

103^D CONGRESS
1ST SESSION

H. R. 2138

To provide for budget reconciliation with respect to part B of the medicare program, the medicaid program, and other health programs within the jurisdiction of the Committee on Energy and Commerce.

IN THE HOUSE OF REPRESENTATIVES

MAY 17, 1993

Mr. WAXMAN introduced the following bill; which was referred jointly to the Committees on Energy and Commerce and Ways and Means

A BILL

To provide for budget reconciliation with respect to part B of the medicare program, the medicaid program, and other health programs within the jurisdiction of the Committee on Energy and Commerce.

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

3 **TITLE I—SHORT TITLE**

4 **SEC. 101. SHORT TITLE.**

5 This Act may be cited as the “Medicare and Medicaid
6 Budget Reconciliation Act of 1993”.

1 **TITLE II—TABLE OF CONTENTS**

2 **SEC. 201. TABLE OF CONTENTS.**

3 The table of contents of this Act is as follows:

TITLE I—SHORT TITLE

Sec. 101. Short title.

TITLE II—TABLE OF CONTENTS

Sec. 201. Table of contents.

TITLE III—REFERENCES TO OMNIBUS BUDGET RECONCILIATION
ACT OF 1993

Sec. 302. References to Omnibus Budget Reconciliation Act of 1993.

TITLE IV—OTHER REFERENCES IN ACT

Sec. 401. Other references in act.

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MEDICARE, MEDICAID, AND OTHER HEALTH PROGRAMS

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- Sec. 5001. Reduction in default update for conversion factor for 1994.
- Sec. 5002. Reduction in performance standard rate of increase and increase in maximum reduction permitted in default update.
- Sec. 5003. Classification of primary care services as a separate category of services.
- Sec. 5004. Phased-in reduction in practice expense relative value units for certain services.
- Sec. 5005. Limitation on payment for the anesthesia care team.
- Sec. 5006. Basing payments for anesthesia services on actual time.
- Sec. 5007. Separate payment for interpretation of electrocardiograms.
- Sec. 5008. Payments for new physicians and practitioners.
- Sec. 5009. Geographic adjustment factors for medicare physicians' services.
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- Sec. 5144. Increase in limit on Federal medicaid matching payments to Puerto Rico and other territories.
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- Sec. 5148. Application of mammography certification requirements under the medicaid program.
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- Sec. 5150. Extension of moratorium on treatment of certain facilities as institutions for mental diseases.
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- Sec. 5155. Corrections relating to section 4602 (outreach locations).
- Sec. 5156. Corrections relating to section 4604 (payment for hospital services for children under 6 years of age).
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- Sec. 5158. Corrections relating to section 4704 (Federally-qualified health centers).
- Sec. 5159. Corrections relating to section 4708 (substitute physicians).
- Sec. 5160. Corrections relating to section 4711 (home and community care for frail elderly).
- Sec. 5161. Corrections relating to section 4712 (community supported living arrangements services).
- Sec. 5162. Correction relating to section 4713 (COBRA continuation coverage).
- Sec. 5163. Correction relating to section 4716 (medicaid transition for family assistance).
- Sec. 5164. Corrections relating to section 4723 (medicaid spenddown option).
- Sec. 5165. Corrections relating to section 4724 (optional State disability determinations).
- Sec. 5166. Correction relating to section 4732 (special rules for health maintenance organizations).
- Sec. 5167. Corrections relating to section 4741 (home and community-based waivers).
- Sec. 5168. Corrections relating to section 4744 (frail elderly waivers).
- Sec. 5169. Corrections relating to section 4747 (coverage of HIV-positive individuals).
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CHAPTER 2—UNIVERSAL ACCESS TO CHILDHOOD IMMUNIZATIONS

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“Subtitle 3—Entitlement and Monitoring Programs With Respect to Childhood Immunizations

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- “Sec. 2151. Delivery to States of sufficient quantities of pediatric vaccines.
- “Sec. 2152. Entitlements.
- “Sec. 2153. Voluntary participation of health care providers.
- “Sec. 2154. Intrastate distribution of pediatric vaccines.
- “Sec. 2155. General provisions.
- “Sec. 2156. State option regarding immunization of additional categories of children.
- “Sec. 2157. State application for vaccines.
- “Sec. 2158. Contracts with manufacturers of pediatric vaccines.
- “Sec. 2159. Certain administrative variations.
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- “Sec. 2161. Childhood Immunization Trust Fund.
- “Sec. 2162. Definitions.
- “Sec. 2163. Termination of program.

“PART B—NATIONAL SYSTEM FOR MONITORING IMMUNIZATION STATUS OF CHILDREN

- “Sec. 2171. Formula grants for State registries with respect to monitoring.
- “Sec. 2172. Registry data.

- “Sec. 2173. General provisions.
- “Sec. 2174. Application for grant.
- “Sec. 2175. Determination of amount of allotment.
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“PART C—FUNDING FOR OTHER PURPOSES REGARDING CHILDHOOD
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- “Sec. 2181. Grants regarding Year 2000 health objectives.

- Sec. 5182. National Vaccine Injury Compensation Program amendments.
- Sec. 5183. Medicaid immunization provisions.
- Sec. 5184. Availability of medicaid payments for childhood vaccine replacement programs.
- Sec. 5185. Healthy start for infants.
- Sec. 5186. Increase in authorization of appropriations for the Maternal and Child Health Services Block Grant Program.
- Sec. 5187. Miscellaneous technical corrections to Public Health Service Act provisions.

1 **TITLE III—REFERENCES TO OM-**
2 **NIBUS BUDGET RECONCILI-**
3 **ATION ACT OF 1993**

4 **SEC. 302. REFERENCES TO OMNIBUS BUDGET RECONCILI-**
5 **ATION ACT OF 1993.**

6 Any reference in this Act (or in any amendment made
7 by this Act) to the Omnibus Budget Reconciliation Act
8 of 1993 shall be deemed to be a reference to this Act.

9 **TITLE IV—OTHER REFERENCES**
10 **IN ACT**

11 **SEC. 401. OTHER REFERENCES IN ACT.**

12 (a) AMENDMENTS TO SOCIAL SECURITY ACT.—Ex-
13 cept as otherwise specifically provided, whenever in this
14 Act an amendment is expressed in terms of an amendment
15 to or repeal of a section or other provision, the reference

1 shall be considered to be made to that section or other
2 provision of the Social Security Act.

3 (b) REFERENCES TO OBRA.—In this Act, the terms
4 “OBRA-1986”, “OBRA-1987”, “OBRA-1989”, and
5 “OBRA-1990” refer to the Omnibus Budget Reconcili-
6 ation Act of 1986 (Public Law 99-509), the Omnibus
7 Budget Reconciliation Act of 1987 (Public Law 100-203),
8 the Omnibus Budget Reconciliation Act of 1989 (Public
9 Law 101-239), and the Omnibus Budget Reconciliation
10 Act of 1990 (Public Law 101-508), respectively.

11 **TITLE V—RECONCILIATION PRO-**
12 **VISIONS RELATING TO MEDI-**
13 **CARE, MEDICAID, AND OTHER**
14 **HEALTH PROGRAMS**

15 **Subtitle A—Medicare Program**

16 **CHAPTER 1—PROVISIONS RELATING TO**
17 **PART B**

18 **Subchapter A—Physicians’ Services**

19 **SEC. 5001. REDUCTION IN DEFAULT UPDATE FOR CONVER-**
20 **SION FACTOR FOR 1994.**

21 Section 1848(d)(3)(A) (42 U.S.C. 1395w-
22 4(d)(3)(A)) is amended—

23 (1) in clause (i), by striking “clause (iii)” and
24 inserting “clauses (iii) and (iv)”, and

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

3 “(iv) ADJUSTMENT IN PERCENTAGE
4 INCREASE FOR 1994.—In applying clause
5 (i) for services (other than primary care
6 services) furnished in 1994, the percentage
7 increase in the appropriate update index
8 shall be reduced by—

9 “(I) 3 percentage points for sur-
10 gical services (as defined for purposes
11 of subsection (j)(1)), and

12 “(II) 2 percentage points for
13 other services.”.

14 **SEC. 5002. REDUCTION IN PERFORMANCE STANDARD RATE**
15 **OF INCREASE AND INCREASE IN MAXIMUM**
16 **REDUCTION PERMITTED IN DEFAULT UP-**
17 **DATE.**

18 (a) REDUCTION IN PERFORMANCE STANDARD FAC-
19 TOR.—Section 1848(f)(2)(B) (42 U.S.C. 1395w-
20 4(f)(2)(B)) is amended—

21 (1) by striking “and” at the end of clause (ii),
22 and

23 (2) by striking clause (iii) and inserting the fol-
24 lowing:

25 “(iii) for 1993 is 2 percentage points,

1 “(iv) for 1994 is 3½ percentage
2 points, and

3 “(v) for each succeeding year is 4 per-
4 centage points.”.

5 (b) INCREASE IN MAXIMUM REDUCTION PERMITTED
6 IN DEFAULT UPDATE.—Section 1848(d)(3)(B)(ii) (42
7 U.S.C. 1395w-4(d)(3)(B)(ii)) is amended—

8 (1) in subclause (II), by striking “or 1995”,
9 and

10 (2) in subclause (III), by striking “3” and in-
11 serting “5”.

12 **SEC. 5003. CLASSIFICATION OF PRIMARY CARE SERVICES**
13 **AS A SEPARATE CATEGORY OF SERVICES.**

14 (a) IN GENERAL.—Section 1848(j)(1) (42 U.S.C.
15 1395w-4(j)(1)) is amended by inserting “, primary care
16 services (as defined in section 1842(i)(4)),” after “Sec-
17 retary”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 subsection (a) shall apply—

20 (1) to volume performance standard rates of in-
21 crease established under section 1848(f) of the So-
22 cial Security Act for fiscal years beginning with fis-
23 cal year 1994, and

24 (2) to updates in the conversion factors for phy-
25 sicians’ services established under section 1848(d) of

1 such Act for physicians' services to be furnished in
2 calendar years beginning with 1996.

3 **SEC. 5004. PHASED-IN REDUCTION IN PRACTICE EXPENSE**
4 **RELATIVE VALUE UNITS FOR CERTAIN SERV-**
5 **ICES.**

6 (a) IN GENERAL.—Section 1848(c)(2) (42 U.S.C.
7 1395w-4(c)(2)) is amended by adding at the end the fol-
8 lowing new subparagraph:

9 “(E) REDUCTION IN PRACTICE EXPENSE
10 RELATIVE VALUE UNITS FOR CERTAIN SERV-
11 ICES.—

12 “(i) IN GENERAL.—Subject to clause
13 (ii), the Secretary shall reduce the practice
14 expense relative value units applied to serv-
15 ices described in clause (iii) furnished in—

16 “(I) 1994, by 25 percent of the
17 number by which the number of prac-
18 tice expense relative value units (de-
19 termined for 1994 without regard to
20 this subparagraph) exceeds the num-
21 ber of work relative value units deter-
22 mined for 1994,

23 “(II) 1995, by an additional 25
24 percent of such excess, and

1 “(III) 1996 and subsequent
2 years, by an additional 25 percent of
3 such excess.

4 “(ii) FLOOR ON REDUCTIONS.—The
5 practice expense relative value units for a
6 physicians’ service shall not be reduced
7 under this subparagraph to a number less
8 than 110 percent of the number of work
9 relative value units.

10 “(iii) SERVICES COVERED.—For pur-
11 poses of clause (i), the services described in
12 this clause are physicians’ services that are
13 not described in clause (iv) and for
14 which—

15 “(I) there are work relative value
16 units, and

17 “(II) the number of practice ex-
18 pense relative value units (determined
19 for 1994) exceeds 110 percent of the
20 number of work relative value units
21 (determined for such year).

22 “(iv) EXCLUDED SERVICES.—For
23 purposes of clause (iii), the services de-
24 scribed in this clause are—

25 “(I) anesthesia services,

1 “(II) radiology services, and
2 “(III) services which the Sec-
3 retary determines at least 75 percent
4 of which are provided under this title
5 in an office setting.”.

6 (b) DEVELOPMENT OF RESOURCE-BASED METH-
7 ODOLOGY FOR PRACTICE EXPENSES.—

8 (1) The Secretary of Health and Human Serv-
9 ices shall develop a methodology for implementing in
10 1997 a resource-based system for determining prac-
11 tice expense relative value units for each physician’s
12 service.

13 (2) The Secretary shall transmit a report by
14 June 30, 1996, on the methodology developed under
15 paragraph (1) to the Committees on Ways and
16 Means and Energy and Commerce of the House of
17 Representatives and the Committee on Finance of
18 the Senate. The report shall include a presentation
19 of data utilized in developing the methodology and
20 an explanation of the methodology.

21 **SEC. 5005. LIMITATION ON PAYMENT FOR THE ANESTHESIA**
22 **CARE TEAM.**

23 (a) LIMIT ON PAYMENT TO A PHYSICIAN FOR MEDI-
24 CAL DIRECTION.—

1 (1) IN GENERAL.—Section 1848(a) (42 U.S.C.
2 1395w-4(a)) is amended by adding at the end the
3 following new paragraph:

4 “(5) SPECIAL RULE FOR MEDICAL DIREC-
5 TION.—

6 “(A) IN GENERAL.—With respect to physi-
7 cians’ services furnished on or after January 1,
8 1994, and consisting of medical direction of
9 two, three, or four concurrent anesthesia cases,
10 the fee schedule amount to be applied shall not
11 exceed one-half of the amount described in sub-
12 paragraph (B).

13 “(B) AMOUNT.—The amount described in
14 this subparagraph, for a physician’s medical di-
15 rection of the performance of anesthesia serv-
16 ices, is the following percentage of the fee
17 schedule amount otherwise applicable under this
18 section if the anesthesia services were person-
19 ally performed by the physician alone:

20 “(i) For services furnished during
21 1994, 120 percent.

22 “(ii) For services furnished during
23 1995, 115 percent.

24 “(iii) For services furnished during
25 1996, 110 percent.

1 “(iv) For services furnished during
2 1997, 105 percent.

3 “(v) For services furnished after
4 1997, 100 percent.”.

5 (2) ELIMINATION OF REDUCTION FOR MEDICAL
6 DIRECTION OF MULTIPLE NURSE ANESTHETISTS.—
7 Section 1842(b) (42 U.S.C. 1395u(b)) is amended
8 by striking paragraph (13).

9 (b) PAYMENT TO A CERTIFIED REGISTERED NURSE
10 ANESTHETIST FOR MEDICALLY DIRECTED SERVICES.—
11 Subparagraph (B) of section 1833(l)(4) (42 U.S.C.
12 1395l(l)(4)) is amended—

13 (1) in clause (i), by inserting “and before Janu-
14 ary 1, 1994,” after “1991,”;

15 (2) in clause (ii)—

16 (A) by adding “and” at the end of
17 subclause (II),

18 (B) by striking the comma at the end of
19 subclause (III) and inserting a period, and

20 (C) by striking subclauses (IV) through
21 (VII); and

22 (3) by adding at the end the following new
23 clause:

24 “(iii) In the case of services of a certified registered
25 nurse anesthetist who is medically directed by a physician

1 and that are furnished on or after January 1, 1994, the
2 fee schedule amount shall be one-half of the amount de-
3 scribed in section 1848(a)(5)(B) with respect to the physi-
4 cian.”.

5 **SEC. 5006. BASING PAYMENTS FOR ANESTHESIA SERVICES**
6 **ON ACTUAL TIME.**

7 (a) PHYSICIANS’ SERVICES.—Section 1848(b)(2)(B)
8 (42 U.S.C. 1395w-4(b)(2)(B)) is amended by adding at
9 the end the following: “For anesthesia services furnished
10 on or after January 1, 1994, the Secretary may not mod-
11 ify the methodology in effect as of January 1, 1993, for
12 determining the amount of time that may be billed for
13 such services under this section.”.

14 (b) SERVICES OF CERTIFIED REGISTERED NURSE
15 ANESTHETISTS.—Section 1833(l)(1)(B) (42 U.S.C.
16 1395l(l)(1)(B)) is amended by adding at the end the fol-
17 lowing: “For anesthesia services furnished on or after
18 January 1, 1994, the Secretary may not modify the meth-
19 odology in effect as of January 1, 1993, for determining
20 the amount of time that may be billed for such services
21 under this section.”.

22 **SEC. 5007. SEPARATE PAYMENT FOR INTERPRETATION OF**
23 **ELECTROCARDIOGRAMS.**

24 (a) IN GENERAL.—Paragraph (3) of section 1848(b)
25 (42 U.S.C. 1395w-4(b)) is amended to read as follows:

1 “(3) TREATMENT OF INTERPRETATION OF
2 ELECTROCARDIOGRAMS.—The Secretary—

3 “(A) shall make separate payment under
4 this section for the interpretation of electro-
5 cardiograms performed or ordered to be per-
6 formed as part of or in conjunction with a visit
7 to or a consultation with a physician, and

8 “(B) shall adjust the relative values estab-
9 lished for visits and consultations under sub-
10 section (c) so as not to include relative value
11 units for interpretations of electrocardiograms
12 in the relative value for visits and consulta-
13 tions.”.

14 (b) ASSURING BUDGET NEUTRALITY.—Section
15 1848(c)(2) (42 U.S.C. 1395w-4(c)(2)) is amended by add-
16 ing at the end the following new subparagraph:

17 “(E) BUDGET NEUTRALITY ADJUST-
18 MENTS.—The Secretary—

19 “(i) shall reduce the relative values
20 for all services (other than anesthesia serv-
21 ices) established under this paragraph
22 (and, in the case of anesthesia services, the
23 conversion factor established by the Sec-
24 retary for such services) by such percent-
25 age as the Secretary determines to be nec-

1 essary so that, beginning in 1996, the
2 amendment made by section 5007(a) of
3 the Omnibus Budget Reconciliation Act of
4 1993 would not result in expenditures
5 under this section that exceed the amount
6 of such expenditures that would have been
7 made if such amendment had not been
8 made, and

9 “(ii) shall reduce the amounts deter-
10 mined under subsection (a)(2)(B)(ii)(I) by
11 such percentage as the Secretary deter-
12 mines to be required to assure that, taking
13 into account the reductions made under
14 clause (i), the amendment made by section
15 5007(a) of the Omnibus Budget Reconcili-
16 ation Act of 1993 would not result in ex-
17 penditures under this section in 1994 that
18 exceed the amount of such expenditures
19 that would have been made if such amend-
20 ment had not been made.”.

21 (c) CONFORMING AMENDMENTS.—Section 1848 (42
22 U.S.C. 1395w-4) is amended—

23 (1) in subsection (a)(2)(B)(ii)(I), by inserting
24 “and as adjusted under subsection (c)(2)(E)(ii)”
25 after “for 1994”;

1 (2) in subsection (c)(2)(A)(i), by adding at the
2 end the following: “Such relative values are subject
3 to adjustment under subparagraph (E)(i).”; and

4 (3) in subsection (i)(1)(B), by adding at the
5 end “including adjustments under subsection
6 (c)(2)(E).”.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to services furnished on or after
9 January 1, 1994.

10 **SEC. 5008. PAYMENTS FOR NEW PHYSICIANS AND PRACTI-**
11 **TIONERS.**

12 (a) EQUAL TREATMENT OF NEW PHYSICIANS AND
13 PRACTITIONERS.—(1) Section 1848(a) (42 U.S.C.
14 1395w-4(a)) is amended by striking paragraph (4).

15 (2) Section 1842(b)(4) (42 U.S.C. 1395u(b)(4)) is
16 amended by striking subparagraph (F).

17 (b) BUDGET NEUTRALITY ADJUSTMENT.—Notwith-
18 standing any other provision of law, the Secretary of
19 Health and Human Services shall reduce the following val-
20 ues and amounts for 1994 (to be applied for that year
21 and subsequent years) by such uniform percentage as the
22 Secretary determines to be required to assure that the
23 amendments made by subsection (a) will not result in ex-
24 penditures under part B of title XVIII of the Social Secu-
25 rity Act in 1994 that exceed the amount of such expendi-

1 tures that would have been made if such amendments had
2 not been made:

3 (1) The relative values established under section
4 1848(c) of such Act for services (other than anesthe-
5 sia services) and, in the case of anesthesia services,
6 the conversion factor established under section 1848
7 of such Act for such services.

8 (2) The amounts determined under section
9 1848(a)(2)(B)(ii)(I) of such Act.

10 (3) The prevailing charges or fee schedule
11 amounts to be applied under such part for services
12 of a health care practitioner (as defined in section
13 1842(b)(4)(F)(ii)(I) of such Act, as in effect before
14 the date of the enactment of this Act).

15 (c) CONFORMING AMENDMENTS.—Section 1848 (42
16 U.S.C. 1395w-4), as amended by section 5007(c), is
17 amended—

18 (1) in subsection (a)(2)(B)(ii)(I), by inserting
19 “and section 5008(b) of the Omnibus Budget Rec-
20 onciliation Act of 1993” after “for 1994”;

21 (2) in subsection (c)(2)(A)(i), by inserting “and
22 section 5008(b) of the Omnibus Budget Reconcili-
23 ation Act of 1993” after “under subparagraph
24 (E)(i)”; and

1 (c) DEADLINE FOR INITIAL REVIEW AND REVI-
2 SION.—The Secretary of Health and Human Services
3 shall first review and revise geographic adjustment factors
4 under section 1848(e)(1)(C) of the Social Security Act by
5 not later than January 1, 1995.

6 (d) REPORT ON REVIEW PROCESS.—Not later than
7 1 year after the date of the enactment of this Act, the
8 Secretary of Health and Human Services shall study and
9 report to the Committee on Finance of the Senate and
10 the Committee on Ways and Means and the Committee
11 on Energy and Commerce of the House of Representatives
12 on—

13 (1) the data necessary to review and revise the
14 indices established under section 1848(e)(1)(A) of
15 the Social Security Act, including—

16 (A) the shares allocated to physicians'
17 work effort, practice expenses (other than mal-
18 practice expenses), and malpractice expenses;

19 (B) the weights assigned to the input com-
20 ponents of such shares; and

21 (C) the index values assigned to such com-
22 ponents;

23 (2) any limitations on the availability of data
24 necessary to review and revise such indices at least
25 every three years;

1 (3) ways of addressing such limitations, with
2 particular attention to the development of alternative
3 data sources for input components for which current
4 index values are based on data collected less fre-
5 quently than every three years; and

6 (4) the costs of developing more accurate and
7 timely data.

8 **SEC. 5010. EXTRA-BILLING LIMITS.**

9 (a) ENFORCEMENT AND UNIFORM APPLICATION.—

10 (1) ENFORCEMENT.—Paragraph (1) of section
11 1848(g) (42 U.S.C. 1395w-4(g)) is amended to read
12 as follows:

13 “(1) LIMITATION ON ACTUAL CHARGES.—

14 “(A) IN GENERAL.—In the case of a
15 nonparticipating physician or nonparticipating
16 supplier or other person (as defined in section
17 1842(i)(2)) who does not accept payment on an
18 assignment-related basis for a physician’s serv-
19 ice furnished with respect to an individual en-
20 rolled under this part, the following rules apply:

21 “(i) APPLICATION OF LIMITING
22 CHARGE.—No person may bill or collect an
23 actual charge for the service in excess of
24 the limiting charge described in paragraph
25 (2) for such service.

1 “(ii) NO LIABILITY FOR EXCESS
2 CHARGES.—No person is liable for pay-
3 ment of any amounts billed for the service
4 in excess of such limiting charge.

5 “(iii) CORRECTION OF EXCESS
6 CHARGES.—If such a physician, supplier,
7 or other person bills, but does not collect,
8 an actual charge for a service in violation
9 of clause (i), the physician, supplier, or
10 other person shall reduce on a timely basis
11 the actual charge billed for the service to
12 an amount not to exceed the limiting
13 charge for the service.

14 “(iv) REFUND OF EXCESS COLLEC-
15 TIONS.—If such a physician, supplier, or
16 other person collects an actual charge for
17 a service in violation of clause (i), the phy-
18 sician, supplier, or other person shall pro-
19 vide on a timely basis a refund to the indi-
20 vidual charged in the amount by which the
21 amount collected exceeded the limiting
22 charge for the service. The amount of such
23 a refund shall be reduced to the extent the
24 individual has an outstanding balance owed
25 by the individual to the physician.

1 “(B) SANCTIONS.—If a physician, supplier,
2 or other person—

3 “(i) knowingly and willfully bills or
4 collects for services in violation of subpara-
5 graph (A)(i) on a repeated basis, or

6 “(ii) fails to comply with clause (iii)
7 or (iv) of subparagraph (A) on a timely
8 basis,

9 the Secretary may apply sanctions against the
10 physician, supplier, or other person in accord-
11 ance with paragraph (2) of section 1842(j). In
12 applying this subparagraph, paragraph (4) of
13 such section applies in the same manner as
14 such paragraph applies to such section and any
15 reference in such section to a physician is
16 deemed also to include a reference to a supplier
17 or other person under this subparagraph.

18 “(C) TIMELY BASIS.—For purposes of this
19 paragraph, a correction of a bill for an excess
20 charge or refund of an amount with respect to
21 a violation of subparagraph (A)(i) in the case of
22 a service is considered to be provided ‘on a
23 timely basis’, if the reduction or refund is made
24 not later than 30 days after the date the physi-
25 cian, supplier, or other person is notified by the

1 carrier under this part of such violation and of
2 the requirements of subparagraph (A).”.

3 (2) UNIFORM APPLICATION OF EXTRA-BILLING
4 LIMITS TO PHYSICIANS’ SERVICES.—

5 (A) IN GENERAL.—Section 1848(g)(2)(C)
6 (42 U.S.C. 1395w-4(g)(2)(C)) is amended by
7 inserting “or for nonparticipating suppliers or
8 other persons” after “nonparticipating physi-
9 cians”.

10 (B) CONFORMING DEFINITION.—Section
11 1842(i)(2) (42 U.S.C. 1395u(i)(2)) is amend-
12 ed—

13 (i) by striking “, and the term” and
14 inserting “; the term”, and

15 (ii) by inserting before the period at
16 the end the following: “; and the term
17 ‘nonparticipating supplier or other person’
18 means a supplier or other person (exclud-
19 ing a provider of services) that is not a
20 participating physician or supplier (as de-
21 fined in subsection (h)(1))”.

22 (3) ADDITIONAL CONFORMING AMENDMENTS.—
23 Section 1848 (42 U.S.C. 1395w-4) is amended—

24 (A) in subsection (a)(3)—

1 (i) by inserting “AND SUPPLIERS”
2 after “PHYSICIANS”,

3 (ii) by inserting “or a
4 nonparticipating supplier or other person”
5 after “nonparticipating physician”, and

6 (iii) by adding at the end the follow-
7 ing: “In the case of physicians’ services
8 (including services which the Secretary ex-
9 cludes pursuant to subsection (j)(3)) of a
10 nonparticipating physician, supplier, or
11 other person for which payment is made
12 under this part on a basis other than the
13 fee schedule amount, the payment shall be
14 based on 95 percent of the payment basis
15 for such services furnished by a participat-
16 ing physician, supplier, or other person.”;

17 (B) in subsection (g)(1)(A), as amended by
18 subsection (a), in the matter before clause (i),
19 by inserting “(including services which the Sec-
20 retary excludes pursuant to subsection (j)(3))”
21 after “a physician’s service”;

22 (C) in subsection (g)(2)(D), by inserting
23 “(or, if payment under this part is made on a
24 basis other than the fee schedule under this sec-

1 tion, 95 percent of the other payment basis)”
2 after “subsection (a)”;

3 (D) in subsection (g)(3)(B)—

4 (i) by inserting after the first sentence
5 the following: “ No person is liable for pay-
6 ment of any amounts billed for such a
7 service in violation of the previous sen-
8 tence.”, and

9 (ii) in the last sentence, by striking
10 “previous sentence” and inserting “first
11 sentence”;

12 (E) in subsection (h)—

13 (i) by inserting “or nonparticipating
14 supplier or other person furnishing physi-
15 cians’ services (as defined in section
16 1848(j)(3))” after “physician” the first
17 place it appears,

18 (ii) by inserting “, supplier, or other
19 person” after “physician” the second place
20 it appears, and

21 (iii) by inserting “, suppliers, and
22 other persons” after “physicians” the sec-
23 ond place it appears; and

1 (F) in subsection (j)(3), by inserting “, ex-
2 cept for purposes of subsections (a)(3), (g), and
3 (h)” after “tests and”.

4 (b) CLARIFICATION OF MANDATORY ASSIGNMENT
5 RULES FOR CERTAIN PRACTITIONERS.—

6 (1) IN GENERAL.—Section 1842(b) (42 U.S.C.
7 1395u(b)) is amended by adding at the end the fol-
8 lowing new paragraph:

9 “(19)(A) Payment for any service furnished by a
10 practitioner described in subparagraph (C) and for which
11 payment may be made under this part on a reasonable
12 charge or fee schedule basis may only be made under this
13 part on an assignment-related basis.

14 “(B) A practitioner described in subparagraph (C) or
15 other person may not bill (or collect any amount from)
16 the individual or another person for any service described
17 in subparagraph (A), except for deductible and coinsur-
18 ance amounts applicable under this part. No person is lia-
19 ble for payment of any amounts billed for such a service
20 in violation of the previous sentence. If a practitioner or
21 other person knowingly and willfully bills (or collects an
22 amount) for such a service in violation of such sentence,
23 the Secretary may apply sanctions against the practitioner
24 or other person in the same manner as the Secretary may
25 apply sanctions against a physician in accordance with

1 section 1842(j)(2) in the same manner as such section ap-
2 plies with respect to a physician. Paragraph (4) of section
3 1842(j) shall apply in this subparagraph in the same man-
4 ner as such paragraph applies to such section.

5 “(C) A practitioner described in this subparagraph
6 is any of the following:

7 “(i) A physician assistant, nurse practitioner, or
8 clinical nurse specialist (as defined in section
9 1861(aa)(5)).

10 “(ii) A certified registered nurse anesthetist (as
11 defined in section 1861(bb)(2)).

12 “(iii) A certified nurse-midwife (as defined in
13 section 1861(gg)(2)).

14 “(iv) A clinical social worker (as defined in sec-
15 tion 1861(hh)(1)).

16 “(v) A clinical psychologist (as defined by the
17 Secretary for purposes of section 1861(ii)).

18 “(D) For purposes of this paragraph, a service fur-
19 nished by a practitioner described in subparagraph (C) in-
20 cludes any services and supplies furnished as incident to
21 the service as would otherwise be covered under this part
22 if furnished by a physician or as incident to a physician’s
23 service.”.

24 (2) CONFORMING AMENDMENTS.—

1 (A) Section 1833 (42 U.S.C. 1395l) is
2 amended—

3 (i) in subsection (l)(5), by striking
4 subparagraph (B) and redesignating sub-
5 paragraph (C) as subparagraph (B);

6 (ii) by striking subsection (p); and

7 (iii) in subsection (r), by striking
8 paragraph (3) and redesignating para-
9 graph (4) as paragraph (3).

10 (B) Section 1842(b)(12) (42 U.S.C.
11 1395u(b)(12)) is amended by striking subpara-
12 graph (C).

13 (c) INFORMATION ON EXTRA-BILLING LIMITS.—

14 (1) PART OF EXPLANATION OF MEDICARE BEN-
15 EFITS.—Section 1842(h)(7) (42 U.S.C.
16 1395u(h)(7)) is amended—

17 (A) by striking “and” at the end of sub-
18 paragraph (B),

19 (B) in subparagraph (C), by striking “shall
20 include”,

21 (C) in subparagraph (C), by striking the
22 period at the end and inserting “, and”, and

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

1 “(D) in the case of services for which the billed
2 amount exceeds the limiting charge imposed under
3 section 1848(g), information regarding such applica-
4 ble limiting charge (including information concern-
5 ing the right to a refund under section
6 1848(g)(1)(A)(iv)).”.

7 (2) DETERMINATIONS BY CARRIERS.—Subpara-
8 graph (G) of section 1842(b)(3) (42 U.S.C.
9 1395u(b)(3)) is amended to read as follows:

10 “(G) will, for a service that is furnished with
11 respect to an individual enrolled under this part,
12 that is not paid on an assignment-related basis, and
13 that is subject to a limiting charge under section
14 1848(g)—

15 “(i) determine, prior to making payment,
16 whether the amount billed for such service ex-
17 ceeds the limiting charge applicable under sec-
18 tion 1848(g)(2);

19 “(ii) notify the physician, supplier, or other
20 person periodically (but not less often than once
21 every 30 days) of determinations that amounts
22 billed exceeded such applicable limiting charges;
23 and

24 “(iii) provide for prompt response to in-
25 quiries of physicians, suppliers, and other per-

1 sons concerning the accuracy of such limiting
2 charges for their services;”.

3 (d) REPORT ON CHARGES IN EXCESS OF LIMITING
4 CHARGE.—Section 1848(g)(6)(B) (42 U.S.C. 1395w-
5 4(g)(6)(B)) is amended by inserting “the extent to which
6 actual charges exceed limiting charges, the number and
7 types of services involved, and the average amount of ex-
8 cess charges and” after “report to the Congress”.

9 (e) MISCELLANEOUS AND TECHNICAL AMEND-
10 MENTS.—Section 1833 (42 U.S.C. 1395l) is amended—

11 (1) in subsection (a)(1), as amended by section
12 5070(e)(2)—

13 (A) by striking “and” before “(O)”, and

14 (B) by inserting before the semicolon at
15 the end the following: “, and (P) with respect
16 to services described in clauses (i), (ii) and (iv)
17 of section 1861(s)(2)(K), the amounts paid are
18 subject to the provisions of section
19 1842(b)(12)”;

20 (2) in subsection (h)(5)(D)—

21 (A) by striking “paragraphs (2) and (3)”
22 and by inserting “paragraph (2)”, and

23 (B) by adding at the end the following:
24 “Paragraph (4) of such section shall apply in

1 this subparagraph in the same manner as such
2 paragraph applies to such section.”.

3 (f) EFFECTIVE DATES.—

4 (1) ENFORCEMENT AND UNIFORM APPLICA-
5 TION; MISCELLANEOUS AND TECHNICAL AMEND-
6 MENTS.—The amendments made by subsections (a)
7 and (e) shall apply to services furnished on or after
8 the date of the enactment of this Act; except that
9 the amendments made by subsection (a) shall not
10 apply to services of a nonparticipating supplier or
11 other person furnished before January 1, 1994.

12 (2) PRACTITIONERS.—The amendments made
13 by subsection (b) shall apply to services furnished on
14 or after January 1, 1994.

15 (3) EOMBS.—The amendments made by sub-
16 section (c)(1) shall apply to explanations of benefits
17 provided on or after January 1, 1994.

18 (4) CARRIER DETERMINATIONS.—The amend-
19 ments made by subsection (c)(2) shall apply to con-
20 tracts as of January 1, 1994.

21 (5) REPORT.—The amendment made by sub-
22 section (d) shall apply to reports for years beginning
23 with 1994.

1 **SEC. 5011. RELATIVE VALUES FOR PEDIATRIC SERVICES.**

2 (a) IN GENERAL.—The Secretary of Health and
3 Human Services shall fully develop, by not later than July
4 1, 1994, relative values for the full range of pediatric phy-
5 sicians' services which are consistent with the relative val-
6 ues developed for other physicians' services under section
7 1848(c) of the Social Security Act. In developing such val-
8 ues, the Secretary shall conduct such refinements as may
9 be necessary to produce appropriate estimates for such rel-
10 ative values.

11 (b) STUDY.—

12 (1) IN GENERAL.—The Secretary shall conduct
13 a study of the relative values for pediatric and other
14 services to determine whether there are significant
15 variations in the resources used in providing similar
16 services to different populations. In conducting such
17 study, the Secretary shall consult with appropriate
18 organizations representing pediatricians and other
19 physicians and physical and occupational therapists.

20 (2) REPORT.—Not later than July 1, 1994, the
21 Secretary shall submit to Congress a report on the
22 study conducted under paragraph (1). Such report
23 shall include any appropriate recommendations re-
24 garding needed changes in coding or other payment
25 policies to ensure that payments for pediatric serv-

1 “(E) for responding to inquiries respecting phy-
2 sicians’ services or for providing information with re-
3 spect to medical review of such services.”.

4 (b) CLARIFICATION OF PERMISSIBLE SUBSTITUTE
5 BILLING ARRANGEMENTS.—

6 (1) IN GENERAL.—Clause (D) of section
7 1842(b)(6) (42 U.S.C. 1395u(b)(6)) is amended to
8 read as follows: “(D) payment may be made to a
9 physician for physicians’ services (and services fur-
10 nished incident to such services) furnished by a sec-
11 ond physician to patients of the first physician if (i)
12 the first physician is unavailable to provide the serv-
13 ices; (ii) the services are furnished pursuant to an
14 arrangement between the two physicians that (I) is
15 informal and reciprocal, or (II) involves per diem or
16 other fee-for-time compensation for such services;
17 (iii) the services are not provided by the second phy-
18 sician over a continuous period of more than 60
19 days; and (iv) the claim form submitted to the car-
20 rier for such services includes the second physician’s
21 unique identifier (provided under the system estab-
22 lished under subsection (r)) and indicates that the
23 claim meets the requirements of this clause for pay-
24 ment to the first physician”.

1 (B) in subparagraph (B)—

2 (i) by striking “, simple and subcutane-
3 ous”,

4 (ii) by striking “(HCPCS codes 19160 and
5 19162)” and inserting “(HCPCS code 19160)”,
6 and

7 (iii) by striking all that follows “(HCPCS
8 codes 92250” and inserting “and 92260).”.

9 (b) RADIOLOGY SERVICES (SECTION 4102 OF
10 OBRA-1990).—(1) Section 1834(b)(4) (42 U.S.C.
11 1395m(b)(4)) is amended by redesignating subparagraphs
12 (E) and (F) as subparagraphs (F) and (G), respectively.

13 (2) Section 1834(b)(4)(D) (42 U.S.C.
14 1395m(b)(4)(D)) is amended—

15 (A) in the matter before clause (i), by striking
16 “shall be determined as follows:” and inserting
17 “shall, subject to clause (vii), be reduced to the ad-
18 justed conversion factor for the locality determined
19 as follows:”,

20 (B) in clause (iv), by striking “LOCAL ADJUST-
21 MENT.—Subject to clause (vii), the conversion factor
22 to be applied to” and inserting “ADJUSTED CONVER-
23 SION FACTOR.—The adjusted conversion factor for”,

24 (C) in clause (vii), by striking “under this sub-
25 paragraph”, and

1 (D) in clause (vii), by inserting “reduced under
2 this subparagraph by” after “shall not be”.

3 (3) Section 4102(c)(2) of OBRA-1990 is amended
4 by striking “radiology services” and all that follows and
5 inserting “nuclear medicine services”.

6 (4) Section 4102(d) of OBRA-1990 is amended by
7 striking “new paragraph” and inserting “new subpara-
8 graph”.

9 (5) Section 1834(b)(4)(E) (42 U.S.C.
10 1395m(b)(4)(E)) is amended by inserting “RULE FOR
11 CERTAIN SCANNING SERVICES.—” after “(E)”.

12 (6) Section 1848(a)(2)(D)(iii) (42 U.S.C. 1395w-
13 4(a)(2)(D)(iii)) is amended by striking “that are subject
14 to section 6105(b) of the Omnibus Budget Reconciliation
15 Act of 1989” and by striking “provided under such sec-
16 tion” and inserting “provided under section 6105(b) of the
17 Omnibus Budget Reconciliation Act of 1989”.

18 (c) ANESTHESIA SERVICES (SECTION 4103 OF
19 OBRA-1990).—(1) Section 4103(a) of OBRA-1990 is
20 amended by striking “REDUCTION IN FEE SCHEDULE”
21 and inserting “REDUCTION IN PREVAILING CHARGES”.

22 (2) Section 1842(q)(1)(B) (42 U.S.C.
23 1395u(q)(1)(B)) is amended—

24 (A) in the matter before clause (i), by striking
25 “shall be determined as follows:” and inserting

1 “shall, subject to clause (iv), be reduced to the ad-
2 justed prevailing charge conversion factor for the lo-
3 cality determined as follows:”, and

4 (B) in clause (iii), by striking “Subject to
5 clause (iv), the prevailing charge conversion factor to
6 be applied in” and inserting “The adjusted prevail-
7 ing charge conversion factor for”.

8 (d) ASSISTANTS AT SURGERY (SECTION 4107 OF
9 OBRA-1990).—(1) Section 4107(c) of OBRA-1990 is
10 amended by inserting “(a)(1)” after “subsection”.

11 (2) Section 4107(a)(2) of OBRA-1990 is amended
12 by adding at the end the following: “In applying section
13 1848(g)(2)(D) of the Social Security Act for services of
14 an assistant-at-surgery furnished during 1991, the recog-
15 nized payment amount shall not exceed the maximum
16 amount specified under section 1848(i)(2)(A) of such Act
17 (as applied under this paragraph in such year).”.

18 (e) TECHNICAL COMPONENTS OF DIAGNOSTIC SERV-
19 ICES (SECTION 4108 OF OBRA-1990).—Section 1842(b)
20 (42 U.S.C. 1395u(b)) is amended by redesignating para-
21 graph (18), as added by section 4108(a) of OBRA-1990,
22 as paragraph (17) and, in such paragraph, by inserting
23 “, tests specified in paragraph (14)(C)(i),” after “diag-
24 nostic laboratory tests”.

1 (f) STATEWIDE FEE SCHEDULES (SECTION 4117 OF
2 OBRA-1990).—Section 4117 of OBRA-1990 is amend-
3 ed—

4 (1) in subsection (a)—

5 (A) by striking “IN GENERAL.—”, and

6 (B) by striking “, if the” and all that fol-
7 lows through “1991, ”; and

8 (2) by striking subsections (b), (c), and (d).

9 (g) STUDY OF AGGREGATION RULE FOR CLAIMS OF
10 SIMILAR PHYSICIAN SERVICES (SECTION 4113 OF
11 OBRA-1990).—Section 4113 of OBRA-1990 is amend-
12 ed—

13 (1) by inserting “of the Social Security Act”
14 after “1869(b)(2)”; and

15 (2) by striking “December 31, 1992” and in-
16 serting “December 31, 1993”.

17 (h) OTHER MISCELLANEOUS AND TECHNICAL
18 AMENDMENTS.—(1) The heading of section 1834(f) (42
19 U.S.C. 1395m(f)) is amended by striking “FISCAL YEAR”.

20 (2)(A) Section 4105(b) of OBRA-1990 is amended—

21 (i) in paragraph (2), by striking “amendments”
22 and inserting “amendment”, and

23 (ii) in paragraph (3), by striking “amendments
24 made by paragraphs (1) and (2)” and inserting
25 “amendment made by paragraph (1)”.

1 (B) Section 1848(f)(2)(C) (42 U.S.C. 1395w-
2 4(f)(2)(C)) is amended by inserting “PERFORMANCE
3 STANDARD RATES OF INCREASE FOR FISCAL YEAR
4 1991.—” after “(C)”.

5 (C) Section 4105(d) of OBRA-1990 is amended by
6 inserting “PUBLICATION OF PERFORMANCE STANDARD
7 RATES.—” after “(d)”.

8 (3) Section 1842(b)(4)(F) (42 U.S.C.
9 1395u(b)(4)(F)) is amended—

10 (A) in clause (i), by striking “prevailing
11 charge” the first place it appears and inserting
12 “customary charge”; and

13 (B) in clause (ii)(III), by striking “second,
14 third, and fourth” and inserting “first, second, and
15 third”.

16 (4) Section 1842(b)(4)(F)(ii)(I) (42 U.S.C.
17 1395u(b)(4)(F)(ii)(I)) is amended by striking “respiratory
18 therapist,”.

19 (5) Section 4106(c) of OBRA-1990 is amended by
20 inserting “of the Social Security Act” after
21 “1848(d)(1)(B)”.

22 (6) Section 4114 of OBRA-1990 is amended by
23 striking “patients” the second place it appears.

1 (7) Section 1848(e)(1)(C) (42 U.S.C. 1395w-
2 4(e)(1)(C)) is amended by inserting “date of the” after
3 “since the”.

4 (8) Section 4118(f)(1)(D) of OBRA-1990 is amend-
5 ed by striking “is amended”.

6 (9) Section 4118(f)(1)(N)(ii) of OBRA-1990 is
7 amended by striking “subsection (f)(5)(A)” and inserting
8 “subsection (f)(5)(A)”.

9 (10) Section 1845(e) (42 U.S.C. 1395w-1(e)) is
10 amended—

11 (A) by striking paragraph (2); and

12 (B) by redesignating paragraphs (3), (4), and
13 (5) as paragraphs (2), (3), and (4).

14 (11) Section 4118(j)(2) of OBRA-1990 is amended
15 by striking “In section” and inserting “Section”.

16 (12)(A) Section 1848(i)(3) (42 U.S.C. 1395w-
17 4(i)(3)) is amended by striking the space before the period
18 at the end.

19 (B) Section 1834(a)(10)(B) (42 U.S.C.
20 1395m(a)(10)(B)) is amended by striking “as such provi-
21 sions apply to physicians’ services and physicians and a
22 reasonable charge under section 1842(b)”.

23 (i) OTHER CORRECTIONS.—(1) Effective on the date
24 of the enactment of this Act, section 6102(d)(4) of

1 OBRA–1989 is amended by striking all that follows the
2 first sentence.

3 (2) Effective for payments for fiscal years beginning
4 with fiscal year 1994, section 1842(c)(1) (42 U.S.C.
5 1395u(c)(1)) is amended—

6 (A) in subparagraph (A), by striking “(A) Any
7 contract” and inserting “Any contract”; and

8 (B) by striking subparagraph (B).

9 (j) EFFECTIVE DATE.—Except as provided in sub-
10 section (i), the amendments made by this section and the
11 provisions of this section shall take effect as if included
12 in the enactment of OBRA–1990.

13 **Subchapter B—Outpatient Hospital Services**
14 **and Ambulatory Surgical Services**

15 **SEC. 5021. EXTENSION OF 10 PERCENT REDUCTION IN PAY-**
16 **MENTS FOR CAPITAL-RELATED COSTS OF**
17 **OUTPATIENT HOSPITAL SERVICES.**

18 Section 1861(v)(1)(S)(ii)(I) (42 U.S.C.
19 1395x(v)(1)(S)(ii)(I)) is amended by striking “fiscal year
20 1992, 1993, 1994, or 1995” and inserting “fiscal years
21 1992 through 1998”.

1 **SEC. 5022. EXTENSION OF CURRENT REDUCTION IN PAY-**
2 **MENTS FOR OTHER COSTS OF OUTPATIENT**
3 **HOSPITAL SERVICES.**

4 Section 1861(v)(1)(S)(ii)(II) (42 U.S.C.
5 1395x(v)(1)(S)(ii)(II)) is amended by striking “1991” and
6 all that follows and inserting “1991 through 1998”.

7 **SEC. 5023. 1-YEAR FREEZE IN AMBULATORY SURGERY**
8 **RATES.**

9 The Secretary of Health and Human Services shall
10 not provide for any update in the amounts of payment
11 described in paragraphs (2)(A) and (2)(B) of section
12 1833(i)(2) of the Social Security Act that otherwise would
13 occur in fiscal year 1994.

14 **SEC. 5024. EYE OR EYE AND EAR HOSPITALS.**

15 (a) IN GENERAL.—Section 1833(i) (42 U.S.C.
16 1395l(i)) is amended—

17 (1) in paragraph (3)(B)(ii)—

18 (A) by striking “the last sentence of this
19 clause” and inserting “paragraph (4)”, and

20 (B) by striking the last sentence; and

21 (2) by inserting after paragraph (3) the follow-
22 ing new paragraph:

23 “(4)(A) In the case of a hospital that—

24 “(i) makes application to the Secretary and
25 demonstrates that it specializes in eye services or eye
26 and ear services (as determined by the Secretary),

1 “(ii) receives more than 30 percent of its total
2 revenues from outpatient services, and

3 “(iii) on October 1, 1987—

4 “(I) was an eye specialty hospital or an eye
5 and ear specialty hospital, or

6 “(II) was operated as an eye or eye and
7 ear unit (as defined in subparagraph (B)) of a
8 general acute care hospital which, on the date
9 of the application described in clause (i), oper-
10 ates less than 20 percent of the beds that the
11 hospital operated on October 1, 1987, and has
12 sold or otherwise disposed of a substantial por-
13 tion of the hospital’s other acute care oper-
14 ations,

15 the cost proportion and ASC proportion in effect under
16 subclauses (I) and (II) of paragraph (3)(B)(ii) for cost
17 reporting periods beginning in fiscal year 1988 shall re-
18 main in effect for cost reporting periods beginning on or
19 after October 1, 1988, and before January 1, 1995.

20 “(B) For purposes of this subparagraph (A)(iii)(II),
21 the term ‘eye or eye and ear unit’ means a physically sepa-
22 rate or distinct unit containing separate surgical suites de-
23 voted solely to eye or eye and ear services.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) shall apply to portions of cost reporting pe-
3 riods beginning on or after January 1, 1994.

4 **SEC. 5025. EXTENSION OF CAP ON PAYMENTS FOR INTRA-**
5 **OCULAR LENSES.**

6 (a) IN GENERAL.—Section 4151(c)(3) of OBRA-
7 1990 is amended by striking “December 31, 1992” and
8 inserting “December 31, 1994”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 subsection (a) shall be effective as if included in the enact-
11 ment of OBRA-1990.

12 **SEC. 5026. MISCELLANEOUS AND TECHNICAL CORREC-**
13 **TIONS.**

14 (a) PAYMENT AMOUNTS FOR SERVICES FURNISHED
15 IN AMBULATORY SURGICAL CENTERS.—(1)(A) Section
16 1833(i)(2)(A)(i) (42 U.S.C. 1395l(i)(2)(A)(i)) is amended
17 by striking the comma at the end and inserting the follow-
18 ing: “, as determined in accordance with a survey (based
19 upon a representative sample of procedures and facilities)
20 taken not later than January 1, 1995, and every 5 years
21 thereafter, of the actual audited costs incurred by such
22 centers in providing such services,”.

23 (B) Section 1833(i)(2) (42 U.S.C. 1395l(i)(2)) is
24 amended—

1 (i) in the second sentence of subparagraph (A)
2 and the second sentence of subparagraph (B), by
3 striking “and may be adjusted by the Secretary,
4 when appropriate,”; and

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

7 “(C) Notwithstanding the second sentence of sub-
8 paragraph (A) or the second sentence of subparagraph
9 (B), if the Secretary has not updated amounts established
10 under such subparagraphs with respect to facility services
11 furnished during a fiscal year (beginning with fiscal year
12 1996), such amounts shall be increased by the percentage
13 increase in the consumer price index for all urban consum-
14 ers (U.S. city average) as estimated by the Secretary for
15 the 12-month period ending with the midpoint of the fiscal
16 year involved.”.

17 (C) The second sentence of section 1833(i)(1) (42
18 U.S.C. 1395l(i)(1)) is amended by striking the period and
19 inserting the following: “, in consultation with appropriate
20 trade and professional organizations.”.

