlement or compromise of a pro-**  
6           **ceeding described in such subpara-**  
7           **graph are conditioned upon prior**  
8           **written approval by the Secretary of**  
9           **the final settlement or compromise.**

10           **“(E) CONSTRUCTION.—Nothing in**  
11           **this paragraph shall be construed—**

12                   **“(i) to change any common**  
13                   **law immunity that may be avail-**  
14                   **able to a medicare administrative**  
15                   **contractor or person described in**  
16                   **subparagraph (A); or**

17                   **“(ii) to permit the payment of**  
18                   **costs not otherwise allowable,**  
19                   **reasonable, or allocable under the**  
20                   **Federal Acquisition Regulations.”.**

21           **(2) CONSIDERATION OF INCORPORATION**  
22           **OF CURRENT LAW STANDARDS.—In devel-**  
23           **oping contract performance require-**  
24           **ments under section 1874A(b) of the So-**  
25           **cial Security Act, as inserted by para-**

1 **graph (1), the Secretary shall consider in-**  
2 **clusion of the performance standards de-**  
3 **scribed in sections 1816(f)(2) of such Act**  
4 **(relating to timely processing of reconsid-**  
5 **erations and applications for exemptions)**  
6 **and section 1842(b)(2)(B) of such Act (re-**  
7 **lating to timely review of determinations**  
8 **and fair hearing requests), as such sec-**  
9 **tions were in effect before the date of the**  
10 **enactment of this Act.**

11 **(b) CONFORMING AMENDMENTS TO SECTION**  
12 **1816 (RELATING TO FISCAL INTERMEDIARIES).—**  
13 **Section 1816 (42 U.S.C. 1395h) is amended as**  
14 **follows:**

15 **(1) The heading is amended to read as**  
16 **follows:**

17 **“PROVISIONS RELATING TO THE ADMINISTRATION**  
18 **OF PART A”.**

19 **(2) Subsection (a) is amended to read**  
20 **as follows:**

21 **“(a) The administration of this part shall**  
22 **be conducted through contracts with medi-**  
23 **care administrative contractors under section**  
24 **1874A.”.**

25 **(3) Subsection (b) is repealed.**

26 **(4) Subsection (c) is amended—**

1           **(A) by striking paragraph (1); and**  
2           **(B) in each of paragraphs (2)(A)**  
3           **and (3)(A), by striking “agreement**  
4           **under this section” and inserting**  
5           **“contract under section 1874A that**  
6           **provides for making payments under**  
7           **this part”.**

8           **(5) Subsections (d) through (i) are re-**  
9           **pealed.**

10          **(6) Subsections (j) and (k) are each**  
11          **amended—**

12               **(A) by striking “An agreement**  
13               **with an agency or organization under**  
14               **this section” and inserting “A con-**  
15               **tract with a medicare administrative**  
16               **contractor under section 1874A with**  
17               **respect to the administration of this**  
18               **part”; and**

19               **(B) by striking “such agency or**  
20               **organization” and inserting “such**  
21               **medicare administrative contractor”**  
22               **each place it appears.**

23          **(7) Subsection (l) is repealed.**



1           **(i) in the matter before sub-**  
2           **paragraph (A), by striking “Each**  
3           **such contract shall provide that**  
4           **the carrier” and inserting “The**  
5           **Secretary”;**

6           **(ii) by striking “will” the first**  
7           **place it appears in each of sub-**  
8           **paragraphs (A), (B), (F), (G), (H),**  
9           **and (L) and inserting “shall”;**

10          **(iii) in subparagraph (B), in**  
11          **the matter before clause (i), by**  
12          **striking “to the policyholders and**  
13          **subscribers of the carrier” and in-**  
14          **serting “to the policyholders and**  
15          **subscribers of the medicare ad-**  
16          **ministrative contractor”;**

17          **(iv) by striking subparagraphs**  
18          **(C), (D), and (E);**

19          **(v) in subparagraph (H)—**

20               **(I) by striking “if it makes**  
21               **determinations or payments**  
22               **with respect to physicians’**  
23               **services,” in the matter pre-**  
24               **ceding clause (i); and**

- 1           **(II) by striking “carrier”**  
2           **and inserting “medicare ad-**  
3           **ministrative contractor” in**  
4           **clause (i);**  
5           **(vi) by striking subparagraph**  
6           **(I);**  
7           **(vii) in subparagraph (L), by**  
8           **striking the semicolon and insert-**  
9           **ing a period;**  
10           **(viii) in the first sentence,**  
11           **after subparagraph (L), by strik-**  
12           **ing “and shall contain” and all**  
13           **that follows through the period;**  
14           **and**  
15           **(ix) in the seventh sentence,**  
16           **by inserting “medicare adminis-**  
17           **trative contractor,” after “car-**  
18           **rier,”; and**  
19           **(D) by striking paragraph (5);**  
20           **(E) in paragraph (6)(D)(iv), by**  
21           **striking “carrier” and inserting**  
22           **“medicare administrative contractor”;**  
23           **and**

1           **(F) in paragraph (7), by striking**  
2           **“the carrier” and inserting “the Sec-**  
3           **retary” each place it appears.**

4           **(4) Subsection (c) is amended—**

5                   **(A) by striking paragraph (1);**

6                   **(B) in paragraph (2)(A), by strik-**  
7           **ing “contract under this section**  
8           **which provides for the disbursement**  
9           **of funds, as described in subsection**  
10           **(a)(1)(B),” and inserting “contract**  
11           **under section 1874A that provides for**  
12           **making payments under this part”;**

13                   **(C) in paragraph (3)(A), by strik-**  
14           **ing “subsection (a)(1)(B)” and insert-**  
15           **ing “section 1874A(a)(3)(B)”;**

16                   **(D) in paragraph (4), in the mat-**  
17           **ter preceding subparagraph (A), by**  
18           **striking “carrier” and inserting**  
19           **“medicare administrative contractor”;**  
20           **and**

21                   **(E) by striking paragraphs (5) and**  
22           **(6).**

23           **(5) Subsections (d), (e), and (f) are re-**  
24           **pealed.**

1           **(6) Subsection (g) is amended by**  
2           **striking “carrier or carriers” and insert-**  
3           **ing “medicare administrative contractor**  
4           **or contractors”.**

5           **(7) Subsection (h) is amended—**

6                   **(A) in paragraph (2)—**

7                           **(i) by striking “Each carrier**  
8                           **having an agreement with the**  
9                           **Secretary under subsection (a)”**  
10                           **and inserting “The Secretary”;**  
11                           **and**

12                           **(ii) by striking “Each such**  
13                           **carrier” and inserting “The Sec-**  
14                           **retary”;**

15                   **(B) in paragraph (3)(A)—**

16                           **(i) by striking “a carrier hav-**  
17                           **ing an agreement with the Sec-**  
18                           **retary under subsection (a)” and**  
19                           **inserting “medicare administra-**  
20                           **tive contractor having a contract**  
21                           **under section 1874A that provides**  
22                           **for making payments under this**  
23                           **part”; and**

24                           **(ii) by striking “such carrier”**  
25                           **and inserting “such contractor”;**

1           **(C) in paragraph (3)(B)—**

2                 **(i) by striking “a carrier” and**  
3                 **inserting “a medicare administra-**  
4                 **tive contractor” each place it ap-**  
5                 **pears; and**

6                 **(ii) by striking “the carrier”**  
7                 **and inserting “the contractor”**  
8                 **each place it appears; and**

9           **(D) in paragraphs (5)(A) and**  
10           **(5)(B)(iii), by striking “carriers” and**  
11           **inserting “medicare administrative**  
12           **contractors” each place it appears.**

13           **(8) Subsection (l) is amended—**

14                 **(A) in paragraph (1)(A)(iii), by**  
15                 **striking “carrier” and inserting**  
16                 **“medicare administrative contractor”;**  
17                 **and**

18                 **(B) in paragraph (2), by striking**  
19                 **“carrier” and inserting “medicare ad-**  
20                 **ministrative contractor”.**

21           **(9) Subsection (p)(3)(A) is amended by**  
22           **striking “carrier” and inserting “medi-**  
23           **care administrative contractor”.**

24           **(10) Subsection (q)(1)(A) is amended**  
25           **by striking “carrier”.**

1 **(d) EFFECTIVE DATE; TRANSITION RULE.—**

2 **(1) EFFECTIVE DATE.—**

3 **(A) IN GENERAL.—Except as other-**  
4 **wise provided in this subsection, the**  
5 **amendments made by this section**  
6 **shall take effect on October 1, 2005,**  
7 **and the Secretary is authorized to**  
8 **take such steps before such date as**  
9 **may be necessary to implement such**  
10 **amendments on a timely basis.**

11 **(B) CONSTRUCTION FOR CURRENT**  
12 **CONTRACTS.—Such amendments shall**  
13 **not apply to contracts in effect before**  
14 **the date specified under subpara-**  
15 **graph (A) that continue to retain the**  
16 **terms and conditions in effect on**  
17 **such date (except as otherwise pro-**  
18 **vided under this Act, other than**  
19 **under this section) until such date as**  
20 **the contract is let out for competitive**  
21 **bidding under such amendments.**

22 **(C) DEADLINE FOR COMPETITIVE**  
23 **BIDDING.—The Secretary shall provide**  
24 **for the letting by competitive bidding**  
25 **of all contracts for functions of medi-**

1           **care administrative contractors for**  
2           **annual contract periods that begin on**  
3           **or after October 1, 2010.**

4           **(D) WAIVER OF PROVIDER NOMINA-**  
5           **TION PROVISIONS DURING TRANSITION.—**  
6           **During the period beginning on the**  
7           **date of the enactment of this Act and**  
8           **before the date specified under sub-**  
9           **paragraph (A), the Secretary may**  
10          **enter into new agreements under sec-**  
11          **tion 1816 of the Social Security Act**  
12          **(42 U.S.C. 1395h) without regard to**  
13          **any of the provider nomination provi-**  
14          **sions of such section.**

15          **(2) GENERAL TRANSITION RULES.—The**  
16          **Secretary shall take such steps, con-**  
17          **sistent with paragraph (1)(B) and (1)(C),**  
18          **as are necessary to provide for an appro-**  
19          **priate transition from contracts under**  
20          **section 1816 and section 1842 of the So-**  
21          **cial Security Act (42 U.S.C. 1395h, 1395u)**  
22          **to contracts under section 1874A, as**  
23          **added by subsection (a)(1).**

24          **(3) AUTHORIZING CONTINUATION OF MIP**  
25          **FUNCTIONS UNDER CURRENT CONTRACTS AND**

1       **AGREEMENTS AND UNDER ROLLOVER CON-**  
2       **TRACTS.—The provisions contained in the**  
3       **exception in section 1893(d)(2) of the So-**  
4       **cial Security Act (42 U.S.C. 1395ddd(d)(2))**  
5       **shall continue to apply notwithstanding**  
6       **the amendments made by this section,**  
7       **and any reference in such provisions to**  
8       **an agreement or contract shall be**  
9       **deemed to include a contract under sec-**  
10      **tion 1874A of such Act, as inserted by**  
11      **subsection (a)(1), that continues the ac-**  
12      **tivities referred to in such provisions.**

13      **(e) REFERENCES.—On and after the effec-**  
14      **tive date provided under subsection (d)(1),**  
15      **any reference to a fiscal intermediary or car-**  
16      **rier under title XI or XVIII of the Social Secu-**  
17      **rity Act (or any regulation, manual instruc-**  
18      **tion, interpretative rule, statement of policy,**  
19      **or guideline issued to carry out such titles)**  
20      **shall be deemed a reference to an appropriate**  
21      **medicare administrative contractor (as pro-**  
22      **vided under section 1874A of the Social Secu-**  
23      **rity Act).**

24      **(f) REPORTS ON IMPLEMENTATION.—**

1           **(1) PLAN FOR IMPLEMENTATION.—By**  
2           **not later than October 1, 2004, the Sec-**  
3           **retary shall submit a report to Congress**  
4           **and the Comptroller General of the**  
5           **United States that describes the plan for**  
6           **implementation of the amendments made**  
7           **by this section. The Comptroller General**  
8           **shall conduct an evaluation of such plan**  
9           **and shall submit to Congress, not later**  
10          **than 6 months after the date the report**  
11          **is received, a report on such evaluation**  
12          **and shall include in such report such rec-**  
13          **ommendations as the Comptroller Gen-**  
14          **eral deems appropriate.**

15          **(2) STATUS OF IMPLEMENTATION.—The**  
16          **Secretary shall submit a report to Con-**  
17          **gress not later than October 1, 2008, that**  
18          **describes the status of implementation of**  
19          **such amendments and that includes a de-**  
20          **scription of the following:**

21                  **(A) The number of contracts that**  
22                  **have been competitively bid as of**  
23                  **such date.**

24                  **(B) The distribution of functions**  
25                  **among contracts and contractors.**

1           **(C) A timeline for complete transi-**  
2           **tion to full competition.**

3           **(D) A detailed description of how**  
4           **the Secretary has modified oversight**  
5           **and management of medicare con-**  
6           **tractors to adapt to full competition.**

7 **SEC. 202. REQUIREMENTS FOR INFORMATION SECURITY**  
8           **FOR MEDICARE ADMINISTRATIVE CONTRAC-**  
9           **TORS.**

10           **(a) IN GENERAL.—Section 1874A, as added**  
11 **by section 201(a)(1), is amended by adding at**  
12 **the end the following new subsection:**

13           **“(e) REQUIREMENTS FOR INFORMATION SECU-**  
14 **RITY.—**

15           **“(1) DEVELOPMENT OF INFORMATION SE-**  
16 **CURITY PROGRAM.—A medicare administra-**  
17 **tive contractor that performs the func-**  
18 **tions referred to in subparagraphs (A)**  
19 **and (B) of subsection (a)(4) (relating to**  
20 **determining and making payments) shall**  
21 **implement a contractor-wide information**  
22 **security program to provide information**  
23 **security for the operation and assets of**  
24 **the contractor with respect to such func-**  
25 **tions under this title. An information se-**

1        **curity program under this paragraph**  
2        **shall meet the requirements for informa-**  
3        **tion security programs imposed on Fed-**  
4        **eral agencies under paragraphs (1)**  
5        **through (8) of section 3544(b) of title 44,**  
6        **United States Code (other than the re-**  
7        **quirements under paragraph (2)(D)(i) of**  
8        **such section).**

9            **“(2) INDEPENDENT AUDITS.—**

10            **“(A) PERFORMANCE OF ANNUAL**  
11            **EVALUATIONS.—Each year a medicare**  
12            **administrative contractor that per-**  
13            **forms the functions referred to in**  
14            **subparagraphs (A) and (B) of sub-**  
15            **section (a)(4) (relating to determining**  
16            **and making payments) shall undergo**  
17            **an evaluation of the information se-**  
18            **curity of the contractor with respect**  
19            **to such functions under this title. The**  
20            **evaluation shall—**

21            **“(i) be performed by an entity**  
22            **that meets such requirements for**  
23            **independence as the Inspector**  
24            **General of the Department of**

1           **Health and Human Services may**  
2           **establish; and**

3           **“(ii) test the effectiveness of**  
4           **information security control tech-**  
5           **niques of an appropriate subset of**  
6           **the contractor’s information sys-**  
7           **tems (as defined in section 3502(8)**  
8           **of title 44, United States Code) re-**  
9           **lating to such functions under**  
10           **this title and an assessment of**  
11           **compliance with the require-**  
12           **ments of this subsection and re-**  
13           **lated information security poli-**  
14           **cies, procedures, standards and**  
15           **guidelines, including policies and**  
16           **procedures as may be prescribed**  
17           **by the Director of the Office of**  
18           **Management and Budget and ap-**  
19           **plicable information security**  
20           **standards promulgated under sec-**  
21           **tion 11331 of title 40, United**  
22           **States Code.**

23           **“(B) DEADLINE FOR INITIAL EVALUA-**  
24           **TION.—**

1           **“(i) NEW CONTRACTORS.—In the**  
2           **case of a medicare administrative**  
3           **contractor covered by this sub-**  
4           **section that has not previously**  
5           **performed the functions referred**  
6           **to in subparagraphs (A) and (B) of**  
7           **subsection (a)(4) (relating to de-**  
8           **termining and making payments)**  
9           **as a fiscal intermediary or carrier**  
10          **under section 1816 or 1842, the**  
11          **first independent evaluation con-**  
12          **ducted pursuant subparagraph**  
13          **(A) shall be completed prior to**  
14          **commencing such functions.**

15          **“(ii) OTHER CONTRACTORS.—In**  
16          **the case of a medicare adminis-**  
17          **trative contractor covered by this**  
18          **subsection that is not described**  
19          **in clause (i), the first independent**  
20          **evaluation conducted pursuant**  
21          **subparagraph (A) shall be com-**  
22          **pleted within 1 year after the**  
23          **date the contractor commences**  
24          **functions referred to in clause (i)**  
25          **under this section.**

1           **“(C) REPORTS ON EVALUATIONS.—**

2           **“(i) TO THE DEPARTMENT OF**  
3           **HEALTH AND HUMAN SERVICES.—The**  
4           **results of independent evalua-**  
5           **tions under subparagraph (A)**  
6           **shall be submitted promptly to**  
7           **the Inspector General of the De-**  
8           **partment of Health and Human**  
9           **Services and to the Secretary.**

10           **“(ii) TO CONGRESS.—The In-**  
11           **pector General of Department of**  
12           **Health and Human Services shall**  
13           **submit to Congress annual re-**  
14           **ports on the results of such eval-**  
15           **uations, including assessments of**  
16           **the scope and sufficiency of such**  
17           **evaluations.**

18           **“(iii) AGENCY REPORTING.—The**  
19           **Secretary shall address the re-**  
20           **sults of such evaluations in re-**  
21           **ports required under section**  
22           **3544(c) of title 44, United States**  
23           **Code.”.**

24           **(b) APPLICATION OF REQUIREMENTS TO FIS-**  
25           **CAL INTERMEDIARIES AND CARRIERS.—**

1           **(1) IN GENERAL.—The provisions of**  
2           **section 1874A(e)(2) of the Social Security**  
3           **Act (other than subparagraph (B)), as**  
4           **added by subsection (a), shall apply to**  
5           **each fiscal intermediary under section**  
6           **1816 of the Social Security Act (42 U.S.C.**  
7           **1395h) and each carrier under section**  
8           **1842 of such Act (42 U.S.C. 1395u) in the**  
9           **same manner as they apply to medicare**  
10          **administrative contractors under such**  
11          **provisions.**

12          **(2) DEADLINE FOR INITIAL EVALUA-**  
13          **TION.—In the case of such a fiscal inter-**  
14          **mediary or carrier with an agreement or**  
15          **contract under such respective section in**  
16          **effect as of the date of the enactment of**  
17          **this Act, the first evaluation under sec-**  
18          **tion 1874A(e)(2)(A) of the Social Security**  
19          **Act (as added by subsection (a)), pursu-**  
20          **ant to paragraph (1), shall be completed**  
21          **(and a report on the evaluation sub-**  
22          **mitted to the Secretary) by not later than**  
23          **1 year after such date.**

1           **TITLE III—EDUCATION AND**  
2                           **OUTREACH**

3   **SEC. 301. PROVIDER EDUCATION AND TECHNICAL ASSIST-**  
4                           **ANCE.**

5           **(a) COORDINATION OF EDUCATION FUND-**  
6   **ING.—**

7                   **(1) IN GENERAL.—The Social Security**  
8           **Act is amended by inserting after section**  
9           **1888 the following new section:**

