

111TH CONGRESS
2D SESSION

S. 2964

To amend titles XVIII, XIX, and XXI of the Social Security Act to prevent fraud, waste, and abuse under Medicare, Medicaid, and CHIP, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2010

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

A BILL

To amend titles XVIII, XIX, and XXI of the Social Security Act to prevent fraud, waste, and abuse under Medicare, Medicaid, and CHIP, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Strengthening Program Integrity and Accountability in
6 Health Care Act”.

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

Sec. 1. Short title; table of contents.

TITLE I—MEDICARE, MEDICAID, AND CHIP

- Sec. 101. Provider screening and other enrollment requirements under Medicare, Medicaid, and CHIP.
- Sec. 102. Enhanced Medicare and Medicaid program integrity provisions.
- Sec. 103. Elimination of duplication between the Healthcare Integrity and Protection Data Bank and the National Practitioner Data Bank.
- Sec. 104. Maximum period for submission of Medicare claims reduced to not more than 12 months.
- Sec. 105. Physicians who order items or services required to be Medicare enrolled physicians or eligible professionals.
- Sec. 106. Requirement for physicians to provide documentation on referrals to programs at high risk of waste and abuse.
- Sec. 107. Face to face encounter with patient required before physicians may certify eligibility for home health services or durable medical equipment under Medicare.
- Sec. 108. Enhanced penalties.
- Sec. 109. Medicare self-referral disclosure protocol.
- Sec. 110. Expansion of the Recovery Audit Contractor (RAC) program.
- Sec. 111. Requirements for the transmission of management implication reports by the HHS OIG.
- Sec. 112. Medical ID theft information sharing program and clearinghouse.

TITLE II—ADDITIONAL MEDICAID PROVISIONS

- Sec. 201. Termination of provider participation under Medicaid if terminated under Medicare or other State plan.
- Sec. 202. Medicaid exclusion from participation relating to certain ownership, control, and management affiliations.
- Sec. 203. Billing agents, clearinghouses, or other alternate payees required to register under Medicaid.
- Sec. 204. Requirement to report expanded set of data elements under MMIS to detect fraud and abuse.
- Sec. 205. Prohibition on payments to institutions or entities located outside of the United States.
- Sec. 206. Overpayments.
- Sec. 207. Mandatory State use of national correct coding initiative.
- Sec. 208. Payment for illegal unapproved drugs.
- Sec. 209. General effective date.

TITLE III—ADDITIONAL PROVISIONS

- Sec. 301. Requiring individuals or entities that participate in or conduct activities under Federal health care programs to comply with certain Congressional requests.
- Sec. 302. Amendments to the False Claims Act.
- Sec. 303. Dismissal of certain actions or claims under the False Claims Act.

1 **TITLE I—MEDICARE, MEDICAID,**
 2 **AND CHIP**

3 **SEC. 101. PROVIDER SCREENING AND OTHER ENROLLMENT**
 4 **REQUIREMENTS UNDER MEDICARE, MED-**
 5 **ICAID, AND CHIP.**

6 (a) MEDICARE.—Section 1866(j) of the Social Secu-
 7 rity Act (42 U.S.C. 1395cc(j)) is amended—

8 (1) in paragraph (1)(A), by adding at the end
 9 the following: “Such process shall include screening
 10 of providers and suppliers in accordance with para-
 11 graph (2), a provisional period of enhanced oversight
 12 in accordance with paragraph (3), disclosure require-
 13 ments in accordance with paragraph (4), the imposi-
 14 tion of temporary enrollment moratoria in accord-
 15 ance with paragraph (5), and the establishment of
 16 compliance programs in accordance with paragraph
 17 (6).”;

18 (2) by redesignating paragraph (2) as para-
 19 graph (7); and

20 (3) by inserting after paragraph (1) the fol-
 21 lowing:

22 “(2) PROVIDER SCREENING.—

23 “(A) PROCEDURES.—Not later than 180
 24 days after the date of enactment of this para-
 25 graph, the Secretary, in consultation with the

1 Inspector General of the Department of Health
2 and Human Services, shall establish procedures
3 under which screening is conducted with respect
4 to providers of medical or other items or serv-
5 ices and suppliers under the program under this
6 title, the Medicaid program under title XIX,
7 and the CHIP program under title XXI.

8 “(B) LEVEL OF SCREENING.—The Sec-
9 retary shall determine the level of screening
10 conducted under this paragraph according to
11 the risk of fraud, waste, and abuse, as deter-
12 mined by the Secretary, with respect to the cat-
13 egory of provider of medical or other items or
14 services or supplier. Such screening—

15 “(i) shall include a licensure check,
16 which may include such checks across
17 States; and

18 “(ii) may, as the Secretary determines
19 appropriate based on the risk of fraud,
20 waste, and abuse described in the pre-
21 ceding sentence, include—

22 “(I) a criminal background
23 check;

24 “(II) fingerprinting;

1 “(III) unscheduled and unan-
2 nounced site visits, including
3 preenrollment site visits;

4 “(IV) database checks (including
5 such checks across States); and

6 “(V) such other screening as the
7 Secretary determines appropriate.

8 “(C) APPLICATION FEES.—

9 “(i) INSTITUTIONAL PROVIDERS.—Ex-
10 cept as provided in clause (ii), the Sec-
11 retary shall impose a fee on each institu-
12 tional provider of medical or other items or
13 services or supplier (such as a hospital or
14 skilled nursing facility) with respect to
15 which screening is conducted under this
16 paragraph in an amount equal to—

17 “(I) for 2011, \$500; and

18 “(II) for 2012 and each subse-
19 quent year, the amount determined
20 under this clause for the preceding
21 year, adjusted by the percentage
22 change in the consumer price index
23 for all urban consumers (all items;
24 United States city average) for the

12-month period ending with June of
the previous year.

“(ii) **HARDSHIP EXCEPTION; WAIVER
FOR CERTAIN MEDICAID PROVIDERS.**—The
Secretary may, on a case-by-case basis, ex-
empt a provider of medical or other items
or services or supplier from the imposition
of an application fee under this subpara-
graph if the Secretary determines that the
imposition of the application fee would re-
sult in a hardship. The Secretary may
waive the application fee under this sub-
paragraph for providers enrolled in a State
Medicaid program for whom the State
demonstrates that imposition of the fee
would impede beneficiary access to care.

“(iii) **USE OF FUNDS.**—Amounts col-
lected as a result of the imposition of a fee
under this subparagraph shall be used by
the Secretary for program integrity efforts,
including to cover the costs of conducting
screening under this paragraph and to
carry out this subsection and section
1128J.

“(D) **APPLICATION AND ENFORCEMENT.**—

1 “(i) NEW PROVIDERS OF SERVICES
 2 AND SUPPLIERS.—The screening under
 3 this paragraph shall apply, in the case of
 4 a provider of medical or other items or
 5 services or supplier who is not enrolled in
 6 the program under this title, title XIX, or
 7 title XXI as of the date of enactment of
 8 this paragraph, on or after the date that is
 9 1 year after such date of enactment.

10 “(ii) CURRENT PROVIDERS OF SERV-
 11 ICES AND SUPPLIERS.—The screening
 12 under this paragraph shall apply, in the
 13 case of a provider of medical or other
 14 items or services or supplier who is en-
 15 rolled in the program under this title, title
 16 XIX, or title XXI as of such date of enact-
 17 ment, on or after the date that is 2 years
 18 after such date of enactment.

19 “(iii) REVALIDATION OF ENROLL-
 20 MENT.—Effective beginning on the date
 21 that is 180 days after such date of enact-
 22 ment, the screening under this paragraph
 23 shall apply with respect to the revalidation
 24 of enrollment of a provider of medical or
 25 other items or services or supplier in the

1 program under this title, title XIX, or title
2 XXI.

3 “(iv) LIMITATION ON ENROLLMENT
4 AND REVALIDATION OF ENROLLMENT.—In
5 no case may a provider of medical or other
6 items or services or supplier who has not
7 been screened under this paragraph be ini-
8 tially enrolled or reenrolled in the program
9 under this title, title XIX, or title XXI on
10 or after the date that is 3 years after such
11 date of enactment.

12 “(E) EXPEDITED RULEMAKING.—The Sec-
13 retary may promulgate an interim final rule to
14 carry out this paragraph.

15 “(3) PROVISIONAL PERIOD OF ENHANCED
16 OVERSIGHT FOR NEW PROVIDERS OF SERVICES AND
17 SUPPLIERS.—

18 “(A) IN GENERAL.—The Secretary shall
19 establish procedures to provide for a provisional
20 period of not less than 30 days and not more
21 than 1 year during which new providers of med-
22 ical or other items or services and suppliers, as
23 the Secretary determines appropriate, including
24 categories of providers or suppliers, would be
25 subject to enhanced oversight, such as prepay-

1 ment review and payment caps, under the pro-
2 gram under this title, the Medicaid program
3 under title XIX, and the CHIP program under
4 title XXI.

5 “(B) IMPLEMENTATION.—The Secretary
6 may establish by program instruction or other-
7 wise the procedures under this paragraph.

8 “(4) INCREASED DISCLOSURE REQUIRE-
9 MENTS.—

10 “(A) DISCLOSURE.—A provider of medical
11 or other items or services or supplier who sub-
12 mits an application for enrollment or revalida-
13 tion of enrollment in the program under this
14 title, title XIX, or title XXI on or after the date
15 that is 1 year after the date of enactment of
16 this paragraph shall disclose (in a form and
17 manner and at such time as determined by the
18 Secretary) any current or previous affiliation
19 (directly or indirectly) with a provider of med-
20 ical or other items or services or supplier that
21 has uncollected debt, has been or is subject to
22 a payment suspension under a Federal health
23 care program (as defined in section 1128B(f)),
24 has been excluded from participation under the
25 program under this title, the Medicaid program

1 under title XIX, or the CHIP program under
2 title XXI, or has had its billing privileges de-
3 nied or revoked.

4 “(B) AUTHORITY TO DENY ENROLL-
5 MENT.—If the Secretary determines that such
6 previous affiliation poses an undue risk of
7 fraud, waste, or abuse, the Secretary may deny
8 such application. Such a denial shall be subject
9 to appeal in accordance with paragraph (7).

10 “(5) AUTHORITY TO ADJUST PAYMENTS OF
11 PROVIDERS OF SERVICES AND SUPPLIERS WITH THE
12 SAME TAX IDENTIFICATION NUMBER FOR PAST-DUE
13 OBLIGATIONS.—

14 “(A) IN GENERAL.—Notwithstanding any
15 other provision of this title, in the case of an
16 applicable provider of services or supplier, the
17 Secretary may make any necessary adjustments
18 to payments to the applicable provider of serv-
19 ices or supplier under the program under this
20 title in order to satisfy any past-due obligations
21 described in subparagraph (B)(ii) of an obli-
22 gated provider of services or supplier.

23 “(B) DEFINITIONS.—In this paragraph:

24 “(i) IN GENERAL.—The term ‘applica-
25 ble provider of services or supplier’ means

1 a provider of services or supplier that has
2 the same taxpayer identification number
3 assigned under section 6109 of the Inter-
4 nal Revenue Code of 1986 as is assigned
5 to the obligated provider of services or sup-
6 plier under such section, regardless of
7 whether the applicable provider of services
8 or supplier is assigned a different billing
9 number or national provider identification
10 number under the program under this title
11 than is assigned to the obligated provider
12 of services or supplier.

13 “(ii) OBLIGATED PROVIDER OF SERV-
14 ICES OR SUPPLIER.—The term ‘obligated
15 provider of services or supplier’ means a
16 provider of services or supplier that owes a
17 past-due obligation under the program
18 under this title (as determined by the Sec-
19 retary).

20 “(6) TEMPORARY MORATORIUM ON ENROLL-
21 MENT OF NEW PROVIDERS.—

22 “(A) IN GENERAL.—The Secretary may
23 impose a temporary moratorium on the enroll-
24 ment of new providers of services and suppliers,
25 including categories of providers of services and

1 suppliers, in the program under this title, under
 2 the Medicaid program under title XIX, or
 3 under the CHIP program under title XXI if the
 4 Secretary determines such moratorium is nec-
 5 essary to prevent or combat fraud, waste, or
 6 abuse under either such program.

7 “(B) LIMITATION ON REVIEW.—There
 8 shall be no judicial review under section 1869,
 9 section 1878, or otherwise, of a temporary mor-
 10 atorium imposed under subparagraph (A).

11 “(7) COMPLIANCE PROGRAMS.—

12 “(A) IN GENERAL.—On or after the date
 13 of implementation determined by the Secretary
 14 under subparagraph (C), a provider of medical
 15 or other items or services or supplier within a
 16 particular industry sector or category shall, as
 17 a condition of enrollment in the program under
 18 this title, title XIX, or title XXI, establish a
 19 compliance program that contains the core ele-
 20 ments established under subparagraph (B) with
 21 respect to that provider or supplier and indus-
 22 try or category.

23 “(B) ESTABLISHMENT OF CORE ELE-
 24 MENTS.—The Secretary, in consultation with
 25 the Inspector General of the Department of

1 Health and Human Services, shall establish
 2 core elements for a compliance program under
 3 subparagraph (A) for providers or suppliers
 4 within a particular industry or category.

5 “(C) TIMELINE FOR IMPLEMENTATION.—

6 The Secretary shall determine the timeline for
 7 the establishment of the core elements under
 8 subparagraph (B) and the date of the imple-
 9 mentation of subparagraph (A) for providers or
 10 suppliers within a particular industry or cat-
 11 egory. The Secretary shall, in determining such
 12 date of implementation, consider the extent to
 13 which the adoption of compliance programs by
 14 a provider of medical or other items or services
 15 or supplier is widespread in a particular indus-
 16 try sector or with respect to a particular pro-
 17 vider or supplier category.”.