21 (2) Section 4151(c)(3) of OBRA-1990 is amended
22 by striking “for the insertion of an intraocular lens” and
23 inserting “for an intraocular lens inserted”.

24 (b) ADJUSTMENTS TO PAYMENT AMOUNTS FOR NEW
25 TECHNOLOGY INTRAOCULAR LENSES.—(1) Not later

1 than 1 year after the date of the enactment of this Act,
2 the Secretary of Health and Human Services (in this sub-
3 section referred to as the “Secretary”) shall develop and
4 implement a process under which interested parties may
5 request review by the Secretary of the appropriateness of
6 the reimbursement amount provided under section
7 1833(i)(2)(A)(iii) of the Social Security Act with respect
8 to a class of new technology intraocular lenses. For pur-
9 poses of the preceding sentence, an intraocular lens may
10 not be treated as a new technology lens unless it has been
11 approved by the Food and Drug Administration.

12 (2) In determining whether to provide an adjustment
13 of payment with respect to a particular lens under para-
14 graph (1), the Secretary shall take into account whether
15 use of the lens is likely to result in reduced risk of
16 intraoperative or postoperative complication or trauma,
17 accelerated postoperative recovery, reduced induced astig-
18 matism, improved postoperative visual acuity, more stable
19 postoperative vision, or other comparable clinical advan-
20 tages.

21 (3) The Secretary shall publish notice in the Federal
22 Register from time to time (but no less often than once
23 each year) of a list of the requests that the Secretary has
24 received for review under this subsection, and shall provide
25 for a 30-day comment period on the lenses that are the

1 subjects of the requests contained in such notice. The Sec-
2 retary shall publish a notice of his determinations with
3 respect to intraocular lenses listed in the notice within 90
4 days after the close of the comment period.

5 (4) Any adjustment of a payment amount (or pay-
6 ment limit) made under this subsection shall become effec-
7 tive not later than 30 days after the date on which the
8 notice with respect to the adjustment is published under
9 paragraph (3).

10 (c) BLEND AMOUNTS FOR AMBULATORY SURGICAL
11 CENTER PAYMENTS.—

12 (1) IN GENERAL.—Subclauses (I) and (II) of
13 section 1833(i)(3)(B)(ii) (42 U.S.C.
14 1395l(i)(3)(B)(ii)) are each amended—

15 (A) by striking “for reporting” and insert-
16 ing “for portions of cost reporting”; and

17 (B) by striking “and on or before” and in-
18 serting “and ending on or before”.

19 (2) EFFECTIVE DATE.—The amendments made
20 by paragraph (1) shall take effect as if included in
21 the enactment of OBRA-1990.

1 **Subchapter C—Durable Medical Equipment**

2 **SEC. 5031. REVISIONS TO PAYMENT RULES FOR DURABLE**
3 **MEDICAL EQUIPMENT.**

4 (a) BASING NATIONAL PAYMENT LIMITS ON MEDIAN
5 OF LOCAL PAYMENT AMOUNTS.—

6 (1) INEXPENSIVE AND ROUTINELY PURCHASED
7 ITEMS; ITEMS REQUIRING FREQUENT AND SUBSTAN-
8 TIAL SERVICING.—(A) Paragraphs (2)(C)(i)(II) and
9 (3)(C)(i)(II) of section 1834(a) (42 U.S.C.
10 1395m(a)) are each amended—

11 (i) by striking “1992” the first place it ap-
12 pears and inserting “1992, 1993, and 1994”;
13 and

14 (ii) by striking “1992” the second place it
15 appears and inserting “the year”.

16 (B) Paragraphs (2)(C)(ii) and (3)(C)(ii) of sec-
17 tion 1834(a) (42 U.S.C. 1395m(a)) are each amend-
18 ed—

19 (i) by striking “and” at the end of
20 subclause (I);

21 (ii) by redesignating subclause (II) as (IV);
22 and

23 (iii) by inserting after subclause (I) the fol-
24 lowing new subclauses:

1 “(II) for 1992 and 1993, the
2 amount determined under this clause
3 for the preceding year increased by
4 the covered item update for such sub-
5 sequent year,

6 “(III) for 1994, the local pay-
7 ment amount determined under clause
8 (i) for such item or device for that
9 year, except that the national limited
10 payment amount may not exceed 100
11 percent of the median of all local pay-
12 ment amounts determined under such
13 clause for such item for that year and
14 may not be less than 85 percent of
15 the median of all local payment
16 amounts determined under such
17 clause for such item or device for that
18 year, and”.

19 (2) MISCELLANEOUS DEVICES AND ITEMS.—
20 Section 1834(a)(8) (42 U.S.C. 1395m(a)(8)) is
21 amended—

22 (A) in subparagraph (A)(ii)(III), by strik-
23 ing “1992” and inserting “1992, 1993, and
24 1994”; and

25 (B) in subparagraph (B)—

1 (i) by striking “and” at the end of
2 clause (i),

3 (ii) by redesignating clause (ii) as (iv),
4 and

5 (iii) by inserting after clause (i) the
6 following new clauses:

7 “(ii) for 1992 and 1993, the amount
8 determined under this subparagraph for
9 the preceding year increased by the cov-
10 ered item update for such subsequent year;

11 “(iii) for 1994, the local purchase
12 price computed under subparagraph (A)(ii)
13 for the item for the year, except that such
14 national limited purchase price may not ex-
15 ceed 100 percent of the median of all local
16 purchase prices computed for the item
17 under such subparagraph for the year and
18 may not be less than 85 percent of the me-
19 dian of all local purchase prices computed
20 under such subparagraph for the item for
21 the year; and”.

22 (3) OXYGEN AND OXYGEN EQUIPMENT.—Sec-
23 tion 1834(a)(9) (42 U.S.C. 1395m(a)(9)) is amend-
24 ed—

1 (A) in subparagraph (A)(ii)(II), by striking
2 “1991 and 1992” and inserting “1991, 1992,
3 1993, and 1994”; and

4 (B) in subparagraph (B)—

5 (i) by striking “and” at the end of
6 clause (i),

7 (ii) by redesignating clause (ii) as (iv),
8 and

9 (iii) by inserting after clause (i) the
10 following new clauses:

11 “(ii) for 1992 and 1993, the amount
12 determined under this subparagraph for
13 the preceding year increased by the cov-
14 ered item update for such subsequent year;

15 “(iii) for 1994, the local monthly pay-
16 ment rate computed under subparagraph
17 (A)(ii) for the item for the year, except
18 that such national limited monthly pay-
19 ment rate may not exceed 100 percent of
20 the median of all local monthly payment
21 rates computed for the item under such
22 subparagraph for the year and may not be
23 less than 85 percent of the median of all
24 local monthly payment rates computed for

1 the item under such subparagraph for the
2 year; and”.

3 (b) PAYMENT FOR PROSTHETIC DEVICES AND
4 ORTHOTICS AND PROSTHETICS.—

5 (1) IN GENERAL.—Section 1834(h)(2) (42
6 U.S.C. 1395m(h)(2)) is amended—

7 (A) in subparagraph (A)(ii)(II), by striking
8 “1992 or 1993” and inserting “1992, 1993, or
9 1994”;

10 (B) in subparagraph (B)(ii), by striking
11 “each subsequent year” and inserting “1993”;

12 (C) in subparagraph (C)(iv), by striking
13 “regional purchase price computed under sub-
14 paragraph (B)” and inserting “national limited
15 purchase price computed under subparagraph
16 (E)”;

17 (D) in subparagraph (D)(ii), by striking “a
18 subsequent year” and inserting “1993”; and

19 (E) by adding at the end the following new
20 subparagraph:

21 “(E) COMPUTATION OF NATIONAL LIM-
22 ITED PURCHASE PRICE.—With respect to the
23 furnishing of a particular item in a year, the
24 Secretary shall compute a national limited pur-
25 chase price—

1 “(i) for 1994, equal to the local pur-
2 chase price computed under subparagraph
3 (A)(ii)(II) for the item for the year, except
4 that such national limited purchase price
5 may not exceed 100 percent of the median
6 of all local purchase prices for the item
7 computed under such subparagraph for the
8 year, and may not be less than 85 percent
9 of the median of all local purchase prices
10 for the item computed under such subpara-
11 graph for the year; and

12 “(ii) for each subsequent year, equal
13 to the amount determined under this sub-
14 paragraph for the preceding year increased
15 by the applicable percentage increase for
16 such subsequent year.”.

17 (2) EXCEPTION FOR CERTAIN ITEMS.—Section
18 1834(h) (42 U.S.C. 1395m(h)), as amended by
19 paragraph (1), is further amended—

20 (A) in paragraph (1)(B), by striking “sub-
21 paragraph (C),” and inserting “subparagraphs
22 (C) and (F),”; and

23 (B) by adding at the end of paragraph (2)
24 the following new subparagraph:

1 “(F) EXCEPTION FOR CERTAIN ITEMS.—
2 Payment for ostomy supplies, tracheostomy
3 supplies, and urologicals shall be made in ac-
4 cordance with subparagraphs (B) and (C) of
5 section 1834(a)(2).”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to items furnished on or after Jan-
8 uary 1, 1994.

9 **SEC. 5032. PAYMENT FOR PARENTERAL AND ENTERAL NU-**
10 **TRIENTS, SUPPLIES, AND EQUIPMENT DUR-**
11 **ING 1994.**

12 In determining the amount of payment under part
13 B of title XVIII of the Social Security Act during 1994,
14 the charges determined to be reasonable with respect to
15 parenteral and enteral nutrients, supplies, and equipment
16 may not exceed the charges determined to be reasonable
17 with respect to such nutrients, supplies, and equipment
18 during 1993.

19 **SEC. 5033. TREATMENT OF NEBULIZERS AND ASPIRATORS.**

20 (a) IN GENERAL.—Section 1834(a)(3)(A) (42 U.S.C.
21 1395m(a)(3)(A)) is amended by striking “ventilators, as-
22 pirators, IPPB machines, and nebulizers” and inserting
23 “ventilators and IPPB machines”.

1 (b) PAYMENT FOR ACCESSORIES RELATING TO
2 NEBULIZERS AND ASPIRATORS.—Section 1834(a)(2)(A)
3 (42 U.S.C. 1395m(a)) is amended—

4 (1) by striking “or” at the end of clause (i),
5 (2) by adding “or” at the end of clause (ii), and
6 (3) by inserting after clause (ii) the following
7 new clause:

8 “(iii) which is an accessory used in
9 conjunction with a nebulizer or aspirator,”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to items furnished on or after Jan-
12 uary 1, 1994.

13 **SEC. 5034. CERTIFICATION OF SUPPLIERS.**

14 (a) REQUIREMENTS.—

15 (1) IN GENERAL.—Section 1834 (42 U.S.C.
16 1395m) is amended by adding at the end the follow-
17 ing new subsection:

18 “(i) REQUIREMENTS FOR SUPPLIERS OF MEDICAL
19 EQUIPMENT AND SUPPLIES.—

20 “(1) ISSUANCE AND RENEWAL OF SUPPLIER
21 NUMBER.—

22 “(A) PAYMENT.—Except as provided in
23 subparagraph (C), no payment may be made
24 under this part after October 1, 1994, for items
25 furnished by a supplier of medical equipment

1 and supplies unless such supplier obtains (and
2 renews at such intervals as the Secretary may
3 require) a supplier number.

4 “(B) STANDARDS FOR POSSESSING A SUP-
5 PLIER NUMBER.—A supplier may not obtain a
6 supplier number unless—

7 “(i) for medical equipment and sup-
8 plies furnished on or after October 1,
9 1994, and before January 1, 1996, the
10 supplier meets standards prescribed by the
11 Secretary; and

12 “(ii) for medical equipment and sup-
13 plies furnished on or after January 1,
14 1996, the supplier meets revised standards
15 prescribed by the Secretary (in consulta-
16 tion with representatives of suppliers of
17 medical equipment and supplies, carriers,
18 and consumers) that shall include require-
19 ments that the supplier—

20 “(I) comply with all applicable
21 State and Federal licensure and regu-
22 latory requirements;

23 “(II) maintain a physical facility
24 on an appropriate site;

1 “(III) have proof of appropriate
2 liability insurance; and

3 “(IV) meet such other require-
4 ments as the Secretary may specify.

5 “(C) EXCEPTION FOR ITEMS FURNISHED
6 AS INCIDENT TO A PHYSICIAN’S SERVICE.—
7 Subparagraph (A) shall not apply with respect
8 to medical equipment and supplies furnished as
9 an incident to a physician’s service.

10 “(D) PROHIBITION AGAINST MULTIPLE
11 SUPPLIER NUMBERS.—The Secretary may not
12 issue more than one supplier number to any
13 supplier of medical equipment and supplies un-
14 less the issuance of more than one number is
15 appropriate to identify subsidiary or regional
16 entities under the supplier’s ownership or con-
17 trol.

18 “(E) PROHIBITION AGAINST DELEGATION
19 OF SUPPLIER DETERMINATIONS.—The Sec-
20 retary may not delegate (other than by contract
21 under section 1842) the responsibility to deter-
22 mine whether suppliers meet the standards nec-
23 essary to obtain a supplier number.

24 “(2) CERTIFICATES OF MEDICAL NECESSITY.—

1 “(A) STANDARDIZED CERTIFICATES.—Not
2 later than October 1, 1994, the Secretary shall,
3 in consultation with carriers under this part,
4 develop one or more standardized certificates of
5 medical necessity (as defined in subparagraph
6 (C)) for medical equipment and supplies for
7 which the Secretary determines that such a cer-
8 tificate is necessary.

9 “(B) PROHIBITION AGAINST DISTRIBUTION
10 BY SUPPLIERS OF CERTIFICATES OF MEDICAL
11 NECESSITY.—

12 “(i) IN GENERAL.—Except as pro-
13 vided in clause (ii), a supplier of medical
14 equipment and supplies may not distribute
15 to physicians or to individuals entitled to
16 benefits under this part for commercial
17 purposes any completed or partially com-
18 pleted certificates of medical necessity on
19 or after October 1, 1994.

20 “(ii) EXCEPTION FOR CERTAIN BILL-
21 ING INFORMATION.—Clause (i) shall not
22 apply with respect to a certificate of medi-
23 cal necessity for any item that is not con-
24 tained on the list of potentially overused
25 items developed by the Secretary under

1 subsection (a)(15)(A) to the extent that
2 such certificate contains only information
3 completed by the supplier of medical equip-
4 ment and supplies identifying such supplier
5 and the beneficiary to whom such medical
6 equipment and supplies are furnished, a
7 description of such medical equipment and
8 supplies, any product code identifying such
9 medical equipment and supplies, and any
10 other administrative information (other
11 than information relating to the bene-
12 ficiary's medical condition) identified by
13 the Secretary. In the event a supplier pro-
14 vides a certificate of medical necessity con-
15 taining information permitted under this
16 clause, such certificate shall also contain
17 the fee schedule amount and the supplier's
18 charge for the medical equipment or sup-
19 plies being furnished prior to distribution
20 of such certificate to the physician.

21 “(iii) PENALTY.—Any supplier of
22 medical equipment and supplies who know-
23 ingly and willfully distributes a certificate
24 of medical necessity in violation of clause
25 (i) is subject to a civil money penalty in an

1 amount not to exceed \$1,000 for each such
2 certificate of medical necessity so distrib-
3 uted. The provisions of section 1128A
4 (other than subsections (a) and (b)) shall
5 apply to civil money penalties under this
6 subparagraph in the same manner as they
7 apply to a penalty or proceeding under sec-
8 tion 1128A(a).

9 “(C) DEFINITION.—For purposes of this
10 paragraph, the term ‘certificate of medical ne-
11 cessity’ means a form or other document con-
12 taining information required by the Secretary to
13 be submitted to show that a covered item is
14 reasonable and necessary for the diagnosis or
15 treatment of illness or injury or to improve the
16 functioning of a malformed body member.

17 “(3) COVERAGE AND REVIEW CRITERIA.—

18 “(A) DEVELOPMENT AND ESTABLISH-
19 MENT.—Not later than January 1, 1996, the
20 Secretary, in consultation with representatives
21 of suppliers of medical equipment and supplies,
22 individuals enrolled under this part, and appro-
23 priate medical specialty societies, shall develop
24 and establish uniform national coverage and
25 utilization review criteria for 200 items of medi-

1 cal equipment and supplies selected in accord-
2 ance with the standards described in subpara-
3 graph (B). The Secretary shall publish the cri-
4 teria as part of the instructions provided to fis-
5 cal intermediaries and carriers under this part
6 and no further publication, including publica-
7 tion in the Federal Register, shall be required.

8 “(B) STANDARDS FOR SELECTING ITEMS
9 SUBJECT TO CRITERIA.—The Secretary may se-
10 lect an item for coverage under the criteria de-
11 veloped and established under subparagraph
12 (A) if the Secretary finds that—

13 “(i) the item is frequently purchased
14 or rented by beneficiaries;

15 “(ii) the item is frequently subject to
16 a determination that such item is not
17 medically necessary; or

18 “(iii) the coverage or utilization cri-
19 teria applied to the item (as of the date of
20 the enactment of this subsection) is not
21 consistent among carriers.

22 “(C) ANNUAL REVIEW AND EXPANSION OF
23 ITEMS SUBJECT TO CRITERIA.—The Secretary
24 shall annually review the coverage and utiliza-
25 tion of items of medical equipment and supplies

1 to determine whether items not included among
2 the items selected under subparagraph (A)
3 should be made subject to uniform national cov-
4 erage and utilization review criteria, and, if ap-
5 propriate, shall develop and apply such criteria
6 to such additional items.

7 “(4) DEFINITION.—The term ‘medical equip-
8 ment and supplies’ means—

9 “(A) durable medical equipment (as de-
10 fined in section 1861(n));

11 “(B) prosthetic devices (as described in
12 section 1861(s)(8));

13 “(C) orthotics and prosthetics (as de-
14 scribed in section 1861(s)(9));

15 “(D) surgical dressings (as described in
16 section 1861(s)(5));

17 “(E) such other items as the Secretary
18 may determine; and

19 “(F) for purposes of paragraphs (1) and
20 (3)—

21 “(i) home dialysis supplies and equip-
22 ment (as described in section
23 1861(s)(2)(F)), and

24 “(ii) immunosuppressive drugs (as de-
25 scribed in section 1861(s)(2)(J)).”.

1 (2) CONFORMING AMENDMENT.—Effective Oc-
2 tober 1, 1994, paragraph (16) of section 1834(a)
3 (42 U.S.C. 1395m(a)) is repealed.

4 (b) REPORT ON EFFECT OF UNIFORM CRITERIA ON
5 UTILIZATION OF ITEMS.—Not later than July 1, 1996, the
6 Secretary shall submit a report to the Committee on Ways
7 and Means and the Committee on Energy and Commerce
8 of the House of Representatives and the Committee on
9 Finance of the Senate analyzing the impact of the uniform
10 criteria established under section 1834(i)(3)(A) of the So-
11 cial Security Act (as added by subsection (a)) on the utili-
12 zation of items of medical equipment and supplies by indi-
13 viduals enrolled under part B of the medicare program.

14 (c) USE OF COVERED ITEMS BY DISABLED BENE-
15 FICIARIES.—

16 (1) IN GENERAL.—The Secretary of Health and
17 Human Services, in consultation with representa-
18 tives of suppliers of durable medical equipment
19 under part B of the medicare program and individ-
20 uals entitled to benefits under such program on the
21 basis of disability, shall conduct a study of the ef-
22 fects of the methodology for determining payments
23 for items of such equipment under such part on the
24 ability of such individuals to obtain items of such
25 equipment, including customized items.

1 (2) REPORT.—Not later than one year after the
2 date of the enactment of this Act, the Secretary
3 shall submit a report to Congress on the study con-
4 ducted under paragraph (1), and shall include in the
5 report such recommendations as the Secretary con-
6 siders appropriate to assure that disabled medicare
7 beneficiaries have access to items of durable medical
8 equipment.

9 (d) CRITERIA FOR TREATMENT OF ITEMS AS PROS-
10 THETICS DEVICES OR ORTHOTICS AND PROSTHETICS.—
11 Not later than one year after the date of the enactment
12 of this Act, the Secretary of Health and Human Services
13 shall submit a report to the Committees on Ways and
14 Means and Energy and Commerce of the House of Rep-
15 resentatives and the Committee on Finance of the Senate
16 describing prosthetic devices or orthotics and prosthetics
17 covered under part B of the medicare program that do
18 not require individualized or custom fitting and adjust-
19 ment to be used by a patient. Such report shall include
20 recommendations for an appropriate methodology for de-
21 termining the amount of payment for such items under
22 such program.

1 **SEC. 5035. PROHIBITION AGAINST CARRIER FORUM SHOP-**
2 **PING.**

3 (a) IN GENERAL.—Section 1834(a)(12) (42 U.S.C.
4 1395m(a)(12)) is amended to read as follows:

5 “(12) USE OF CARRIERS TO PROCESS
6 CLAIMS.—

7 “(A) DESIGNATION OF REGIONAL CAR-
8 RRIERS.—The Secretary may designate, by regu-
9 lation under section 1842, one carrier for one
10 or more entire regions to process all claims
11 within the region for covered items under this
12 section.

13 “(B) PROHIBITION AGAINST CARRIER
14 SHOPPING.—(i) No supplier of a covered item
15 may present or cause to be presented a claim
16 for payment under this part unless such claim
17 is presented to the appropriate regional carrier
18 (as designated by the Secretary).

19 “(ii) For purposes of clause (i), the term
20 ‘appropriate regional carrier’ means the carrier
21 having jurisdiction over the geographic area
22 that includes the permanent residence of the
23 patient to whom the item is furnished.”.

24 (b) EFFECTIVE DATE.—The amendment made by
25 subsection (a) shall apply to items furnished on or after
26 October 1, 1993.

1 (c) CLARIFICATION OF AUTHORITY TO DESIGNATE
2 CARRIERS FOR OTHER ITEMS AND SERVICES.—Nothing
3 in this subsection or the amendment made by this sub-
4 section may be construed to restrict the authority of the
5 Secretary of Health and Human Services to designate re-
6 gional carriers or modify claims jurisdiction rules with re-
7 spect to items or services under part B of the medicare
8 program that are not covered items under section 1834(a)
9 of the Social Security Act or prosthetic devices or orthotics
10 and prosthetics under section 1834(h) of such Act.

11 **SEC. 5036. RESTRICTIONS ON CERTAIN MARKETING AND**
12 **SALES ACTIVITIES.**

13 (a) PROHIBITING UNSOLICITED TELEPHONE CON-
14 TACTS FROM SUPPLIERS OF DURABLE MEDICAL EQUIP-
15 MENT TO MEDICARE BENEFICIARIES.—

16 (1) IN GENERAL.—Section 1834(a) (42 U.S.C.
17 1395m(a)) is amended by adding at the end the fol-
18 lowing new paragraph:

19 “(17) PROHIBITION AGAINST UNSOLICITED
20 TELEPHONE CONTACTS BY SUPPLIERS.—

21 “(A) IN GENERAL.—A supplier of a cov-
22 ered item under this subsection may not contact
23 an individual enrolled under this part by tele-
24 phone regarding the furnishing of a covered
25 item to the individual (other than a covered

1 item the supplier has already furnished to the
2 individual) unless—

3 “(i) the individual gives permission to
4 the supplier to make contact by telephone
5 for such purpose; or

6 “(ii) the supplier has furnished a cov-
7 ered item under this subsection to the indi-
8 vidual during the 15-month period preced-
9 ing the date on which the supplier contacts
10 the individual for such purpose.

11 “(B) PROHIBITING PAYMENT FOR ITEMS
12 FURNISHED SUBSEQUENT TO UNSOLICITED
13 CONTACTS.—If a supplier knowingly contacts
14 an individual in violation of subparagraph (A),
15 no payment may be made under this part for
16 any item subsequently furnished to the individ-
17 ual by the supplier.

18 “(C) EXCLUSION FROM PROGRAM FOR
19 SUPPLIERS ENGAGING IN PATTERN OF UNSO-
20 LICITED CONTACTS.—If a supplier knowingly
21 contacts individuals in violation of subpara-
22 graph (A) to such an extent that the supplier’s
23 conduct establishes a pattern of contacts in vio-
24 lation of such subparagraph, the Secretary shall
25 exclude the supplier from participation in the

1 programs under this Act, in accordance with
2 the procedures set forth in subsections (c), (f),
3 and (g) of section 1128.”.

4 (2) REQUIRING REFUND OF AMOUNTS COL-
5 LECTED FOR DISALLOWED ITEMS.—Section 1834(a)
6 (42 U.S.C. 1395m(a)), as amended by paragraph
7 (1), is amended by adding at the end the following
8 new paragraph:

9 “(18) REFUND OF AMOUNTS COLLECTED FOR
10 CERTAIN DISALLOWED ITEMS.—

11 “(A) IN GENERAL.—If a nonparticipating
12 supplier furnishes to an individual enrolled
13 under this part a covered item for which no
14 payment may be made under this part by rea-
15 son of paragraph (17)(B), the supplier shall re-
16 fund on a timely basis to the patient (and shall
17 be liable to the patient for) any amounts col-
18 lected from the patient for the item, unless—

19 “(i) the supplier establishes that the
20 supplier did not know and could not rea-
21 sonably have been expected to know that
22 payment may not be made for the item by
23 reason of paragraph (17)(B), or

24 “(ii) before the item was furnished,
25 the patient was informed that payment

1 under this part may not be made for that
2 item and the patient has agreed to pay for
3 that item.

4 “(B) SANCTIONS.—If a supplier knowingly
5 and willfully fails to make refunds in violation
6 of subparagraph (A), the Secretary may apply
7 sanctions against the supplier in accordance
8 with section 1842(j)(2).

9 “(C) NOTICE.—Each carrier with a con-
10 tract in effect under this part with respect to
11 suppliers of covered items shall send any notice
12 of denial of payment for covered items by rea-
13 son of paragraph (17)(B) and for which pay-
14 ment is not requested on an assignment-related
15 basis to the supplier and the patient involved.

16 “(D) TIMELY BASIS DEFINED.—A refund
17 under subparagraph (A) is considered to be on
18 a timely basis only if—

19 “(i) in the case of a supplier who does
20 not request reconsideration or seek appeal
21 on a timely basis, the refund is made with-
22 in 30 days after the date the supplier re-
23 ceives a denial notice under subparagraph
24 (C), or

1 “(ii) in the case in which such a re-
2 consideration or appeal is taken, the re-
3 fund is made within 15 days after the date
4 the supplier receives notice of an adverse
5 determination on reconsideration or ap-
6 peal.”.

7 (b) CONFORMING AMENDMENT.—Section 1834(h)(3)
8 (42 U.S.C. 1395m(h)(3)) is amended by striking “Para-
9 graph (12)” and inserting “Paragraphs (12) and (17)”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 subsections (a) and (b) shall apply to items furnished after
12 the expiration of the 60-day period that begins on the date
13 of the enactment of this Act.

14 **SEC. 5037. KICKBACK CLARIFICATION.**

15 (a) IN GENERAL.—Section 1128B(b)(3)(B) (42
16 U.S.C. 1320a–7b(b)(3)(B)) is amended by inserting be-
17 fore the semicolon the following: “(except that in the case
18 of a contract supply arrangement between any entity and
19 a supplier of medical supplies and equipment (as defined
20 in section 1834(i)(4), but not including items described
21 in subparagraph (F) of such section), such employment
22 shall not be considered bona fide to the extent that it in-
23 cludes tasks of a clerical and cataloging nature in trans-
24 mitting to suppliers assignment rights of individuals eligi-

1 ble for benefits under part B of title XVIII, or perform-
2 ance of warehousing or stock inventory functions)”.
3

4 (b) EFFECTIVE DATE.—The amendment made by
5 subsection (a) shall apply with respect to services fur-
6 nished on or after the first day of the first month that
7 begins after the expiration of the 60-day period beginning
8 on the date of the enactment of this Act.

9 **SEC. 5038. BENEFICIARY LIABILITY FOR NONCOVERED**
10 **SERVICES.**

11 (a) UNASSIGNED CLAIMS.—

12 (1) IN GENERAL.—Section 1834(i) (42 U.S.C.
13 1395m(i)), as added by section 5034(a)(1), is
14 amended—

15 (A) by redesignating paragraph (4) as
16 paragraph (5), and

17 (B) by inserting after paragraph (3) the
18 following new paragraph:

19 “(4) LIMITATION ON PATIENT LIABILITY.—If a
20 supplier of medical equipment and supplies (as de-
21 fined in paragraph (5))—

22 “(A) furnishes an item or service to a ben-
23 eficiary for which no payment may be made by
reason of paragraph (1);

1 “(B) furnishes an item or service to a ben-
2 eficiary for which payment is denied in advance
3 under subsection (a)(15); or

4 “(C) furnishes an item or service to a ben-
5 eficiary for which payment is denied under sec-
6 tion 1862(a)(1);

7 any expenses incurred for items and services fur-
8 nished to an individual by such a supplier not on an
9 assigned basis shall be the responsibility of such
10 supplier. The individual shall have no financial re-
11 sponsibility for such expenses and the supplier shall
12 refund on a timely basis to the individual (and shall
13 be liable to the individual for) any amounts collected
14 from the individual for such items or services. The
15 provisions of subsection (a)(18) shall apply to re-
16 funds required under the previous sentence in the
17 same manner as such provisions apply to refunds
18 under such subsection.”.

19 (2) CONFORMING AMENDMENT.—Section
20 1128B(b)(3)(B) (42 U.S.C. 1320a-7b(b)(3)(B)), as
21 amended by section 5037(a), is amended by striking
22 “1834(i)(4)” and inserting “1834(i)(5)”.

23 (b) ASSIGNED CLAIMS.—Section 1879 (42 U.S.C.
24 1395pp) is amended by adding at the end the following
25 new subsection:

1 “(h) If a supplier of medical equipment and supplies
2 (as defined in section 1834(i)(4))—

3 “(1) furnishes an item or service to a bene-
4 ficiary for which no payment may be made by reason
5 of section 1834(i)(1); or

6 “(2) furnishes an item or service to a bene-
7 ficiary for which payment is denied in advance under
8 section 1834(a)(15);

9 any expenses incurred for items and services furnished to
10 an individual by such a supplier on an assignment-related
11 basis shall be the responsibility of such supplier. The indi-
12 vidual shall have no financial responsibility for such ex-
13 penses and the supplier shall refund on a timely basis to
14 the individual (and shall be liable to the individual for)
15 any amounts collected from the individual for such items
16 or services. The provisions of section 1834(a)(18) shall
17 apply to refunds required under the previous sentence in
18 the same manner as such provisions apply to refunds
19 under such section.”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to items or services furnished on
22 or after October 1, 1994.

1 **SEC. 5039. ADJUSTMENTS FOR INHERENT REASONABLE-**
2 **NESS.**

3 (a) ADJUSTMENTS MADE TO FINAL PAYMENT
4 AMOUNTS.—

5 (1) IN GENERAL.—Section 1834(a)(10)(B) (42
6 U.S.C. 1395m(a)(10)(B)) is amended by adding at
7 the end the following: “In applying such provisions
8 to payments for an item under this subsection, the
9 Secretary shall make adjustments to the payment
10 basis for the item described in paragraph (1)(B) if
11 the Secretary determines (in accordance with such
12 provisions and on the basis of prices and costs appli-
13 cable at the time the item is furnished) that such
14 payment basis is not inherently reasonable.”.

15 (2) EFFECTIVE DATE.—The amendment made
16 by paragraph (1) shall take effect on the date of the
17 enactment of this Act.

18 (b) ADJUSTMENT REQUIRED FOR CERTAIN ITEMS.—

19 (1) IN GENERAL.—In accordance with section
20 1834(a)(10)(B) of the Social Security Act (as
21 amended by subsection (a)), the Secretary of Health
22 and Human Services shall determine whether the
23 payment amounts for the items described in para-
24 graph (2) are not inherently reasonable, and shall
25 adjust such amounts in accordance with such section
26 if the amounts are not inherently reasonable.

1 (2) ITEMS DESCRIBED.—The items referred to
2 in paragraph (1) are decubitus care equipment,
3 transcutaneous electrical nerve stimulators, and any
4 other items considered appropriate by the Secretary.

5 **SEC. 5040. PAYMENT FOR SURGICAL DRESSINGS.**

6 (a) IN GENERAL.—Section 1834 (42 U.S.C. 1395m),
7 as amended by section 5034(a)(1), is amended by adding
8 at the end the following new subsection:

9 “(j) PAYMENT FOR SURGICAL DRESSINGS.—

10 “(1) IN GENERAL.—Payment under this sub-
11 section for surgical dressings (described in section
12 1861(s)(5)) shall be made in a lump sum amount
13 for the purchase of the item in an amount equal to
14 80 percent of the lesser of—

15 “(A) the actual charge for the item; or

16 “(B) a payment amount determined in ac-
17 cordance with the methodology described in
18 subparagraphs (B) and (C) of subsection (a)(2)
19 (except that in applying such methodology, the
20 national limited payment amount referred to in
21 such subparagraphs shall be initially computed
22 based on local payment amounts using average
23 reasonable charges for the 12-month period
24 ending December 31, 1992, increased by the

1 covered item updates described in such sub-
2 section for 1993 and 1994)

3 “(2) EXCEPTIONS.—Paragraph (1) shall not
4 apply to surgical dressings that are—

5 “(A) furnished as an incident to a physi-
6 cian’s professional service; or

7 “(B) furnished by a home health agency.”.

8 (b) CONFORMING AMENDMENT.—Section 1833(a)(1)
9 (42 U.S.C. 1395l(a)(1)), as amended by sections
10 5070(e)(2) and 5010(e)(1), is amended—

11 (1) by striking “and” before “(P)”, and

12 (2) by inserting before the semicolon at the end
13 the following: “, and (Q) with respect to surgical
14 dressings, the amounts paid shall be the amounts
15 determined under section 1834(j);”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to items furnished on or after Jan-
18 uary 1, 1994.

19 **SEC. 5041. PAYMENTS FOR TENS DEVICES.**

20 (a) IN GENERAL.—Section 1834(a)(1)(D) (42 U.S.C.
21 1395m(a)(1)(D)) is amended by striking “15 percent” the
22 second place it appears and inserting “45 percent”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 subsection (a) shall apply to items furnished on or after
25 January 1, 1994.

1 **SEC. 5042. MISCELLANEOUS AND TECHNICAL CORREC-**
2 **TIONS.**

3 (a) UPDATES TO PAYMENT AMOUNTS.—Subpara-
4 graph (A) of section 1834(a)(14) (42 U.S.C.
5 1395m(a)(14)) is amended to read as follows:

6 “(A) for 1991 and 1992, the percentage
7 increase in the consumer price index for all
8 urban consumers (U.S. city average) for the 12-
9 month period ending with June of the previous
10 year reduced by 1 percentage point; and”.

11 (b) TREATMENT OF POTENTIALLY OVERUSED ITEMS
12 AND ADVANCED DETERMINATIONS OF COVERAGE.—(1)
13 Effective on the date of the enactment of this Act, section
14 1834(a)(15) (42 U.S.C. 1395m(a)(15)) is amended to
15 read as follows:

16 “(15) SPECIAL TREATMENT FOR POTENTIALLY
17 OVERUSED ITEMS.—

18 “(A) DEVELOPMENT OF LIST OF ITEMS BY
19 SECRETARY.—The Secretary shall develop and
20 periodically update a list of items for which
21 payment may be made under this subsection
22 that are potentially overused, and shall include
23 in such list seat-lift mechanisms, transcutane-
24 ous electrical nerve stimulators, motorized
25 scooters, decubitus care mattresses, and any
26 such other item determined by the Secretary to

1 be potentially overused on the basis of any of
2 the following criteria—

3 “(i) the item is marketed directly to
4 potential patients;

5 “(ii) the item is marketed with an
6 offer to potential patients to waive the
7 costs of coinsurance associated with the
8 item or is marketed as being available at
9 no cost to policyholders of a medicare sup-
10 plemental policy (as defined in section
11 1882(g)(1));

12 “(iii) the item has been subject to a
13 consistent pattern of overutilization; or

14 “(iv) a high proportion of claims for
15 payment for such item under this part may
16 not be made because of the application of
17 section 1862(a)(1).

18 “(B) ITEMS SUBJECT TO SPECIAL CARRIER
19 SCRUTINY.—Payment may not be made under
20 this part for any item contained in the list de-
21 veloped by the Secretary under subparagraph
22 (A) unless the carrier has subjected the claim
23 for payment for the item to special scrutiny or
24 has followed the procedures described in para-
25 graph (11)(C) with respect to the item.”.

1 (2) Effective January 1, 1994, section 1834(a)(11)
2 (42 U.S.C. 1395m(a)) is amended by adding at the end
3 the following new subparagraph:

4 “(C) CARRIER DETERMINATIONS FOR CER-
5 TAIN ITEMS IN ADVANCE.—A carrier shall de-
6 termine in advance whether payment for an
7 item may not be made under this subsection be-
8 cause of the application of section 1862(a)(1)
9 if—

10 “(i) the item is a customized item
11 (other than inexpensive items specified by
12 the Secretary); or

13 “(ii) the item is a specified covered
14 item under subparagraph (B).”.

15 (3) Effective for standards applied for contract years
16 beginning after the date of the enactment of this Act, sec-
17 tion 1842(c) (42 U.S.C. 1395u(c)), as amended by section
18 5013(a), is amended by adding at the end the following
19 new paragraph:

20 “(5) Each contract under this section which provides
21 for the disbursement of funds, as described in subsection
22 (a)(1)(B), shall require the carrier to meet criteria devel-
23 oped by the Secretary to measure the timeliness of carrier
24 responses to requests for payment of items described in
25 section 1834(a)(11)(C).”.

1 (4) Section 1834(h)(3) (42 U.S.C. 1395m(h)(3)) is
2 amended by striking “paragraph (10) and paragraph
3 (11)” and inserting “paragraphs (10) and (11)”.

4 (c) STUDY OF VARIATIONS IN DURABLE MEDICAL
5 EQUIPMENT SUPPLIER COSTS.—

6 (1) COLLECTION AND ANALYSIS OF SUPPLIER
7 COST DATA.—The Administrator of the Health Care
8 Financing Administration shall, in consultation with
9 appropriate organizations, collect data on supplier
10 costs of durable medical equipment for which pay-
11 ment may be made under part B of the medicare
12 program, and shall analyze such data to determine
13 the proportions of such costs attributable to the
14 service and product components of furnishing such
15 equipment and the extent to which such proportions
16 vary by type of equipment and by the geographic re-
17 gion in which the supplier is located.

18 (2) DEVELOPMENT OF GEOGRAPHIC ADJUST-
19 MENT INDEX; REPORTS.—Not later than January 1,
20 1995—

21 (A) the Administrator shall submit a re-
22 port to the Committees on Energy and Com-
23 merce and Ways and Means of the House of
24 Representatives and the Committee on Finance
25 of the Senate on the data collected and the

1 analysis conducted under paragraph (1), and
2 shall include in such report the Administrator’s
3 recommendations for a geographic cost adjust-
4 ment index for suppliers of durable medical
5 equipment under the medicare program and an
6 analysis of the impact of such proposed index
7 on payments under the medicare program; and

8 (B) the Comptroller General shall submit a
9 report to the Committees on Energy and Com-
10 merce and Ways and Means of the House of
11 Representatives and the Committee on Finance
12 of the Senate analyzing on a geographic basis
13 the supplier costs of durable medical equipment
14 under the medicare program.

15 (d) OXYGEN RETESTING.—Section 1834(a)(5)(E)
16 (42 U.S.C. 1395m(a)(5)(E)) is amended by striking “55”
17 and inserting “56”.

18 (e) OTHER MISCELLANEOUS AND TECHNICAL
19 AMENDMENTS.—(1) Section 4152(a)(3) of OBRA–1990
20 is amended by striking “amendment made by subsection
21 (a)” and inserting “amendments made by this sub-
22 section”.

23 (2) Section 4152(c)(2) of OBRA–1990 is amended
24 by striking “1395m(a)(7)(A)” and inserting
25 “1395m(a)(7)”.

1 (3) Section 1834(a)(7)(A)(iii)(II) (42 U.S.C.
2 1395m(a)(7)(A)(iii)(II)) is amended by striking “clause
3 (v)” and inserting “clause (vi)”.

4 (4) Section 1834(a)(7)(C)(i) (42 U.S.C.
5 1395m(a)(7)(C)(i)) is amended by striking “or paragraph
6 (3)”.

7 (5) Section 1834(a)(3) (42 U.S.C. 1395m(a)(3)) is
8 amended by striking subparagraph (D).

9 (6) Section 4153(c)(1) of OBRA-1990 is amended
10 by striking “1834(a)” and inserting “1834(h)”.

11 (7) Section 4153(d)(2) of OBRA-1990 is amended
12 by striking “Reconciliation” and inserting “Reconcili-
13 ation”.

14 (8)(A) Section 1834(a) (42 U.S.C. 1395m(a)) is
15 amended by striking paragraph (6).

16 (B) Section 1834(a) (42 U.S.C. 1395m(a)) is amend-
17 ed—

18 (i) in subparagraphs (A) and (B) of paragraph
19 (1), by striking “(2) through (7)” each place it ap-
20 pears and inserting “(2) through (5) and (7)”;

21 (ii) in paragraph (7), by striking “(2) through
22 (6)” and inserting “(2) through (5)”;

23 (iii) in paragraph (8), by striking “paragraphs
24 (6) and (7)” each place it appears in the matter pre-

1 ceding subparagraph (A) and in subparagraph (C)
2 and inserting “paragraph (7)”; and

3 (iv) in paragraph (8)(A)(i), by striking “de-
4 scribed—” and all that follows and inserting “de-
5 scribed in paragraph (7) equal to the average of the
6 purchase prices on the claims submitted on an as-
7 signment-related basis for the unused item supplied
8 during the 6-month period ending with December
9 1986.”.

10 (9) The amendments made by this subsection shall
11 take effect as if included in the enactment of OBRA-1990.

12 **Subchapter D—Part B Premium**

13 **SEC. 5051. PART B PREMIUM.**

14 Section 1839(e) (42 U.S.C. 1395r(e)) is amended—

15 (1) in paragraph (1)(A), by inserting “and for
16 each month in 1996 and 1997” after “January
17 1991”, and

18 (2) in paragraph (2), by striking “1991” and
19 inserting “1998”.

20 **Subchapter E—Other Provisions**

21 **SEC. 5061. PAYMENTS FOR CLINICAL DIAGNOSTIC LABORA-** 22 **TORY TESTS.**

23 (a) LOWER CAP.—Section 1833(h)(4)(B) (42 U.S.C.
24 1395l(h)(4)(B)) is amended—

25 (1) by striking “and” at the end of clause (iii),

1 (2) in clause (iv), by inserting “and before Jan-
2 uary 1, 1994,” after “1990,”

3 (3) by striking the period at the end of clause
4 (iv) and inserting “, and”, and

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

6 “(v) after December 31, 1993, is equal to 76
7 percent of the median of all the fee schedules estab-
8 lished for that test for that laboratory setting under
9 paragraph (1).”.

10 (b) TWO PERCENT UPDATE FOR 1994 THROUGH
11 1998.—Section 1833(h)(2)(A)(ii)(III) (42 U.S.C.
12 1395l(h)(2)(A)(ii)(III)) is amended by striking “1991,
13 1992, and 1993” and inserting “1991 through 1998”.

14 **SEC. 5062. TREATMENT OF INPATIENTS AND PROVISION OF**
15 **DIAGNOSTIC AND THERAPEUTIC X-RAY SERV-**
16 **ICES BY RURAL HEALTH CLINICS AND FED-**
17 **ERALLY QUALIFIED HEALTH CENTERS.**

18 (a) TREATMENT OF INPATIENTS.—Section 1861(aa)
19 (42 U.S.C. 1395x(aa)) is amended—

20 (1) in paragraph (1), in the matter following
21 subparagraph (C), by striking “as an outpatient”
22 and inserting “as a patient”;

23 (2) in paragraph (2)(A), by striking “furnishing
24 to outpatients” and inserting “furnishing to pa-
25 tients”; and

1 (3) in paragraph (3), in the matter following
2 subparagraph (B), by striking “as an outpatient”
3 and inserting “as a patient”.

4 (b) TREATMENT OF DIAGNOSTIC AND THERAPEUTIC
5 X-RAY SERVICES.—Section 1861(aa) (42 U.S.C.
6 1395x(aa)) is further amended—

7 (1) in paragraph (1)(A), by inserting “(i)” after
8 “(A)” and by adding at the end the following: “and
9 (ii) diagnostic and therapeutic x-ray services,” and
10 (2) in paragraph (2)(A), by striking “(A)” and
11 inserting “(A)(i)”.

12 (c) CONFORMING AMENDMENT.—Section
13 1862(a)(14) (42 U.S.C. 1395y(a)(14)) is amended by
14 striking “and services of a certified registered nurse anes-
15 thetist” and inserting “services of a certified registered
16 nurse anesthetist, rural health clinic services, and Feder-
17 ally-qualified health center services”.

18 (d) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect on January 1, 1994, and shall
20 apply to services furnished on or after such date.

21 **SEC. 5063. APPLICATION OF MAMMOGRAPHY CERTIFI-**
22 **CATION REQUIREMENTS.**

23 (a) SCREENING MAMMOGRAPHY.—Section 1834(c)
24 (42 U.S.C. 1395m(c)) is amended—

1 (1) in paragraph (1)(B), by striking “meets the
2 quality standards established under paragraph (3)”
3 and inserting “is conducted by a facility that has a
4 certificate (or provisional certificate) issued under
5 section 354 of the Public Health Service Act”;

6 (2) in paragraph (1)(C)(iii), by striking “para-
7 graph (4)” and inserting “paragraph (3)”;

8 (3) by striking paragraph (3); and

9 (4) by redesignating paragraphs (4) and (5) as
10 paragraphs (3) and (4).

11 (b) DIAGNOSTIC MAMMOGRAPHY.—Section
12 1861(s)(3) (42 U.S.C. 1395x(s)(3)) is amended by insert-
13 ing “and including diagnostic mammography if conducted
14 by a facility that has a certificate (or provisional certifi-
15 cate) issued under section 354 of the Public Health Serv-
16 ice Act” after “necessary”.

17 (c) CONFORMING AMENDMENTS.—(1) Section
18 1862(a)(1)(F) (42 U.S.C. 1395y(a)(1)(F)) is amended by
19 striking “or which does not meet the standards established
20 under section 1834(c)(3)” and inserting “or which is not
21 conducted by a facility described in section
22 1834(c)(1)(B)”.

23 (2) Section 1863 (42 U.S.C. 1395z) is amended by
24 striking “or whether screening mammography meets the
25 standards established under section 1834(c)(3),”.

1 (3) The first sentence of section 1864(a) (42 U.S.C.
2 1395aa(a)) is amended by striking “, or whether screening
3 mammography meets the standards established under sec-
4 tion 1834(c)(3)”.

5 (4) The third sentence of section 1865(a) (42 U.S.C.
6 1395bb(a)) is amended by striking “1834(c)(3),”.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to mammography furnished by a
9 facility on and after the first date that the certificate re-
10 quirements of section 354(b) of the Public Health Service
11 Act apply to such mammography conducted by such facil-
12 ity.

13 **SEC. 5064. EXTENSION OF ALZHEIMER’S DISEASE DEM-**
14 **ONSTRATION.**

15 Section 9342 of OBRA–1986, as amended by section
16 4164(a)(2) of OBRA–1990, is amended—

17 (1) in subsection (c)(1), by striking “4 years”
18 and inserting “5 years”; and

19 (2) in subsection (f)—

20 (A) by striking “\$55,000,000” and insert-
21 ing “\$60,000,000”, and

22 (B) by striking “\$3,000,000” and insert-
23 ing “\$5,000,000”.

1 **SEC. 5065. ORAL CANCER DRUGS.**

2 (a) COVERAGE OF CERTAIN SELF-ADMINISTERED
3 ANTICANCER DRUGS.—Section 1861(s)(2) (42 U.S.C.
4 1395(s)(2)), as amended by section 5070(f)(7)(B), is
5 amended—

6 (1) by striking “and” at the end of subpara-
7 graph (N);

8 (2) by adding “and” at the end of subpara-
9 graph (O); and

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

12 “(P) an oral drug (which is approved by the
13 Federal Food and Drug Administration) prescribed
14 for use as an anticancer chemotherapeutic agent for
15 a given indication, and containing an active ingredi-
16 ent (or ingredients), which is the same indication
17 and active ingredient (or ingredients) as a drug
18 which the carrier determines would be covered pur-
19 suant to subparagraph (A) or (B) if the drug could
20 not be self-administered;”.

21 (b) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to items furnished on or after Jan-
23 uary 1, 1994.

1 **SEC. 5066. EXTENSION OF MUNICIPAL HEALTH SERVICE**
2 **DEMONSTRATION PROJECTS.**

3 Section 9215 of the Consolidated Omnibus Budget
4 Reconciliation Act of 1985, as amended by section 6135
5 of OBRA-1989, is amended—

6 (1) by striking “December 31, 1993” and in-
7 serting “December 31, 1997”, and

8 (2) in the second sentence, by inserting after
9 “beneficiary costs,” the following: “costs to the med-
10 icaid program and other payors, access to care, out-
11 comes, beneficiary satisfaction, utilization differences
12 among the different populations served by the
13 projects,”.

14 **SEC. 5067. TREATMENT OF CERTAIN INDIAN HEALTH PRO-**
15 **GRAMS AND FACILITIES AS FEDERALLY-**
16 **QUALIFIED HEALTH CENTERS.**

17 (a) IN GENERAL.—Section 1861(aa)(4) (42 U.S.C.
18 1395x(aa)(4)) is amended—

19 (1) by striking “or” at the end of subparagraph
20 (B);

21 (2) by striking the period at the end of sub-
22 paragraph (C) and inserting “; or”; and

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

25 “(D) is an outpatient health program or facility
26 operated by a tribe or tribal organization under the

1 Indian Self-Determination Act or by an urban In-
2 dian organization receiving funds under title V of
3 the Indian Health Care Improvement Act.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 subsection (a) shall take effect as if included in the enact-
6 ment of section 4161(a)(2)(C) of OBRA–1990.

7 **SEC. 5068. INTEREST PAYMENTS.**

8 (a) IN GENERAL.—Section 1842(c)(2)(B)(ii)(IV) of
9 the Social Security Act shall be applied with respect to
10 paper claims received in the 9-month period beginning
11 January 1, 1993, by substituting “27 calendar days” for
12 “24 calendar days” and “17 calendar days”.

13 (b) PROHIBITING PAYMENT OF INTEREST DURING
14 MANDATORY PAYMENT DELAY PERIOD.—Section
15 1842(c)(2)(C) (42 U.S.C. 1395u(c)(2)(C)) is amended by
16 adding at the end the following: “Notwithstanding any
17 other provision of law, no interest may be paid with re-
18 spect to a claim pursuant to the preceding sentence within
19 any period following the submission of the claim during
20 which no payment may be issued, mailed, or otherwise
21 transmitted with respect to the claim.”.