10           **“PROVIDER EDUCATION AND TECHNICAL**  
11                           **ASSISTANCE**

12           **“SEC. 1889. (a) COORDINATION OF EDU-**  
13   **CATION FUNDING.—The Secretary shall coordi-**  
14   **nate the educational activities provided**  
15   **through medicare contractors (as defined in**  
16   **subsection (g), including under section 1893)**  
17   **in order to maximize the effectiveness of Fed-**  
18   **eral education efforts for providers of serv-**  
19   **ices and suppliers.”.**

20                   **(2) EFFECTIVE DATE.—The amendment**  
21           **made by paragraph (1) shall take effect**  
22           **on the date of the enactment of this Act.**

23                   **(3) REPORT.—Not later than October 1,**  
24           **2004, the Secretary shall submit to Con-**  
25           **gress a report that includes a description**

1       **and evaluation of the steps taken to co-**  
2       **ordinate the funding of provider edu-**  
3       **cation under section 1889(a) of the Social**  
4       **Security Act, as added by paragraph (1).**

5       **(b) INCENTIVES TO IMPROVE CONTRACTOR**  
6       **PERFORMANCE.—**

7               **(1) IN GENERAL.—Section 1874A, as**  
8       **added by section 201(a)(1) and as amend-**  
9       **ed by section 202(a), is amended by add-**  
10       **ing at the end the following new sub-**  
11       **section:**

12       **“(f) INCENTIVES TO IMPROVE CONTRACTOR**  
13       **PERFORMANCE IN PROVIDER EDUCATION AND**  
14       **OUTREACH.—The Secretary shall use specific**  
15       **claims payment error rates or similar method-**  
16       **ology of medicare administrative contractors**  
17       **in the processing or reviewing of medicare**  
18       **claims in order to give such contractors an in-**  
19       **centive to implement effective education and**  
20       **outreach programs for providers of services**  
21       **and suppliers.”.**

22               **(2) APPLICATION TO FISCAL INTER-**  
23       **MEDIARIES AND CARRIERS.—The provisions**  
24       **of section 1874A(f) of the Social Security**  
25       **Act, as added by paragraph (1), shall**

1       **apply to each fiscal intermediary under**  
2       **section 1816 of the Social Security Act (42**  
3       **U.S.C. 1395h) and each carrier under sec-**  
4       **tion 1842 of such Act (42 U.S.C. 1395u) in**  
5       **the same manner as they apply to medi-**  
6       **care administrative contractors under**  
7       **such provisions.**

8               **(3) GAO REPORT ON ADEQUACY OF**  
9       **METHODOLOGY.—Not later than October 1,**  
10       **2004, the Comptroller General of the**  
11       **United States shall submit to Congress**  
12       **and to the Secretary a report on the ade-**  
13       **quacy of the methodology under section**  
14       **1874A(f) of the Social Security Act, as**  
15       **added by paragraph (1), and shall include**  
16       **in the report such recommendations as**  
17       **the Comptroller General determines ap-**  
18       **propriate with respect to the method-**  
19       **ology.**

20               **(4) REPORT ON USE OF METHODOLOGY IN**  
21       **ASSESSING CONTRACTOR PERFORMANCE.—**  
22       **Not later than October 1, 2004, the Sec-**  
23       **retary shall submit to Congress a report**  
24       **that describes how the Secretary intends**  
25       **to use such methodology in assessing**

1        **medicare contractor performance in im-**  
2        **plementing effective education and out-**  
3        **reach programs, including whether to use**  
4        **such methodology as a basis for perform-**  
5        **ance bonuses. The report shall include an**  
6        **analysis of the sources of identified er-**  
7        **rors and potential changes in systems of**  
8        **contractors and rules of the Secretary**  
9        **that could reduce claims error rates.**

10        **(c) PROVISION OF ACCESS TO AND PROMPT**  
11        **RESPONSES FROM MEDICARE ADMINISTRATIVE**  
12        **CONTRACTORS.—**

13                **(1) IN GENERAL.—Section 1874A, as**  
14        **added by section 201(a)(1) and as amend-**  
15        **ed by section 202(a) and subsection (b), is**  
16        **further amended by adding at the end**  
17        **the following new subsection:**

18        **“(g) COMMUNICATIONS WITH BENEFICIARIES,**  
19        **PROVIDERS OF SERVICES AND SUPPLIERS.—**

20                **“(1) COMMUNICATION STRATEGY.—The**  
21        **Secretary shall develop a strategy for**  
22        **communications with individuals entitled**  
23        **to benefits under part A or enrolled**  
24        **under part B, or both, and with providers**  
25        **of services and suppliers under this title.**

1           **“(2) RESPONSE TO WRITTEN INQUIRIES.—**

2           **Each medicare administrative contractor**  
3           **shall, for those providers of services and**  
4           **suppliers which submit claims to the con-**  
5           **tractor for claims processing and for**  
6           **those individuals entitled to benefits**  
7           **under part A or enrolled under part B, or**  
8           **both, with respect to whom claims are**  
9           **submitted for claims processing, provide**  
10           **general written responses (which may be**  
11           **through electronic transmission) in a**  
12           **clear, concise, and accurate manner to in-**  
13           **quiries of providers of services, suppliers**  
14           **and individuals entitled to benefits under**  
15           **part A or enrolled under part B, or both,**  
16           **concerning the programs under this title**  
17           **within 45 business days of the date of re-**  
18           **ceipt of such inquiries.**

19           **“(3) RESPONSE TO TOLL-FREE LINES.—**

20           **The Secretary shall ensure that each**  
21           **medicare administrative contractor shall**  
22           **provide, for those providers of services**  
23           **and suppliers which submit claims to the**  
24           **contractor for claims processing and for**  
25           **those individuals entitled to benefits**

1       **under part A or enrolled under part B, or**  
2       **both, with respect to whom claims are**  
3       **submitted for claims processing, a toll-**  
4       **free telephone number at which such in-**  
5       **dividuals, providers of services and sup-**  
6       **pliers may obtain information regarding**  
7       **billing, coding, claims, coverage, and**  
8       **other appropriate information under this**  
9       **title.**

10           **“(4) MONITORING OF CONTRACTOR RE-**  
11           **SPONSES.—**

12                   **“(A) IN GENERAL.—Each medicare**  
13                   **administrative contractor shall, con-**  
14                   **sistent with standards developed by**  
15                   **the Secretary under subparagraph**  
16                   **(B)—**

17                           **“(i) maintain a system for**  
18                           **identifying who provides the in-**  
19                           **formation referred to in para-**  
20                           **graphs (2) and (3); and**

21                           **“(ii) monitor the accuracy,**  
22                           **consistency, and timeliness of the**  
23                           **information so provided.**

24                   **“(B) DEVELOPMENT OF STAND-**  
25                   **ARDS.—**

1           **“(i) IN GENERAL.—The Sec-**  
2           **retary shall establish and make**  
3           **public standards to monitor the**  
4           **accuracy, consistency, and timeli-**  
5           **ness of the information provided**  
6           **in response to written and tele-**  
7           **phone inquiries under this sub-**  
8           **section. Such standards shall be**  
9           **consistent with the performance**  
10          **requirements established under**  
11          **subsection (b)(3).**

12          **“(ii) EVALUATION.—In con-**  
13          **ducting evaluations of individual**  
14          **medicare administrative contrac-**  
15          **tors, the Secretary shall take into**  
16          **account the results of the moni-**  
17          **toring conducted under subpara-**  
18          **graph (A) taking into account as**  
19          **performance requirements the**  
20          **standards established under**  
21          **clause (i). The Secretary shall, in**  
22          **consultation with organizations**  
23          **representing providers of serv-**  
24          **ices, suppliers, and individuals**  
25          **entitled to benefits under part A**

1           **or enrolled under part B, or both,**  
2           **establish standards relating to**  
3           **the accuracy, consistency, and**  
4           **timeliness of the information so**  
5           **provided.**

6           **“(C) DIRECT MONITORING.—Nothing**  
7           **in this paragraph shall be construed**  
8           **as preventing the Secretary from di-**  
9           **rectly monitoring the accuracy, con-**  
10          **sistency, and timeliness of the infor-**  
11          **mation so provided.”.**

12          **(2) EFFECTIVE DATE.—The amendment**  
13          **made by paragraph (1) shall take effect**  
14          **October 1, 2004.**

15          **(3) APPLICATION TO FISCAL INTER-**  
16          **MEDIARIES AND CARRIERS.—The provisions**  
17          **of section 1874A(g) of the Social Security**  
18          **Act, as added by paragraph (1), shall**  
19          **apply to each fiscal intermediary under**  
20          **section 1816 of the Social Security Act (42**  
21          **U.S.C. 1395h) and each carrier under sec-**  
22          **tion 1842 of such Act (42 U.S.C. 1395u) in**  
23          **the same manner as they apply to medi-**  
24          **care administrative contractors under**  
25          **such provisions.**

1       **(d) IMPROVED PROVIDER EDUCATION AND**  
2 **TRAINING.—**

3           **(1) IN GENERAL.—Section 1889, as**  
4 **added by subsection (a), is amended by**  
5 **adding at the end the following new sub-**  
6 **sections:**

7       **“(b) ENHANCED EDUCATION AND TRAINING.—**

8           **“(1) ADDITIONAL RESOURCES.—There**  
9 **are authorized to be appropriated to the**  
10 **Secretary (in appropriate part from the**  
11 **Federal Hospital Insurance Trust Fund**  
12 **and the Federal Supplementary Medical**  
13 **Insurance Trust Fund) \$25,000,000 for**  
14 **each of fiscal years 2005 and 2006 and**  
15 **such sums as may be necessary for suc-**  
16 **ceeding fiscal years.**

17       **“(2) USE.—The funds made available**  
18 **under paragraph (1) shall be used to in-**  
19 **crease the conduct by medicare contrac-**  
20 **tors of education and training of pro-**  
21 **viders of services and suppliers regard-**  
22 **ing billing, coding, and other appropriate**  
23 **items and may also be used to improve**  
24 **the accuracy, consistency, and timeliness**  
25 **of contractor responses.**

1       **“(c) TAILORING EDUCATION AND TRAINING**  
2 **ACTIVITIES FOR SMALL PROVIDERS OR SUP-**  
3 **PLIERS.—**

4           **“(1) IN GENERAL.—Insofar as a medi-**  
5 **care contractor conducts education and**  
6 **training activities, it shall tailor such ac-**  
7 **tivities to meet the special needs of small**  
8 **providers of services or suppliers (as de-**  
9 **fin ed in paragraph (2)).**

10           **“(2) SMALL PROVIDER OF SERVICES OR**  
11 **SUPPLIER.—In this subsection, the term**  
12 **‘small provider of services or supplier’**  
13 **means—**

14           **“(A) a provider of services with**  
15 **fewer than 25 full-time-equivalent em-**  
16 **ployees; or**

17           **“(B) a supplier with fewer than 10**  
18 **full-time-equivalent employees.”.**

19           **(2) EFFECTIVE DATE.—The amendment**  
20 **made by paragraph (1) shall take effect**  
21 **on October 1, 2004.**

22       **(e) REQUIREMENT TO MAINTAIN INTERNET**  
23 **SITES.—**

24           **(1) IN GENERAL.—Section 1889, as**  
25 **added by subsection (a) and as amended**

1       **by subsection (d), is further amended by**  
2       **adding at the end the following new sub-**  
3       **section:**

4       **“(d) INTERNET SITES; FAQs.—The Sec-**  
5       **retary, and each medicare contractor insofar**  
6       **as it provides services (including claims proc-**  
7       **essing) for providers of services or suppliers,**  
8       **shall maintain an Internet site which—**

9               **“(1) provides answers in an easily ac-**  
10              **cessible format to frequently asked ques-**  
11              **tions, and**

12              **“(2) includes other published mate-**  
13              **rials of the contractor,**  
14       **that relate to providers of services and sup-**  
15       **pliers under the programs under this title**  
16       **(and title XI insofar as it relates to such pro-**  
17       **grams).”.**

18              **(2) EFFECTIVE DATE.—The amendment**  
19       **made by paragraph (1) shall take effect**  
20       **on October 1, 2004.**

21       **(f) ADDITIONAL PROVIDER EDUCATION PRO-**  
22       **VISIONS.—**

23              **(1) IN GENERAL.—Section 1889, as**  
24       **added by subsection (a) and as amended**  
25       **by subsections (d) and (e), is further**

1       **amended by adding at the end the fol-**  
2       **lowing new subsections:**

3       **“(e) ENCOURAGEMENT OF PARTICIPATION IN**  
4       **EDUCATION PROGRAM ACTIVITIES.—A medicare**  
5       **contractor may not use a record of attendance**  
6       **at (or failure to attend) educational activities**  
7       **or other information gathered during an edu-**  
8       **cational program conducted under this sec-**  
9       **tion or otherwise by the Secretary to select or**  
10       **track providers of services or suppliers for**  
11       **the purpose of conducting any type of audit**  
12       **or prepayment review.**

13       **“(f) CONSTRUCTION.—Nothing in this sec-**  
14       **tion or section 1893(g) shall be construed as**  
15       **providing for disclosure by a medicare con-**  
16       **tractor of information that would compromise**  
17       **pending law enforcement activities or reveal**  
18       **findings of law enforcement-related audits.**

19       **“(g) DEFINITIONS.—For purposes of this**  
20       **section, the term ‘medicare contractor’ in-**  
21       **cludes the following:**

22               **“(1) A medicare administrative con-**  
23               **tractor with a contract under section**  
24               **1874A, including a fiscal intermediary**  
25               **with a contract under section 1816 and a**

1       **carrier with a contract under section**  
2       **1842.**

3               **“(2) An eligible entity with a contract**  
4       **under section 1893.**

5       **Such term does not include, with respect to**  
6       **activities of a specific provider of services or**  
7       **supplier an entity that has no authority under**  
8       **this title or title IX with respect to such activi-**  
9       **ties and such provider of services or sup-**  
10       **plier.”.**

11               **(2) EFFECTIVE DATE.—The amendment**  
12       **made by paragraph (1) shall take effect**  
13       **on the date of the enactment of this Act.**

14       **SEC. 302. SMALL PROVIDER TECHNICAL ASSISTANCE DEM-**  
15               **ONSTRATION PROGRAM.**

16               **(a) ESTABLISHMENT.—**

17               **(1) IN GENERAL.—The Secretary shall**  
18       **establish a demonstration program (in**  
19       **this section referred to as the “dem-**  
20       **onstration program”) under which tech-**  
21       **nical assistance described in paragraph**  
22       **(2) is made available, upon request and**  
23       **on a voluntary basis, to small providers**  
24       **of services or suppliers in order to im-**  
25       **prove compliance with the applicable re-**

1       **quirements of the programs under medi-**  
2       **care program under title XVIII of the So-**  
3       **cial Security Act (including provisions of**  
4       **title XI of such Act insofar as they relate**  
5       **to such title and are not administered by**  
6       **the Office of the Inspector General of the**  
7       **Department of Health and Human Serv-**  
8       **ices).**

9               **(2) FORMS OF TECHNICAL ASSISTANCE.—**

10       **The technical assistance described in this**  
11       **paragraph is—**

12               **(A) evaluation and recommenda-**  
13               **tions regarding billing and related**  
14               **systems; and**

15               **(B) information and assistance re-**  
16               **garding policies and procedures**  
17               **under the medicare program, includ-**  
18               **ing coding and reimbursement.**

19               **(3) SMALL PROVIDERS OF SERVICES OR**  
20       **SUPPLIERS.—In this section, the term**  
21       **“small providers of services or suppliers”**  
22       **means—**

23               **(A) a provider of services with**  
24               **fewer than 25 full-time-equivalent em-**  
25               **ployees; or**

1           **(B) a supplier with fewer than 10**  
2           **full-time-equivalent employees.**

3           **(b) QUALIFICATION OF CONTRACTORS.—In**  
4           **conducting the demonstration program, the**  
5           **Secretary shall enter into contracts with**  
6           **qualified organizations (such as peer review**  
7           **organizations or entities described in section**  
8           **1889(g)(2) of the Social Security Act, as in-**  
9           **serted by section 5(f)(1)) with appropriate ex-**  
10          **pertise with billing systems of the full range**  
11          **of providers of services and suppliers to pro-**  
12          **vide the technical assistance. In awarding**  
13          **such contracts, the Secretary shall consider**  
14          **any prior investigations of the entity's work**  
15          **by the Inspector General of Department of**  
16          **Health and Human Services or the Comp-**  
17          **troller General of the United States.**

18          **(c) DESCRIPTION OF TECHNICAL ASSIST-**  
19          **ANCE.—The technical assistance provided**  
20          **under the demonstration program shall in-**  
21          **clude a direct and in-person examination of**  
22          **billing systems and internal controls of small**  
23          **providers of services or suppliers to deter-**  
24          **mine program compliance and to suggest**

1 **more efficient or effective means of achieving**  
2 **such compliance.**

3 **(d) AVOIDANCE OF RECOVERY ACTIONS FOR**  
4 **PROBLEMS IDENTIFIED AS CORRECTED.—The**  
5 **Secretary shall provide that, absent evidence**  
6 **of fraud and notwithstanding any other provi-**  
7 **sion of law, any errors found in a compliance**  
8 **review for a small provider of services or sup-**  
9 **plier that participates in the demonstration**  
10 **program shall not be subject to recovery ac-**  
11 **tion if the technical assistance personnel**  
12 **under the program determine that—**

13 **(1) the problem that is the subject of**  
14 **the compliance review has been cor-**  
15 **rected to their satisfaction within 30 days**  
16 **of the date of the visit by such personnel**  
17 **to the small provider of services or sup-**  
18 **plier; and**

19 **(2) such problem remains corrected**  
20 **for such period as is appropriate.**

21 **The previous sentence applies only to claims**  
22 **filed as part of the demonstration program**  
23 **and lasts only for the duration of such pro-**  
24 **gram and only as long as the small provider**

1 of services or supplier is a participant in such  
2 program.

3 (e) GAO EVALUATION.—Not later than 2  
4 years after the date of the date the dem-  
5 onstration program is first implemented, the  
6 Comptroller General, in consultation with the  
7 Inspector General of the Department of  
8 Health and Human Services, shall conduct an  
9 evaluation of the demonstration program. The  
10 evaluation shall include a determination of  
11 whether claims error rates are reduced for  
12 small providers of services or suppliers who  
13 participated in the program and the extent of  
14 improper payments made as a result of the  
15 demonstration program. The Comptroller  
16 General shall submit a report to the Secretary  
17 and the Congress on such evaluation and  
18 shall include in such report recommendations  
19 regarding the continuation or extension of  
20 the demonstration program.