18 (b) MEDICAID.—

19 (1) STATE PLAN AMENDMENT.—Section
 20 1902(a) of the Social Security Act (42 U.S.C.
 21 1396a(a)) is amended—

22 (A) in subsection (a)—

23 (i) by striking “and” at the end of
 24 paragraph (72);

1 (ii) by striking the period at the end
 2 of paragraph (73) and inserting a semi-
 3 colon; and

4 (iii) by inserting after paragraph (73)
 5 the following:

6 “(74) provide that the State shall comply with
 7 provider and supplier screening, oversight, and re-
 8 porting requirements in accordance with subsection
 9 (ii);” and

10 (B) by adding at the end the following:

11 “(ii) PROVIDER AND SUPPLIER SCREENING, OVER-
 12 SIGHT, AND REPORTING REQUIREMENTS.—For purposes
 13 of subsection (a)(74), the requirements of this subsection
 14 are the following:

15 “(1) SCREENING.—The State complies with the
 16 process for screening providers and suppliers under
 17 this title, as established by the Secretary under sec-
 18 tion 1886(j)(2).

19 “(2) PROVISIONAL PERIOD OF ENHANCED
 20 OVERSIGHT FOR NEW PROVIDERS AND SUPPLIERS.—
 21 The State complies with procedures to provide for a
 22 provisional period of enhanced oversight for new pro-
 23 viders and suppliers under this title, as established
 24 by the Secretary under section 1886(j)(3).

1 “(3) DISCLOSURE REQUIREMENTS.—The State
 2 requires providers and suppliers under the State
 3 plan or under a waiver of the plan to comply with
 4 the disclosure requirements established by the Sec-
 5 retary under section 1886(j)(4).

6 “(4) TEMPORARY MORATORIUM ON ENROLL-
 7 MENT OF NEW PROVIDERS OR SUPPLIERS.—

8 “(A) TEMPORARY MORATORIUM IMPOSED
 9 BY THE SECRETARY.—

10 “(i) IN GENERAL.—Subject to clause
 11 (ii), the State complies with any temporary
 12 moratorium on the enrollment of new pro-
 13 viders or suppliers imposed by the Sec-
 14 retary under section 1886(j)(6).

15 “(ii) EXCEPTION.—A State shall not
 16 be required to comply with a temporary
 17 moratorium described in clause (i) if the
 18 State determines that the imposition of
 19 such temporary moratorium would ad-
 20 versely impact beneficiaries’ access to med-
 21 ical assistance.

22 “(B) MORATORIUM ON ENROLLMENT OF
 23 PROVIDERS AND SUPPLIERS.—At the option of
 24 the State, the State imposes, for purposes of
 25 entering into participation agreements with pro-

1 viders or suppliers under the State plan or
2 under a waiver of the plan, periods of enroll-
3 ment moratoria, or numerical caps or other lim-
4 its, for providers or suppliers identified by the
5 Secretary as being at high-risk for fraud, waste,
6 or abuse as necessary to combat fraud, waste,
7 or abuse, but only if the State determines that
8 the imposition of any such period, cap, or other
9 limits would not adversely impact beneficiaries'
10 access to medical assistance.

11 “(5) COMPLIANCE PROGRAMS.—The State re-
12 quires providers and suppliers under the State plan
13 or under a waiver of the plan to establish, in accord-
14 ance with the requirements of section 1866(j)(7), a
15 compliance program that contains the core elements
16 established under subparagraph (B) of that section
17 1866(j)(7) for providers or suppliers within a par-
18 ticular industry or category.

19 “(6) REPORTING OF ADVERSE PROVIDER AC-
20 TIONS.—The State complies with the national sys-
21 tem for reporting criminal and civil convictions,
22 sanctions, negative licensure actions, and other ad-
23 verse provider actions to the Secretary, through the
24 Administrator of the Centers for Medicare & Med-

1 icaid Services, in accordance with regulations of the
2 Secretary.

3 “(7) ENROLLMENT AND NPI OF ORDERING OR
4 REFERRING PROVIDERS.—The State requires—

5 “(A) all ordering or referring physicians or
6 other professionals to be enrolled under the
7 State plan or under a waiver of the plan as a
8 participating provider; and

9 “(B) the national provider identifier of any
10 ordering or referring physician or other profes-
11 sional to be specified on any claim for payment
12 that is based on an order or referral of the phy-
13 sician or other professional.

14 “(8) OTHER STATE OVERSIGHT.—Nothing in
15 this subsection shall be interpreted to preclude or
16 limit the ability of a State to engage in provider and
17 supplier screening or enhanced provider and supplier
18 oversight activities beyond those required by the Sec-
19 retary.”.

20 (2) DISCLOSURE OF MEDICARE TERMINATED
21 PROVIDERS AND SUPPLIERS TO STATES.—The Ad-
22 ministrator of the Centers for Medicare & Medicaid
23 Services shall establish a process for making avail-
24 able to the each State agency with responsibility for
25 administering a State Medicaid plan (or a waiver of

1 such plan) under title XIX of the Social Security
 2 Act or a child health plan under title XXI the name,
 3 national provider identifier, and other identifying in-
 4 formation for any provider of medical or other items
 5 or services or supplier under the Medicare program
 6 under title XVIII or under the CHIP program under
 7 title XXI that is terminated from participation
 8 under that program within 30 days of the termi-
 9 nation (and, with respect to all such providers or
 10 suppliers who are terminated from the Medicare pro-
 11 gram on the date of enactment of this Act, within
 12 90 days of such date).

13 (3) CONFORMING AMENDMENT.—Section
 14 1902(a)(23) of the Social Security Act (42 U.S.C.
 15 1396a), is amended by inserting before the semi-
 16 colon at the end the following: “or by a provider or
 17 supplier to which a moratorium under subsection
 18 (ii)(4) is applied during the period of such morato-
 19 rium”.

20 (c) CHIP.—Section 2107(e)(1) of the Social Security
 21 Act (42 U.S.C. 1397gg(e)(1)) is amended—

22 (1) by redesignating subparagraphs (D)
 23 through (L) as subparagraphs (E) through (M), re-
 24 spectively; and

1 (2) by inserting after subparagraph (C), the fol-
 2 lowing:

3 “(D) Subsections (a)(74) and (ii) of sec-
 4 tion 1902 (relating to provider and supplier
 5 screening, oversight, and reporting require-
 6 ments).”.

7 **SEC. 102. ENHANCED MEDICARE AND MEDICAID PROGRAM**
 8 **INTEGRITY PROVISIONS.**

9 (a) IN GENERAL.—Part A of title XI of the Social
 10 Security Act (42 U.S.C. 1301 et seq.) is amended by in-
 11 serting after section 1128F the following new section:

12 **“SEC. 1128G. MEDICARE AND MEDICAID PROGRAM INTEG-**
 13 **RITY PROVISIONS.**

14 “(a) DATA MATCHING.—

15 “(1) INTEGRATED DATA REPOSITORY.—

16 “(A) INCLUSION OF CERTAIN DATA.—

17 “(i) IN GENERAL.—The Integrated
 18 Data Repository of the Centers for Medi-
 19 care & Medicaid Services shall include, at
 20 a minimum, claims and payment data from
 21 the following:

22 “(I) The programs under titles
 23 XVIII and XIX (including parts A, B,
 24 C, and D of title XVIII).

1 “(II) The program under title
2 XXI.

3 “(III) Health-related programs
4 administered by the Secretary of Vet-
5 erans Affairs.

6 “(IV) Health-related programs
7 administered by the Secretary of De-
8 fense.

9 “(V) The program of old-age,
10 survivors, and disability insurance
11 benefits established under title II.

12 “(VI) The Indian Health Service
13 and the Contract Health Service pro-
14 gram.

15 “(ii) PRIORITY FOR INCLUSION OF
16 CERTAIN DATA.—Inclusion of the data de-
17 scribed in subclause (I) of such clause in
18 the Integrated Data Repository shall be a
19 priority. Data described in subclauses (II)
20 through (VI) of such clause shall be in-
21 cluded in the Integrated Data Repository
22 as appropriate.

23 “(B) DATA SHARING AND MATCHING.—

24 “(i) IN GENERAL.—The Secretary
25 shall enter into agreements with the indi-

viduals described in clause (ii) under which such individuals share and match data in the system of records of the respective agencies of such individuals with data in the system of records of the Department of Health and Human Services for the purpose of identifying potential fraud, waste, and abuse under the programs under titles XVIII and XIX.

“(ii) INDIVIDUALS DESCRIBED.—The following individuals are described in this clause:

“(I) The Commissioner of Social Security.

“(II) The Secretary of Veterans Affairs.

“(III) The Secretary of Defense.

“(IV) The Director of the Indian Health Service.

“(iii) DEFINITION OF SYSTEM OF RECORDS.—For purposes of this paragraph, the term ‘system of records’ has the meaning given such term in section 552a(a)(5) of title 5, United States Code.

1 “(2) ACCESS TO CLAIMS AND PAYMENT DATA-
2 BASES.—For purposes of conducting law enforce-
3 ment and oversight activities and to the extent con-
4 sistent with applicable information, privacy, security,
5 and disclosure laws, including the regulations pro-
6 mulgated under the Health Insurance Portability
7 and Accountability Act of 1996 and section 552a of
8 title 5, United States Code, and subject to any infor-
9 mation systems security requirements under such
10 laws or otherwise required by the Secretary, the In-
11 spector General of the Department of Health and
12 Human Services and the Attorney General shall
13 have access to claims and payment data of the De-
14 partment of Health and Human Services and its
15 contractors related to titles XVIII, XIX, and XXI.

16 “(b) OIG AUTHORITY TO OBTAIN INFORMATION.—
17 “(1) IN GENERAL.—Notwithstanding and in ad-
18 dition to any other provision of law, the Inspector
19 General of the Department of Health and Human
20 Services may, for purposes of protecting the integ-
21 rity of the programs under titles XVIII and XIX,
22 obtain information from any individual (including a
23 beneficiary provided all applicable privacy protec-
24 tions are followed) or entity that—

1 “(A) is a provider of medical or other
2 items or services, supplier, grant recipient, con-
3 tractor, or subcontractor; or

4 “(B) directly or indirectly provides, orders,
5 manufactures, distributes, arranges for, pre-
6 scribes, supplies, or receives medical or other
7 items or services payable by any Federal health
8 care program (as defined in section 1128B(f))
9 regardless of how the item or service is paid
10 for, or to whom such payment is made.

11 “(2) INCLUSION OF CERTAIN INFORMATION.—
12 Information which the Inspector General may obtain
13 under paragraph (1) includes any supporting docu-
14 mentation necessary to validate claims for payment
15 or payments under title XVIII or XIX, including a
16 prescribing physician’s medical records for an indi-
17 vidual who is prescribed an item or service which is
18 covered under part B of title XVIII, a covered part
19 D drug (as defined in section 1860D–2(e)) for which
20 payment is made under an MA–PD plan under part
21 C of such title, or a prescription drug plan under
22 part D of such title, and any records necessary for
23 evaluation of the economy, efficiency, and effective-
24 ness of the programs under titles XVIII and XIX.

1 “(c) ADMINISTRATIVE REMEDY FOR KNOWING PAR-
 2 TICIPATION BY BENEFICIARY IN HEALTH CARE FRAUD
 3 SCHEME.—

4 “(1) IN GENERAL.—In addition to any other
 5 applicable remedies, if an applicable individual has
 6 knowingly participated in a Federal health care
 7 fraud offense or a conspiracy to commit a Federal
 8 health care fraud offense, the Secretary shall impose
 9 an appropriate administrative penalty commensurate
 10 with the offense or conspiracy.

11 “(2) APPLICABLE INDIVIDUAL.—For purposes
 12 of paragraph (1), the term ‘applicable individual’
 13 means an individual—

14 “(A) entitled to, or enrolled for, benefits
 15 under part A of title XVIII or enrolled under
 16 part B of such title;

17 “(B) eligible for medical assistance under
 18 a State plan under title XIX or under a waiver
 19 of such plan; or

20 “(C) eligible for child health assistance
 21 under a child health plan under title XXI.

22 “(d) REPORTING AND RETURNING OF OVERPAY-
 23 MENTS.—

24 “(1) IN GENERAL.—If a person has received an
 25 overpayment, the person shall—

1 “(A) report and return the overpayment to
2 the Secretary, the State, an intermediary, a
3 carrier, or a contractor, as appropriate, at the
4 correct address; and

5 “(B) notify the Secretary, State, inter-
6 mediary, carrier, or contractor to whom the
7 overpayment was returned in writing of the rea-
8 son for the overpayment.

9 “(2) DEADLINE FOR REPORTING AND RETURN-
10 ING OVERPAYMENTS.—An overpayment must be re-
11 ported and returned under paragraph (1) by the
12 later of—

13 “(A) the date which is 60 days after the
14 date on which the overpayment was identified;
15 or

16 “(B) the date any corresponding cost re-
17 port is due, if applicable.

18 “(3) ENFORCEMENT.—Any overpayment re-
19 tained by a person after the deadline for reporting
20 and returning the overpayment under paragraph (2)
21 is an obligation (as defined in section 3729(b)(3) of
22 title 31, United States Code) for purposes of section
23 3729 of such title.

24 “(4) DEFINITIONS.—In this subsection:

1 “(A) KNOWING AND KNOWINGLY.—The
 2 terms ‘knowing’ and ‘knowingly’ have the mean-
 3 ing given those terms in section 3729(b) of title
 4 31, United States Code.

5 “(B) OVERPAYMENT.—The term ‘overpay-
 6 ment’ means any funds that a person receives
 7 or retains under title XVIII or XIX to which
 8 the person, after applicable reconciliation, is not
 9 entitled under such title.

10 “(C) PERSON.—

11 “(i) IN GENERAL.—The term ‘person’
 12 means a provider of services, supplier,
 13 Medicaid managed care organization (as
 14 defined in section 1903(m)(1)(A)), Medi-
 15 care Advantage organization (as defined in
 16 section 1859(a)(1)), or PDP sponsor (as
 17 defined in section 1860D–41(a)(13)).