1 **SEC. 5069. CLARIFICATION OF COVERAGE OF CERTIFIED**
2 **NURSE-MIDWIFE SERVICES PERFORMED**
3 **OUTSIDE THE MATERNITY CYCLE.**

4 (a) IN GENERAL.—Section 1861(gg)(2) (42 U.S.C.
5 1395x(gg)(2)) is amended by striking “, and performs
6 services” and all that follows and inserting a period.

7 (b) EFFECTIVE DATE.—The amendment made by
8 subsection (a) shall apply to services furnished on or after
9 January 1, 1994.

10 **SEC. 5069A. INCREASE IN, AND STUDY OF, ANNUAL CAP ON**
11 **AMOUNT OF MEDICARE PAYMENT FOR OUT-**
12 **PATIENT PHYSICAL THERAPY AND OCCUPA-**
13 **TIONAL THERAPY SERVICES.**

14 (a) INCREASE IN ANNUAL LIMITATION.—Section
15 1833(g) (42 U.S.C. 1395l(g)) is amended by striking
16 “\$750” and inserting “\$900” each place it appears.

17 (b) STUDY.—(1) The Physician Payment Review
18 Commission shall conduct a study of the appropriateness
19 of continuing an annual limitation on the amount of pay-
20 ment for outpatient services of independently practicing
21 physical and occupational therapists under the medicare
22 program.

23 (2) By not later than January 1, 1995, the Commis-
24 sion shall submit to the Committees on Energy and Com-
25 merce and Ways and Means of the House of Representa-
26 tives and the Committee on Finance of the Senate a report

1 on the study conducted under paragraph (1). Such report
2 shall include such recommendations for changes in such
3 annual limitation as the Commission finds appropriate.

4 (c) EFFECTIVE DATE.—The amendment made by
5 subsection (a) shall apply to services furnished on or after
6 January 1, 1994.

7 **SEC. 5070. MISCELLANEOUS AND TECHNICAL CORREC-**
8 **TIONS.**

9 (a) REVISION OF INFORMATION ON PART B CLAIMS
10 FORMS.—Section 1833(q)(1) (42 U.S.C. 1395l(q)(1)) is
11 amended—

12 (1) by striking “provider number” and inserting
13 “unique physician identification number”; and

14 (2) by striking “and indicate whether or not the
15 referring physician is an interested investor (within
16 the meaning of section 1877(h)(5))”.

17 (b) CONSULTATION FOR SOCIAL WORKERS.—Effec-
18 tive with respect to services furnished on or after January
19 1, 1991, section 6113(c) of OBRA-1989 is amended—

20 (1) by inserting “and clinical social worker
21 services” after “psychologist services”; and

22 (2) by striking “psychologist” the second and
23 third place it appears and inserting “psychologist or
24 clinical social worker”.

1 (c) REPORTS ON HOSPITAL OUTPATIENT PAY-
2 MENT.—(1) OBRA–1989 is amended by striking section
3 6137.

4 (2) Section 1135(d) (42 U.S.C. 1320b–5(d)) is
5 amended—

6 (A) by striking paragraph (6); and

7 (B) in paragraph (7)—

8 (i) by striking “systems” each place it ap-
9 pears and inserting “system”; and

10 (ii) by striking “paragraphs (1) and (6)”
11 and inserting “paragraph (1)”.

12 (d) RADIOLOGY AND DIAGNOSTIC SERVICES PRO-
13 VIDED IN HOSPITAL OUTPATIENT DEPARTMENTS.—(1)
14 Effective as if included in the enactment of OBRA–1989,
15 section 1833(n)(1)(B)(i)(II) (42 U.S.C.
16 1395l(n)(1)(B)(i)(II)) is amended—

17 (A) by striking “1989” and inserting “1989
18 and for services described in subsection (a)(2)(E)(ii)
19 furnished on or after January 1, 1992”; and

20 (B) by striking “1842(b)” and inserting
21 “1842(b) (or, in the case of services furnished on or
22 after January 1, 1992, under section 1848)”.

23 (2) Effective as if included in the enactment of
24 OBRA–1989, section 1833(n)(1)(B)(i)(II) (42 U.S.C.

1 1395l(n)(1)(B)(i)(II)) is amended by striking “January 1,
2 1989” and inserting “April 1, 1989”.

3 (e) PAYMENTS TO NURSE PRACTITIONERS IN RURAL
4 AREAS (SECTION 4155 OF OBRA-1990).—(1) Section
5 1861(s)(2)(K)(iii) (42 U.S.C. 1395x(s)(2)(K)(iii)) is
6 amended—

7 (A) by striking “subsection (aa)(3)” and insert-
8 ing “subsection (aa)(5)”; and

9 (B) by striking “subsection (aa)(4)” and insert-
10 ing “subsection (aa)(6)”.

11 (2) Section 1833(a)(1) (42 U.S.C. 1395l(a)(1)) is
12 amended—

13 (A) by striking “and” before “(N)”; and

14 (B) with respect to the matter inserted by sec-
15 tion 4155(b)(2)(B) of OBRA-1990—

16 (i) by striking “(M)” and inserting “, and
17 (O)”, and

18 (ii) by transferring and inserting it (as
19 amended) immediately before the semicolon at
20 the end.

21 (3) Section 1833(r)(1) (42 U.S.C. 1395l(r)(1)) is
22 amended—

23 (A) by striking “ambulatory” each place it ap-
24 pears and inserting “or ambulatory”; and

1 (B) by striking “center,” and inserting “cen-
2 ter”.

3 (4) Section 1833(r)(2)(A) (42 U.S.C. 1395l(r)(2)(A))
4 is amended by striking “subsection (a)(1)(M)” and insert-
5 ing “subsection (a)(1)(O)”.

6 (5) Section 1861(b)(4) (42 U.S.C. 1395x(b)(4)) is
7 amended by striking “subsection (s)(2)(K)(i)” and insert-
8 ing “clauses (i) or (iii) of subsection (s)(2)(K)”.

9 (6) Section 1861(aa)(5) (42 U.S.C. 1395x(aa)(5)) is
10 amended by striking “this Act” and inserting “this title”.

11 (7) Section 1862(a)(14) (42 U.S.C. 1395y(a)(14)) is
12 amended by striking “1861(s)(2)(K)(i)” and inserting
13 “1861(s)(2)(K)(i) or 1861(s)(2)(K)(iii)”.

14 (8) Section 1866(a)(1)(H) (42 U.S.C.
15 1395cc(a)(1)(H)) is amended by striking
16 “1861(s)(2)(K)(i)” and inserting “1861(s)(2)(K)(i) or
17 1861(s)(2)(K)(iii)”.

18 (f) OTHER MISCELLANEOUS AND TECHNICAL
19 AMENDMENTS.—

20 (1) IMMEDIATE ENROLLMENT IN PART B BY IN-
21 DIVIDUALS COVERED BY AN EMPLOYMENT-BASED
22 PLAN.—(A) Subparagraphs (A) and (B) of section
23 1837(i)(3) (42 U.S.C. 1395p(i)(3)) are each amend-
24 ed—

1 (i) by striking “beginning with the first
2 day of the first month in which the individual
3 is no longer enrolled” and inserting “including
4 each month during any part of which the indi-
5 vidual is enrolled”; and

6 (ii) by striking “and ending seven months
7 later” and inserting “ending with the last day
8 of the eighth consecutive month in which the in-
9 dividual is at no time so enrolled”.

10 (B) Paragraphs (1) and (2) of section 1838(e)
11 (42 U.S.C. 1395q(e)) are amended to read as fol-
12 lows:

13 “(1) in any month of the special enrollment pe-
14 riod in which the individual is at any time enrolled
15 in a plan (specified in subparagraph (A) or (B), as
16 applicable, of section 1837(i)(3)) or in the first
17 month following such a month, the coverage period
18 shall begin on the first day of the month in which
19 the individual so enrolls (or, at the option of the in-
20 dividual, on the first day of any of the following
21 three months), or

22 “(2) in any other month of the special enroll-
23 ment period, the coverage period shall begin on the
24 first day of the month following the month in which
25 the individual so enrolls.”.

1 (C) The amendments made by subparagraphs
2 (A) and (B) shall take effect on the first day of the
3 first month that begins after the expiration of the
4 120-day period that begins on the date of the enact-
5 ment of this Act.

6 (2) BLEND AMOUNTS FOR AMBULATORY SUR-
7 GICAL CENTER PAYMENTS.—Subclauses (I) and (II)
8 of section 1833(i)(3)(B)(ii) (42 U.S.C.
9 1395l(i)(3)(B)(ii)) are each amended—

10 (A) by striking “for reporting” and insert-
11 ing “for portions of cost reporting”; and

12 (B) by striking “and on or before” and in-
13 serting “and ending on or before”.

14 (3) CLINICAL DIAGNOSTIC LABORATORY TESTS
15 (SECTION 4154 OF OBRA-1990).—Section 4154(e)(5)
16 of OBRA-1990 is amended by striking “(1)(A)” and
17 inserting “(1)(A),”.

18 (4) SEPARATE PAYMENT UNDER PART B FOR
19 CERTAIN SERVICES (SECTION 4157 OF OBRA-1990).—
20 Section 4157(a) of OBRA-1990 is amended by
21 striking “(a) SERVICES OF” and all that follows
22 through “Section” and inserting “(a) TREATMENT
23 OF SERVICES OF CERTAIN HEALTH PRACTITION-
24 ERS.—Section”.

1 (5) COMMUNITY HEALTH CENTERS AND RURAL
2 HEALTH CLINICS (SECTION 4161 OF OBRA-1990).—

3 (A) The fourth sentence of section 1861(aa)(2) (42
4 U.S.C. 1395x(aa)(2)) is amended—

5 (i) by striking “certification” the first
6 place it appears and inserting “approval”; and

7 (ii) by striking “the Secretary’s approval
8 or disapproval of the certification” and insert-
9 ing “Secretary’s approval or disapproval”.

10 (B) Section 4161(a)(7)(B) of OBRA-1990 is
11 amended by inserting “and to the Committee on Fi-
12 nance of the Senate” after “Representatives”.

13 (6) SCREENING MAMMOGRAPHY (SECTION 4163
14 OF OBRA-1990).—Section 4163 of OBRA-1990 is
15 amended—

16 (A) by adding at the end of subsection (d)
17 the following new paragraph:

18 “(3) The amendment made by paragraph
19 (2)(A)(iv) shall apply to screening pap smears per-
20 formed on or after July 1, 1990.”; and

21 (B) in subsection (e), by striking “The
22 amendments” and inserting “Except as pro-
23 vided in subsection (d)(3), the amendments.”.

24 (7) INJECTABLE DRUGS FOR TREATMENT OF
25 OSTEOPOROSIS.—

1 (A) CLARIFICATION OF DRUGS COV-
2 ERED.—The section 1861(jj) (42 U.S.C.
3 1395x(jj)) inserted by section 4156(a)(2) of
4 OBRA-1990 is amended—

5 (i) in the matter preceding paragraph
6 (1), by striking “a bone fracture related
7 to”; and

8 (ii) in paragraph (1), by striking “pa-
9 tient” and inserting “individual has suf-
10 fered a bone fracture related to post-meno-
11 pausal osteoporosis and that the individ-
12 ual”.

13 (B) LIMITING COVERAGE TO DRUGS PRO-
14 VIDED BY HOME HEALTH AGENCIES.—(i) The
15 section 1861(jj) (42 U.S.C. 1395x(jj)) inserted
16 by section 4156(a)(2) of OBRA-1990 is
17 amended by striking “if” and inserting “by a
18 home health agency if”.

19 (ii) Section 1861(m)(5) (42 U.S.C.
20 1395x(m)(5)) is amended by striking “but ex-
21 cluding” and inserting “and a covered
22 osteoporosis drug (as defined in subsection
23 (kk), but excluding other”.

24 (iii) Section 1861(s)(2) (42 U.S.C.
25 1395x(s)(2)) is amended—

1 (I) by adding “and” at the end of
2 subparagraph (N), and

3 (II) by striking subparagraph (O) and
4 redesignating subparagraph (P) as sub-
5 paragraph (O).

6 (C) PAYMENT BASED ON REASONABLE
7 COST.—Section 1833(a)(2) (42 U.S.C.
8 1395l(a)(2)) is amended—

9 (i) in subparagraph (A), by striking
10 “health services” and inserting “health
11 services (other than covered osteoporosis
12 drug (as defined in section 1861(kk)))”;

13 (ii) by striking “and” at the end of
14 subparagraph (D);

15 (iii) by striking the semicolon at the
16 end and inserting “; and”; and

17 (iv) by adding at the end the following
18 new subparagraph:

19 “(F) with respect to covered osteoporosis
20 drug (as defined in section 1861(kk)) furnished
21 by a home health agency, 80 percent of the rea-
22 sonable cost of such service, as determined
23 under section 1861(v);”.

24 (D) APPLICATION OF PART B DEDUCT-
25 IBLE.—Section 1833(b)(2) (42 U.S.C.

1 1395l(b)(2)) is amended by striking “services”
2 and inserting “services (other than covered
3 osteoporosis drug (as defined in section
4 1861(kk)))”.

5 (E) COVERED OSTEOPOROSIS DRUG (SEC-
6 TION 4156 OF OBRA-1990).—Section 1861 (42
7 U.S.C. 1395x) is amended, in the subsection
8 (jj) inserted by section 4156(a)(2) of OBRA-
9 1990, by striking “(jj) The term” and inserting
10 “(kk) The term”.

11 (8) OTHER MISCELLANEOUS AND TECHNICAL
12 CORRECTIONS (SECTION 4164 OF OBRA-1990).—

13 (A) OWNERSHIP DISCLOSURE REQUIRE-
14 MENTS.—(i) Section 1124A(a)(2)(A) (42
15 U.S.C. 1320a-3a(a)(2)(A)) is amended by
16 striking “of the Social Security Act”.

17 (ii) Section 4164(b)(4) of OBRA-1990 is
18 amended by striking “paragraph” and inserting
19 “paragraphs”.

20 (B) DIRECTORY OF UNIQUE PHYSICIAN
21 IDENTIFIER NUMBERS.—Section 4164(c) of
22 OBRA-1990 is amended by striking “publish”
23 and inserting “publish, and shall periodically
24 update,”.

1 (g) EFFECTIVE DATE.—Except as otherwise provided
2 in this section, the amendments made by this section shall
3 take effect as if included in the enactment of OBRA–1990.

4 **CHAPTER 2—PROVISIONS RELATING TO**
5 **PARTS A AND B**

6 **SEC. 5071. ELIMINATION OF ADD-ON FOR OVERHEAD OF**
7 **HOSPITAL-BASED HOME HEALTH AGENCIES.**

8 (a) GENERAL RULE.—The first sentence of section
9 1861(v)(1)(L)(ii) (42 U.S.C. 1395x(v)(1)(L)(ii)) is
10 amended by striking “, with appropriate adjustment for
11 administrative and general costs of hospital-based agen-
12 cies”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 subsection (a) applies to cost reporting periods beginning
15 after fiscal year 1993.

16 **SEC. 5072. STUDY AND REPORT ON MEDICARE GME PAY-**
17 **MENTS.**

18 (a) STUDY.—The Secretary of Health and Human
19 Services shall conduct a study of the methodology used
20 to determine payments to hospitals under the medicare
21 program for the costs of medical residency training pro-
22 grams and shall include in the study an analysis of the
23 causes of variation among such programs in the per resi-
24 dent costs of direct graduate medical education, including

1 the extent of support for such programs from non-hospital
2 sources.

3 (b) REPORT.—Not later than 1 year after the date
4 of the enactment of this Act, the Secretary shall submit
5 a report to Congress on the study conducted under sub-
6 section (a), and shall include in the report any rec-
7 ommendations considered appropriate by the Secretary for
8 modifications to the methodology used to determine pay-
9 ments to hospitals under the medicare program for the
10 costs of medical residency training programs that will en-
11 courage greater uniformity among medical residency train-
12 ing programs in the per resident costs of direct graduate
13 medical education.

14 **SEC. 5073. MEDICARE AS SECONDARY PAYER.**

15 (a) EXTENSION OF DATA MATCH PROGRAM.—Sec-
16 tion 1862(b)(5)(C)(iii) (42 U.S.C. 1395y(b)(5)(C)(iii)) is
17 amended by striking “1995” and inserting “1998”.

18 (b) PERMANENT APPLICATION TO DISABLED INDI-
19 VIDUALS.—Section 1862(b)(1)(B) (42 U.S.C.
20 1395y(b)(1)(B)) is amended by striking clause (iii).

21 (c) APPLICATION OF ESRD RULES TO CERTAIN
22 AGED AND DISABLED BENEFICIARIES AND EXTENSION
23 OF APPLICATION OF 18-MONTH RULE.—

1 (1) Subparagraphs (A)(iv) and (B)(ii) of section
2 1862(b)(1) (42 U.S.C. 1395y(b)(1)) are each
3 amended—

4 (A) by striking “Clause (i) shall not apply”
5 and inserting “Subparagraph (C) shall apply
6 instead of clause (i)”, and

7 (B) by inserting “(without regard to enti-
8 tlement under section 226)” after “or” the sec-
9 ond place it appears.

10 (2) The second sentence of section
11 1862(b)(1)(C) is amended by striking “on or before
12 January 1, 1996” and inserting “before October 1,
13 1998”.

14 (d) UNIFORM RULES FOR SIZE OF EMPLOYER.—

15 (1) IN GENERAL.—Section 1862(b)(1) (42
16 U.S.C. 1395y(b)(1)) is amended by adding at the
17 end the following:

18 “(E) GENERAL PROVISIONS.—

19 “(i) EXCLUSION OF GROUP HEALTH
20 PLAN OF A SMALL EMPLOYER.—Subpara-
21 graphs (A) through (C) do not apply to a
22 group health plan unless the plan is a plan
23 of, or contributed to by, an employer or
24 employee organization that has 20 or more
25 individuals in current employment status

1 for each working day in each of 20 or more
2 calendar weeks in the current calendar
3 year or the preceding calendar year.

4 “(ii) EXCEPTION FOR SMALL EMPLOY-
5 ERS IN MULTIEMPLOYER OR MULTIPLE
6 EMPLOYER GROUP HEALTH PLANS.—Sub-
7 paragraphs (A) through (C) also do not
8 apply with respect to individuals enrolled
9 in a multiemployer or multiple employer
10 group health plan if the coverage of the in-
11 dividuals under the plan is by virtue of
12 current employment status with an em-
13 ployer that does not have 20 or more indi-
14 viduals in current employment status for
15 each working day in each of 20 or more
16 calendar weeks in the current calendar
17 year and the preceding calendar year; but
18 the exception provided in this clause ap-
19 plies only if the plan elects treatment
20 under this clause.

21 “(iii) APPLICATION OF CONTROLLED
22 GROUP RULES.—For purposes of clauses
23 (i) and (ii)—

24 “(I) all employees of corporations
25 which are members of a controlled

1 group of corporations (within the
2 meaning of section 1563(a) of the In-
3 ternal Revenue Code of 1986, deter-
4 mined without regard to subsection
5 (a)(4) or (e)(3)(C)), shall be treated
6 as employed by a single employer,

7 “(II) all employees of trades or
8 businesses (whether or not incor-
9 porated) which are under common
10 control (under regulations prescribed
11 by the Secretary of the Treasury
12 under section 414(c) of that Code)
13 shall be treated as employed by a sin-
14 gle employer,

15 “(III) all employees of the mem-
16 bers of an affiliated service group (as
17 defined in section 414(m) of that
18 Code) shall be treated as employed by
19 a single employer, and

20 “(IV) leased employees (as de-
21 fined in section 414(n)(2) of that
22 Code) shall be treated as employees of
23 the person for whom they perform
24 services to the extent they are so

1 treated under section 414(n) of that
2 Code.

3 In applying sections of the Internal Reve-
4 nue Code of 1986 under this clause, the
5 Secretary shall rely upon the regulations
6 and decisions of the Secretary of the
7 Treasury respecting such sections.

8 “(iv) GROUP HEALTH PLAN DE-
9 FINED.—For purposes of this subsection,
10 the term ‘group health plan’ has the mean-
11 ing given such term in section 5000(b) of
12 the Internal Revenue Code of 1986, with-
13 out regard to section 5000(d) of such
14 Code.

15 “(v) CURRENT EMPLOYMENT STATUS
16 DEFINED.—For purposes of this sub-
17 section, an individual has ‘current employ-
18 ment status’ with an employer if the indi-
19 vidual is an employee, is the employer, or
20 is associated with the employer in a busi-
21 ness relationship.

22 “(vi) TREATMENT OF SELF-EM-
23 PLOYED PERSONS AS EMPLOYERS.—For
24 purposes of this subsection, the term ‘em-
25 ployer’ includes a self-employed person.”.

1 (2) CONFORMING AMENDMENTS FOR WORKING
2 AGED.—Section 1862(b)(1)(A) (42 U.S.C.
3 1395y(b)(1)(A)) is amended—

4 (A) by amending subclauses (I) and (II) of
5 clause (i) to read as follows:

6 “(I) may not take into account
7 that an individual (or the individual’s
8 spouse) who is covered under the plan
9 by virtue of the individual’s current
10 employment status with an employer
11 is entitled to benefits under this title
12 under section 226(a), and

13 “(II) shall provide that any indi-
14 vidual age 65 or over (and the individ-
15 ual’s spouse age 65 or older) who is
16 covered under the plan by virtue of
17 the individual’s current employment
18 status with an employer shall be enti-
19 tled to the same benefits under the
20 plan under the same conditions as any
21 such individual (or spouse) under age
22 65.”;

23 (B) by striking clauses (ii), (iii), and (v),

24 and

1 (C) by redesignating clause (iv) as clause
2 (ii).

3 (3) AMENDMENTS FOR DISABLED INDIVIDUALS.—Section 1862(b) (42 U.S.C. 1395y(b)) is
4 amended—
5

6 (A) by amending the heading and clause
7 (i) of paragraph (1)(B) to read as follows:

8 “(B) DISABLED INDIVIDUALS UNDER
9 GROUP HEALTH PLANS.—

10 “(i) IN GENERAL.—A group health
11 plan may not take into account that an individual (or a member of the individual’s
12 family) who is covered under the plan by
13 virtue of the individual’s current employment status with an employer is entitled to
14 benefits under this title under section
15 226(b).”;

16 (B) by striking clause (iv) of paragraph
17 (1)(B); and
18

19 (C) in the second sentence of paragraph
20 (2)(A), by striking “or large group health
21 plan”.
22

23 (4) AMENDMENTS FOR INDIVIDUALS WITH
24 ESRD.—Section 1862(b)(1)(C) (42 U.S.C.
25 1395y(b)(1)(C)) is amended—

1 (A) in the matter preceding clause (i), by
2 striking “(as defined in paragraph (A)(v))”,

3 (B) by striking “solely” each place it ap-
4 pears,

5 (C) by striking “by reason of” and insert-
6 ing “under” each place it appears, and

7 (D) by inserting “or eligible for” after “en-
8 titled to” each place it appears.

9 (e) SECONDARY PAYER EXEMPTION FOR MEMBERS
10 OF RELIGIOUS ORDERS.—Effective as if included in the
11 enactment of OBRA–1989, section 6202(e)(2) of such Act
12 is amended by adding at the end the following: “Such
13 amendment also shall apply to items and services fur-
14 nished before such date with respect to secondary payor
15 cases which the Secretary of Health and Human Services
16 had not identified as of such date.”.

17 (f) IMPROVING IDENTIFICATION OF MEDICARE SEC-
18 ONDARY PAYER SITUATIONS.—

19 (1) SURVEY OF BENEFICIARIES.—

20 (A) IN GENERAL.—Section 1862(b)(5) (42
21 U.S.C. 1395y(b)(5)) is amended by adding at
22 the end the following new subparagraph:

23 “(D) OBTAINING INFORMATION FROM
24 BENEFICIARIES.—Before an individual applies
25 for benefits under part A or enrolls under part

1 B, the Administrator shall mail the individual a
2 questionnaire to obtain information on whether
3 the individual is covered under a primary plan
4 and the nature of the coverage provided under
5 the plan, including the name, address, and iden-
6 tifying number of the plan.”.

7 (B) DISTRIBUTION OF QUESTIONNAIRE BY
8 CONTRACTOR.—The Secretary of Health and
9 Human Services shall enter into an agreement
10 with an entity not later than April 1, 1994, to
11 distribute the questionnaire described in section
12 1862(b)(5)(D) of the Social Security Act (as
13 added by subparagraph (A)).

14 (C) NO MEDICARE SECONDARY PAYOR DE-
15 NIAL BASED ON FAILURE TO COMPLETE QUES-
16 TIONNAIRE.—Section 1862(b)(2) (42 U.S.C.
17 1395y(b)(2)) is amended by adding at the end
18 the following new subparagraph:

19 “(C) TREATMENT OF QUESTIONNAIRES.—
20 The Secretary may not fail to make payment
21 under subparagraph (A) solely on the ground
22 that an individual failed to complete a question-
23 naire concerning the existence of a primary
24 plan.”.

1 (2) MANDATORY SCREENING BY PROVIDERS
2 AND SUPPLIERS UNDER PART B.—

3 (A) IN GENERAL.—Section 1862(b) (42
4 U.S.C. 1395y(b)) is amended by adding at the
5 end the following new paragraph:

6 “(6) SCREENING REQUIREMENTS FOR PROVID-
7 ERS AND SUPPLIERS.—

8 “(A) IN GENERAL.—Notwithstanding any
9 other provision of this title, no payment may be
10 made for any item or service furnished under
11 part B unless the entity furnishing such item or
12 service completes (to the best of its knowledge
13 and on the basis of information obtained from
14 the individual to whom the item or service is
15 furnished) the portion of the claim form relat-
16 ing to the availability of other health benefit
17 plans.

18 “(B) PENALTIES.—An entity that know-
19 ingly, willfully, and repeatedly fails to complete
20 a claim form in accordance with subparagraph
21 (A) or provides inaccurate information relating
22 to the availability of other health benefit plans
23 on a claim form under such subparagraph shall
24 be subject to a civil money penalty of not to ex-
25 ceed \$2,000 for each such incident. The provi-

1 sions of section 1128A (other than subsections
2 (a) and (b)) shall apply to a civil money penalty
3 under the previous sentence in the same man-
4 ner as such provisions apply to a penalty or
5 proceeding under section 1128A(a).”.

6 (B) EFFECTIVE DATE.—The amendment
7 made by subparagraph (A) shall apply with re-
8 spect to items and services furnished on or
9 after January 1, 1994.

10 (g) IMPROVEMENTS IN RECOVERY OF PAYMENTS
11 FROM PRIMARY PAYERS.—

12 (1) SUBMISSION OF REPORTS ON EFFORTS TO
13 RECOVER ERRONEOUS PAYMENTS.—Section
14 1842(b)(3) (42 U.S.C. 1395u(b)(3)) is amended—

15 (A) by striking “and” at the end of sub-
16 paragraphs (G) and (H); and

17 (B) by inserting after subparagraph (H)
18 the following new subparagraph:

19 “(I) will submit annual reports to the Secretary
20 describing the steps taken to recover payments made
21 under this part for items or services for which pay-
22 ment has been or could be made under a primary
23 plan (as defined in section 1862(b)(2)(A)).”.

24 (2) REQUIREMENTS UNDER CARRIER PERFORM-
25 ANCE EVALUATION PROGRAM.—Section 1842(b)(2)

1 (42 U.S.C. 1395u(b)(2)) is amended by adding at
2 the end the following new subparagraph:

3 “(D) In addition to any other standards and criteria
4 established by the Secretary for evaluating carrier per-
5 formance under this paragraph relating to avoiding erro-
6 neous payments, the Secretary shall establish standards
7 and criteria relating to the carrier’s success in recovering
8 payments made under this part for items or services for
9 which payment has been or could be made under a pri-
10 mary plan (as defined in section 1862(b)(2)(A)).”.

11 (3) DEADLINE FOR REIMBURSEMENT BY PRI-
12 MARY PLANS.—

13 (A) IN GENERAL.—Section
14 1862(b)(2)(B)(i) (42 U.S.C. 1395y(b)(2)(B)(i))
15 is amended by adding at the end the following
16 sentence: “If reimbursement is not made to the
17 appropriate Trust Fund before the expiration of
18 the 60-day period that begins on the date such
19 notice or other information is received, the Sec-
20 retary may charge interest (beginning with the
21 date on which the notice or other information
22 is received) on the amount of the reimburse-
23 ment until reimbursement is made (at a rate
24 determined by the Secretary in accordance with

1 regulations of the Secretary of the Treasury ap-
2 plicable to charges for late payments).”.

3 (B) CONFORMING AMENDMENT.—The
4 heading of clause (i) of section 1862(b)(2)(B) is
5 amended to read as follows: “REPAYMENT RE-
6 QUIRED.—”.

7 (C) EFFECTIVE DATE.—The amendments
8 made by this paragraph shall apply to payments
9 for items and services furnished on or after the
10 date of the enactment of this Act.

11 (4) EFFECTIVE DATE.—The amendments made
12 by paragraphs (1) and (2) shall apply to contracts
13 with fiscal intermediaries and carriers under title
14 XVIII of the Social Security Act for years beginning
15 with 1994.

16 (h) MISCELLANEOUS AND TECHNICAL CORREC-
17 TIONS.—

18 (1) The sentence in section 1862(b)(1)(C)
19 added by section 4203(c)(1)(B) of OBRA-1990 is
20 amended by striking “clauses (i) and (ii)” and in-
21 sserting “this subparagraph”.

22 (2) Effective as if included in the enactment of
23 OBRA-1989, section 1862(b)(1) is amended—

24 (A) in subparagraphs (A)(v) and
25 (B)(iv)(II), by inserting “, without regard to

1 section 5000(d) of such Code” before the period
2 at the end of each subparagraph;

3 (B) in subparagraph (A)(iii), by striking
4 “current calendar year or the preceding cal-
5 endar year” and inserting “current calendar
6 year and the preceding calendar year”; and

7 (C) in the matter in subparagraph (C)
8 after clause (ii), by striking “taking into ac-
9 count that” and inserting “paying benefits sec-
10 ondary to this title when”.

11 (3) Section 1862(b)(5)(C)(i) (42 U.S.C.
12 1395y(b)(5)(C)(i)) is amended by striking
13 “6103(l)(12)(D)(iii)” and inserting
14 “6103(l)(12)(E)(iii)”.

15 (4) Section 4203(c)(2) of OBRA-1990 is
16 amended—

17 (A) by striking “the application of clause
18 (iii)” and inserting “the second sentence”;

19 (B) by striking “on individuals” and all
20 that follows through “section 226A of such
21 Act”;

22 (C) in clause (ii), by striking “clause” and
23 inserting “sentence”;

24 (D) in clause (v), by adding “and” at the
25 end; and

1 (E) in clause (vi)—

2 (i) by inserting “of such Act” after
3 “1862(b)(1)(C)”, and

4 (ii) by striking the period at the end
5 and inserting the following: “, without re-
6 gard to the number of employees covered
7 by such plans.”.

8 (5) Section 4203(d) of OBRA–1990 is amended
9 by striking “this subsection” and inserting “this sec-
10 tion”.

11 (6) Except as provided in paragraph (2), the
12 amendments made by this subsection shall be effec-
13 tive as if included in the enactment of OBRA–1990
14 and shall be executed before the amendments made
15 by subsections (a) through (d) of this section.

16 (i) EFFECTIVE DATE.—

17 (1) IN GENERAL.—Except as otherwise pro-
18 vided in this section, the amendments made by this
19 section shall take effect on the date of the enactment
20 of this Act.

21 (2) ESRD AND UNIFORM SIZE RULES.—The
22 amendments made by subsections (c) and (d) apply
23 to items and services furnished on or after January
24 1, 1994.

1 **SEC. 5074. EXTENSION OF SELF-REFERRAL BAN TO ADDI-**
2 **TIONAL SPECIFIED SERVICES.**

3 (a) EXTENSION TO DESIGNATED HEALTH SERV-
4 ICES.—

5 (1) IN GENERAL.—Section 1877 (42 U.S.C.
6 1395nn) is amended—

7 (A) by striking “clinical laboratory serv-
8 ices” and “CLINICAL LABORATORY SERVICES”
9 and inserting “designated health services” and
10 “DESIGNATED HEALTH SERVICES”, respectively,
11 each place either appears in subsections (a)(1),
12 (b)(2)(A)(ii), (b)(4), (d)(1), (d)(2), and (d)(3);
13 and

14 (B) by adding at the end the following new
15 subsection:

16 “(i) DESIGNATED HEALTH SERVICES DEFINED.—In
17 this section, the term ‘designated health services’ means—

18 “(1) clinical laboratory services;

19 “(2) physical or occupational therapy services;

20 “(3) radiology or other diagnostic services;

21 “(4) radiation therapy services;

22 “(5) the furnishing of durable medical equip-
23 ment;

24 “(6) the furnishing of parenteral and enteral
25 nutrition nutrients, supplies, and equipment;

26 “(7) home health services; and

1 “(8) home infusion therapy services.”.

2 (2) CONFORMING AMENDMENTS.—Section 1877
3 is further amended—

4 (A) in subsection (g)(1), by striking “clinical
5 laboratory service” and inserting “designated
6 health service”, and

7 (B) in subsection (h)(7)(B), by striking
8 “clinical laboratory service” and inserting “designated
9 health service”.

10 (b) MULTIPLE LOCATIONS FOR GROUP PRACTICES.—Section
11 1877(b)(2)(A)(ii)(II) (42 U.S.C.
12 1395nn(b)(2)(A)(ii)(II)) is amended by striking “central-
13 ized provision” and inserting “provision of some or all”.

14 (c) TREATMENT OF COMPENSATION ARRANGEMENTS.—
15

16 (1) RENTAL OF OFFICE SPACE AND EQUIPMENT.—Paragraph (1) of section
17 1877(e) (42 U.S.C. 1395nn(e)) is amended to read as follows:

18 “(1) RENTAL OF OFFICE SPACE; RENTAL OF
19 EQUIPMENT.—

20 “(A) OFFICE SPACE.—Payments made by
21 a lessee to a lessor for the use of premises if—

22 “(i) the lease is set out in writing,
23 signed by the parties, and specifies the
24 premises covered by the lease,
25

1 “(ii) the aggregate space rented or
2 leased is reasonable and necessary for the
3 legitimate business purposes of the lease or
4 rental and is used exclusively by the lessee
5 when being used by the lessee,

6 “(iii) the lease provides for a term of
7 rental or lease for at least one year,

8 “(iv) the rental charges over the term
9 of the lease are set in advance, are consist-
10 ent with fair market value, and are not de-
11 termined in a manner that takes into ac-
12 count the volume or value of any referrals
13 or other business generated between the
14 parties,

15 “(v) the lease would be commercially
16 reasonable even if no referrals were made
17 between the parties,

18 “(vi) the lease covers all of the prem-
19 ises leased between the parties for the pe-
20 riod of the lease, and

21 “(vii) the compensation arrangement
22 meets such other requirements as the Sec-
23 retary may impose by regulation as needed
24 to protect against program or patient
25 abuse.

1 “(B) EQUIPMENT.—Payments made by a
2 lessee of equipment to the lessor of the equip-
3 ment for the use of the equipment if—

4 “(i) the lease is set out in writing,
5 signed by the parties, and specifies the
6 equipment covered by the lease,

7 “(ii) the equipment rented or leased is
8 reasonable and necessary for the legitimate
9 business purposes of the lease or rental
10 and is used exclusively by the lessee when
11 being used by the lessee,

12 “(iii) the lease provides for a term of
13 rental or lease of at least one year,

14 “(iv) the rental charges over the term
15 of the lease are set in advance, are consist-
16 ent with fair market value, and are not de-
17 termined in a manner that takes into ac-
18 count the volume or value of any referrals
19 or other business generated between the
20 parties,

21 “(v) the lease would be commercially
22 reasonable even if no referrals were made
23 between the parties,

1 “(vi) the lease covers all of the equip-
2 ment leased between the parties for the pe-
3 riod of the lease, and

4 “(vii) the compensation arrangement
5 meets such other requirements as the Sec-
6 retary may impose by regulation as needed
7 to protect against program or patient
8 abuse.”.

9 (2) BONA FIDE EMPLOYMENT RELATION-
10 SHIPS.—Section 1877(e)(2) (42 U.S.C.
11 1395nn(e)(2)) is amended—

12 (A) by striking “AND SERVICE” and “WITH
13 HOSPITALS”;

14 (B) by striking “An arrangement” and all
15 that follows through “if” and inserting “Any
16 amount paid by an employer to a physician (or
17 immediate family member) who has a bona fide
18 employment relationship with the employer for
19 the provision of services if”;

20 (C) in subparagraphs (A), (B), and (D), by
21 striking “arrangement” and inserting “employ-
22 ment”;

23 (D) in subparagraph (C), by striking “to
24 the hospital”; and

25 (E) by adding at the end the following:

1 “Subparagraph (B)(ii) shall not be construed as pro-
2 hibiting the payment of remuneration in the form of
3 shares of overall profits or in the form of a produc-
4 tivity bonus based on services performed personally
5 by the physician or member, if the amount of the re-
6 muneration is not determined in a manner that
7 takes into account directly the volume or value of
8 any referrals by the referring physician.”.

9 (3) PERSONAL SERVICE ARRANGEMENTS.—Sec-
10 tion 1877(e) is further amended by adding at the
11 end the following new paragraph:

12 “(7) PERSONAL SERVICE ARRANGEMENTS.—Re-
13 muneration from an entity under an arrangement
14 if—

15 “(A) the arrangement is set out in writing,
16 signed by the parties, and specifies the services
17 covered by the arrangement,

18 “(B) the arrangement covers all of the
19 services to be provided,

20 “(C) the aggregate services contracted for
21 do not exceed those that are reasonable and
22 necessary for the legitimate business purposes
23 of the arrangement,

24 “(D) the term of the arrangement is for at
25 least one year,

1 “(E) the compensation to be paid over the
2 term of the arrangement is set in advance, does
3 not exceed fair market value, and is not deter-
4 mined in a manner that takes into account the
5 volume or value of any referrals or other busi-
6 ness generated between the parties,

7 “(F) the services to be performed under
8 the arrangement do not involve the counseling
9 or promotion of a business arrangement of
10 other activity that violates any State or Federal
11 law, and

12 “(G) the arrangement meets such other re-
13 quirements as the Secretary may impose by reg-
14 ulation as needed to protect against program or
15 patient abuse.”.

16 (4) ADDITIONAL EXCEPTIONS.—Section
17 1877(e) is further amended by adding at the end the
18 following new paragraphs:

19 “(8) PAYMENTS BY A PHYSICIAN FOR ITEMS
20 AND SERVICES.—Payments made by a physician—

21 “(A) to a laboratory in exchange for the
22 provision of clinical laboratory services, or

23 “(B) to an entity as compensation for
24 other items or services if the items or services

1 are furnished at a price that is consistent with
2 fair market value.

3 “(9) PAYMENTS FOR PATHOLOGY SERVICES OF
4 A GROUP PRACTICE.—Payments made to a group
5 practice for pathology services under an agreement
6 if—

7 “(A) the agreement is set out in writing
8 and specifies the services to be provided by the
9 parties and the compensation for services pro-
10 vided under the agreement,

11 “(B) the compensation paid over the term
12 of the agreement is consistent with fair market
13 value and is not determined in a manner that
14 takes into account the volume or value of any
15 referrals or other business generated between
16 the parties,

17 “(C) the compensation is provided pursu-
18 ant to an agreement which would be commer-
19 cially reasonable even if no referrals were made
20 to the entity, and

21 “(D) the compensation arrangement be-
22 tween the parties meets such other require-
23 ments as the Secretary may impose by regula-
24 tion as needed to protect against program or
25 patient abuse.”.

1 (4) REFERRING PHYSICIANS.—Section
2 1877(h)(7)(C) (42 U.S.C. 1395nn(h)(7)(C)) is
3 amended—

4 (A) by inserting “a request by a radiologist
5 for diagnostic radiology services, and a request
6 by a radiation oncologist for radiation therapy,”
7 after “examination services,” and

8 (B) by inserting “, radiologist, or radiation
9 oncologist” after “pathologist” the second place
10 it appears.

11 (d) TREATMENT OF GROUP PRACTICES.—

12 (1) USE OF BILLING NUMBERS, ETC.—Section
13 1877 is amended—

14 (A) in subsection (b)(2)(B), by inserting
15 “under a billing number assigned to the group
16 practice” after “member”,

17 (B) in subsection (h)(4)(B), by inserting
18 “and under a billing number assigned to the
19 group” after “in the name of the group”, and

20 (C) in subsection (h)(4)(C), by striking
21 “by members of the group”.

22 (2) TREATMENT OF SERVICES UNDER AR-
23 RANGEMENTS BETWEEN HOSPITALS AND GROUP
24 PRACTICES.—

1 (A) IN GENERAL.—Section 1877(h)(4) (42
2 U.S.C. 1395nn(h)(4)) is amended—

3 (i) in subparagraph (B) (as amended
4 by paragraph (1)(B)), by inserting “(or
5 are billed in the name of a hospital for
6 which the group provides designated health
7 services pursuant to an arrangement that
8 meets the requirements of subparagraph
9 (B))” after “assigned to the group”;

10 (ii) by redesignating subparagraphs
11 (A) through (D) as clauses (i) through
12 (iv), respectively;

13 (iii) by inserting “(A)” after “.—”;

14 and

15 (iv) by adding at the end the following
16 new subparagraph:

17 “(B) The requirements of this subparagraph,
18 with respect to an arrangement for designated
19 health services provided by the group and billed in
20 the name of a hospital, are that—

21 “(i) with respect to services provided to an
22 inpatient of the hospital, the arrangement is
23 pursuant to the provision of inpatient hospital
24 services under section 1861(b)(3);

1 “(ii) the arrangement began before Decem-
2 ber 19, 1989, and has continued in effect with-
3 out interruption since such date;

4 “(iii) the group provides substantially all of
5 the designated health services to the hospital’s
6 patients;

7 “(iv) the arrangement is pursuant to an
8 agreement that is set out in writing and that
9 specifies the services to be provided by the par-
10 ties and the compensation for services provided
11 under the agreement;

12 “(v) the compensation paid over the term
13 of the agreement is consistent with fair market
14 value and the compensation per unit of services
15 is fixed in advance and is not determined in a
16 manner that takes into account the volume or
17 value of any referrals or other business gen-
18 erated between the parties;

19 “(vi) the compensation is provided pursu-
20 ant to an agreement which would be commer-
21 cially reasonable even if no referrals were made
22 to the entity; and

23 “(vii) the arrangement between the parties
24 meets such other requirements as the Secretary

1 may impose by regulation as needed to protect
2 against program or patient abuse.”.

3 (B) CONFORMING AMENDMENT.—Section
4 1877(b)(2)(B) (42 U.S.C. 1395nn(b)(2)(B)) is
5 amended by inserting “(or by a hospital for
6 which such a group practice provides designated
7 health services pursuant to an arrangement
8 that meets the requirements of subsection
9 (h)(4)(B))” after “by a group practice of which
10 such physician is a member”.

11 (3) TREATMENT OF CERTAIN FACULTY PRAC-
12 TICE PLANS.—The last sentence of section
13 1877(h)(4)(A) (42 U.S.C. 1395nn(h)(4)(A)), as re-
14 designated by paragraph (1)(A), is amended by in-
15 sserting “, institution of higher education, or medical
16 school” after “hospital”.

17 (e) EXPANDING RURAL PROVIDER EXCEPTION TO
18 COVER COMPENSATION ARRANGEMENTS.—

19 (1) IN GENERAL.—Section 1877(b) (42 U.S.C.
20 1395nn(b)) is amended—

21 (A) by redesignating paragraph (5) as
22 paragraph (7), and

23 (B) by inserting after paragraph (4) the
24 following new paragraph:

1 “(5) RURAL PROVIDERS.—In the case of des-
2 ignated services if—

3 “(A) the entity furnishing the services is in
4 a rural area (as defined in section
5 1886(d)(2)(D)), and

6 “(B) substantially all of the services fur-
7 nished by the entity to individuals entitled to
8 benefits under this title are furnished to such
9 individuals who reside in such a rural area.”.

10 (2) CONFORMING AMENDMENTS.—Section
11 1877(d) (42 U.S.C. 1395nn(d)) is amended—

12 (A) by striking paragraph (2), and

13 (B) by redesignating paragraph (3) as
14 paragraph (2).

15 (f) EXCEPTION FOR SHARED FACILITY LABORATORY
16 SERVICES.—

17 (1) IN GENERAL.—Section 1877 is amended—

18 (A) in subsection (b), as amended by sub-
19 section (e)(1), by inserting after paragraph (5)
20 the following new paragraph:

21 “(6) SHARED FACILITY LABORATORY SERV-
22 ICES.—

23 “(A) IN GENERAL.—In the case of shared
24 facility laboratory services of a shared facility—

25 “(i) that are furnished—

1 “(I) personally by the referring
2 physician who is a shared facility phy-
3 sician or personally by an individual
4 supervised by such a physician or by
5 another shared facility physician and
6 employed under the shared facility ar-
7 rangement,

8 “(II) by a shared facility in a
9 building in which the referring physi-
10 cian furnishes physician’s services un-
11 related to the furnishing of shared fa-
12 cility laboratory services, and

13 “(III) to a patient of a shared fa-
14 cility physician; and

15 “(ii) that are billed by the referring
16 physician or by an entity that is wholly
17 owned by such physician.

18 “(B) LIMITATION.—The exception under
19 this paragraph shall only apply to a shared fa-
20 cility only if the facility and the shared facility
21 arrangement were established as of June 26,
22 1992.”; and

23 (B) in subsection (h), by adding at the end
24 the following new paragraph:

1 “(8) SHARED FACILITY RELATED DEFINI-
2 TIONS.—

3 “(A) SHARED FACILITY LABORATORY
4 SERVICES.—The term ‘shared facility laboratory
5 services’ means, with respect to a shared facil-
6 ity, clinical laboratory services furnished by the
7 facility to patients of shared facility physicians.

8 “(B) SHARED FACILITY.—The term
9 ‘shared facility’ means an entity that furnishes
10 shared facility laboratory services under a
11 shared facility arrangement.

12 “(C) SHARED FACILITY PHYSICIAN.—The
13 term ‘shared facility physician’ means, with re-
14 spect to a shared facility, a physician who has
15 a financial relationship under a shared facility
16 arrangement with the facility.

17 “(D) SHARED FACILITY ARRANGEMENT.—
18 The term ‘shared facility arrangement’ means,
19 with respect to the provision of shared facility
20 laboratory services in a building, a financial ar-
21 rangement—

22 “(i) which is only between physicians
23 who are providing services (unrelated to
24 shared facility laboratory services) in the
25 same building,

1 “(ii) in which the overhead expenses
2 of the facility are shared, in accordance
3 with methods previously determined by the
4 physicians in the arrangement, among the
5 physicians in the arrangement, and

6 “(iii) which, in the case of a corpora-
7 tion, is wholly owned and controlled by
8 shared facility physicians.”.

9 (2) GAO STUDY OF SHARED FACILITY AR-
10 RANGEMENTS.—

11 (A) IN GENERAL.—The Comptroller Gen-
12 eral shall analyze the effect on the utilization of
13 health services of shared facility arrangements
14 for which an exception is provided under the
15 amendments made by paragraph (1). The anal-
16 ysis shall include a review of the effect of the
17 limitation, described in section 1877(b)(6)(B) of
18 the Social Security Act (as added by paragraph
19 (1)), with respect to such exception and on the
20 availability of services (including hematology
21 services).

22 (B) REPORT.—Not later than January 1,
23 1995, the Comptroller General shall submit a
24 report to Congress on the analysis conducted
25 under subparagraph (A). The report shall in-

1 clude recommendations with respect to chang-
2 ing the limitation.

3 (g) EXEMPTION OF COMPENSATION ARRANGEMENTS
4 INVOLVING CERTAIN TYPES OF REMUNERATION.—Sec-
5 tion 1877(h)(1) (42 U.S.C. 1395nn(h)(1)) is amended—

6 (1) by striking subparagraph (B);

7 (2) in subparagraph (A), by inserting before the
8 period the following: “(other than an arrangement
9 involving only remuneration described in subpara-
10 graph (B))”; and

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

13 “(B) Remuneration described in this subpara-
14 graph is any remuneration consisting of any of the
15 following:

16 “(i) The forgiveness of amounts owed for
17 inaccurate tests or procedures, mistakenly per-
18 formed tests or procedures, or the correction of
19 minor billing errors.

20 “(ii) The provision of items, devices, or
21 supplies that are used solely to—

22 “(I) collect, transport, process, or
23 store specimens for the entity providing
24 the item, device, or supply, or

1 “(II) communicate the results of tests
2 or procedures for such entity.”.

3 (h) EXCEPTION FOR PUBLICLY-TRADED SECURI-
4 TIES.—Section 1877(c)(2) (42 U.S.C. 1395nn(d)(2)) is
5 amended by striking “total assets exceeding
6 \$100,000,000” and inserting “stockholder exceed-
7 ing \$75,000,000”.

8 (i) MISCELLANEOUS AND TECHNICAL CORREC-
9 TIONS.—Section 1877 (42 U.S.C. 1395nn) is amended—

10 (1) in subsection (b)(2)(A)(i), in subparagraph
11 (A)(i), by striking “who are employed by such physi-
12 cian or group practice and who are personally” and
13 inserting “who are directly”;

14 (2) in the fourth sentence of subsection (f)—

15 (A) by striking “provided” and inserting
16 “furnished”, and

17 (B) by striking “provides” and inserting
18 “furnish”;

19 (3) in the fifth sentence of subsection (f)—

20 (A) by striking “providing” each place it
21 appears and inserting “furnishing”,

22 (B) by striking “with respect to the provid-
23 ers” and inserting “with respect to the enti-
24 ties”, and

1 (C) by striking “diagnostic imaging serv-
2 ices of any type” and inserting “magnetic reso-
3 nance imaging, computerized axial tomography
4 scans, and ultrasound services”; and

5 (4) in subsection (a)(2)(B), by striking “sub-
6 section (h)(1)(A)” and inserting “subsection (h)(1)”.

7 (j) EFFECTIVE DATES.—

8 (1) The amendments made by subsection (a)
9 apply with respect to a referral by a physician for
10 designated health services (as described in section
11 1877(i) of the Social Security Act) made after De-
12 cember 31, 1994.

13 (2) The amendments made by this section
14 (other than subsection (a)) shall apply to referrals
15 made on or after January 1, 1992.

16 **SEC. 5075. REDUCTION IN PAYMENT FOR ERYTHRO-**
17 **POIETIN.**

18 (a) IN GENERAL.—Section 1881(b)(11)(B)(ii)(I) (42
19 U.S.C. 1395rr(b)(11)(B)(ii)(I)) is amended—

20 (1) by striking “1991” and inserting “1994”,
21 and

22 (2) by striking “\$11” and inserting “\$10”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 subsection (a) apply to erythropoietin furnished after
25 1993.