21 (f) FINANCIAL PARTICIPATION BY PRO-  
22 VIDERS.—The provision of technical assistance  
23 to a small provider of services or supplier  
24 under the demonstration program is condi-  
25 tioned upon the small provider of services or

1 **supplier paying an amount estimated (and**  
2 **disclosed in advance of a provider's or sup-**  
3 **plier's participation in the program) to be**  
4 **equal to 25 percent of the cost of the technical**  
5 **assistance.**

6 **(g) AUTHORIZATION OF APPROPRIATIONS.—**  
7 **There are authorized to be appropriated to**  
8 **the Secretary (in appropriate part from the**  
9 **Federal Hospital Insurance Trust Fund and**  
10 **the Federal Supplementary Medical Insur-**  
11 **ance Trust Fund) to carry out the demonstra-**  
12 **tion program—**

13 **(1) for fiscal year 2005, \$1,000,000, and**

14 **(2) for fiscal year 2006, \$6,000,000.**

15 **SEC. 303. MEDICARE PROVIDER OMBUDSMAN; MEDICARE**  
16 **BENEFICIARY OMBUDSMAN.**

17 **(a) MEDICARE PROVIDER OMBUDSMAN.—Sec-**  
18 **tion 1868 (42 U.S.C. 1395ee) is amended—**

19 **(1) by adding at the end of the head-**  
20 **ing the following: “; MEDICARE PROVIDER**  
21 **OMBUDSMAN”;**

22 **(2) by inserting “PRACTICING PHYSI-**  
23 **CIANS ADVISORY COUNCIL.—(1)” after “(a)”;**

24 **(3) in paragraph (1), as so redesign-**  
25 **ated under paragraph (2), by striking**

1       **“in this section” and inserting “in this**  
2       **subsection”;**

3               **(4) by redesignating subsections (b)**  
4       **and (c) as paragraphs (2) and (3), respec-**  
5       **tively; and**

6               **(5) by adding at the end the following**  
7       **new subsection:**

8       **“(b) MEDICARE PROVIDER OMBUDSMAN.—**  
9       **The Secretary shall appoint within the De-**  
10       **partment of Health and Human Services a**  
11       **Medicare Provider Ombudsman. The Om-**  
12       **budsman shall—**

13               **“(1) provide assistance, on a confiden-**  
14       **tial basis, to providers of services and**  
15       **suppliers with respect to complaints,**  
16       **grievances, and requests for information**  
17       **concerning the programs under this title**  
18       **(including provisions of title XI insofar as**  
19       **they relate to this title and are not ad-**  
20       **ministered by the Office of the Inspector**  
21       **General of the Department of Health and**  
22       **Human Services) and in the resolution of**  
23       **unclear or conflicting guidance given by**  
24       **the Secretary and medicare contractors**  
25       **to such providers of services and sup-**

1 **pliers regarding such programs and pro-**  
2 **visions and requirements under this title**  
3 **and such provisions; and**

4 **“(2) submit recommendations to the**  
5 **Secretary for improvement in the admin-**  
6 **istration of this title and such provisions,**  
7 **including—**

8 **“(A) recommendations to respond**  
9 **to recurring patterns of confusion in**  
10 **this title and such provisions (includ-**  
11 **ing recommendations regarding sus-**  
12 **pending imposition of sanctions**  
13 **where there is widespread confusion**  
14 **in program administration), and**

15 **“(B) recommendations to provide**  
16 **for an appropriate and consistent re-**  
17 **sponse (including not providing for**  
18 **audits) in cases of self-identified over-**  
19 **payments by providers of services**  
20 **and suppliers.**

21 **The Ombudsman shall not serve as an advo-**  
22 **cate for any increases in payments or new**  
23 **coverage of services, but may identify issues**  
24 **and problems in payment or coverage poli-**  
25 **cies.”.**

1       **(b) MEDICARE BENEFICIARY OMBUDSMAN.—**  
2 **Title XVIII is amended by inserting after sec-**  
3 **tion 1806 the following new section:**

4           **“MEDICARE BENEFICIARY OMBUDSMAN**

5       **“SEC. 1807. (a) IN GENERAL.—The Secretary**  
6 **shall appoint within the Department of**  
7 **Health and Human Services a Medicare Bene-**  
8 **ficiary Ombudsman who shall have expertise**  
9 **and experience in the fields of health care**  
10 **and education of (and assistance to) individ-**  
11 **uals entitled to benefits under this title.**

12       **“(b) DUTIES.—The Medicare Beneficiary**  
13 **Ombudsman shall—**

14           **“(1) receive complaints, grievances,**  
15 **and requests for information submitted**  
16 **by individuals entitled to benefits under**  
17 **part A or enrolled under part B, or both,**  
18 **with respect to any aspect of the medi-**  
19 **care program;**

20           **“(2) provide assistance with respect**  
21 **to complaints, grievances, and requests**  
22 **referred to in paragraph (1), including—**

23           **“(A) assistance in collecting rel-**  
24 **evant information for such individ-**  
25 **uals, to seek an appeal of a decision**  
26 **or determination made by a fiscal**



1 **provision of information to individuals enti-**  
2 **bled to benefits under part A or enrolled**  
3 **under part B, or both regarding**  
4 **Medicare+Choice plans and changes to those**  
5 **plans. Nothing in this subsection shall pre-**  
6 **clude further collaboration between the Om-**  
7 **budsman and such programs.”.**

8 **(c) DEADLINE FOR APPOINTMENT.—The Sec-**  
9 **retary shall appoint the Medicare Provider**  
10 **Ombudsman and the Medicare Beneficiary**  
11 **Ombudsman, under the amendments made by**  
12 **subsections (a) and (b), respectively, by not**  
13 **later than 1 year after the date of the enact-**  
14 **ment of this Act.**

15 **(d) FUNDING.—There are authorized to be**  
16 **appropriated to the Secretary (in appropriate**  
17 **part from the Federal Hospital Insurance**  
18 **Trust Fund and the Federal Supplementary**  
19 **Medical Insurance Trust Fund) to carry out**  
20 **the provisions of subsection (b) of section**  
21 **1868 of the Social Security Act (relating to the**  
22 **Medicare Provider Ombudsman), as added by**  
23 **subsection (a)(5) and section 1807 of such Act**  
24 **(relating to the Medicare Beneficiary Om-**  
25 **budsman), as added by subsection (b), such**

1 **sums as are necessary for fiscal year 2004 and**  
2 **each succeeding fiscal year.**

3 **(e) USE OF CENTRAL, TOLL-FREE NUMBER**  
4 **(1-800-MEDICARE).—**

5 **(1) PHONE TRIAGE SYSTEM; LISTING IN**  
6 **MEDICARE HANDBOOK INSTEAD OF OTHER**  
7 **TOLL-FREE NUMBERS.—Section 1804(b) (42**  
8 **U.S.C. 1395b-2(b)) is amended by adding**  
9 **at the end the following: “The Secretary**  
10 **shall provide, through the toll-free num-**  
11 **ber 1-800-MEDICARE, for a means by**  
12 **which individuals seeking information**  
13 **about, or assistance with, such programs**  
14 **who phone such toll-free number are**  
15 **transferred (without charge) to appro-**  
16 **priate entities for the provision of such**  
17 **information or assistance. Such toll-free**  
18 **number shall be the toll-free number list-**  
19 **ed for general information and assistance**  
20 **in the annual notice under subsection (a)**  
21 **instead of the listing of numbers of indi-**  
22 **vidual contractors.”.**

23 **(2) MONITORING ACCURACY.—**

24 **(A) STUDY.—The Comptroller Gen-**  
25 **eral of the United States shall con-**

1           **duct a study to monitor the accuracy**  
2           **and consistency of information pro-**  
3           **vided to individuals entitled to bene-**  
4           **fits under part A or enrolled under**  
5           **part B, or both, through the toll-free**  
6           **number 1-800-MEDICARE, including**  
7           **an assessment of whether the infor-**  
8           **mation provided is sufficient to an-**  
9           **swer questions of such individuals. In**  
10          **conducting the study, the Comp-**  
11          **troller General shall examine the edu-**  
12          **cation and training of the individuals**  
13          **providing information through such**  
14          **number.**

15           **(B) REPORT.—Not later than 1**  
16          **year after the date of the enactment**  
17          **of this Act, the Comptroller General**  
18          **shall submit to Congress a report on**  
19          **the study conducted under subpara-**  
20          **graph (A).**

21   **SEC. 304. BENEFICIARY OUTREACH DEMONSTRATION PRO-**  
22                   **GRAM.**

23           **(a) IN GENERAL.—The Secretary shall es-**  
24          **tablish a demonstration program (in this sec-**  
25          **tion referred to as the “demonstration pro-**

1 **gram”)** under which medicare specialists em-  
2 **ployed by the Department of Health and**  
3 **Human Services provide advice and assist-**  
4 **ance to individuals entitled to benefits under**  
5 **part A of title XVIII of the Social Security Act,**  
6 **or enrolled under part B of such title, or both,**  
7 **regarding the medicare program at the loca-**  
8 **tion of existing local offices of the Social Secu-**  
9 **rity Administration.**

10 **(b) LOCATIONS.—**

11 **(1) IN GENERAL.—The demonstration**  
12 **program shall be conducted in at least 6**  
13 **offices or areas. Subject to paragraph (2),**  
14 **in selecting such offices and areas, the**  
15 **Secretary shall provide preference for of-**  
16 **fices with a high volume of visits by indi-**  
17 **viduals referred to in subsection (a).**

18 **(2) ASSISTANCE FOR RURAL BENE-**  
19 **FICIARIES.—The Secretary shall provide**  
20 **for the selection of at least 2 rural areas**  
21 **to participate in the demonstration pro-**  
22 **gram. In conducting the demonstration**  
23 **program in such rural areas, the Sec-**  
24 **retary shall provide for medicare special-**

1       **ists to travel among local offices in a**  
2       **rural area on a scheduled basis.**

3       **(c) DURATION.—The demonstration pro-**  
4       **gram shall be conducted over a 3-year period.**

5       **(d) EVALUATION AND REPORT.—**

6           **(1) EVALUATION.—The Secretary shall**  
7       **provide for an evaluation of the dem-**  
8       **onstration program. Such evaluation**  
9       **shall include an analysis of—**

10           **(A) utilization of, and satisfaction**  
11       **of those individuals referred to in**  
12       **subsection (a) with, the assistance**  
13       **provided under the program; and**

14           **(B) the cost-effectiveness of pro-**  
15       **viding beneficiary assistance through**  
16       **out-stationing medicare specialists at**  
17       **local offices of the Social Security Ad-**  
18       **ministration.**

19           **(2) REPORT.—The Secretary shall sub-**  
20       **mit to Congress a report on such evalua-**  
21       **tion and shall include in such report rec-**  
22       **ommendations regarding the feasibility**  
23       **of permanently out-stationing medicare**  
24       **specialists at local offices of the Social**  
25       **Security Administration.**

1 **SEC. 305. INCLUSION OF ADDITIONAL INFORMATION IN NO-**  
2 **TICES TO BENEFICIARIES ABOUT SKILLED**  
3 **NURSING FACILITY BENEFITS.**

4 **(a) IN GENERAL.—The Secretary shall pro-**  
5 **vide that in medicare beneficiary notices pro-**  
6 **vided (under section 1806(a) of the Social Se-**  
7 **curity Act, 42 U.S.C. 1395b-7(a)) with respect**  
8 **to the provision of post-hospital extended**  
9 **care services under part A of title XVIII of the**  
10 **Social Security Act, there shall be included in-**  
11 **formation on the number of days of coverage**  
12 **of such services remaining under such part**  
13 **for the medicare beneficiary and spell of ill-**  
14 **ness involved.**

15 **(b) EFFECTIVE DATE.—Subsection (a) shall**  
16 **apply to notices provided during calendar**  
17 **quarters beginning more than 6 months after**  
18 **the date of the enactment of this Act.**

19 **SEC. 306. INFORMATION ON MEDICARE-CERTIFIED**  
20 **SKILLED NURSING FACILITIES IN HOSPITAL**  
21 **DISCHARGE PLANS.**

22 **(a) AVAILABILITY OF DATA.—The Secretary**  
23 **shall publicly provide information that en-**  
24 **ables hospital discharge planners, medicare**  
25 **beneficiaries, and the public to identify**

1 **skilled nursing facilities that are partici-**  
2 **pating in the medicare program.**

3 **(b) INCLUSION OF INFORMATION IN CERTAIN**  
4 **HOSPITAL DISCHARGE PLANS.—**

5 **(1) IN GENERAL.—Section**  
6 **1861(ee)(2)(D) (42 U.S.C. 1395x(ee)(2)(D))**  
7 **is amended—**

8 **(A) by striking “hospice services”**  
9 **and inserting “hospice care and post-**  
10 **hospital extended care services”; and**

11 **(B) by inserting before the period**  
12 **at the end the following: “and, in the**  
13 **case of individuals who are likely to**  
14 **need post-hospital extended care**  
15 **services, the availability of such serv-**  
16 **ices through facilities that partici-**  
17 **pate in the program under this title**  
18 **and that serve the area in which the**  
19 **patient resides”.**

20 **(2) EFFECTIVE DATE.—The amendments**  
21 **made by paragraph (1) shall apply to dis-**  
22 **charge plans made on or after such date**  
23 **as the Secretary shall specify, but not**  
24 **later than 6 months after the date the**

1 **Secretary provides for availability of in-**  
2 **formation under subsection (a).**

3 **TITLE IV—APPEALS AND**  
4 **RECOVERY**

5 **SEC. 401. TRANSFER OF RESPONSIBILITY FOR MEDICARE**  
6 **APPEALS.**

7 **(a) TRANSITION PLAN.—**

8 **(1) IN GENERAL.—Not later than Octo-**  
9 **ber 1, 2004, the Commissioner of Social**  
10 **Security and the Secretary shall develop**  
11 **and transmit to Congress and the Comp-**  
12 **troller General of the United States a**  
13 **plan under which the functions of admin-**  
14 **istrative law judges responsible for hear-**  
15 **ing cases under title XVIII of the Social**  
16 **Security Act (and related provisions in**  
17 **title XI of such Act) are transferred from**  
18 **the responsibility of the Commissioner**  
19 **and the Social Security Administration to**  
20 **the Secretary and the Department of**  
21 **Health and Human Services.**

22 **(2) GAO EVALUATION.—The Comp-**  
23 **troller General of the United States shall**  
24 **evaluate the plan and, not later than the**  
25 **date that is 6 months after the date on**

1       **which the plan is received by the Comp-**  
2       **troller General, shall submit to Congress**  
3       **a report on such evaluation.**

4       **(b) TRANSFER OF ADJUDICATION AUTHOR-**  
5       **ITY.—**

6               **(1) IN GENERAL.—Not earlier than July**  
7       **1, 2005, and not later than October 1,**  
8       **2005, the Commissioner of Social Security**  
9       **and the Secretary shall implement the**  
10       **transition plan under subsection (a) and**  
11       **transfer the administrative law judge**  
12       **functions described in such subsection**  
13       **from the Social Security Administration**  
14       **to the Secretary.**

15               **(2) ASSURING INDEPENDENCE OF**  
16       **JUDGES.—The Secretary shall assure the**  
17       **independence of administrative law**  
18       **judges performing the administrative law**  
19       **judge functions transferred under para-**  
20       **graph (1) from the Centers for Medicare**  
21       **& Medicaid Services and its contractors.**  
22       **In order to assure such independence,**  
23       **the Secretary shall place such judges in**  
24       **an administrative office that is organiza-**  
25       **tionally and functionally separate from**

1       **such Centers. Such judges shall report to,**  
2       **and be under the general supervision of,**  
3       **the Secretary, but shall not report to, or**  
4       **be subject to supervision by, another**  
5       **other officer of the Department.**

6           **(3) GEOGRAPHIC DISTRIBUTION.—The**  
7       **Secretary shall provide for an appro-**  
8       **priate geographic distribution of admin-**  
9       **istrative law judges performing the ad-**  
10       **ministrative law judge functions trans-**  
11       **ferred under paragraph (1) throughout**  
12       **the United States to ensure timely access**  
13       **to such judges.**

14           **(4) HIRING AUTHORITY.—Subject to the**  
15       **amounts provided in advance in appro-**  
16       **priations Act, the Secretary shall have**  
17       **authority to hire administrative law**  
18       **judges to hear such cases, giving priority**  
19       **to those judges with prior experience in**  
20       **handling medicare appeals and in a man-**  
21       **ner consistent with paragraph (3), and to**  
22       **hire support staff for such judges.**

23           **(5) FINANCING.—Amounts payable**  
24       **under law to the Commissioner for ad-**  
25       **ministrative law judges performing the**

1       **administrative law judge functions trans-**  
2       **ferred under paragraph (1) from the Fed-**  
3       **eral Hospital Insurance Trust Fund and**  
4       **the Federal Supplementary Medical In-**  
5       **surance Trust Fund shall become payable**  
6       **to the Secretary for the functions so**  
7       **transferred.**

8               **(6) SHARED RESOURCES.—The Sec-**  
9       **retary shall enter into such arrangements**  
10       **with the Commissioner as may be appro-**  
11       **priate with respect to transferred func-**  
12       **tions of administrative law judges to**  
13       **share office space, support staff, and**  
14       **other resources, with appropriate reim-**  
15       **bursement from the Trust Funds de-**  
16       **scribed in paragraph (5).**

17               **(c) INCREASED FINANCIAL SUPPORT.—In ad-**  
18       **dition to any amounts otherwise appro-**  
19       **priated, to ensure timely action on appeals be-**  
20       **fore administrative law judges and the De-**  
21       **partmental Appeals Board consistent with**  
22       **section 1869 of the Social Security Act (as**  
23       **amended by section 521 of BIPA, 114 Stat.**  
24       **2763A–534), there are authorized to be appro-**  
25       **priated (in appropriate part from the Federal**

1 **Hospital Insurance Trust Fund and the Fed-**  
2 **eral Supplementary Medical Insurance Trust**  
3 **Fund) to the Secretary such sums as are nec-**  
4 **essary for fiscal year 2005 and each subse-**  
5 **quent fiscal year to—**

6 **(1) increase the number of adminis-**  
7 **trative law judges (and their staffs)**  
8 **under subsection (b)(4);**

9 **(2) improve education and training**  
10 **opportunities for administrative law**  
11 **judges (and their staffs); and**

12 **(3) increase the staff of the Depart-**  
13 **mental Appeals Board.**

14 **(d) CONFORMING AMENDMENT.—Section**  
15 **1869(f)(2)(A)(i) (42 U.S.C. 1395ff(f)(2)(A)(i)), as**  
16 **added by section 522(a) of BIPA (114 Stat.**  
17 **2763A–543), is amended by striking “of the So-**  
18 **cial Security Administration”.**

19 **SEC. 402. PROCESS FOR EXPEDITED ACCESS TO REVIEW.**

20 **(a) EXPEDITED ACCESS TO JUDICIAL RE-**  
21 **VIEW.—Section 1869(b) (42 U.S.C. 1395ff(b)) as**  
22 **amended by BIPA, is amended—**

23 **(1) in paragraph (1)(A), by inserting “,**  
24 **subject to paragraph (2),” before “to judi-**

1 **cial review of the Secretary’s final deci-**  
2 **sion”;**

3 **(2) in paragraph (1)(F)—**

4 **(A) by striking clause (ii);**

5 **(B) by striking “PROCEEDING” and**  
6 **all that follows through “DETERMINA-**  
7 **TION” and inserting “DETERMINATIONS**  
8 **AND RECONSIDERATIONS”;** and

9 **(C) by redesignating subclauses**  
10 **(I) and (II) as clauses (i) and (ii) and**  
11 **by moving the indentation of such**  
12 **subclauses (and the matter that fol-**  
13 **lows) 2 ems to the left; and**

14 **(3) by adding at the end the following**  
15 **new paragraph:**

16 **“(2) EXPEDITED ACCESS TO JUDICIAL RE-**  
17 **VIEW.—**

18 **“(A) IN GENERAL.—The Secretary**  
19 **shall establish a process under which**  
20 **a provider of services or supplier that**  
21 **furnishes an item or service or an in-**  
22 **dividual entitled to benefits under**  
23 **part A or enrolled under part B, or**  
24 **both, who has filed an appeal under**  
25 **paragraph (1) may obtain access to**

1           **judicial review when a review panel**  
2           **(described in subparagraph (D)), on**  
3           **its own motion or at the request of**  
4           **the appellant, determines that no en-**  
5           **tity in the administrative appeals**  
6           **process has the authority to decide**  
7           **the question of law or regulation rel-**  
8           **evant to the matters in controversy**  
9           **and that there is no material issue of**  
10          **fact in dispute. The appellant may**  
11          **make such request only once with re-**  
12          **spect to a question of law or regula-**  
13          **tion in a case of an appeal.**

14           **“(B) PROMPT DETERMINATIONS.—If,**  
15           **after or coincident with appro-**  
16           **priately filing a request for an admin-**  
17           **istrative hearing, the appellant re-**  
18           **quests a determination by the appro-**  
19           **priate review panel that no review**  
20           **panel has the authority to decide the**  
21           **question of law or regulations rel-**  
22           **evant to the matters in controversy**  
23           **and that there is no material issue of**  
24           **fact in dispute and if such request is**  
25           **accompanied by the documents and**

1 materials as the appropriate review  
2 panel shall require for purposes of  
3 making such determination, such re-  
4 view panel shall make a determina-  
5 tion on the request in writing within  
6 60 days after the date such review  
7 panel receives the request and such  
8 accompanying documents and mate-  
9 rials. Such a determination by such  
10 review panel shall be considered a  
11 final decision and not subject to re-  
12 view by the Secretary.