18 “(ii) EXCLUSION.—Such term does
 19 not include a beneficiary.

20 “(e) INCLUSION OF NATIONAL PROVIDER IDENTI-
 21 FIER ON ALL APPLICATIONS AND CLAIMS.—The Sec-
 22 retary shall promulgate a regulation that requires, not
 23 later than January 1, 2011, all providers of medical or
 24 other items or services and suppliers under the programs
 25 under titles XVIII and XIX that qualify for a national

1 provider identifier to include their national provider identi-
 2 fier on all applications to enroll in such programs and on
 3 all claims for payment submitted under such programs.”.

4 (b) ACCESS TO DATA.—

5 (1) MEDICARE PART D.—Section 1860D–
 6 15(f)(2) of the Social Security Act (42 U.S.C.
 7 1395w–116(f)(2)) is amended by striking “may be
 8 used by” and all that follows through the period at
 9 the end and inserting “may be used—

10 “(A) by officers, employees, and contrac-
 11 tors of the Department of Health and Human
 12 Services for the purposes of, and to the extent
 13 necessary in—

14 “(i) carrying out this section; and

15 “(ii) conducting oversight, evaluation,
 16 and enforcement under this title; and

17 “(B) by the Attorney General and the
 18 Comptroller General of the United States for
 19 the purposes of, and to the extent necessary in,
 20 carrying out health oversight activities.”.

21 (2) DATA MATCHING.—Section 552a(a)(8)(B)
 22 of title 5, United States Code, is amended—

23 (A) in clause (vii), by striking “or” at the
 24 end;

1 (B) in clause (viii), by inserting “or” after
 2 the semicolon; and

3 (C) by adding at the end the following new
 4 clause:

5 “(ix) matches performed by the Sec-
 6 retary of Health and Human Services or
 7 the Inspector General of the Department
 8 of Health and Human Services with re-
 9 spect to potential fraud, waste, and abuse,
 10 including matches of a system of records
 11 with non-Federal records;”.

12 (3) MATCHING AGREEMENTS WITH THE COM-
 13 MISSIONER OF SOCIAL SECURITY.—Section 205(r) of
 14 the Social Security Act (42 U.S.C. 405(r)) is amend-
 15 ed by adding at the end the following new para-
 16 graph:

17 “(9)(A) The Commissioner of Social Security
 18 shall, upon the request of the Secretary or the In-
 19 spector General of the Department of Health and
 20 Human Services—

21 “(i) enter into an agreement with the Sec-
 22 retary or such Inspector General for the pur-
 23 pose of matching data in the system of records
 24 of the Social Security Administration and the

1 system of records of the Department of Health
2 and Human Services; and

3 “(ii) include in such agreement safeguards
4 to assure the maintenance of the confidentiality
5 of any information disclosed.

6 “(B) For purposes of this paragraph, the term
7 ‘system of records’ has the meaning given such term
8 in section 552a(a)(5) of title 5, United States
9 Code.”.

10 (c) WITHHOLDING OF FEDERAL MATCHING PAY-
11 MENTS FOR STATES THAT FAIL TO REPORT ENROLLEE
12 ENCOUNTER DATA IN THE MEDICAID STATISTICAL IN-
13 FORMATION SYSTEM.—Section 1903(i) of the Social Secu-
14 rity Act (42 U.S.C. 1396b(i)) is amended—

15 (1) in paragraph (23), by striking “or” at the
16 end;

17 (2) in paragraph (24), by striking the period at
18 the end and inserting “; or”; and

19 (3) by adding at the end the following new
20 paragraph:.

21 “(25) with respect to any amounts expended for
22 medical assistance for individuals for whom the
23 State does not report enrollee encounter data (as de-
24 fined by the Secretary) to the Medicaid Statistical

1 Information System (MSIS) in a timely manner (as
 2 determined by the Secretary).”.

3 (d) PERMISSIVE EXCLUSIONS AND CIVIL MONETARY
 4 PENALTIES.—

5 (1) PERMISSIVE EXCLUSIONS.—Section 1128(b)
 6 of the Social Security Act (42 U.S.C. 1320a–7(b))
 7 is amended—

8 (A) by striking clauses (i) and (ii) of para-
 9 graph (15)(A) and inserting the following:

10 “(i) who has or had a direct or indi-
 11 rect ownership or control interest in the
 12 sanctioned entity and who knew or should
 13 have known (as defined in section
 14 1128A(i)(7)) of the action constituting the
 15 basis for the conviction or exclusion de-
 16 scribed in subparagraph (B); or

17 “(ii) who is or was an officer or man-
 18 aging employee (as defined in section
 19 1126(b)) of such an entity at the time of
 20 the action constituting the basis for the
 21 conviction or exclusion so described.”; and

22 (B) by adding at the end the following new
 23 paragraph:

24 “(16) MAKING FALSE STATEMENTS OR MIS-
 25 REPRESENTATION OF MATERIAL FACTS.—Any indi-

1 vidual or entity that knowingly makes or causes to
 2 be made any false statement, omission, or misrepre-
 3 sentation of a material fact in any application,
 4 agreement, bid, or contract to participate or enroll
 5 as a provider of services or supplier under a Federal
 6 health care program (as defined in section
 7 1128B(f)), including Medicare Advantage organiza-
 8 tions under part C of title XVIII, prescription drug
 9 plan sponsors under part D of title XVIII, Medicaid
 10 managed care organizations under title XIX, and en-
 11 tities that apply to participate as providers of serv-
 12 ices or suppliers in such managed care organizations
 13 and such plans.”.

14 (2) CIVIL MONETARY PENALTIES.—

15 (A) IN GENERAL.—Section 1128A(a) of
 16 the Social Security Act (42 U.S.C. 1320a–
 17 7a(a)) is amended—

18 (i) in paragraph (1)(D), by striking
 19 “was excluded” and all that follows
 20 through the period at the end and insert-
 21 ing “was excluded from the Federal health
 22 care program (as defined in section
 23 1128B(f)) under which the claim was
 24 made pursuant to Federal law.”;

1 (ii) in paragraph (6), by striking “or”
2 at the end;

3 (iii) by inserting after paragraph (7),
4 the following new paragraphs:

5 “(8) orders or prescribes a medical or other
6 item or service during a period in which the person
7 was excluded from a Federal health care program
8 (as so defined), in the case where the person knows
9 or should know that a claim for such medical or
10 other item or service will be made under such a pro-
11 gram;

12 “(9) knowingly makes or causes to be made any
13 false statement, omission, or misrepresentation of a
14 material fact in any application, bid, or contract to
15 participate or enroll as a provider of services or a
16 supplier under a Federal health care program (as so
17 defined), including Medicare Advantage organiza-
18 tions under part C of title XVIII, prescription drug
19 plan sponsors under part D of title XVIII, Medicaid
20 managed care organizations under title XIX, and en-
21 tities that apply to participate as providers of serv-
22 ices or suppliers in such managed care organizations
23 and such plans;

24 “(10) knows of an overpayment (as defined in
25 paragraph (4) of section 1128G(d)) and does not re-

port and return the overpayment in accordance with
such section;”;

(iv) in the first sentence—

(I) by striking the “or” after
“prohibited relationship occurs;” and

(II) by striking “act)” and in-
serting “act; or in cases under para-
graph (9), \$50,000 for each false
statement or misrepresentation of a
material fact)” and

(v) in the second sentence, by striking
“purpose)” and inserting “purpose; or in
cases under paragraph (9), an assessment
of not more than 3 times the total amount
claimed for each item or service for which
payment was made based upon the applica-
tion containing the false statement or mis-
representation of a material fact)”.

(B) CLARIFICATION OF TREATMENT OF
CERTAIN CHARITABLE AND OTHER INNOCUOUS
PROGRAMS.—Section 1128A(i)(6) of the Social
Security Act (42 U.S.C. 1320a–7a(i)(6)) is
amended—

(i) in subparagraph (C), by striking
“or” at the end;

1 (ii) in subparagraph (D), as redesignig-
 2 nated by section 4331(e) of the Balanced
 3 Budget Act of 1997 (Public Law 105–33),
 4 by striking the period at the end and in-
 5 serting a semicolon;

6 (iii) by redesignating subparagraph
 7 (D), as added by section 4523(c) of such
 8 Act, as subparagraph (E) and striking the
 9 period at the end and inserting “; or”; and

10 (iv) by adding at the end the following
 11 new subparagraphs:

12 “(F) any other remuneration which pro-
 13 motes access to care and poses a low risk of
 14 harm to patients and Federal health care pro-
 15 grams (as defined in section 1128B(f) and des-
 16 ignated by the Secretary under regulations);

17 “(G) the offer or transfer of items or serv-
 18 ices for free or less than fair market value by
 19 a person, if—

20 “(i) the items or services consist of
 21 coupons, rebates, or other rewards from a
 22 retailer;

23 “(ii) the items or services are offered
 24 or transferred on equal terms available to

1 the general public, regardless of health in-
2 surance status; and

3 “(iii) the offer or transfer of the items
4 or services is not tied to the provision of
5 other items or services reimbursed in whole
6 or in part by the program under title
7 XVIII or a State health care program (as
8 defined in section 1128(h));

9 “(H) the offer or transfer of items or serv-
10 ices for free or less than fair market value by
11 a person, if—

12 “(i) the items or services are not of-
13 fered as part of any advertisement or solici-
14 tation;

15 “(ii) the items or services are not tied
16 to the provision of other services reim-
17 bursed in whole or in part by the program
18 under title XVIII or a State health care
19 program (as so defined);

20 “(iii) there is a reasonable connection
21 between the items or services and the med-
22 ical care of the individual; and

23 “(iv) the person provides the items or
24 services after determining in good faith
25 that the individual is in financial need; or

1 “(I) effective on a date specified by the
 2 Secretary (but not earlier than January 1,
 3 2011), the waiver by a PDP sponsor of a pre-
 4 scription drug plan under part D of title XVIII
 5 or an MA organization offering an MA–PD
 6 plan under part C of such title of any copay-
 7 ment for the first fill of a covered part D drug
 8 (as defined in section 1860D–2(e)) that is a ge-
 9 neric drug for individuals enrolled in the pre-
 10 scription drug plan or MA–PD plan, respec-
 11 tively.”.

12 (e) TESTIMONIAL SUBPOENA AUTHORITY IN EXCLU-
 13 SION-ONLY CASES.—Section 1128(f) of the Social Secu-
 14 rity Act (42 U.S.C. 1320a–7(f)) is amended by adding at
 15 the end the following new paragraph:

16 “(4) The provisions of subsections (d) and (e)
 17 of section 205 shall apply with respect to this sec-
 18 tion to the same extent as they are applicable with
 19 respect to title II. The Secretary may delegate the
 20 authority granted by section 205(d) (as made appli-
 21 cable to this section) to the Inspector General of the
 22 Department of Health and Human Services for pur-
 23 poses of any investigation under this section.”.

24 (f) REVISING THE INTENT REQUIREMENT FOR
 25 HEALTH CARE FRAUD.—Section 1128B of the Social Se-

1 curity Act (42 U.S.C. 1320a–7b) is amended by adding
 2 at the end the following new subsection:

3 “(g) With respect to violations of this section, a per-
 4 son need not have actual knowledge of this section or spe-
 5 cific intent to commit a violation of this section.”.

6 (g) SURETY BOND REQUIREMENTS.—

7 (1) DURABLE MEDICAL EQUIPMENT.—Section
 8 1834(a)(16)(B) of the Social Security Act (42
 9 U.S.C. 1395m(a)(16)(B)) is amended by inserting
 10 “that the Secretary determines is commensurate
 11 with the volume of the billing of the supplier” before
 12 the period at the end.

13 (2) HOME HEALTH AGENCIES.—Section
 14 1861(o)(7)(C) of the Social Security Act (42 U.S.C.
 15 1395x(o)(7)(C)) is amended by inserting “that the
 16 Secretary determines is commensurate with the vol-
 17 ume of the billing of the home health agency” before
 18 the semicolon at the end.

19 (3) REQUIREMENTS FOR CERTAIN OTHER PRO-
 20 VIDERS OF SERVICES AND SUPPLIERS.—Section
 21 1862 of the Social Security Act (42 U.S.C. 1395y)
 22 is amended by adding at the end the following new
 23 subsection:

24 “(n) REQUIREMENT OF A SURETY BOND FOR CER-
 25 TAIN PROVIDERS OF SERVICES AND SUPPLIERS.—

1 “(1) IN GENERAL.—The Secretary may require
 2 a provider of services or supplier described in para-
 3 graph (2) to provide the Secretary on a continuing
 4 basis with a surety bond in a form specified by the
 5 Secretary in an amount (not less than \$50,000) that
 6 the Secretary determines is commensurate with the
 7 volume of the billing of the provider of services or
 8 supplier. The Secretary may waive the requirement
 9 of a bond under the preceding sentence in the case
 10 of a provider of services or supplier that provides a
 11 comparable surety bond under State law.

12 “(2) PROVIDER OF SERVICES OR SUPPLIER DE-
 13 SCRIBED.—A provider of services or supplier de-
 14 scribed in this paragraph is a provider of services or
 15 supplier the Secretary determines appropriate based
 16 on the level of risk involved with respect to the pro-
 17 vider of services or supplier, and consistent with the
 18 surety bond requirements under sections
 19 1834(a)(16)(B) and 1861(o)(7)(C).”.

20 (h) SUSPENSION OF MEDICARE AND MEDICAID PAY-
 21 MENTS PENDING INVESTIGATION OF CREDIBLE ALLEGA-
 22 TIONS OF FRAUD.—

23 (1) MEDICARE.—Section 1862 of the Social Se-
 24 curity Act (42 U.S.C. 1395y), as amended by sub-

1 section (g)(3), is amended by adding at the end the
 2 following new subsection:

3 “(o) SUSPENSION AUTHORITY.—

4 “(1) IN GENERAL.—The Secretary shall sus-
 5 pend payment to a provider of services or supplier
 6 under this title pending an investigation of credible
 7 allegations of fraud against the provider of services
 8 or supplier, unless the Secretary finds good cause
 9 not to suspend such payment.