1 **SEC. 5076. MEDICARE HOSPITAL AGREEMENTS WITH**
2 **ORGAN PROCUREMENT ORGANIZATIONS.**

3 (a) IN GENERAL.—Section 1138(a)(1) (42 U.S.C.
4 1320b–8(a)(1)) is amended—

5 (1) by striking “and” at the end of subpara-
6 graph (A),

7 (2) by striking the period at the end of sub-
8 paragraph (B) and inserting “; and”, and

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

11 “(C) in the case of a hospital or rural primary
12 care hospital that has in effect an agreement (de-
13 scribed in section 371(b)(3)(A) of the Public Health
14 Service Act) with an organ procurement organiza-
15 tion, the agreement is with such organization for the
16 service area in which the hospital is located (as es-
17 tablished under such section).”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 subsection (a) shall apply to hospitals participating in the
20 programs under titles XVIII and XIX of the Social Secu-
21 rity Act as of January 1, 1994.

22 **SEC. 5077. EXTENSION OF WAIVER FOR WATTS HEALTH**
23 **FOUNDATION.**

24 Section 9312(c)(3)(D) of OBRA–1986, as added by
25 section 4018(d) of OBRA–1987 and as amended by sec-

1 tion 6212(a)(1) of OBRA–1989, is amended by striking
2 “1994” and inserting “1996”.

3 **SEC. 5078. IMPROVED OUTREACH FOR QUALIFIED MEDI-**
4 **CARE BENEFICIARIES.**

5 The Secretary of Health and Human Services shall
6 establish and implement a method for obtaining informa-
7 tion from newly eligible medicare beneficiaries that may
8 be used to determine whether such beneficiaries may be
9 eligible for medical assistance for medicare cost-sharing
10 under State medicaid plans as qualified medicare bene-
11 ficiaries, and for transmitting such information to the
12 State in which such a beneficiary resides.

13 **SEC. 5079. SOCIAL HEALTH MAINTENANCE ORGANIZA-**
14 **TIONS.**

15 (a) EXTENSION OF CURRENT WAIVERS.—Section
16 4018(b) of OBRA–1987, as amended by section
17 4207(b)(4) of OBRA–1990, is amended—

18 (1) in paragraph (1) by striking “December 31,
19 1995” and inserting “December 31, 1997”; and

20 (2) in paragraph (4) by striking “March 31,
21 1996” and inserting “March 31, 1998”.

22 (b) EXPANSION OF DEMONSTRATIONS.—Section
23 2355 of the Deficit Reduction Act of 1984, as amended
24 by section 4207(b)(4)(B) of OBRA–1990, is amended—

1 (1) in the last sentence of subsection (a) by
2 striking “12 months” and inserting “36 months”;
3 and

4 (2) in subsection (b)(1)(B)—

5 (A) by striking “or” at the end of clause
6 (iii), and

7 (B) by redesignating clause (iv) as clause
8 (v) and inserting after clause (iii) the following
9 new clause:

10 “(iv) integrating acute and chronic
11 care management for patients with end-
12 stage renal disease through expanded com-
13 munity care case management services
14 (and for purposes of a demonstration
15 project conducted under this clause, any
16 requirement under a waiver granted under
17 this section that a project disenroll individ-
18 uals who develop end-stage renal disease
19 shall not apply); or”.

20 (c) EXPANSION OF NUMBER OF MEMBERS PER
21 SITE.—The Secretary of Health and Human Services may
22 not impose a limit of less than 12,000 on the number of
23 individuals that may participate in a project conducted
24 under section 2355 of the Deficit Reduction Act of 1984.

1 (d) MISCELLANEOUS AND TECHNICAL CORREC-
2 TIONS.—

3 (1) The section following section 4206 of
4 OBRA–1990 is amended by striking “SEC. 4027.”
5 and inserting “SEC. 4207.”, and in this subtitle is
6 referred to as section 4207 of OBRA–1990.

7 (2) Section 2355(b)(1)(B) of the Deficit Reduc-
8 tion Act of 1984, as amended by section
9 4207(b)(4)(B)(ii) of OBRA–1990, is amended—

10 (A) by striking “12907(c)(4)(A)” and in-
11 serting “4207(b)(4)(B)(i)”, and

12 (B) by striking “feasibilitly” and inserting
13 “feasibility”.

14 (3) Section 4207(b)(4)(B)(iii)(III) of OBRA–
15 1990 is amended by striking the period at the end
16 and inserting a semicolon.

17 (4) Subsections (c)(3) and (e) of section 2355
18 of the Deficit Reduction Act of 1984, as amended by
19 section 4207(b)(4)(B) of OBRA–1990, are each
20 amended by striking “12907(c)(4)(A)” each place it
21 appears and inserting “4207(b)(4)(B)”.

22 (5) Section 4207(c)(2) of OBRA–1990 is
23 amended by striking “the Committee on Ways and
24 Means” each place it appears and inserting “the

1 Committees on Ways and Means and Energy and
2 Commerce”.

3 (6) Section 4207(d) of OBRA–1990 is amended
4 by redesignating the second paragraph (3) (relating
5 to effective date) as paragraph (4).

6 (7) Section 4207(i)(2) of OBRA–1990 is
7 amended—

8 (A) by striking the period at the end of
9 clause (iii) and inserting a semicolon, and

10 (B) in clause (v), by striking “residents”
11 and inserting “patients”.

12 (8) Section 4207(j) of OBRA–1990 is amended
13 by striking “title” each place it appears and insert-
14 ing “subtitle”.

15 (e) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect as if included in the enact-
17 ment of OBRA–90.

18 **SEC. 5080. PEER REVIEW ORGANIZATIONS.**

19 (a) REPEAL OF PRO PRECERTIFICATION REQUIRE-
20 MENT FOR CERTAIN SURGICAL PROCEDURES.—

21 (1) IN GENERAL.—Section 1164 (42 U.S.C.
22 1320c–13) is repealed.

23 (2) CONFORMING AMENDMENTS.—

24 (A) Section 1154 (42 U.S.C. 1320c–3) is
25 amended—

1 (i) in subsection (a), by striking para-
2 graph (12), and

3 (ii) in subsection (d), by striking
4 “(and except as provided in section
5 1164)”.

6 (B) Section 1833 (42 U.S.C. 1395l) is
7 amended—

8 (i) in subsection (a)(1)(D)(i), by strik-
9 ing “, or for tests furnished in connection
10 with obtaining a second opinion required
11 under section 1164(c)(2) (or a third opin-
12 ion, if the second opinion was in disagree-
13 ment with the first opinion)”;

14 (ii) in subsection (a)(1), by striking
15 clause (G);

16 (iii) in subsection (a)(2)(A), by strik-
17 ing “to items and services (other than clin-
18 ical diagnostic laboratory tests) furnished
19 in connection with obtaining a second opin-
20 ion required under section 1164(c)(2) (or a
21 third opinion, if the second opinion was in
22 disagreement with the first opinion),”;

23 (iv) in subsection (a)(2)(D)(i)—

24 (I) by striking “related basis,”
25 and inserting “related basis or”, and

1 (II) by striking “, or for tests
2 furnished in connection with obtaining
3 a second opinion required under sec-
4 tion 1164(c)(2) (or a third opinion, if
5 the second opinion was in disagree-
6 ment with the first opinion))”;

7 (v) in subsection (a)(3), by striking
8 “and for items and services furnished in
9 connection with obtaining a second opinion
10 required under section 1164(c)(2), or a
11 third opinion, if the second opinion was in
12 disagreement with the first opinion)”;

13 (vi) in the first sentence of subsection
14 (b), by striking “(4)” and all that follow
15 through “and (5)” and inserting “and
16 (4)”.

17 (C) Section 1834(g)(1)(B) (42 U.S.C.
18 1395m(g)(1)(B)) is amended by striking “and
19 for items and services furnished in connection
20 with obtaining a second opinion required under
21 section 1164(c)(2), or a third opinion, if the
22 second opinion was in disagreement with the
23 first opinion)”.

24 (D) Section 1862(a) (42 U.S.C. 1395y(a))
25 is amended—

1 (i) by adding “or” at the end of para-
2 graph (14),

3 (ii) by striking “; or” at the end of
4 paragraph (15) and inserting a period, and

5 (iii) by striking paragraph (16).

6 (E) The third sentence of section
7 1866(a)(2)(A) (42 U.S.C. 1395w(a)(2)(A)) is
8 amended by striking “, with respect to items
9 and services furnished in connection with ob-
10 taining a second opinion required under section
11 1164(c)(2) (or a third opinion, if the second
12 opinion was in disagreement with the first opin-
13 ion),”.

14 (3) EFFECTIVE DATE.—The amendments made
15 by this subsection shall apply to services provided on
16 or after the date of the enactment of this Act.

17 (b) MISCELLANEOUS AND TECHNICAL CORREC-
18 TIONS.—(1) The third sentence of section 1156(b)(1) (42
19 U.S.C. 1320c-5(b)(1)) is amended by striking “whehter”
20 and inserting “whether”.

21 (2)(A) Subparagraph (B) of section 1154(a)(9) (42
22 U.S.C. 1320c-3(a)(9)) is amended to read as follows:

23 “(B) If the organization finds, after reasonable
24 notice and opportunity for discussion with the physi-
25 cian or practitioner concerned, that the physician or

1 practitioner has furnished services in violation of
2 section 1156(a), the organization shall notify the
3 State board or boards responsible for the licensing
4 or disciplining of the physician or practitioner of its
5 finding and of any action taken as a result of the
6 finding.”.

7 (B) Subparagraph (D) of section 1160(b)(1) (42
8 U.S.C. 1320c-9(b)(1)) is amended to read as follows:

9 “(D) to provide notice in accordance with
10 section 1154(a)(9)(B);”.

11 (3) Section 4205(d)(2)(B) of OBRA-1990 is amend-
12 ed by striking “amendments” and inserting “amend-
13 ment”.

14 (4) Section 1160(d) (42 U.S.C. 1320c-9(d)) is
15 amended by striking “subpena” and inserting “subpoena”.

16 (5) Section 4205(e)(2) of OBRA-1990 is amended
17 by striking “amendments” and inserting “amendment”
18 and by striking “all”.

19 (6)(A) Except as provided in subparagraph (B), the
20 amendments made by this subsection shall take effect as
21 if included in the enactment of OBRA-1990.

22 (B) The amendments made by paragraph (2) (relat-
23 ing to the requirement on reporting of information to
24 State boards) shall take effect on the date of the enact-
25 ment of this Act.

1 **SEC. 5081. HOSPICE INFORMATION TO HOME HEALTH**
2 **BENEFICIARIES.**

3 (a) IN GENERAL.—Section 1891(a)(1) (42 U.S.C.
4 1395bbb(a)(1)) is amended by adding at the end the fol-
5 lowing new subparagraph:

6 “(H) The right, in the case of a resident
7 who is entitled to benefits under this title, to be
8 fully informed orally and in writing (at the time
9 of coming under the care of the agency) of the
10 entitlement of individuals to hospice care under
11 section 1812(a)(4) (unless there is no hospice
12 program providing hospice care for which pay-
13 ment may be made under this title within the
14 geographic area of the facility and it is not the
15 common practice of the agency to refer patients
16 to hospice programs located outside such geo-
17 graphic area).”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 subsection (a) shall apply to services furnished on or after
20 the first day of the first month beginning more than one
21 year after the date of the enactment of this Act.

22 **SEC. 5082. HEALTH MAINTENANCE ORGANIZATIONS.**

23 (a) ADJUSTMENT IN MEDICARE CAPITATION PAY-
24 MENTS TO ACCOUNT FOR REGIONAL VARIATIONS IN AP-
25 PPLICATION OF SECONDARY PAYOR PROVISIONS.—

1 (1) IN GENERAL.—Section 1876(a)(4) (42
2 U.S.C. 1395mm(a)(4)) is amended by adding at the
3 end the following new sentence: “In establishing the
4 adjusted average per capita cost for a geographic
5 area, the Secretary shall take into account the dif-
6 ferences between the proportion of individuals in the
7 area with respect to whom there is a group health
8 plan that is a primary payor (within the meaning of
9 section 1862(b)(2)(A)) compared to the proportion
10 of all such individuals with respect to whom there is
11 such a group health plan.”.

12 (2) EFFECTIVE DATE.—The amendment made
13 by paragraph (1) shall apply to contracts entered
14 into for years beginning with 1994.

15 (b) REVISIONS IN THE PAYMENT METHODOLOGY
16 FOR RISK CONTRACTORS.—Section 4204(b) of OBRA-
17 1990 is amended to read as follows:

18 “(b) REVISIONS IN THE PAYMENT METHODOLOGY
19 FOR RISK CONTRACTORS.—(1)(A) Not later than January
20 1, 1995, the Secretary of Health and Human Services (in
21 this subsection referred to as the “Secretary”) shall sub-
22 mit a proposal to the Congress that provides for revisions
23 to the payment method to be applied in years beginning
24 with 1996 for organizations with a risk-sharing contract
25 under section 1876(g) of the Social Security Act.

1 “(B) In proposing the revisions required under sub-
2 paragraph (A) the Secretary shall consider—

3 “(i) the difference in costs associated with med-
4 icare beneficiaries with differing health status and
5 demographic characteristics; and

6 “(ii) the effects of using alternative geographic
7 classifications on the determinations of costs associ-
8 ated with beneficiaries residing in different areas.

9 “(2) Not later than 3 months after the date of sub-
10 mittal of the proposal made pursuant to paragraph (1),
11 the Comptroller General shall review the proposal and
12 shall report to Congress on the appropriateness of the pro-
13 posed modifications.”.

14 (c) MISCELLANEOUS AND TECHNICAL CORREC-
15 TIONS.—(1) Section 1876(a)(3) (42 U.S.C.
16 1395mm(a)(3)) is amended by striking “subsection
17 (c)(7)” and inserting “subsections (c)(2)(B)(ii) and
18 (c)(7)”.

19 (2) Section 4204(c)(3) of OBRA–1990 is amended
20 by striking “for 1991” and inserting “for years beginning
21 with 1991”.

22 (3) Section 4204(d)(2) of OBRA–1990 is amended
23 by striking “amendment” and inserting “amendments”.

1 (4) Section 1876(a)(1)(E)(ii)(I) (42 U.S.C.
2 1395mm(a)(1)(E)(ii)(I)) is amended by striking the
3 comma after “contributed to”.

4 (5) Section 4204(e)(2) of OBRA–1990 is amended
5 by striking “(which has a risk-sharing contract under sec-
6 tion 1876 of the Social Security Act)”.

7 (6) Section 4204(f)(4) of OBRA–1990 is amended by
8 striking “final”.

9 (7) Section 1862(b)(3)(C) (42 U.S.C.
10 1395y(b)(3)(C)) is amended—

11 (A) in the heading, by striking “PLAN” and in-
12 sserting “PLAN OR A LARGE GROUP HEALTH PLAN”;

13 (B) by striking “group health plan” and insert-
14 ing “group health plan or a large group health
15 plan”;

16 (C) by striking “, unless such incentive is also
17 offered to all individuals who are eligible for cov-
18 erage under the plan”; and

19 (D) by striking “the first sentence of subsection
20 (a) and other than subsection (b)” and inserting
21 “subsections (a) and (b)”.

22 (8) The amendments made by this subsection shall
23 take effect as if included in the enactment of OBRA–1990.

1 **SEC. 5083. MISCELLANEOUS AND TECHNICAL CORREC-**
2 **TIONS.**

3 (a) SURVEY AND CERTIFICATION REQUIREMENTS.—

4 (1) Section 1864 (42 U.S.C. 1395aa) is amended—

5 (A) in subsection (e), by striking “title” and in-
6 sserting “title (other than any fee relating to section
7 353 of the Public Health Service Act)”; and

8 (B) in the first sentence of subsection (a), by
9 striking “1861(s) or” and all that follows through
10 “Service Act,” and inserting “1861(s),”.

11 (2) An agreement made by the Secretary of Health
12 and Human Services with a State under section 1864(a)
13 of the Social Security Act may include an agreement that
14 the services of the State health agency or other appro-
15 priate State agency (or the appropriate local agencies) will
16 be utilized by the Secretary for the purpose of determining
17 whether a laboratory meets the requirements of section
18 353 of the Public Health Service Act.

19 (b) OTHER MISCELLANEOUS AND TECHNICAL PRO-
20 VISIONS.—(1) Section 1833 (42 U.S.C. 1395l) is amended
21 by redesignating the subsection (r) added by section
22 4206(b)(2) of OBRA–1990 as subsection (s).

23 (2) Section 1866(f)(1) (42 U.S.C. 1395cc(f)(1)) is
24 amended by striking “1833(r)” and inserting “1833(s)”.

25 (3) Section 1861(s)(2) (42 U.S.C. 1395x(s)(2)) is
26 amended by moving subparagraph (O), as redesignated by

1 section 5070(f)(7)(B)(iii)(II) of this subtitle, two ems to
2 the left.

3 (4) Section 1881(b)(1)(C) (42 U.S.C.
4 1395rr(b)(1)(C)) is amended by striking “1861(s)(2)(Q)”
5 and inserting “1861(s)(2)(P)”.

6 (5) Section 4201(d)(2) of OBRA-1990 is amended
7 by striking “(B) by striking”, “(C) by striking”, and “(3)
8 by adding” and inserting “(i) by striking”, “(ii) by strik-
9 ing”, and “(B) by adding”, respectively.

10 (6)(A) Section 4207(a)(1) of OBRA-1990 is amend-
11 ed by adding closing quotation marks and a period after
12 “such review.”.

13 (B) Section 4207(a)(4) of OBRA-1990 is amended
14 by striking “this subsection” and inserting “paragraphs
15 (2) and (3)”.

16 (C) Section 4207(b)(1) of OBRA-1990 is amended
17 by striking “section 3(7)” and inserting “section
18 601(a)(1)”.

19 (7) Section 4202 of OBRA-1990 is amended—

20 (A) in subsection (b)(1)(A), by striking “home
21 hemodialysis staff assistant” and inserting “quali-
22 fied home hemodialysis staff assistant (as described
23 in subsection (d))”;

1 (B) in subsection (b)(2)(B)(ii)(I), by striking
2 “(as adjusted to reflect differences in area wage lev-
3 els)”;

4 (C) in subsection (c)(1)(A), by striking
5 “skilled”; and

6 (D) in subsection (c)(1)(E), by striking
7 “(b)(4)” and inserting “(b)(2)”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall take effect as if included in the enact-
10 ment of OBRA–1990.

11 **CHAPTER 3—PROVISIONS RELATING TO**
12 **MEDICARE SUPPLEMENTAL INSUR-**
13 **ANCE POLICIES**

14 **SEC. 5091. STANDARDS FOR MEDICARE SUPPLEMENTAL IN-**
15 **SURANCE POLICIES.**

16 (a) SIMPLIFICATION OF MEDICARE SUPPLEMENTAL
17 POLICIES.—

18 (1) Section 4351 of OBRA–1990 is amended by
19 striking “(a) IN GENERAL.—”.

20 (2) Section 1882(p) (42 U.S.C. 1395ss(p)) is
21 amended—

22 (A) in paragraph (1)(A)—

23 (i) by striking “promulgates” and in-
24 serting “changes the revised NAIC Model

1 Regulation (described in subsection (m)) to
2 incorporate”,

3 (ii) by striking “(such limitations, lan-
4 guage, definitions, format, and standards
5 referred to collectively in this subsection as
6 ‘NAIC standards’)”, and

7 (iii) by striking “included a reference
8 to the NAIC standards” and inserting
9 “were a reference to the revised NAIC
10 Model Regulation as changed under this
11 subparagraph (such changed regulation re-
12 ferred to in this section as the ‘1991 NAIC
13 Model Regulation’)”;

14 (B) in paragraph (1)(B)—

15 (i) by striking “promulgate NAIC
16 standards” and inserting “make the
17 changes in the revised NAIC Model Regu-
18 lation”,

19 (ii) by striking “limitations, language,
20 definitions, format, and standards de-
21 scribed in clauses (i) through (iv) of such
22 subparagraph (in this subsection referred
23 to collectively as ‘Federal standards’)” and
24 inserting “a regulation”, and

1 (iii) by striking “included a reference
2 to the Federal standards” and inserting
3 “were a reference to the revised NAIC
4 Model Regulation as changed by the Sec-
5 retary under this subparagraph (such
6 changed regulation referred to in this sec-
7 tion as the ‘1991 Federal Regulation’)”;

8 (C) in paragraph (1)(C)(i), by striking
9 “NAIC standards or the Federal standards”
10 and inserting “1991 NAIC Model Regulation or
11 1991 Federal Regulation”;

12 (D) in paragraphs (1)(C)(ii)(I), (1)(E),
13 (2), and (9)(B), by striking “NAIC or Federal
14 standards” and inserting “1991 NAIC Model
15 Regulation or 1991 Federal Regulation”;

16 (E) in paragraph (2)(C), by striking
17 “(5)(B)” and inserting “(4)(B)”;

18 (F) in paragraph (4)(A)(i), by inserting
19 “or paragraph (6)” after “(B)”;

20 (G) in paragraph (4), by striking “applica-
21 ble standards” each place it appears and insert-
22 ing “applicable 1991 NAIC Model Regulation
23 or 1991 Federal Regulation”;

24 (H) in paragraph (6), by striking “in re-
25 gard to the limitation of benefits described in

1 paragraph (4)” and inserting “described in
2 clauses (i) through (iii) of paragraph (1)(A)”;

3 (I) in paragraph (7), by striking “policy-
4 holder” and inserting “policyholders”;

5 (J) in paragraph (8), by striking “after the
6 effective date of the NAIC or Federal standards
7 with respect to the policy, in violation of the
8 previous requirements of this subsection” and
9 inserting “on and after the effective date speci-
10 fied in paragraph (1)(C) (but subject to para-
11 graph (10)), in violation of the applicable 1991
12 NAIC Model Regulation or 1991 Federal Regu-
13 lation insofar as such regulation relates to the
14 requirements of subsection (o) or (q) or clause
15 (i), (ii), or (iii) of paragraph (1)(A)”;

16 (K) in paragraph (9), by adding at the end
17 the following new subparagraph:

18 “(D) Subject to paragraph (10), this paragraph shall
19 apply to sales of policies occurring on or after the effective
20 date specified in paragraph (1)(C).”; and

21 (L) in paragraph (10), by striking “this
22 subsection” and inserting “paragraph
23 (1)(A)(i)”.

24 (b) GUARANTEED RENEWABILITY.—Section 1882(q)
25 (42 U.S.C. 1395ss(q)) is amended—

1 (1) in paragraph (2), by striking “paragraph
2 (2)” and inserting “paragraph (4)”, and

3 (2) in paragraph (4), by striking “the succeed-
4 ing issuer” and inserting “issuer of the replacement
5 policy”.

6 (c) ENFORCEMENT OF STANDARDS.—

7 (1) Section 1882(a)(2) (42 U.S.C.
8 1395ss(a)(2)) is amended—

9 (A) in subparagraph (A), by striking
10 “NAIC standards or the Federal standards”
11 and inserting “1991 NAIC Model Regulation or
12 1991 Federal Regulation”, and

13 (B) by striking “after the effective date of
14 the NAIC or Federal standards with respect to
15 the policy” and inserting “on and after the ef-
16 fective date specified in subsection (p)(1)(C)”.

17 (2) The sentence in section 1882(b)(1) added
18 by section 4353(c)(5) of OBRA-1990 is amended—

19 (A) by striking “The report” and inserting
20 “Each report”,

21 (B) by inserting “and requirements” after
22 “standards”,

23 (C) by striking “and” after “compliance,”,
24 and

1 (D) by striking the comma after “Commis-
2 sioners”.

3 (3) Section 1882(g)(2)(B) (42 U.S.C.
4 1395ss(g)(2)(B)) is amended by striking “Panel”
5 and inserting “Secretary”.

6 (4) Section 1882(b)(1) (42 U.S.C.
7 1395ss(b)(1)) is amended by striking “the the Sec-
8 retary” and inserting “the Secretary”.

9 (d) PREVENTING DUPLICATION.—

10 (1) Section 1882(d)(3)(A) (42 U.S.C.
11 1395ss(d)(3)(A)) is amended—

12 (A) by amending the first sentence to read
13 as follows:

14 “(i) It is unlawful for a person to sell or issue to an
15 individual entitled to benefits under part A or enrolled
16 under part B of this title—

17 “(I) a health insurance policy with knowledge
18 that the policy duplicates health benefits to which
19 the individual is otherwise entitled under this title or
20 title XIX,

21 “(II) a medicare supplemental policy with
22 knowledge that the individual is entitled to benefits
23 under another medicare supplemental policy, or

24 “(III) a health insurance policy (other than a
25 medicare supplemental policy) with knowledge that

1 the policy duplicates health benefits to which the in-
2 dividual is otherwise entitled, other than benefits to
3 which the individual is entitled under a requirement
4 of State or Federal law.”;

5 (B) by designating the second sentence as
6 clause (ii) and, in such clause, by striking “the
7 previous sentence” and inserting “clause (i)”;

8 (C) by designating the third sentence as
9 clause (iii) and, in such clause—

10 (i) by striking “the previous sentence”
11 and inserting “clause (i) with respect to
12 the sale of a medicare supplemental pol-
13 icy”, and

14 (ii) by striking “and the statement”
15 and all that follows up to the period at the
16 end; and

17 (D) by striking the last sentence.

18 (2) Section 1882(d)(3)(B) (42 U.S.C.
19 1395ss(d)(3)(B)) is amended—

20 (A) in clause (ii)(II), by striking “65 years
21 of age or older”,

22 (B) in clause (iii)(I), by striking “another
23 medicare” and inserting “a medicare”,

1 (C) in clause (iii)(I), by striking “such a
2 policy” and inserting “a medicare supplemental
3 policy”,

4 (D) in clause (iii)(II), by striking “another
5 policy” and inserting “a medicare supplemental
6 policy”, and

7 (E) by amending subclause (III) of clause
8 (iii) to read as follows:

9 “(III) If the statement required by clause (i) is ob-
10 tained and indicates that the individual is entitled to any
11 medical assistance under title XIX, the sale of the policy
12 is not in violation of clause (i) (insofar as such clause re-
13 lates to such medical assistance), if a State medicaid plan
14 under such title pays the premiums for the policy, or, in
15 the case of a qualified medicare beneficiary described in
16 section 1905(p)(1), if the State pays less than the full
17 amount of medicare cost-sharing as described in subpara-
18 graphs (B), (C), and (D) of section 1905(p)(3) for such
19 individual.”.

20 (3)(A) Section 1882(d)(3)(C) (42 U.S.C.
21 1395ss(d)(3)(C)) is amended—

22 (i) by striking “the selling” and inserting
23 “(i) the sale or issuance”, and

24 (ii) by inserting before the period at the
25 end the following: “, (ii) the sale or issuance of

1 a policy or plan described in subparagraph
2 (A)(i)(I) (other than a medicare supplemental
3 policy to an individual entitled to any medical
4 assistance under title XIX) under which all the
5 benefits are fully payable directly to or on be-
6 half of the individual without regard to other
7 health benefit coverage of the individual but
8 only if (for policies sold or issued more than 60
9 days after the date the statements are pub-
10 lished or promulgated under subparagraph (D))
11 there is disclosed in a prominent manner as
12 part of (or together with) the application the
13 applicable statement (specified under subpara-
14 graph (D)) of the extent to which benefits pay-
15 able under the policy or plan duplicate benefits
16 under this title, or (iii) the sale or issuance of
17 a policy or plan described in subparagraph
18 (A)(i)(III) under which all the benefits are fully
19 payable directly to or on behalf of the individual
20 without regard to other health benefit coverage
21 of the individual”.

22 (B) Section 1882(d)(3) (42 U.S.C.
23 1395ss(d)(3)) is amended by adding at the end the
24 following:

25 “(D)(i) If—

1 “(I) within the 90-day period beginning on the
2 date of the enactment of this subparagraph, the Na-
3 tional Association of Insurance Commissioners devel-
4 ops (after consultation with consumer and insurance
5 industry representatives) and submits to the Sec-
6 retary a statement for each of the types of health in-
7 surance policies (other than medicare supplemental
8 policies and including, as separate types of policies,
9 policies paying directly to the beneficiary fixed, cash
10 benefits) which are sold to persons entitled to health
11 benefits under this title, of the extent to which bene-
12 fits payable under the policy or plan duplicate bene-
13 fits under this title, and

14 “(II) the Secretary approves all the statements
15 submitted as meeting the requirements of subclause
16 (I),

17 each such statement shall be (for purposes of subpara-
18 graph (C)) the statement specified under this subpara-
19 graph for the type of policy involved. The Secretary shall
20 review and approve (or disapprove) all the statements sub-
21 mitted under subclause (I) within 30 days after the date
22 of their submittal. Upon approval of such statements, the
23 Secretary shall publish such statements.

24 “(ii) If the Secretary does not approve the statements
25 under clause (i) or the statements are not submitted with-

1 in the 90-day period specified in such clause, the Secretary
2 shall promulgate (after consultation with consumer and
3 insurance industry representatives and not later than 90
4 days after the date of disapproval or the end of such 90-
5 day period (as the case may be)) a statement for each
6 of the types of health insurance policies (other than medi-
7 care supplemental policies and including, as separate types
8 of policies, policies paying directly to the beneficiary fixed,
9 cash benefits) which are sold to persons entitled to health
10 benefits under this title, of the extent to which benefits
11 payable under the policy or plan duplicate benefits under
12 this title, and each such statement shall be (for purposes
13 of subparagraph (C)) the statement specified under this
14 subparagraph for the type of policy involved.”.

15 (C) The requirement of a disclosure under sec-
16 tion 1882(d)(3)(C)(ii) of the Social Security Act
17 shall not apply to an application made for a policy
18 or plan before 60 days after the date the Secretary
19 of Health and Human Services publishes or promul-
20 gates all the statements under section
21 1882(d)(3)(D) of such Act.

22 (4) Subparagraphs (A) and (B) of section
23 1882(q)(5)(A) (42 U.S.C. 1395ss(q)(5)(A)) are
24 amended by striking “of the Social Security Act”.

1 (5) The second subsection (b) of section 4354
2 of OBRA-1990 (relating to effective date) is amend-
3 ed by redesignating such subsection as subsection
4 (c).

5 (e) LOSS RATIOS AND REFUNDS OF PREMIUMS.—

6 (1) Section 1882(r) (42 U.S.C. 1395ss(r)) is
7 amended—

8 (A) in paragraph (1), by striking “or sold”
9 and inserting “or renewed (or otherwise provide
10 coverage after the date described in subsection
11 (p)(1)(C))”;

12 (B) in paragraph (1)(A), by inserting “for
13 periods after the effective date of these provi-
14 sions” after “the policy can be expected”;

15 (C) in paragraph (1)(A), by striking
16 “Commissioners,” and inserting “Commis-
17 sioners)”;

18 (D) in paragraph (1)(B), by inserting be-
19 fore the period at the end the following: “,
20 treating policies of the same type as a single
21 policy for each standard package”;

22 (E) by adding at the end of paragraph (1)
23 the following: “For the purpose of calculating
24 the refund or credit required under paragraph
25 (1)(B) for a policy issued before the date speci-

1 fied in subsection (p)(1)(C), the refund or cred-
2 it calculation shall be based on the aggregate
3 benefits provided and premiums collected under
4 all such policies issued by an insurer in a State
5 (separated as to individual and group policies)
6 and shall be based only on aggregate benefits
7 provided and premiums collected under such
8 policies after the date specified in section
9 5091(m)(4) of the Omnibus Budget Reconcili-
10 ation Act of 1993.”;

11 (F) in the first sentence of paragraph
12 (2)(A), by striking “by policy number” and in-
13 serting “by standard package”;

14 (G) by striking the second sentence of
15 paragraph (2)(A) and inserting the following:
16 “Paragraph (1)(B) shall not apply to a policy
17 until 12 months following issue.”;

18 (H) in the last sentence of paragraph
19 (2)(A), by striking “in order” and all that fol-
20 lows through “are effective”;

21 (I) by adding at the end of paragraph
22 (2)(A), the following new sentence: “In the case
23 of a policy issued before the date specified in
24 subsection (p)(1)(C), paragraph (1)(B) shall
25 not apply until 1 year after the date specified

1 in section 5091(m)(4) of the Omnibus Budget
2 Reconciliation Act of 1993.”;

3 (J) in paragraph (2), by striking “policy
4 year” each place it appears and inserting “cal-
5 endar year”;

6 (K) in paragraph (4), by striking “Feb-
7 ruary”, “disallowance”, “loss-ratios” each place
8 it appears, and “loss-ratio” and inserting “Oc-
9 tober”, “disallowance”, “loss ratios”, and “loss
10 ratio”, respectively;

11 (L) in paragraph (6)(A), by striking “is-
12 sues a policy in violation of the loss ratio re-
13 quirements of this subsection” and “such viola-
14 tion” and inserting “fails to provide refunds or
15 credits as required in paragraph (1)(B)” and
16 “policy issued for which such failure occurred”,
17 respectively; and

18 (M) in paragraph (6)(B), by striking “to
19 policyholders” and inserting “to the policy-
20 holder or, in the case of a group policy, to the
21 certificate holder”.

22 (2) Section 1882(b)(1) (42 U.S.C.
23 1395ss(b)(1)) is amended, in the matter after sub-
24 paragraph (H), by striking “subsection (F)” and in-
25 serting “subparagraph (F)”.

1 (3) Section 4355(d) of OBRA-1990 is amended
2 by striking “sold or issued” and all that follows and
3 inserting “issued or renewed (or otherwise providing
4 coverage after the date described in section
5 1882(p)(1)(C) of the Social Security Act) on or after
6 the date specified in section 1882(p)(1)(C) of such
7 Act.”.

8 (f) TREATMENT OF HMO’S.—

9 (1) Section 1882(g)(1) (42 U.S.C.
10 1395ss(g)(1)) is amended by striking “a health
11 maintenance organization or other direct service or-
12 ganization” and all that follows through “1833” and
13 inserting “an eligible organization (as defined in sec-
14 tion 1876(b)) if the policy or plan provides benefits
15 pursuant to a contract under section 1876 or an ap-
16 proved demonstration project described in section
17 603(c) of the Social Security Amendments of 1983,
18 section 2355 of the Deficit Reduction Act of 1984,
19 or section 9412(b) of the Omnibus Budget Reconcili-
20 ation Act of 1986 or, during the period beginning on
21 the date specified in subsection (p)(1)(C) and ending
22 on December 31, 1994, a policy or plan of an orga-
23 nization if the policy or plan provides benefits pursu-
24 ant to an agreement under section 1833(a)(1)(A)”.

1 (2) Section 4356(b) of OBRA-1990 is amended
2 by striking “on the date of the enactment of this
3 Act” and inserting “on the date specified in section
4 1882(p)(1)(C) of the Social Security Act”.

5 (g) PRE-EXISTING CONDITION LIMITATIONS.—Sec-
6 tion 1882(s) (42 U.S.C. 1395ss(s)) is amended—

7 (1) in paragraph (2)(A), by striking “for which
8 an application is submitted” and inserting “in the
9 case of an individual for whom an application is sub-
10 mitted prior to or”,

11 (2) in paragraph (2)(A), by striking “in which
12 the individual (who is 65 years of age or older) first
13 is enrolled for benefits under part B” and inserting
14 “as of the first day on which the individual is 65
15 years of age or older and is enrolled for benefits
16 under part B”, and

17 (3) in paragraph (2)(B), by striking “before it”
18 and inserting “before the policy”.

19 (h) MEDICARE SELECT POLICIES.—

20 (1) Section 1882(t) (42 U.S.C. 1395ss(t)) is
21 amended—

22 (A) in paragraph (1), by inserting “medi-
23 care supplemental” after “If a”,

1 (B) in paragraph (1), by striking “NAIC
2 Model Standards” and inserting “1991 NAIC
3 Model Regulation or 1991 Federal Regulation”,

4 (C) in paragraph (1)(A), by inserting “or
5 agreements” after “contracts”,

6 (D) in subparagraphs (E)(i) and (F) of
7 paragraph (1), by striking “NAIC standards”
8 and inserting “standards in the 1991 NAIC
9 Model Regulation or 1991 Federal Regulation”,
10 and

11 (E) in paragraph (2), by inserting “the is-
12 suer” before “is subject to a civil money pen-
13 alty”.

14 (2) Section 1154(a)(4)(B) (42 U.S.C. 1320c-
15 3(a)(4)(B)) is amended—

16 (A) by inserting “that is” after “(or”, and

17 (B) by striking “1882(t)” and inserting
18 “1882(t)(3)”.

19 (i) HEALTH INSURANCE COUNSELING.—Section
20 4360 of OBRA-1990 is amended—

21 (1) in subsection (b)(2)(A)(ii), by striking
22 “Act” and inserting “Act)”;

23 (2) in subsection (b)(2)(D), by striking “serv-
24 ices” and inserting “counseling”;

1 (3) in subsection (b)(2)(I), by striking “assist-
2 ance” and inserting “referrals”;

3 (4) in subsection (c)(1), by striking “and that
4 such activities will continue to be maintained at such
5 level”;

6 (5) in subsection (d)(3), by striking “to the
7 rural areas” and inserting “eligible individuals resid-
8 ing in rural areas”;

9 (6) in subsection (e)—

10 (A) by striking “subsection (c) or (d)” and
11 inserting “this section”,

12 (B) by striking “and annually thereafter,
13 issue an annual report” and inserting “and an-
14 nually thereafter during the period of the grant,
15 issue a report”,

16 (C) in paragraph (1), by striking “State-
17 wide”, and

18 (D) in subsection (f), by striking para-
19 graph (2) and by redesignating paragraphs (3)
20 through (5) as paragraphs (2) through (4), re-
21 spectively; and

22 (7) by redesignating the second subsection (f)
23 (relating to authorization of appropriations for
24 grants) as subsection (g).

25 (j) TELEPHONE INFORMATION SYSTEM.—

1 (1) Section 1804 (42 U.S.C. 1395b-2) is
2 amended—

3 (A) by adding at the end of the heading
4 the following: “; MEDICARE AND MEDIGAP IN-
5 FORMATION”,

6 (B) by inserting “(a)” after “1804.”, and

7 (C) by adding at the end the following new
8 subsection:

9 “(b) The Secretary shall provide information via a
10 toll-free telephone number on the programs under this
11 title.”.

12 (2) Section 1882(f) (42 U.S.C. 1395ss(f)) is
13 amended by adding at the end the following new
14 paragraph:

15 “(3) The Secretary shall provide information via a
16 toll-free telephone number on medicare supplemental poli-
17 cies (including the relationship of State programs under
18 title XIX to such policies).”.

19 (3) Section 1889 (42 U.S.C. 1395zz) is re-
20 pealed.

21 (k) MAILING OF POLICIES.—Section 1882(d)(4) (42
22 U.S.C. 1395ss(d)(4)) is amended—

23 (1) in subparagraph (D), by striking “, if such
24 policy” and all that follows up to the period at the
25 end, and

1 (2) by adding at the end the following new sub-
2 paragraph:

3 “(E) Subparagraph (A) shall not apply in the case
4 of an issuer who mails or causes to be mailed a policy,
5 certificate, or other matter solely to comply with the re-
6 quirements of subsection (q).”.

7 (l) EFFECTIVE DATE.—The amendments made by
8 this section shall be effective as if included in the enact-
9 ment of OBRA–1990; except that—

10 (1) the amendments made by subsection (d)(1)
11 shall take effect on the date of the enactment of this
12 Act, but no penalty shall be imposed under section
13 1882(d)(3)(A) of the Social Security Act (for an ac-
14 tion occurring after the effective date of the amend-
15 ments made by section 4354 of OBRA–1990 and be-
16 fore the date of the enactment of this Act) with re-
17 spect to the sale or issuance of a policy which is not
18 unlawful under section 1882(d)(3)(A)(i)(II) of the
19 Social Security Act (as amended by this section);

20 (2) the amendments made by subsection
21 (d)(2)(A) and by subparagraphs (A), (B), and (E)
22 of subsection (e)(1) shall be effective on the date
23 specified in subsection (m)(4); and

24 (3) the amendment made by subsection (g)(2)
25 shall take effect on January 1, 1994, and shall apply

1 to individuals who attain 65 years of age or older on
2 or after the effective date of section 1882(s)(2) of
3 the Social Security Act (and, in the case of individ-
4 uals who attained 65 years of age after such effec-
5 tive date and before January 1, 1994, and who were
6 not covered under such section before January 1,
7 1994, the 6-month period specified in that section
8 shall begin January 1, 1994).

9 (m) TRANSITION PROVISIONS.—

10 (1) IN GENERAL.—If the Secretary of Health
11 and Human Services identifies a State as requiring
12 a change to its statutes or regulations to conform its
13 regulatory program to the changes made by this sec-
14 tion, the State regulatory program shall not be con-
15 sidered to be out of compliance with the require-
16 ments of section 1882 of the Social Security Act due
17 solely to failure to make such change until the date
18 specified in paragraph (4).

19 (2) NAIC STANDARDS.—If, within 6 months
20 after the date of the enactment of this Act, the Na-
21 tional Association of Insurance Commissioners (in
22 this subsection referred to as the “NAIC”) modifies
23 its 1991 NAIC Model Regulation (adopted in July
24 1991) to conform to the amendments made by this
25 section and to delete from section 15C the exception

1 which begins with “unless”, such modifications shall
2 be considered to be part of that Regulation for the
3 purposes of section 1882 of the Social Security Act.

4 (3) SECRETARY STANDARDS.—If the NAIC
5 does not make the modifications described in para-
6 graph (2) within the period specified in such para-
7 graph, the Secretary of Health and Human Services
8 shall make the modifications described in such para-
9 graph and such modifications shall be considered to
10 be part of that Regulation for the purposes of sec-
11 tion 1882 of the Social Security Act.

12 (4) DATE SPECIFIED.—

13 (A) IN GENERAL.—Subject to subpara-
14 graph (B), the date specified in this paragraph
15 for a State is the earlier of—

16 (i) the date the State changes its stat-
17 utes or regulations to conform its regu-
18 latory program to the changes made by
19 this section, or

20 (ii) 1 year after the date the NAIC or
21 the Secretary first makes the modifications
22 under paragraph (2) or (3), respectively.

23 (B) ADDITIONAL LEGISLATIVE ACTION RE-
24 QUIRED.—In the case of a State which the Sec-
25 retary identifies as—

1 (i) requiring State legislation (other
2 than legislation appropriating funds) to
3 conform its regulatory program to the
4 changes made in this section, but

5 (ii) having a legislature which is not
6 scheduled to meet in 1994 in a legislative
7 session in which such legislation may be
8 considered,

9 the date specified in this paragraph is the first
10 day of the first calendar quarter beginning after
11 the close of the first legislative session of the
12 State legislature that begins on or after Janu-
13 ary 1, 1994. For purposes of the previous sen-
14 tence, in the case of a State that has a 2-year
15 legislative session, each year of such session
16 shall be deemed to be a separate regular session
17 of the State legislature.

1 **Subtitle B—Medicaid Program and**
2 **Other Health Care Provisions**

3 **CHAPTER 1—MEDICAID PROGRAM**

4 **Subchapter A—Program Savings Provisions**

5 **PART I—REPEAL OF MANDATE**

6 **SEC. 5101. PERSONAL CARE SERVICES FURNISHED OUT-**
7 **SIDE THE HOME AS OPTIONAL BENEFIT.**

8 (a) IN GENERAL.—Section 1905(a) (42 U.S.C.
9 1396d(a)), as amended by section 5174(c)(1), is further
10 amended—

11 (1) in paragraph (7), by striking “including
12 personal care services” and all that follows through
13 “nursing facility”;

14 (2) in paragraph (23), by striking “and” at the
15 end;

16 (3) by redesignating paragraph (24) as para-
17 graph (25); and

18 (4) by inserting after paragraph (23) the fol-
19 lowing new paragraph:

20 “(24) personal care services furnished to an in-
21 dividual who is not an inpatient or resident of a
22 nursing facility that are (A) authorized by a physi-
23 cian for the individual in accordance with a plan of
24 treatment, (B) provided by an individual who is
25 qualified to provide such services and who is not a

1 member of the individual's family, (C) supervised by
2 a registered nurse, and (D) furnished in a home or
3 other location; and”.

4 (b) CONFORMING AMENDMENTS.—(1) Section
5 1902(a)(10)(C)(iv) (42 U.S.C. 1396a(a)(10)(C)(iv)), as
6 amended by section 5174(c)(2)(A), is amended by striking
7 “through (23)” and inserting “through (24)”.

8 (2) Section 1902(j) (42 U.S.C. 1396a(j)), as amend-
9 ed by section 5174(c)(2)(B), is amended by striking
10 “through (24)” and inserting “through (25)”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 subsections (a) and (b) shall take effect as if included in
13 the enactment of section 4721(a) of OBRA–90.

14 PART II—OUTPATIENT PRESCRIPTION DRUGS

15 **SEC. 5106. PERMITTING PRESCRIPTION DRUG** 16 **FORMULARIES UNDER STATE PLANS.**

17 (a) ELIMINATION OF PROHIBITION AGAINST USE OF
18 FORMULARIES.—Paragraph (54) of section 1902(a)(54)
19 (42 U.S.C. 1396a(a)(54)) is amended to read as follows:

20 “(54) in the case of a State plan that provides
21 medical assistance for covered outpatient drugs (as
22 defined in section 1927(k)), comply with the applica-
23 ble requirements of section 1927;”.

1 (b) STANDARDS FOR FORMULARIES.—Section
2 1927(d) (42 U.S.C. 1396r–8(d)), as amended by sections
3 5107(a) and 5108(b)(4)(A)(iii), is amended—

4 (1) by adding at the end of paragraph (1) the
5 following new subparagraph:

6 “(C) In the case of a State that establishes a
7 formulary in accordance with paragraph (5), the
8 State may exclude coverage of a covered outpatient
9 drug that is not included in the formulary.”; and

10 (2) by inserting after paragraph (4) the follow-
11 ing new paragraph:

12 “(5) REQUIREMENTS FOR FORMULARIES.—A
13 State may establish a formulary only if the following
14 requirements are met:

15 “(A) The formulary is established by a
16 committee consisting of physicians, phar-
17 macists, and other appropriate individuals ap-
18 pointed by the Governor of the State (or, at the
19 option of the State, the State’s drug use review
20 board established under subsection (g)(3)).

21 “(B) Except as provided in subparagraph
22 (C), the formulary includes the covered out-
23 patient drugs of any manufacturer which has
24 entered into and complies with an agreement
25 under subsection (a).

1 “(C) The committee may exclude a covered
2 outpatient drug with respect to the treatment of
3 a specific disease or condition for an identified
4 population (if any) only if the committee finds,
5 based on the drug’s labeling (or, in the case of
6 a drug whose prescribed use is not approved
7 under the Federal Food, Drug, and Cosmetic
8 Act but is a medically accepted indication,
9 based on information from the appropriate com-
10 pendia described in subsection (k)(6)), that the
11 excluded drug does not have a significant, clini-
12 cally meaningful therapeutic advantage in terms
13 of safety, effectiveness, or clinical outcome of
14 such treatment for such population over other
15 drugs included in the formulary.

16 “(D) With respect to a decision to exclude
17 a covered outpatient drug from the formulary
18 or a prescribed use of such a drug, the commit-
19 tee issues a written explanation of its decision
20 that is available to the public, unless the deci-
21 sion was made at a meeting of the committee
22 which was open to the public.

23 “(E) The manufacturer of the drug, and
24 any person affected by the decision, may obtain
25 a reversal of the committee’s decision to exclude

1 a covered outpatient drug from the formulary
2 under subparagraph (C) on the ground that the
3 decision was arbitrary and capricious, in ac-
4 cordance with an appeals process that is estab-
5 lished by the State and that provides an oppor-
6 tunity for judicial review of such decision.

7 “(F) The State plan permits coverage of a
8 drug excluded from the formulary pursuant to
9 a prior authorization program that is consistent
10 with paragraph (4).

11 “(G) The formulary meets such other re-
12 quirements as the Secretary may impose.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to calendar quarters beginning on
15 or after October 1, 1993, without regard to whether or
16 not regulations to carry out such amendments have been
17 promulgated by such date.

18 **SEC. 5107. ELIMINATION OF SPECIAL EXEMPTION FROM**

19 **PRIOR AUTHORIZATION FOR NEW DRUGS.**

20 (a) IN GENERAL.—Section 1927(d) (42 U.S.C.
21 1396r–8(d)), as amended by section 5108(b)(4)(A)(iii), is
22 amended by striking paragraph (5).

23 (b) CONFORMING AMENDMENT.—Section 1927(d)(3)
24 (42 U.S.C. 1396r–8(d)(3)) is amended by striking “(ex-

1 cept with respect” and all that follows through “of this
2 paragraph)”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to calendar quarters beginning on
5 or after October 1, 1993, without regard to whether or
6 not regulations to carry out such amendments have been
7 promulgated by such date.

8 **SEC. 5108. TECHNICAL CORRECTIONS RELATING TO SEC-**
9 **TION 4401 OF OBRA-1990.**

10 (a) SECTION 1903, SSA.—Paragraph (10) of section
11 1903(i), as inserted by section 4401(a)(1)(B) of OBRA-
12 1990, is amended to read as follows:

13 “(10) with respect to covered outpatient drugs
14 unless there is a rebate agreement in effect under
15 section 1927 with respect to such drugs or unless
16 section 1927(a)(3) applies;”.

17 (b) SECTION 1927, SSA.—(1) Section 1927(a) (42
18 U.S.C. 1396r-8(a)) is amended—

19 (A) in paragraph (1)—

20 (i) by amending the second sentence to
21 read as follows: “Any such agreement entered
22 into prior to April 1, 1991, shall be deemed to
23 have been entered into on January 1, 1991, and
24 the amount of the rebate under such agreement

1 shall be calculated as if the agreement had been
2 entered into on January 1, 1991.”, and

3 (ii) in the third sentence, by striking
4 “March” and inserting “April”;

5 (B) in paragraph (2)—

6 (i) by striking “first”, and

7 (ii) by striking the period at the end and
8 inserting the following: “, except that such
9 paragraph (and section 1903(i)(10)(A)) shall
10 not apply to the dispensing of such a drug be-
11 fore April 1, 1991, if the Secretary determines
12 that there were extenuating circumstances with
13 respect to the first calendar quarter of 1991.”;

14 (C) in paragraph (3), by striking “single
15 source” and all that follows and inserting the follow-
16 ing: “covered outpatient drugs if—

17 “(A) based on information provided by a
18 beneficiary’s physician, the State has made a
19 determination that the availability of the drug
20 is essential to the health of the beneficiary
21 under the State plan, and the Secretary has re-
22 viewed and approved such determination; and

23 “(B) the drug has been given a rating of
24 1-A by the Food and Drug Administration.”;

25 (D) in paragraph (4)—

1 (i) by striking “in compliance with”
2 and inserting “in effect under”, and

3 (ii) by striking “coverage of the man-
4 ufacturer’s drugs” and inserting “ingredi-
5 ent costs of the manufacturer’s covered
6 outpatient drugs covered”; and

7 (E) by adding at the end the following new
8 paragraph:

9 “(5) APPLICATION IN CERTAIN STATES AND
10 TERRITORIES.—

11 “(A) APPLICATION IN STATES OPERATING
12 UNDER DEMONSTRATION PROJECTS.—In the
13 case of any State which is providing medical as-
14 sistance to its residents under a waiver granted
15 under section 1115, the Secretary shall require
16 the State to meet the requirements of section
17 1902(a)(54) and of this section in the same
18 manner as the State would be required to meet
19 such requirements if the State had in effect a
20 plan approved under this title.