13 “(C) ACCESS TO JUDICIAL REVIEW.—

14 “(i) IN GENERAL.—If the appro-  
15 priate review panel—

16 “(I) determines that there  
17 are no material issues of fact  
18 in dispute and that the only  
19 issue is one of law or regula-  
20 tion that no review panel has  
21 the authority to decide; or

22 “(II) fails to make such de-  
23 termination within the period  
24 provided under subparagraph  
25 (B);

1           **then the appellant may bring a**  
2           **civil action as described in this**  
3           **subparagraph.**

4           **“(ii) DEADLINE FOR FILING.—**  
5           **Such action shall be filed, in the**  
6           **case described in—**

7                   **“(I) clause (i)(I), within 60**  
8                   **days of date of the determina-**  
9                   **tion described in such sub-**  
10                   **paragraph; or**

11                   **“(II) clause (i)(II), within**  
12                   **60 days of the end of the pe-**  
13                   **riod provided under subpara-**  
14                   **graph (B) for the determina-**  
15                   **tion.**

16           **“(iii) VENUE.—Such action**  
17           **shall be brought in the district**  
18           **court of the United States for the**  
19           **judicial district in which the ap-**  
20           **pellant is located (or, in the case**  
21           **of an action brought jointly by**  
22           **more than one applicant, the judi-**  
23           **cial district in which the greatest**  
24           **number of applicants are located)**

1 or in the district court for the  
2 District of Columbia.

3 “(iv) INTEREST ON AMOUNTS IN  
4 CONTROVERSY.—Where a provider  
5 of services or supplier seeks judi-  
6 cial review pursuant to this para-  
7 graph, the amount in controversy  
8 shall be subject to annual interest  
9 beginning on the first day of the  
10 first month beginning after the  
11 60-day period as determined pur-  
12 suant to clause (ii) and equal to  
13 the rate of interest on obligations  
14 issued for purchase by the Fed-  
15 eral Hospital Insurance Trust  
16 Fund and by the Federal Supple-  
17 mentary Medical Insurance Trust  
18 Fund for the month in which the  
19 civil action authorized under this  
20 paragraph is commenced, to be  
21 awarded by the reviewing court  
22 in favor of the prevailing party.  
23 No interest awarded pursuant to  
24 the preceding sentence shall be  
25 deemed income or cost for the

1           **purposes of determining reim-**  
2           **bursement due providers of serv-**  
3           **ices or suppliers under this Act.**

4           **“(D) REVIEW PANELS.—For pur-**  
5           **poses of this subsection, a ‘review**  
6           **panel’ is a panel consisting of 3 mem-**  
7           **bers (who shall be administrative law**  
8           **judges, members of the Departmental**  
9           **Appeals Board, or qualified individ-**  
10           **uals associated with a qualified inde-**  
11           **pendent contractor (as defined in**  
12           **subsection (c)(2)) or with another**  
13           **independent entity) designated by the**  
14           **Secretary for purposes of making de-**  
15           **terminations under this paragraph.”.**

16           **(b) APPLICATION TO PROVIDER AGREEMENT**  
17           **DETERMINATIONS.—Section 1866(h)(1) (42**  
18           **U.S.C. 1395cc(h)(1)) is amended—**

19           **(1) by inserting “(A)” after “(h)(1)”;**

20           **and**

21           **(2) by adding at the end the following**  
22           **new subparagraph:**

23           **“(B) An institution or agency described in**  
24           **subparagraph (A) that has filed for a hearing**  
25           **under subparagraph (A) shall have expedited**

1 access to judicial review under this subpara-  
2 graph in the same manner as providers of  
3 services, suppliers, and individuals entitled to  
4 benefits under part A or enrolled under part  
5 B, or both, may obtain expedited access to ju-  
6 dicial review under the process established  
7 under section 1869(b)(2). Nothing in this sub-  
8 paragraph shall be construed to affect the ap-  
9 plication of any remedy imposed under sec-  
10 tion 1819 during the pendency of an appeal  
11 under this subparagraph.”.

12 (c) EFFECTIVE DATE.—The amendments  
13 made by this section shall apply to appeals  
14 filed on or after October 1, 2004.

15 (d) EXPEDITED REVIEW OF CERTAIN PRO-  
16 VIDER AGREEMENT DETERMINATIONS.—

17 (1) TERMINATION AND CERTAIN OTHER  
18 IMMEDIATE REMEDIES.—The Secretary shall  
19 develop and implement a process to expe-  
20 dited proceedings under sections 1866(h)  
21 of the Social Security Act (42 U.S.C.  
22 1395cc(h)) in which the remedy of termi-  
23 nation of participation, or a remedy de-  
24 scribed in clause (i) or (iii) of section  
25 1819(h)(2)(B) of such Act (42 U.S.C. 1395i-

1 **3(h)(2)(B)) which is applied on an imme-**  
2 **diat e basis, has been imposed. Under**  
3 **such process priority shall be provided in**  
4 **cases of termination.**

5 **(2) INCREASED FINANCIAL SUPPORT.—In**  
6 **addition to any amounts otherwise ap-**  
7 **propriated, to reduce by 50 percent the**  
8 **average time for administrative deter-**  
9 **minations on appeals under section**  
10 **1866(h) of the Social Security Act (42**  
11 **U.S.C. 1395cc(h)), there are authorized to**  
12 **be appropriated (in appropriate part**  
13 **from the Federal Hospital Insurance**  
14 **Trust Fund and the Federal Supple-**  
15 **mentary Medical Insurance Trust Fund)**  
16 **to the Secretary such additional sums for**  
17 **fiscal year 2005 and each subsequent fis-**  
18 **cal year as may be necessary. The pur-**  
19 **poses for which such amounts are avail-**  
20 **able include increasing the number of ad-**  
21 **ministrative law judges (and their staffs)**  
22 **and the appellate level staff at the De-**  
23 **partmental Appeals Board of the Depart-**  
24 **ment of Health and Human Services and**

1       **educating such judges and staffs on long-**  
2       **term care issues.**

3       **SEC. 403. REVISIONS TO MEDICARE APPEALS PROCESS.**

4       **(a) REQUIRING FULL AND EARLY PRESEN-**  
5       **TATION OF EVIDENCE.—**

6               **(1) IN GENERAL.—Section 1869(b) (42**  
7       **U.S.C. 1395ff(b)), as amended by BIPA**  
8       **and as amended by section 402(a), is fur-**  
9       **ther amended by adding at the end the**  
10       **following new paragraph:**

11               **“(3) REQUIRING FULL AND EARLY PRES-**  
12       **ENTATION OF EVIDENCE BY PROVIDERS.—A**  
13       **provider of services or supplier may not**  
14       **introduce evidence in any appeal under**  
15       **this section that was not presented at the**  
16       **reconsideration conducted by the quali-**  
17       **fied independent contractor under sub-**  
18       **section (c), unless there is good cause**  
19       **which precluded the introduction of such**  
20       **evidence at or before that reconsider-**  
21       **ation.”.**

22               **(2) EFFECTIVE DATE.—The amendment**  
23       **made by paragraph (1) shall take effect**  
24       **on October 1, 2004.**

1           **(b) USE OF PATIENTS’ MEDICAL RECORDS.—**  
2   **Section 1869(c)(3)(B)(i) (42 U.S.C.**  
3   **1395ff(c)(3)(B)(i)), as amended by BIPA, is**  
4   **amended by inserting “(including the medical**  
5   **records of the individual involved)” after**  
6   **“clinical experience”.**

7           **(c) NOTICE REQUIREMENTS FOR MEDICARE**  
8   **APPEALS.—**

9           **(1) INITIAL DETERMINATIONS AND REDE-**  
10   **TERMINATIONS.—Section 1869(a) (42 U.S.C.**  
11   **1395ff(a)), as amended by BIPA, is amend-**  
12   **ed by adding at the end the following**  
13   **new paragraphs:**

14           **“(4) REQUIREMENTS OF NOTICE OF DE-**  
15   **TERMINATIONS.—With respect to an initial**  
16   **determination insofar as it results in a**  
17   **denial of a claim for benefits—**

18           **“(A) the written notice on the de-**  
19   **termination shall include—**

20           **“(i) the reasons for the deter-**  
21   **mination, including whether a**  
22   **local medical review policy or a**  
23   **local coverage determination was**  
24   **used;**

1           “(ii) the procedures for ob-  
2           taining additional information  
3           concerning the determination, in-  
4           cluding the information described  
5           in subparagraph (B); and

6           “(iii) notification of the right  
7           to seek a redetermination or oth-  
8           erwise appeal the determination  
9           and instructions on how to ini-  
10          tiate such a redetermination  
11          under this section; and

12          “(B) the person provided such no-  
13          tice may obtain, upon request, the  
14          specific provision of the policy, man-  
15          ual, or regulation used in making the  
16          determination.

17          “(5) REQUIREMENTS OF NOTICE OF REDE-  
18          TERMINATIONS.—With respect to a redeter-  
19          mination insofar as it results in a denial  
20          of a claim for benefits—

21                  “(A) the written notice on the re-  
22                  determination shall include—

23                          “(i) the specific reasons for  
24                          the redetermination;

1           **“(ii) as appropriate, a sum-**  
2           **mary of the clinical or scientific**  
3           **evidence used in making the rede-**  
4           **termination;**

5           **“(iii) a description of the pro-**  
6           **cedures for obtaining additional**  
7           **information concerning the rede-**  
8           **termination; and**

9           **“(iv) notification of the right**  
10          **to appeal the redetermination**  
11          **and instructions on how to ini-**  
12          **tiate such an appeal under this**  
13          **section;**

14          **“(B) such written notice shall be**  
15          **provided in printed form and written**  
16          **in a manner calculated to be under-**  
17          **stood by the individual entitled to**  
18          **benefits under part A or enrolled**  
19          **under part B, or both; and**

20          **“(C) the person provided such no-**  
21          **tice may obtain, upon request, infor-**  
22          **mation on the specific provision of**  
23          **the policy, manual, or regulation used**  
24          **in making the redetermination.”.**

1           **(2) RECONSIDERATIONS.—Section**  
2           **1869(c)(3)(E) (42 U.S.C. 1395ff(c)(3)(E)), as**  
3           **amended by BIPA, is amended—**

4           **(A) by inserting “be written in a**  
5           **manner calculated to be understood**  
6           **by the individual entitled to benefits**  
7           **under part A or enrolled under part**  
8           **B, or both, and shall include (to the**  
9           **extent appropriate)” after “in writing,**  
10           **”; and**

11           **(B) by inserting “and a notifica-**  
12           **tion of the right to appeal such deter-**  
13           **mination and instructions on how to**  
14           **initiate such appeal under this sec-**  
15           **tion” after “such decision,”.**

16           **(3) APPEALS.—Section 1869(d) (42**  
17           **U.S.C. 1395ff(d)), as amended by BIPA, is**  
18           **amended—**

19           **(A) in the heading, by inserting “;**  
20           **NOTICE” after “SECRETARY”; and**

21           **(B) by adding at the end the fol-**  
22           **lowing new paragraph:**

23           **“(4) NOTICE.—Notice of the decision of**  
24           **an administrative law judge shall be in**  
25           **writing in a manner calculated to be un-**

1 **derstood by the individual entitled to**  
2 **benefits under part A or enrolled under**  
3 **part B, or both, and shall include—**

4 **“(A) the specific reasons for the**  
5 **determination (including, to the ex-**  
6 **tent appropriate, a summary of the**  
7 **clinical or scientific evidence used in**  
8 **making the determination);**

9 **“(B) the procedures for obtaining**  
10 **additional information concerning**  
11 **the decision; and**

12 **“(C) notification of the right to**  
13 **appeal the decision and instructions**  
14 **on how to initiate such an appeal**  
15 **under this section.”.**

16 **(4) SUBMISSION OF RECORD FOR AP-**  
17 **PEAL.—Section 1869(c)(3)(J)(i) (42 U.S.C.**  
18 **1395ff(c)(3)(J)(i)) by striking “prepare”**  
19 **and inserting “submit” and by striking**  
20 **“with respect to” and all that follows**  
21 **through “and relevant policies”.**

22 **(d) QUALIFIED INDEPENDENT CONTRAC-**  
23 **TORS.—**

24 **(1) ELIGIBILITY REQUIREMENTS OF**  
25 **QUALIFIED INDEPENDENT CONTRACTORS.—**

1       **Section 1869(c)(3) (42 U.S.C. 1395ff(c)(3)),**  
2       **as amended by BIPA, is amended—**

3               **(A) in subparagraph (A), by strik-**  
4               **ing “sufficient training and expertise**  
5               **in medical science and legal matters”**  
6               **and inserting “sufficient medical,**  
7               **legal, and other expertise (including**  
8               **knowledge of the program under this**  
9               **title) and sufficient staffing”; and**

10              **(B) by adding at the end the fol-**  
11              **lowing new subparagraph:**

12              **“(K) INDEPENDENCE REQUIRE-**  
13              **MENTS.—**

14              **“(i) IN GENERAL.—Subject to**  
15              **clause (ii), a qualified inde-**  
16              **pendent contractor shall not con-**  
17              **duct any activities in a case un-**  
18              **less the entity—**

19              **“(I) is not a related party**  
20              **(as defined in subsection**  
21              **(g)(5));**

22              **“(II) does not have a mate-**  
23              **rial familial, financial, or pro-**  
24              **fessional relationship with**

1           **such a party in relation to**  
2           **such case; and**

3           **“(III) does not otherwise**  
4           **have a conflict of interest**  
5           **with such a party.**

6           **“(ii) EXCEPTION FOR REASON-**  
7           **ABLE COMPENSATION.—Nothing in**  
8           **clause (i) shall be construed to**  
9           **prohibit receipt by a qualified**  
10          **independent contractor of com-**  
11          **penetration from the Secretary for**  
12          **the conduct of activities under**  
13          **this section if the compensation is**  
14          **provided consistent with clause**  
15          **(iii).**

16          **“(iii) LIMITATIONS ON ENTITY**  
17          **COMPENSATION.—Compensation**  
18          **provided by the Secretary to a**  
19          **qualified independent contractor**  
20          **in connection with reviews under**  
21          **this section shall not be contin-**  
22          **gent on any decision rendered by**  
23          **the contractor or by any review-**  
24          **ing professional.”.**

1           **(2) ELIGIBILITY REQUIREMENTS FOR RE-**  
2           **VIEWERS.—Section 1869 (42 U.S.C. 1395ff),**  
3           **as amended by BIPA, is amended—**

4                   **(A) by amending subsection**  
5                   **(c)(3)(D) to read as follows:**

6                   **“(D) QUALIFICATIONS FOR REVIEW-**  
7                   **ERS.—The requirements of subsection**  
8                   **(g) shall be met (relating to qualifica-**  
9                   **tions of reviewing professionals).”;**  
10                   **and**

11                   **(B) by adding at the end the fol-**  
12                   **lowing new subsection:**

13           **“(g) QUALIFICATIONS OF REVIEWERS.—**

14                   **“(1) IN GENERAL.—In reviewing deter-**  
15                   **minations under this section, a qualified**  
16                   **independent contractor shall assure**  
17                   **that—**

18                   **“(A) each individual conducting a**  
19                   **review shall meet the qualifications**  
20                   **of paragraph (2);**

21                   **“(B) compensation provided by**  
22                   **the contractor to each such reviewer**  
23                   **is consistent with paragraph (3); and**

24                   **“(C) in the case of a review by a**  
25                   **panel described in subsection**

1           **(c)(3)(B) composed of physicians or**  
2           **other health care professionals (each**  
3           **in this subsection referred to as a ‘re-**  
4           **viewing professional’), a reviewing**  
5           **professional meets the qualifications**  
6           **described in paragraph (4) and,**  
7           **where a claim is regarding the fur-**  
8           **nishing of treatment by a physician**  
9           **(allopathic or osteopathic) or the pro-**  
10           **vision of items or services by a physi-**  
11           **cian (allopathic or osteopathic), each**  
12           **reviewing professional shall be a phy-**  
13           **sician (allopathic or osteopathic).**

14           **“(2) INDEPENDENCE.—**

15                   **“(A) IN GENERAL.—Subject to sub-**  
16                   **paragraph (B), each individual con-**  
17                   **ducting a review in a case shall—**

18                           **“(i) not be a related party (as**  
19                           **defined in paragraph (5));**

20                           **“(ii) not have a material famil-**  
21                           **ial, financial, or professional rela-**  
22                           **tionship with such a party in the**  
23                           **case under review; and**

1           “(iii) not otherwise have a  
2           conflict of interest with such a  
3           party.