10 “(2) CONSULTATION.—The Secretary shall con-
 11 sult with the Inspector General of the Department
 12 of Health and Human Services in determining
 13 whether there is a credible allegation of fraud
 14 against a provider of services or supplier.

15 “(3) PROMULGATION OF REGULATIONS.—The
 16 Secretary shall promulgate regulations to carry out
 17 this subsection and section 1903(i)(2)(C).”.

18 (2) MEDICAID.—Section 1903(i)(2) of such Act
 19 (42 U.S.C. 1396b(i)(2)) is amended—

20 (A) in subparagraph (A), by striking “or”
 21 at the end; and

22 (B) by inserting after subparagraph (B),
 23 the following:

24 “(C) by any individual or entity to whom
 25 the State has failed to suspend payments under

1 the plan during any period when there is pend-
 2 ing an investigation of a credible allegation of
 3 fraud against the individual or entity, as deter-
 4 mined by the State in accordance with regula-
 5 tions promulgated by the Secretary for pur-
 6 poses of section 1862(o) and this subparagraph,
 7 unless the State determines in accordance with
 8 such regulations there is good cause not to sus-
 9 pend such payments; or”.

10 (i) EXTENSION OF NUMBER OF DAYS IN WHICH
 11 MEDICARE CLAIMS ARE REQUIRED TO BE PAID IN
 12 ORDER TO PREVENT OR COMBAT FRAUD, WASTE, OR
 13 ABUSE.—

14 (1) PART A CLAIMS.—Section 1816(c)(2) of the
 15 Social Security Act (42 U.S.C. 1395h(c)(2)) is
 16 amended—

17 (A) in subparagraph (B)(ii)(V), by striking
 18 “with respect” and inserting “subject to sub-
 19 paragraph (D), with respect”; and

20 (B) by adding at the end the following new
 21 subparagraph:

22 “(D)(i) Upon a determination by the Sec-
 23 retary that there is a likelihood of fraud, waste,
 24 or abuse involving a particular category of pro-
 25 viders of services or suppliers, categories of pro-

1 viders of services or suppliers in a certain geo-
2 graphic area, or individual providers of services
3 or suppliers, the Secretary shall extend the
4 number of calendar days described in subpara-
5 graph (B)(ii)(V) to—

6 “(I) up to 365 calendar days with re-
7 spect to claims submitted by—

8 “(aa) categories of providers of
9 services or suppliers; or

10 “(bb) categories of providers of
11 services or suppliers in a certain geo-
12 graphic area; or

13 “(II) such time that the Secretary de-
14 termines is necessary to ensure that the
15 claims with respect to individual providers
16 of services or suppliers are clean claims.

17 “(ii) During the extended period of time
18 under subclauses (I) and (II) of clause (ii), the
19 Secretary shall engage in heightened scrutiny of
20 claims, such as prepayment review and other
21 methods the Secretary determines to be appro-
22 priate.

23 “(iii) Not later than 90 days after the date
24 of enactment of this subparagraph and not less
25 than annually thereafter, the Inspector General

of the Department of Health and Human Services shall submit to the Secretary a report containing recommendations with respect to the application of this subparagraph and section 1842(c)(2)(D). Not later than 60 days after receiving such a report, the Secretary shall submit to the Inspector General a written response to the recommendations contained in the report.

“(iv) There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the implementation of this subparagraph by the Secretary.”.

(2) PART B CLAIMS.—Section 1842(c)(2) of the Social Security Act (42 U.S.C. 1395u(c)(2)) is amended—

(A) in subparagraph (B)(ii)(V), by striking “with respect” and inserting “subject to subparagraph (D), with respect”; and

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

“(D)(i) Upon a determination by the Secretary that there is a likelihood of fraud, waste, or abuse involving a particular category of providers of services or suppliers, categories of providers of services or suppliers in a certain geo-

1 graphic area, or individual providers of services
 2 or suppliers, the Secretary shall extend the
 3 number of calendar days described in subpara-
 4 graph (B)(ii)(V) to—

5 “(I) up to 365 calendar days with re-
 6 spect to claims submitted by—

7 “(aa) categories of providers of
 8 services or suppliers; or

9 “(bb) categories of providers of
 10 services or suppliers in a certain geo-
 11 graphic area; or

12 “(II) such time that the Secretary de-
 13 termines is necessary to ensure that the
 14 claims with respect to individual providers
 15 of services or suppliers are clean claims.

16 “(ii) During the extended period of time
 17 under subclauses (I) and (II) of clause (ii), the
 18 Secretary shall engage in heightened scrutiny of
 19 claims, such as prepayment review and other
 20 methods the Secretary determines to be appro-
 21 priate.

22 “(iii) There shall be no administrative or
 23 judicial review under section 1869, section
 24 1878, or otherwise of the implementation of
 25 this subparagraph by the Secretary.”.

1 (3) EFFECTIVE DATE.—

2 (A) IN GENERAL.—The amendments made
3 by this subsection shall take effect on the day
4 that is 6 months after the date of the enact-
5 ment of this Act.

6 (B) EXPEDITING IMPLEMENTATION.—The
7 Secretary shall promulgate regulations to carry
8 out the amendments made by this subsection
9 which may be effective and final immediately on
10 an interim basis as of the date of publication of
11 the interim final regulation. If the Secretary
12 provides for an interim final regulation, the
13 Secretary shall provide for a period of public
14 comment on such regulation after the date of
15 publication. The Secretary may change or revise
16 such regulation after completion of the period
17 of public comment.

18 (j) INCREASED FUNDING TO FIGHT FRAUD AND
19 ABUSE.—

20 (1) IN GENERAL.—Section 1817(k) of the So-
21 cial Security Act (42 U.S.C. 1395i(k)) is amended—

22 (A) by adding at the end the following new
23 paragraph:

24 “(7) ADDITIONAL FUNDING.—In addition to the
25 funds otherwise appropriated to the Account from

1 the Trust Fund under paragraphs (3) and (4) and
 2 for purposes described in paragraphs (3)(C) and
 3 (4)(A), there are hereby appropriated an additional
 4 \$10,000,000 to such Account from such Trust Fund
 5 for each of fiscal years 2011 through 2020. The
 6 funds appropriated under this paragraph shall be al-
 7 located in the same proportion as the total funding
 8 appropriated with respect to paragraphs (3)(A) and
 9 (4)(A) was allocated with respect to fiscal year
 10 2010, and shall be available without further appro-
 11 priation until expended.”; and

12 (B) in paragraph (4)(A), by inserting
 13 “until expended” after “appropriation”.

14 (2) INDEXING OF AMOUNTS APPROPRIATED.—

15 (A) DEPARTMENTS OF HEALTH AND
 16 HUMAN SERVICES AND JUSTICE.—Section
 17 1817(k)(3)(A)(i) of the Social Security Act (42
 18 U.S.C. 1395i(k)(3)(A)(i)) is amended—

19 (i) in subclause (III), by inserting
 20 “and” at the end;

21 (ii) in subclause (IV)—

22 (I) by striking “for each of fiscal
 23 years 2007, 2008, 2009, and 2010”
 24 and inserting “for each fiscal year
 25 after fiscal year 2006”; and

1 (II) by striking “; and” and in-
 2 serting a period; and

3 (iii) by striking subclause (V).

4 (B) OFFICE OF THE INSPECTOR GENERAL
 5 OF THE DEPARTMENT OF HEALTH AND HUMAN
 6 SERVICES.—Section 1817(k)(3)(A)(ii) of such
 7 Act (42 U.S.C. 1395i(k)(3)(A)(ii)) is amend-
 8 ed—

9 (i) in subclause (VIII), by inserting
 10 “and” at the end;

11 (ii) in subclause (IX)—

12 (I) by striking “for each of fiscal
 13 years 2008, 2009, and 2010” and in-
 14 serting “for each fiscal year after fis-
 15 cal year 2007”; and

16 (II) by striking “; and” and in-
 17 serting a period; and

18 (iii) by striking subclause (X).

19 (C) FEDERAL BUREAU OF INVESTIGA-
 20 TION.—Section 1817(k)(3)(B) of the Social Se-
 21 curity Act (42 U.S.C. 1395i(k)(3)(B)) is
 22 amended—

23 (i) in clause (vii), by inserting “and”
 24 at the end;

25 (ii) in clause (viii)—

1 (I) by striking “for each of fiscal
 2 years 2007, 2008, 2009, and 2010”
 3 and inserting “for each fiscal year
 4 after fiscal year 2006”; and

5 (II) by striking “; and” and in-
 6 serting a period; and

7 (iii) by striking clause (ix).

8 (D) MEDICARE INTEGRITY PROGRAM.—
 9 Section 1817(k)(4)(C) of the Social Security
 10 Act (42 U.S.C. 1395i(k)(4)(C)) is amended by
 11 adding at the end the following new clause:

12 “(ii) For each fiscal year after 2010,
 13 by the percentage increase in the consumer
 14 price index for all urban consumers (all
 15 items; United States city average) over the
 16 previous year.”.

17 (k) MEDICARE INTEGRITY PROGRAM AND MEDICAID
 18 INTEGRITY PROGRAM.—

19 (1) MEDICARE INTEGRITY PROGRAM.—

20 (A) REQUIREMENT TO PROVIDE PERFORM-
 21 ANCE STATISTICS.—Section 1893(c) of the So-
 22 cial Security Act (42 U.S.C. 1395ddd(c)) is
 23 amended—

24 (i) in paragraph (3), by striking
 25 “and” at the end;

1 (ii) by redesignating paragraph (4) as
 2 paragraph (5); and

3 (iii) by inserting after paragraph (3)
 4 the following new paragraph:

5 “(4) the entity agrees to provide the Secretary
 6 and the Inspector General of the Department of
 7 Health and Human Services with such performance
 8 statistics (including the number and amount of over-
 9 payments recovered, the number of fraud referrals,
 10 and the return on investment of such activities by
 11 the entity) as the Secretary or the Inspector General
 12 may request; and”.

13 (B) EVALUATIONS AND ANNUAL RE-
 14 PORT.—Section 1893 of the Social Security Act
 15 (42 U.S.C. 1395ddd) is amended by adding at
 16 the end the following new subsection:

17 “(i) EVALUATIONS AND ANNUAL REPORT.—

18 “(1) EVALUATIONS.—The Secretary shall con-
 19 duct evaluations of eligible entities which the Sec-
 20 retary contracts with under the Program not less
 21 frequently than every 3 years.

22 “(2) ANNUAL REPORT.—Not later than 180
 23 days after the end of each fiscal year (beginning
 24 with fiscal year 2011), the Secretary shall submit a
 25 report to Congress which identifies—

“(A) the use of funds, including funds transferred from the Federal Hospital Insurance Trust Fund under section 1817 and the Federal Supplementary Insurance Trust Fund under section 1841, to carry out this section; and

“(B) the effectiveness of the use of such funds.”.

(C) FLEXIBILITY IN PURSUING FRAUD AND ABUSE.—Section 1893(a) of the Social Security Act (42 U.S.C. 1395ddd(a)) is amended by inserting “, or otherwise,” after “entities”.

(2) MEDICAID INTEGRITY PROGRAM.—

(A) REQUIREMENT TO PROVIDE PERFORMANCE STATISTICS.—Section 1936(c)(2) of the Social Security Act (42 U.S.C. 1396u–6(c)(2)) is amended—

(i) by redesignating subparagraph (D) as subparagraph (E); and

(ii) by inserting after subparagraph (C) the following new subparagraph:

“(D) The entity agrees to provide the Secretary and the Inspector General of the Department of Health and Human Services with such performance statistics (including the number

1 and amount of overpayments recovered, the
 2 number of fraud referrals, and the return on in-
 3 vestment of such activities by the entity) as the
 4 Secretary or the Inspector General may re-
 5 quest.”.

6 (B) EVALUATIONS AND ANNUAL RE-
 7 PORT.—Section 1936(e) of the Social Security
 8 Act (42 U.S.C. 1396u–7(e)) is amended—

9 (i) by redesignating paragraph (4) as
 10 paragraph (5); and

11 (ii) by inserting after paragraph (3)
 12 the following new paragraph:

13 “(4) EVALUATIONS.—The Secretary shall con-
 14 duct evaluations of eligible entities which the Sec-
 15 retary contracts with under the Program not less
 16 frequently than every 3 years.”.

17 (l) EXPANDED APPLICATION OF HARDSHIP WAIVERS
 18 FOR EXCLUSIONS.—Section 1128(c)(3)(B) of the Social
 19 Security Act (42 U.S.C. 1320a–7(c)(3)(B)) is amended by
 20 striking “individuals entitled to benefits under part A of
 21 title XVIII or enrolled under part B of such title, or both”
 22 and inserting “beneficiaries (as defined in section
 23 1128A(i)(5)) of that program”.

1 **SEC. 103. ELIMINATION OF DUPLICATION BETWEEN THE**
 2 **HEALTHCARE INTEGRITY AND PROTECTION**
 3 **DATA BANK AND THE NATIONAL PRACTI-**
 4 **TIONER DATA BANK.**

5 (a) INFORMATION REPORTED BY FEDERAL AGEN-
 6 CIES AND HEALTH PLANS.—Section 1128E of the Social
 7 Security Act (42 U.S.C. 1320a–7e) is amended—

8 (1) by striking subsection (a) and inserting the
 9 following:

10 “(a) IN GENERAL.—The Secretary shall maintain a
 11 national health care fraud and abuse data collection pro-
 12 gram under this section for the reporting of certain final
 13 adverse actions (not including settlements in which no
 14 findings of liability have been made) against health care
 15 providers, suppliers, or practitioners as required by sub-
 16 section (b), with access as set forth in subsection (d), and
 17 shall furnish the information collected under this section
 18 to the National Practitioner Data Bank established pursu-
 19 ant to the Health Care Quality Improvement Act of 1986
 20 (42 U.S.C. 11101 et seq.).”;

21 (2) by striking subsection (d) and inserting the
 22 following:

23 “(d) ACCESS TO REPORTED INFORMATION.—

24 “(1) AVAILABILITY.—The information collected
 25 under this section shall be available from the Na-
 26 tional Practitioner Data Bank to the agencies, au-

1 thorities, and officials which are provided under sec-
 2 tion 1921(b) information reported under section
 3 1921(a).