21 “(B) NO APPLICATION IN COMMON-
22 WEALTHS AND TERRITORIES.—This section,
23 and sections 1902(a)(54) and 1903(i)(10), shall
24 only apply to a State that is one of the 50
25 States or the District of Columbia.”.

1 (2) Section 1927(b) (42 U.S.C. 1396r-8(b)) is
2 amended—

3 (A) in paragraph (1)(A)—

4 (i) by striking “(or periodically in accord-
5 ance with a schedule specified by the Sec-
6 retary)” and inserting “(or other period speci-
7 fied by the Secretary)”, and

8 (ii) by inserting “after December 31, 1990,
9 for which payment was made” after “dis-
10 pensed”;

11 (B) in paragraph (2)(A)—

12 (i) by striking “calendar quarter” and “the
13 quarter” and inserting “rebate period” and
14 “the period”, respectively,

15 (ii) by striking “dosage units” and insert-
16 ing “units of each dosage form and strength”,
17 and

18 (iii) by inserting “after December 31,
19 1990, for which payment was made” after “dis-
20 pensed”;

21 (C) in paragraph (3)(A)—

22 (i) in clause (i), by striking “quarter” each
23 place it appears and inserting “calendar quarter
24 or other rebate period under the agreement”,

1 (ii) in clause (i), by striking the open pa-
2 renthesis before “for” and the close parenthesis
3 after “drugs”,

4 (iii) in clause (i), by striking “subsection
5 (c)(2)(B)) for covered outpatient drugs” and in-
6 serting “subsection (c)(1)(C) for each covered
7 outpatient drug”, and

8 (iv) in clause (ii), by inserting a comma
9 after “this section” and after “1990”;

10 (D) in paragraph (3)(B)—

11 (i) by striking “\$100,000” and inserting
12 “\$10,000”,

13 (ii) by striking “if the wholesaler” and in-
14 serting “for each instance in which the whole-
15 saler”,

16 (iii) by inserting “in response to such a re-
17 quest” after “false information”, and

18 (iv) by striking “(with respect to amounts
19 of penalties or additional assessments)”;

20 (E) in paragraph (3)(C)—

21 (i) in clause (i), by striking “the penalty”
22 and inserting “the rebate next required to be
23 paid”,

1 (ii) in clause (i), by striking “and such
2 amount shall be paid to the Treasury, and, if”
3 and inserting “. If”,

4 (iii) in clause (ii), by inserting “under sub-
5 paragraph (A)” after “provides false informa-
6 tion”, and

7 (iv) in clause (ii), by striking “Such civil
8 money penalties are” and inserting “Any such
9 civil money penalty shall be”;

10 (F) in paragraph (3)(D), by striking “whole-
11 saler,” and inserting “wholesaler or the”; and

12 (G) in paragraph (4)(B)(iii), by adding at the
13 end the following: “In the case of such a termi-
14 nation, a State may terminate coverage of the drugs
15 affected by such termination as of the effective date
16 of such termination without providing any advance
17 notice otherwise required by regulation.”.

18 (3) Section 1927(c) (42 U.S.C. 1396r-8(c)) is
19 amended—

20 (A) in paragraph (1) in the matter preceding
21 subparagraph (A)—

22 (i) by striking the first sentence,

23 (ii) in the second sentence, by striking
24 “Except as otherwise provided” and all that fol-
25 lows through “the Secretary)” and inserting the

1 following: “For purposes of this section, the
2 amount of the rebate under this subsection for
3 a rebate period”, and

4 (iii) by inserting “(except as provided in
5 subsection (b)(3)(C) and paragraph (2))” after
6 “drugs shall”;

7 (B) in paragraph (1)(A), by striking “the quar-
8 ter (or other period)” and inserting “the rebate pe-
9 riod”;

10 (C) in subparagraph (C)—

11 (i) by striking “For purposes of this para-
12 graph” and inserting “BEST PRICE DEFINED.—
13 For purposes of this section”,

14 (ii) by inserting “provider,” after “re-
15 tailer,”, and

16 (iii) by striking the semicolon at the end
17 and inserting a period; and

18 (D) by striking subparagraph (D) and inserting
19 the following:

20 “(D) USE OF ESTIMATED BEST PRICES
21 DURING INITIAL YEAR OF AVAILABILITY OF
22 DRUG.—If the Secretary determines that a
23 manufacturer cannot determine the best price
24 for rebate periods during the first year in which
25 an agreement is in effect until after the end of

1 the year, as part of the agreement the Sec-
2 retary may require the manufacturer to esti-
3 mate the best price for rebate periods during
4 the year and provide an adjustment to the re-
5 bate paid to the State to take into account the
6 difference (if any) between the best price and
7 the estimated best price.”.

8 (4)(A) Section 1927(d) (42 U.S.C. 1396r-8(d)) is
9 amended—

10 (i) in paragraph (2)—

11 (I) in subparagraph (A), by inserting “or
12 loss” after “gain”,

13 (II) by striking subparagraph (I), and

14 (III) by redesignating subparagraphs (J)
15 and (K) as subparagraphs (I) and (J);

16 (ii) in paragraph (3)—

17 (I) by striking “described in paragraph
18 (2)”, and

19 (II) by inserting “described in paragraph
20 (2)” after “classes of drugs,”;

21 (iii) by striking paragraph (4) and by redesign-
22 ating paragraphs (5) through (7) as paragraphs
23 (4) through (6);

24 (iv) in paragraph (6), as so redesignated, by
25 striking “provided” and inserting “if”; and

1 (v) by striking the second sentence of para-
2 graph (6), as so redesignated, and paragraph (8)
3 and inserting the following:

4 “(7) CONSTRUCTION WITH RESPECT TO FRAUD
5 AND ABUSE.—Nothing in this section shall be con-
6 strued to restrict the authority of a State to apply
7 sanctions under this Act against any person for
8 fraud or abuse.”.

9 (B) Section 1927(d)(4) of the Social Security Act, as
10 redesignated by subparagraph (A)(iii), shall first apply to
11 drugs dispensed on or after July 1, 1991.

12 (5)(A) Section 1927(f) (42 U.S.C. 1396r-8(f)) is
13 amended to read as follows:

14 “(f) NO REDUCTIONS IN PHARMACY REIMBURSE-
15 MENT LIMITS.—

16 “(1) IN GENERAL.—During the period begin-
17 ning on November 5, 1990, and ending on December
18 31, 1994—

19 “(A) a State may not reduce the amount
20 paid by the State under this title with respect
21 to the ingredient cost of a covered outpatient
22 drug or the dispensing fee for such a drug
23 below the amount in effect as of November 5,
24 1990, and

1 “(B) the Secretary may not change the
2 regulations in effect on November 5, 1990, gov-
3 erning the amounts described in subparagraph
4 (A) which are eligible for Federal financial par-
5 ticipation, to reduce the reimbursement limits
6 described in such regulations.

7 “(2) CONSTRUCTION.—If the Secretary notified
8 a State before November 5, 1990, that its payment
9 amounts under this title with respect to the ingredi-
10 ent cost of a covered outpatient drug or the dispens-
11 ing fee for such a drug were in excess of those per-
12 mitted under regulations in effect on such date,
13 paragraph (1)(B) shall not be construed as prevent-
14 ing a State from reducing payment amounts or dis-
15 pensing fee in order to comply with such regula-
16 tions.”.

17 (B) Not later than April 1, 1994, the Secretary of
18 Health and Human Services shall establish an upper limit
19 on the amount of payment which is eligible for Federal
20 financial participation under title XIX of the Social Secu-
21 rity Act for each multiple source drug (as defined in sec-
22 tion 1927(k)(7)(A)(i) of such Act) for which the Food and
23 Drug Administration has rated at least 3 formulations of
24 such drug as therapeutically and pharmaceutically equiva-
25 lent, regardless of whether all the formulations of such

1 drug are rated as so equivalent. In establishing such a
2 limit for a drug, the Secretary shall take into account only
3 those formulations of the drug which the Food and Drug
4 Administration has rated as therapeutically and pharma-
5 ceutically equivalent.

6 (6) Section 1927(g) (42 U.S.C. 1396r-8(g)) is
7 amended—

8 (A) by amending paragraph (1) to read as fol-
9 lows:

10 “(1) REQUIREMENT FOR DRUG USE REVIEW
11 PROGRAM.—Each State shall provide, by not later
12 than January 1, 1993, for a drug use review pro-
13 gram for covered outpatient drugs (other than drugs
14 dispensed to residents of nursing facilities) that—

15 “(i) meets the requirements of para-
16 graph (2), and

17 “(ii) is intended to assure that pre-
18 scriptions for such drugs are appropriate,
19 medically necessary, and not likely to lead
20 to adverse medical results.”;

21 (B) in paragraph (2)—

22 (i) by amending the matter before subpara-
23 graph (A) to read as follows:

24 “(2) REQUIREMENTS.—”,

1 (ii) by amending subparagraph (A) to read
2 as follows:

3 “(A) PROSPECTIVE DRUG USE REVIEW.—
4 Each drug use review program shall provide for
5 a review of drug therapy before each prescrip-
6 tion is filled or delivered to an individual receiv-
7 ing benefits under this title (including counsel-
8 ing by pharmacists) consistent with standards
9 established by the Secretary. Nothing in this
10 paragraph shall be construed as requiring a
11 pharmacist to provide consultation when an in-
12 dividual receiving benefits under this title or
13 caregiver of such individual refuses such con-
14 sultation.”,

15 (iii) in subparagraph (C)—

16 (I) by striking “APPLICATION OF
17 STANDARDS.—” and inserting “STAND-
18 ARDS.—(i)”,

19 (II) by striking “and literature re-
20 ferred to in subsection (1)(B)” and insert-
21 ing “described in clause (ii)”,

22 (III) by striking “including but not
23 limited to” and inserting “. Such assess-
24 ment shall include”,

1 (IV) by striking “abuse/misuse and,
2 as necessary, introduce remedial strate-
3 gies,” and inserting “abuse or misuse and
4 introduce remedial strategies”, and

5 (V) by adding at the end the following
6 new clause:

7 “(ii) The compendia described in this
8 clause are the American Hospital Formulary
9 Service Drug Information, the United States
10 Pharmacopeia-Drug Information, and the
11 American Medical Association Drug Evalua-
12 tions.”, and

13 (iv) by amending subparagraph (D) to
14 read as follows:

15 “(D) EDUCATIONAL PROGRAM.—The pro-
16 gram shall educate (directly or by contract)
17 pharmacists, physicians, and other individuals
18 prescribing or dispensing covered outpatient
19 drugs under the State plan on common drug
20 therapy problems in order to improve prescrib-
21 ing or dispensing practices.”;

22 (C) in paragraph (3)—

23 (i) in subparagraph (A), by striking
24 “(hereinafter)” and all that follows and inserting

1 “(in this paragraph referred to as the ‘DUR
2 Board’).”,

3 (ii) in subparagraph (B), by striking “51
4 percent” and all that follows and inserting “50
5 percent licensed and actively practicing physi-
6 cians and at least 1/3 but not more than 50
7 percent licensed and actively practicing phar-
8 macists.”,

9 (iii) by amending subparagraph (C) to
10 read as follows:

11 “(C) RESPONSIBILITIES.—The responsibil-
12 ities of the DUR Board shall include the follow-
13 ing:

14 “(i) Carrying out retrospective drug
15 use review pursuant to paragraph (2)(B).

16 “(ii) Establishing and applying stand-
17 ards for drug use review described in para-
18 graph (2)(C).

19 “(iii) Implementing educational pro-
20 grams described in paragraph (2)(D).

21 “(iv) Conducting ongoing evaluations
22 of the effectiveness of its programs and ac-
23 tivities in improving the quality and safety
24 of drug therapy for individuals receiving
25 benefits under the State plan.”; and

1 (D) by amending subparagraph (D) to read as
2 follows:

3 “(4) ANNUAL REPORT.—Each State shall sub-
4 mit a report each year to the Secretary on the na-
5 ture and scope of the drug use review program
6 under this subsection. Such report shall include an
7 estimate of cost savings resulting from operation of
8 such program.”.

9 (7) Section 1927(h) (42 U.S.C. 1396r-8(h)) is
10 amended to read as follows:

11 “(h) ENCOURAGING ELECTRONIC CLAIMS MANAGE-
12 MENT.—The Secretary shall encourage each single State
13 agency under this title to establish, as its principal means
14 of processing claims for covered outpatient drugs, a point-
15 of-sale electronic claims management system for the pur-
16 pose of verifying eligibility, transmitting data on claims,
17 and assisting pharmacists and other authorized persons
18 in applying for and receiving payment under the State
19 plan.”.

20 (8) Section 1927(i) (42 U.S.C. 1396r-8(i)) is amend-
21 ed to read as follows:

22 “(i) ANNUAL REPORT ON REBATE PROGRAM.—Not
23 later than May 1 of each year, the Secretary shall submit
24 to the Committee on Finance of the Senate, the Commit-
25 tee on Energy and Commerce of the House of Representa-

1 tives, and the Committee on Aging of the Senate a report
2 on the operation of the rebate agreements required for
3 covered outpatient drugs under this section in the preced-
4 ing fiscal year, and shall include in the report such infor-
5 mation in addition to the information required to be re-
6 ported under section 601(d) of the Veterans Health Care
7 Act of 1992 as the Secretary considers appropriate.”.

8 (9) Section 1927(j) (42 U.S.C. 1396r-8(j)) is amend-
9 ed to read as follows:

10 “(j) EXEMPTION FROM CERTAIN REQUIREMENTS
11 FOR CERTAIN HEALTH MAINTENANCE ORGANIZATIONS
12 AND HOSPITALS.—

13 “(1) CERTAIN HEALTH MAINTENANCE ORGANI-
14 ZATIONS AND PHARMACIES.—The requirements of
15 subsections (g) and (h) shall not apply with respect
16 to covered outpatient drugs dispensed by—

17 “(A) an entity which receives payment
18 under a prepaid capitation basis or under any
19 other risk basis in accordance with section
20 1903(m)(2)(A) for services provided under the
21 State plan; or

22 “(B) a pharmacy that is owned or operated
23 by a qualified health maintenance organization
24 (as defined in section 1310(d) of the Public

1 Health Service Act) that operates its own pro-
2 spective drug use review program.

3 “(2) HOSPITALS WITH INDEPENDENT FOR-
4 MULARY SYSTEMS.—

5 “(A) IN GENERAL.—The requirements of
6 subsections (g) and (h) shall not apply with re-
7 spect to covered outpatient drugs dispensed by
8 a hospital providing medical assistance under
9 the State plan that dispenses such drugs under
10 a drug formulary system.

11 “(B) APPLICATION OF STATE FOR-
12 MULARY.—Nothing in subparagraph (A) shall
13 be construed to permit payment to be made
14 under the State plan for a covered outpatient
15 drug that is included in a drug formulary but
16 that is not included in the State formulary
17 under subsection (d)(5).

18 “(3) CONSTRUCTION IN DETERMINING BEST
19 PRICE.—Nothing in this subsection shall be con-
20 strued to exclude any covered outpatient drugs sub-
21 ject to the provisions of this subsection from the de-
22 termination of the best price (as defined in sub-
23 section (c)(1)(C)) for such drugs.”.

24 (10) Section 1927(k) (42 U.S.C. 1396r-8(k)) is
25 amended—

1 (A) in paragraph (1), by striking “calendar
2 quarter” and inserting “rebate period”;

3 (B) in paragraph (2)—

4 (i) in the matter before clause (i) of sub-
5 paragraph (A), strike “paragraph (5)” and in-
6 sert “subparagraph (D)”;

7 (ii) by striking “and” at the end of sub-
8 paragraph (A),

9 (iii) by striking the period at the end of
10 subparagraph (C) and inserting “; and”, and

11 (iv) by adding at the end the following new
12 subparagraph:

13 “(D) a drug which may be sold without a
14 prescription (commonly referred to as an ‘over-
15 the-counter drug’), if the drug is prescribed by
16 a physician (or other person authorized to pre-
17 scribe under State law).”;

18 (C) in paragraph (3)—

19 (i) in subparagraph (E), by striking “****
20 emergency room visits”;

21 (ii) in subparagraph (F), by striking
22 “sevices” and inserting “services”, and

23 (iii) in subparagraph (H), by inserting
24 “services” after “dialysis”;

25 (D) by striking paragraph (4);

1 (E) by amending paragraph (5) to read as fol-
2 lows:

3 “(5) MANUFACTURER.—The term ‘manufac-
4 turer’ means, with respect to a covered outpatient
5 drug—

6 “(A) the entity (if any) that both manufac-
7 tures and distributes the drug, or

8 “(B) if no such entity exists, the entity
9 that distributes the drug.

10 Such term does not include a wholesale distributor
11 of the drug that does not hold a National Drug Code
12 number for the drug or a retail pharmacy licensed
13 under State law.”;

14 (F) in paragraph (6), by striking “, which ap-
15 pears” and all that follows and inserting “which is
16 accepted by any of the compendia described in sub-
17 section (g)(2)(C)(ii).”;

18 (G) in paragraph (7)—

19 (i) in subparagraph (A)(i), by striking
20 “calendar quarter” and inserting “rebate pe-
21 riod”,

22 (ii) in subparagraph (A)(i), by striking
23 “paragraph (5)” and inserting “paragraph
24 (2)(D)”,

1 (iii) in subparagraph (A)(ii), by inserting
2 “or product licensing application” after “appli-
3 cation”,

4 (iv) in subparagraph (C)(i), by striking
5 “pharmaceutically” and inserting “pharma-
6 ceutically”, and

7 (v) in subparagraph (C)(iii), by striking “,
8 provided that” and inserting “and”; and

9 (H) by redesignating paragraph (8) as para-
10 graph (9) and by inserting after paragraph (7) the
11 following new paragraph:

12 “(8) REBATE PERIOD.—The term ‘rebate pe-
13 riod’ means, with respect to an agreement under
14 subsection (a), a calendar quarter or other period
15 specified with respect to the agreement under sub-
16 section (b)(1)(A) for the payment of rebates.”.

17 (d) FUNDING.—Section 4401(b)(2) of OBRA–1990
18 is amended by striking “75 percent,” and all that follows
19 and inserting “75 percent.”.

20 (e) DEMONSTRATION PROJECTS.—Section
21 4401(c)(1) of OBRA–1990 is amended—

22 (A) in subparagraph (A), by striking “10” and
23 inserting “5”; and

24 (B) in subparagraph (C), by striking “regi-
25 ment” and inserting “regimen”.

1 (f) STUDIES.—Section 4401(d) of OBRA–1990 is
2 amended—

3 (1) in paragraph (1)(A), by striking “other in-
4 stitutional facilities, and managed care plans” and
5 inserting “nursing facilities, intermediate care facili-
6 ties for the mentally retarded, and health mainte-
7 nance organizations”;

8 (2) in paragraph (1)(B), by striking “under
9 this subsection” and inserting “under this para-
10 graph”;

11 (3) in paragraph (1)(B)(i), by striking “under
12 this section” and inserting “under section 1927 of
13 the Social Security Act”;

14 (4) in paragraph (1)(B)(ii)—

15 (A) by striking “drug use review” and in-
16 serting “the type of drug use review that is”,
17 and

18 (B) by striking “under this section” and
19 inserting “under such section”;

20 (5) in paragraph (1)(B)(iii), by striking “under
21 this title” and inserting “under title XIX of the So-
22 cial Security Act”;

23 (6) in paragraph (1)(C)—

24 (A) by striking “May 1, 1991” and insert-
25 ing “May 1, 1992”, and

1 (B) by striking “hereafter”;

2 (7) in paragraph (2), by striking “the Commit-
3 tees on Aging of the Senate and House of Rep-
4 resentatives an annual report and inserting “the
5 Committee on Aging of the Senate a report”;

6 (8) in paragraph (3)—

7 (A) in subparagraph (A), by striking “,
8 acting in consultation with the Comptroller
9 General,”,

10 (B) by indenting subparagraph (B) an ad-
11 ditional 2 ems, and

12 (C) in subparagraph (B)—

13 (i) by striking “December 31, 1991,
14 the Secretary and the Comptroller Gen-
15 eral” and inserting “June 1, 1993, the
16 Secretary”, and

17 (ii) by striking “the Committees on
18 Aging of the Senate and the House of Rep-
19 resentatives” and inserting “the Commit-
20 tee on Aging of the Senate”;

21 (9) in paragraph (4)(A), by striking “each” and
22 by striking the semicolon and inserting a comma;
23 and

24 (10) by striking paragraphs (5) and (6).

1 PART III—RESTRICTIONS ON DIVESTITURE OF
2 ASSETS AND ESTATE RECOVERY

3 **SEC. 5111. TRANSFER OF ASSETS.**

4 (a) PERIOD OF INELIGIBILITY.—

5 (1) EXTENDING LOOK-BACK PERIOD TO 36
6 MONTHS.—Section 1917(c)(1) (42 U.S.C.
7 1396p(c)(1)) is amended by striking “30-month pe-
8 riod” and inserting “36-month period”.

9 (2) ELIMINATING 30-MONTH LIMIT ON PERIOD
10 OF INELIGIBILITY.—The second sentence of such
11 section is amended by striking “equal to” and all
12 that follows and inserting the following: “equal to—

13 “(A) the total uncompensated value of the re-
14 sources so transferred; divided by

15 “(B) the average monthly cost, to a private pa-
16 tient at the time of the application, of nursing facil-
17 ity services in the State or, at State option, in the
18 community in which the individual is institutional-
19 ized.”.

20 (3) CUMULATIVE PERIODS OF INELIGIBILITY IN
21 THE CASE OF MULTIPLE TRANSFERS.—Such sen-
22 tence is further amended by inserting “(or, in the
23 case of a transfer which occurs during a period of
24 ineligibility attributable to a previous transfer, the
25 first month after the end of all periods of ineligibil-

1 ity attributable to any previous transfer)” after
2 “shall begin with the month in which such resources
3 were transferred”.

4 (b) CRITERIA FOR UNDUE HARDSHIP EXCEPTION.—
5 Section 1917(c)(2)(D) (42 U.S.C. 1396p(c)(2)(D)) is
6 amended to read as follows:

7 “(D) the State agency determines, under proce-
8 dures established by the State (in accordance with
9 standards specified by the Secretary) that the denial
10 of eligibility would work an undue hardship (in ac-
11 cordance with criteria established by the Sec-
12 retary).”.

13 (c) TREATMENT OF JOINTLY HELD ASSETS.—Sec-
14 tion 1917(c) (42 U.S.C. 1936p(c)) is further amended by
15 adding at the end the following new paragraph:

16 “(6) For purposes of this subsection, in the case of
17 an asset held by an individual in common with another
18 person or persons in a joint tenancy or a similar arrange-
19 ment, the asset (or the affected portion thereof) shall be
20 considered to be transferred by such individual when any
21 action is taken, either by such individual or by any other
22 person, that reduces or eliminates such individual’s owner-
23 ship or control of such asset.”.

1 (d) MEDICAID QUALIFYING TRUSTS.—Section
2 1902(k) (42 U.S.C. 1396a(k)) is amended to read as fol-
3 lows:

4 “(k) TREATMENT OF TRUST AMOUNTS.—

5 “(1) IN GENERAL.—For purposes of determin-
6 ing an individual’s eligibility for or amount of bene-
7 fits under a State plan under this title, subject to
8 paragraph (4), the following rules shall apply to a
9 trust (which term includes, for purposes of this sub-
10 section, any similar legal instrument or device, such
11 as an annuity) established by such individual:

12 “(A) REVOCABLE TRUSTS.—In the case of
13 a revocable trust—

14 “(i) the corpus of the trust shall be
15 considered resources available to the indi-
16 vidual,

17 “(ii) payments from the trust to or
18 for the benefit of the individual shall be
19 considered income of the individual, and

20 “(iii) any other payments from the
21 trust shall be considered a transfer of as-
22 sets by the individual subject to section
23 1917(c).

24 “(B) IRREVOCABLE TRUSTS WHICH MAY
25 BENEFIT GRANTOR.—In the case of an irrev-

1 ocable trust, if there are any circumstances
2 under which payment from the trust could be
3 made to or for the benefit of the individual—

4 “(i) the corpus of the trust (or that
5 portion of the corpus from which, or from
6 the increase whereof, payment to the indi-
7 vidual could be made) shall be considered
8 resources available to the individual, and
9 payments from that portion of the corpus
10 (or increase)—

11 “(I) to or for the benefit of the
12 individual, shall be considered income
13 of the individual, and

14 “(II) for any other purpose, shall
15 be considered a transfer of assets by
16 the individual subject to the provisions
17 of section 1917(c); and

18 “(ii) any portion of the trust from
19 which (or from the income whereof) no
20 payment could under any circumstances be
21 made to the individual shall be considered,
22 as of the date of establishment of the trust
23 (or, if later, the date on which payment to
24 the individual was foreclosed), a transfer of
25 assets by the individual subject to section

1 1917(c), and payments from such portion
2 of the trust after such date shall be dis-
3 regarded.

4 “(C) IRREVOCABLE TRUSTS WHICH CAN-
5 NOT BENEFIT GRANTOR.—In the case of an ir-
6 revocable trust, if no payment may be made
7 from the trust under any circumstances to or
8 for the benefit of the individual—

9 “(i) the corpus of the trust shall be
10 considered, as of the date of establishment
11 of the trust (or, if later, the date on which
12 payment to the individual was foreclosed),
13 a transfer of assets subject to section
14 1917(c), and

15 “(ii) payments from the trust after
16 the date specified in clause (i) shall be dis-
17 regarded.

18 “(2) DETERMINATION OF GRANTOR.—

19 “(A) TREATMENT OF ACTS BY INDIVIDUAL
20 AND OTHERS.—For purposes of this subsection,
21 an individual shall be considered to have estab-
22 lished a trust if—

23 “(i) the individual (or the individual’s
24 spouse), or a person (including a court or
25 administrative body) with legal authority

1 to act in place of or on behalf of such indi-
2 vidual (or spouse), or any person (includ-
3 ing any court or administrative body) act-
4 ing at the direction or upon the request of
5 such individual (or spouse), established
6 (other than by will) such a trust, and

7 “(ii) assets of the individual (as de-
8 fined in subparagraph (B)) were used to
9 form all or part of the corpus of such
10 trust.

11 “(B) ASSETS.—For purposes of this para-
12 graph, assets of an individual include all income
13 and resources of the individual and of the indi-
14 vidual’s spouse, including any income or re-
15 sources which the individual (or spouse) is enti-
16 tled to but does not receive because of action by
17 the individual (or spouse), by a person (includ-
18 ing a court or administrative body) with legal
19 authority to act in place of or on behalf of such
20 individual (or spouse), or by any person (includ-
21 ing any court or administrative body) acting at
22 the direction or upon the request of such indi-
23 vidual (or spouse).

24 “(C) TRUSTS CONTAINING ASSETS OF
25 MORE THAN ONE INDIVIDUAL.—In the case of

1 a trust whose corpus includes assets of an indi-
2 vidual (as determined pursuant to subpara-
3 graph (A)) and assets of any other person or
4 persons, the provisions of this subsection shall
5 apply to the portion of the trust attributable to
6 the assets of the individual.

7 “(3) APPLICATION; RELATION TO OTHER PRO-
8 VISIONS.—Subject to paragraph (4), this subsection
9 shall apply without regard to—

10 “(A) the purposes for which the trust is es-
11 tablished,

12 “(B) whether the trustees have or exercise
13 any discretion under the trust,

14 “(C) any restrictions on when or whether
15 distributions may be made from the trust, or

16 “(D) any restrictions on the use of dis-
17 tributions from the trust.

18 “(4) EXCEPTIONS AND HARDSHIP WAIVER.—

19 “(A) EXCEPTION FOR CERTAIN TRUSTS.—
20 This subsection shall not apply to any of the
21 following trusts:

22 “(i) A trust established for the benefit
23 of a disabled individual (as determined
24 under section 1614(a)(3)) by a parent,

1 grandparent, or other representative payee
2 of the individual.

3 “(ii) A trust established in a State for
4 the benefit of an individual if—

5 “(I) the trust is composed only of
6 pension, Social Security, and other in-
7 come to the individual (and accumu-
8 lated income in the trust),

9 “(II) the State will receive any
10 amounts remaining in the trust upon
11 the death of the individual, and

12 “(III) the State makes medical
13 assistance available to individuals de-
14 scribed in section
15 1902(a)(10)(A)(ii)(V), but does not
16 make such assistance available to any
17 group of individuals under section
18 1902(a)(10)(C).

19 “(B) SPECIAL TREATMENT OF ANNU-
20 ITIES.—In this subsection, the term ‘trust’ in-
21 cludes an annuity only to such extent and in
22 such manner as the Secretary specifies.

23 “(C) HARDSHIP WAIVER.—The State
24 agency shall establish procedures (in accordance
25 with standards specified by the Secretary)

1 under which the agency waives the application
2 of this subsection with respect to an individual
3 if the individual establishes (under criteria es-
4 tablished by the Secretary) that such applica-
5 tion would work an undue hardship on the indi-
6 vidual.”.

7 (e) EFFECTIVE DATE.—(1) The amendments made
8 by this section shall apply, except as provided in this sub-
9 section, to payments under title XIX of the Social Security
10 Act for calendar quarters beginning on or after October
11 1, 1993, without regard to whether or not final regulations
12 to carry out such amendments have been promulgated by
13 such date.

14 (2) The amendments made by this section shall not
15 apply—

16 (A) to medical assistance provided for services
17 furnished before October 1, 1993,

18 (B) with respect to resources disposed of before
19 May 11, 1993,

20 (C) with respect to trusts established before
21 May 11, 1993, or

22 (D) with respect to inter-spousal transfers.

23 **SEC. 5112. MEDICAID ESTATE RECOVERIES.**

24 (a) REQUIRING ESTABLISHMENT OF ESTATE RECOV-
25 ERY PROGRAMS.—

1 (1) IN GENERAL.—Section 1902(a)(51) (42
2 U.S.C. 1396a(a)(51)) is amended by striking “and
3 (B)” and inserting “(B) provide for an estate recov-
4 ery program that meets the requirements of section
5 1917(b)(1), and (C)”.

6 (2) REQUIREMENTS FOR ESTATE RECOVERY
7 PROGRAMS.—Section 1917(b) (42 U.S.C. 1396p(b))
8 is amended—

9 (A) in paragraph (1)—

10 (i) by striking “(b)(1)” and inserting
11 “(2)”, and

12 (ii) by striking “(a)(1)(B)” and in-
13 serting “(a)(1)(B)(i)”;

14 (B) in paragraph (2), by striking “(2) Any
15 adjustment or recovery under” and inserting
16 “(3) Any adjustment or recovery under an es-
17 tate recovery program under”; and

18 (C) by inserting before paragraph (2), as
19 designated by subparagraph (A), the following:

20 “(b)(1) For purposes of section 1902(a)(51)(B), the
21 requirements for an estate recovery program of a State
22 are as follows:

23 “(A) The program provides for identifying and
24 tracking (and, at the option of the State, preserving)
25 resources (whether excluded or not) of individuals

1 who are furnished any of the following long-term
2 care services for which medical assistance is pro-
3 vided under this title:

4 “(i) Nursing facility services.

5 “(ii) Home and community-based services
6 (as defined in section 1915(d)(5)(C)(i)).

7 “(iii) Services described in section
8 1905(a)(14) (relating to services in an institu-
9 tion for mental diseases).

10 “(iv) Home and community care provided
11 under section 1929.

12 “(v) Community supported living arrange-
13 ments services provided under section 1930.

14 “(B) The program provides for promptly
15 ascertaining—

16 “(i) when such an individual dies;

17 “(ii) in the case of such an individual who
18 was married at the time of death, when the sur-
19 viving spouse dies; and

20 “(iii) at the option of the State, cases in
21 which adjustment or recovery may not be made
22 at the time of death because of the application
23 of paragraph (3)(A) or paragraph (3)(B).

1 “(C)(i) The program provides for the collection
2 consistent with paragraph (3) of an amount (not to
3 exceed the amount described in clause (ii)) from—

4 “(I) the estate of the individual;

5 “(II) in the case of an individual described
6 in subparagraph (B)(ii), from the estate of the
7 surviving spouse; or

8 “(III) at the option of the State, in a case
9 described in subparagraph (B)(iii), from the ap-
10 propriate person.

11 “(ii) The amount described in this clause is the
12 amount of medical assistance correctly paid under
13 this title for long-term care services described in
14 subparagraph (A) furnished on behalf of the individ-
15 ual.”.

16 (b) **HARDSHIP WAIVER.**—Section 1917(b) (42 U.S.C.
17 1396p(b)) is further amended by adding at the end the
18 following new paragraph:

19 “(4) The State agency shall establish procedures (in
20 accordance with standards specified by the Secretary)
21 under which the agency waives the application of this sub-
22 section if such application would work an undue hardship
23 (in accordance with criteria established by the Sec-
24 retary).”.

1 (c) DEFINITION OF ESTATE.—Section 1917(b) (42
2 U.S.C. 1396(b)) is further amended by adding at the end
3 the following new paragraph:

4 “(5) For purposes of this section, the term ‘estate’,
5 with respect to a deceased individual, includes all real and
6 personal property and other assets in which the individual
7 had any legally cognizable title or interest at the time of
8 his death, including such assets conveyed to a survivor,
9 heir, or assign of the deceased individual through joint
10 tenancy, survivorship, life estate, living trust, or other ar-
11 rangement.”.

12 (d) EFFECTIVE DATE.—

13 (1)(A) The amendments made by subsections
14 (a) and (b) apply (except as provided under subpara-
15 graph (B)) to payments under title XIX of the So-
16 cial Security Act for calendar quarters beginning on
17 or after October 1, 1993, without regard to whether
18 or not final regulations or standards to carry out
19 such amendments have been promulgated by such
20 date.

21 (B) In the case of a State plan for medical as-
22 sistance under title XIX of the Social Security Act
23 which the Secretary of Health and Human Services
24 determines requires State legislation (other than leg-
25 islation appropriating funds) in order for the plan to

1 meet the additional requirements imposed by the
2 amendments made by subsections (a) and (b), the
3 State plan shall not be regarded as failing to comply
4 with the requirements of such title solely on the
5 basis of its failure to meet these additional require-
6 ments before the first day of the first calendar quar-
7 ter beginning after the close of the first regular ses-
8 sion of the State legislature that begins after the
9 date of the enactment of this Act. For purposes of
10 the previous sentence, in the case of a State that has
11 a 2-year legislative session, each year of such session
12 shall be deemed to be a separate regular session of
13 the State legislature.

14 (2) The amendments made by this section shall
15 not apply to individuals who died before October 1,
16 1993.

17 **SEC. 5113. CLOSING LOOPHOLE PERMITTING WEALTHY IN-**
18 **DIVIDUALS TO QUALIFY FOR MEDICAID.**

19 (a) IN GENERAL.—Section 1902(r)(2) (42 U.S.C.
20 1396a(r)(2)) is amended by adding at the end the follow-
21 ing:

22 “(C)(i) Notwithstanding subparagraph (A), except as
23 provided in clause (ii), a State plan may not provide pur-
24 suant to this paragraph for disregarding any assets—

1 “(I) to the extent that payments are made
2 under a long-term care insurance policy; or

3 “(II) because an individual has received (or is
4 entitled to receive) benefits for a specified period of
5 time under a long-term care insurance policy.

6 “(ii) Clause (i) shall not apply to State plan provi-
7 sions that are approved as of May 14, 1993.”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 subsection (a) shall take effect on the date of the enact-
10 ment of this Act.

11 PART IV—IMPROVEMENT IN IDENTIFICATION
12 AND COLLECTION OF THIRD PARTY PAYMENTS

13 **SEC. 5116. LIABILITY OF THIRD PARTIES TO PAY FOR CARE**
14 **AND SERVICES.**

15 (a) LIABILITY OF ERISA PLANS.—(1) Section
16 1902(a)(25)(A) (42 U.S.C. 1396a(a)(25)(A)) is amended
17 by striking “insurers)” and inserting “insurers and group
18 health plans (as defined in section 607(1) of the Employee
19 Retirement Income Security Act of 1974) and including
20 a service benefit plan and a health maintenance organiza-
21 tion)”.

22 (2) Section 1903(o) of such Act (42 U.S.C. 1396b(o))
23 is amended by striking “regulation)” and inserting “regu-
24 lation and including a group health plan (as defined in
25 section 607(1) of the Employee Retirement Income Secu-

1 rity Act of 1974)), a service benefit plan, and a health
2 maintenance organization”.

3 (b) REQUIRING STATE TO PROHIBIT INSURERS
4 FROM TAKING MEDICAID STATUS INTO ACCOUNT.—Sec-
5 tion 1902(a)(25) (42 U.S.C. 1396a(a)(25)) is amended—

6 (1) by striking “and” at the end of subpara-
7 graph (F);

8 (2) by adding “and” at the end of subpara-
9 graph (G); and

10 (3) by adding after subparagraph (G) the fol-
11 lowing new subparagraph:

12 “(H) that the State prohibits any health
13 insurer (including a group health plan, as de-
14 fined in section 607(1) of the Employee Retire-
15 ment Income Security Act of 1974, a service
16 benefit plan, and a health maintenance organi-
17 zation), in enrolling an individual or in making
18 any payments for benefits to the individual or
19 on the individual’s behalf, from taking into ac-
20 count that the individual is eligible for or is
21 provided medical assistance under a State
22 plan;”.

23 (c) STATE RIGHT TO SUBROGATION.—Section
24 1902(a)(25) (42 U.S.C. 1396a(a)(25)), as amended by
25 subsection (b), is further amended—

1 (1) by striking “and” at the end of subpara-
2 graph (G);

3 (2) by adding “and” at the end of subpara-
4 graph (H); and

5 (3) by adding after subparagraph (H) the fol-
6 lowing new subparagraph:

7 “(I) that to the extent that payment has
8 been made under the State plan for medical as-
9 sistance in any case where a third party has a
10 legal liability to make payment for such assist-
11 ance, the State is subrogated to the right of any
12 other party to payment for such assistance;”.

13 (d) EFFECTIVE DATE.—(1) Except as provided in
14 paragraph (2), the amendments made by subsections
15 (a)(1), (b), and (c) shall apply to calendar quarters begin-
16 ning on or after October 1, 1993, without regard to wheth-
17 er or not final regulations to carry out such amendments
18 have been promulgated by such date.

19 (2) In the case of a State plan for medical assistance
20 under title XIX of the Social Security Act which the Sec-
21 retary of Health and Human Services determines requires
22 State legislation (other than legislation appropriating
23 funds) in order for the plan to meet the additional require-
24 ments imposed by the amendments made by subsections
25 (a) and (b), the State plan shall not be regarded as failing

1 to comply with the requirements of such title solely on the
2 basis of its failure to meet these additional requirements
3 before the first day of the first calendar quarter beginning
4 after the close of the first regular session of the State leg-
5 islature that begins after the date of the enactment of this
6 Act. For purposes of the previous sentence, in the case
7 of a State that has a 2-year legislative session, each year
8 of such session shall be deemed to be a separate regular
9 session of the State legislature.

10 (3) The amendment made by subsection (a)(2) shall
11 apply to items and services furnished on or after October
12 1, 1993.

13 **SEC. 5117. HEALTH COVERAGE CLEARINGHOUSE.**

14 (a) IN GENERAL.—The Social Security Act is
15 amended by adding at the end the following new title:

16 “TITLE XXI—HEALTH COVERAGE
17 CLEARINGHOUSE

18 “ESTABLISHMENT OF CLEARINGHOUSE

19 “SEC. 2101. (a) IN GENERAL.—The Secretary shall
20 establish and operate a Health Coverage Clearinghouse (in
21 this title referred to as the ‘Clearinghouse’) for the pur-
22 pose of identifying, for beneficiaries of a covered health
23 program (as defined in subsection (c)), third parties
24 (which may include a covered health program) which may

1 be liable for payment for health care items and services
2 furnished to such beneficiaries under such program.

3 “(b) DIRECTOR.—The Clearinghouse shall be headed
4 by a Director (in this title referred to as the ‘Director’)
5 appointed by the Secretary.

6 “(c) COVERED HEALTH PROGRAM DEFINED.—In
7 this title, the term ‘covered health program’ means any
8 of the following under which payment is made for health
9 care items or services furnished to a beneficiary:

10 “(1) The medicare program under title XVIII.

11 “(2) A State plan for medical assistance under
12 title XIX (including a State plan operating under a
13 Statewide waiver under section 1115).

14 “(3) The Indian Health Service and any pro-
15 gram under the Indian Health Care Improvement
16 Act.

17 “(4) A State program under title V that pro-
18 vides payment for items or services.

19 “(d) OTHER DEFINITIONS.—In this title:

20 “(1) The term ‘administrator’ means, with re-
21 spect to the covered health program described in—

22 “(A) subsection (c)(1), the Administrator
23 of the Health Care Financing Administration;

24 “(B) subsection (c)(2), the single State
25 agency referred to in section 1902(a)(5);

1 “(C) subsection (c)(3), the Director of the
2 Indian Health Service; and

3 “(D) subsection (c)(4), the State agency
4 receiving funds under title V.

5 “(2) The term ‘group health plan’ has the
6 meaning given such term in section
7 6103(l)(12)(E)(ii) of such Code.

8 “(3) The term ‘qualified employer’ has the
9 meaning given such term in section
10 6103(l)(12)(E)(iii) of the Internal Revenue Code of
11 1986.

12 “PROVISION OF INFORMATION

13 “SEC. 2102. (a) REQUEST FOR INFORMATION.—An
14 administrator of a covered health program may request
15 from the Director information concerning the employment
16 and group health coverage of a program beneficiary, the
17 beneficiary’s spouse, and (if the beneficiary is a dependent
18 child) the beneficiary’s parents. The Director shall provide
19 such information if the request—

20 “(1) is in such form and manner and at such
21 a time as the Director may require, and

22 “(2) specifies the name and tax identification
23 number of the beneficiary.

24 “(b) DATA MATCHING PROGRAM.—

25 “(1) REQUEST BY DIRECTOR.—The Director
26 shall, at such intervals as the Director finds appro-

1 appropriate, transmit to the Secretary of the Treasury the
2 names and tax identification numbers of bene-
3 ficiaries with respect to whom a request has been
4 made pursuant to subsection (a), and request that
5 such Secretary disclose to the Commissioner of So-
6 cial Security the following information:

7 “(A) Whether the beneficiary is married
8 and, if so, the name of the spouse and such
9 spouse’s tax identification number.

10 “(B) If the beneficiary is a dependent
11 child, the name of and tax identification num-
12 bers of the beneficiary’s parents.

13 “(2) INFORMATION FROM COMMISSIONER OF
14 SOCIAL SECURITY.—The Secretary, acting through
15 the Commissioner of Social Security, shall, upon
16 written request from the Director, disclose to the Di-
17 rector, the following information:

18 “(A) For each individual who is identified
19 as having received wages (as defined in section
20 3401(a) of the Internal Revenue Code of 1986)
21 from, and as having available coverage under a
22 group health plan of, an employer in a previous
23 year—

24 “(i) the name and taxpayer identifica-
25 tion number of the individual;

1 “(ii) the name, address, and taxpayer
2 identification number of the employer, and
3 whether such employer is a qualified em-
4 ployer; and

5 “(iii) whether the employer has made
6 available a group health plan to the em-
7 ployee and the plan coverage provided (if
8 any) with respect to the employee and fam-
9 ily members of the employee under the
10 group health plan.

11 “(B) For each individual who is identified
12 as married and whose spouse is identified as
13 having received wages (as defined in section
14 3401(a) of the Internal Revenue Code of 1986)
15 from, and as having available coverage under a
16 group health plan of, an employer in a previous
17 year—

18 “(i) the name and taxpayer identifica-
19 tion number of the individual and of the
20 individual’s spouse;

21 “(ii) the name, address, and taxpayer
22 identification number of the spouse’s em-
23 ployer, and whether such employer is a
24 qualified employer; and

1 “(iii) whether the spouse’s employer
2 has made available a group health plan to
3 the spouse and the plan coverage provided
4 (if any) with respect to the spouse and
5 family members of the spouse under the
6 group health plan.

7 “(C) For each individual who is identified
8 as a dependent child and whose parent is iden-
9 tified as having received wages (as defined in
10 section 3401(a) of the Internal Revenue Code
11 of 1986) from, and as having available coverage
12 under a group health plan of, an employer in a
13 previous year—

14 “(i) the name and taxpayer identifica-
15 tion number of the individual and of the
16 individual’s parent;

17 “(ii) the name, address, and taxpayer
18 identification number of the parent’s em-
19 ployer, and whether such employer is a
20 qualified employer; and

21 “(iii) whether the parent’s employer
22 has made available a group health plan to
23 the parent and the plan coverage provided
24 (if any) with respect to the parent and de-

1 pendent children of the parent under the
2 group health plan.

3 “(3) INFORMATION FROM EMPLOYERS.—The
4 Director shall—

5 “(A) request, from the employer of each
6 individual (including each spouse) with respect
7 to whom information was received from the
8 Commissioner of Social Security pursuant to
9 paragraph (2), specific information concerning
10 coverage of such individual (and of the individ-
11 ual’s spouse and dependent children) under the
12 employer’s group health plan (including the pe-
13 riod and nature of the coverage, and the name,
14 address, and identifying number of the plan),
15 and

16 “(B) furnish the information received in
17 response to such request with respect to an in-
18 dividual (or such individual’s spouse or depend-
19 ent children) to the administrator requesting
20 such information pursuant to subsection (a).

21 “REQUIREMENT THAT EMPLOYERS FURNISH
22 INFORMATION

23 “SEC. 2103. (a) IN GENERAL.—An employer shall
24 furnish to the Director the information requested pursu-
25 ant to section 2102(b)(3) within 30 days after receipt of
26 such a request.

1 “(b) SUNSET ON REQUIREMENT.—Subsection (a)
2 shall not apply to inquiries made after September 30,
3 1998.

4 “(c) CIVIL MONEY PENALTY FOR FAILURE TO CO-
5 OPERATE.—

6 “(1) IN GENERAL.—An employer (other than a
7 Federal or other governmental entity) who willfully
8 or repeatedly fails to provide timely and accurate re-
9 sponse to a request for information pursuant to sec-
10 tion 2102(b)(3) shall be subject, in addition to any
11 other penalties that may be prescribed by law, to a
12 civil money penalty of not to exceed \$1,000 for each
13 individual with respect to whom such a request is
14 made.

15 “(2) ENFORCEMENT AUTHORITY.—In cases of
16 failure to respond to the Director in accordance with
17 subsection (a) to inquiries relating to requests pur-
18 suant to section 2102, the provisions of section
19 1128A (other than subsections (a) and (b)) shall
20 apply to civil money penalties under paragraph (1)
21 in the same manner as such provisions apply to pen-
22 alties or proceedings under section 1128A(a).

23 “DATA BANK

24 “SEC. 2104. (a) MAINTENANCE OF INFORMATION.—
25 The Clearinghouse shall maintain a data bank, containing
26 information on individuals obtained pursuant to this title.

1 Individual information in the data bank shall be retained
2 for not less than one year after the date the information
3 was obtained.

4 “(b) DISCLOSURE OF INFORMATION IN DATA
5 BANK.—

6 “(1) IN GENERAL.—The Director is authorized
7 (subject to paragraph (2)) to disclose any informa-
8 tion in the data bank established pursuant to sub-
9 section (a) with respect to an individual (or an indi-
10 vidual’s spouse or parent)—

11 “(A) to the Commissioner of Social Secu-
12 rity, the Secretary of the Treasury, administra-
13 tors, employers, and insurers, to the extent nec-
14 essary to assist such administrators;

15 “(B) to Federal and State law enforcement
16 officials responsible for enforcement of civil or
17 criminal laws, in connection with investigations
18 or administrative or judicial law enforcement
19 proceedings relating to a covered health pro-
20 gram; and

21 “(C) for research or statistical purposes.

22 “(2) RESTRICTIONS ON DISCLOSURE.—Informa-
23 tion in the data bank may be disclosed under this
24 subsection only for purposes of, and to the extent

1 necessary in, determining the extent to which an in-
2 dividual is covered under any group health plan.

3 “(c) USE OF CONTRACTORS.—The responsibilities of
4 the Clearinghouse under this section may be carried out
5 by contract.

6 “(d) FEES.—The Clearinghouse shall—

7 “(1) establish fees for services under this sec-
8 tion designed to cover the full costs to the Clearing-
9 house of providing such services, and

10 “(2) require the payment of such fees to pro-
11 vide such services.”.

12 (b) CONFORMING MEDICARE AMENDMENTS.—Sec-
13 tion 1862(b)(5) (42 U.S.C. 1395y(b)(5)) is amended—

14 (1) in subparagraph (A)(i)—

15 (A) by striking “Secretary of the Treas-
16 ury” and inserting “Director of the Health Cov-
17 erage Clearinghouse”,

18 (B) by striking “(as defined in section
19 6103(l)(12) of the Internal Revenue Code of
20 1986)” and inserting “(as defined in clause
21 (iii))”, and

22 (C) by striking “and request” and all that
23 follows and inserting a period;

24 (2) in subparagraph (A)(ii)—

1 (A) by striking “the Commissioner of the
2 Social Security Administration” and all that
3 follows and inserting “the Director of the
4 Health Coverage Clearinghouse to obtain and
5 disclose to the Administrator, pursuant to sec-
6 tion 2102(b) and to subparagraph (C) of sec-
7 tion 6103(l)(12) of the Internal Revenue Code
8 of 1986, the information described in section
9 2102(b) and subparagraph (B) of such section
10 6103(l)(12).”, and

11 (B) by inserting “, pursuant to section
12 1144(c),” after “disclose to the Administrator”;
13 and

14 (3) by striking subparagraph (C).

15 (c) MEDICAID USE OF CLEARINGHOUSE.—Section
16 1902(a)(25)(A) (42 U.S.C. 1396a(a)(25)(A)) is amended
17 by inserting “(including making appropriate requests to
18 the Director of the Health Coverage Clearinghouse under
19 section 2102)” after “all reasonable measures”.

20 (d) COLLECTION OF THIRD PARTY PAYMENTS
21 UNDER MATERNAL AND CHILD HEALTH BLOCK GRANT
22 PROGRAM.—Section 505(a) (42 U.S.C. 705(a)) is amend-
23 ed—

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

25 (4),

1 (2) by striking the period at the end of para-
2 graph (5) and inserting “; and”, and

3 (3) by inserting after paragraph (5) the follow-
4 ing new paragraph:

5 “(6) provides for an entity providing health
6 services with assistance from the State under this
7 title taking all reasonable steps—

8 “(A) to ascertain the legal liability of third
9 parties to pay for such services, and

10 “(B) where such liability is found to exist,
11 to seek reimbursement for such services.”.

12 (e) EFFECTIVE DATES.—

13 (1) The amendments made by subsections (a),
14 (b), and (d) shall take effect on April 1, 1995.

15 (2) The amendments made by subsection (c)
16 shall apply to allotments for years beginning with
17 fiscal year 1994.