4           “(B) EXCEPTION.—Nothing in sub-  
5           paragraph (A) shall be construed to—

6           “(i) prohibit an individual,  
7           solely on the basis of a participa-  
8           tion agreement with a fiscal inter-  
9           mediary, carrier, or other con-  
10          tractor, from serving as a review-  
11          ing professional if—

12           “(I) the individual is not  
13           involved in the provision of  
14           items or services in the case  
15           under review;

16           “(II) the fact of such an  
17           agreement is disclosed to the  
18           Secretary and the individual  
19           entitled to benefits under part  
20           A or enrolled under part B, or  
21           both, (or authorized rep-  
22           resentative) and neither party  
23           objects; and

24           “(III) the individual is not  
25           an employee of the inter-

1           **mediary, carrier, or con-**  
2           **tractor and does not provide**  
3           **services exclusively or pri-**  
4           **marily to or on behalf of such**  
5           **intermediary, carrier, or con-**  
6           **tractor;**

7           **“(ii) prohibit an individual**  
8           **who has staff privileges at the in-**  
9           **stitution where the treatment in-**  
10          **volved takes place from serving**  
11          **as a reviewer merely on the basis**  
12          **of having such staff privileges if**  
13          **the existence of such privileges is**  
14          **disclosed to the Secretary and**  
15          **such individual (or authorized**  
16          **representative), and neither party**  
17          **objects; or**

18          **“(iii) prohibit receipt of com-**  
19          **penetration by a reviewing profes-**  
20          **sional from a contractor if the**  
21          **compensation is provided con-**  
22          **sistent with paragraph (3).**

23          **For purposes of this paragraph, the**  
24          **term ‘participation agreement’ means**  
25          **an agreement relating to the provi-**

1           **sion of health care services by the in-**  
2           **dividual and does not include the**  
3           **provision of services as a reviewer**  
4           **under this subsection.**

5           **“(3) LIMITATIONS ON REVIEWER COM-**  
6           **PENSATION.—Compensation provided by a**  
7           **qualified independent contractor to a re-**  
8           **viewer in connection with a review under**  
9           **this section shall not be contingent on**  
10          **the decision rendered by the reviewer.**

11          **“(4) LICENSURE AND EXPERTISE.—Each**  
12          **reviewing professional shall be—**

13               **“(A) a physician (allopathic or os-**  
14               **teopathic) who is appropriately**  
15               **credentialed or licensed in one or**  
16               **more States to deliver health care**  
17               **services and has medical expertise in**  
18               **the field of practice that is appro-**  
19               **priate for the items or services at**  
20               **issue; or**

21               **“(B) a health care professional**  
22               **who is legally authorized in one or**  
23               **more States (in accordance with State**  
24               **law or the State regulatory mecha-**  
25               **nism provided by State law) to fur-**

1           **nish the health care items or services**  
2           **at issue and has medical expertise in**  
3           **the field of practice that is appro-**  
4           **priate for such items or services.**

5           **“(5) RELATED PARTY DEFINED.—For**  
6           **purposes of this section, the term ‘related**  
7           **party’ means, with respect to a case**  
8           **under this title involving a specific indi-**  
9           **vidual entitled to benefits under part A**  
10          **or enrolled under part B, or both, any of**  
11          **the following:**

12               **“(A) The Secretary, the medicare**  
13               **administrative contractor involved,**  
14               **or any fiduciary, officer, director, or**  
15               **employee of the Department of**  
16               **Health and Human Services, or of**  
17               **such contractor.**

18               **“(B) The individual (or authorized**  
19               **representative).**

20               **“(C) The health care professional**  
21               **that provides the items or services in-**  
22               **volved in the case.**

23               **“(D) The institution at which the**  
24               **items or services (or treatment) in-**  
25               **volved in the case are provided.**

1           **“(E) The manufacturer of any**  
2           **drug or other item that is included in**  
3           **the items or services involved in the**  
4           **case.**

5           **“(F) Any other party determined**  
6           **under any regulations to have a sub-**  
7           **stantial interest in the case in-**  
8           **volved.”.**

9           **(3) REDUCING MINIMUM NUMBER OF**  
10          **QUALIFIED INDEPENDENT CONTRACTORS.—**  
11          **Section 1869(c)(4) (42 U.S.C. 1395ff(c)(4))**  
12          **is amended by striking “not fewer than**  
13          **12 qualified independent contractors**  
14          **under this subsection” and inserting “a**  
15          **sufficient number of qualified inde-**  
16          **pendent contractors (but not fewer than**  
17          **4 such contractors) to conduct reconsid-**  
18          **erations consistent with the timeframes**  
19          **applicable under this subsection”.**

20          **(4) EFFECTIVE DATE.—The amendments**  
21          **made by paragraphs (1) and (2) shall be**  
22          **effective as if included in the enactment**  
23          **of the respective provisions of subtitle C**  
24          **of title V of BIPA, (114 Stat. 2763A–534).**

1           **(5) TRANSITION.—In applying section**  
2           **1869(g) of the Social Security Act (as**  
3           **added by paragraph (2)), any reference to**  
4           **a medicare administrative contractor**  
5           **shall be deemed to include a reference to**  
6           **a fiscal intermediary under section 1816**  
7           **of the Social Security Act (42 U.S.C.**  
8           **1395h) and a carrier under section 1842**  
9           **of such Act (42 U.S.C. 1395u).**

10 **SEC. 404. PREPAYMENT REVIEW.**

11           **(a) IN GENERAL.—Section 1874A, as added**  
12           **by section 201(a)(1) and as amended by sec-**  
13           **tions 202(b), 301(b)(1), and 301(c)(1), is further**  
14           **amended by adding at the end the following**  
15           **new subsection:**

16           **“(h) CONDUCT OF PREPAYMENT REVIEW.—**

17           **“(1) CONDUCT OF RANDOM PREPAYMENT**  
18           **REVIEW.—**

19           **“(A) IN GENERAL.—A medicare ad-**  
20           **ministrative contractor may conduct**  
21           **random prepayment review only to**  
22           **develop a contractor-wide or pro-**  
23           **gram-wide claims payment error**  
24           **rates or under such additional cir-**  
25           **cumstances as may be provided**

1           **under regulations, developed in con-**  
2           **sultation with providers of services**  
3           **and suppliers.**

4           **“(B) USE OF STANDARD PROTOCOLS**  
5           **WHEN CONDUCTING PREPAYMENT RE-**  
6           **VIEWES.—When a medicare administra-**  
7           **tive contractor conducts a random**  
8           **prepayment review, the contractor**  
9           **may conduct such review only in ac-**  
10          **cordance with a standard protocol for**  
11          **random prepayment audits developed**  
12          **by the Secretary.**

13          **“(C) CONSTRUCTION.—Nothing in**  
14          **this paragraph shall be construed as**  
15          **preventing the denial of payments for**  
16          **claims actually reviewed under a ran-**  
17          **dom prepayment review.**

18          **“(D) RANDOM PREPAYMENT RE-**  
19          **VIEW.—For purposes of this sub-**  
20          **section, the term ‘random prepay-**  
21          **ment review’ means a demand for the**  
22          **production of records or documenta-**  
23          **tion absent cause with respect to a**  
24          **claim.**

1           **“(2) LIMITATIONS ON NON-RANDOM PRE-**  
2           **PAYMENT REVIEW.—**

3           **“(A) LIMITATIONS ON INITIATION OF**  
4           **NON-RANDOM PREPAYMENT REVIEW.—A**  
5           **medicare administrative contractor**  
6           **may not initiate non-random prepay-**  
7           **ment review of a provider of services**  
8           **or supplier based on the initial iden-**  
9           **tification by that provider of services**  
10           **or supplier of an improper billing**  
11           **practice unless there is a likelihood**  
12           **of sustained or high level of payment**  
13           **error (as defined in subsection**  
14           **(i)(3)(A)).**

15           **“(B) TERMINATION OF NON-RANDOM**  
16           **PREPAYMENT REVIEW.—The Secretary**  
17           **shall issue regulations relating to the**  
18           **termination, including termination**  
19           **dates, of non-random prepayment re-**  
20           **view. Such regulations may vary such**  
21           **a termination date based upon the**  
22           **differences in the circumstances trig-**  
23           **gering prepayment review.”.**

24           **(b) EFFECTIVE DATE.—**

1           **(1) IN GENERAL.—**Except as provided  
2           **in this subsection, the amendment made**  
3           **by subsection (a) shall take effect 1 year**  
4           **after the date of the enactment of this**  
5           **Act.**

6           **(2) DEADLINE FOR PROMULGATION OF**  
7           **CERTAIN REGULATIONS.—**The Secretary  
8           **shall first issue regulations under section**  
9           **1874A(h) of the Social Security Act, as**  
10          **added by subsection (a), by not later than**  
11          **1 year after the date of the enactment of**  
12          **this Act.**

13          **(3) APPLICATION OF STANDARD PROTO-**  
14          **COLS FOR RANDOM PREPAYMENT REVIEW.—**  
15          **Section 1874A(h)(1)(B) of the Social Secu-**  
16          **rity Act, as added by subsection (a), shall**  
17          **apply to random prepayment reviews**  
18          **conducted on or after such date (not later**  
19          **than 1 year after the date of the enact-**  
20          **ment of this Act) as the Secretary shall**  
21          **specify.**

22          **(c) APPLICATION TO FISCAL INTERMEDIARIES**  
23          **AND CARRIERS.—**The provisions of section  
24          **1874A(h) of the Social Security Act, as added**  
25          **by subsection (a), shall apply to each fiscal**

1 **intermediary under section 1816 of the Social**  
2 **Security Act (42 U.S.C. 1395h) and each car-**  
3 **rier under section 1842 of such Act (42 U.S.C.**  
4 **1395u) in the same manner as they apply to**  
5 **medicare administrative contractors under**  
6 **such provisions.**

7 **SEC. 405. RECOVERY OF OVERPAYMENTS.**

8 **(a) IN GENERAL.—Section 1893 (42 U.S.C.**  
9 **1395ddd) is amended by adding at the end the**  
10 **following new subsection:**

11 **“(f) RECOVERY OF OVERPAYMENTS.—**

12 **“(1) USE OF REPAYMENT PLANS.—**

13 **“(A) IN GENERAL.—If the repay-**  
14 **ment, within 30 days by a provider of**  
15 **services or supplier, of an overpay-**  
16 **ment under this title would con-**  
17 **stitute a hardship (as defined in sub-**  
18 **paragraph (B)), subject to subpara-**  
19 **graph (C), upon request of the pro-**  
20 **vider of services or supplier the Sec-**  
21 **retary shall enter into a plan with the**  
22 **provider of services or supplier for**  
23 **the repayment (through offset or oth-**  
24 **erwise) of such overpayment over a**  
25 **period of at least 6 months but not**

1           **longer than 3 years (or not longer**  
2           **than 5 years in the case of extreme**  
3           **hardship, as determined by the Sec-**  
4           **retary). Interest shall accrue on the**  
5           **balance through the period of repay-**  
6           **ment. Such plan shall meet terms and**  
7           **conditions determined to be appro-**  
8           **priate by the Secretary.**

9           **“(B) HARDSHIP.—**

10           **“(i) IN GENERAL.—For purposes**  
11           **of subparagraph (A), the repay-**  
12           **ment of an overpayment (or over-**  
13           **payments) within 30 days is**  
14           **deemed to constitute a hardship**  
15           **if—**

16           **“(I) in the case of a pro-**  
17           **vider of services that files**  
18           **cost reports, the aggregate**  
19           **amount of the overpayments**  
20           **exceeds 10 percent of the**  
21           **amount paid under this title**  
22           **to the provider of services for**  
23           **the cost reporting period cov-**  
24           **ered by the most recently sub-**  
25           **mitted cost report; or**

1           **“(II) in the case of another**  
2           **provider of services or sup-**  
3           **plier, the aggregate amount of**  
4           **the overpayments exceeds 10**  
5           **percent of the amount paid**  
6           **under this title to the pro-**  
7           **vider of services or supplier**  
8           **for the previous calendar**  
9           **year.**

10           **“(ii) RULE OF APPLICATION.—**  
11           **The Secretary shall establish**  
12           **rules for the application of this**  
13           **subparagraph in the case of a**  
14           **provider of services or supplier**  
15           **that was not paid under this title**  
16           **during the previous year or was**  
17           **paid under this title only during a**  
18           **portion of that year.**

19           **“(iii) TREATMENT OF PREVIOUS**  
20           **OVERPAYMENTS.—If a provider of**  
21           **services or supplier has entered**  
22           **into a repayment plan under sub-**  
23           **paragraph (A) with respect to a**  
24           **specific overpayment amount,**  
25           **such payment amount under the**

1            **repayment plan shall not be taken**  
2            **into account under clause (i) with**  
3            **respect to subsequent overpay-**  
4            **ment amounts.**

5            **“(C) EXCEPTIONS.—Subparagraph**  
6            **(A) shall not apply if—**

7                    **“(i) the Secretary has reason**  
8                    **to suspect that the provider of**  
9                    **services or supplier may file for**  
10                   **bankruptcy or otherwise cease to**  
11                   **do business or discontinue par-**  
12                   **ticipation in the program under**  
13                   **this title; or**

14                   **“(ii) there is an indication of**  
15                   **fraud or abuse committed against**  
16                   **the program.**

17            **“(D) IMMEDIATE COLLECTION IF VIO-**  
18            **LATION OF REPAYMENT PLAN.—If a pro-**  
19            **vider of services or supplier fails to**  
20            **make a payment in accordance with a**  
21            **repayment plan under this para-**  
22            **graph, the Secretary may imme-**  
23            **diately seek to offset or otherwise re-**  
24            **cover the total balance outstanding**

1           **(including applicable interest) under**  
2           **the repayment plan.**

3           **“(E) RELATION TO NO FAULT PROVI-**  
4           **SION.—Nothing in this paragraph**  
5           **shall be construed as affecting the ap-**  
6           **plication of section 1870(c) (relating**  
7           **to no adjustment in the cases of cer-**  
8           **tain overpayments).**

9           **“(2) LIMITATION ON RECOUPMENT.—**

10           **“(A) IN GENERAL.—In the case of a**  
11           **provider of services or supplier that**  
12           **is determined to have received an**  
13           **overpayment under this title and that**  
14           **seeks a reconsideration by a qualified**  
15           **independent contractor on such de-**  
16           **termination under section 1869(b)(1),**  
17           **the Secretary may not take any ac-**  
18           **tion (or authorize any other person,**  
19           **including any medicare contractor, as**  
20           **defined in subparagraph (C)) to re-**  
21           **coup the overpayment until the date**  
22           **the decision on the reconsideration**  
23           **has been rendered. If the provisions**  
24           **of section 1869(b)(1) (providing for**  
25           **such a reconsideration by a qualified**

1           **independent contractor) are not in ef-**  
2           **fect, in applying the previous sen-**  
3           **tence any reference to such a recon-**  
4           **sideration shall be treated as a ref-**  
5           **erence to a redetermination by the**  
6           **fiscal intermediary or carrier in-**  
7           **volved.**

8           **“(B) COLLECTION WITH INTEREST.—**  
9           **Insofar as the determination on such**  
10           **appeal is against the provider of serv-**  
11           **ices or supplier, interest on the over-**  
12           **payment shall accrue on and after the**  
13           **date of the original notice of overpay-**  
14           **ment. Insofar as such determination**  
15           **against the provider of services or**  
16           **supplier is later reversed, the Sec-**  
17           **retary shall provide for repayment of**  
18           **the amount recouped plus interest at**  
19           **the same rate as would apply under**  
20           **the previous sentence for the period**  
21           **in which the amount was recouped.**

22           **“(C) MEDICARE CONTRACTOR DE-**  
23           **FINED.—For purposes of this sub-**  
24           **section, the term ‘medicare con-**

1           **tractor’ has the meaning given such**  
2           **term in section 1889(g).**

3           **“(3) LIMITATION ON USE OF EXTRAPO-**  
4           **LATION.—A medicare contractor may not**  
5           **use extrapolation to determine overpay-**  
6           **ment amounts to be recovered by**  
7           **recoupment, offset, or otherwise unless—**

8                   **“(A) there is a sustained or high**  
9                   **level of payment error (as defined by**  
10                   **the Secretary by regulation); or**

11                   **“(B) documented educational**  
12                   **intervention has failed to correct the**  
13                   **payment error (as determined by the**  
14                   **Secretary).**

15           **“(4) PROVISION OF SUPPORTING DOCU-**  
16           **MENTATION.—In the case of a provider of**  
17           **services or supplier with respect to**  
18           **which amounts were previously overpaid,**  
19           **a medicare contractor may request the**  
20           **periodic production of records or sup-**  
21           **porting documentation for a limited sam-**  
22           **ple of submitted claims to ensure that the**  
23           **previous practice is not continuing.**

24           **“(5) CONSENT SETTLEMENT REFORMS.—**

1           **“(A) IN GENERAL.—The Secretary**  
2           **may use a consent settlement (as de-**  
3           **defined in subparagraph (D)) to settle a**  
4           **projected overpayment.**

5           **“(B) OPPORTUNITY TO SUBMIT ADDI-**  
6           **TIONAL INFORMATION BEFORE CONSENT**  
7           **SETTLEMENT OFFER.—Before offering a**  
8           **provider of services or supplier a con-**  
9           **sent settlement, the Secretary shall—**

10           **“(i) communicate to the pro-**  
11           **vider of services or supplier—**

12           **“(I) that, based on a re-**  
13           **view of the medical records**  
14           **requested by the Secretary, a**  
15           **preliminary evaluation of**  
16           **those records indicates that**  
17           **there would be an overpay-**  
18           **ment;**

19           **“(II) the nature of the**  
20           **problems identified in such**  
21           **evaluation; and**

22           **“(III) the steps that the**  
23           **provider of services or sup-**  
24           **plier should take to address**  
25           **the problems; and**

1           “(ii) provide for a 45-day pe-  
2           riod during which the provider of  
3           services or supplier may furnish  
4           additional information con-  
5           cerning the medical records for  
6           the claims that had been re-  
7           viewed.

8           “(C) CONSENT SETTLEMENT OFFER.—

9           The Secretary shall review any addi-  
10          tional information furnished by the  
11          provider of services or supplier under  
12          subparagraph (B)(ii). Taking into con-  
13          sideration such information, the Sec-  
14          retary shall determine if there still  
15          appears to be an overpayment. If so,  
16          the Secretary—

17               “(i) shall provide notice of  
18               such determination to the pro-  
19               vider of services or supplier, in-  
20               cluding an explanation of the rea-  
21               son for such determination; and

22               “(ii) in order to resolve the  
23               overpayment, may offer the pro-  
24               vider of services or supplier—

1                   **“(I) the opportunity for a**  
2                   **statistically valid random**  
3                   **sample; or**

4                   **“(II) a consent settlement.**

5                   **The opportunity provided under**  
6                   **clause (ii)(I) does not waive any ap-**  
7                   **peal rights with respect to the alleged**  
8                   **overpayment involved.**

9                   **“(D) CONSENT SETTLEMENT DE-**  
10                   **FINED.—For purposes of this para-**  
11                   **graph, the term ‘consent settlement’**  
12                   **means an agreement between the Sec-**  
13                   **retary and a provider of services or**  
14                   **supplier whereby both parties agree**  
15                   **to settle a projected overpayment**  
16                   **based on less than a statistically valid**  
17                   **sample of claims and the provider of**  
18                   **services or supplier agrees not to ap-**  
19                   **peal the claims involved.**

20                   **“(6) NOTICE OF OVER-UTILIZATION OF**  
21                   **CODES.—The Secretary shall establish, in**  
22                   **consultation with organizations rep-**  
23                   **resenting the classes of providers of serv-**  
24                   **ices and suppliers, a process under which**  
25                   **the Secretary provides for notice to class-**

1 **es of providers of services and suppliers**  
2 **served by the contractor in cases in**  
3 **which the contractor has identified that**  
4 **particular billing codes may be overuti-**  
5 **lized by that class of providers of services**  
6 **or suppliers under the programs under**  
7 **this title (or provisions of title XI insofar**  
8 **as they relate to such programs).**

9 **“(7) PAYMENT AUDITS.—**

10 **“(A) WRITTEN NOTICE FOR POST-PAY-**  
11 **MENT AUDITS.—Subject to subpara-**  
12 **graph (C), if a medicare contractor**  
13 **decides to conduct a post-payment**  
14 **audit of a provider of services or sup-**  
15 **plier under this title, the contractor**  
16 **shall provide the provider of services**  
17 **or supplier with written notice**  
18 **(which may be in electronic form) of**  
19 **the intent to conduct such an audit.**

20 **“(B) EXPLANATION OF FINDINGS FOR**  
21 **ALL AUDITS.—Subject to subparagraph**  
22 **(C), if a medicare contractor audits a**  
23 **provider of services or supplier under**  
24 **this title, the contractor shall—**

1           **“(i) give the provider of serv-**  
2           **ices or supplier a full review and**  
3           **explanation of the findings of the**  
4           **audit in a manner that is under-**  
5           **standable to the provider of serv-**  
6           **ices or supplier and permits the**  
7           **development of an appropriate**  
8           **corrective action plan;**

9           **“(ii) inform the provider of**  
10          **services or supplier of the appeal**  
11          **rights under this title as well as**  
12          **consent settlement options (which**  
13          **are at the discretion of the Sec-**  
14          **retary);**

15          **“(iii) give the provider of serv-**  
16          **ices or supplier an opportunity to**  
17          **provide additional information to**  
18          **the contractor; and**

19          **“(iv) take into account infor-**  
20          **mation provided, on a timely**  
21          **basis, by the provider of services**  
22          **or supplier under clause (iii).**

23          **“(C) EXCEPTION.—Subparagraphs**  
24          **(A) and (B) shall not apply if the pro-**  
25          **vision of notice or findings would**