4 “(2) FEES FOR DISCLOSURE.—The Secretary
 5 may establish or approve reasonable fees for the dis-
 6 closure of information under this section. The
 7 amount of such a fee may not exceed the costs of
 8 processing the requests for disclosure and of pro-
 9 viding such information. Such fees shall be available
 10 to the Secretary to cover such costs.”;

11 (3) by striking subsection (f) and inserting the
 12 following:

13 “(f) APPROPRIATE COORDINATION.—In imple-
 14 menting this section, the Secretary shall provide for the
 15 maximum appropriate coordination with part B of the
 16 Health Care Quality Improvement Act of 1986 (42 U.S.C.
 17 11131 et seq.) and section 1921.”; and

18 (4) in subsection (g)—

19 (A) in paragraph (1)(A)—

20 (i) in clause (iii)—

21 (I) by striking “or State” each
 22 place it appears;

23 (II) by redesignating subclauses
 24 (II) and (III) as subclauses (III) and
 25 (IV), respectively; and

1 (III) by inserting after subclause
 2 (I) the following new subclause:

3 “(II) any dismissal or closure of
 4 the proceedings by reason of the pro-
 5 vider, supplier, or practitioner surren-
 6 dering their license or leaving the
 7 State or jurisdiction”; and

8 (ii) by striking clause (iv) and insert-
 9 ing the following:

10 “(iv) Exclusion from participation in a
 11 Federal health care program (as defined in
 12 section 1128B(f)).”;

13 (B) in paragraph (3)—

14 (i) by striking subparagraphs (D) and
 15 (E); and

16 (ii) by redesignating subparagraph
 17 (F) as subparagraph (D); and

18 (C) in subparagraph (D) (as so redesign-
 19 nated), by striking “or State”.

20 (b) INFORMATION REPORTED BY STATE LAW OR
 21 FRAUD ENFORCEMENT AGENCIES.—Section 1921 of the
 22 Social Security Act (42 U.S.C. 1396r-2) is amended—

23 (1) in subsection (a)—

24 (A) in paragraph (1)—

1 (i) by striking “SYSTEM.—The State”
 2 and all that follows through the semicolon
 3 and inserting SYSTEM.—

4 “(A) LICENSING OR CERTIFICATION AC-
 5 TIONS.—The State must have in effect a system
 6 of reporting the following information with re-
 7 spect to formal proceedings (as defined by the
 8 Secretary in regulations) concluded against a
 9 health care practitioner or entity by a State li-
 10 censing or certification agency.”;

11 (ii) by redesignating subparagraphs
 12 (A) through (D) as clauses (i) through
 13 (iv), respectively, and indenting appro-
 14 priately;

15 (iii) in subparagraph (A)(iii) (as so
 16 redesignated)—

17 (I) by striking “the license of”
 18 and inserting “license or the right to
 19 apply for, or renew, a license by”; and

20 (II) by inserting “nonrenew-
 21 ability,” after “voluntary surrender,”;
 22 and

23 (iv) by adding at the end the following
 24 new subparagraph:

1 “(B) OTHER FINAL ADVERSE ACTIONS.—

2 The State must have in effect a system of re-
 3 porting information with respect to any final
 4 adverse action (not including settlements in
 5 which no findings of liability have been made)
 6 taken against a health care provider, supplier,
 7 or practitioner by a State law or fraud enforce-
 8 ment agency.”; and

9 (B) in paragraph (2), by striking “the au-
 10 thority described in paragraph (1)” and insert-
 11 ing “a State licensing or certification agency or
 12 State law or fraud enforcement agency”;

13 (2) in subsection (b)—

14 (A) by striking paragraph (2) and insert-
 15 ing the following:

16 “(2) to State licensing or certification agencies
 17 and Federal agencies responsible for the licensing
 18 and certification of health care providers, suppliers,
 19 and licensed health care practitioners;”;

20 (B) in each of paragraphs (4) and (6), by
 21 inserting “, but only with respect to information
 22 provided pursuant to subsection (a)(1)(A)” be-
 23 fore the comma at the end;

24 (C) by striking paragraph (5) and insert-
 25 ing the following:

1 “(5) to State law or fraud enforcement agen-
2 cies,”;

3 (D) by redesignating paragraphs (7) and
4 (8) as paragraphs (8) and (9), respectively; and
5 (E) by inserting after paragraph (6) the
6 following new paragraph:

7 “(7) to health plans (as defined in section
8 1128C(c));”;

9 (3) by redesignating subsection (d) as sub-
10 section (h), and by inserting after subsection (c) the
11 following new subsections:

12 “(d) DISCLOSURE AND CORRECTION OF INFORMA-
13 TION.—

14 “(1) DISCLOSURE.—With respect to informa-
15 tion reported pursuant to subsection (a)(1), the Sec-
16 retary shall—

17 “(A) provide for disclosure of the informa-
18 tion, upon request, to the health care practi-
19 tioner who, or the entity that, is the subject of
20 the information reported; and

21 “(B) establish procedures for the case
22 where the health care practitioner or entity dis-
23 puts the accuracy of the information reported.

24 “(2) CORRECTIONS.—Each State licensing or
25 certification agency and State law or fraud enforce-

1 ment agency shall report corrections of information
 2 already reported about any formal proceeding or
 3 final adverse action described in subsection (a), in
 4 such form and manner as the Secretary prescribes
 5 by regulation.

6 “(e) FEES FOR DISCLOSURE.—The Secretary may
 7 establish or approve reasonable fees for the disclosure of
 8 information under this section. The amount of such a fee
 9 may not exceed the costs of processing the requests for
 10 disclosure and of providing such information. Such fees
 11 shall be available to the Secretary to cover such costs.

12 “(f) PROTECTION FROM LIABILITY FOR REPORT-
 13 ING.—No person or entity, including any agency des-
 14 ignated by the Secretary in subsection (b), shall be held
 15 liable in any civil action with respect to any reporting of
 16 information as required under this section, without knowl-
 17 edge of the falsity of the information contained in the re-
 18 port.

19 “(g) REFERENCES.—For purposes of this section:

20 “(1) STATE LICENSING OR CERTIFICATION
 21 AGENCY.—The term ‘State licensing or certification
 22 agency’ includes any authority of a State (or of a
 23 political subdivision thereof) responsible for the li-
 24 censing of health care practitioners (or any peer re-
 25 view organization or private accreditation entity re-

1 viewing the services provided by health care practi-
 2 tioners) or entities.

3 “(2) STATE LAW OR FRAUD ENFORCEMENT
 4 AGENCY.—The term ‘State law or fraud enforcement
 5 agency’ includes—

6 “(A) a State law enforcement agency; and

7 “(B) a State Medicaid fraud control unit
 8 (as defined in section 1903(q)).

9 “(3) FINAL ADVERSE ACTION.—

10 “(A) IN GENERAL.—Subject to subpara-
 11 graph (B), the term ‘final adverse action’ in-
 12 cludes—

13 “(i) civil judgments against a health
 14 care provider, supplier, or practitioner in
 15 State court related to the delivery of a
 16 health care item or service;

17 “(ii) State criminal convictions related
 18 to the delivery of a health care item or
 19 service;

20 “(iii) exclusion from participation in
 21 State health care programs (as defined in
 22 section 1128(h));

23 “(iv) any licensing or certification ac-
 24 tion described in subsection (a)(1)(A)

1 taken against a supplier by a State licens-
 2 ing or certification agency; and

3 “(v) any other adjudicated actions or
 4 decisions that the Secretary shall establish
 5 by regulation.

6 “(B) EXCEPTION.—Such term does not in-
 7 clude any action with respect to a malpractice
 8 claim.”; and

9 (4) in subsection (h), as so redesignated, by
 10 striking “The Secretary” and all that follows
 11 through the period at the end and inserting “In im-
 12 plementing this section, the Secretary shall provide
 13 for the maximum appropriate coordination with part
 14 B of the Health Care Quality Improvement Act of
 15 1986 (42 U.S.C. 11131 et seq.) and section
 16 1128E.”.

17 (c) CONFORMING AMENDMENT.—Section
 18 1128C(a)(1) of the Social Security Act (42 U.S.C. 1320a–
 19 7c(a)(1)) is amended—

20 (1) in subparagraph (C), by adding “and” after
 21 the comma at the end;

22 (2) in subparagraph (D), by striking “, and”
 23 and inserting a period; and

24 (3) by striking subparagraph (E).

25 (d) TRANSITION PROCESS; EFFECTIVE DATE.—

1 (1) IN GENERAL.—Effective on the date of en-
2 actment of this Act, the Secretary of Health and
3 Human Services (in this section referred to as the
4 “Secretary”) shall implement a transition process
5 under which, by not later than the end of the transi-
6 tion period described in paragraph (5), the Secretary
7 shall cease operating the Healthcare Integrity and
8 Protection Data Bank established under section
9 1128E of the Social Security Act (as in effect before
10 the effective date specified in paragraph (6)) and
11 shall transfer all data collected in the Healthcare In-
12 tegrity and Protection Data Bank to the National
13 Practitioner Data Bank established pursuant to the
14 Health Care Quality Improvement Act of 1986 (42
15 U.S.C. 11101 et seq.). During such transition proc-
16 ess, the Secretary shall have in effect appropriate
17 procedures to ensure that data collection and access
18 to the Healthcare Integrity and Protection Data
19 Bank and the National Practitioner Data Bank are
20 not disrupted.

21 (2) REGULATIONS.—The Secretary shall pro-
22 mulgate regulations to carry out the amendments
23 made by subsections (a) and (b).

24 (3) FUNDING.—

1 (A) AVAILABILITY OF FEES.—Fees col-
2 lected pursuant to section 1128E(d)(2) of the
3 Social Security Act prior to the effective date
4 specified in paragraph (6) for the disclosure of
5 information in the Healthcare Integrity and
6 Protection Data Bank shall be available to the
7 Secretary, without fiscal year limitation, for
8 payment of costs related to the transition proc-
9 ess described in paragraph (1). Any such fees
10 remaining after the transition period is com-
11 plete shall be available to the Secretary, without
12 fiscal year limitation, for payment of the costs
13 of operating the National Practitioner Data
14 Bank.

15 (B) AVAILABILITY OF ADDITIONAL
16 FUNDS.—In addition to the fees described in
17 subparagraph (A), any funds available to the
18 Secretary or to the Inspector General of the
19 Department of Health and Human Services for
20 a purpose related to combating health care
21 fraud, waste, or abuse shall be available to the
22 extent necessary for operating the Healthcare
23 Integrity and Protection Data Bank during the
24 transition period, including systems testing and
25 other activities necessary to ensure that infor-

1 mation formerly reported to the Healthcare In-
 2 tegrity and Protection Data Bank will be acces-
 3 sible through the National Practitioner Data
 4 Bank after the end of such transition period.

5 (4) SPECIAL PROVISION FOR ACCESS TO THE
 6 NATIONAL PRACTITIONER DATA BANK BY THE DE-
 7 PARTMENT OF VETERANS AFFAIRS.—

8 (A) IN GENERAL.—Notwithstanding any
 9 other provision of law, during the 1-year period
 10 that begins on the effective date specified in
 11 paragraph (6), the information described in
 12 subparagraph (B) shall be available from the
 13 National Practitioner Data Bank to the Sec-
 14 retary of Veterans Affairs without charge.

15 (B) INFORMATION DESCRIBED.—For pur-
 16 poses of subparagraph (A), the information de-
 17 scribed in this subparagraph is the information
 18 that would, but for the amendments made by
 19 this section, have been available to the Sec-
 20 retary of Veterans Affairs from the Healthcare
 21 Integrity and Protection Data Bank.

22 (5) TRANSITION PERIOD DEFINED.—For pur-
 23 poses of this subsection, the term “transition pe-
 24 riod” means the period that begins on the date of
 25 enactment of this Act and ends on the later of—

1 (A) the date that is 1 year after such date
2 of enactment; or

3 (B) the effective date of the regulations
4 promulgated under paragraph (2).

5 (6) EFFECTIVE DATE.—The amendments made
6 by subsections (a), (b), and (c) shall take effect on
7 the first day after the final day of the transition pe-
8 riod.

9 **SEC. 104. MAXIMUM PERIOD FOR SUBMISSION OF MEDI-**
10 **CARE CLAIMS REDUCED TO NOT MORE THAN**
11 **12 MONTHS.**

12 (a) REDUCING MAXIMUM PERIOD FOR SUBMIS-
13 SION.—

14 (1) PART A.—Section 1814(a) of the Social Se-
15 curity Act (42 U.S.C. 1395f(a)(1)) is amended—

16 (A) in paragraph (1), by striking “period
17 of 3 calendar years” and all that follows
18 through the semicolon and inserting “period
19 ending 1 calendar year after the date of serv-
20 ice;”; and

21 (B) by adding at the end the following new
22 sentence: “In applying paragraph (1), the Sec-
23 retary may specify exceptions to the 1 calendar
24 year period specified in such paragraph.”