18 **SEC. 5118. MEDICAL CHILD SUPPORT.**

19 (a) STATE PLAN REQUIREMENT.—Section
20 1902(a)(45) (42 U.S.C. 1396a(a)(45)) is amended by
21 striking “owed to recipients” and inserting “and have in
22 effect laws relating to medical child support”.

23 (b) MEDICAL CHILD SUPPORT LAWS.—Section 1912
24 of such Act (42 U.S.C. 1396k) is amended—

1 (1) by adding at the end of the heading the fol-
2 lowing: “; REQUIRED LAWS RELATING TO MEDICAL
3 CHILD SUPPORT”; and

4 (2) by adding at the end the following new sub-
5 section:

6 “(c) The laws relating to medical child support, which
7 a State is required to have in effect under section
8 1902(a)(45), are as follows:

9 “(1) A law that prohibits an insurer from deny-
10 ing enrollment of a child under the health coverage
11 of the child’s parent on the ground that the child
12 was born out of wedlock, on the ground that the
13 child may not be claimed as a dependent on the par-
14 ent’s Federal income tax return, or on the ground
15 that the child does not reside with the parent or in
16 the insurer’s service area. In this subsection, the
17 term ‘insurer’ includes a group health plan, as de-
18 fined in section 607(1) of the Employee Retirement
19 Income Security Act of 1974, a health maintenance
20 organization, and an entity offering a service benefit
21 plan.

22 “(2) A law that requires an insurer, in any case
23 in which a parent is required by court or administra-
24 tive order to provide health coverage for a child and

1 the parent is eligible for family health coverage
2 through the insurer—

3 “(A) to permit such parent, upon applica-
4 tion and without regard to any enrollment sea-
5 son restrictions, to enroll the parent and such
6 child under such family coverage;

7 “(B) if such a parent is enrolled but fails
8 to make application to obtain coverage of such
9 child, to enroll such child under such family
10 coverage upon application by the child’s other
11 parent or by the State agency administering the
12 program under this title or part D of title IV;
13 and

14 “(C) not to disenroll (or eliminate coverage
15 of) such a child unless the insurer is provided
16 satisfactory written evidence that—

17 “(i) such court or administrative
18 order is no longer in effect, or

19 “(ii) the child is or will be enrolled in
20 comparable health coverage through an-
21 other insurer which will take effect not
22 later than the effective date of such
23 disenrollment.

24 “(3) A law that requires an employer doing
25 business in the State, in the case of health coverage

1 offered through employment with the employer and
2 providing coverage of a child of an employee pursu-
3 ant to a court or administrative order, to withhold
4 from such employee's compensation the employee's
5 share (if any) of premiums for health coverage (to
6 the maximum amount permitted under section
7 303(b) of the Consumer Credit Protection Act) and
8 to pay such share of premiums to the insurer.

9 “(4) A law that prohibits an insurer from im-
10 posing requirements upon a State agency, which is
11 acting as an agent or subrogee of an individual eligi-
12 ble for medical assistance under this title and cov-
13 ered for health benefits from the insurer, that are
14 different from requirements applicable to an agent
15 or subrogee of any other individual so covered.

16 “(5) A law that requires an insurer, in any case
17 in which a child has health coverage through the in-
18 surer of a noncustodial parent—

19 “(A) to provide such information to the
20 custodial parent as may be necessary for the
21 child to obtain benefits through such coverage;

22 “(B) to permit the custodial parent (or
23 provider, with the custodial parent's approval)
24 to submit claims for covered services without
25 the approval of the noncustodial parent; and

1 “(C) to make payment on claims submitted
2 in accordance with subparagraph (B) directly to
3 the custodial parent or the provider.

4 “(6) A law that requires the State agency under
5 this title to garnish the wages, salary, or other em-
6 ployment income of, and to withhold amounts from
7 State tax refunds to, any person who—

8 “(A) is required by court or administrative
9 order to provide coverage of the costs of health
10 services to a child who is eligible for medical as-
11 sistance under this title,

12 “(B) has received payment from a third
13 party for the costs of such services to such
14 child, but

15 “(C) has not used such payments to reim-
16 burse, as appropriate, either the other parent or
17 guardian of such child or the provider of such
18 services,

19 to the extent necessary to reimburse the State agen-
20 cy for expenditures for such costs under its plan
21 under this title, but any claims for current or past-
22 due child support shall take priority over any such
23 claims for the costs of such services.”.

24 (c) EFFECTIVE DATE.—(1) Except as provided in
25 paragraph (2), the amendments made by this section

1 apply to calendar quarters beginning on or after April 1,
2 1994, without regard to whether or not final regulations
3 to carry out such amendments have been promulgated by
4 such date.

5 (2) In the case of a State plan under title XIX of
6 the Social Security Act which the Secretary of Health and
7 Human Services determines requires State legislation in
8 order for the plan to meet the additional requirements im-
9 posed by the amendments made by this section, the State
10 plan shall not be regarded as failing to comply with the
11 requirements of such title solely on the basis of its failure
12 to meet these additional requirements before the first day
13 of the first calendar quarter beginning after the close of
14 the first regular session of the State legislature that be-
15 gins after the date of enactment of this Act. For purposes
16 of the previous sentence, in the case of a State that has
17 a 2-year legislative session, each year of such session shall
18 be deemed to be a separate regular session of the State
19 legislature.

20 PART V—ASSURING PROPER PAYMENTS TO
21 DISPROPORTIONATE SHARE HOSPITALS

22 **SEC. 5121. ASSURING PROPER PAYMENTS TO DISPROPOR-**
23 **TIONATE SHARE HOSPITALS.**

24 (a) DISPROPORTIONATE SHARE HOSPITALS RE-
25 QUIRED TO PROVIDE MINIMUM LEVEL OF SERVICES TO

1 MEDICAID PATIENTS.—Section 1923 (42 U.S.C. 1396r–
2 4) is amended—

3 (1) in subsection (a)(1)(A), by striking “re-
4 quirement” and inserting “requirements”;

5 (2) in subsection (b)(1), by striking “require-
6 ment” and inserting “requirements”;

7 (3) in the heading to subsection (d), by striking
8 “REQUIREMENT” and inserting “REQUIREMENTS”;

9 (4) by adding at the end of subsection (d) the
10 following new paragraph:

11 “(3) No hospital may be defined or deemed as
12 a disproportionate share hospital under a State plan
13 under this title or under subsection (b) or (e) of this
14 section unless the hospital has a medicaid inpatient
15 utilization rate (as defined in subsection (b)(2)) of
16 not less than 1 percent.”;

17 (5) in subsection (e)(1)—

18 (A) by striking “and” before “(B)”, and

19 (B) by inserting before the period at the
20 end the following: “, and (C) the plan meets the
21 requirement of subsection (d)(3) and such pay-
22 ment adjustments are made consistent with the
23 fourth sentence of subsection (c)”;

24 (6) in subsection (e)(2)—

1 (A) in subparagraph (A), by inserting
2 “(other than the fourth sentence of subsection
3 (c))” after “(c)”,

4 (B) by striking “and” at the end of sub-
5 paragraph (A),

6 (C) by striking the period at the end of
7 subparagraph (B) and inserting “, and”, and

8 (D) by adding at the end the following new
9 subparagraph:

10 “(C) subsection (d)(3) shall apply.”.

11 (b) LIMITING AMOUNT OF PAYMENT ADJUSTMENTS
12 FOR STATE OR COUNTY HOSPITALS TO UNCOVERED
13 COSTS.—Subsection (c) of such section is amended by
14 adding at the end the following: “A payment adjustment
15 during a year is not considered to be consistent with this
16 subsection with respect to a hospital owned or operated
17 by a State (or by an instrumentality or a unit of govern-
18 ment within a State) if the payment adjustment exceeds
19 the costs of furnishing hospital services (as determined by
20 the Secretary and net of payments under this title, other
21 than under this section, and by uninsured patients) by the
22 hospital to individuals who either are eligible for medical
23 assistance under the State plan or have no health insur-
24 ance (or other source of third party payment) for such
25 services during the year. For purposes of the preceding

1 sentence, payments made to a hospital for services pro-
2 vided to indigent patients made by a State or a unit of
3 local government within a State shall not be considered
4 to be a source of third party payment.”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to payments to States under sec-
7 tion 1903(a) of the Social Security Act for payments to
8 hospitals made under State plans after—

9 (1) the end of the State fiscal year that ends
10 during 1994, or

11 (2) in the case of a State with a State legisla-
12 ture which is not scheduled to have a regular legisla-
13 tive session in 1994, the end of the State fiscal year
14 that ends during 1995;

15 without regard to whether or not final regulations to carry
16 out such amendments have been promulgated by either
17 such date.

18 **Subchapter B—Miscellaneous Provisions**

19 **PART I—ANTI-FRAUD AND ABUSE PROVISIONS**

20 **SEC. 5131. APPLICATION OF MEDICARE RULES LIMITING** 21 **CERTAIN PHYSICIAN REFERRALS.**

22 (a) IN GENERAL.—Section 1903(i) (42 U.S.C.
23 1396b(i)), as amended by section 5174(b), is amended—

24 (A) in paragraph (12), by striking or at
25 the end,

1 (B) in paragraph (13), by striking the pe-
2 riod at the end and inserting “; or”, and

3 (C) by inserting after paragraph (13) the
4 following new paragraph:

5 “(14) with respect to any amount expended for
6 an item or service for which payment would be de-
7 nied under section 1877(g)(1) if the item or service
8 were furnished to an individual entitled to benefits
9 under title XVIII.”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 subsection (a) shall apply to items and services furnished
12 on or after October 1, 1993.

13 **SEC. 5132. INTERMEDIATE SANCTIONS FOR KICKBACK VIO-**
14 **LATIONS.**

15 (a) PENALTY FOR KICKBACKS.—Section 1128A(a)
16 (42 U.S.C. 1320a–7a(a)) is amended—

17 (1) by striking “or” at the end of paragraphs
18 (1) and (2);

19 (2) by adding “or” at the end of paragraph (3);

20 (3) by inserting after paragraph (3) the follow-
21 ing new paragraph:

22 “(4) carries out any activity in violation of
23 paragraph (1) or (2) of section 1128B(b);”;

1 (4) by striking “given).” at the end of the first
2 sentence and inserting “given or, in cases under
3 paragraph (4), \$50,000 for each such violation).”;

4 (5) in the second sentence, by inserting “in
5 cases under paragraphs (1), (2), and (3),” after “In
6 addition,”; and

7 (6) by inserting after the second sentence, the
8 following new sentence: “In cases under paragraph
9 (4), such a person shall be subject to an assessment
10 of not more than twice the total amount of the re-
11 munerations offered, paid, solicited, or received in
12 violation of section 1128B(b), determined without
13 regard to whether a portion of such remuneration
14 was offered, paid, solicited, or received for a lawful
15 purpose.”.

16 (b) AUTHORIZATION TO ACT.—The first sentence of
17 section 1128A(c)(1) (42 U.S.C. 1320a–7a(c)(1)) is
18 amended by striking all that follows “(b)” and inserting
19 the following: “unless, within one year after the date the
20 Secretary presents a case to the Attorney General for con-
21 sideration, the Attorney General brings an action in a dis-
22 trict court of the United States.”.

23 (c) EFFECTIVE DATES.—

24 (1) The amendments made by subsection (a)
25 shall apply to remuneration offered, paid, solicited,

1 or received before, on, or after the date of the enact-
2 ment of this Act.

3 (2) The amendment made by subsection (b)
4 shall apply to cases presented by the Secretary of
5 Health and Human Services for consideration on or
6 after the date of the enactment of this Act.

7 **SEC. 5133. REQUIRING MAINTENANCE OF EFFORT FOR**
8 **STATE MEDICAID FRAUD CONTROL UNITS.**

9 (a) IN GENERAL.—Section 1902(a)(49) (42 U.S.C.
10 1396a(a)(49)) is amended—

11 (1) by inserting “(A)” after “(49)”, and

12 (2) by adding at the end the following new sub-
13 paragraph:

14 “(B) provide that the State will expend for its
15 medicaid fraud and abuse control unit (as defined in
16 section 1903(q)), for each State fiscal year, an
17 amount that is not less than the amount expended
18 for such unit in the State fiscal year that ended in
19 1992 adjusted to reflect the percentage increase in
20 total expenditures under the State plan between
21 such State fiscal year and the State fiscal year in-
22 volved;”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 subsection (a) shall apply to State fiscal years ending after
25 1993.

1 PART II—MANAGED CARE PROVISIONS

2 **SEC. 5135. MEDICAID MANAGED CARE ANTI-FRAUD PROVI-**
3 **SIONS.**4 (a) PROHIBITING AFFILIATIONS WITH INDIVIDUALS
5 DEBARRED BY FEDERAL AGENCIES.—6 (1) IN GENERAL.—Section 1903(m) (42 U.S.C.
7 1396b(m)) is amended—

8 (A) in paragraph (2)(A)—

9 (i) by striking “and” at the end of
10 clause (x),11 (ii) by striking the period at the end
12 of clause (xi) and inserting “; and”, and13 (iii) by adding at the end the follow-
14 ing new clause:15 “(xii) the entity complies with the requirements
16 of paragraph (3) (relating to certain protections
17 against fraud and abuse).”;18 (B) in paragraph (2)(B), as amended by
19 section 5158(b), by striking “clause (ix)” and
20 inserting “clauses (ix) and (xii)”; and21 (C) by inserting after paragraph (2) the
22 following new paragraph:23 “(3)(A)(i) A health maintenance organization may
24 not have a person described in clause (iv) as a director,

1 officer, partner, or person with beneficial ownership of
2 more than 5 percent of organization's equity.

3 “(ii) A health maintenance organization may not have
4 an employment, consulting, or other agreement with a per-
5 son described in clause (iv) for the provision of goods and
6 services that are significant and material to the organiza-
7 tion's obligations under its contract with the State de-
8 scribed in paragraph (2)(A)(iii).

9 “(iii) If a health maintenance organization is not in
10 compliance with clause (i) or clause (ii)—

11 “(I) a State may continue an existing agree-
12 ment with the organization unless the Secretary (in
13 consultation with the Inspector General of the De-
14 partment of Health and Human Services) directs
15 otherwise; and

16 “(II) a State may not renew or otherwise ex-
17 tend the duration of an existing agreement with the
18 organization unless the Secretary (in consultation
19 with the Inspector General of the Department of
20 Health and Human Services) provides a written
21 statement describing compelling reasons that exist
22 for renewing or extending the agreement.

23 “(iv) A person described in this clause is a person
24 that—

1 “(I) is debarred or suspended by the Federal
2 Government, pursuant to the Federal acquisition
3 regulation, from Government contracting and sub-
4 contracting, or

5 “(II) is an affiliate (within the meaning of the
6 Federal acquisition regulation) of a person described
7 in subclause (I).”.

8 (2) EFFECTIVE DATE.—The amendments made
9 by paragraph (1) shall apply to agreements between
10 a State and an entity under section 1903(m) of the
11 Social Security Act entered into or renewed on or
12 after October 1, 1993, without regard to whether
13 regulations to carry out such amendments are pro-
14 mulgated by such date.

15 (b) REQUIREMENT FOR STATE CONFLICT-OF-INTER-
16 EST SAFEGUARDS IN MEDICAID RISK CONTRACTING.—

17 (1) IN GENERAL.—Section 1903(m)(2)(A) (42
18 U.S.C. 1396b(m)(2)(A)), as amended by subsection
19 (a)(1)(C), is amended—

20 (A) by striking “and” at the end of clause
21 (xi),

22 (B) by striking the period at the end of
23 clause (xii) and inserting “; and”, and

24 (C) by adding at the end the following new
25 clause:

1 “(xiii) the State certifies to the Secretary that
2 it has in effect conflict-of-interest safeguards with
3 respect to officers and employees of the State with
4 responsibility with respect to contracts with organi-
5 zations under this subsection that are at least as ef-
6 fective as the Federal safeguards, provided under
7 section 27 of the Office of Federal Procurement Pol-
8 icy Act (41 U.S.C. 423), against conflicts of interest
9 that apply with respect to Federal procurement offi-
10 cials with comparable responsibilities with respect to
11 such contracts.”.

12 (2) EFFECTIVE DATE.—The amendments made
13 by paragraph (1) shall apply as of July 1, 1994,
14 without regard to whether regulations to carry out
15 such amendments are promulgated by such date.

16 (c) REQUIRING DISCLOSURE OF FINANCIAL INFOR-
17 MATION.—

18 (1) IN GENERAL.—Section 1903(m)(3), as in-
19 serted by subsection (a)(1)(C), is amended by add-
20 ing at the end the following new subparagraph:

21 “(B) The contract between the State and an entity
22 referred to in paragraph (2)(A)(iii) shall provide that—

23 “(i) the entity agrees to report to the State
24 such financial information as the Secretary or the

1 State may require to demonstrate that the entity has
2 a fiscally sound operation; and

3 “(ii) the entity agrees to make available to its
4 enrollees upon reasonable request—

5 “(I) the information reported under para-
6 graph (1),

7 “(II) the information required to be dis-
8 closed under sections 1124 and 1126, and

9 “(III) a description of each transaction,
10 described in subparagraphs (A) through (C) of
11 section 1318(a)(3) of the Public Health Service
12 Act, between the entity and a party in interest
13 (as defined in section 1318(b) of such Act).”.

14 (2) EFFECTIVE DATE.—The amendment made
15 by paragraph (1) shall apply to contract years begin-
16 ning on or after October 1, 1993, without regard to
17 whether regulations to carry out such amendments
18 are promulgated by such date, with respect to infor-
19 mation reported or required to be disclosed, or
20 transactions occurring, before, on, or after such
21 date.

22 (d) PROHIBITING MARKETING FRAUD.—

23 (1) IN GENERAL.—Section 1903(m)(3), as in-
24 serted by subsection (a)(1) and as amended by sub-

1 section (c)(1), is amended by adding at the end the
2 following new subparagraph:

3 “(C) The contract between the State and an entity
4 referred to in paragraph (2)(A)(iii) shall provide that the
5 entity agrees to comply with such procedures and condi-
6 tions as the Secretary prescribes in order to ensure that,
7 before an individual is enrolled with the entity, the individ-
8 ual is provided accurate and sufficient information to
9 make an informed decision whether or not to enroll.”.

10 (2) EFFECTIVE DATE.—The amendment made
11 by paragraph (1) shall apply to contract years that
12 begin on or after October 1, 1993, without regard
13 to whether regulations to carry out such amendment
14 are promulgated by such date.

15 (e) REQUIRING ADEQUATE EQUITY FOR FOR-PROFIT
16 ENTITIES.—

17 (1) IN GENERAL.—Section 1903(m)(3), as pre-
18 viously amended by this section, is further amended
19 by adding at the end the following new subpara-
20 graph:

21 “(D)(i) The contract between the State and an entity
22 referred to in paragraph (2)(A)(iii) shall require, in the
23 case of a for-profit entity, that the entity shall maintain
24 an average ratio of—

25 “(I) equity capital to

1 “(II) payments made by the State to the entity
2 under the contract on a capitation basis or any other
3 risk basis,
4 of not less than such minimum ratio as the Secretary shall
5 specify.

6 “(ii) The contract between the State and a non-profit
7 entity referred to in paragraph (2)(A)(iii) shall require
8 that no payment shall be made directly or indirectly under
9 an agreement between the non-profit entity and a related
10 for-profit entity (as defined by the Secretary) unless the
11 for-profit entity maintains an average ratio of equity cap-
12 ital to payments under such agreement of not less than
13 such ratio as the Secretary shall specify.”.

14 (2) EFFECTIVE DATE.—The amendment made
15 by paragraph (1) shall apply to contract years begin-
16 ning on or after July 1, 1994, without regard to
17 whether regulations to carry out such amendment
18 are promulgated by such date.

19 (f) REQUIRING ADEQUATE PROVISION AGAINST RISK
20 OF INSOLVENCY.—

21 (1) IN GENERAL.—Section 1903(m)(1)(A)(ii)
22 (42 U.S.C. 1396b(m)(1)(A)(ii)) is amended by in-
23 serting “, which meets such standards as the Sec-
24 retary shall prescribe” after “satisfactory to the
25 State”.

1 (2) EFFECTIVE DATE AND TRANSITION.—(A)

2 The amendment made by paragraph (1) shall apply
3 to contract years beginning on or after July 1, 1994,
4 without regard to whether regulations to carry out
5 such amendments are promulgated by such date.

6 (B) If the Secretary of Health and Human
7 Services has not promulgated standards to carry out
8 the amendment made by paragraph (1) by July 1,
9 1994, until such standards have been promulgated a
10 provision of a health maintenance organization
11 against the risk of insolvency shall not be considered
12 to meet standards prescribed by the Secretary, for
13 purposes of section 1903(m)(1)(A)(ii) of the Social
14 Security Act, unless such provision has been found
15 satisfactory by the Secretary under section
16 1876(b)(2)(E) of such Act.

17 (g) REQUIRING REPORT ON NET EARNINGS AND AD-
18 DITIONAL BENEFITS.—

19 (1) IN GENERAL.—Section 1903(m)(3), as pre-
20 viously amended by this section, is amended by add-
21 ing at the end the following new subparagraph:

22 “(E) The contract between the State and an entity
23 referred to in paragraph (2)(A)(iii) shall provide that the
24 entity shall submit a report to the State and the Secretary

1 not later than 12 months after the close of a contract year
2 containing—

3 “(i) a financial statement of the entity’s net
4 earnings under the contract during the contract
5 year, which statement has been audited using audit-
6 ing standards established by the Secretary in con-
7 sultation with the States; and

8 “(ii) a description of any benefits that are in
9 addition to the benefits required to be provided
10 under the contract that were provided during the
11 contract year to members enrolled with the entity
12 and entitled to medical assistance under the plan.”.

13 (2) EFFECTIVE DATE.—The amendment made
14 by paragraph (1) shall apply to contract years begin-
15 ning on or after October 1, 1993, without regard to
16 whether regulations to carry out such amendments
17 are promulgated by such date.

18 (h) REPORT ON NET EARNINGS OF CONTRACTORS.—
19 Not later than 6 months after the date of the enactment
20 of this Act, the Secretary of Health and Human Services
21 shall submit a report to Congress on the earnings of orga-
22 nizations with contracts to receive payment for providing
23 medical assistance under title XIX of the Social Security
24 Act on a prepaid capitation or any other risk basis. The
25 report shall include the Secretary’s recommendations on

1 options for requiring such organizations, as a condition
2 of participation under such title, to dedicate a portion of
3 such earnings to the provision of additional benefits to in-
4 dividuals enrolled with the organization.

5 **SEC. 5136. CLARIFICATION OF TREATMENT OF HMO EN-**
6 **ROLLEES IN COMPUTING THE MEDICAID IN-**
7 **PATIENT UTILIZATION RATE IN QUALIFYING**
8 **HOSPITALS AS DISPROPORTIONATE SHARE**
9 **HOSPITALS.**

10 (a) IN GENERAL.—Section 1923(b)(2) (42 U.S.C.
11 1396r-4(b)(2)) is amended by inserting before the period
12 at the end the following: “and whether or not the individ-
13 ual is enrolled with an entity contracting with the State
14 on a prepaid capitation basis or other risk basis under sec-
15 tion 1903(m)”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 subsection (a) shall apply to payments to States under sec-
18 tion 1903(a) of the Social Security Act for payments to
19 hospitals made under State plans on and after the first
20 day of the first calendar quarter beginning after the date
21 of the enactment of this Act.

1 **SEC. 5137. EXTENSION OF PERIOD OF APPLICABILITY OF**
2 **ENROLLMENT MIX REQUIREMENT TO CER-**
3 **TAIN HEALTH MAINTENANCE ORGANIZA-**
4 **TIONS PROVIDING SERVICES UNDER DAYTON**
5 **AREA HEALTH PLAN.**

6 Section 2 of Public Law 102–276 is amended by
7 striking “January 31, 1994” and inserting “December 31,
8 1995”.

9 **SEC. 5138. EXTENSION OF MEDICAID WAIVER FOR TEN-**
10 **NESSEE PRIMARY CARE NETWORK.**

11 Section 6411(f) of the Omnibus Budget Reconcili-
12 ation Act of 1989, as amended by section 1 of Public Law
13 102–317, is amended by striking “January 31, 1994” and
14 inserting “December 31, 1995”.

15 **SEC. 5139. WAIVER OF APPLICATION OF MEDICAID EN-**
16 **ROLLMENT MIX REQUIREMENT TO DISTRICT**
17 **OF COLUMBIA CHARTERED HEALTH PLAN,**
18 **INC.**

19 (a) IN GENERAL.—The Secretary of Health and
20 Human Services shall waive the application of the require-
21 ment described in section 1903(m)(2)(A)(ii) of the Social
22 Security Act to the entity known as the District of Colum-
23 bia Chartered Health Plan, Inc., for the period described
24 in subsection (b), if the Secretary determines that the en-
25 tity is making continuous efforts and progress toward
26 achieving compliance with such requirement.

1 (b) PERIOD OF APPLICABILITY.—The period referred
2 to in subsection (a) is the period that begins on October
3 1, 1992, and ends on December 31, 1995.

4 **SEC. 5140. EXTENSION OF MINNESOTA PREPAID MEDICAID**
5 **DEMONSTRATION PROJECT.**

6 (a) IN GENERAL.—Section 507 of the Family Sup-
7 port Act of 1988, as amended by section 6411(j) of
8 OBRA–1989 and by section 4733 of OBRA–1990, is
9 amended by striking “1996” and inserting “1998”.

10 (b) AUTHORITY TO IMPOSE PREMIUM.—

11 (1) IN GENERAL.—Notwithstanding section
12 1916 of the Social Security Act and subject to para-
13 graph (2), the State of Minnesota may impose a pre-
14 mium on individuals receiving medical assistance
15 under the Minnesota Prepaid Demonstration Project
16 operated under a waiver granted by the Secretary of
17 Health and Human Services under section 1115(a)
18 of the Social Security Act and other individuals eligi-
19 ble under the State’s plan for medical assistance
20 under title XIX of such Act.

21 (2) LIMITATION ON AMOUNT OF PREMIUM.—In
22 no case may the amount of any premium imposed on
23 an individual receiving medical assistance under the
24 State plan or under the Demonstration Project de-
25 scribed in paragraph (1) exceed 10 percent of the

1 amount by which the family income (less expenses
2 for the care of a dependent child) of the individual
3 exceeds 110 percent of the income official poverty
4 line (as defined by the Office of Management and
5 Budget), and revised annually in accordance with
6 section 673(2) of the Omnibus Budget Reconcili-
7 ation Act of 1981) applicable to a family of the size
8 involved.

9 PART III—EMERGENCY SERVICES TO
10 UNDOCUMENTED ALIENS

11 **SEC. 5141. INCREASE IN FEDERAL FINANCIAL PARTICIPA-**
12 **TION FOR EMERGENCY MEDICAL ASSIST-**
13 **ANCE TO UNDOCUMENTED ALIENS.**

14 (a) IN GENERAL.—Section 1905(b) (42 U.S.C.
15 1396d(b)) is amended by adding at the end the following:
16 “Notwithstanding the first sentence of this section, sub-
17 ject to 1903(v)(4), the Federal medical assistance percent-
18 age shall be 100 per centum with respect to amounts ex-
19 pended by an eligible State in a covered fiscal year (as
20 defined in section 1903(v)(4)(C)) as medical assistance for
21 care and services described in section 1903(v)(2) to aliens
22 described in section 1903(v)(1).”.

23 (b) LIMITATION.—Section 1903(v) (42 U.S.C.
24 1396b(v)) is amended by adding at the end the following
25 new paragraph:

1 “(4)(A) With respect to any eligible State (as defined
2 in subparagraph (C)(i)), the amount of the increase in
3 payments to a State under subsection (a) in a covered fis-
4 cal year (as defined in subparagraph (C)(ii)), resulting
5 from the increase in the Federal medical assistance per-
6 centage under the fourth sentence of section 1905(b), shall
7 not exceed the State’s allotment determined under sub-
8 paragraph (B).

9 “(B)(i) The total of the allotments to all States for
10 a covered fiscal year under this paragraph shall be
11 \$300,000,000.

12 “(ii) From the total allotment under clause (i) for
13 a covered fiscal year, the Secretary shall determine the
14 amount of the allotment for each eligible State. Subject
15 to clause (iii), the amount of such allotment for such a
16 fiscal year shall bear the same ratio to the total amount
17 specified in clause (i) for the fiscal year as the ratio of—

18 “(I) the allotment to the State for fiscal year
19 1993 under section 204 of the Immigration Reform
20 and Control Act of 1986, to

21 “(II) the total of such allotments for all such el-
22 igible States for fiscal year 1993.

23 “(iii) In the case of an eligible State which notifies
24 the Secretary that an amount of its allotment will not be
25 used by the State under this paragraph, the State’s allot-

1 ment shall be reduced by such amount and such amount
2 shall be redistributed among the other eligible States in
3 proportion to the amount otherwise allotted to such State
4 under clause (ii).

5 “(C) For purposes of this paragraph and the fourth
6 sentence of section 1905(b):

7 “(i) The term ‘eligible State’ means a State—

8 “(I) with a plan approved under this title
9 (including a State which is providing medical
10 assistance to its residents under a statewide
11 waiver granted under section 1115), and

12 “(II) for which its allotment for fiscal year
13 1993 under section 204 of the Immigration Re-
14 form and Control Act of 1986 is at least 1 per-
15 cent of the total of such allotments for all the
16 States for fiscal year 1993.

17 “(ii) The term ‘covered fiscal year’ means only
18 fiscal year 1994.

19 “(D) Nothing in this paragraph or the fourth sen-
20 tence of section 1905(b) shall be construed as establishing
21 entitlement authority (within the meaning of section 3(9)
22 of the Congressional Budget Act of 1974) for any fiscal
23 year other than a covered fiscal year.”.

1 **SEC. 5142. LIMITING FEDERAL MEDICAID MATCHING PAY-**
2 **MENT TO BONA FIDE EMERGENCY SERVICES**
3 **FOR UNDOCUMENTED ALIENS.**

4 (a) IN GENERAL.—Section 1903(v)(2) (42 U.S.C.
5 1396b(v)(2)) is amended—

6 (1) by striking “and” at the end of subpara-
7 graph (A),

8 (2) by striking the period at the end of sub-
9 paragraph (B) and inserting “, and”, and

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

12 “(C) such care and services are not related to
13 an organ transplant procedure.”.

14 (b) EFFECTIVE DATE.—(1) Subject to paragraph
15 (2), the amendments made by subsection (a) shall apply
16 as if included in the enactment of OBRA-1986.

17 (2) The Secretary of Health and Human Services
18 shall not disallow expenditures made for the care and serv-
19 ices described in section 1903(v)(2)(C) of the Social Secu-
20 rity Act, as added by subsection (a), furnished before the
21 date of the enactment of this Act.

1 PART IV—MISCELLANEOUS PROVISIONS

2 **SEC. 5144. INCREASE IN LIMIT ON FEDERAL MEDICAID**
3 **MATCHING PAYMENTS TO PUERTO RICO AND**
4 **OTHER TERRITORIES.**

5 (a) IN GENERAL.—Paragraphs (1) through (5) of
6 section 1108(c) (42 U.S.C. 1308(c)) are amended to read
7 as follows:

8 “(1) Puerto Rico shall not exceed (A)
9 \$104,000,000 for fiscal year 1994 and (B) for each
10 succeeding fiscal year the amount provided in this
11 paragraph for the preceding fiscal year increased by
12 percentage increase in the medical care component
13 of the consumer price index for all urban consumers
14 (as published by the Bureau of Labor Statistics) for
15 the twelve-month period ending in March preceding
16 the beginning of the fiscal year, rounded to the near-
17 est \$100,000;

18 “(2) the Virgin Islands shall not exceed (A)
19 \$3,425,000 for fiscal year 1994, and (B) for each
20 succeeding fiscal year the amount provided in this
21 paragraph for the preceding fiscal year increased by
22 percentage increase referred to in paragraph (1)(B),
23 rounded to the nearest \$10,000;

24 “(3) Guam shall not exceed (A) \$3,290,000 for
25 fiscal year 1994, and (B) for each succeeding fiscal

1 year the amount provided in this paragraph for the
2 preceding fiscal year increased by percentage in-
3 crease referred to in paragraph (1)(B), rounded to
4 the nearest \$10,000;

5 “(4) Northern Mariana Islands shall not exceed
6 (A) \$990,000 for fiscal year 1994, and (B) for each
7 succeeding fiscal year the amount provided in this
8 paragraph for the preceding fiscal year increased by
9 percentage increase referred to in paragraph (1)(B),
10 rounded to the nearest \$10,000; and

11 “(5) American Samoa shall not exceed (A)
12 \$1,910,000 for fiscal year 1994, and (B) for each
13 succeeding fiscal year the amount provided in this
14 paragraph for the preceding fiscal year increased by
15 percentage increase referred to in paragraph (1)(B),
16 rounded to the nearest \$10,000.”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 subsection (a) shall apply beginning with fiscal year 1994.

19 **SEC. 5145. CRITERIA FOR MAKING DETERMINATIONS OF**
20 **DENIAL OF FEDERAL MEDICAID MATCHING**
21 **PAYMENTS TO STATES.**

22 (a) IN GENERAL.—Section 1903 (42 U.S.C. 1396b)
23 is amended by adding at the end the following new sub-
24 section:

1 “(x)(1) In any case in which the Secretary proposes
2 to disallow under section 1116(d) a claim by a State under
3 this section and the State exercises its right of reconsider-
4 ation under section 1116(d), the Departmental Appeals
5 Board established in the Department of Health and
6 Human Services shall, if such Board upholds the basis for
7 the disallowance, determine whether the amount of the
8 disallowance should be reduced. In making this determina-
9 tion, the Board shall take into account (to the extent the
10 State makes a showing) factors which shall include—

11 “(A) the nature of the basis for the disallow-
12 ance;

13 “(B) whether the amount of the disallowance is
14 proportionate to the error or deficiency on which the
15 disallowance is based;

16 “(C) whether the basis of the disallowance con-
17 stitutes noncompliance that prevented or materially
18 affected the provision of appropriate services to indi-
19 viduals eligible under this title; or

20 “(D) whether Federal guidance with respect to
21 the action that is the basis for the proposed dis-
22 allowance was insufficient and the State made good
23 faith efforts to conform its action to the intent of
24 the applicable Federal statute or regulation.

1 “(2) No disallowance shall be taken or upheld if the
2 action of the State on which the disallowance would be
3 based is consistent with its approved State plan.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 subsection (a) shall apply to disallowances made after the
6 date of the enactment of this Act and shall take effect
7 without regard to the promulgation of implementing regu-
8 lations.

9 **SEC. 5146. RENEWAL OF UNFUNDED DEMONSTRATION**
10 **PROJECT FOR LOW-INCOME PREGNANT**
11 **WOMEN AND CHILDREN.**

12 (a) IN GENERAL.—Section 6407 of OBRA–89 is
13 amended—

14 (1) in subsection (d), by striking “3 years” and
15 inserting “5 years”;

16 (2) in subsection (f), by striking “\$10,000,000
17 in each of fiscal years 1990, 1991, and 1992” and
18 inserting “\$30,000,000”; and

19 (3) in subsection (g)(2), by striking “January
20 1, 1994” and inserting “one year after the termi-
21 nation of the demonstration projects”.

22 (b) EFFECTIVE DATE.—The amendments made by
23 subsection (a) shall take effect as if included in the enact-
24 ment of OBRA–89.

1 **SEC. 5147. OPTIONAL MEDICAID COVERAGE OF TB-RELAT-**
2 **ED SERVICES FOR CERTAIN TB-INFECTED IN-**
3 **DIVIDUALS.**

4 (a) COVERAGE AS OPTIONAL, CATEGORICALLY
5 NEEDY GROUP.—Section 1902(a)(10)(A)(ii) (42 U.S.C.
6 1396a(a)(10)(A)(ii)) is amended—

7 (1) by striking “or” at the end of subclause
8 (X),

9 (2) by adding “or” at the end of subclause
10 (XI), and

11 (3) by adding at the end the following new
12 subclause:

13 “(XII) who are described in sub-
14 section (z)(1) (relating to certain TB-
15 infected individuals);”.

16 (b) GROUP AND BENEFIT DESCRIBED.—Section
17 1902 is amended by adding at the end the following new
18 subsection:

19 “(z)(1) Individuals described in this paragraph are
20 individuals not described in subsection (a)(10)(A)(i)—

21 “(A) who have tested positively to be infected
22 with tuberculosis;

23 “(B) whose income (as determined under the
24 State plan under this title with respect to disabled
25 individuals) does not exceed the maximum amount
26 of income a disabled individual described in sub-

1 section (a)(10)(A)(i) may have and obtain medical
2 assistance under the plan; and

3 “(C) whose resources (as determined under the
4 State plan under this title with respect to disabled
5 individuals) do not exceed the maximum amount of
6 resources a disabled individual described in sub-
7 section (a)(10)(A)(i) may have and obtain medical
8 assistance under the plan.

9 “(2) For purposes of subsection (a)(10), the term
10 ‘TB-related services’ means each of the following services
11 relating to treatment of infection with tuberculosis:

12 “(A) Prescribed drugs.

13 “(B) Physicians’ services and services described
14 in section 1905(a)(2).

15 “(C) Laboratory and X-ray services.

16 “(D) Clinic services and Federally-qualified
17 health center services.

18 “(E) Case management services (as defined in
19 section 1915(g)(2)).

20 “(F) Services (other than room and board) de-
21 signed to encourage completion of regimens of pre-
22 scribed drugs by outpatients, including services to
23 observe directly the intake of prescribed drugs.”.

1 (c) LIMITATION ON BENEFITS.—Section
2 1902(a)(10), as amended by section 5162(a), is amended,
3 in the matter following subparagraph (F)—

4 (1) by striking “, and (XII)” and inserting “,
5 (XII)”, and

6 (2) by inserting before the semicolon at the end
7 the following: “, and (XIII) the medical assistance
8 made available to an individual described in sub-
9 section (z)(1) who is eligible for medical assistance
10 only because of subparagraph (A)(ii)(XII) shall be
11 limited to medical assistance for TB-related services
12 (as defined in subsection (z)(2))”.

13 (d) CONFORMING EXPANSION OF CASE MANAGE-
14 MENT SERVICES OPTION.—Section 1915(g)(1) (42 U.S.C.
15 1396n(g)(1)) is amended by inserting “or to individuals
16 described in section 1902(z)(1)(A),” after “or with ei-
17 ther,”.

18 (e) CONFORMING AMENDMENT.—Section 1905(a)
19 (42 U.S.C. 1396d(a)) is amended—

20 (1) by striking “or” at the end of clause (ix),

21 (2) by adding “or” at the end of clause (x),

22 (3) by inserting after clause (x) the following
23 new clause:

24 “(xi) individuals described in section
25 1902(z)(1),”, and

1 (4) by amending paragraph (19) to read as fol-
2 lows:

3 “(19) case management services (as defined in
4 section 1915(g)(2)) and TB-related services de-
5 scribed in section 1902(z)(2)(F);”.

6 (f) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to medical assistance furnished on
8 or after January 1, 1994, without regard to whether or
9 not final regulations to carry out such amendments have
10 been promulgated by such date.

11 **SEC. 5148. APPLICATION OF MAMMOGRAPHY CERTIFI-**
12 **CATION REQUIREMENTS UNDER THE MEDIC-**
13 **AID PROGRAM.**

14 (a) IN GENERAL.—Section 1902(a)(9) (42 U.S.C.
15 1396a(a)(9)) is amended—

16 (1) by striking “and” at the end of subpara-
17 graph (B),

18 (2) by striking the semicolon at the end of sub-
19 paragraph (C) and inserting “, and”, and

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

22 “(D) that any mammography paid for
23 under such plan must be conducted by a facility
24 that has a certificate (or provisional certificate)

1 issued under section 354 of the Public Health
2 Service Act;”.

3 (b) EFFECTIVE DATE.—(1) Except as provided in
4 paragraph (2), the amendments made by subsection (a)
5 shall apply to mammography furnished by a facility during
6 calendar quarters beginning on or after the first date that
7 the certificate requirements of section 354(b) of the Public
8 Health Service Act apply to such mammography con-
9 ducted by such facility, without regard to whether or not
10 final regulations to carry out such amendments have been
11 promulgated by such date.

12 (2) In the case of a State plan for medical assistance
13 under title XIX of the Social Security Act which the Sec-
14 retary of Health and Human Services determines requires
15 State legislation (other than legislation appropriating
16 funds) in order for the plan to meet the additional require-
17 ment imposed by the amendment made by subsection
18 (a)(3), the State plan shall not be regarded as failing to
19 comply with the requirements of such title solely on the
20 basis of its failure to meet this additional requirement be-
21 fore the first day of the first calendar quarter beginning
22 after the close of the first regular session of the State leg-
23 islature that begins after the date of the enactment of this
24 Act. For purposes of the previous sentence, in the case
25 of a State that has a 2-year legislative session, each year

1 of such session shall be deemed to be a separate regular
2 session of the State legislature.

3 **SEC. 5149. REMOVAL OF SUNSET ON EXTENSION OF ELIGI-**
4 **BILITY FOR WORKING FAMILIES.**

5 Subsection (f) of section 1925 (42 U.S.C. 1396r-6)
6 is repealed.

7 **SEC. 5150. EXTENSION OF MORATORIUM ON TREATMENT**
8 **OF CERTAIN FACILITIES AS INSTITUTIONS**
9 **FOR MENTAL DISEASES.**

10 Effective as if included in the enactment of OBRA-
11 1989, section 6408(a)(3) of such Act is amended by strik-
12 ing “180 days” and all that follows and inserting “Decem-
13 ber 31, 1995.”.

14 **SEC. 5150A. TREATMENT OF CERTAIN CLINICS AS FEDER-**
15 **ALLY-QUALIFIED HEALTH CENTERS.**

16 (a) IN GENERAL.—Section 1905(l)(2)(B) (42 U.S.C.
17 1396d(l)(2)(B)), as amended by section 5158(c), is
18 amended—

19 (1) by striking “or” at the end of clause

20 (ii)(II),

21 (2) by adding “or” at the end of clause (iii),

22 and

23 (3) by inserting after clause (iii) the following

24 new clause:

1 “(iv) was treated by the Secretary, for purposes
2 of part B of title XVIII, as a comprehensive Feder-
3 ally funded health center as of January 1, 1990;”.

4 (b) EFFECTIVE DATE.—The amendments made by
5 subsection (a) shall apply to calendar quarters beginning
6 on or after July 1, 1993.

7 **SEC. 5150B. NURSING HOME REFORM.**

8 (a) SUSPENSION OF DECERTIFICATION OF NURSES
9 AIDE TRAINING AND COMPETENCY EVALUATION PRO-
10 GRAMS BASED ON EXTENDED SURVEYS.—

11 (1) IN GENERAL.—Section
12 1919(f)(2)(B)(iii)(I)(b) (42 U.S.C.
13 1396r(f)(2)(B)(iii)(I)(b)) is amended by striking the
14 semicolon and inserting the following: “, unless the
15 survey shows that the facility is in compliance with
16 the requirements of subsections (b), (c), and (d) of
17 this section;”.

18 (2) EFFECTIVE DATE.—The amendment made
19 by paragraph (1) shall take effect as included in the
20 enactment of OBRA-1990.

21 (b) REQUIREMENTS FOR CONSULTANTS CONDUCT-
22 ING REVIEWS ON USE OF DRUGS.—

23 (1) IN GENERAL.—Section 1919(c)(1)(D) (42
24 U.S.C. 1396r(c)(1)(D)) is amended by adding at the
25 end the following sentence: “In determining whether

1 such a consultant is qualified to conduct reviews
2 under the previous sentence, the Secretary shall take
3 into account the needs of nursing facilities under
4 this title to have access to the services of such a con-
5 sultant on a timely basis.”.

6 (2) EFFECTIVE DATE.—The amendment made
7 by paragraph (1) shall take effect as included in the
8 enactment of OBRA-1987.

9 (c) INCREASE IN MINIMUM AMOUNT REQUIRED FOR
10 SEPARATE DEPOSIT OF PERSONAL FUNDS.—

11 (1) IN GENERAL.—Section 1919(c)(6)(B)(i) (42
12 U.S.C. 1396r(c)(6)(B)(i)) is amended by striking
13 “\$50” and inserting “\$100”.

14 (2) EFFECTIVE DATE.—The amendment made
15 by paragraph (1) shall take effect October 1, 1993.

16 (d) DUE PROCESS PROTECTIONS FOR NURSES
17 AIDES.—

18 (1) PROHIBITING STATE FROM INCLUDING UN-
19 DOCUMENTED ALLEGATIONS IN NURSES AIDE REG-
20 ISTRY.—Section 1919(e)(2)(B) (42 U.S.C.
21 1396r(e)(2)(B)) is amended by striking the period at
22 the end of the first sentence and inserting the fol-
23 lowing: “, but shall not include any allegations of
24 resident abuse or neglect or misappropriation of

1 resident property that are not specifically docu-
2 mented by the State under such subsection.”.

3 (2) DUE PROCESS REQUIREMENTS FOR REBUT-
4 TING ALLEGATIONS.—Section 1919(g)(1)(C) (42
5 U.S.C. 1396r(g)(1)(C)) is amended by striking the
6 second sentence and inserting the following: “The
7 State shall, after providing the individual involved
8 with a written notice of the allegations (including a
9 statement of the availability of a hearing for the in-
10 dividual to rebut the allegations) and the oppor-
11 tunity for a hearing on the record, make a written
12 finding as to the accuracy of the allegations.”.

13 (3) EFFECTIVE DATE.—The amendments made
14 by this subsection shall take effect October 1, 1993.

15 **Subchapter C—Miscellaneous and Technical**
16 **Corrections Relating to OBRA-1990**

17 **SEC. 5151. EFFECTIVE DATE.**

18 Except as otherwise provided, the amendments made
19 by this subchapter shall take effect as if included in the
20 enactment of OBRA-1990.

21 **SEC. 5152. CORRECTIONS RELATING TO SECTION 4402 (EN-**
22 **ROLLMENT UNDER GROUP HEALTH PLANS).**

23 Section 4402(b) of OBRA-1990 is amended by strik-
24 ing “1903(u)(1)(C)(iv) (42 U.S.C. 1395b(u)(1)(C)(iv))”

1 and inserting “1903(u)(1)(D)(iv) (42 U.S.C.
2 1395b(u)(1)(D)(iv))”.

3 **SEC. 5153. CORRECTIONS RELATING TO SECTION 4501**
4 **(LOW-INCOME MEDICARE BENEFICIARIES).**

5 (a) Section 1902(a)(10)(E)(iii), as added by section
6 4501(b)(3) of OBRA–1990, is amended by striking “cost
7 sharing” and inserting “cost-sharing”.

8 (b) Section 1905(p)(4)(B), as amended by section
9 4501(c)(1) of OBRA–1990, is amended by striking
10 “1902(a)(10)(E)(iii)” and inserting “section
11 1902(a)(10)(E)(iii)”.

12 **SEC. 5154. CORRECTIONS RELATING TO SECTION 4601**
13 **(CHILD HEALTH).**

14 (a) Section 1902(a)(10)(A)(i)(VII), as added by sec-
15 tion 4601(a)(10)(A)(iii) of OBRA–1990, is amended by
16 striking “family;” and inserting “family; and”.

17 (b) Section 1902(l), as amended by section
18 4601(a)(1)(C) of OBRA–1990, is amended—

19 (1) in paragraph (1)(C), by striking “children”
20 after “(C)”;

21 (2) in paragraph (3), by striking
22 “(a)(10)(A)(i)(VII),,” and inserting
23 “(a)(10)(A)(i)(VII),”; and

24 (3) in paragraph (4)(B), by inserting a comma
25 before “(a)(10)(A)(i)(VI),”.

1 (c) Subsections (a)(3)(C) and (b)(3)(C)(i) of section
2 1925, as amended by section 4601(a) of OBRA-1990, are
3 each amended by striking “(i)(VI)” and inserting
4 “(i)(VI),”.

5 **SEC. 5155. CORRECTIONS RELATING TO SECTION 4602 (OUT-**
6 **REACH LOCATIONS).**

7 (a) Section 1902(a)(55), as added by section
8 4602(a)(3) of OBRA-1990, is amended—

9 (1) in the matter preceding subparagraph (A)—

10 (A) by striking “subsection” and inserting
11 “paragraph”, and

12 (B) by striking “(a)” each place it ap-
13 pears; and

14 (2) in subparagraph (A), by striking
15 “1905(1)(2)(B)” and inserting “1905(l)(2)(B)”.

16 (b) Section 1902(l)(1) is amended by striking “who
17 are not described in any of subclauses (I) through (III)
18 of subsection (a)(10)(A)(i) and”.

19 **SEC. 5156. CORRECTIONS RELATING TO SECTION 4604 (PAY-**
20 **MENT FOR HOSPITAL SERVICES FOR CHIL-**
21 **DREN UNDER 6 YEARS OF AGE).**

22 (a) Section 1902(a)(10) is amended in clause (X) in
23 the matter following subparagraph (F) by striking “under
24 one year of age” and inserting “under 6 years of age”.

1 (b) Section 1902(s), as added by section 4604(a) of
2 OBRA-1990, is amended to read as follows:

3 “(s) In order to meet the requirements of subsection
4 (a)(56), the State plan must provide that payments to hos-
5 pitals under the plan for inpatient services furnished to
6 infants who have not attained the age of 1 year (or, in
7 the case of such an individual who is an inpatient on his
8 first birthday, until such individual is discharged) shall—

9 “(1) if made on a prospective basis (whether
10 per diem, per case, or otherwise) provide for an
11 outlier adjustment in payment amounts for medi-
12 cally necessary inpatient hospital services involving
13 exceptionally high costs or exceptionally long lengths
14 of stay;

15 “(2) not be limited by the imposition of day
16 limits; and

17 “(3) not be limited by the imposition of dollar
18 limits (other than dollar limits resulting from pro-
19 spective payments as adjusted pursuant to para-
20 graph (1)).”.

21 (c) Section 1923(a)(2)(C) is amended by striking
22 “provided on or after July 1, 1989,” and all that follows
23 and inserting the following: “involving exceptionally high
24 costs or exceptionally long lengths of stay—

1 “(i) for individuals under 1 year of age, in the
2 case of services provided on or after July 1, 1989,
3 and on or before June 30, 1991; and

4 “(ii) for individuals under 6 years of age, in the
5 case of services provided on or after July 1, 1991.”.

6 **SEC. 5157. CORRECTIONS RELATING TO SECTION 4703 (PAY-**
7 **MENT ADJUSTMENTS FOR DISPROPORTION-**
8 **ATE SHARE HOSPITALS).**

9 (a) Section 1923(c) is amended—

10 (1) in paragraph (2), by striking “paragraph
11 (b)(3)” and inserting “subsection (b)(3)”;

12 (2) by striking the period at the end of para-
13 graph (3)(B) and inserting a comma; and

14 (3) in the third sentence, by striking “the pay-
15 ment adjustment described in paragraph (2)” and
16 inserting “a payment adjustment described in para-
17 graph (2) or (3)”.