1           **compromise pending law enforcement**  
2           **activities, whether civil or criminal,**  
3           **or reveal findings of law enforce-**  
4           **ment-related audits.**

5           **“(8) STANDARD METHODOLOGY FOR**  
6           **PROBE SAMPLING.—The Secretary shall es-**  
7           **tablish a standard methodology for medi-**  
8           **care contractors to use in selecting a**  
9           **sample of claims for review in the case of**  
10          **an abnormal billing pattern.”.**

11          **(b) EFFECTIVE DATES AND DEADLINES.—**

12           **(1) USE OF REPAYMENT PLANS.—Section**  
13           **1893(f)(1) of the Social Security Act, as**  
14           **added by subsection (a), shall apply to re-**  
15           **quests for repayment plans made after**  
16           **the date of the enactment of this Act.**

17           **(2) LIMITATION ON RECOUPMENT.—Sec-**  
18           **tion 1893(f)(2) of the Social Security Act,**  
19           **as added by subsection (a), shall apply to**  
20           **actions taken after the date of the enact-**  
21           **ment of this Act.**

22           **(3) USE OF EXTRAPOLATION.—Section**  
23           **1893(f)(3) of the Social Security Act, as**  
24           **added by subsection (a), shall apply to**  
25           **statistically valid random samples initi-**

1       **ated after the date that is 1 year after the**  
2       **date of the enactment of this Act.**

3               **(4) PROVISION OF SUPPORTING DOCU-**  
4       **MENTATION.—Section 1893(f)(4) of the So-**  
5       **cial Security Act, as added by subsection**  
6       **(a), shall take effect on the date of the en-**  
7       **actment of this Act.**

8               **(5) CONSENT SETTLEMENT.—Section**  
9       **1893(f)(5) of the Social Security Act, as**  
10       **added by subsection (a), shall apply to**  
11       **consent settlements entered into after the**  
12       **date of the enactment of this Act.**

13               **(6) NOTICE OF OVERUTILIZATION.—Not**  
14       **later than 1 year after the date of the en-**  
15       **actment of this Act, the Secretary shall**  
16       **first establish the process for notice of**  
17       **overutilization of billing codes under sec-**  
18       **tion 1893A(f)(6) of the Social Security Act,**  
19       **as added by subsection (a).**

20               **(7) PAYMENT AUDITS.—Section**  
21       **1893A(f)(7) of the Social Security Act, as**  
22       **added by subsection (a), shall apply to**  
23       **audits initiated after the date of the en-**  
24       **actment of this Act.**

1           **(8) STANDARD FOR ABNORMAL BILLING**  
2           **PATTERNS.—Not later than 1 year after the**  
3           **date of the enactment of this Act, the Sec-**  
4           **retary shall first establish a standard**  
5           **methodology for selection of sample**  
6           **claims for abnormal billing patterns**  
7           **under section 1893(f)(8) of the Social Se-**  
8           **curity Act, as added by subsection (a).**

9           **SEC. 406. PROVIDER ENROLLMENT PROCESS; RIGHT OF AP-**  
10           **PEAL.**

11           **(a) IN GENERAL.—Section 1866 (42 U.S.C.**  
12           **1395cc) is amended—**

13           **(1) by adding at the end of the head-**  
14           **ing the following: “; ENROLLMENT PROC-**  
15           **ESSES”; and**

16           **(2) by adding at the end the following**  
17           **new subsection:**

18           **“(j) ENROLLMENT PROCESS FOR PROVIDERS**  
19           **OF SERVICES AND SUPPLIERS.—**

20           **“(1) ENROLLMENT PROCESS.—**

21           **“(A) IN GENERAL.—The Secretary**  
22           **shall establish by regulation a proc-**  
23           **ess for the enrollment of providers of**  
24           **services and suppliers under this**  
25           **title.**

1           **“(B) DEADLINES.—The Secretary**  
2           **shall establish by regulation proce-**  
3           **dures under which there are dead-**  
4           **lines for actions on applications for**  
5           **enrollment (and, if applicable, re-**  
6           **newal of enrollment). The Secretary**  
7           **shall monitor the performance of**  
8           **medicare administrative contractors**  
9           **in meeting the deadlines established**  
10          **under this subparagraph.**

11           **“(C) CONSULTATION BEFORE CHANG-**  
12          **ING PROVIDER ENROLLMENT FORMS.—**  
13          **The Secretary shall consult with pro-**  
14          **viders of services and suppliers be-**  
15          **fore making changes in the provider**  
16          **enrollment forms required of such**  
17          **providers and suppliers to be eligible**  
18          **to submit claims for which payment**  
19          **may be made under this title.**

20           **“(2) HEARING RIGHTS IN CASES OF DE-**  
21          **NIAL OR NON-RENEWAL.—A provider of**  
22          **services or supplier whose application to**  
23          **enroll (or, if applicable, to renew enroll-**  
24          **ment) under this title is denied may have**  
25          **a hearing and judicial review of such de-**

1        **nia** under the procedures that apply  
2        **under subsection (h)(1)(A) to a provider**  
3        **of services that is dissatisfied with a de-**  
4        **termination by the Secretary.”.**

5        **(b) EFFECTIVE DATES.—**

6            **(1) ENROLLMENT PROCESS.—The Sec-**  
7        **retary shall provide for the establishment**  
8        **of the enrollment process under section**  
9        **1866(j)(1) of the Social Security Act, as**  
10       **added by subsection (a)(2), within 6**  
11       **months after the date of the enactment of**  
12       **this Act.**

13           **(2) CONSULTATION.—Section**  
14       **1866(j)(1)(C) of the Social Security Act, as**  
15       **added by subsection (a)(2), shall apply**  
16       **with respect to changes in provider en-**  
17       **rollment forms made on or after January**  
18       **1, 2004.**

19           **(3) HEARING RIGHTS.—Section**  
20       **1866(j)(2) of the Social Security Act, as**  
21       **added by subsection (a)(2), shall apply to**  
22       **denials occurring on or after such date**  
23       **(not later than 1 year after the date of**  
24       **the enactment of this Act) as the Sec-**  
25       **retary specifies.**

1 **SEC. 407. PROCESS FOR CORRECTION OF MINOR ERRORS**  
2 **AND OMISSIONS ON CLAIMS WITHOUT PUR-**  
3 **SUING APPEALS PROCESS.**

4 **The Secretary shall develop, in consulta-**  
5 **tion with appropriate medicare contractors**  
6 **(as defined in section 1889(g) of the Social Se-**  
7 **curity Act, as inserted by section 301(a)(1))**  
8 **and representatives of providers of services**  
9 **and suppliers, a process whereby, in the case**  
10 **of minor errors or omissions (as defined by**  
11 **the Secretary) that are detected in the sub-**  
12 **mission of claims under the programs under**  
13 **title XVIII of such Act, a provider of services**  
14 **or supplier is given an opportunity to correct**  
15 **such an error or omission without the need to**  
16 **initiate an appeal. Such process shall include**  
17 **the ability to resubmit corrected claims.**

18 **SEC. 408. PRIOR DETERMINATION PROCESS FOR CERTAIN**  
19 **ITEMS AND SERVICES; ADVANCE BENE-**  
20 **FICIARY NOTICES.**

21 **(a) IN GENERAL.—Section 1869 (42 U.S.C.**  
22 **1395ff(b)), as amended by sections 521 and 522**  
23 **of BIPA and section 403(d)(2)(B), is further**  
24 **amended by adding at the end the following**  
25 **new subsection:**

1       **“(h) PRIOR DETERMINATION PROCESS FOR**  
2 **CERTAIN ITEMS AND SERVICES.—**

3               **“(1) ESTABLISHMENT OF PROCESS.—**

4                       **“(A) IN GENERAL.—With respect to**  
5 **a medicare administrative contractor**  
6 **that has a contract under section**  
7 **1874A that provides for making pay-**  
8 **ments under this title with respect to**  
9 **eligible items and services described**  
10 **in subparagraph (C), the Secretary**  
11 **shall establish a prior determination**  
12 **process that meets the requirements**  
13 **of this subsection and that shall be**  
14 **applied by such contractor in the**  
15 **case of eligible requesters.**

16                       **“(B) ELIGIBLE REQUESTER.—For**  
17 **purposes of this subsection, each of**  
18 **the following shall be an eligible re-**  
19 **quester:**

20                               **“(i) A physician, but only with**  
21 **respect to eligible items and serv-**  
22 **ices for which the physician may**  
23 **be paid directly.**

24                               **“(ii) An individual entitled to**  
25 **benefits under this title, but only**

1           **with respect to an item or service**  
2           **for which the individual receives,**  
3           **from the physician who may be**  
4           **paid directly for the item or serv-**  
5           **ice, an advance beneficiary notice**  
6           **under section 1879(a) that pay-**  
7           **ment may not be made (or may no**  
8           **longer be made) for the item or**  
9           **service under this title.**

10           **“(C) ELIGIBLE ITEMS AND SERV-**  
11           **ICES.—For purposes of this subsection**  
12           **and subject to paragraph (2), eligible**  
13           **items and services are items and**  
14           **services which are physicians’ serv-**  
15           **ices (as defined in paragraph (4)(A) of**  
16           **section 1848(f) for purposes of calcu-**  
17           **lating the sustainable growth rate**  
18           **under such section).**

19           **“(2) SECRETARIAL FLEXIBILITY.—The**  
20           **Secretary shall establish by regulation**  
21           **reasonable limits on the categories of eli-**  
22           **gible items and services for which a prior**  
23           **determination of coverage may be re-**  
24           **quested under this subsection. In estab-**  
25           **lishing such limits, the Secretary may**

1       **consider the dollar amount involved with**  
2       **respect to the item or service, adminis-**  
3       **trative costs and burdens, and other rel-**  
4       **evant factors.**

5           **“(3) REQUEST FOR PRIOR DETERMINA-**  
6       **TION.—**

7           **“(A) IN GENERAL.—Subject to para-**  
8       **graph (2), under the process estab-**  
9       **lished under this subsection an eligi-**  
10       **ble requester may submit to the con-**  
11       **tractor a request for a determination,**  
12       **before the furnishing of an eligible**  
13       **item or service involved as to wheth-**  
14       **er the item or service is covered**  
15       **under this title consistent with the**  
16       **applicable requirements of section**  
17       **1862(a)(1)(A) (relating to medical ne-**  
18       **cessity).**

19           **“(B) ACCOMPANYING DOCUMENTA-**  
20       **TION.—The Secretary may require**  
21       **that the request be accompanied by a**  
22       **description of the item or service,**  
23       **supporting documentation relating to**  
24       **the medical necessity for the item or**  
25       **service, and any other appropriate**

1           **documentation. In the case of a re-**  
2           **quest submitted by an eligible re-**  
3           **quester who is described in para-**  
4           **graph (1)(B)(ii), the Secretary may re-**  
5           **quire that the request also be accom-**  
6           **panied by a copy of the advance ben-**  
7           **eficiary notice involved.**

8           **“(4) RESPONSE TO REQUEST.—**

9           **“(A) IN GENERAL.—Under such**  
10           **process, the contractor shall provide**  
11           **the eligible requester with written**  
12           **notice of a determination as to**  
13           **whether—**

14                   **“(i) the item or service is so**  
15                   **covered;**

16                   **“(ii) the item or service is not**  
17                   **so covered; or**

18                   **“(iii) the contractor lacks suf-**  
19                   **ficient information to make a cov-**  
20                   **erage determination.**

21           **If the contractor makes the deter-**  
22           **mination described in clause (iii), the**  
23           **contractor shall include in the notice**  
24           **a description of the additional infor-**

1           **mation required to make the cov-**  
2           **erage determination.**

3           **“(B) DEADLINE TO RESPOND.—Such**  
4           **notice shall be provided within the**  
5           **same time period as the time period**  
6           **applicable to the contractor pro-**  
7           **viding notice of initial determina-**  
8           **tions on a claim for benefits under**  
9           **subsection (a)(2)(A).**

10           **“(C) INFORMING BENEFICIARY IN**  
11           **CASE OF PHYSICIAN REQUEST.—In the**  
12           **case of a request in which an eligible**  
13           **requester is not the individual de-**  
14           **scribed in paragraph (1)(B)(ii), the**  
15           **process shall provide that the indi-**  
16           **vidual to whom the item or service is**  
17           **proposed to be furnished shall be in-**  
18           **formed of any determination de-**  
19           **scribed in clause (ii) (relating to a de-**  
20           **termination of non-coverage) and the**  
21           **right (referred to in paragraph (6)(B))**  
22           **to obtain the item or service and have**  
23           **a claim submitted for the item or**  
24           **service.**

25           **“(5) EFFECT OF DETERMINATIONS.—**

1           **“(A) BINDING NATURE OF POSITIVE**  
2           **DETERMINATION.—If the contractor**  
3           **makes the determination described in**  
4           **paragraph (4)(A)(i), such determina-**  
5           **tion shall be binding on the con-**  
6           **tractor in the absence of fraud or evi-**  
7           **dence of misrepresentation of facts**  
8           **presented to the contractor.**

9           **“(B) NOTICE AND RIGHT TO REDE-**  
10           **TERMINATION IN CASE OF A DENIAL.—**

11           **“(i) IN GENERAL.—If the con-**  
12           **tractor makes the determination**  
13           **described in paragraph**  
14           **(4)(A)(ii)—**

15           **“(I) the eligible requester**  
16           **has the right to a redeter-**  
17           **mination by the contractor on**  
18           **the determination that the**  
19           **item or service is not so cov-**  
20           **ered; and**

21           **“(II) the contractor shall**  
22           **include in notice under para-**  
23           **graph (4)(A) a brief expla-**  
24           **nation of the basis for the de-**  
25           **termination, including on**

1           **what national or local cov-**  
2           **erage or noncoverage deter-**  
3           **mination (if any) the deter-**  
4           **mination is based, and the**  
5           **right to such a redetermina-**  
6           **tion.**

7           **“(ii) DEADLINE FOR REDETER-**  
8           **MINATIONS.—The contractor shall**  
9           **complete and provide notice of**  
10           **such redetermination within the**  
11           **same time period as the time pe-**  
12           **riod applicable to the contractor**  
13           **providing notice of redetermina-**  
14           **tions relating to a claim for bene-**  
15           **fits under subsection (a)(3)(C)(ii).**

16           **“(6) LIMITATION ON FURTHER REVIEW.—**

17           **“(A) IN GENERAL.—Contractor de-**  
18           **terminations described in paragraph**  
19           **(4)(A)(ii) or (4)(A)(iii) (and redeter-**  
20           **minations made under paragraph**  
21           **(5)(B)), relating to pre-service claims**  
22           **are not subject to further administra-**  
23           **tive appeal or judicial review under**  
24           **this section or otherwise.**

1           **“(B) DECISION NOT TO SEEK PRIOR**  
2           **DETERMINATION OR NEGATIVE DETER-**  
3           **MINATION DOES NOT IMPACT RIGHT TO**  
4           **OBTAIN SERVICES, SEEK REIMBURSE-**  
5           **MENT, OR APPEAL RIGHTS.—Nothing in**  
6           **this subsection shall be construed as**  
7           **affecting the right of an individual**  
8           **who—**

9                   **“(i) decides not to seek a prior**  
10                   **determination under this sub-**  
11                   **section with respect to items or**  
12                   **services; or**

13                   **“(ii) seeks such a determina-**  
14                   **tion and has received a deter-**  
15                   **mination described in paragraph**  
16                   **(4)(A)(ii),**

17           **from receiving (and submitting a**  
18           **claim for) such items services and**  
19           **from obtaining administrative or ju-**  
20           **dicial review respecting such claim**  
21           **under the other applicable provisions**  
22           **of this section. Failure to seek a prior**  
23           **determination under this subsection**  
24           **with respect to items and services**  
25           **shall not be taken into account in**

1           **such administrative or judicial re-**  
2           **view.**

3           **“(C) NO PRIOR DETERMINATION**  
4           **AFTER RECEIPT OF SERVICES.—Once an**  
5           **individual is provided items and serv-**  
6           **ices, there shall be no prior deter-**  
7           **mination under this subsection with**  
8           **respect to such items or services.”.**

9           **(b) EFFECTIVE DATE; TRANSITION.—**

10           **(1) EFFECTIVE DATE.—The Secretary**  
11           **shall establish the prior determination**  
12           **process under the amendment made by**  
13           **subsection (a) in such a manner as to pro-**  
14           **vide for the acceptance of requests for**  
15           **determinations under such process filed**  
16           **not later than 18 months after the date of**  
17           **the enactment of this Act.**

18           **(2) TRANSITION.—During the period in**  
19           **which the amendment made by sub-**  
20           **section (a) has become effective but con-**  
21           **tracts are not provided under section**  
22           **1874A of the Social Security Act with**  
23           **medicare administrative contractors, any**  
24           **reference in section 1869(g) of such Act**  
25           **(as added by such amendment) to such a**

1 contractor is deemed a reference to a fis-  
2 cal intermediary or carrier with an  
3 agreement under section 1816, or con-  
4 tract under section 1842, respectively, of  
5 such Act.

6 (3) LIMITATION ON APPLICATION TO  
7 SGR.—For purposes of applying section  
8 1848(f)(2)(D) of the Social Security Act (42  
9 U.S.C. 1395w-4(f)(2)(D)), the amendment  
10 made by subsection (a) shall not be con-  
11 sidered to be a change in law or regula-  
12 tion.

13 (c) PROVISIONS RELATING TO ADVANCE BEN-  
14 EFICIARY NOTICES; REPORT ON PRIOR DETER-  
15 MINATION PROCESS.—

16 (1) DATA COLLECTION.—The Secretary  
17 shall establish a process for the collection  
18 of information on the instances in which  
19 an advance beneficiary notice (as defined  
20 in paragraph (4)) has been provided and  
21 on instances in which a beneficiary indi-  
22 cates on such a notice that the bene-  
23 ficiary does not intend to seek to have  
24 the item or service that is the subject of  
25 the notice furnished.