25 (2) PART B.—

1 (A) Section 1842(b)(3) of such Act (42
2 U.S.C. 1395u(b)(3)(B)) is amended—

3 (i) in subparagraph (B), in the flush
4 language following clause (ii), by striking
5 “close of the calendar year following the
6 year in which such service is furnished
7 (deeming any service furnished in the last
8 3 months of any calendar year to have
9 been furnished in the succeeding calendar
10 year)” and inserting “period ending 1 cal-
11 endar year after the date of service”; and

12 (ii) by adding at the end the following
13 new sentence: “In applying subparagraph
14 (B), the Secretary may specify exceptions
15 to the 1 calendar year period specified in
16 such subparagraph.”

17 (B) Section 1835(a) of such Act (42
18 U.S.C. 1395n(a)) is amended—

19 (i) in paragraph (1), by striking “pe-
20 riod of 3 calendar years” and all that fol-
21 lows through the semicolon and inserting
22 “period ending 1 calendar year after the
23 date of service;”; and

24 (ii) by adding at the end the following
25 new sentence: “In applying paragraph (1),

1 the Secretary may specify exceptions to the
 2 1 calendar year period specified in such
 3 paragraph.”

4 (b) EFFECTIVE DATE.—

5 (1) IN GENERAL.—The amendments made by
 6 subsection (a) shall apply to services furnished on or
 7 after March 1, 2010.

8 (2) SERVICES FURNISHED BEFORE MARCH
 9 2010.—In the case of services furnished before
 10 March 1, 2010, a bill or request for payment under
 11 section 1814(a)(1), 1842(b)(3)(B), or 1835(a) shall
 12 be filed not later than December 31, 2010.

13 **SEC. 105. PHYSICIANS WHO ORDER ITEMS OR SERVICES RE-**
 14 **QUIRED TO BE MEDICARE ENROLLED PHYSI-**
 15 **CANS OR ELIGIBLE PROFESSIONALS.**

16 (a) DME.—Section 1834(a)(11)(B) of the Social Se-
 17 curity Act (42 U.S.C. 1395m(a)(11)(B)) is amended by
 18 striking “physician” and inserting “physician enrolled
 19 under section 1866(j) or an eligible professional under sec-
 20 tion 1848(k)(3)(B) that is enrolled under section
 21 1866(j)”.

22 (b) HOME HEALTH SERVICES.—

23 (1) PART A.—Section 1814(a)(2) of such Act
 24 (42 U.S.C. 1395(a)(2)) is amended in the matter
 25 preceding subparagraph (A) by inserting “in the

1 case of services described in subparagraph (C), a
 2 physician enrolled under section 1866(j) or an eligi-
 3 ble professional under section 1848(k)(3)(B),” be-
 4 fore “or, in the case of services”.

5 (2) PART B.—Section 1835(a)(2) of such Act
 6 (42 U.S.C. 1395n(a)(2)) is amended in the matter
 7 preceding subparagraph (A) by inserting “, or in the
 8 case of services described in subparagraph (A), a
 9 physician enrolled under section 1866(j) or an eligi-
 10 ble professional under section 1848(k)(3)(B),” after
 11 “a physician”.

12 (c) APPLICATION TO OTHER ITEMS OR SERVICES.—
 13 The Secretary may extend the requirement applied by the
 14 amendments made by subsections (a) and (b) to durable
 15 medical equipment and home health services (relating to
 16 requiring certifications and written orders to be made by
 17 enrolled physicians and health professions) to all other
 18 categories of items or services under title XVIII of the
 19 Social Security Act (42 U.S.C. 1395 et seq.), including
 20 covered part D drugs as defined in section 1860D–2(e)
 21 of such Act (42 U.S.C. 1395w–102), that are ordered, pre-
 22 scribed, or referred by a physician enrolled under section
 23 1866(j) of such Act (42 U.S.C. 1395cc(j)) or an eligible
 24 professional under section 1848(k)(3)(B) of such Act (42
 25 U.S.C. 1395w–4(k)(3)(B)).

1 (d) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to written orders and certifications
 3 made on or after July 1, 2010.

4 **SEC. 106. REQUIREMENT FOR PHYSICIANS TO PROVIDE**
 5 **DOCUMENTATION ON REFERRALS TO PRO-**
 6 **GRAMS AT HIGH RISK OF WASTE AND ABUSE.**

7 (a) PHYSICIANS AND OTHER SUPPLIERS.—Section
 8 1842(h) of the Social Security Act (42 U.S.C. 1395u(h))
 9 is amended by adding at the end the following new para-
 10 graph:

11 “(9) The Secretary may revoke enrollment, for a pe-
 12 riod of not more than one year for each act, for a physi-
 13 cian or supplier under section 1866(j) if such physician
 14 or supplier fails to maintain and, upon request of the Sec-
 15 retary, provide access to documentation relating to written
 16 orders or requests for payment for durable medical equip-
 17 ment, certifications for home health services, or referrals
 18 for other items or services written or ordered by such phy-
 19 sician or supplier under this title, as specified by the Sec-
 20 retary.”.

21 (b) PROVIDERS OF SERVICES.—Section 1866(a)(1)
 22 of such Act (42 U.S.C. 1395cc) is further amended—

23 (1) in subparagraph (U), by striking at the end
 24 “and”;

1 (2) in subparagraph (V), by striking the period
2 at the end and adding “; and”; and

3 (3) by adding at the end the following new sub-
4 paragraph:

5 “(W) maintain and, upon request of the
6 Secretary, provide access to documentation re-
7 lating to written orders or requests for payment
8 for durable medical equipment, certifications for
9 home health services, or referrals for other
10 items or services written or ordered by the pro-
11 vider under this title, as specified by the Sec-
12 retary.”.

13 (c) **OIG PERMISSIVE EXCLUSION AUTHORITY.**—Sec-
14 tion 1128(b)(11) of the Social Security Act (42 U.S.C.
15 1320a–7(b)(11)) is amended by inserting “, ordering, re-
16 ferring for furnishing, or certifying the need for” after
17 “furnishing”.

18 (d) **EFFECTIVE DATE.**—The amendments made by
19 this section shall apply to orders, certifications, and refer-
20 rals made on or after March 1, 2010.

1 **SEC. 107. FACE TO FACE ENCOUNTER WITH PATIENT RE-**
 2 **QUIRED BEFORE PHYSICIANS MAY CERTIFY**
 3 **ELIGIBILITY FOR HOME HEALTH SERVICES**
 4 **OR DURABLE MEDICAL EQUIPMENT UNDER**
 5 **MEDICARE.**

6 (a) CONDITION OF PAYMENT FOR HOME HEALTH
 7 SERVICES.—

8 (1) PART A.—Section 1814(a)(2)(C) of such
 9 Act is amended—

10 (A) by striking “and such services” and in-
 11 serting “such services”; and

12 (B) by inserting after “care of a physi-
 13 cian” the following: “, and, in the case of a cer-
 14 tification made by a physician after March 1,
 15 2010, prior to making such certification the
 16 physician must document that the physician
 17 himself or herself has had a face-to-face en-
 18 counter (including through use of telehealth,
 19 subject to the requirements in section 1834(m),
 20 and other than with respect to encounters that
 21 are incident to services involved) with the indi-
 22 vidual within a reasonable timeframe as deter-
 23 mined by the Secretary”.

24 (2) PART B.—Section 1835(a)(2)(A) of the So-
 25 cial Security Act is amended—

26 (A) by striking “and” before “(iii)”; and

1 (B) by inserting after “care of a physi-
 2 cian” the following: “, and (iv) in the case of
 3 a certification after March 1, 2010, prior to
 4 making such certification the physician must
 5 document that the physician has had a face-to-
 6 face encounter (including through use of tele-
 7 health and other than with respect to encoun-
 8 ters that are incident to services involved) with
 9 the individual during the 6-month period pre-
 10 ceeding such certification, or other reasonable
 11 timeframe as determined by the Secretary”.

12 (b) CONDITION OF PAYMENT FOR DURABLE MED-
 13 ICAL EQUIPMENT.—Section 1834(a)(11)(B) of the Social
 14 Security Act (42 U.S.C. 1395m(a)(11)(B)) is amended—

15 (1) by striking “ORDER.—The Secretary” and
 16 inserting “ORDER.—

17 “(i) IN GENERAL.—The Secretary”;
 18 and

19 (2) by adding at the end the following new
 20 clause:

21 “(ii) REQUIREMENT FOR FACE TO
 22 FACE ENCOUNTER.—The Secretary shall
 23 require that such an order be written pur-
 24 suant to the physician documenting that a
 25 physician, a physician assistant, a nurse

1 practitioner, or a clinical nurse specialist
2 (as those terms are defined in section
3 1861(aa)(5)) has had a face-to-face en-
4 counter (including through use of tele-
5 health under subsection (m) and other
6 than with respect to encounters that are
7 incident to services involved) with the indi-
8 vidual involved during the 6-month period
9 preceding such written order, or other rea-
10 sonable timeframe as determined by the
11 Secretary.”.

12 (c) APPLICATION TO OTHER AREAS UNDER MEDI-
13 CARE.—The Secretary may apply the face-to-face encoun-
14 ter requirement described in the amendments made by
15 subsections (a) and (b) to other items and services for
16 which payment is provided under title XVIII of the Social
17 Security Act based upon a finding that such an decision
18 would reduce the risk of waste, fraud, or abuse.

19 (d) APPLICATION TO MEDICAID.—The requirements
20 pursuant to the amendments made by subsections (a) and
21 (b) shall apply in the case of physicians making certifi-
22 cations for home health services under title XIX of the
23 Social Security Act in the same manner and to the same
24 extent as such requirements apply in the case of physi-

1 cians making such certifications under title XVIII of such
2 Act.

3 **SEC. 108. ENHANCED PENALTIES.**

4 (a) CIVIL MONETARY PENALTIES FOR FALSE STATE-
5 MENTS OR DELAYING INSPECTIONS.—Section 1128A(a)
6 of the Social Security Act (42 U.S.C. 1320a–7a(a)), as
7 amended by section 102(d)(2)(A), is amended—

8 (1) by inserting after paragraph (10) the fol-
9 lowing new paragraphs:

10 “(11) knowingly makes, uses, or causes to be
11 made or used, a false record or statement material
12 to a false or fraudulent claim for payment for items
13 and services furnished under a Federal health care
14 program; or

15 “(12) fails to grant timely access, upon reason-
16 able request (as defined by the Secretary in regula-
17 tions), to the Inspector General of the Department
18 of Health and Human Services, for the purpose of
19 audits, investigations, evaluations, or other statutory
20 functions of the Inspector General of the Depart-
21 ment of Health and Human Services;” and

22 (2) in the first sentence (as so amended)—

23 (A) by striking “or in cases under para-
24 graph (9)” and inserting “in cases under para-
25 graph (9)”; and

1 (B) by striking “a material fact)” and in-
 2 serting “a material fact, in cases under para-
 3 graph (11), \$50,000 for each false record or
 4 statement, or in cases under paragraph (12),
 5 \$15,000 for each day of the failure described in
 6 such paragraph)”.

7 (b) MEDICARE ADVANTAGE AND PART D PLANS.—

8 (1) ENSURING TIMELY INSPECTIONS RELATING
 9 TO CONTRACTS WITH MA ORGANIZATIONS.—Section
 10 1857(d)(2) of such Act (42 U.S.C. 1395w–27(d)(2))
 11 is amended—

12 (A) in subparagraph (A), by inserting
 13 “timely” before “inspect”; and

14 (B) in subparagraph (B), by inserting
 15 “timely” before “audit and inspect”.

16 (2) MARKETING VIOLATIONS.—Section
 17 1857(g)(1) of the Social Security Act (42 U.S.C.
 18 1395w–27(g)(1)) is amended—

19 (A) in subparagraph (F), by striking “or”
 20 at the end;

21 (B) by inserting after subparagraph (G)
 22 the following new subparagraphs:

23 “(H) except as provided under subpara-
 24 graph (C) or (D) of section 1860D–1(b)(1), en-
 25 rolls an individual in any plan under this part

1 without the prior consent of the individual or
2 the designee of the individual;

3 “(I) transfers an individual enrolled under
4 this part from one plan to another without the
5 prior consent of the individual or the designee
6 of the individual or solely for the purpose of
7 earning a commission;

8 “(J) fails to comply with marketing re-
9 strictions described in subsections (h) and (j) of
10 section 1851 or applicable implementing regula-
11 tions or guidance; or

12 “(K) employs or contracts with any indi-
13 vidual or entity who engages in the conduct de-
14 scribed in subparagraphs (A) through (J) of
15 this paragraph;”; and

16 (C) by adding at the end the following new
17 sentence: “The Secretary may provide, in addi-
18 tion to any other remedies authorized by law,
19 for any of the remedies described in paragraph
20 (2), if the Secretary determines that any em-
21 ployee or agent of such organization, or any
22 provider or supplier who contracts with such or-
23 ganization, has engaged in any conduct de-
24 scribed in subparagraphs (A) through (K) of
25 this paragraph.”.

1 (3) PROVISION OF FALSE INFORMATION.—Sec-
 2 tion 1857(g)(2)(A) of the Social Security Act (42
 3 U.S.C. 1395w–27(g)(2)(A)) is amended by inserting
 4 “except with respect to a determination under sub-
 5 paragraph (E), an assessment of not more than the
 6 amount claimed by such plan or plan sponsor based
 7 upon the misrepresentation or falsified information
 8 involved,” after “for each such determination,”.

9 (c) OBSTRUCTION OF PROGRAM AUDITS.—Section
 10 1128(b)(2) of the Social Security Act (42 U.S.C. 1320a–
 11 7(b)(2)) is amended—

12 (1) in the heading, by inserting “OR AUDIT”
 13 after “INVESTIGATION”; and

14 (2) by striking “investigation into” and all that
 15 follows through the period and inserting “investiga-
 16 tion or audit related to—

17 “(i) any offense described in para-
 18 graph (1) or in subsection (a); or

19 “(ii) the use of funds received, directly
 20 or indirectly, from any Federal health care
 21 program (as defined in section
 22 1128B(f)).”.