18 (b) Effective December 22, 1987, section
19 1923(d)(2)(A)(ii) is amended by striking “the date of the
20 enactment of this Act” and inserting “December 22,
21 1987”.

22 (c) Section 4703(d) of OBRA-1990 is amended by
23 striking “412(a)(2)” and inserting “4112(a)(2)”.

1 **SEC. 5158. CORRECTIONS RELATING TO SECTION 4704 (FED-**
2 **ERALLY-QUALIFIED HEALTH CENTERS).**

3 (a) Clause (ix) of section 1903(m)(2)(A), as added
4 by section 4704(b)(1)(C) of OBRA-1990, is amended—

5 (1) by striking “of such center” the first place
6 it appears;

7 (2) by striking “federally qualified” and insert-
8 ing “Federally-qualified”;

9 (3) by inserting “section” before
10 “1905(a)(2)(C)”; and

11 (4) by moving such clause 2 ems to the left.

12 (b) Section 1903(m)(2)(B), as amended by section
13 4704(b)(2) of OBRA-1990, is amended by striking “ex-
14 cept with respect to clause (ix) of subparagraph (A),” and
15 inserting “(except with respect to clause (ix) of such sub-
16 paragraph)”.

17 (c) Section 1905(l)(2), as amended by section
18 4704(c) of OBRA-1990, is amended—

19 (1) in subparagraph (A)—

20 (A) by striking “Federally-qualified” and
21 inserting “Federally-qualified”, and

22 (B) by striking “an patient” and inserting
23 “a patient”; and

24 (2) in subparagraph (B)—

25 (A) in the matter preceding clause (i), by
26 striking “a entity” and inserting “an entity”,

1 (B) by striking “or” at the end of clause

2 (i),

3 (C) by striking the semicolon at the end of

4 clause (ii)(II) and inserting “, or”,

5 (D) by moving clause (ii) 4 ems to the left,

6 and

7 (E) in the last sentence, by striking

8 “clause (ii)” and inserting “clause (iii)”.

9 **SEC. 5159. CORRECTIONS RELATING TO SECTION 4708 (SUB-**
10 **STITUTE PHYSICIANS).**

11 Section 1902(a)(32)(C), as added by section
12 4708(a)(3) of OBRA–1990, is amended to read as follows:

13 “(C) payment may be made to a physician
14 for physicians’ services (and services furnished
15 incident to such services) furnished by a second
16 physician to patients of the first physician if (i)
17 the first physician is unavailable to provide the
18 services; (ii) the services are furnished pursuant
19 to an arrangement between the two physicians
20 that (I) is informal and reciprocal, or (II) in-
21 volves per diem or other fee-for-time compensa-
22 tion for such services; (iii) the services are not
23 provided by the second physician over a contin-
24 uous period of more than 60 days; and (iv) the
25 claim form submitted to the carrier for such

1 services includes the second physician's unique
2 identifier (provided under the system estab-
3 lished under subsection (x)) and indicates that
4 the claim meets the requirements of this clause
5 for payment to the first physician;”.

6 **SEC. 5160. CORRECTIONS RELATING TO SECTION 4711**
7 **(HOME AND COMMUNITY CARE FOR FRAIL**
8 **ELDERLY).**

9 (a) Section 1929, as added by section 4711(b) of
10 OBRA-1990, is amended—

11 (1) in subsection (c)(2)(F), by moving the sec-
12 ond sentence 2 ems to the right;

13 (2) in subsection (d)(2)(F)(ii), by striking “they
14 manage” and inserting “it manages”;

15 (3) in subsection (d)(2)(F)(iii), by inserting
16 “the agency or organization” after “(iii)”;

17 (4) in subsection (e)(2)(B), by striking “fiscal
18 year 1989” and inserting “fiscal year 1990”;

19 (5) in subsection (f)(1), by striking “Commu-
20 nity care” and inserting “community care”;

21 (6) in subsection (g)(1)—

22 (A) by striking “SETTINGS” and inserting
23 “SETTING”, and

24 (B) in subparagraph (B), by striking “set-
25 ting.” and inserting “setting in which home and

1 community care under this section is pro-
2 vided.”;

3 (7) in subsection (g)(2), by striking “commu-
4 nity care” the second, third, and fourth places it ap-
5 pears and inserting “home and community care”;

6 (8) in subsection (h)(1)—

7 (A) by striking “more than 8” each place
8 it appears and inserting “8 or more”, and

9 (B) in subparagraph (B), by inserting
10 “(other than merely board)” after “personal
11 services”;

12 (9) in subsection (h)(2), by striking “commu-
13 nity care” the second and third places it appears
14 and inserting “home and community care”;

15 (10) in subsection (j)(1)—

16 (A) in subparagraph (B)(ii), by striking
17 “1990” and inserting “1991”, and

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

20 “(C) APPLICABILITY TO COMMUNITY CARE
21 SETTINGS.—Subparagraphs (A) and (B) shall
22 apply to community care settings in the same
23 manner as such subparagraphs apply to provid-
24 ers of home or community care.”;

1 (11) in subsection (j)(2), by adding at the end
2 the following new subparagraph:

3 “(D) APPLICABILITY TO COMMUNITY CARE
4 SETTINGS.—Subparagraphs (A), (B), and (C)
5 shall apply to community care settings in the
6 same manner as such subparagraphs apply to
7 providers of home or community care.”;

8 (12) in subsection (k)(1)(A)(i)—

9 (A) by striking “(d)(2)(E)” and inserting
10 “(d)(2)”, and

11 (B) by striking “settings,” and inserting
12 “settings),”;

13 (13) in subsection (l), by striking “State wide-
14 ness” and inserting “Statewideness”;

15 (14) in subsection (m)—

16 (A) in paragraph (2), by striking “Individ-
17 ual Community Care Plan” and inserting “indi-
18 vidual community care plan”,

19 (B) in paragraph (3), by striking “and
20 need for services” and inserting “need for serv-
21 ices, and income”,

22 (C) in the second sentence in paragraph
23 (4), by striking “elderly individuals” and all
24 that follows and inserting “individuals receiving
25 home and community care under this section

1 who reside in such State in relation to the total
2 number of individuals receiving home and com-
3 munity care under this section.”, and

4 (D) by adding at the end the following new
5 paragraph:

6 “(5) NOTICE TO STATES OF AMOUNTS AVAIL-
7 ABLE FOR ASSISTANCE.—

8 “(A) NOTICE TO SECRETARY.—In order to
9 receive Federal medical assistance for expendi-
10 tures for home and community care under this
11 section for a fiscal year (beginning with fiscal
12 year 1994), a State shall submit a notice to the
13 Secretary of its intention to provide such care
14 under this section not later than 3 months be-
15 fore the beginning of the fiscal year.

16 “(B) NOTICE TO STATES.—Not later than
17 2 months before the beginning of each fiscal
18 year (beginning with fiscal year 1994), the Sec-
19 retary shall notify each State that has submit-
20 ted a notice to the Secretary under subpara-
21 graph (A) for the fiscal year of the amount of
22 Federal medical assistance that will be available
23 to the State for the fiscal year (as established
24 under paragraph (4)).”; and

1 (C) by striking “3 other” and inserting
2 “3”;

3 (2) in subsection (d)—

4 (A) in the matter preceding paragraph (1),
5 by striking “program,” and inserting “pro-
6 gram”, and

7 (B) in the second sentence, by striking
8 “plan” each place it appears and inserting
9 “program”; and

10 (3) in subsection (i), by striking “FUNDS” and
11 inserting “FUNDS”.

12 (b) Section 4712(c) of OBRA-1990 is amended—

13 (1) in paragraph (1), by inserting “of section
14 1930 of the Social Security” after “subsection (h)”;
15 and

16 (2) in paragraph (2), by striking “this section”
17 and inserting “such section”.

18 **SEC. 5162. CORRECTION RELATING TO SECTION 4713**

19 **(COBRA CONTINUATION COVERAGE).**

20 (a) Section 1902(a)(10) is amended in the matter fol-
21 lowing subparagraph (F)—

22 (1) by striking “; and (XI)” and inserting
23 “, (XI)”;

24 (2) by striking “individuals, and (XI)” and in-
25 serting “individuals, and (XII); and

1 (3) by striking “COBRA continuation pre-
2 miums” and inserting “COBRA premiums”.

3 (b) Section 1902(u)(3), as added by section
4 4713(a)(2) of OBRA-1990, is amended by striking “title
5 VI” and inserting “part 6 of subtitle B of title I”.

6 **SEC. 5163. CORRECTION RELATING TO SECTION 4716 (MED-**
7 **ICAID TRANSITION FOR FAMILY ASSIST-**
8 **ANCE).**

9 Section 4716(a) of OBRA-1990 is amended by strik-
10 ing “AMENDMENTS.—Subsection (f) of section” and in-
11 serting “IN GENERAL.—Section”.

12 **SEC. 5164. CORRECTIONS RELATING TO SECTION 4723**
13 **(MEDICAID SPENDDOWN OPTION).**

14 Section 1903(f)(2), as amended by section 4723(a)
15 of OBRA-1990, is amended—

16 (1) by striking “(A)” after “(2)”;

17 (2) by striking “or, (B)” and inserting “. There
18 shall also be excluded,”;

19 (3) by striking “to the State, provided that”
20 and inserting “to the State if”; and

21 (4) by striking “pursuant to this subpara-
22 graph.” and inserting “pursuant to the previous sen-
23 tence”.

1 **SEC. 5165. CORRECTIONS RELATING TO SECTION 4724 (OP-**
2 **TIONAL STATE DISABILITY DETERMINA-**
3 **TIONS).**

4 Section 1902(v), as added by section 4724 of OBRA-
5 1990, is amended—

6 (1) by striking “(v)(1)” and inserting “(v)”;

7 and

8 (2) by striking “of the Social Security Act”.

9 **SEC. 5166. CORRECTION RELATING TO SECTION 4732 (SPE-**
10 **CIAL RULES FOR HEALTH MAINTENANCE OR-**
11 **GANIZATIONS).**

12 Section 1903(m)(2)(F)(i), as amended by section
13 4732(b)(2)(B) of OBRA-1990, is amended by striking
14 “or” before “with an eligible organization”.

15 **SEC. 5167. CORRECTIONS RELATING TO SECTION 4741**
16 **(HOME AND COMMUNITY-BASED WAIVERS).**

17 The first sentence of section 1915(d)(3) is amended
18 by striking the period at the end and inserting the follow-
19 ing: “, and a waiver of the requirements of section
20 1902(a)(23) (relating to choice of providers) insofar as
21 such requirements relate to the provision of case manage-
22 ment services and the State provides assurances satisfac-
23 tory to the Secretary that a waiver of such requirements
24 will not substantially limit access to such services).”

1 **SEC. 5168. CORRECTIONS RELATING TO SECTION 4744**
2 **(FRAIL ELDERLY WAIVERS).**

3 (a) Section 1924(a)(5), as added by section
4 4744(b)(1) of OBRA–1990, is amended by striking
5 “1986.” and inserting “1986 or a waiver under section
6 603(c) of the Social Security Amendments of 1983.”.

7 (b) Section 603(c) of the Social Security Amend-
8 ments of 1983 is amended—

9 (1) by striking “(c)” and inserting “(c)(1)”;

10 (2) by redesignating paragraphs (1) and (2) as
11 subparagraphs (A) and (B); and

12 (3) by adding at the end the following new
13 paragraph:

14 “(2) Section 1924 of the Social Security Act shall
15 apply to any individual receiving services from an organi-
16 zation receiving a waiver under this subsection.”.

17 **SEC. 5169. CORRECTIONS RELATING TO SECTION 4747 (COV-**
18 **ERAGE OF HIV-POSITIVE INDIVIDUALS).**

19 Section 4747 of OBRA–1990 is amended—

20 (1) in subsection (a), by striking “subsection
21 (c)” and inserting “subsection (b)”;

22 (2) in subsection (b)(2)—

23 (A) by striking “preventative” each place it
24 appears and inserting “preventive”, and

25 (B) by adding a period at the end of sub-
26 paragraph (J);

1 (3) in subsection (c)(1)—

2 (A) by striking “subsection (c)” and in-
3 serting “subsection (b)”, and

4 (B) by striking “paragraphs (1) and (2)
5 of’; and

6 (4) in subsection (d)—

7 (A) by striking “paragraph (3)” and in-
8 serting “subsection (b)”, and

9 (B) by striking “paragraph (1)” and in-
10 serting “subsection (a)”.

11 **SEC. 5170. CORRECTION RELATING TO SECTION 4751 (AD-**
12 **VANCE DIRECTIVES).**

13 Section 1903(m)(1)(A), as amended by section
14 4751(b)(1) of OBRA–1990, is amended—

15 (1) by striking “1902(w)” and inserting
16 “1902(w) and”; and

17 (2) by striking “1902(a)” and inserting
18 “1902(w)”.

19 **SEC. 5171. CORRECTIONS RELATING TO SECTION 4752 (PHY-**
20 **SICIANS’ SERVICES).**

21 (a) The paragraph (58) of section 1902(a) added by
22 section 4752(c)(1)(C) of OBRA–1990 is amended by
23 striking “subsection (v)” and inserting “subsection (x)”.

1 (b) Subparagraphs (A) and (B) of the paragraph (14)
2 of section 1903(i) added by section 4752(e)(2) of OBRA-
3 1990 are each amended—

4 (1) by striking “or” at the end of clause (v);

5 (2) by redesignating clause (vi) as clause (vii);

6 and

7 (3) by inserting after clause (v) the following
8 new clause:

9 “(vi) delivers such services in the
10 emergency department of a hospital par-
11 ticipating in the state plan approved under
12 this title, or”.

13 **SEC. 5172. CORRECTIONS RELATING TO SECTION 4801**
14 **(NURSING HOME REFORM).**

15 (a) Section 1919(b)(3)(C)(i)(I), as amended by sec-
16 tion 4801(e)(3) of OBRA-1990, is amended by striking
17 “no later than” before “not to exceed 14 days”.

18 (b) Section 1919(b)(5)(D), as amended by section
19 4801(a)(4) of OBRA-1990, is amended by striking the
20 comma before “or a new competency evaluation pro-
21 gram.”.

22 (c) Section 1919(b)(5)(G) is amended by striking “or
23 licensed or certified social worker” and inserting “licensed
24 or certified social worker, registered respiratory therapist,
25 or certified respiratory therapy technician”.

1 (d) Section 1919(f)(2)(B)(i) is amended by striking
2 “facilities,” and inserting “facilities (subject to clause
3 (iii)),”.

4 (e) Section 1919(f)(2)(B)(iii)(I)(c) is amended by
5 striking “clauses” each place it appears and inserting
6 “clause”.

7 (f) Section 1919(g)(5)(B) is amended by striking
8 “paragraphs” and inserting “paragraph”.

9 (g) Section 4801(a)(6)(B) of OBRA-1990 is amend-
10 ed—

11 (1) by striking “The amendments” and insert-
12 ing “(i) The amendments”;

13 (2) by redesignating clauses (i) through (v) as
14 subclauses (I) through (V); and

15 (3) by adding at the end the following new
16 clause:

17 “(ii) Notwithstanding clause (i) and sub-
18 ject to section 1919(f)(2)(B)(iii) of the Social
19 Security Act (as amended by subparagraph
20 (A)), a State may approve a training and com-
21 petency evaluation program or a competency
22 evaluation program offered by or in a nursing
23 facility described in clause (i) if, during the pre-
24 vious 2 years, none of the subclauses of clause
25 (i) applied to the facility.”.

1 **SEC. 5173. OTHER TECHNICAL CORRECTIONS.**

2 (a) Section 1905(o)(1)(A) is amended—

3 (1) in the first sentence, by striking “intermedi-
4 ate care facility services” and inserting “for nursing
5 facility services or intermediate care facility services
6 for the mentally retarded”; and

7 (2) in the second sentence, by striking “or in-
8 termediate care facility” and inserting “(for pur-
9 poses of title XVIII), a nursing facility, or an inter-
10 mediate care facility for the mentally retarded”.

11 (b) Section 1915(d) is amended—

12 (1) by striking “skilled nursing facility or inter-
13 mediate care facility” each place it appears in para-
14 graphs (1), (2)(B), and (2)(C) and inserting “nurs-
15 ing facility”;

16 (2) in paragraph (2)(B)(i), by striking “skilled
17 nursing or intermediate care facility” and inserting
18 “nursing facility”;

19 (3) in paragraph (5)(A), by striking “under”
20 the second place it appears and inserting “(or, in the
21 case of waiver years beginning on or after October
22 1, 1990, with respect to nursing facility services and
23 home and community-based services) under”; and

24 (4) in paragraph (5)(B)—

25 (A) in clause (i), by striking “furnished”
26 and inserting “(or, with respect to waiver years

1 beginning on or after October 1, 1990, for
2 nursing facility services) furnished”; and

3 (B) in clause (iii)(I), by striking “(regard-
4 less” and inserting “(or, with respect to waiver
5 years beginning on or after October 1, 1990,
6 which comprise nursing facility services) (re-
7 gardless”.

8 **SEC. 5174. CORRECTIONS TO DESIGNATIONS OF NEW PRO-**
9 **VISIONS.**

10 (a) PARAGRAPHS ADDED TO SECTION 1902(a).—

11 Section 1902(a) is amended—

12 (1) by striking “and” at the end of paragraph
13 (54);

14 (2) in the paragraph (55) inserted by section
15 4602(a)(3) of OBRA–1990, by striking the period at
16 the end and inserting a semicolon;

17 (3) by redesignating the paragraph (55) in-
18 serted by section 4604(b)(3) of OBRA–1990 as
19 paragraph (56), by transferring and inserting it
20 after the paragraph (55) inserted by section
21 4602(a)(3) of such Act, and by striking the period
22 at the end and inserting a semicolon;

23 (4) by placing paragraphs (57) and (58), in-
24 serted by section 4751(a)(1)(C) of OBRA–1990, im-

1 mediately after paragraph (56), as redesignated by
2 paragraph (3);

3 (5) in the paragraph (58) inserted by section
4 4751(a)(1)(C) of OBRA-1990, by striking the pe-
5 riod at the end and inserting “; and”; and

6 (6) by redesignating the paragraph (58) in-
7 serted by section 4752(c)(1)(C) of OBRA-1990 as
8 paragraph (59) and by transferring and inserting it
9 after the paragraph (58) inserted by section
10 4751(a)(1)(C) of such Act.

11 (b) PARAGRAPHS ADDED TO SECTION 1903(i).—Sec-
12 tion 1903(i), as amended by section 2(b)(2) of the Medic-
13 aid Voluntary Contribution and Provider-Specific Tax
14 Amendments of 1991, is amended—

15 (1) in the paragraph (10) inserted by section
16 4401(a)(1)(B) of OBRA-1990, by striking all that
17 follows “1927(g)” and inserting a semicolon;

18 (2) by redesignating the paragraph (12) in-
19 serted by section 4752(a)(2) of OBRA-1990 as
20 paragraph (11), by transferring and inserting it
21 after the paragraph (10) inserted by section
22 4401(a)(1)(B) of OBRA-1990, and by striking the
23 period at the end and inserting a semicolon;

24 (3) by redesignating the paragraph (14) in-
25 serted by section 4752(e) of OBRA-1990 as para-

1 graph (12), by transferring and inserting it after
2 paragraph (11), as redesignated by paragraph (2),
3 and by striking the period at the end and inserting
4 “; or”; and

5 (4) by redesignating the paragraph (11) in-
6 serted by section 4801(e)(16)(A) of OBRA-1990 as
7 paragraph (13) and by transferring and inserting it
8 after paragraph (12), as redesignated by paragraph
9 (3).

10 (c) PARAGRAPHS ADDED TO SECTION 1905(a).—

11 (1) IN GENERAL.—Section 1905(a) is amend-
12 ed—

13 (A) by striking “and” at the end of para-
14 graph (21);

15 (B) in paragraph (24), by striking the
16 comma at the end and inserting “; and”; and

17 (C) by redesignating paragraphs (22),
18 (23), and (24) as paragraphs (24), (22), and
19 (23), respectively, and by transferring and in-
20 serting paragraph (24) after paragraph (23), as
21 so redesignated.

22 (2) CONFORMING AMENDMENTS.—(A) Effective
23 July 1, 1991, section 1902(a)(10)(C)(iv), as amend-
24 ed by section 4755(c)(1)(A) of OBRA-1990, is

1 amended by striking “through (21)” and inserting
2 “through (23)”.

3 (B) Effective July 1, 1991, section 1902(j), as
4 amended by section 4711(d)(1) of OBRA-1990, is
5 amended by striking “through (22)” and inserting
6 “through (24)”.

7 (d) FINAL SECTIONS.—Section 1928, as redesignated
8 by section 4401(a)(3) of OBRA-1990, is amended—

9 (1) by transferring such section to the end of
10 title XIX of the Social Security Act; and

11 (2) by redesignating such section as section
12 1931.

13 **CHAPTER 2—UNIVERSAL ACCESS TO**
14 **CHILDHOOD IMMUNIZATIONS**

15 **SEC. 5181. ESTABLISHMENT OF ENTITLEMENT AND MON-**
16 **ITORING PROGRAMS WITH RESPECT TO**
17 **CHILDHOOD IMMUNIZATIONS.**

18 (a) IN GENERAL.—Title XXI of the Public Health
19 Service Act (42 U.S.C. 300aa-1 et seq.) is amended by
20 adding at the end the following subtitle:

1 “Subtitle 3—Entitlement and Monitoring Programs With
2 Respect to Childhood Immunizations

3 “PART A—ENTITLEMENT PROGRAM

4 **“SEC. 2151. DELIVERY TO STATES OF SUFFICIENT QUAN-**
5 **TITIES OF PEDIATRIC VACCINES.**

6 “(a) IN GENERAL.—In the case of any State that
7 submits to the Secretary an application in accordance with
8 section 2157, the Secretary, acting through the Director
9 of the Centers for Disease Control and Prevention, shall
10 provide for the purchase and delivery on behalf of the
11 State of such quantities of pediatric vaccines as may be
12 necessary for the immunization of each eligible child in
13 the State. The preceding sentence is subject to sections
14 2152(d) and 2159(a).

15 “(b) ELIGIBLE CHILDREN.—For purposes of this
16 part, the term ‘eligible child’ means an individual 18 years
17 of age or younger who—

18 “(1) with respect to the State involved, is enti-
19 tled to medical assistance under the plan approved
20 for the State under title XIX of the Social Security
21 Act (including a State operating under a statewide
22 waiver under section 1115 of such Act);

23 “(2)(A) is uninsured with respect to health in-
24 surance policies or plans (including group health
25 plans or prepaid health plans and including em-

1 ployee welfare benefit plans under the Employee Re-
2 tirement Income Security Act of 1974); or

3 “(B) is covered under such a policy or plan, but
4 under the policy or plan benefits are not available
5 with respect to immunizations; or

6 “(3) is an Indian.

7 **“SEC. 2152. ENTITLEMENTS.**

8 “(a) ENTITLEMENT OF STATES.—Subject to sub-
9 section (d), in the case of any State that submits to the
10 Secretary an application in accordance with section 2157,
11 the State is entitled to have the Secretary provide for the
12 purchase and delivery on behalf of the State of pediatric
13 vaccines under section 2151. The preceding sentence con-
14 stitutes budget authority in advance of appropriations
15 Acts, and represents the obligation of the Federal Govern-
16 ment to provide for the purchase and delivery to the State
17 of the vaccines.

18 “(b) ENTITLEMENTS OF CHILDREN AND HEALTH
19 CARE PROVIDERS.—Subject to subsection (d), the Sec-
20 retary may provide for the purchase and delivery of pedi-
21 atric vaccines under section 2151 on behalf of a State only
22 if the State agrees as follows:

23 “(1) Each eligible child in the State, in receiv-
24 ing an immunization with a pediatric vaccine from
25 a program-registered provider (as defined in section

1 2153(a)), is entitled to receive the immunization
2 without charge for the cost of such vaccine.

3 “(2) Each program-registered provider in the
4 State who administers a pediatric vaccine to an eligi-
5 ble child in the State is entitled to receive such vac-
6 cine from the State without charge.

7 “(3) The State will carry out a program to ad-
8 minister the entitlements established pursuant to
9 paragraphs (1) and (2).

10 “(c) ENFORCEMENT OF PROVIDER RIGHTS BY ELI-
11 GIBLE CHILDREN.—With respect to the obligation of a
12 State under the entitlement established in subsection
13 (b)(2), an eligible child (or representative of the child)
14 may enforce the rights of the provider under such para-
15 graph if—

16 “(1) the provider administered a pediatric vac-
17 cine to the child notwithstanding the failure of the
18 State to carry out such obligation with respect to the
19 vaccine; or

20 “(2) an immunization with the vaccine was
21 sought for the child by a parent of the child, but the
22 provider, on the basis of such failure of the State,
23 did not administer the vaccine to the child.

24 “(d) CERTAIN CONDITIONS.—

1 “(1) IN GENERAL.—This part does not apply
2 with respect to any vaccine administered before Oc-
3 tober 1, 1994.

4 “(2) RELATIONSHIP TO PURCHASE CONTRACTS
5 WITH MANUFACTURERS.—With respect to a pedi-
6 atric vaccine, the obligation of the Federal Govern-
7 ment pursuant to subsection (a), and the obligations
8 of the State pursuant to subsection (b), are effective
9 only to the extent that there is in effect a contract
10 under section 2158 for the purchase and delivery of
11 the vaccine.

12 “(3) SUBMISSION OF APPLICATION.—

13 “(A) Subject to subparagraph (C), the en-
14 titlements established pursuant to subsections
15 (a) and (b) are established with respect to a
16 State upon the State submitting to the Sec-
17 retary an application in accordance with section
18 2157.

19 “(B) An application submitted to the Sec-
20 retary under section 2157 is deemed to have
21 been submitted in accordance with such section
22 unless the Secretary, not later than 30 days
23 after the date on which the application is sub-
24 mitted, notifies the State that the application is
25 not in accordance with such section.

1 “(C) In the case of a State whose applica-
2 tion submitted under section 2157 is not sub-
3 mitted in accordance with such section, the Sec-
4 retary may, upon the submission by the State
5 of an application that is in accordance with
6 such section, provide that the entitlements es-
7 tablished pursuant to such submission are
8 deemed to have been established on the date on
9 which the State first submitted the application.

10 **“SEC. 2153. VOLUNTARY PARTICIPATION OF HEALTH CARE**
11 **PROVIDERS.**

12 “(a) IN GENERAL.—

13 “(1) REQUEST FOR PARTICIPATION; REQUIRED
14 APPROVAL.—The Secretary may provide for the pur-
15 chase and delivery of pediatric vaccines under sec-
16 tion 2151 on behalf of a State only if the State
17 agrees that federally-supplied pediatric vaccines will
18 not be distributed to a health care provider unless—

19 “(A) the provider submits to the State a
20 written request to participate in the program
21 established by the State pursuant to section
22 2152(b)(3);

23 “(B) the request is in such form and is
24 made in such manner as the Secretary may re-
25 quire; and

1 “(C) the provider makes the agreements
2 described in this section.

3 “(2) PROGRAM-REGISTERED PROVIDERS.—For
4 purposes of this part, the term ‘program-registered
5 provider’ means a health care provider that meets
6 the conditions specified in subparagraphs (A)
7 through (C) of paragraph (1).

8 “(b) ELIGIBILITY OF CHILDREN.—

9 “(1) IN GENERAL.—An agreement for a health
10 care provider under subsection (a) is that the pro-
11 vider—

12 “(A) before administering a pediatric vac-
13 cine to a child, will ask a parent of the child
14 such questions as are necessary to determine
15 whether the child is an eligible child;

16 “(B) will, for a period of time specified by
17 the Secretary, maintain records of responses
18 made to the questions; and

19 “(C) will, upon request, make such records
20 available to the State involved and to the Sec-
21 retary, subject to paragraph (2).

22 “(2) RESTRICTION ON USE OF INFORMATION.—
23 Records provided to a State or to the Secretary
24 under paragraph (1)(C) may be used only for pur-

1 poses of audit of the program carried out under sec-
2 tion 2152(b)(3) by the State.

3 “(c) CHARGES FOR VACCINES.—

4 “(1) VACCINES PER SE.—An agreement for a
5 health care provider under subsection (a) is that, in
6 administering a federally-supplied pediatric vaccine
7 to an eligible child, the provider will not impose a
8 charge for the cost of the vaccine.

9 “(2) ADMINISTRATION OF VACCINES.—With re-
10 spect to compliance with an agreement under para-
11 graph (1), a program-registered provider may im-
12 pose a charge for the administration of a federally-
13 supplied pediatric vaccine, subject to an agreement
14 by the provider that the provider will not impose
15 such charge with respect to a child if a parent of the
16 child certifies to the provider that the parent is un-
17 able to pay the charge.

18 “(d) RULES OF CONSTRUCTION.—

19 “(1) EXTENT OF PARTICIPATION.—This section
20 may not be construed as requiring that a program-
21 registered provider administer a federally-supplied
22 pediatric vaccine to each eligible child for whom an
23 immunization with the vaccine is sought from the
24 provider.

1 “(2) VERIFICATION OF INFORMATION.—With
2 respect to compliance with agreements under sub-
3 sections (b) and (c), such agreements may not be
4 construed as requiring a program-registered provider
5 to verify independently the information provided to
6 the provider by a parent pursuant to such sub-
7 sections.

8 **“SEC. 2154. INTRASTATE DISTRIBUTION OF PEDIATRIC VAC-**
9 **CINES.**

10 “(a) IN GENERAL.—Not later than 180 days after
11 the date of the enactment of the Omnibus Budget Rec-
12 onciliation Act of 1993, the Secretary shall, through publi-
13 cation in the Federal Register, establish criteria for the
14 delivery on behalf of the States of federally-supplied pedi-
15 atric vaccines to program-registered providers in the
16 State.

17 “(b) INVOLVEMENT OF CERTAIN PROVIDERS.—

18 “(1) IN GENERAL.—In establishing criteria
19 under subsection (a), the Secretary shall establish
20 criteria with respect to encouraging the entities de-
21 scribed in paragraph (2) to become program-reg-
22 istered providers.

23 “(2) RELEVANT PROVIDERS.—The entities re-
24 ferred to in paragraph (1) are—

25 “(A) private health care providers; and

1 “(B)(i) health care providers that receive
2 funds under title V of the Indian Health Care
3 Improvement Act;

4 “(ii) the Indian Health Service; and

5 “(iii) health programs or facilities operated
6 by Indian tribes or tribal organizations.

7 “(c) CULTURAL CONTEXT OF SERVICES.—In estab-
8 lishing criteria under subsection (a), the Secretary shall
9 require that, in providing a federally-supplied pediatric
10 vaccine to any population of eligible children a substantial
11 portion of whose parents have a limited ability to speak
12 the English language, a State have in effect a reasonable
13 plan to administer the vaccines through program-reg-
14 istered providers who are able to communicate with the
15 population involved in the language and cultural context
16 that is most appropriate.

17 “(d) COMPLIANCE BY STATES.—The Secretary may
18 provide for the purchase and delivery of pediatric vaccines
19 under section 2151 on behalf of a State only if the State
20 agrees to maintain compliance with the criteria established
21 under subsection (a).

22 **“SEC. 2155. GENERAL PROVISIONS.**

23 “(a) FEDERAL STANDARDS ON ACCOUNTABILITY.—

24 “(1) ESTABLISHMENT OF STANDARDS.—Not
25 later than 180 days after the date of the enactment

1 of the Omnibus Budget Reconciliation Act of 1993,
2 the Secretary shall, through publication in the Fed-
3 eral Register, establish standards with respect to de-
4 termining the extent to which States and program-
5 registered providers are in compliance with the
6 agreements made under this part.

7 “(2) COMPLIANCE BY STATES.— The Secretary
8 may provide for the purchase and delivery of pedi-
9 atric vaccines under section 2151 on behalf of a
10 State only if the State agrees to maintain compli-
11 ance with the standards established under subsection
12 (a).

13 “(b) STATE MAINTENANCE OF IMMUNIZATION
14 LAWS.—The Secretary may provide for the purchase and
15 delivery of vaccines under section 2151 on behalf of a
16 State only if the State certifies to the Secretary that, if
17 it had in effect as of May 1, 1993, a law that requires
18 some or all health insurance policies or plans to provide
19 some coverage with respect to a pediatric vaccine, the
20 State has not modified or repealed such law in a manner
21 that reduces the amount of coverage so required.

22 “(c) PARTICIPATION IN NATIONAL MONITORING SYS-
23 TEM.—On and after January 1, 1998, the Secretary may
24 provide for the purchase and delivery of vaccines under
25 section 2151 on behalf of a State only if the State certifies

1 to the Secretary that the State is operating a registry in
2 accordance with part B.

3 **“SEC. 2156. STATE OPTION REGARDING IMMUNIZATION OF**
4 **ADDITIONAL CATEGORIES OF CHILDREN.**

5 “(a) STATE PURCHASES.—Subject to subsections (b)
6 and (c), for the purpose of administering a pediatric vac-
7 cine to children in addition to eligible children, any partici-
8 pating State under section 2151 may, pursuant to section
9 2158(a)(2), purchase the vaccine from a manufacturer of
10 the vaccine at the price in effect under section 2158.

11 “(b) REQUIREMENTS.—A State may purchase pedi-
12 atric vaccines pursuant to subsection (a) only if the follow-
13 ing conditions are met:

14 “(1) The State agrees that the vaccines will be
15 used to provide immunizations for children who are
16 not eligible children.

17 “(2) The State designates the particular cat-
18 egories of children who are to receive the immuniza-
19 tions, and submits to the Secretary a description of
20 the categories so designated.

21 “(3) The State provides to the Secretary such
22 information as the Secretary determines to be nec-
23 essary to provide for quantities of pediatric vaccines
24 for the State to purchase pursuant to section
25 2158(a)(2).

1 “(4) The State agrees, subject to subsection (c),
2 that the program established by the State pursuant
3 to section 2152(b)(3) applies to children designated
4 under paragraph (2) to the same extent and in the
5 same manner as the program applies to eligible chil-
6 dren (except for the State being the purchaser of the
7 pediatric vaccines involved).

8 “(c) CERTAIN LIMITATIONS.—A State may purchase
9 pediatric vaccines pursuant to subsection (a) only if the
10 State agrees as follows:

11 “(1) The authorization established in such sub-
12 section with respect to a pediatric vaccine is subject
13 to the quantity of the vaccine that, on behalf of the
14 State, the Secretary provides for under section
15 2158(a)(2).

16 “(2) In any case in which multiple contracts are
17 in effect under section 2158 with respect to such a
18 vaccine and the State elects to purchase the vaccine
19 pursuant to subsection (a), the Secretary will deter-
20 mine which of such contracts will be applicable to
21 the purchase.

22 **“SEC. 2157. STATE APPLICATION FOR VACCINES.**

23 “(a) IN GENERAL.—An application by a State for pe-
24 diatric vaccines under section 2151(a) is in accordance
25 with this section if the application—

1 “(1) is submitted not later than the date speci-
2 fied by the Secretary;

3 “(2) contains each agreement required in this
4 part (including the agreements required in section
5 2156, if the State is electing to purchase pediatric
6 vaccines pursuant to such section);

7 “(3) contains any information required in this
8 part to be submitted to the Secretary (including the
9 information required in section 2156, if the State is
10 electing to purchase pediatric vaccines pursuant to
11 such section);

12 “(4) contains the certification required in sub-
13 section (b) of section 2155 and, as applicable, the
14 certification required in subsection (c) of such sec-
15 tion; and

16 “(5) is in such form, is made in such manner,
17 and contains such agreements, assurances, and in-
18 formation as the Secretary determines to be nec-
19 essary to carry out this part.

20 “(b) FAILURE TO APPLY.—

21 “(1) IN GENERAL.—If, as of January 1, 1998,
22 a State is not receiving pediatric vaccines under sec-
23 tion 2151 and carrying out a program pursuant to
24 section 2152(b)(3), the Secretary shall, subject to

1 paragraph (2), terminate payments to the State
2 under part A of title XIX.

3 “(2) EXCEPTIONS.—Paragraph (1) does not
4 apply in the case of a State described in such para-
5 graph that—

6 “(A) is, through all willing health care pro-
7 viders, providing for the immunization of eligi-
8 ble children with pediatric vaccines, and is not
9 imposing a charge on such providers or children
10 for the costs of the vaccines; or

11 “(B) meets or exceeds the objectives estab-
12 lished by the Secretary for the year 2000 for
13 the immunization status of children in the
14 United States who are 2 years of age.

15 **“SEC. 2158. CONTRACTS WITH MANUFACTURERS OF PEDI-**
16 **ATRIC VACCINES.**

17 “(a) IN GENERAL.—Subject to the provisions of this
18 section, the Secretary shall periodically enter into negotia-
19 tions with manufacturers of pediatric vaccines for the pur-
20 pose of maintaining contracts under which—

21 “(1) the Secretary provides for the purchase of
22 quantities of pediatric vaccines necessary for carry-
23 ing out section 2151, and provides for the delivery
24 of the vaccines to participating States under such
25 section; and

1 “(2) each participating State, at the option of
2 the State under section 2156, is permitted to obtain
3 additional quantities of pediatric vaccines (subject to
4 limits in such contracts regarding quantities)
5 through purchasing the vaccines from the manufac-
6 turers at the price negotiated by the Secretary for
7 the quantities specified in paragraph (1).

8 The Secretary shall enter into the initial negotiations
9 under the preceding sentence not later than 180 days after
10 the date of the enactment of the Omnibus Budget Rec-
11 onciliation Act of 1993.

12 “(b) NEGOTIATION OF PURCHASE PRICE.—

13 “(1) IN GENERAL.—In negotiating the prices at
14 which pediatric vaccines will be purchased from a
15 manufacturer under subsection (a), the Secretary
16 shall negotiate a price that provides a reasonable
17 profit for the manufacturer.

18 “(2) CERTAIN FACTORS.—

19 “(A) In determining a reasonable profit for
20 a manufacturer under paragraph (1), the Sec-
21 retary shall consider the following factors:

22 “(i) The costs of the manufacturer in
23 researching, developing, and producing the
24 pediatric vaccine involved.

1 “(ii) The costs of the manufacturer in
2 researching and developing new or im-
3 proved vaccines (pediatric or otherwise).

4 “(iii) The costs of shipping and han-
5 dling pediatric vaccines in compliance with
6 the agreement under subsection (c).

7 “(iv) Such other factors as the Sec-
8 retary determines to be appropriate.

9 “(B) With respect to factors considered
10 under subparagraph (A), the Secretary may
11 enter into a contract under subsection (a) only
12 if the manufacturer involved provides to the
13 Secretary such information regarding the fac-
14 tors as the Secretary determines to be appro-
15 priate.

16 “(3) CONFIDENTIALITY.—With respect to infor-
17 mation provided to the Secretary by a manufacturer
18 under paragraph (2), the following applies:

19 “(A) The Secretary shall maintain the con-
20 fidentiality of the information, with provision
21 for reasonable disclosures.

22 “(B) For purposes of section 552(b)(4) of
23 title 5, United States Code, the information
24 shall be considered to be trade secrets and com-

1 merchial or financial information obtained from
2 a person and privileged or confidential.

3 “(C) Section 1905 of title 18, United
4 States Code, applies to information maintained
5 confidentially under subparagraph (A).

6 “(c) CHARGES FOR SHIPPING AND HANDLING.—The
7 Secretary may enter into a contract under subsection (a)
8 only if the manufacturer involved agrees that the manu-
9 facturer will provide for delivering the vaccines on behalf
10 of the States in accordance with the programs established
11 by the States pursuant to section 2152(b)(3), and will not
12 impose any charges for the costs of such delivery (except
13 to the extent such costs are provided for in the price nego-
14 tiated under subsection (b)).

15 “(d) QUANTITY OF VACCINES.—For the purpose of
16 ensuring that the Federal Government has the ability to
17 carry out section 2151, the Secretary, in negotiations
18 under subsection (a), shall negotiate for maintaining a
19 supply of pediatric vaccines to meet unanticipated needs
20 for the vaccines. For purposes of the preceding sentence,
21 the Secretary shall negotiate for a 6-month supply of vac-
22 cines in addition to the quantity that the Secretary other-
23 wise would provide for in such negotiations. In carrying
24 out this paragraph, the Secretary shall consider the poten-

1 tial for outbreaks of the diseases with respect to which
2 the vaccines have been developed.

3 “(e) NEGOTIATING AUTHORITY OF SECRETARY.—In
4 carrying out subsection (a), the Secretary, to the extent
5 determined by the Secretary to be appropriate, may enter
6 into contracts described in such subsection, may decline
7 to enter into such contracts, and with the consent of the
8 manufacturers involved, may modify such agreements and
9 may extend such agreements.

10 “(f) CERTAIN CONTRACT PROVISIONS.—

11 “(1) DURATION.—A contract entered into by
12 the Secretary under subsection (a) is effective for
13 such period as the Secretary and the manufacturer
14 involved may agree in the contract.

15 “(2) ADVANCE FUNDING.—The Secretary may,
16 pursuant to section 2152(a), enter into contracts
17 under subsection (a) under which the Federal Gov-
18 ernment is obligated to make outlays, the budget au-
19 thority for which is not provided for in advance in
20 appropriations Acts.

21 “(g) REPORTS TO SECRETARY.—The Secretary may
22 enter into a contract under subsection (a) only if the man-
23 ufacturer involved agrees to submit to the Secretary such
24 reports as the Secretary determines to be appropriate with
25 respect to compliance with the contract. For purposes of

1 paragraph (3) of subsection (b), such reports shall be con-
2 sidered to be information provided by the manufacturer
3 to the Secretary under paragraph (2) of such subsection.

4 “(h) MULTIPLE SUPPLIERS.—

5 “(1) IN GENERAL.—In the case of the pediatric
6 vaccine involved, the Secretary shall, as appropriate,
7 enter into a contract under subsection (a) with each
8 manufacturer of the vaccine that meets the terms
9 and conditions of the Secretary for an award of such
10 a contract (including terms and conditions regarding
11 safety, quality, and price).

12 “(2) RULE OF CONSTRUCTION.—With respect
13 to multiple contracts entered into pursuant to para-
14 graph (1), such paragraph may not be construed as
15 prohibiting the Secretary from having in effect dif-
16 ferent prices under each of such contracts.

17 **“SEC. 2159. CERTAIN ADMINISTRATIVE VARIATIONS.**

18 “(a) TRIBES AND TRIBAL ORGANIZATIONS.—

19 “(1) IN GENERAL.—Subject to paragraph (2),
20 the Secretary shall provide for the purchase and de-
21 livery on behalf of each Indian tribe and each tribal
22 organization of such quantities of pediatric vaccines
23 as may be necessary for the immunization of each
24 Indian child in the State in which the tribe or orga-
25 nization (as the case may be) is located.

1 “(2) ENTITLEMENTS; ADMINISTERING PRO-
2 GRAM.—The Secretary may provide for the purchase
3 and delivery of pediatric vaccines under paragraph
4 (1) on behalf of an Indian tribe or tribal organiza-
5 tion only if the tribe or organization (as the case
6 may be) agrees that this part applies to the tribe or
7 organization (in relation to Indian children) to the
8 same extent and in the manner as such part applies
9 to States (in relation to eligible children).

10 “(b) STATE AS MANUFACTURER.—

11 “(1) PAYMENTS IN LIEU OF VACCINES.—In the
12 case of a participating State under section 2151 that
13 manufactures a pediatric vaccine and is not receiv-
14 ing the vaccine under such section, if the Secretary
15 determines that the program of the State under
16 2152(b)(3) is carried out with respect to the vaccine,
17 the Secretary shall provide to the State an amount
18 equal to the value of the quantity of such vaccine
19 that otherwise would have been delivered to the
20 State under section 2151, subject to the provisions
21 of this subsection.

22 “(2) DETERMINATION OF VALUE.—In deter-
23 mining the amount to pay a State under paragraph
24 (1) with respect to a pediatric vaccine, the value of
25 the quantity of vaccine shall be determined on the

1 basis of the price in effect for the vaccine under con-
2 tracts under section 2158. If more than 1 such con-
3 tract is in effect, the Secretary shall determine such
4 value on the basis of the average of the prices under
5 the contracts, after weighting each such price in re-
6 lation to the quantity of vaccine under the contract
7 involved.

8 “(3) USE OF PAYMENTS.—A State may expend
9 payments received under paragraph (1) only for pur-
10 poses relating to pediatric vaccines.

11 **“SEC. 2160. LIST OF PEDIATRIC VACCINES; SCHEDULE FOR**
12 **ADMINISTRATION.**

13 “(a) RECOMMENDED PEDIATRIC VACCINES.—

14 “(1) IN GENERAL.—The Secretary shall estab-
15 lish a list of the vaccines that the Secretary rec-
16 ommends for administration to all children for the
17 purpose of immunizing the children, subject to such
18 contraindications for particular medical categories of
19 children as the Secretary may establish under sub-
20 section (b)(1)(D). The Secretary shall periodically
21 review the list, and shall revise the list as appro-
22 priate.

23 “(2) RULE OF CONSTRUCTION.—

1 “(A) The list of vaccines specified in sub-
2 paragraph (B) is deemed to be the list of vac-
3 cines maintained under paragraph (1).

4 “(B) The list of vaccines specified in this
5 subparagraph is the list of vaccines that, for
6 purposes of paragraph (1), is established (and
7 periodically reviewed and as appropriate re-
8 vised) by the Advisory Committee on Immuni-
9 zation Practices, an advisory committee estab-
10 lished by the Secretary, acting through the Di-
11 rector of the Centers for Disease Control and
12 Prevention.

13 “(b) RECOMMENDED SCHEDULE FOR ADMINISTRA-
14 TION.—

15 “(1) IN GENERAL.—Subject to paragraph (2),
16 in the case of a pediatric vaccine, the Secretary shall
17 establish (and periodically review and as appropriate
18 revise) a schedule of nonbinding recommendations
19 for the following:

20 “(A) The number of immunizations with
21 the vaccine that children should receive.

22 “(B) The ages at which children should re-
23 ceive the immunizations.

24 “(C) The dosage of vaccine that should be
25 administered in the immunizations.

1 “(D) Any contraindications regarding ad-
2 ministration of the vaccine to particular medical
3 categories of children.

4 “(E) Such other guidelines as the Sec-
5 retary determines to be appropriate with re-
6 spect to administering the vaccine to children.

7 “(2) VARIATIONS IN MEDICAL PRACTICE.—In
8 establishing and revising a schedule under para-
9 graph (1), the Secretary shall ensure that, in the
10 case of the pediatric vaccine involved, the schedule
11 provides for the full range of variations in medical
12 judgment regarding the administration of the vac-
13 cine, subject to remaining within medical norms.

14 “(3) RULE OF CONSTRUCTION.—

15 “(A) The schedule specified in subpara-
16 graph (B) is deemed to be the schedule main-
17 tained under paragraph (1).

18 “(B) The schedule specified in this sub-
19 paragraph is the schedule that, for purposes of
20 paragraph (1), is established (and periodically
21 reviewed and as appropriate revised) by the ad-
22 visory committee specified in subsection
23 (a)(2)(B).

24 “(c) GENERALLY APPLICABLE RULES OF CONSTRUC-
25 TION.—

1 “(1) IN GENERAL.—The list established under
2 subsection (a) and the schedules established under
3 subsection (b) do not constitute guidelines, stand-
4 ards, performance measures, or review criteria for
5 purposes of the program carried out by the Adminis-
6 trator for Health Care Policy and Research under
7 part B of title IX or under section 1142 of the So-
8 cial Security Act.

9 “(2) STATE LAWS.—This section does not su-
10 persede any State law on requirements with respect
11 to receiving immunizations (including any such law
12 relating to religious exemptions or medical exemp-
13 tions).

14 “(d) ISSUANCE OF LIST AND SCHEDULES.—Not later
15 than 180 days after the date of the enactment of the Om-
16 nibus Budget Reconciliation Act of 1993, the Secretary
17 shall establish the initial list required in subsection (a) and
18 the schedule required in subsection (b).

19 **“SEC. 2161. CHILDHOOD IMMUNIZATION TRUST FUND.**

20 “(a) ESTABLISHMENT OF FUND.—There is estab-
21 lished in the Treasury of the United States a fund to be
22 known as the National Childhood Immunization Trust
23 Fund (in this section referred to as the ‘Fund’). The Fund
24 shall consist of such amounts as may be appropriated to
25 the Fund in appropriations Acts, in the Internal Revenue

1 Code of 1986, or in subsection (c)(3). Amounts appro-
2 priated to the Fund shall remain available until expended.

3 “(b) EXPENDITURES FROM FUND.—Amounts in the
4 Fund are available to the Secretary for the purpose of car-
5 rying out this part. Payments under the program under
6 this part, and the costs of carrying out such program,
7 shall be exempt from reduction under any order issued
8 under part C of the Balanced Budget and Emergency Def-
9 icit Control Act of 1985.

10 “(c) INVESTMENT.—

11 “(1) IN GENERAL.—The Secretary of the
12 Treasury shall invest such amounts of the Fund as
13 such Secretary determines are not required to meet
14 current withdrawals from the Fund. Such invest-
15 ments may be made only in interest-bearing obliga-
16 tions of the United States. For such purpose, such
17 obligations may be acquired on original issue at the
18 issue price, or by purchase of outstanding obliga-
19 tions at the market price.

20 “(2) SALE OF OBLIGATIONS.—Any obligation
21 acquired by the Fund may be sold by the Secretary
22 of the Treasury at the market price.

23 “(3) AVAILABILITY OF INCOME.—Any interest
24 derived from obligations acquired by the Fund, and

1 proceeds from any sale or redemption of such obliga-
2 tions, are hereby appropriated to the Fund.

3 **“SEC. 2162. DEFINITIONS.**

4 “For purposes of this subtitle:

5 “(1) The term ‘eligible child’ has the meaning
6 given such term in section 2151(b).

7 “(2) The term ‘federally-supplied’, with respect
8 to a pediatric vaccine, means that such vaccine is
9 purchased and delivered on behalf of a State under
10 section 2151(a).

11 “(3) The term ‘health care provider’, with re-
12 spect to the administration of vaccines to children,
13 means an entity that is licensed or otherwise author-
14 ized for such administration under the law of the
15 State in which the entity administers the vaccine,
16 subject to section 333(e).

17 “(4) The term ‘immunization’ means an immu-
18 nization against a vaccine-preventable disease.

19 “(5) Each of the terms ‘Indian’, ‘Indian tribe’,
20 and ‘tribal organization’ has the meaning given such
21 term in section 4 of the Indian Health Care Im-
22 provement Act.

23 “(6) The term ‘Indian child’ means an Indian
24 who is 18 years of age or younger.

1 “(7) The term ‘manufacturer’ means any cor-
2 poration, organization, or institution, whether public
3 or private (including Federal, State, and local de-
4 partments, agencies, and instrumentalities), which
5 manufactures, imports, processes, or distributes
6 under its label any pediatric vaccine. The term
7 ‘manufacture’ means to manufacture, import, proc-
8 ess, or distribute a vaccine.

9 “(8) The term ‘parent’, with respect to a child,
10 means a legal guardian of the child.