1           **(2) OUTREACH AND EDUCATION.—The**  
2           **Secretary shall establish a program of**  
3           **outreach and education for beneficiaries**  
4           **and providers of services and other per-**  
5           **sons on the appropriate use of advance**  
6           **beneficiary notices and coverage policies**  
7           **under the medicare program.**

8           **(3) GAO REPORT ON USE OF ADVANCE**  
9           **BENEFICIARY NOTICES.—Not later than 18**  
10          **months after the date on which section**  
11          **1869(g) of the Social Security Act (as**  
12          **added by subsection (a)) takes effect, the**  
13          **Comptroller General of the United States**  
14          **shall submit to Congress a report on the**  
15          **use of advance beneficiary notices under**  
16          **title XVIII of such Act. Such report shall**  
17          **include information concerning the pro-**  
18          **viders of services and other persons that**  
19          **have provided such notices and the re-**  
20          **sponse of beneficiaries to such notices.**

21          **(4) GAO REPORT ON USE OF PRIOR DE-**  
22          **TERMINATION PROCESS.—Not later than 18**  
23          **months after the date on which section**  
24          **1869(g) of the Social Security Act (as**  
25          **added by subsection (a)) takes effect, the**

1       **Comptroller General of the United States**  
2       **shall submit to Congress a report on the**  
3       **use of the prior determination process**  
4       **under such section. Such report shall in-**  
5       **clude—**

6               **(A) information concerning the**  
7               **types of procedures for which a prior**  
8               **determination has been sought, deter-**  
9               **minations made under the process,**  
10              **and changes in receipt of services re-**  
11              **sulting from the application of such**  
12              **process; and**

13              **(B) an evaluation of whether the**  
14              **process was useful for physicians**  
15              **(and other suppliers) and bene-**  
16              **ficiaries, whether it was timely, and**  
17              **whether the amount of information**  
18              **required was burdensome to physi-**  
19              **cians and beneficiaries.**

20              **(5) ADVANCE BENEFICIARY NOTICE DE-**  
21              **FINED.—In this subsection, the term “ad-**  
22              **vance beneficiary notice” means a writ-**  
23              **ten notice provided under section 1879(a)**  
24              **of the Social Security Act (42 U.S.C.**  
25              **1395pp(a)) to an individual entitled to**

1 **benefits under part A or B of title XVIII**  
2 **of such Act before items or services are**  
3 **furnished under such part in cases where**  
4 **a provider of services or other person**  
5 **that would furnish the item or service be-**  
6 **lieves that payment will not be made for**  
7 **some or all of such items or services**  
8 **under such title.**

9 **TITLE V—MISCELLANEOUS**  
10 **PROVISIONS**

11 **SEC. 501. POLICY DEVELOPMENT REGARDING EVALUATION**  
12 **AND MANAGEMENT (E & M) DOCUMENTATION**  
13 **GUIDELINES.**

14 **(a) IN GENERAL.—The Secretary may not**  
15 **implement any new documentation guidelines**  
16 **for evaluation and management physician**  
17 **services under the title XVIII of the Social Se-**  
18 **curity Act on or after the date of the enact-**  
19 **ment of this Act unless the Secretary—**

20 **(1) has developed the guidelines in**  
21 **collaboration with practicing physicians**  
22 **(including both generalists and special-**  
23 **ists) and provided for an assessment of**  
24 **the proposed guidelines by the physician**  
25 **community;**

1           **(2) has established a plan that con-**  
2           **tains specific goals, including a schedule,**  
3           **for improving the use of such guidelines;**

4           **(3) has conducted appropriate and**  
5           **representative pilot projects under sub-**  
6           **section (b) to test modifications to the**  
7           **evaluation and management documenta-**  
8           **tion guidelines;**

9           **(4) finds that the objectives described**  
10          **in subsection (c) will be met in the imple-**  
11          **mentation of such guidelines; and**

12          **(5) has established, and is imple-**  
13          **menting, a program to educate physi-**  
14          **cians on the use of such guidelines and**  
15          **that includes appropriate outreach.**

16 **The Secretary shall make changes to the man-**  
17 **ner in which existing evaluation and manage-**  
18 **ment documentation guidelines are imple-**  
19 **mented to reduce paperwork burdens on phy-**  
20 **sicians.**

21          **(b) PILOT PROJECTS TO TEST EVALUATION**  
22 **AND MANAGEMENT DOCUMENTATION GUIDE-**  
23 **LINES.—**

24           **(1) IN GENERAL.—The Secretary shall**  
25           **conduct under this subsection appro-**

1        **priate and representative pilot projects**  
2        **to test new evaluation and management**  
3        **documentation guidelines referred to in**  
4        **subsection (a).**

5            **(2) LENGTH AND CONSULTATION.—Each**  
6        **pilot project under this subsection shall—**

7                    **(A) be voluntary;**

8                    **(B) be of sufficient length as de-**  
9        **termined by the Secretary to allow**  
10       **for preparatory physician and medi-**  
11       **care contractor education, analysis,**  
12       **and use and assessment of potential**  
13       **evaluation and management guide-**  
14       **lines; and**

15                  **(C) be conducted, in development**  
16       **and throughout the planning and**  
17       **operational stages of the project, in**  
18       **consultation with practicing physi-**  
19       **cians (including both generalists and**  
20       **specialists).**

21            **(3) RANGE OF PILOT PROJECTS.—Of the**  
22       **pilot projects conducted under this sub-**  
23       **section—**

24                  **(A) at least one shall focus on a**  
25       **peer review method by physicians**

1           **(not employed by a medicare con-**  
2           **tractor) which evaluates medical**  
3           **record information for claims sub-**  
4           **mitted by physicians identified as sta-**  
5           **tistical outliers relative to definitions**  
6           **published in the Current Procedures**  
7           **Terminology (CPT) code book of the**  
8           **American Medical Association;**

9           **(B) at least one shall focus on an**  
10          **alternative method to detailed guide-**  
11          **lines based on physician documenta-**  
12          **tion of face to face encounter time**  
13          **with a patient;**

14          **(C) at least one shall be con-**  
15          **ducted for services furnished in a**  
16          **rural area and at least one for serv-**  
17          **ices furnished outside such an area;**  
18          **and**

19          **(D) at least one shall be con-**  
20          **ducted in a setting where physicians**  
21          **bill under physicians' services in**  
22          **teaching settings and at least one**  
23          **shall be conducted in a setting other**  
24          **than a teaching setting.**

1           **(4) BANNING OF TARGETING OF PILOT**  
2 **PROJECT PARTICIPANTS.—Data collected**  
3 **under this subsection shall not be used as**  
4 **the basis for overpayment demands or**  
5 **post-payment audits. Such limitation ap-**  
6 **plies only to claims filed as part of the**  
7 **pilot project and lasts only for the dura-**  
8 **tion of the pilot project and only as long**  
9 **as the provider is a participant in the**  
10 **pilot project.**

11           **(5) STUDY OF IMPACT.—Each pilot**  
12 **project shall examine the effect of the**  
13 **new evaluation and management docu-**  
14 **mentation guidelines on—**

15                   **(A) different types of physician**  
16 **practices, including those with fewer**  
17 **than 10 full-time-equivalent employ-**  
18 **ees (including physicians); and**

19                   **(B) the costs of physician compli-**  
20 **ance, including education, implemen-**  
21 **tation, auditing, and monitoring.**

22           **(6) PERIODIC REPORTS.—The Secretary**  
23 **shall submit to Congress periodic reports**  
24 **on the pilot projects under this sub-**  
25 **section.**

1           **(c) OBJECTIVES FOR EVALUATION AND MAN-**  
2 **AGEMENT GUIDELINES.—The objectives for**  
3 **modified evaluation and management docu-**  
4 **mentation guidelines developed by the Sec-**  
5 **retary shall be to—**

6           **(1) identify clinically relevant docu-**  
7 **mentation needed to code accurately and**  
8 **assess coding levels accurately;**

9           **(2) decrease the level of non-clinically**  
10 **pertinent and burdensome documenta-**  
11 **tion time and content in the physician’s**  
12 **medical record;**

13           **(3) increase accuracy by reviewers;**  
14 **and**

15           **(4) educate both physicians and re-**  
16 **viewers.**

17           **(d) STUDY OF SIMPLER, ALTERNATIVE SYS-**  
18 **TEMS OF DOCUMENTATION FOR PHYSICIAN**  
19 **CLAIMS.—**

20           **(1) STUDY.—The Secretary shall carry**  
21 **out a study of the matters described in**  
22 **paragraph (2).**

23           **(2) MATTERS DESCRIBED.—The matters**  
24 **referred to in paragraph (1) are—**

1           **(A) the development of a simpler,**  
2           **alternative system of requirements**  
3           **for documentation accompanying**  
4           **claims for evaluation and manage-**  
5           **ment physician services for which**  
6           **payment is made under title XVIII of**  
7           **the Social Security Act; and**

8           **(B) consideration of systems other**  
9           **than current coding and documenta-**  
10          **tion requirements for payment for**  
11          **such physician services.**

12          **(3) CONSULTATION WITH PRACTICING**  
13          **PHYSICIANS.—In designing and carrying**  
14          **out the study under paragraph (1), the**  
15          **Secretary shall consult with practicing**  
16          **physicians, including physicians who are**  
17          **part of group practices and including**  
18          **both generalists and specialists.**

19          **(4) APPLICATION OF HIPAA UNIFORM**  
20          **CODING REQUIREMENTS.—In developing an**  
21          **alternative system under paragraph (2),**  
22          **the Secretary shall consider require-**  
23          **ments of administrative simplification**  
24          **under part C of title XI of the Social Se-**  
25          **curity Act.**

1           **(5) REPORT TO CONGRESS.—(A) Not**  
2           **later than October 1, 2005, the Secretary**  
3           **shall submit to Congress a report on the**  
4           **results of the study conducted under**  
5           **paragraph (1).**

6           **(B) The Medicare Payment Advisory**  
7           **Commission shall conduct an analysis of**  
8           **the results of the study included in the**  
9           **report under subparagraph (A) and shall**  
10          **submit a report on such analysis to Con-**  
11          **gress.**

12          **(e) STUDY ON APPROPRIATE CODING OF CER-**  
13          **TAIN EXTENDED OFFICE VISITS.—The Secretary**  
14          **shall conduct a study of the appropriateness**  
15          **of coding in cases of extended office visits in**  
16          **which there is no diagnosis made. Not later**  
17          **than October 1, 2005, the Secretary shall sub-**  
18          **mit a report to Congress on such study and**  
19          **shall include recommendations on how to**  
20          **code appropriately for such visits in a manner**  
21          **that takes into account the amount of time**  
22          **the physician spent with the patient.**

23          **(f) DEFINITIONS.—In this section—**

24                  **(1) the term “rural area” has the**  
25                  **meaning given that term in section**

1 **1886(d)(2)(D) of the Social Security Act,**  
2 **42 U.S.C. 1395ww(d)(2)(D); and**

3 **(2) the term “teaching settings” are**  
4 **those settings described in section**  
5 **415.150 of title 42, Code of Federal Regu-**  
6 **lations.**

7 **SEC. 502. IMPROVEMENT IN OVERSIGHT OF TECHNOLOGY**  
8 **AND COVERAGE.**

9 **(a) COUNCIL FOR TECHNOLOGY AND INNOVA-**  
10 **TION.—Section 1868 (42 U.S.C. 1395ee), as**  
11 **amended by section 301(a), is amended by**  
12 **adding at the end the following new sub-**  
13 **section:**

14 **“(c) COUNCIL FOR TECHNOLOGY AND INNOVA-**  
15 **TION.—**

16 **“(1) ESTABLISHMENT.—The Secretary**  
17 **shall establish a Council for Technology**  
18 **and Innovation within the Centers for**  
19 **Medicare & Medicaid Services (in this**  
20 **section referred to as ‘CMS’).**

21 **“(2) COMPOSITION.—The Council shall**  
22 **be composed of senior CMS staff and cli-**  
23 **nicians and shall be chaired by the Exec-**  
24 **utive Coordinator for Technology and In-**

1       novation (appointed or designated under  
2       paragraph (4)).

3           “(3) DUTIES.—The Council shall co-  
4       ordinate the activities of coverage, cod-  
5       ing, and payment processes under this  
6       title with respect to new technologies  
7       and procedures, including new drug  
8       therapies, and shall coordinate the ex-  
9       change of information on new tech-  
10      nologies between CMS and other entities  
11      that make similar decisions.

12           “(4) EXECUTIVE COORDINATOR FOR  
13      TECHNOLOGY AND INNOVATION.—The Sec-  
14      retary shall appoint (or designate) a non-  
15      career appointee (as defined in section  
16      3132(a)(7) of title 5, United States Code)  
17      who shall serve as the Executive Coordi-  
18      nator for Technology and Innovation.  
19      Such executive coordinator shall report  
20      to the Administrator of CMS, shall chair  
21      the Council, shall oversee the execution  
22      of its duties, and shall serve as a single  
23      point of contact for outside groups and  
24      entities regarding the coverage, coding,  
25      and payment processes under this title.”.

1       **(b) METHODS FOR DETERMINING PAYMENT**  
2 **BASIS FOR NEW LAB TESTS.—Section 1833(h) (42**  
3 **U.S.C. 1395l(h)) is amended by adding at the**  
4 **end the following:**

5       **“(8)(A) The Secretary shall establish by**  
6 **regulation procedures for determining the**  
7 **basis for, and amount of, payment under this**  
8 **subsection for any clinical diagnostic labora-**  
9 **tory test with respect to which a new or sub-**  
10 **stantially revised HCPCS code is assigned on**  
11 **or after January 1, 2005 (in this paragraph re-**  
12 **ferred to as ‘new tests’).**

13       **“(B) Determinations under subparagraph**  
14 **(A) shall be made only after the Secretary—**

15           **“(i) makes available to the public**  
16 **(through an Internet site and other ap-**  
17 **propriate mechanisms) a list that in-**  
18 **cludes any such test for which establish-**  
19 **ment of a payment amount under this**  
20 **subsection is being considered for a year;**

21           **“(ii) on the same day such list is made**  
22 **available, causes to have published in the**  
23 **Federal Register notice of a meeting to**  
24 **receive comments and recommendations**  
25 **(and data on which recommendations are**

1 based) from the public on the appro-  
2 priate basis under this subsection for es-  
3 tablishing payment amounts for the tests  
4 on such list;

5 “(iii) not less than 30 days after publi-  
6 cation of such notice convenes a meeting,  
7 that includes representatives of officials  
8 of the Centers for Medicare & Medicaid  
9 Services involved in determining pay-  
10 ment amounts, to receive such comments  
11 and recommendations (and data on  
12 which the recommendations are based);

13 “(iv) taking into account the com-  
14 ments and recommendations (and accom-  
15 panying data) received at such meeting,  
16 develops and makes available to the pub-  
17 lic (through an Internet site and other  
18 appropriate mechanisms) a list of pro-  
19 posed determinations with respect to the  
20 appropriate basis for establishing a pay-  
21 ment amount under this subsection for  
22 each such code, together with an expla-  
23 nation of the reasons for each such deter-  
24 mination, the data on which the deter-  
25 minations are based, and a request for

1       **public written comments on the proposed**  
2       **determination; and**

3           **“(v) taking into account the com-**  
4       **ments received during the public com-**  
5       **ment period, develops and makes avail-**  
6       **able to the public (through an Internet**  
7       **site and other appropriate mechanisms) a**  
8       **list of final determinations of the pay-**  
9       **ment amounts for such tests under this**  
10       **subsection, together with the rationale**  
11       **for each such determination, the data on**  
12       **which the determinations are based, and**  
13       **responses to comments and suggestions**  
14       **received from the public.**

15       **“(C) Under the procedures established**  
16       **pursuant to subparagraph (A), the Secretary**  
17       **shall—**

18           **“(i) set forth the criteria for making**  
19       **determinations under subparagraph (A);**  
20       **and**

21           **“(ii) make available to the public the**  
22       **data (other than proprietary data) con-**  
23       **sidered in making such determinations.**

24       **“(D) The Secretary may convene such fur-**  
25       **ther public meetings to receive public com-**

1 **ments on payment amounts for new tests**  
2 **under this subsection as the Secretary deems**  
3 **appropriate.**

4 **“(E) For purposes of this paragraph:**

5 **“(i) The term ‘HCPCS’ refers to the**  
6 **Health Care Procedure Coding System.**

7 **“(ii) A code shall be considered to be**  
8 **‘substantially revised’ if there is a sub-**  
9 **stantive change to the definition of the**  
10 **test or procedure to which the code ap-**  
11 **plies (such as a new analyte or a new**  
12 **methodology for measuring an existing**  
13 **analyte-specific test).”.**

14 **(c) GAO STUDY ON IMPROVEMENTS IN EXTER-**  
15 **NAL DATA COLLECTION FOR USE IN THE MEDI-**  
16 **CARE INPATIENT PAYMENT SYSTEM.—**

17 **(1) STUDY.—The Comptroller General**  
18 **of the United States shall conduct a study**  
19 **that analyzes which external data can be**  
20 **collected in a shorter time frame by the**  
21 **Centers for Medicare & Medicaid Serv-**  
22 **ices for use in computing payments for**  
23 **inpatient hospital services. The study**  
24 **may include an evaluation of the feasi-**  
25 **bility and appropriateness of using of**

1       **quarterly samples or special surveys or**  
2       **any other methods. The study shall in-**  
3       **clude an analysis of whether other execu-**  
4       **tive agencies, such as the Bureau of**  
5       **Labor Statistics in the Department of**  
6       **Commerce, are best suited to collect this**  
7       **information.**

8               **(2) REPORT.—By not later than Octo-**  
9       **ber 1, 2004, the Comptroller General shall**  
10       **submit a report to Congress on the study**  
11       **under paragraph (1).**

12       **(d) PROCESS FOR ADOPTION OF ICD CODES**  
13       **AS DATA STANDARD.—Section 1172(f) (42 U.S.C.**  
14       **1320d-1(f)) is amended by inserting after the**  
15       **first sentence the following: “Notwithstanding**  
16       **the preceding sentence, if the National Com-**  
17       **mittee on Vital and Health Statistics has not**  
18       **made a recommendation to the Secretary be-**  
19       **fore the date of the enactment of this sen-**  
20       **tence, with respect to the adoption of the**  
21       **International Classification of Diseases, 10th**  
22       **Revision, Procedure Coding System (‘ICD-10-**  
23       **PCS’) and the International Classification of**  
24       **Diseases, 10th Revision, Clinical Modification**  
25       **(‘ICD-10-CM’) as a standard under this part**

1 **for the reporting of services, the Secretary**  
2 **may adopt ICD-10-PCS and ICD-10-CM as**  
3 **such a standard on or after such date without**  
4 **receiving such a recommendation.”.**

5 **SEC. 503. TREATMENT OF HOSPITALS FOR CERTAIN SERV-**  
6 **ICES UNDER MEDICARE SECONDARY PAYOR**  
7 **(MSP) PROVISIONS.**

8 **(a) IN GENERAL.—The Secretary shall not**  
9 **require a hospital (including a critical access**  
10 **hospital) to ask questions (or obtain informa-**  
11 **tion) relating to the application of section**  
12 **1862(b) of the Social Security Act (relating to**  
13 **medicare secondary payor provisions) in the**  
14 **case of reference laboratory services de-**  
15 **scribed in subsection (b), if the Secretary does**  
16 **not impose such requirement in the case of**  
17 **such services furnished by an independent**  
18 **laboratory.**

19 **(b) REFERENCE LABORATORY SERVICES DE-**  
20 **SCRIBED.—Reference laboratory services de-**  
21 **scribed in this subsection are clinical labora-**  
22 **tory diagnostic tests (or the interpretation of**  
23 **such tests, or both) furnished without a face-**  
24 **to-face encounter between the individual en-**  
25 **titled to benefits under part A or enrolled**

1 **under part B, or both, and the hospital in-**  
2 **involved and in which the hospital submits a**  
3 **claim only for such test or interpretation.**

4 **SEC. 504. EMTALA IMPROVEMENTS.**

5 **(a) PAYMENT FOR EMTALA-MANDATED**  
6 **SCREENING AND STABILIZATION SERVICES.—**

7 **(1) IN GENERAL.—Section 1862 (42**  
8 **U.S.C. 1395y) is amended by inserting**  
9 **after subsection (c) the following new**  
10 **subsection:**

11 **“(d) For purposes of subsection (a)(1)(A),**  
12 **in the case of any item or service that is re-**  
13 **quired to be provided pursuant to section**  
14 **1867 to an individual who is entitled to bene-**  
15 **fits under this title, determinations as to**  
16 **whether the item or service is reasonable and**  
17 **necessary shall be made on the basis of the in-**  
18 **formation available to the treating physician**  
19 **or practitioner (including the patient’s pre-**  
20 **senting symptoms or complaint) at the time**  
21 **the item or service was ordered or furnished**  
22 **by the physician or practitioner (and not on**  
23 **the patient’s principal diagnosis). When mak-**  
24 **ing such determinations with respect to such**  
25 **an item or service, the Secretary shall not**

1 **consider the frequency with which the item**  
2 **or service was provided to the patient before**  
3 **or after the time of the admission or visit.”.**

4 **(2) EFFECTIVE DATE.—The amendment**  
5 **made by paragraph (1) shall apply to**  
6 **items and services furnished on or after**  
7 **January 1, 2004.**

8 **(b) NOTIFICATION OF PROVIDERS WHEN**  
9 **EMTALA INVESTIGATION CLOSED.—Section**  
10 **1867(d) (42 U.S.C. 1395dd(d)) is amended by**  
11 **adding at the end the following new para-**  
12 **graph:**

13 **“(4) NOTICE UPON CLOSING AN INVES-**  
14 **TIGATION.—The Secretary shall establish a**  
15 **procedure to notify hospitals and physi-**  
16 **cians when an investigation under this**  
17 **section is closed.”.**

18 **(c) PRIOR REVIEW BY PEER REVIEW ORGANI-**  
19 **ZATIONS IN EMTALA CASES INVOLVING TERMI-**  
20 **NATION OF PARTICIPATION.—**

21 **(1) IN GENERAL.—Section 1867(d)(3) (42**  
22 **U.S.C. 1395dd(d)(3)) is amended—**

23 **(A) in the first sentence, by insert-**  
24 **ing “or in terminating a hospital’s**  
25 **participation under this title” after**

1           **“in imposing sanctions under para-**  
2           **graph (1)”**; and

3           **(B) by adding at the end the fol-**  
4           **lowing new sentences: “Except in the**  
5           **case in which a delay would jeop-**  
6           **ardize the health or safety of individ-**  
7           **uals, the Secretary shall also request**  
8           **such a review before making a com-**  
9           **pliance determination as part of the**  
10           **process of terminating a hospital’s**  
11           **participation under this title for vio-**  
12           **lations related to the appropriateness**  
13           **of a medical screening examination,**  
14           **stabilizing treatment, or an appro-**  
15           **propriate transfer as required by this**  
16           **section, and shall provide a period of**  
17           **5 days for such review. The Secretary**  
18           **shall provide a copy of the organiza-**  
19           **tion’s report to the hospital or physi-**  
20           **cian consistent with confidentiality**  
21           **requirements imposed on the organi-**  
22           **zation under such part B.”**.