23 (d) EFFECTIVE DATE.—

24 (1) IN GENERAL.—Except as provided in para-
 25 graph (2), the amendments made by this section

1 shall apply to acts committed on or after January 1,
2 2010.

3 (2) EXCEPTION.—The amendments made by
4 subsection (b)(1) take effect on the date of enact-
5 ment of this Act.

6 **SEC. 109. MEDICARE SELF-REFERRAL DISCLOSURE PRO-**
7 **TOCOL.**

8 (a) DEVELOPMENT OF SELF-REFERRAL DISCLO-
9 SURE PROTOCOL.—

10 (1) IN GENERAL.—The Secretary of Health and
11 Human Services, in cooperation with the Inspector
12 General of the Department of Health and Human
13 Services, shall establish, not later than 6 months
14 after the date of the enactment of this Act, a pro-
15 tocol to enable health care providers of services and
16 suppliers to disclose an actual or potential violation
17 of section 1877 of the Social Security Act (42
18 U.S.C. 1395nn) pursuant to a self-referral disclosure
19 protocol (in this section referred to as an “SRDP”).
20 The SRDP shall include direction to health care pro-
21 viders of services and suppliers on—

22 (A) a specific person, official, or office to
23 whom such disclosures shall be made; and

1 (B) instruction on the implication of the
2 SRDP on corporate integrity agreements and
3 corporate compliance agreements.

4 (2) PUBLICATION ON INTERNET WEBSITE OF
5 SRDP INFORMATION.—The Secretary of Health and
6 Human Services shall post information on the public
7 Internet website of the Centers for Medicare & Med-
8 icaid Services to inform relevant stakeholders of how
9 to disclose actual or potential violations pursuant to
10 an SRDP.

11 (3) RELATION TO ADVISORY OPINIONS.—The
12 SRDP shall be separate from the advisory opinion
13 process set forth in regulations implementing section
14 1877(g) of the Social Security Act.

15 (b) REDUCTION IN AMOUNTS OWED.—The Secretary
16 of Health and Human Services is authorized to reduce the
17 amount due and owing for all violations under section
18 1877 of the Social Security Act to an amount less than
19 that specified in subsection (g) of such section. In estab-
20 lishing such amount for a violation, the Secretary may
21 consider the following factors:

22 (1) The nature and extent of the improper or
23 illegal practice.

24 (2) The timeliness of such self-disclosure.

1 (3) The cooperation in providing additional in-
2 formation related to the disclosure.

3 (4) Such other factors as the Secretary con-
4 siders appropriate.

5 (c) REPORT.—Not later than 18 months after the
6 date on which the SRDP protocol is established under sub-
7 section (a)(1), the Secretary shall submit to Congress a
8 report on the implementation of this section. Such report
9 shall include—

10 (1) the number of health care providers of serv-
11 ices and suppliers making disclosures pursuant to
12 the SRDP;

13 (2) the amounts collected pursuant to the
14 SRDP;

15 (3) the types of violations reported under the
16 SRDP; and

17 (4) such other information as may be necessary
18 to evaluate the impact of this section.

19 **SEC. 110. EXPANSION OF THE RECOVERY AUDIT CON-**
20 **TRACTOR (RAC) PROGRAM.**

21 (a) EXPANSION TO MEDICAID.—

22 (1) STATE PLAN AMENDMENT.—Section
23 1902(a)(42) of the Social Security Act (42 U.S.C.
24 1396a(a)(42)) is amended—

1 (A) by striking “that the records” and in-
2 serting “that—

3 “(A) the records”;

4 (B) by inserting “and” after the semicolon;
5 and

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

7 “(B) not later than December 31, 2010,
8 the State shall—

9 “(i) establish a program under which
10 the State contracts (consistent with State
11 law and in the same manner as the Sec-
12 retary enters into contracts with recovery
13 audit contractors under section 1893(h),
14 subject to such exceptions or requirements
15 as the Secretary may require for purposes
16 of this title or a particular State) with 1
17 or more recovery audit contractors for the
18 purpose of identifying underpayments and
19 overpayments and recouping overpayments
20 under the State plan and under any waiver
21 of the State plan with respect to all serv-
22 ices for which payment is made to any en-
23 tity under such plan or waiver; and

24 “(ii) provide assurances satisfactory
25 to the Secretary that—

1 “(I) under such contracts, pay-
2 ment shall be made to such a con-
3 tractor only from amounts recovered;

4 “(II) from such amounts recov-
5 ered, payment—

6 “(aa) shall be made on a
7 contingent basis for collecting
8 overpayments; and

9 “(bb) may be made in such
10 amounts as the State may specify
11 for identifying underpayments;

12 “(III) the State has an adequate
13 process for entities to appeal any ad-
14 verse determination made by such
15 contractors; and

16 “(IV) such program is carried
17 out in accordance with such require-
18 ments as the Secretary shall specify,
19 including—

20 “(aa) for purposes of section
21 1903(a)(7), that amounts ex-
22 pended by the State to carry out
23 the program shall be considered
24 amounts expended as necessary
25 for the proper and efficient ad-

1 ministration of the State plan or
2 a waiver of the plan;

3 “(bb) that section 1903(d)
4 shall apply to amounts recovered
5 under the program; and

6 “(cc) that the State and any
7 such contractors under contract
8 with the State shall coordinate
9 such recovery audit efforts with
10 other contractors or entities per-
11 forming audits of entities receiv-
12 ing payments under the State
13 plan or waiver in the State, in-
14 cluding efforts with Federal and
15 State law enforcement with re-
16 spect to the Department of Jus-
17 tice, including the Federal Bu-
18 reau of Investigations, the In-
19 specter General of the Depart-
20 ment of Health and Human
21 Services, and the State Medicaid
22 fraud control unit; and”.

23 (2) COORDINATION; REGULATIONS.—

24 (A) IN GENERAL.—The Secretary of
25 Health and Human Services, acting through the

1 Administrator of the Centers for Medicare &
 2 Medicaid Services, shall coordinate the expan-
 3 sion of the Recovery Audit Contractor program
 4 to Medicaid with States, particularly with re-
 5 spect to each State that enters into a contract
 6 with a recovery audit contractor for purposes of
 7 the State’s Medicaid program prior to Decem-
 8 ber 31, 2010.

9 (B) REGULATIONS.—The Secretary of
 10 Health and Human Services shall promulgate
 11 regulations to carry out this subsection and the
 12 amendments made by this subsection, including
 13 with respect to conditions of Federal financial
 14 participation, as specified by the Secretary.

15 (b) EXPANSION TO MEDICARE PARTS C AND D.—

16 Section 1893(h) of the Social Security Act (42 U.S.C.
 17 1395ddd(h)) is amended—

18 (1) in paragraph (1), in the matter preceding
 19 subparagraph (A), by striking “part A or B” and in-
 20 serting “this title”;

21 (2) in paragraph (2), by striking “parts A and
 22 B” and inserting “this title”;

23 (3) in paragraph (3), by inserting “(not later
 24 than December 31, 2010, in the case of contracts re-

1 lating to payments made under part C or D)” after
 2 “2010”;

3 (4) in paragraph (4), in the matter preceding
 4 subparagraph (A), by striking “part A or B” and in-
 5 serting “this title”; and

6 (5) by adding at the end the following:

7 “(9) SPECIAL RULES RELATING TO PARTS C
 8 AND D.—The Secretary shall enter into contracts
 9 under paragraph (1) to require recovery audit con-
 10 tractors to—

11 “(A) ensure that each MA plan under part
 12 C has an anti- fraud plan in effect and to re-
 13 view the effectiveness of each such anti-fraud
 14 plan;

15 “(B) ensure that each prescription drug
 16 plan under part D has an anti- fraud plan in
 17 effect and to review the effectiveness of each
 18 such anti-fraud plan;

19 “(C) examine claims for reinsurance pay-
 20 ments under section 1860D–15(b) to determine
 21 whether prescription drug plans submitting
 22 such claims incurred costs in excess of the al-
 23 lowable reinsurance costs permitted under para-
 24 graph (2) of that section; and

1 “(D) review estimates submitted by pre-
 2 scription drug plans by private plans with re-
 3 spect to the enrollment of high cost bene-
 4 ficiaries (as defined by the Secretary) and to
 5 compare such estimates with the numbers of
 6 such beneficiaries actually enrolled by such
 7 plans.”.

8 (c) ANNUAL REPORT.—The Secretary of Health and
 9 Human Services, acting through the Administrator of the
 10 Centers for Medicare & Medicaid Services, shall submit
 11 an annual report to Congress concerning the effectiveness
 12 of the Recovery Audit Contractor program under Medicaid
 13 and Medicare and shall include such reports recommenda-
 14 tions for expanding or improving the program.

15 **SEC. 111. REQUIREMENTS FOR THE TRANSMISSION OF**
 16 **MANAGEMENT IMPLICATION REPORTS BY**
 17 **THE HHS OIG.**

18 Section 1128G of the Social Security Act, as added
 19 by section 102(a), is amended by adding at the end the
 20 following new subsection:

21 “(f) TRANSMISSION OF MANAGEMENT IMPLICATION
 22 REPORTS BY THE HHS OIG.—

23 “(1) CONGRESSIONAL NOTIFICATION.—Not
 24 later than 30 days after the transmission by the In-
 25 specter General of the Department of Health and

1 Human Services to another agency of the Depart-
 2 ment of Health and Human Services of a manage-
 3 ment implication report, the Inspector General shall
 4 notify the relevant committees of Congress of such
 5 transmission.

6 “(2) SECRETARIAL RESPONSE.—The Secretary
 7 shall respond to a management implication report
 8 transmitted under paragraph (1) not later than 90
 9 days after such transmission.

10 “(3) RELEVANT COMMITTEES OF CONGRESS
 11 DEFINED.—In this subsection, the term ‘relevant
 12 committees of Congress’ means the Committees on
 13 Ways and Means and Energy and Commerce of the
 14 House of Representatives and the Committee on Fi-
 15 nance of the Senate.”.

16 **SEC. 112. MEDICAL ID THEFT INFORMATION SHARING PRO-**
 17 **GRAM AND CLEARINGHOUSE.**

18 (a) ESTABLISHMENT.—Not later than 24 months
 19 after the date of enactment of this Act, the Secretary of
 20 Health and Human Services (in this section referred to
 21 as the “Secretary”), acting through the Administrator of
 22 the Centers for Medicare & Medicaid Services and in co-
 23 ordination with the Chairman of the Federal Trade Com-
 24 mission, shall establish an information sharing program
 25 regarding beneficiary medical ID theft under the pro-

grams under titles XVIII, XIX, and XXI of the Social Security Act (in this section referred to as the “program”).

(b) CONTENTS OF PROGRAM.—The program shall include—

(1) the establishment of methods to identify and detect relevant warning signs of medical ID theft;

(2) the establishment of appropriate responses to such warning signs that would mitigate and prevent beneficiary medical ID theft; and

(3) the development of a detailed plan to update the program as appropriate, taking into consideration such warning signs and appropriate responses.

(c) ESTABLISHMENT OF CLEARINGHOUSE.—The Secretary, in coordination with the Chairman of the Federal Trade Commission, shall establish a clearinghouse at the Centers for Medicare & Medicaid Services that collects reports of ID theft against beneficiaries under the programs under titles XVIII, XIX, and XXI of the Social Security Act from the Federal Trade Commission and other sources determined appropriate by the Secretary. Such clearinghouse shall be used to fight medical ID theft against beneficiaries and to prevent the improper payment of claims under such programs.

TITLE II—ADDITIONAL MEDICAID PROVISIONS

SEC. 201. TERMINATION OF PROVIDER PARTICIPATION UNDER MEDICAID IF TERMINATED UNDER MEDICARE OR OTHER STATE PLAN.

Section 1902(a)(39) of the Social Security Act (42 U.S.C. 42 U.S.C. 1396a(a)) is amended by inserting after “1128A,” the following: “terminate the participation of any individual or entity in such program if (subject to such exceptions as are permitted with respect to exclusion under sections 1128(c)(3)(B) and 1128(d)(3)(B)) participation of such individual or entity is terminated under title XVIII or any other State plan under this title,”.

SEC. 202. MEDICAID EXCLUSION FROM PARTICIPATION RELATING TO CERTAIN OWNERSHIP, CONTROL, AND MANAGEMENT AFFILIATIONS.

Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by section 101(b), is amended by inserting after paragraph (74) the following:

“(75) provide that the State agency described in paragraph (9) exclude, with respect to a period, any individual or entity from participation in the program under the State plan if such individual or entity owns, controls, or manages an entity that (or

1 if such entity is owned, controlled, or managed by an
 2 individual or entity that)—

3 “(A) has unpaid overpayments (as defined
 4 by the Secretary) under this title during such
 5 period determined by the Secretary or the State
 6 agency to be delinquent;

7 “(B) is suspended or excluded from par-
 8 ticipation under or whose participation is termi-
 9 nated under this title during such period; or

10 “(C) is affiliated with an individual or enti-
 11 ty that has been suspended or excluded from
 12 participation under this title or whose participa-
 13 tion is terminated under this title during such
 14 period;”.

15 **SEC. 203. BILLING AGENTS, CLEARINGHOUSES, OR OTHER**
 16 **ALTERNATE PAYEES REQUIRED TO REG-**
 17 **ISTER UNDER MEDICAID.**

18 (a) IN GENERAL.—Section 1902(a) of the Social Se-
 19 curity Act (42 U.S.C. 42 U.S.C. 1396a(a)), as amended
 20 by section 202(a), is amended by inserting after para-
 21 graph (75) the following:

22 “(76) provide that any agent, clearinghouse, or
 23 other alternate payee (as defined by the Secretary)
 24 that submits claims on behalf of a health care pro-
 25 vider must register with the State and the Secretary

1 in a form and manner specified by the Secretary;
 2 and”.

3 **SEC. 204. REQUIREMENT TO REPORT EXPANDED SET OF**
 4 **DATA ELEMENTS UNDER MMIS TO DETECT**
 5 **FRAUD AND ABUSE.**

6 (a) IN GENERAL.—Section 1903(r)(1)(F) of the So-
 7 cial Security Act (42 U.S.C. 1396b(r)(1)(F)) is amended
 8 by inserting after “necessary” the following: “and includ-
 9 ing, for data submitted to the Secretary on or after March
 10 1, 2010, data elements from the automated data system
 11 that the Secretary determines to be necessary for program
 12 integrity, program oversight, and administration, at such
 13 frequency as the Secretary shall determine”.

14 (b) MANAGED CARE ORGANIZATIONS.—

15 (1) IN GENERAL.—Section 1903(m)(2)(A)(xi)
 16 of the Social Security Act (42 U.S.C.
 17 1396b(m)(2)(A)(xi)) is amended by inserting “and
 18 for the provision of such data to the State at a fre-
 19 quency and level of detail to be specified by the Sec-
 20 retary” after “patients”.

21 (2) EFFECTIVE DATE.—The amendment made
 22 by paragraph (1) shall apply with respect to contract
 23 years beginning on or after March 1, 2010.

1 **SEC. 205. PROHIBITION ON PAYMENTS TO INSTITUTIONS**
 2 **OR ENTITIES LOCATED OUTSIDE OF THE**
 3 **UNITED STATES.**

4 Section 1902(a) of the Social Security Act (42 U.S.C.
 5 1396b(a)), as amended by section 203, is amended by in-
 6 serting after paragraph (76) the following new paragraph:

7 “(77) provide that the State shall not provide
 8 any payments for items or services provided under
 9 the State plan or under a waiver to any financial in-
 10 stitution or entity located outside of the United
 11 States.”.

12 **SEC. 206. OVERPAYMENTS.**

13 (a) **EXTENSION OF PERIOD FOR COLLECTION OF**
 14 **OVERPAYMENTS DUE TO FRAUD.—**

15 (1) **IN GENERAL.**—Section 1903(d)(2) of the
 16 Social Security Act (42 U.S.C. 1396b(d)(2)) is
 17 amended—

18 (A) in subparagraph (C)—

19 (i) in the first sentence, by striking
 20 “60 days” and inserting “1 year”; and

21 (ii) in the second sentence, by striking
 22 “60 days” and inserting “1-year period”;
 23 and

24 (B) in subparagraph (D)—

25 (i) in inserting “(i)” after “(D)”; and

1 (ii) by adding at the end the fol-
2 lowing:

3 “(ii) In any case where the State is unable to recover
4 a debt which represents an overpayment (or any portion
5 thereof) made to a person or other entity due to fraud
6 within 1 year of discovery because there is not a final de-
7 termination of the amount of the overpayment under an
8 administrative or judicial process (as applicable), includ-
9 ing as a result of a judgment being under appeal, no ad-
10 justment shall be made in the Federal payment to such
11 State on account of such overpayment (or portion thereof)
12 before the date that is 30 days after the date on which
13 a final judgment (including, if applicable, a final deter-
14 mination on an appeal) is made.”.

15 (2) EFFECTIVE DATE.—The amendments made
16 by this subsection take effect on the date of enact-
17 ment of this Act and apply to overpayments discov-
18 ered on or after that date.

19 (b) CORRECTIVE ACTION.—The Secretary shall pro-
20 mulgate regulations that require States to correct Feder-
21 ally identified claims overpayments, of an ongoing or re-
22 curring nature, with new Medicaid Management Informa-
23 tion System (MMIS) edits, audits, or other appropriate
24 corrective action.

1 **SEC. 207. MANDATORY STATE USE OF NATIONAL CORRECT**
2 **CODING INITIATIVE.**

3 Section 1903(r) of the Social Security Act (42 U.S.C.
4 1396b(r)) is amended—

5 (1) in paragraph (1)(B)—

6 (A) in clause (ii), by striking “and” at the
7 end;

8 (B) in clause (iii), by adding “and” after
9 the semi-colon; and

10 (C) by adding at the end the following new
11 clause:

12 “(iv) effective for claims filed on or
13 after October 1, 2010, incorporate compat-
14 ible methodologies of the National Correct
15 Coding Initiative administered by the Sec-
16 retary (or any successor initiative to pro-
17 mote correct coding and to control im-
18 proper coding leading to inappropriate pay-
19 ment) and such other methodologies of
20 that Initiative (or such other national cor-
21 rect coding methodologies) as the Sec-
22 retary identifies in accordance with para-
23 graph (4);” and

24 (2) by adding at the end the following new
25 paragraph:

1 “(4) For purposes of paragraph (1)(B)(iv), the Sec-
2 retary shall do the following:

3 “(A) Not later than September 1, 2010:

4 “(i) Identify those methodologies of the
5 National Correct Coding Initiative administered
6 by the Secretary (or any successor initiative to
7 promote correct coding and to control improper
8 coding leading to inappropriate payment) which
9 are compatible to claims filed under this title.

10 “(ii) Identify those methodologies of such
11 Initiative (or such other national correct coding
12 methodologies) that should be incorporated into
13 claims filed under this title with respect to
14 items or services for which States provide med-
15 ical assistance under this title and no national
16 correct coding methodologies have been estab-
17 lished under such Initiative with respect to title
18 XVIII.

19 “(iii) Notify States of—

20 “(I) the methodologies identified
21 under subparagraphs (A) and (B) (and of
22 any other national correct coding meth-
23 odologies identified under subparagraph
24 (B)); and

1 “(II) how States are to incorporate
2 such methodologies into claims filed under
3 this title.

4 “(B) Not later than March 1, 2011, submit a
5 report to Congress that includes the notice to States
6 under clause (iii) of subparagraph (A) and an anal-
7 ysis supporting the identification of the methodolo-
8 gies made under clauses (i) and (ii) of subparagraph
9 (A).”.

10 **SEC. 208. PAYMENT FOR ILLEGAL UNAPPROVED DRUGS.**

11 (a) FINDINGS.—Congress finds that each year, the
12 Medicaid program under title XIX of the Social Security
13 Act (42 U.S.C. 1396 et seq.) pays millions of dollars in
14 reimbursement for covered outpatient drugs that are not
15 approved by the Food and Drug Administration under a
16 new drug application under section 505(b) of the Federal
17 Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)) or an
18 abbreviated new drug application under section 505(j) of
19 such Act, or that such drug is not subject such section
20 505 or section 512 due to the application of section 201(p)
21 of such Act (21 U.S.C. 321(p)).

22 (b) LISTING OF DRUGS AND DEVICES.—Section 510
23 of the Food, Drug and Cosmetic Act (21 U.S.C. 360) is
24 amended—

25 (1) in subsection (j)(1)(B)—

1 (A) in clause (i), by inserting “in the case
 2 of a drug, the authority under this Act that
 3 does not require such drug to be subject to sec-
 4 tion 505 and section 512,” after “labeling for
 5 such drug or device,”; and

6 (B) in clause (ii), by inserting “, in the
 7 case of a drug, the authority under this Act
 8 that does not require such drug to be subject to
 9 section 505 and section 512,” after “for such
 10 drug or device”; and

11 (2) in subsection (f)—

12 (A) by striking “(f) The Secretary” and in-
 13 serting the following:

14 “(f) INSPECTION BY PUBLIC OF REGISTRATION.—

15 “(1) IN GENERAL.—The Secretary”; and

16 (B) by adding at the end the following:

17 “(2) LIST OF DRUGS THAT ARE NOT APPROVED
 18 UNDER SECTION 505 OR 512.—Not later than Janu-
 19 ary 1, 2011, the Secretary shall make available to
 20 the public on the Internet website of the Food and
 21 Drug Administration a list that includes, for each
 22 drug described in subsection (j)(1)(B)—

23 “(A) the drug;

24 “(B) the person who listed such drug; and

1 “(C) the authority under this Act that
 2 does not require such drug to be subject to sec-
 3 tion 505 and section 512, as provided by such
 4 person in such list.”.

5 (c) PAYMENT FOR COVERED OUTPATIENT DRUGS.—
 6 Section 1927 of the Social Security Act (42 U.S.C. 1396r–
 7 8) is amended by inserting at the end the following:

8 “(l) CONDITION.—Beginning January 1, 2011, no
 9 State shall make any payment under this section for any
 10 covered outpatient drug unless such State first verifies
 11 with the Food and Drug Administration that such covered
 12 outpatient drug has been approved by the Food and Drug
 13 Administration under a new drug application under sec-
 14 tion 505(b) of the Federal Food, Drug, and Cosmetic Act
 15 (21 U.S.C. 355(b)) or an abbreviated new drug application
 16 under section 505(j) of such Act, or that such drug is not
 17 subject such section 505 or section 512 due to the applica-
 18 tion of section 201(p) of such Act (21 U.S.C. 321(p)). The
 19 Secretary shall have the authority to proscribe regulations
 20 to create an information sharing protocol to allow States
 21 to verify that a covered outpatient drug has been approved
 22 by the Food and Drug Administration.”.

23 **SEC. 209. GENERAL EFFECTIVE DATE.**

24 (a) IN GENERAL.—Except as otherwise provided in
 25 this subtitle, this subtitle and the amendments made by

1 this subtitle take effect on January 1, 2011, without re-
2 gard to whether final regulations to carry out such amend-
3 ments and subtitle have been promulgated by that date.

4 (b) DELAY IF STATE LEGISLATION REQUIRED.—In
5 the case of a State plan for medical assistance under title
6 XIX of the Social Security Act or a child health plan
7 under title XXI of such Act which the Secretary of Health
8 and Human Services determines requires State legislation
9 (other than legislation appropriating funds) in order for
10 the plan to meet the additional requirement imposed by
11 the amendments made by this subtitle, the State plan or
12 child health plan shall not be regarded as failing to comply
13 with the requirements of such title solely on the basis of
14 its failure to meet this additional requirement before the
15 first day of the first calendar quarter beginning after the
16 close of the first regular session of the State legislature
17 that begins after the date of the enactment of this Act.
18 For purposes of the previous sentence, in the case of a
19 State that has a 2-year legislative session, each year of
20 such session shall be deemed to be a separate regular ses-
21 sion of the State legislature.

TITLE III—ADDITIONAL PROVISIONS

SEC. 301. REQUIRING INDIVIDUALS OR ENTITIES THAT PARTICIPATE IN OR CONDUCT ACTIVITIES UNDER FEDERAL HEALTH CARE PROGRAMS TO COMPLY WITH CERTAIN CONGRESSIONAL REQUESTS.

(a) IN GENERAL.—Section 1128G of the Social Security Act, as added by section 102(a) and amended by section 111, is amended by adding at the end the following new subsection:

“(g) COMPLIANCE WITH CERTAIN REQUESTS BY INDIVIDUALS AND ENTITIES THAT PARTICIPATE IN OR CONDUCT ACTIVITIES UNDER FEDERAL HEALTH CARE PROGRAMS.—

“(1) IN GENERAL.—Any individual or entity that participates in or conducts activities under a Federal health care program (as defined in section 1128B(f)) shall, as a condition of such participation or such conduct, comply (at a time and in a manner specified by the Chairman or ranking member) with any request submitted by the Chairman or the ranking member of a relevant committee of Congress to the individual or entity for the following:

“(A) Documents.

1 “(B) Information.

2 “(C) Interviews.

3 “(2) RELEVANT COMMITTEE OF CONGRESS DE-
 4 FINED.—In this subsection, the term ‘relevant com-
 5 mittee of Congress’ means the Committees on Ways
 6 and Means and Energy and Commerce of the House
 7 of Representatives and the Committee on Finance of
 8 the Senate.”.

9 (b) EFFECTIVE DATE.—The amendments made by
 10 this section shall take effect on the date that is 2 years
 11 after the date of enactment of this Act.

12 **SEC. 302. AMENDMENTS TO THE FALSE CLAIMS ACT.**

13 Section 3730(h) of title 31, United States Code, is
 14 amended—

15 (1) in paragraph (1), by striking “or agent on
 16 behalf of the employee, contractor, or agent or asso-
 17 ciated others in furtherance of other efforts to stop
 18 1 or more violations of this subchapter” and insert-
 19 ing “agent or associated others in furtherance of an
 20 action under this section or other efforts to stop 1
 21 or more violations of this subchapter”; and

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

23 “(3) LIMITATION ON BRINGING CIVIL AC-
 24 TION.—A civil action under this subsection may not

1 be brought more than 2 years after the date when
2 the retaliation occurred.”.

3 **SEC. 303. DISMISSAL OF CERTAIN ACTIONS OR CLAIMS**
4 **UNDER THE FALSE CLAIMS ACT.**

5 Section 3730(e) of title 31, United States Code, is
6 amended by striking paragraph (4) and inserting the fol-
7 lowing:

8 “(4)(A) The court shall dismiss an action or
9 claim under this section, unless opposed by the Gov-
10 ernment, if substantially the same allegations or
11 transactions as alleged in the action or claim were
12 publicly disclosed—

13 “(i) in a Federal criminal, civil, or admin-
14 istrative hearing in which the Government or its
15 agent is a party;

16 “(ii) in a congressional, Government Ac-
17 countability Office, or other Federal report,
18 hearing, audit, or investigation; or

19 “(iii) from the news media, unless the ac-
20 tion is brought by the Attorney General or the
21 person bringing the action is an original source
22 of the information.

23 “(B) For purposes of this paragraph, the term
24 ‘original source’ means an individual who—

1 “(i) prior to a public disclosure under sub-
2 section (e)(4)(a), has voluntarily disclosed to
3 the Government the information on which alle-
4 gations or transactions in a claim are based; or
5 “(ii) has knowledge that is independent of
6 and materially adds to the publicly disclosed al-
7 legations or transactions, and has voluntarily
8 provided the information to the Government be-
9 fore filing an action under this section.”.

○