11 “(9) The term ‘participating State under sec-
12 tion 2151’ means a State that has submitted to the
13 Secretary an application in accordance with section
14 2157.

15 “(10) The term ‘pediatric vaccine’ means a vac-
16 cine included on the list established under section
17 2160(a).

18 “(11) The term ‘program-registered provider’
19 has the meaning given such term in 2153(a)(2).

20 **“SEC. 2163. TERMINATION OF PROGRAM.**

21 This part shall cease to be in effect beginning on such
22 date as may be prescribed in Federal law providing for
23 immunization services for all children as part of a broad-
24 based reform of the national health care system.

1 “PART B—NATIONAL SYSTEM FOR MONITORING
2 IMMUNIZATION STATUS OF CHILDREN

3 **“SEC. 2171. FORMULA GRANTS FOR STATE REGISTRIES**
4 **WITH RESPECT TO MONITORING.**

5 “(a) IN GENERAL.—For the purpose described in
6 subsection (b), the Secretary, acting through the Director
7 of the Centers for Disease Control and Prevention, shall
8 make an allotment each fiscal year for each State in an
9 amount determined in accordance with section 2175. The
10 Secretary shall make a grant to the State of the allotment
11 made for the State for the fiscal year if the State submits
12 to the Secretary an application in accordance with section
13 2174.

14 “(b) AUTHORIZED ACTIVITIES.—The Secretary may
15 make a grant under subsection (a) only if the State agrees
16 to expend the grant for the purpose of—

17 “(1) collecting the data described in section
18 2172;

19 “(2) operating registries to maintain the data
20 (and establishing such registries, in the case of a
21 State that is not operating such a registry);

22 “(3) utilizing the data to monitor the extent to
23 which children have received immunizations in ac-
24 cordance with the schedule established under section
25 2160(b);

1 “(4) notifying parents if children have not re-
2 ceived immunizations in accordance with such sched-
3 ule; and

4 “(5) such other activities as the Secretary may
5 authorize with respect to achieving the objectives es-
6 tablished by the Secretary for the year 2000 for the
7 immunization status of children in the United
8 States.

9 “(c) REQUIREMENT REGARDING STATE LAWS.—

10 “(1) IN GENERAL.—The Secretary may make a
11 grant under subsection (a) only if the State in-
12 volved—

13 “(A) provides assurances satisfactory to
14 the Secretary that, not later than October 1,
15 1996, the State will be operating a registry in
16 accordance with this part, including having in
17 effect such laws and regulations as may be nec-
18 essary to so operate such a registry; and

19 “(B) agrees that, prior to such date, the
20 State will make such efforts to operate a reg-
21 istry in accordance with this part as may be au-
22 thorized in the law and regulations of the State.

23 “(2) RULES OF CONSTRUCTION.—

24 “(A) With respect to the agreements made
25 by a State under this part, other than the

1 agreement under paragraph (1)(B), the Sec-
2 retary may require compliance with the agree-
3 ments only to the extent consistent with such
4 paragraph.

5 “(B) This part does not authorize the Sec-
6 retary, as a condition of the receipt of a grant
7 under subsection (a) by a State, to prohibit the
8 State from providing any parent, upon the re-
9 quest of the parent, with an exemption from the
10 requirements established by the State pursuant
11 to this part for the collection of data regarding
12 any child of the parent.

13 **“SEC. 2172. REGISTRY DATA.**

14 “(a) IN GENERAL.—For purposes of section
15 2171(b)(1), the data described in this section are the data
16 described in subsection (b) and the data described in sub-
17 section (c). This section applies to data regarding a child
18 without regard to whether the child is an eligible child as
19 defined in section 2162.

20 “(b) DATA REGARDING BIRTH OF CHILD.—With re-
21 spect to the birth of a child, the data described in this
22 subsection is as follows:

23 “(1) The name of each child born in the State
24 involved on or after October 1, 1993.

25 “(2) Demographic data on the child.

1 “(3) The name of one or both of the parents of
2 the child.

3 “(4) The address, as of the date of the birth of
4 the child, of each parent whose name is received in
5 the registry pursuant to paragraph (3).

6 “(c) DATA REGARDING INDIVIDUAL IMMUNIZA-
7 TIONS.—With respect to a child to whom a pediatric vac-
8 cine is administered in the State involved, the data de-
9 scribed in this subsection is as follows:

10 “(1) The name, age, and address of the child.

11 “(2) The date on which the vaccine was admin-
12 istered to the child.

13 “(3) The name and business address of the
14 health care provider that administered the vaccine.

15 “(4) The address of the facility at which the
16 vaccine was administered.

17 “(5) The name and address of one or both par-
18 ents of the child as of the date on which the vaccine
19 was administered, if such information is available to
20 the health care provider.

21 “(6) The type of vaccine.

22 “(7) The number or other information identify-
23 ing the particular manufacturing batch of the vac-
24 cine, if such information appears on the container or

1 packaging for the vaccine or is otherwise readily ac-
2 cessible to the health care provider.

3 “(8) The dosage of vaccine that was adminis-
4 tered.

5 “(9) A description of any adverse medical reac-
6 tions that the child experienced in relation to the
7 vaccine and of which the health care provider is
8 aware.

9 “(10) Any other contraindications noted by the
10 health care provider with respect to administration
11 of the vaccine to the child.

12 “(11) Such other data regarding immunizations
13 for the child, including identifying data, as the Sec-
14 retary may require consistent with applicable law
15 (including social security account numbers furnished
16 pursuant to section 205(c)(2)(E) of the Social Secu-
17 rity Act).

18 “(d) DATE CERTAIN FOR SUBMISSION TO REG-
19 ISTRY.—The Secretary may make a grant under section
20 2171 only if the State involved agrees to ensure that, with
21 respect to a child—

22 “(1) the data described in subsection (b) are
23 submitted to the registry under such section not
24 later than 6 weeks after the date on which the child
25 is born; and

1 “(2) the data described in subsection (c) with
2 respect to a vaccine are submitted to such registry
3 not later than 6 weeks after the date on which the
4 vaccine is administered to the child.

5 **“SEC. 2173. GENERAL PROVISIONS.**

6 “(a) FEDERAL STANDARDS ON CONFIDENTIALITY.—
7 The Secretary shall by regulation establish standards pro-
8 viding for maintaining the confidentiality of the identity
9 of individuals with respect to whom data are maintained
10 in a registries under section 2171. Such standards shall,
11 with respect to a State, provide that the State is to have
12 in effect laws regarding such confidentiality, including ap-
13 propriate penalties for violation of the laws. The Secretary
14 may make a grant under such section only if the State
15 involved agrees to comply with the standards.

16 “(b) USE OF SOCIAL SECURITY ACCOUNT NUM-
17 BERS.—Any usage or disclosure of data in registries under
18 section 2171 that consists of social security account num-
19 bers and related information which is otherwise permitted
20 under this part may be exercised only to the extent per-
21 mitted under section 205(c)(2)(E) of the Social Security
22 Act. For purposes of the preceding sentence, the term ‘re-
23 lated information’ has the meaning given such term in
24 clause (iv)(II) of such section.

1 “(c) UNIFORMITY IN METHODOLOGIES.—The Sec-
2 retary shall establish standards regarding the methodolo-
3 gies used in establishing and operating registries under
4 section 2171, and may make a grant under such section
5 only if the State agrees to comply with the standards. The
6 Secretary shall provide for a reasonable degree of uniform-
7 ity among the States in such methodologies for the pur-
8 pose of ensuring the utility, comparability, and exchange
9 of the data maintained in such registries.

10 “(d) COORDINATION AMONG STATES.—The Sec-
11 retary may make a grant under section 2171 to a State
12 only if, with respect to the operation of the registry of
13 the State under such section, the State agrees to cooperate
14 with the Secretary and with other States in carrying out
15 activities with respect to achieving the objectives estab-
16 lished by the Secretary for the year 2000 for the immuni-
17 zation status of children in the United States.

18 “(e) REPORTS TO SECRETARY.—The Secretary may
19 make a grant under section 2171 only if the State involved
20 agrees to submit to the Secretary such reports as the Sec-
21 retary determines to be appropriate with respect to the
22 activities of the State under this part.

23 **“SEC. 2174. APPLICATION FOR GRANT.**

24 “An application by a State for a grant under section
25 2171 is in accordance with this section if the application—

1 “(1) is submitted not later than the date speci-
2 fied by the Secretary;

3 “(2) contains each agreement required in this
4 part;

5 “(3) contains any information required in this
6 part to be submitted to the Secretary; and

7 “(4) is in such form, is made in such manner,
8 and contains such agreements, assurances, and in-
9 formation as the Secretary determines to be nec-
10 essary to carry out this part.

11 **“SEC. 2175. DETERMINATION OF AMOUNT OF ALLOTMENT.**

12 “The Secretary shall determine the amount of the al-
13 lotments required in section 2171 for States for a fiscal
14 year in accordance with a formula established by the Sec-
15 retary that allots the amounts appropriated under section
16 2177 for the fiscal year on the basis of the costs of the
17 States in establishing and operating registries under sec-
18 tion 2171.

19 **“SEC. 2176. DEFINITIONS.**

20 “For purposes of this part, each of the terms ‘health
21 care provider, ‘pediatric vaccine’ and ‘parent’ has the
22 meaning given the term in section 2162.

23 **“SEC. 2177. AUTHORIZATION OF APPROPRIATIONS.**

24 “For the purpose of carrying out this part, there are
25 authorized to be appropriated \$50,000,000, for fiscal year

1 1994, \$152,000,000 for fiscal year 1995, \$125,000,000
2 for fiscal year 1996, and \$35,000,000 for each of the fis-
3 cal years 1997 through 1999.

4 “PART C—FUNDING FOR OTHER PURPOSES REGARDING
5 CHILDHOOD IMMUNIZATIONS

6 “**SEC. 2181. GRANTS REGARDING YEAR 2000 HEALTH OBJEC-**
7 **TIVES.**

8 “(a) IN GENERAL.—The Secretary, acting through
9 the Director of the Centers for Disease Control and Pre-
10 vention, may make grants to States for the purpose of car-
11 rying out activities with respect to achieving the objectives
12 established by the Secretary for the year 2000 for the im-
13 munization status of children in the United States, other
14 than providing for the purchase and delivery on behalf of
15 the State of any pediatric vaccine (as defined in section
16 2162).

17 “(b) CERTAIN ACTIVITIES.—Subject to subsection
18 (a), the purposes for which a grant under such subsection
19 may be expended include the following:

20 “(1) Research into the prevention and control
21 of diseases that may be prevented through vaccina-
22 tion.

23 “(2) Demonstration projects for the prevention
24 and control of such diseases.

1 “(3) Public information and education pro-
2 grams for the prevention and control of such dis-
3 eases.

4 “(4) Education, training, and clinical skills im-
5 provement activities in the prevention and control of
6 such diseases for health professionals (including al-
7 lied health personnel).

8 “(5) Such other activities as the Secretary de-
9 termines to be appropriate.

10 “(c) APPLICATION FOR GRANT.—The Secretary may
11 make a grant under subsection (a) only if an application
12 for the grant is submitted to the Secretary and the appli-
13 cation is in such form, is made in such manner, and con-
14 tains such agreements, assurances, and information as the
15 Secretary determines to be necessary to carry out this sec-
16 tion.

17 “(d) SUPPLIES AND SERVICES IN LIEU OF GRANT
18 FUNDS.— The Secretary, at the request of a recipient of
19 a grant under subsection (a), may reduce the amount of
20 such grant by—

21 “(1) the fair market value of any supplies or
22 equipment furnished the grant recipient, and

23 “(2) the amount of the pay, allowances, and
24 travel expenses of any officer or employee of the
25 Federal Government when detailed to the grant re-

1 recipient and the amount of any other costs incurred
2 in connection with the detail of such officer or em-
3 ployee.

4 When the furnishing of such supplies or equipment or the
5 detail of such an officer or employee is for the convenience
6 of and at the request of such grant recipient and for the
7 purpose of carrying out a program with respect to which
8 the grant under subsection (a) is made. The amount by
9 which any such grant is so reduced shall be available for
10 payment by the Secretary of the costs incurred in furnish-
11 ing the supplies or equipment, or in detailing the person-
12 nel, on which the reduction of such grant is based, and
13 such amount shall be deemed as part of the grant and
14 shall be deemed to have been paid to the grant recipient.

15 “(e) AUTHORIZATION OF APPROPRIATIONS.—For the
16 purpose of carrying out this part, there are authorized to
17 be appropriated \$580,000,000 for fiscal year 1993,
18 \$680,000,000 for fiscal year 1994, and such sums as may
19 be necessary for each of the fiscal years 1995 through
20 1999.”.

21 (b) AUTHORITY TO USE SOCIAL SECURITY ACCOUNT
22 NUMBERS.—Section 205(c)(2) of the Social Security Act
23 (42 U.S.C. 405(c)(2)) is amended—

24 (1) by redesignating subparagraphs (E) and
25 (F) as subparagraphs (F) and (G), respectively; and

1 (2) by inserting after subparagraph (D) the fol-
2 lowing new subparagraph:

3 “(E)(i) The Secretary and each State receiving
4 grants under section 2171(a) of the Public Health Service
5 Act may utilize social security account numbers issued by
6 the Secretary under this subsection for purposes of—

7 “(I) operating registries under such section to
8 maintain information including such numbers (and
9 establishing such registries, in the case of a State
10 that is not operating such a registry),

11 “(II) utilizing such numbers to monitor the ex-
12 tent to which children have received immunizations
13 in accordance with the schedule established under
14 section 2160(b) of the Public Health Service Act,
15 and

16 “(III) notifying parents if children have not re-
17 ceived immunizations in accordance with such sched-
18 ule.

19 “(ii) Disclosure by individuals of social security ac-
20 count numbers may be required by a State for purposes
21 of identification of children in a registry operated pursu-
22 ant to a grant referred to in clause (i), except that such
23 disclosure may be required to be made only to persons spe-
24 cifically authorized in regulations of the Secretary pre-
25 scribed under part B of subtitle 3 of title XXI of the Pub-

1 lic Health Service Act. The Secretary shall take such ac-
2 tions as are necessary to restrict access to information
3 consisting of such numbers and related information only
4 to such authorized persons whose duties or responsibilities
5 require access for the purposes described in clause (i). The
6 Secretary shall issue regulations governing the use, main-
7 tenance, and disclosure by any holder of such information,
8 including appropriate administrative, technical, and phys-
9 ical safeguards, to ensure that only such authorized per-
10 sons have access to such information. Any use or disclo-
11 sure of such information in violation of such regulations
12 shall be deemed a disclosure in violation of subparagraph
13 (C)(vii).

14 “(iii) The Secretary shall submit a report to the Com-
15 mittee on Ways and Means of the House of Representa-
16 tives and the Committee on Finance of the Senate not
17 later than January 1, 1996, and biennially thereafter, on
18 the operation of this subparagraph.

19 “(iv) For purposes of this subparagraph—

20 “(I) the term ‘State’ has the meaning provided
21 such term under section 2(f) of the Public Health
22 Service Act, and

23 “(II) the term ‘related information’ means any
24 record, list, or compilation which indicates, directly
25 or indirectly, the identity of any individual with re-

1 spect to whom a social security account number is
2 maintained pursuant to this subparagraph and part
3 B of subtitle 3 of title XXI of the Public Health
4 Service Act.”.

5 (c) RELATIONSHIP OF NEW PROGRAM OF IMMUNIZA-
6 TION GRANTS TO CURRENT PROGRAM.—

7 (1) STRIKING OF CURRENT PROGRAM.—Section
8 317 of the Public Health Service Act (42 U.S.C.
9 247b) is amended—

10 (A) in subsection (j)—

11 (i) by striking paragraph (1); and

12 (ii) by striking the remaining para-
13 graph designation; and

14 (B) in subsection (k)—

15 (i) by striking paragraph (1); and

16 (ii) by redesignating paragraphs (2)
17 and (3) as paragraphs (1) and (2), respec-
18 tively.

19 (2) TRANSITIONAL AUTHORITY UNDER NEW
20 PROGRAM.—With respect to activities that the Sec-
21 retary of Health and Human Services was author-
22 ized to carry out pursuant to section 317(j)(1) of
23 the Public Health Service Act (as in effect on the
24 day before the date of the enactment of this Act),
25 the Secretary may, for fiscal year 1994, carry out

1 any such activity under section 2181 of the Public
2 Health Service Act (as added by subsection (a) of
3 this section), notwithstanding the provisions of such
4 section 2181. The authority established in the pre-
5 ceding sentence includes the authority to purchase
6 vaccines.

7 (d) CONTINUED COVERAGE OF COSTS OF A PEDI-
8 ATRIC VACCINE UNDER GROUP HEALTH PLANS.—

9 (1) REQUIREMENT.—The requirement of this
10 paragraph, with respect to a group health plan for
11 plan years beginning after the date of the enactment
12 of this Act, is that the group health plan not reduce
13 its coverage of the costs of pediatric vaccines (as de-
14 fined under section 2162 of the Public Health Serv-
15 ice Act) below the coverage it provided as of May 1,
16 1993.

17 (2) ENFORCEMENT.—

18 (A) For purposes of section 2207 of the
19 Public Health Service Act, the requirement of
20 paragraph (1) is deemed a requirement of title
21 XXII of such Act.

22 (B) For purposes of subsections (a)
23 through (e) of section 4980B of the Internal
24 Revenue Code of 1986, paragraph (1) is

1 deemed a requirement of subsection (f) of such
2 section.

3 (C) For purposes of section 502 of the
4 Employee Retirement Income Security Act of
5 1974, paragraph (1) is deemed a provision of
6 part 6 of subtitle B of title I of such Act.

7 **SEC. 5182. NATIONAL VACCINE INJURY COMPENSATION**
8 **PROGRAM AMENDMENTS.**

9 (a) USE OF VACCINE INJURY COMPENSATION TRUST
10 FUND.—Section 6601(r) of the Omnibus Budget Rec-
11 onciliation Act of 1989 is amended by striking
12 “\$2,500,000 for each of fiscal years 1991 and 1992” each
13 place it appears and inserting “\$3,000,000 for fiscal year
14 1994 and each fiscal year thereafter” (in three places).

15 (b) AMENDMENT OF VACCINE INJURY TABLE.—Sec-
16 tion 2116(b) of the Public Health Service Act (42 U.S.C.
17 300aa-16(b)) is amended by striking “such person may
18 file” and inserting “or to significantly increase the likeli-
19 hood of obtaining compensation, such person may, not-
20 withstanding section 2111(b)(2), file”.

21 (c) EXTENSION OF TIME FOR DECISION.—Section
22 2112(d)(3)(D) of such Act (42 U.S.C. 300aa-
23 12(d)(3)(D)) is amended by striking “540 days” and in-
24 serting “30 months (but for no more than 6 months at
25 a time)”.

1 (d) SIMPLIFICATION OF VACCINE INFORMATION MA-
2 TERIALS.—

3 (1) Section 2126(b) of such Act (42 U.S.C.
4 300aa–26(b)) is amended—

5 (A) by striking “by rule” in the matter
6 preceding paragraph (1);

7 (B) by striking, in paragraph (1), “, op-
8 portunity for a public hearing, and 90” and in-
9 serting “and 30”; and

10 (C) by striking, in paragraph (2), “, appro-
11 priate health care providers and parent organi-
12 zations”.

13 (2) Section 2126(c) of such Act (42 U.S.C.
14 300aa–26(c)) is amended—

15 (A) by inserting “shall be based on avail-
16 able data and information,” after “such mate-
17 rials” in the matter preceding paragraph (1),
18 and

19 (B) by striking paragraphs (1) through
20 (10) and inserting the following:

21 “(1) a concise description of the benefits of the
22 vaccine,

23 “(2) a concise description of the risks associ-
24 ated with the vaccine,

1 “(3) a statement of the availability of the Na-
2 tional Vaccine Injury Compensation Program, and

3 “(4) such other relevant information as may be
4 determined by the Secretary.”.

5 (3) Subsections (a) and (d) of section 2126 of
6 such Act (42 U.S.C. 300aa–26) are each amended
7 by inserting “or to any other individual” after “to
8 the legal representative of any child”.

9 (4) Subsection (d) of section 2126 of such Act
10 (42 U.S.C. 300aa–26) is amended—

11 (A) by striking all after “subsection (a),”
12 the second place it appears in the first sentence
13 and inserting “supplemented with visual presen-
14 tations or oral explanations, in appropriate
15 cases.”, and

16 (B) by striking “or other information” in
17 the last sentence.

18 **SEC. 5183. MEDICAID IMMUNIZATION PROVISIONS.**

19 (a) **OUTREACH AND EDUCATION.**—

20 (1) **IMMUNIZATION OUTREACH THROUGH EPSDT**
21 **PROGRAM.**—Section 1902(a)(43)(A) (42 U.S.C.
22 1396a(a)(43)(A)) is amended by inserting before the
23 comma at the end the following: “and the need for
24 age-appropriate immunizations against vaccine-pre-
25 ventable diseases”.

1 (2) COORDINATION WITH MATERNAL AND
2 CHILD HEALTH BLOCK GRANT PROGRAMS AND WIC
3 PROGRAMS.—Section 1902(a)(11) (42 U.S.C.
4 1396a(a)(11)) is amended—

5 (A) in clause (B)—

6 (i) by striking “effective July 1,
7 1969,”

8 (ii) by striking “and” before “(ii),”
9 and

10 (iii) by striking “to him under section
11 1903” and inserting “to the individual
12 under section 1903, and (iii) providing for
13 coordination of information and education
14 on childhood vaccinations and delivery of
15 immunization services”; and

16 (B) in clause (C), by inserting “(including
17 the provision of information and education on
18 childhood vaccinations and the delivery of im-
19 munization services)” after “operations under
20 this title”.

21 (3) COVERAGE OF PUBLIC HOUSING HEALTH
22 CENTERS AS FEDERALLY-QUALIFIED HEALTH CEN-
23 TERS.—Section 1905(l)(2)(B) (42 U.S.C.
24 1396d(l)(2)(B)) is amended by striking “or 340”
25 each place it appears and inserting “340, or 340A”.

1 (4) EFFECTIVE DATE.—(A) Except as provided
2 in subparagraph (B), the amendments made by this
3 subsection shall apply to calendar quarters beginning
4 on or after October 1, 1993, without regard to
5 whether or not final regulations to carry out such
6 amendments have been promulgated by such date.

7 (B) In the case of a State plan for medical as-
8 sistance under title XIX of the Social Security Act
9 which the Secretary of Health and Human Services
10 determines requires State legislation (other than leg-
11 islation appropriating funds) in order for the plan to
12 meet the additional requirements imposed by the
13 amendments made by this subsection, the State plan
14 shall not be regarded as failing to comply with the
15 requirements of such title solely on the basis of its
16 failure to meet these additional requirements before
17 the first day of the first calendar quarter beginning
18 after the close of the first regular session of the
19 State legislature that begins after the date of the en-
20 actment of this Act. For purposes of the previous
21 sentence, in the case of a State that has a 2-year
22 legislative session, each year of such session shall be
23 deemed to be a separate regular session of the State
24 legislature.

1 (b) SCHEDULE OF IMMUNIZATIONS UNDER
2 EPSDT.—

3 (1) IN GENERAL.—Section 1905(r)(1) (42
4 U.S.C. 1396d(r)(1)) is amended—

5 (A) in subparagraph (A)(i), by inserting
6 “and, with respect to immunizations under sub-
7 paragraph (B)(iii), in accordance with the
8 schedule recommended by the Secretary under
9 section 2160 of the Public Health Service Act”
10 after “child health care”; and

11 (B) in subparagraph (B)(iii), by inserting
12 “(according to the schedule recommended by
13 the Secretary under section 2160 of the Public
14 Health Service Act)” after “appropriate immu-
15 nizations”.

16 (2) EFFECTIVE DATE.—The amendments made
17 by subparagraphs (A) and (B) of paragraph (1)
18 shall first apply 90 days after the date the Secretary
19 of Health and Human Services first issues the rec-
20 ommended schedule referred to in subparagraphs
21 (A)(i) and subparagraph (B)(iii) of section
22 1905(r)(1) of the Social Security Act (as amended
23 by such respective subparagraphs).

24 (c) ASSURING ADEQUATE PAYMENT RATES FOR AD-
25 MINISTRATION OF VACCINES TO CHILDREN.—

1 (1) PAYMENT RATES.—Section 1926(a)(4)(B)
2 (42 U.S.C. 1396r-7(a)(4)(B)) is amended by insert-
3 ing “(including the administration of vaccines)”
4 after “means services”.

5 (2) EFFECTIVE DATE.—The amendment made
6 by paragraph (1) shall apply to the plan amendment
7 required to be submitted under section 1926(a)(2) of
8 the Social Security Act by not later than April 1,
9 1994.

10 (d) DENIAL OF FEDERAL FINANCIAL PARTICIPATION
11 FOR INAPPROPRIATE ADMINISTRATION OF SINGLE-ANTI-
12 GEN VACCINE.—

13 (1) IN GENERAL.—Section 1903(i) (42 U.S.C.
14 1396b(i)), as amended by sections 5174(b) and
15 5131(a), is amended—

16 (A) in paragraph (13), by striking “or” at
17 the end,

18 (B) in paragraph (14), by striking the pe-
19 riod at the end and inserting “; or”, and

20 (C) by inserting after paragraph (14) the
21 following new paragraph:

22 “(15) with respect to any amount expended for
23 a single-antigen vaccine and its administration in
24 any case in which the administration of a combined-

1 antigen vaccine was medically appropriate (as deter-
2 mined by the Secretary).”.

3 (2) EFFECTIVE DATE.—The amendments made
4 by paragraph (1) shall apply to amounts expended
5 for vaccines administered on or after October 1,
6 1993.

7 (e) REQUIRING MEDICAID MANAGED CARE PLANS
8 ~~T±±~~ TO COMPLY WITH IMMUNIZATION AND OTHER EPSDT
9 REQUIREMENTS.—

10 (1) IN GENERAL.—Section 1903(m) (42 U.S.C.
11 1396b(m)) is amended—

12 (A) in paragraph (2)(A), as amended by
13 subsections (a)(1) and (b)(1) of section 5135—

14 (i) by striking “and” at the end of
15 clause (xii),

16 (ii) by striking the period at the end
17 of clause (xiii) and inserting “; and”, and

18 (iii) by adding at the end the follow-
19 ing new clause:

20 “(xiv) the entity complies with the requirements
21 of paragraph (7) (relating to EPSDT compliance).”;

22 and

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

1 “(7) The contract between the State and an entity
2 referred to in paragraph (2)(A)(iii) shall—

3 “(A) specify which early and periodic screening,
4 diagnostic, and treatment services are to be provided
5 under the contract to individuals under age 21 en-
6 rolled with the entity;

7 “(B) in the case of such services which are not
8 to be so provided, specify the steps the entity will
9 take (through referrals or other arrangements) to
10 assure that such individuals will receive such serv-
11 ices; and

12 “(C) require the entity to submit such periodic
13 reports as may be necessary to enable the State to
14 prepare and submit timely reports under section
15 1902(a)(43)(D) and section 506(a)(2).”.

16 (2) APPLICATION OF INTERMEDIATE SANC-
17 TIONS FOR FAILURE TO PROVIDE IMMUNIZATIONS
18 AND OTHER EPSDT SERVICES.—Section
19 1903(m)(5)(A) (42 U.S.C. 1396b(m)(5)(A)) is
20 amended—

21 (A) by striking “, or” at the end of clause
22 (iv) and inserting a semicolon,

23 (B) by striking the comma at the end of
24 clause (v) and inserting “; or”, and

1 (C) by inserting after clause (v) the follow-
2 ing new clause:

3 “(vi) fails substantially to provide early and
4 periodic screening, diagnostic, and treatment serv-
5 ices to the extent specified in the contract under
6 paragraph (7)(A);”.

7 (3) EFFECTIVE DATE.—The amendments made
8 by this subsection shall apply to contract years be-
9 ginning on or after October 1, 1993, without regard
10 to whether or not final regulations to carry out such
11 amendments have been promulgated by such date.

12 (f) TRANSITION RULE.—

13 (1) MEDICAID USE OF CDC CONTRACT PRICE.—
14 The Secretary of Health and Human Services shall
15 not, on or after the date of the enactment of this
16 Act, enter into a contract for the purchase by the
17 Centers for Disease Control and Prevention of pedi-
18 atric vaccines for distribution (as provided for in
19 section 317 or section 2181 of the Public Health
20 Service Act) unless such contract provides that the
21 charge for such vaccines, for which medical assist-
22 ance is provided under a State plan under title XIX
23 of the Social Security Act, will not exceed the price
24 negotiated under the contract. The previous sentence
25 shall not apply, with respect to a vaccine for which

1 medical assistance is provided by a State, on and
2 after such date as the State becomes entitled to have
3 the Secretary provide for the purchase and delivery
4 on behalf of the State of that vaccine under section
5 2151 of the Public Health Service Act.

6 (2) OPTIONAL USE BY STATES OF CDC CON-
7 TRACT PRICE.—Nothing in paragraph (1) shall be
8 construed as limiting the Federal financial participa-
9 tion available to States, under title XIX of the So-
10 cial Security Act, for the cost of a pediatric vaccine
11 to the contract price described in such paragraph for
12 the vaccine.

13 **SEC. 5184. AVAILABILITY OF MEDICAID PAYMENTS FOR**
14 **CHILDHOOD VACCINE REPLACEMENT PRO-**
15 **GRAMS.**

16 (a) IN GENERAL.—Section 1902(a)(32) (42 U.S.C.
17 1396a(a)(32)) is amended—

18 (1) by striking “and” at the end of subpara-
19 graph (B),

20 (2) by striking the period at the end of sub-
21 paragraph (C) and inserting “; and”, and

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

24 “(D) in the case of payment for a child-
25 hood vaccine administered to individuals enti-

1 tled to medical assistance under the State plan,
2 the State plan may make payment directly to
3 the manufacturer of the vaccine under a vol-
4 untary replacement program agreed to by the
5 State pursuant to which the manufacturer (i)
6 supplies doses of the vaccine to providers ad-
7 ministering the vaccine, (ii) periodically replaces
8 the supply of the vaccine, and (iii) charges the
9 State the manufacturer’s bid price to the Cen-
10 ters for Disease Control and Prevention for the
11 vaccine so administered plus a reasonable pre-
12 mium to cover shipping and the handling of re-
13 turns;”.

14 (b) EFFECTIVE DATE.—The amendments made by
15 subsection (a) shall take effect on the date of the enact-
16 ment of this Act.

17 **SEC. 5185. HEALTHY START FOR INFANTS.**

18 (a) IN GENERAL.—Part D of title III of the Public
19 Health Service Act (42 U.S.C. 254b et seq.) is amended
20 by inserting after section 330 the following section:

21 “HEALTHY START FOR INFANTS

22 “SEC. 330A. (a) GRANTS FOR COMPREHENSIVE
23 SERVICES.—

24 “(1) IN GENERAL.—The Secretary may make
25 grants for the operation of not more than 21 dem-
26 onstration projects to provide the services described

1 in subsection (b) for the purpose of reducing, in the
2 geographic areas in which the projects are carried
3 out—

4 “(A) the incidence of infant mortality and
5 morbidity;

6 “(B) the incidence of fetal deaths;

7 “(C) the incidence of maternal mortality;

8 “(D) the incidence of fetal alcohol syn-
9 drome; and

10 “(E) the incidence of low-birthweight
11 births.

12 “(2) ACHIEVEMENT OF YEAR 2000 HEALTH STA-
13 TUS OBJECTIVES.—With respect to the objectives es-
14 tablished by the Secretary for the health status of
15 the population of the United States for the year
16 2000, the Secretary shall, in providing for a dem-
17 onstration project under paragraph (1) in a geo-
18 graphic area, seek to meet the objectives that are
19 applicable to the purpose described in such para-
20 graph and the populations served by the project.

21 “(b) AUTHORIZED SERVICES.—

22 “(1) IN GENERAL.—Subject to subsection (h),
23 the services referred to in this subsection are com-
24 prehensive services (including preventive and pri-
25 mary health services for pregnant women and in-

1 fants and childhood immunizations in accordance
2 with the schedule recommended by the Secretary
3 under section 2160) for carrying out the purpose de-
4 scribed in subsection (a), including services other
5 than health services.

6 “(2) CERTAIN PROVIDERS.—The Secretary may
7 make a grant under subsection (a) only if the appli-
8 cant involved agrees that, in making any arrange-
9 ments under which other entities provide authorized
10 services in the demonstration project involved, the
11 applicant will include among the entities with which
12 the arrangements are made grantees under any of
13 sections 329, 330, 340, and 340A, if such grantees
14 are providing services in the service area of such
15 project and the grantees are willing to make such
16 arrangements with the applicant.

17 “(c) ELIGIBLE GEOGRAPHIC AREAS.—The Secretary
18 may make a grant under subsection (a) only if—

19 “(1) the applicant for the grant specifies the
20 geographic area in which the demonstration project
21 under such subsection is to be carried out and
22 agrees that the project will not be carried out in
23 other areas; and

1 “(2) the rate of infant mortality in the geo-
2 graphic area equals or exceeds 150 percent of the
3 national average in the United States of such rates.

4 “(d) MINIMUM QUALIFICATIONS OF GRANTEEES.—

5 “(1) PUBLIC OR NONPROFIT PRIVATE ENTI-
6 TIES.—The Secretary may make a grant under sub-
7 section (a) only if the applicant for the grant is a
8 State or local department of health, or other public
9 or nonprofit private entity, or a consortium of public
10 or nonprofit private entities.

11 “(2) APPROVAL OF POLITICAL SUBDIVISIONS.—

12 With respect to a proposed demonstration project
13 under subsection (a), the Secretary may make a
14 grant under such subsection only if—

15 “(A) the chief executive officer of each po-
16 litical subdivision in the service area of such
17 project approves the applicant for the grant as
18 being qualified to carry out the project; and

19 “(B) the leadership of any Indian tribe or
20 tribal organization with jurisdiction over any
21 portion of such area so approves the applicant.

22 “(3) STATUS AS MEDICAID PROVIDER.—

23 “(A) In the case of any service described
24 in subsection (b) that is available pursuant to
25 the State plan approved under title XIX of the

1 Social Security Act for a State in which a dem-
2 onstration project under subsection (a) is car-
3 ried out, the Secretary may make a grant under
4 such subsection for the project only if, subject
5 to subparagraph (B)—

6 “(i) the applicant for the grant will
7 provide the service directly, and the appli-
8 cant has entered into a participation agree-
9 ment under the State plan and is qualified
10 to receive payments under such plan; or

11 “(ii) the applicant will enter into an
12 agreement with a public or private entity
13 under which the entity will provide the
14 service, and the entity has entered into
15 such a participation agreement under the
16 State plan and is qualified to receive such
17 payments.

18 “(B)(i) In the case of an entity making an
19 agreement pursuant to subparagraph (A)(ii) re-
20 garding the provision of services, the require-
21 ment established in such subparagraph regard-
22 ing a participation agreement shall be waived
23 by the Secretary if the entity does not, in pro-
24 viding health care services, impose a charge or
25 accept reimbursement available from any third-

1 party payor, including reimbursement under
2 any insurance policy or under any Federal or
3 State health benefits plan.

4 “(ii) A determination by the Secretary of
5 whether an entity referred to in clause (i) meets
6 the criteria for a waiver under such clause shall
7 be made without regard to whether the entity
8 accepts voluntary donations regarding the pro-
9 vision of services to the public.

10 “(e) STATE APPROVAL OF PROJECT.—With respect
11 to a proposed demonstration project under subsection (a),
12 the Secretary may make a grant under such subsection
13 to the applicant involved only if—

14 “(1) the chief executive officer of the State in
15 which the project is to be carried out approves the
16 proposal of the applicant for carrying out the
17 project; and

18 “(2) the leadership of any Indian tribe or tribal
19 organization with jurisdiction over any portion of the
20 service area of the project so approves the proposal.

21 “(f) ELIGIBILITY FOR SERVICES PROVIDED WITH
22 GRANT FUNDS.—

23 “(1) IN GENERAL.—With respect to any au-
24 thorized service under subsection (b), if the service
25 is a service that States are required or authorized to

1 provide under title XIX of the Social Security Act,
2 the Secretary may make a grant under subsection
3 (a) only if the applicant involved agrees that the
4 grant will not be expended to provide the service to
5 any individual to whom States are required or au-
6 thorized under such title to provide the service. The
7 Secretary may not make a grant under subsection
8 (a) unless the State involved agrees that the grant
9 will not be expended to make payment for any item
10 or service to the extent that payment has been
11 made, or can reasonably be expected to be made,
12 with respect to such item or service—

13 “(A) under a health insurance policy or
14 plan (including a group health plan or a pre-
15 paid health plan),

16 “(B) under any Federal or State health
17 benefits program, including any program under
18 title V, XVIII, or XIX of the Social Security
19 Act, or

20 “(C) under subpart 2 of part B of title
21 XIX of this Act.

22 “(2) RULES OF CONSTRUCTION.—For purposes
23 of paragraph (1):

24 “(A) Individuals to whom States are au-
25 thorized to provide services under title XIX of

1 the Social Security Act include, pursuant to
2 section 1902(l) of such title, pregnant women,
3 infants, and children with an income level not
4 less than 133 percent, and not more than 185
5 percent, of the official poverty line.

6 “(B) Authorized services under subsection
7 (b) that are authorized to be provided under
8 title XIX of such Act include, pursuant to sec-
9 tion 1920 of such title, ambulatory prenatal
10 services during a period of presumptive eligi-
11 bility.

12 “(C) Authorized services under subsection
13 (b) that are required to be provided under title
14 XIX of such Act include, pursuant to section
15 1905(a)(4)(B) of such title, early and periodic
16 screening, diagnostic, and treatment services for
17 children under the age of 21.

18 “(D) Authorized services under subsection
19 (b) that are authorized to be provided under
20 title XIX of such Act include, pursuant to sec-
21 tion 1905(a)(19) of such title, case-manage-
22 ment services.

23 “(g) MAINTENANCE OF EFFORT.—

24 “(1) GRANTEE.—With respect to authorized
25 services under subsection (b), the Secretary may

1 make a grant under subsection (a) only if the appli-
2 cant involved agrees to maintain expenditures of
3 non-Federal amounts for such services at a level
4 that is not less than the level of such expenditures
5 maintained by the applicant for fiscal year 1991.

6 “(2) RELEVANT POLITICAL SUBDIVISIONS.—
7 With respect to authorized services under subsection
8 (b), the Secretary may make a grant under sub-
9 section (a) only if each political subdivision in the
10 service area of the demonstration project involved
11 agrees to maintain expenditures of non-Federal
12 amounts for such services at a level that is not less
13 than the level of such expenditures maintained by
14 the political subdivision for fiscal year 1991.

15 “(h) RESTRICTIONS ON EXPENDITURE OF GRANT.—

16 “(1) IN GENERAL.—Except as provided in para-
17 graph (3), the Secretary may make a grant under
18 subsection (a) only if the applicant involved agrees
19 that the grant will not be expended—

20 “(A) to provide inpatient services, except
21 with respect to residential treatment for sub-
22 stance abuse provided in settings other than
23 hospitals;

1 “(B) to make cash payments to intended
2 recipients of health services or mental health
3 services; or

4 “(C) to purchase or improve real property
5 (other than minor remodeling of existing im-
6 provements to real property) or to purchase
7 major medical equipment (other than mobile
8 medical units for providing ambulatory prenatal
9 services).

10 “(2) ADMINISTRATIVE EXPENSES; DATA COL-
11 LECTION.—The Secretary may make a grant under
12 subsection (a) only if the applicant involved agrees
13 that not more than an aggregate 10 percent of the
14 grant will be expended for administering the grant
15 and the collection and analysis of data.

16 “(3) WAIVER.—If the Secretary finds that the
17 purpose described in subsection (a) cannot otherwise
18 be carried out, the Secretary may, with respect to an
19 otherwise qualified applicant, waive the restriction
20 established in paragraph (1)(C).

21 “(i) DETERMINATION OF CAUSE OF INFANT
22 DEATHS.—The Secretary may make a grant under sub-
23 section (a) only if the applicant involved—

1 “(1) agrees to provide for a determination of
2 the cause of each infant death in the service area of
3 the demonstration project involved; and

4 “(2) the applicant has made such arrangements
5 with public entities as may be necessary to carry out
6 paragraph (1).

7 “(j) ANNUAL REPORTS TO SECRETARY.—The Sec-
8 retary may make a grant under subsection (a) only if the
9 applicant involved agrees that, for each fiscal year for
10 which the applicant operates a demonstration project
11 under such subsection the applicant will, not later than
12 April 1 of the subsequent fiscal year, submit to the Sec-
13 retary a report providing the following information with
14 respect to the project:

15 “(1) The number of individuals that received
16 authorized services, and the demographic character-
17 istics of the population of such individuals.

18 “(2) The types of authorized services provided,
19 including the types of ambulatory prenatal services
20 provided and the trimester of the pregnancy in
21 which the services were provided.

22 “(3) The sources of payment for the authorized
23 services provided.

24 “(4) The extent to which children under age 2
25 receiving authorized services have received the ap-

1 appropriate number and variety of immunizations
2 against vaccine-preventable diseases.

3 “(5) An analysis of the causes of death deter-
4 mined under subsection (i).

5 “(6) The extent of progress being made toward
6 meeting the health status objectives specified in sub-
7 section (a)(2).

8 “(7) The extent to which, in the service area in-
9 volved, progress is being made toward meeting the
10 participation goals established for the State by the
11 Secretary under section 1905(r) of the Social Secu-
12 rity Act (relating to early periodic screening, diag-
13 nostic, and treatment services for children under the
14 age of 21).

15 “(k) COMMUNITY PARTICIPATION.—The Secretary
16 may make a grant under subsection (a) only if the appli-
17 cant involved agrees that, in preparing the proposal of the
18 applicant for the demonstration project involved, and in
19 the operation of the project, the applicant will consult with
20 the residents of the service area for the project and with
21 public and nonprofit private entities that provide author-
22 ized services to such residents.

23 “(l) APPLICATION FOR GRANT.—The Secretary may
24 make a grant under subsection (a) only if an application
25 for the grant is submitted to the Secretary and the appli-

1 cation is in such form, is made in such manner, and con-
2 tains such agreements, assurances, and information as the
3 Secretary determines to be necessary to carry out this sub-
4 section.

5 “(m) REPORT TO CONGRESS.—Not later than Feb-
6 ruary 1, 1998, the Secretary shall submit to the Commit-
7 tee on Energy and Commerce of the House of Representa-
8 tives, and the Committee on Labor and Human Resources
9 of the Senate, a report—

10 “(1) summarizing the reports received by the
11 Secretary under subsection (j);

12 “(2) describing the extent to which demonstra-
13 tion projects under subsection (a) have been cost ef-
14 fective; and

15 “(3) describing the extent to which the Sec-
16 retary has, in the service areas of such projects,
17 been successful in meeting the health status objec-
18 tives specified in subsection (a)(2).

19 “(n) LIMITATION ON CERTAIN EXPENSES OF SEC-
20 RETARY.—Of the amounts appropriated under subsection
21 (o) for a fiscal year, the Secretary may not obligate more
22 than an aggregate 5 percent for the administrative costs
23 of the Secretary in carrying out this section, for the provi-
24 sion of technical assistance regarding demonstration

1 projects under subsection (a), and for evaluations of such
2 projects.

3 “(o) DEFINITIONS.—For purposes of this section:

4 “(1) The term ‘authorized services’ means the
5 services specified in subsection (b).

6 “(2) The terms ‘Indian tribe’ and ‘tribal organi-
7 zation’ have the meaning given such terms in section
8 4(b) and section 4(c) of the Indian Self-Determina-
9 tion and Education Assistance Act.

10 “(3) The term ‘service area’, with respect to a
11 demonstration project under subsection (a), means
12 the geographic area specified in subsection (c).

13 “(p) AUTHORIZATION OF APPROPRIATIONS.—For the
14 purpose of carrying out this section, there are authorized
15 to be appropriated for each of the fiscal years 1994
16 through 1997 such sums as may be necessary.

17 “(q) SUNSET.—Effective October 1, 1997, this sec-
18 tion is repealed.”.

19 (b) REPORT FOR FISCAL YEAR 1993.—With respect
20 to grants under section 330A of the Public Health Service
21 Act, as added by subsection (a) of this section, the Sec-
22 retary of Health and Human Services may make a grant
23 under such section for fiscal year 1994 only if the appli-
24 cant for the grant agrees to submit to the Secretary, not
25 later than April 1 of such year, a report on any federally-

1 supported project of the applicant that is substantially
2 similar to the demonstration projects authorized in such
3 section 330A, which report provides, to the extent prac-
4 ticable, the information described in subsection (j) of such
5 section.

6 (c) SAVINGS PROVISION.—With respect to grants
7 under section 330A of the Public Health Service Act, as
8 added by subsection (a) of this section and in effect for
9 the fiscal years 1994 through 1997, such grants remain
10 available for obligation and expenditure in accordance with
11 the terms upon which the grants were made, notwith-
12 standing the repeal of such section 330A pursuant to sub-
13 section (q) of such section.

14 (d) USE OF GENERAL AUTHORITY UNDER PUBLIC
15 HEALTH SERVICE ACT.—With respect to the program es-
16 tablished in section 330A of the Public Health Service Act,
17 as added by subsection (a) of this section, section 301 of
18 the Public Health Service Act may not be construed as
19 providing to the Secretary of Health and Human Services
20 any authority to carry out, during any fiscal year in which
21 such program is in operation, any demonstration project
22 to provide any of the services specified in subsection (b)
23 of such section 330A.

1 **SEC. 5186. INCREASE IN AUTHORIZATION OF APPROPRIA-**
2 **TIONS FOR THE MATERNAL AND CHILD**
3 **HEALTH SERVICES BLOCK GRANT PROGRAM.**

4 Section 501(a) (42 U.S.C. 701(a)) is amended by
5 striking “\$686,000,000 for fiscal year 1990” and insert-
6 ing “\$705,000,000 for fiscal year 1994”.

7 **SEC. 5187. MISCELLANEOUS TECHNICAL CORRECTIONS TO**
8 **PUBLIC HEALTH SERVICE ACT PROVISIONS.**

9 (a) COMPENSATION FOR MEMBERS OF NATIONAL
10 ADVISORY COUNCIL ON NATIONAL HEALTH SERVICE
11 CORPS.—

12 (1) IN GENERAL.—Section 337(b)(2) of the
13 Public Health Service Act (42 U.S.C. 254j(b)(2)) is
14 amended—

15 (A) by inserting after “so serving” the fol-
16 lowing: “compensation at a rate fixed by the
17 Secretary (but not to exceed”, and

18 (B) by striking “Schedule;” and inserting
19 “Schedule);”.

20 (2) EFFECTIVE DATE.—The amendments made
21 by paragraph (1) shall take effect on the date of the
22 enactment of this Act.

23 (b) LIABILITY PROTECTIONS FOR INDIVIDUALS PRO-
24 VIDING SERVICES AT CERTAIN CLINICS.—

25 (1) CLARIFICATION OF VOLUNTARY PARTICIPA-
26 TION BY CERTAIN ENTITIES.—(A) Section 224(g) of

1 the Public Health Service Act (42 U.S.C.
2 133(g)(1)), as added by section 2(a) of the Federally
3 Supported Health Centers Assistance Act of 1992, is
4 amended—

5 (i) in paragraph (4), by striking “An en-
6 tity” and inserting “Except as provided in
7 paragraph (6), an entity”, and

8 (ii) by adding at the end the following new
9 paragraph:

10 “(6) An entity may elect not to be treated as being
11 described in paragraph (4) if the entity establishes that
12 on a continuous basis since October 24, 1992, the entity
13 has been a participant in, and partial owner of, a nonprofit
14 risk retention group which offers malpractice and other
15 liability coverage to the entity.”.

16 (B) Section 224(k)(2) of such Act (42 U.S.C.
17 233(k)(2)), as added by section 4 of the Federally
18 Supported Health Centers Assistance Act of 1992, is
19 amended by striking “entities receiving funds” and
20 all that follows through “subsection (g)” and insert-
21 ing the following: “entities described in subsection
22 (g)(4) and receiving funds under each of the grant
23 programs described in such subsection”.

24 (2) CLARIFICATION OF COVERAGE OF OFFICERS
25 AND EMPLOYEES OF CLINICS.—The first sentence of

1 section 224(g)(1) of the Public Health Service Act
2 (42 U.S.C. 233(g)(1)) is amended by striking “offi-
3 cer, employee, or contractor” and inserting the fol-
4 lowing: “officer or employee of such an entity, and
5 any contractor”.

6 (3) COVERAGE FOR SERVICES FURNISHED TO
7 INDIVIDUALS OTHER THAN PATIENTS OF CLINIC.—
8 Section 224(g) of such Act (42 U.S.C. 233(g)(1)),
9 as amended by paragraph (1), is amended—

10 (A) in the first sentence of paragraph (1),
11 by inserting after “Service” the following: “with
12 respect to services provided to patients of the
13 entity and (subject to paragraph (7)) to certain
14 other individuals”; and

15 (B) by adding at the end the following new
16 paragraph:

17 “(7) For purposes of paragraph (1), an officer, em-
18 ployee, or contractor described in such paragraph may be
19 deemed to be an employee of the Public Health Service
20 with respect to services provided to individuals who are
21 not patients of an entity described in paragraph (4) only
22 if the Secretary determines—

23 “(A) that the provision of the services to such
24 individuals is necessary to assure the treatment of
25 patients of such an entity; or

1 “(B) that such services are otherwise required
2 to be provided to such individuals under an employ-
3 ment contract (or other similar arrangement) be-
4 tween the individual and the entity.”.

5 (4) DETERMINING COMPLIANCE OF ENTITY
6 WITH REQUIREMENTS FOR COVERAGE.—Section
7 224(h) of such Act (42 U.S.C. 233(h)), as added by
8 section 2(b) of the Federally Supported Health Cen-
9 ters Assistance Act of 1992, is amended by striking
10 “the entity—” and inserting the following: “the Sec-
11 retary, after receiving such assurances and conduct-
12 ing such investigation as the Secretary considers
13 necessary, finds that the entity—”.

14 (5) EFFECTIVE DATE.—The amendments made
15 by this subsection shall take effect as if included in
16 the enactment of the Federally Supported Health
17 Centers Assistance Act of 1992.

18 (c) ELIMINATION OF DUPLICATE WAIVER AUTHOR-
19 ITY FOR PARTICIPANTS IN NATIONAL HEALTH SERVICE
20 CORPS.—Section 338E(c) of the Public Health Service
21 Act (42 U.S.C. 254o(c)) is amended by striking paragraph
22 (3) and redesignating paragraph (4) as paragraph (3).

23 (d) CLARIFICATION OF PROHIBITION AGAINST RE-
24 SALE OF DRUGS UNDER DRUG REBATE AGREEMENTS.—
25 Section 340B(a)(5)(B) of the Public Health Service Act

1 (42 U.S.C. 256b(a)(5)(B)), as added by section 602(a) of
2 the Veterans Health Care of 1992, is amended by striking
3 “entity.” and inserting “covered entity.”.

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