23           **(2) EFFECTIVE DATE.—The amendments**  
24           **made by paragraph (1) shall apply to ter-**  
25           **minations of participation initiated on or**

1       **after the date of the enactment of this**  
2       **Act.**

3       **SEC. 505. EMERGENCY MEDICAL TREATMENT AND ACTIVE**  
4                       **LABOR ACT (EMTALA) TECHNICAL ADVISORY**  
5                       **GROUP.**

6       **(a) ESTABLISHMENT.—The Secretary shall**  
7       **establish a Technical Advisory Group (in this**  
8       **section referred to as the “Advisory Group”)**  
9       **to review issues related to the Emergency**  
10       **Medical Treatment and Labor Act (EMTALA)**  
11       **and its implementation. In this section, the**  
12       **term “EMTALA” refers to the provisions of**  
13       **section 1867 of the Social Security Act (42**  
14       **U.S.C. 1395dd).**

15       **(b) MEMBERSHIP.—The Advisory Group**  
16       **shall be composed of 19 members, including**  
17       **the Administrator of the Centers for Medicare**  
18       **& Medicaid Services and the Inspector Gen-**  
19       **eral of the Department of Health and Human**  
20       **Services and of which—**

21               **(1) 4 shall be representatives of hos-**  
22               **pitals, including at least one public hos-**  
23               **pital, that have experience with the ap-**  
24               **plication of EMTALA and at least 2 of**

1       **which have not been cited for EMTALA**  
2       **violations;**

3           **(2) 7 shall be practicing physicians**  
4       **drawn from the fields of emergency medi-**  
5       **cine, cardiology or cardiothoracic sur-**  
6       **gery, orthopedic surgery, neurosurgery,**  
7       **pediatrics or a pediatric subspecialty, ob-**  
8       **stetrics-gynecology, and psychiatry, with**  
9       **not more than one physician from any**  
10       **particular field;**

11           **(3) 2 shall represent patients;**

12           **(4) 2 shall be staff involved in**  
13       **EMTALA investigations from different re-**  
14       **gional offices of the Centers for Medicare**  
15       **& Medicaid Services; and**

16           **(5) 1 shall be from a State survey of-**  
17       **fice involved in EMTALA investigations**  
18       **and 1 shall be from a peer review organi-**  
19       **zation, both of whom shall be from areas**  
20       **other than the regions represented under**  
21       **paragraph (4).**

22       **In selecting members described in para-**  
23       **graphs (1) through (3), the Secretary shall**  
24       **consider qualified individuals nominated by**

1 **organizations representing providers and pa-**  
2 **tients.**

3 **(c) GENERAL RESPONSIBILITIES.—The Advi-**  
4 **sory Group—**

5 **(1) shall review EMTALA regulations;**

6 **(2) may provide advice and rec-**  
7 **ommendations to the Secretary with re-**  
8 **spect to those regulations and their ap-**  
9 **plication to hospitals and physicians;**

10 **(3) shall solicit comments and rec-**  
11 **ommendations from hospitals, physicians,**  
12 **and the public regarding the implementa-**  
13 **tion of such regulations; and**

14 **(4) may disseminate information on**  
15 **the application of such regulations to**  
16 **hospitals, physicians, and the public.**

17 **(d) ADMINISTRATIVE MATTERS.—**

18 **(1) CHAIRPERSON.—The members of**  
19 **the Advisory Group shall elect a member**  
20 **to serve as chairperson of the Advisory**  
21 **Group for the life of the Advisory Group.**

22 **(2) MEETINGS.—The Advisory Group**  
23 **shall first meet at the direction of the**  
24 **Secretary. The Advisory Group shall then**  
25 **meet twice per year and at such other**

1       **times as the Advisory Group may pro-**  
2       **vide.**

3       **(e) TERMINATION.—The Advisory Group**  
4       **shall terminate 30 months after the date of its**  
5       **first meeting.**

6       **(f) WAIVER OF ADMINISTRATIVE LIMITA-**  
7       **TION.—The Secretary shall establish the Advi-**  
8       **sory Group notwithstanding any limitation**  
9       **that may apply to the number of advisory**  
10       **committees that may be established (within**  
11       **the Department of Health and Human Serv-**  
12       **ices or otherwise).**

13       **SEC. 506. AUTHORIZING USE OF ARRANGEMENTS TO PRO-**  
14                       **VIDE CORE HOSPICE SERVICES IN CERTAIN**  
15                       **CIRCUMSTANCES.**

16       **(a) IN GENERAL.—Section 1861(dd)(5) (42**  
17       **U.S.C. 1395x(dd)(5)) is amended by adding at**  
18       **the end the following:**

19               **“(D) In extraordinary, exigent, or other**  
20       **non-routine circumstances, such as unantici-**  
21       **pated periods of high patient loads, staffing**  
22       **shortages due to illness or other events, or**  
23       **temporary travel of a patient outside a hos-**  
24       **pice program’s service area, a hospice pro-**  
25       **gram may enter into arrangements with an-**

1 **other hospice program for the provision by**  
2 **that other program of services described in**  
3 **paragraph (2)(A)(ii)(I). The provisions of para-**  
4 **graph (2)(A)(ii)(II) shall apply with respect to**  
5 **the services provided under such arrange-**  
6 **ments.**

7 **“(E) A hospice program may provide serv-**  
8 **ices described in paragraph (1)(A) other than**  
9 **directly by the program if the services are**  
10 **highly specialized services of a registered**  
11 **professional nurse and are provided non-rou-**  
12 **tinely and so infrequently so that the provi-**  
13 **sion of such services directly would be im-**  
14 **practicable and prohibitively expensive.”.**

15 **(b) CONFORMING PAYMENT PROVISION.—Sec-**  
16 **tion 1814(i) (42 U.S.C. 1395f(i)) is amended by**  
17 **adding at the end the following new para-**  
18 **graph:**

19 **“(4) In the case of hospice care provided**  
20 **by a hospice program under arrangements**  
21 **under section 1861(dd)(5)(D) made by another**  
22 **hospice program, the hospice program that**  
23 **made the arrangements shall bill and be paid**  
24 **for the hospice care.”.**

1       **(c) EFFECTIVE DATE.—The amendments**  
2 **made by this section shall apply to hospice**  
3 **care provided on or after the date of the en-**  
4 **actment of this Act.**

5 **SEC. 507. APPLICATION OF OSHA BLOODBORNE PATHO-**  
6 **GENS STANDARD TO CERTAIN HOSPITALS.**

7       **(a) IN GENERAL.—Section 1866 (42 U.S.C.**  
8 **1395cc) is amended—**

9           **(1) in subsection (a)(1)—**

10               **(A) in subparagraph (R), by strik-**  
11 **ing “and” at the end;**

12               **(B) in subparagraph (S), by strik-**  
13 **ing the period at the end and insert-**  
14 **ing “, and”; and**

15               **(C) by inserting after subpara-**  
16 **graph (S) the following new subpara-**  
17 **graph:**

18               **“(T) in the case of hospitals that are**  
19 **not otherwise subject to the Occupational**  
20 **Safety and Health Act of 1970, to comply**  
21 **with the Bloodborne Pathogens standard**  
22 **under section 1910.1030 of title 29 of the**  
23 **Code of Federal Regulations (or as subse-**  
24 **quently redesignated).”;** and

1           **(2) by adding at the end of subsection**  
2           **(b) the following new paragraph:**

3           **“(4)(A) A hospital that fails to comply with**  
4           **the requirement of subsection (a)(1)(T) (relat-**  
5           **ing to the Bloodborne Pathogens standard) is**  
6           **subject to a civil money penalty in an amount**  
7           **described in subparagraph (B), but is not sub-**  
8           **ject to termination of an agreement under**  
9           **this section.**

10          **“(B) The amount referred to in subpara-**  
11          **graph (A) is an amount that is similar to the**  
12          **amount of civil penalties that may be imposed**  
13          **under section 17 of the Occupational Safety**  
14          **and Health Act of 1970 for a violation of the**  
15          **Bloodborne Pathogens standard referred to in**  
16          **subsection (a)(1)(T) by a hospital that is sub-**  
17          **ject to the provisions of such Act.**

18          **“(C) A civil money penalty under this**  
19          **paragraph shall be imposed and collected in**  
20          **the same manner as civil money penalties**  
21          **under subsection (a) of section 1128A are im-**  
22          **posed and collected under that section.”.**

23          **(b) EFFECTIVE DATE.—The amendments**  
24          **made by this subsection (a) shall apply to hos-**  
25          **pitals as of July 1, 2004.**

1 **SEC. 508. BIPA-RELATED TECHNICAL AMENDMENTS AND**  
2 **CORRECTIONS.**

3 **(a) TECHNICAL AMENDMENTS RELATING TO**  
4 **ADVISORY COMMITTEE UNDER BIPA SECTION**  
5 **522.—(1) Subsection (i) of section 1114 (42**  
6 **U.S.C. 1314)—**

7 **(A) is transferred to section 1862 and**  
8 **added at the end of such section; and**

9 **(B) is redesignated as subsection (j).**

10 **(2) Section 1862 (42 U.S.C. 1395y) is**  
11 **amended—**

12 **(A) in the last sentence of subsection**  
13 **(a), by striking “established under section**  
14 **1114(f)”;** and

15 **(B) in subsection (j), as so transferred**  
16 **and redesignated—**

17 **(i) by striking “under subsection**  
18 **(f)”;** and

19 **(ii) by striking “section 1862(a)(1)”**  
20 **and inserting “subsection (a)(1)”.**

21 **(b) TERMINOLOGY CORRECTIONS.—(1) Sec-**  
22 **tion 1869(c)(3)(I)(ii) (42 U.S.C.**  
23 **1395ff(c)(3)(I)(ii)), as amended by section 521**  
24 **of BIPA, is amended—**

25 **(A) in subclause (III), by striking “pol-**  
26 **icy” and inserting “determination”;** and

1           **(B) in subclause (IV), by striking**  
2           **“medical review policies” and inserting**  
3           **“coverage determinations”.**

4           **(2) Section 1852(a)(2)(C) (42 U.S.C. 1395w-**  
5           **22(a)(2)(C)) is amended by striking “policy”**  
6           **and “POLICY” and inserting “determination”**  
7           **each place it appears and “DETERMINATION”,**  
8           **respectively.**

9           **(c) REFERENCE CORRECTIONS.—Section**  
10          **1869(f)(4) (42 U.S.C. 1395ff(f)(4)), as added by**  
11          **section 522 of BIPA, is amended—**

12           **(1) in subparagraph (A)(iv), by strik-**  
13           **ing “subclause (I), (II), or (III)” and in-**  
14           **serting “clause (i), (ii), or (iii)”;**

15           **(2) in subparagraph (B), by striking**  
16           **“clause (i)(IV)” and “clause (i)(III)” and**  
17           **inserting “subparagraph (A)(iv)” and**  
18           **“subparagraph (A)(iii)”, respectively; and**

19           **(3) in subparagraph (C), by striking**  
20           **“clause (i)”, “subclause (IV)” and “sub-**  
21           **paragraph (A)” and inserting “subpara-**  
22           **graph (A)”, “clause (iv)” and “paragraph**  
23           **(1)(A)”, respectively each place it ap-**  
24           **pears.**



1 **entity that is the sole community physician or**  
2 **sole source of essential specialized services in**  
3 **a community.”.**

4 **SEC. 510. TREATMENT OF CERTAIN DENTAL CLAIMS.**

5 **(a) IN GENERAL.—Section 1862 (42 U.S.C.**  
6 **1395y), as amended by section 508(a)(1), is**  
7 **amended by adding at the end the following**  
8 **new subsection:**

9 **“(k)(1) Subject to paragraph (2), a group**  
10 **health plan (as defined in subsection**  
11 **(a)(1)(A)(v)) providing supplemental or sec-**  
12 **ondary coverage to individuals also entitled**  
13 **to services under this title shall not require**  
14 **a medicare claims determination under this**  
15 **title for dental benefits specifically excluded**  
16 **under subsection (a)(12) as a condition of**  
17 **making a claims determination for such bene-**  
18 **fits under the group health plan.**

19 **“(2) A group health plan may require a**  
20 **claims determination under this title in cases**  
21 **involving or appearing to involve inpatient**  
22 **dental hospital services or dental services ex-**  
23 **pressly covered under this title pursuant to**  
24 **actions taken by the Secretary.”.**

1       **(b) EFFECTIVE DATE.**—The amendment  
2 made by subsection (a) shall take effect on the  
3 date that is 60 days after the date of the enact-  
4 ment of this Act.

5 **SEC. 511. ENHANCEMENT OF PROGRAM INTEGRITY EF-**  
6                   **FORTS IN MEDICARE PROVIDER ENROLL-**  
7                   **MENT.**

8       **(a) IN GENERAL.**—Section 1842(b)(6)(A) (42  
9 U.S.C. 1395u(b)(6)(A)) is amended—

10           **(1) by striking “or” before “(ii)”;** and  
11           **(2) by inserting after “for such serv-**  
12           **ice,” the following: “or (iii) where the**  
13           **service was provided under a contractual**  
14           **arrangement between such physician or**  
15           **other person and an entity (such as a**  
16           **medical group, physician practice man-**  
17           **agement organization, or a staffing com-**  
18           **pany), to the entity if under such ar-**  
19           **range ment such entity submits the bill**  
20           **for such service and such arrangement**  
21           **meets such other qualifications to assure**  
22           **program integrity as the Secretary may**  
23           **provide,”.**

24       **(b) EFFECTIVE DATE.**—The amendments  
25 made by this section shall apply to payments

1 **made on or after the date of the enactment of**  
2 **this Act.**

3 **SEC. 512. OTHER PROVISIONS.**

4 **(a) GAO REPORTS ON THE PHYSICIAN COM-**  
5 **PENSATION.—**

6 **(1) SUSTAINABLE GROWTH RATE AND**  
7 **UPDATES.—Not later than 6 months after**  
8 **the date of the enactment of this Act, the**  
9 **Comptroller General of the United States**  
10 **shall submit to Congress a report on the**  
11 **appropriateness of the updates in the**  
12 **conversion factor under subsection (d)(3)**  
13 **of section 1848 of the Social Security Act**  
14 **(42 U.S.C. 1395w-4), including the appro-**  
15 **priateness of the sustainable growth rate**  
16 **formula under subsection (f) of such sec-**  
17 **tion for 2002 and succeeding years. Such**  
18 **report shall examine the stability and**  
19 **predictability of such updates and rate**  
20 **and alternatives for the use of such rate**  
21 **in the updates.**

22 **(2) PHYSICIAN COMPENSATION GEN-**  
23 **ERALLY.—Not later than 12 months after**  
24 **the date of the enactment of this Act, the**  
25 **Comptroller General shall submit to Con-**

1 **gress a report on all aspects of physician**  
2 **compensation for services furnished**  
3 **under title XVIII of the Social Security**  
4 **Act, and how those aspects interact and**  
5 **the effect on appropriate compensation**  
6 **for physician services. Such report shall**  
7 **review alternatives for the physician fee**  
8 **schedule under section 1848 of such title**  
9 **(42 U.S.C. 1395w-4).**

10 **(b) ANNUAL PUBLICATION OF LIST OF NA-**  
11 **TIONAL COVERAGE DETERMINATIONS.—The Sec-**  
12 **retary shall provide, in an appropriate annual**  
13 **publication available to the public, a list of**  
14 **national coverage determinations made**  
15 **under title XVIII of the Social Security Act in**  
16 **the previous year and information on how to**  
17 **get more information with respect to such de-**  
18 **terminations.**

19 **(c) GAO REPORT ON FLEXIBILITY IN APPLY-**  
20 **ING HOME HEALTH CONDITIONS OF PARTICIPA-**  
21 **TION TO PATIENTS WHO ARE NOT MEDICARE**  
22 **BENEFICIARIES.—Not later than 6 months after**  
23 **the date of the enactment of this Act, the**  
24 **Comptroller General of the United States**  
25 **shall submit to Congress a report on the im-**

1 **plications if there were flexibility in the appli-**  
2 **cation of the medicare conditions of partici-**  
3 **pation for home health agencies with respect**  
4 **to groups or types of patients who are not**  
5 **medicare beneficiaries. The report shall in-**  
6 **clude an analysis of the potential impact of**  
7 **such flexible application on clinical oper-**  
8 **ations and the recipients of such services and**  
9 **an analysis of methods for monitoring the**  
10 **quality of care provided to such recipients.**

11 **(d) OIG REPORT ON NOTICES RELATING TO**  
12 **USE OF HOSPITAL LIFETIME RESERVE DAYS.—**  
13 **Not later than 1 year after the date of the en-**  
14 **actment of this Act, the Inspector General of**  
15 **the Department of Health and Human Serv-**  
16 **ices shall submit a report to Congress on—**

17 **(1) the extent to which hospitals pro-**  
18 **vide notice to medicare beneficiaries in**  
19 **accordance with applicable requirements**  
20 **before they use the 60 lifetime reserve**  
21 **days described in section 1812(a)(1) of the**  
22 **Social Security Act (42 U.S.C. 1395d(a)(1));**  
23 **and**

24 **(2) the appropriateness and feasi-**  
25 **bility of hospitals providing a notice to**

- 1 **such beneficiaries before they completely**
- 2 **exhaust such lifetime reserve days.**



**Union Calendar No. 43**

108TH CONGRESS  
1ST SESSION

**H. R. 810**

**[Report No. 108-74, Parts I and II]**

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**A BILL**

To amend title XVIII of the Social Security Act to provide regulatory relief and contracting flexibility under the Medicare Program.

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APRIL 29, 2003

Reported from the Committee on Energy and Commerce with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed