

103^D CONGRESS
1ST SESSION

S. 867

To amend title XI of the Social Security Act to extend the penalties for fraud and abuse assessed against providers under the medicare program and State health care programs to providers under all health care plans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 4 (legislative day, APRIL 19), 1993

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

A BILL

To amend title XI of the Social Security Act to extend the penalties for fraud and abuse assessed against providers under the medicare program and State health care programs to providers under all health care plans, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “National Health Care Anti-Fraud and Abuse Act of
6 1993”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ALL-PAYER FRAUD AND ABUSE CONTROL PROGRAM

Sec. 101. All-payer fraud and abuse control program.

Sec. 102. Application of Federal health anti-fraud and abuse sanctions to all fraud and abuse against any health benefit plan.

Sec. 103. Public reporting of fraudulent actions.

TITLE II—REVISIONS TO CURRENT SANCTIONS FOR FRAUD AND ABUSE

Sec. 201. Mandatory exclusion from participation in medicare and State health care programs.

Sec. 202. Establishment of minimum period of exclusion for certain individuals and entities subject to permissive exclusion from medicare and State health care programs.

Sec. 203. Permissive exclusion of individuals with ownership or control interest in sanctioned entities.

Sec. 204. Civil monetary penalties.

Sec. 205. Actions subject to criminal penalties.

Sec. 206. Sanctions against practitioners and persons for failure to follow corrective action plan of peer review organization.

Sec. 207. Intermediate sanctions for medicare health maintenance organizations.

Sec. 208. Effective date.

TITLE III—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

Sec. 301. Requirements for uniform claims and electronic claims data set.

Sec. 302. National data collection program for final adverse actions.

Sec. 303. Quarterly publication of adverse actions taken.

3 **TITLE I—ALL-PAYER FRAUD AND**
 4 **ABUSE CONTROL PROGRAM**

5 **SEC. 101. ALL-PAYER FRAUD AND ABUSE CONTROL PRO-**
 6 **GRAM.**

7 (a) ESTABLISHMENT OF PROGRAM.—

8 (1) IN GENERAL.—Not later than January 1,
 9 1995, the Secretary of Health and Human Services
 10 (in this section referred to as the “Secretary”) shall
 11 establish in the Office of the Inspector General of

1 the Department of Health and Human Services a
2 program—

3 (A) to coordinate Federal, State, and local
4 law enforcement programs to control fraud and
5 abuse with respect to the delivery of and pay-
6 ment for health care in the United States,

7 (B) to conduct investigations, audits, eval-
8 uations, and inspections relating to the delivery
9 of and payment for health care in the United
10 States, and

11 (C) to facilitate the enforcement of the
12 provisions of sections 1128, 1128A, and 1128B
13 of the Social Security Act and other statutes
14 applicable to health care fraud and abuse.

15 (2) COORDINATION WITH LAW ENFORCEMENT
16 AGENCIES.—In carrying out the program established
17 under paragraph (1), the Secretary shall consult
18 with, and arrange for the sharing of data and re-
19 sources with the Attorney General, State law en-
20 forcement agencies, State medicaid fraud and abuse
21 units, and State agencies responsible for the licens-
22 ing and certification of health care providers.

23 (3) COORDINATION WITH HEALTH CARE
24 PLANS.—In carrying out the program established
25 under paragraph (1), the Secretary shall consult

1 with, and arrange for the sharing of data with rep-
2 resentatives of health care plans.

3 (4) REGULATIONS.—

4 (A) IN GENERAL.—The Secretary shall by
5 regulation establish standards to carry out the
6 program under paragraph (1).

7 (B) INFORMATION STANDARDS.—

8 (i) IN GENERAL.—Such standards
9 shall include standards relating to the fur-
10 nishing of information by health care
11 plans, providers, and others to enable the
12 Secretary to carry out the program (in-
13 cluding coordination with law enforcement
14 agencies under paragraph (2) and health
15 care plans under paragraph (3)).

16 (ii) CONFIDENTIALITY.—Such stand-
17 ards shall include procedures to assure
18 that such information is provided and uti-
19 lized in a manner that appropriately pro-
20 tects the confidentiality of the information
21 and the privacy of individuals receiving
22 health care services and items.

23 (iii) QUALIFIED IMMUNITY FOR PRO-
24 VIDING INFORMATION.—The provisions of
25 section 1157(a) of the Social Security Act

1 (relating to limitation on liability) shall
2 apply to a person providing information to
3 the Secretary under the program under
4 this section, with respect to the Secretary's
5 performance of duties under the program,
6 in the same manner as such section applies
7 to information provided to organizations
8 with a contract under part B of title XI of
9 such Act, with respect to the performance
10 of such a contract.

11 (C) DISCLOSURE OF OWNERSHIP INFOR-
12 MATION.—

13 (i) IN GENERAL.—Such standards
14 shall include standards relating to the dis-
15 closure of ownership information described
16 in clause (ii) by any entity providing health
17 care services and items.

18 (ii) OWNERSHIP INFORMATION DE-
19 SCRIBED.—The ownership information de-
20 scribed in this clause includes—

21 (I) a description of such items
22 and services provided by such entity;

23 (II) the names and unique physi-
24 cian identification numbers of all phy-
25 sicians with a financial relationship

1 (as defined in section 1877(a)(2) of
2 the Social Security Act) with such
3 entity;

4 (III) the names of all other indi-
5 viduals with such an ownership or in-
6 vestment interest in such entity; and

7 (IV) any other ownership and re-
8 lated information required to be dis-
9 closed by such entity under section
10 1124 or section 1124A of the Social
11 Security Act.

12 (D) INTEGRITY OF ISSUANCE OF PRO-
13 VIDER IDENTIFICATION CODES.—Such stand-
14 ards shall, insofar as they relate to the issuance
15 of unique provider codes (described in section
16 301(c)(4))—

17 (i) include standards relating to the
18 information (including ownership informa-
19 tion described in subparagraph (C)(ii) and
20 other information needed in the adminis-
21 tration of the program) to be required for
22 the issuance of such codes, and

23 (ii) provide for the issuance of such a
24 code upon the presentation of such infor-
25 mation as would be sufficient to provide

1 for the issuance of similar codes under the
2 medicare program.

3 (5) AUTHORIZATION OF APPROPRIATIONS FOR
4 INVESTIGATORS AND OTHER PERSONNEL.—In addi-
5 tion to any other amounts authorized to be appro-
6 priated to the Secretary for health care anti-fraud
7 and abuse activities for a fiscal year, there are au-
8 thorized to be appropriated additional amounts as
9 may be necessary to enable the Secretary to conduct
10 investigations and audits of allegations of health
11 care fraud and abuse and otherwise carry out the
12 program established under paragraph (1) in a fiscal
13 year.

14 (6) ENSURING ACCESS TO DOCUMENTATION.—

15 (A) IN GENERAL.—The Inspector General
16 of the Department of Health and Human Serv-
17 ices is authorized to exercise the authority de-
18 scribed in paragraphs (4) and (5) of section 6
19 of the Inspector General Act of 1978 (relating
20 to subpoenas and administration of oaths) with
21 respect to the activities under the all-payer
22 fraud and abuse control program established
23 under this subsection to the same extent as
24 such Inspector General may exercise such au-

1 thorities to perform the functions assigned by
2 such Act.

3 (B) PERMISSIVE EXCLUSION.—Section
4 1128(b) of the Social Security Act (42 U.S.C.
5 1320a–7(b)) is amended by adding at the end
6 the following new paragraph:

7 “(15) FAILURE TO SUPPLY REQUESTED INFOR-
8 MATION TO THE INSPECTOR GENERAL.—Any indi-
9 vidual or entity that fails fully and accurately to pro-
10 vide, upon request of the Inspector General of the
11 Department of Health and Human Services, records,
12 documents, and other information necessary for the
13 purposes of carrying out activities under the all-
14 payer fraud and abuse control program established
15 under section 101 of the National Health Care Anti-
16 Fraud and Abuse Act of 1993.”.

17 (7) HEALTH CARE PLAN DEFINED.—For the
18 purposes of this subsection, the term “health care
19 plan” shall have the meaning given such term in sec-
20 tion 1128(i) of the Social Security Act.

21 (b) ESTABLISHMENT OF ANTI-FRAUD AND ABUSE
22 TRUST FUND.—

23 (1) ESTABLISHMENT.—

24 (A) IN GENERAL.—There is hereby created
25 on the books of the Treasury of the United

1 States a trust fund to be known as the “Anti-
2 Fraud and Abuse Trust Fund” (in this section
3 referred to as the “Trust Fund”). The Trust
4 Fund shall consist of such gifts and bequests as
5 may be made as provided in subparagraph (B)
6 and such amounts as may be deposited in, or
7 appropriated to, such Trust Fund as provided
8 in paragraph (3)(C), and title XI of the Social
9 Security Act.

10 (B) AUTHORIZATION TO ACCEPT GIFTS.—

11 The Managing Trustee of the Trust Fund is
12 authorized to accept on behalf of the United
13 States money gifts and bequests made uncondi-
14 tionally to the Trust Fund, for the benefit of
15 the Trust Fund, or any activity financed
16 through the Trust Fund.

17 (2) MANAGEMENT.—

18 (A) IN GENERAL.—The Trust Fund shall
19 be managed by the Secretary through a Manag-
20 ing Trustee designated by the Secretary.

21 (B) INVESTMENT OF FUNDS.—

22 (i) IN GENERAL.—It shall be the duty
23 of the Managing Trustee to invest such
24 portion of the Trust Fund as is not, in the

1 Managing Trustee's judgment, required to
2 meet current withdrawals.

3 (ii) GENERAL FORM OF INVEST-
4 MENT.—Investments described in clause (i)
5 may be made only in interest-bearing obli-
6 gations of the United States or in obliga-
7 tions guaranteed as to both principal and
8 interest by the United States. For such
9 purpose such obligations may be acquired
10 (I) on original issue at the issue price, or
11 (II) by purchase of outstanding obligations
12 at market price.

13 (iii) ISSUANCE OF PUBLIC-DEBT OBLI-
14 GATIONS.—The purposes for which obliga-
15 tions of the United States may be issued
16 under chapter 31 of title 31, United States
17 Code, are hereby extended to authorize the
18 issuance at par of public-debt obligations
19 for purchase by the Trust Fund. Such obli-
20 gations issued for purchase by the Trust
21 Fund shall have maturities fixed with due
22 regard for the needs of the Trust Fund
23 and shall bear interest at a rate equal to
24 the average market yield (computed by the
25 Managing Trustee on the basis of market

1 quotations as of the end of the calendar
2 month next preceding the date of such
3 issue) on all marketable interest-bearing
4 obligations of the United States then form-
5 ing a part of the public debt which are not
6 due or callable until after the expiration of
7 4 years from the end of such calendar
8 month, except that where such average is
9 not a multiple of $\frac{1}{8}$ of 1 percent, the rate
10 of interest on such obligations shall be the
11 multiple of $\frac{1}{8}$ of 1 percent nearest such
12 market yield.

13 (iv) PURCHASES OF OTHER OBLIGA-
14 TIONS.—The Managing Trustee may pur-
15 chase other interest-bearing obligations of
16 the United States or obligations guaran-
17 teed as to both principal and interest by
18 the United States, on original issue or at
19 the market price, only where the Managing
20 Trustee determines that the purchase of
21 such other obligations is in the public
22 interest.

23 (C) SALE OF OBLIGATIONS.—Any obliga-
24 tions acquired by the Trust Fund (except pub-
25 lic-debt obligations issued exclusively to the

1 Trust Fund) may be sold by the Managing
2 Trustee at the market price, and such public-
3 debt obligations may be redeemed at par plus
4 accrued interest.

5 (D) INTEREST ON OBLIGATIONS AND PRO-
6 CEEDS FROM SALE OR REDEMPTION OF OBLI-
7 GATIONS.—The interest on, and the proceeds
8 from the sale or redemption of, any obligations
9 held in the Trust Fund shall be credited to and
10 form a part of the Trust Fund.

11 (E) RECEIPTS AND DISBURSEMENTS NOT
12 INCLUDED IN UNITED STATES GOVERNMENT
13 BUDGET TOTALS.—The receipts and disburse-
14 ments of the Secretary in the discharge of the
15 functions of the Secretary under the all-payer
16 fraud and abuse control program established
17 under subsection (a) shall not be included in
18 the totals of the budget of the United States
19 Government. For purposes of part C of the Bal-
20 anced Budget and Emergency Deficit Control
21 Act of 1985, the Secretary and the Trust Fund
22 shall be treated in the same manner as the
23 Federal Retirement Thrift Investment Board
24 and the Thrift Savings Fund, respectively. The

1 United States is not liable for any obligation or
2 liability incurred by the Trust Fund.

3 (3) USE OF FUNDS.—

4 (A) IN GENERAL.—Amounts in the Trust
5 Fund shall be used without regard to fiscal year
6 limitation to assist the Inspector General of the
7 Department of Health and Human Services in
8 carrying out the all-payer fraud and abuse con-
9 trol program established under subsection (a).

10 (B) OVERALL ADMINISTRATION.—The
11 Managing Trustee shall also pay from time to
12 time from the Trust Fund such amounts as the
13 Secretary certifies are necessary to carry out
14 the all-payer fraud and abuse control program
15 established under subsection (a).

16 (4) ANNUAL REPORT.—The Managing Trustee
17 shall be required to submit an annual report to Con-
18 gress on the amount of revenue which is generated
19 and disbursed by the Trust Fund in each fiscal year.
20 Such report shall include an estimate of the amount
21 of additional appropriations authorized under sub-
22 section (a)(5) necessary for the Secretary to conduct
23 the all-payer fraud and abuse program established
24 under subsection (a) in the next fiscal year.

1 **SEC. 102. APPLICATION OF FEDERAL HEALTH ANTI-FRAUD**
2 **AND ABUSE SANCTIONS TO ALL FRAUD AND**
3 **ABUSE AGAINST ANY HEALTH CARE PLAN.**

4 (a) CIVIL MONETARY PENALTIES.—Section 1128A
5 of the Social Security Act (42 U.S.C. 1320a–7a) is
6 amended as follows:

7 (1) In subsection (a)(1), by inserting “or of any
8 health care plan (as defined in section 1128(i)),”
9 after “subsection (i)(1),”.

10 (2) In subsection (b)(1)(A), by inserting “or
11 under a health care plan” after “title XIX”.

12 (3) In subsection (f)—

13 (A) by redesignating paragraph (3) as
14 paragraph (4); and

15 (B) by inserting after paragraph (2) the
16 following new paragraph:

17 “(3) With respect to amounts recovered arising
18 out of a claim under a health care plan, the portion
19 of such amounts as is determined to have been paid
20 by the plan shall be repaid to the plan.”.

21 (4) In subsection (f)(4) (as redesignated by
22 paragraph (3)(A)), by striking “as miscellaneous re-
23 cepts of the Treasury of the United States” and in-
24 serting “in the Anti-Fraud and Abuse Trust Fund”.

25 (5) In subsection (i)—

1 (A) in paragraph (2), by inserting “or
2 under a health care plan” before the period at
3 the end, and

4 (B) in paragraph (5), by inserting “or
5 under a health care plan” after “or XX”.

6 (b) CRIMES.—

7 (1) SOCIAL SECURITY ACT.—Section 1128B of
8 such Act (42 U.S.C. 1320a-7b) is amended as
9 follows:

10 (A) In the heading, by adding at the end
11 the following: “OR HEALTH CARE PLANS”.

12 (B) In subsection (a)(1)—

13 (i) by striking “title XVIII or” and
14 inserting “title XVIII,” and

15 (ii) by adding at the end the follow-
16 ing: “or a health care plan (as defined in
17 section 1128(i)),”.

18 (C) In subsection (a)(5), by striking “title
19 XVIII or a State health care program” and in-
20 serting “title XVIII, a State health care pro-
21 gram, or a health care plan”.

22 (D) In the second sentence of subsection
23 (a)—

24 (i) by inserting after “title XIX” the
25 following: “or a health care plan”, and

1 (ii) by inserting after “the State” the
2 following: “or the plan”.

3 (E) In subsection (b)(1), by striking “title
4 XVIII or a State health care program” each
5 place it appears and inserting “title XVIII, a
6 State health care program, or a health care
7 plan”.

8 (F) In subsection (b)(2), by striking “title
9 XVIII or a State health care program” each
10 place it appears and inserting “title XVIII, a
11 State health care program, or a health care
12 plan”.

13 (G) In subsection (b)(3), by striking “title
14 XVIII or a State health care program” each
15 place it appears in subparagraphs (A) and (C)
16 and inserting “title XVIII, a State health care
17 program, or a health care plan”.

18 (H) In subsection (d)(2)—

19 (i) by striking “title XIX,” and insert-
20 ing “title XIX or under a health care
21 plan,”, and

22 (ii) by striking “State plan,” and in-
23 serting “State plan or the health care
24 plan,”.

1 (2) IDENTIFICATION OF COMMUNITY SERVICE
2 OPPORTUNITIES.—Section 1128B of such Act (42
3 U.S.C. 1320a–7b) is further amended by adding at
4 the end the following new subsection:

5 “(f) The Secretary may—

6 “(1) in consultation with State and local health
7 care officials, identify opportunities for the satisfac-
8 tion of community service obligations that a court
9 may impose upon the conviction of an offense under
10 this section, and

11 “(2) make information concerning such oppor-
12 tunities available to Federal and State law enforce-
13 ment officers and State and local health care
14 officials.”.

15 (c) HEALTH CARE PLAN DEFINED.—Section 1128 of
16 such Act (42 U.S.C. 1320a–7) is amended by redesignat-
17 ing subsection (i) as subsection (j) and by inserting after
18 subsection (h) the following new subsection:

19 “(i) HEALTH CARE PLAN DEFINED.—For purposes
20 of sections 1128A and 1128B, the term ‘health care plan’
21 means a public or private program for the delivery of or
22 payment for health care items or services other than the
23 medicare program, the medicaid program, or a State
24 health care program.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on January 1, 1995.

3 **SEC. 103. REPORTING OF FRAUDULENT ACTIONS UNDER**
4 **MEDICARE.**

5 Not later than 1 year after the date of the enactment
6 of this Act, the Secretary of Health and Human Services
7 shall establish a program through which individuals enti-
8 tled to benefits under the medicare program may report
9 to the Secretary on a confidential basis (at the individual's
10 request) instances of suspected fraudulent actions arising
11 under the program by providers of items and services
12 under the program.

13 **TITLE II—REVISIONS TO CUR-**
14 **RENT SANCTIONS FOR FRAUD**
15 **AND ABUSE**

16 **SEC. 201. MANDATORY EXCLUSION FROM PARTICIPATION**
17 **IN MEDICARE AND STATE HEALTH CARE PRO-**
18 **GRAMS.**

19 (a) INDIVIDUAL CONVICTED OF FELONY RELATING
20 TO FRAUD.—

21 (1) IN GENERAL.—Section 1128(a) of the
22 Social Security Act (42 U.S.C. 1320a-7(a)) is
23 amended by adding at the end the following new
24 paragraph:

1 “(3) FELONY CONVICTION RELATING TO
2 FRAUD.—Any individual or entity that has been con-
3 victed, under Federal or State law, in connection
4 with the delivery of a health care item or service or
5 with respect to any act or omission in a program
6 (other than those specifically described in paragraph
7 (1)) operated by or financed in whole or in part by
8 any Federal, State, or local government agency, of
9 a criminal offense consisting of a felony relating to
10 fraud, theft, embezzlement, breach of fiduciary re-
11 sponsibility, or other financial misconduct.”.

12 (2) CONFORMING AMENDMENT.—Section
13 1128(b)(1) of such Act (42 U.S.C. 1320a-7(b)(1))
14 is amended—

15 (A) in the heading, by striking “CONVIC-
16 TION” and inserting “MISDEMEANOR CONVIC-
17 TION”; and

18 (B) by striking “criminal offense” and in-
19 serting “criminal offense consisting of a mis-
20 demeanor”.

21 (b) INDIVIDUAL CONVICTED OF FELONY RELATING
22 TO CONTROLLED SUBSTANCE.—

23 (1) IN GENERAL.—Section 1128(a) of the So-
24 cial Security Act (42 U.S.C. 1320a-7(a)), as amend-

1 ed by subsection (a), is amended by adding at the
2 end the following new paragraph:

3 “(4) FELONY CONVICTION RELATING TO CON-
4 TROLLED SUBSTANCE.—Any individual or entity
5 that has been convicted, under Federal or State law,
6 of a criminal offense consisting of a felony relating
7 to the unlawful manufacture, distribution, prescrip-
8 tion, or dispensing of a controlled substance.”.

9 (2) CONFORMING AMENDMENT.—Section
10 1128(b)(3) of such Act (42 U.S.C. 1320a–7(b)(3))
11 is amended—

12 (A) in the heading, by striking “CONVIC-
13 TION” and inserting “MISDEMEANOR CONVIC-
14 TION”; and

15 (B) by striking “criminal offense” and in-
16 serting “criminal offense consisting of a mis-
17 demeanor”.

18 **SEC. 202. ESTABLISHMENT OF MINIMUM PERIOD OF EX-**
19 **CLUSION FOR CERTAIN INDIVIDUALS AND**
20 **ENTITIES SUBJECT TO PERMISSIVE EXCLU-**
21 **SION FROM MEDICARE AND STATE HEALTH**
22 **CARE PROGRAMS.**

23 Section 1128(c)(3) of the Social Security Act (42
24 U.S.C. 1320a–7(c)(3)) is amended by adding at the end
25 the following new subparagraphs:

1 “(16) INDIVIDUALS CONTROLLING A SANC-
2 TIONED ENTITY.—Any individual who has a direct
3 or indirect ownership or control interest of 5 percent
4 or more, or an ownership or control interest (as de-
5 fined in section 1124(a)(3)) in, or who is an officer,
6 director, agent, or managing employee (as defined in
7 section 1126(b)) of, an entity—

8 “(A) that has been convicted of any of-
9 fense described in subsection (a) or in para-
10 graph (1), (2), or (3) of this subsection;

11 “(B) against which a civil monetary pen-
12 alty has been assessed under section 1128A; or

13 “(C) that has been excluded from partici-
14 pation under a program under title XVIII or
15 under a State health care program.”.

16 **SEC. 204. CIVIL MONETARY PENALTIES.**

17 (a) PROHIBITION AGAINST OFFERING INDUCEMENTS
18 TO INDIVIDUALS ENROLLED UNDER OR EMPLOYED BY
19 PROGRAMS OR PLANS.—

20 (1) INDUCEMENTS TO INDIVIDUALS ENROLLED
21 UNDER MEDICARE.—

22 (A) OFFER OF REMUNERATION.—Section
23 1128A(a) of the Social Security Act (42 U.S.C.
24 1320a-7a(a)) is amended—

1 (i) by striking “or” at the end of
2 paragraph (1)(D);

3 (ii) by striking “, or” at the end of
4 paragraph (2) and inserting a semicolon;

5 (iii) by striking the semicolon at the
6 end of paragraph (3) and inserting “; or”;
7 and

8 (iv) by inserting after paragraph (3)
9 the following new paragraph:

10 “(4) offers to or transfers remuneration to any
11 individual eligible for benefits under title XVIII of
12 this Act, or under a State health care program (as
13 defined in section 1128(h)) that such person knows
14 or should know is likely to influence such individual
15 to order or receive from a particular provider, practi-
16 tioner, or supplier any item or service for which pay-
17 ment may be made, in whole or in part, under title
18 XVIII, or a State health care program;”.

19 (B) REMUNERATION DEFINED.—Section
20 1128A(i) is amended by adding the following
21 new paragraph:

22 “(6) The term ‘remuneration’ includes the waiv-
23 er of coinsurance and deductible amounts (or any
24 part thereof), and transfers of items or services for
25 free or for other than fair market value. The term

1 'remuneration' does not include the waiver of coin-
2 surance and deductible amounts by a person, if—

3 "(A) the waiver is not offered as part of
4 any advertisement or solicitation;

5 "(B) the person does not routinely waive
6 coinsurance or deductible amounts; and

7 "(C) the person—

8 "(i) waives the coinsurance and de-
9 ductible amounts after determining in good
10 faith that the individual is indigent;

11 "(ii) fails to collect coinsurance or de-
12 ductible amounts after making reasonable
13 collection efforts; or

14 "(iii) provides for any permissible
15 waiver as specified in section 1128B(b)(3)
16 or in regulations issued by the Secretary.”.

17 (2) INDUCEMENTS TO EMPLOYEES.—Section
18 1128A(a) of such Act (42 U.S.C. 1320a–7a(a)), as
19 amended by paragraph (1), is further amended—

20 (A) by striking “or” at the end of para-
21 graph (3);

22 (B) by striking the semicolon at the end of
23 paragraph (4) and inserting “; or”; and

24 (C) by inserting after paragraph (4) the
25 following new paragraph:

1 “(5) pays a bonus, reward, or any other remuneration, directly or indirectly, to an employee to induce the employee to encourage individuals to seek or obtain covered items or services for which payment may be made under the medicare program, or a State health care program where the amount of the remuneration is determined in a manner that takes into account (directly or indirectly) the value or volume of any referrals by the employee to the employer for covered items or services;”.

11 (b) EXCLUDED INDIVIDUAL RETAINING OWNERSHIP OR CONTROL INTEREST IN PARTICIPATING ENTITY.—
12 OR CONTROL INTEREST IN PARTICIPATING ENTITY.—
13 Section 1128A(a) of such Act, as amended by subsection
14 (a), is further amended—

15 (1) by striking “or” at the end of paragraph
16 (4);

17 (2) by striking the semicolon at the end of
18 paragraph (5) and inserting “; or”; and

19 (3) by inserting after paragraph (5) the following new paragraph:

21 “(6) in the case of a person who is not an organization, agency, or other entity, is excluded from participating in a program under title XVIII or a State health care program in accordance with this subsection or under section 1128 and who, during

1 the period of exclusion, retains a direct or indirect
2 ownership or control interest of 5 percent or more,
3 or an ownership or control interest (as defined in
4 section 1124(a)(3)) in, or who is an officer, director,
5 agent, or managing employee (as defined in section
6 1126(b)) of, an entity that is participating in a pro-
7 gram under title XVIII or a State health care
8 program;”.

9 (c) MODIFICATIONS OF AMOUNTS OF PENALTIES
10 AND ASSESSMENTS.—Section 1128A(a) of such Act (42
11 U.S.C. 1320a–7a(a)), as amended by subsections (a) and
12 (b), is amended in the matter following paragraph (6)—

13 (1) by striking “\$2,000” and inserting
14 “\$10,000”;

15 (2) by inserting “; in cases under paragraph
16 (4), \$10,000 for each such offer or transfer; in cases
17 under paragraph (5), \$10,000 for each such pay-
18 ment; in cases under paragraph (6), \$10,000 for
19 each day the prohibited relationship occurs; in cases
20 under paragraph (7), \$10,000 per violation” after
21 “false or misleading information was given”;

22 (3) by striking “twice the amount” and insert-
23 ing “3 times the amount”; and

24 (4) by inserting “(or, in cases under paragraphs
25 (4), (5), and (7), 3 times the amount of the illegal

1 remuneration)” after “for each such item or serv-
2 ice”.

3 (d) CLAIM FOR ITEM OR SERVICE BASED ON INCOR-
4 RECT CODING OR MEDICALLY UNNECESSARY SERV-
5 ICES.—Section 1128A(a)(1) of such Act (42 U.S.C.
6 1320a-7a(a)(1)) is amended—

7 (1) in subparagraph (A) by striking “claimed,”
8 and inserting the following: “claimed, including any
9 person who presents or causes to be presented a
10 claim for an item or service that is based on a code
11 that the person knows or should know will result in
12 a greater payment to the person than the code appli-
13 cable to the item or service actually provided,”;

14 (2) in subparagraph (C), by striking “or” at
15 the end;

16 (3) in subparagraph (D), by striking “; or” and
17 inserting “, or”; and

18 (4) by inserting after subparagraph (D) the
19 following new subparagraph:

20 “(E) is for a medical or other item or serv-
21 ice that a person knows or should know is not
22 medically necessary; or”.

23 (e) PERMITTING PARTIES TO BRING ACTIONS ON
24 OWN BEHALF.—Section 1128A of such Act (42 U.S.C.

1 1320a–7a) is amended by adding at the end the following
2 new subsection:

3 “(m)(1) Subject to paragraphs (2) and (3), any per-
4 son (including an organization, agency, or other entity,
5 but excluding a beneficiary, as defined in subsection
6 (i)(5)) that suffers harm or monetary loss as a result of
7 any activity of an individual or entity which makes the
8 individual or entity subject to a civil monetary penalty
9 under this section may, in a civil action against the indi-
10 vidual or entity in the United States District Court, obtain
11 treble damages and costs including attorneys’ fees against
12 the individual or entity and such equitable relief as is
13 appropriate.

14 “(2) A person may bring a civil action under this sub-
15 section only if—

16 “(A) the person provides the Secretary with
17 written notice of—

18 “(i) the person’s intent to bring an action
19 under this subsection,

20 “(ii) the identities of the individuals or en-
21 tities the person intends to name as defendants
22 to the action, and

23 “(iii) all information the person possesses
24 regarding the activity that is the subject of the
25 action that may materially affect the Sec-

1 retary’s decision to initiate a proceeding to im-
2 pose a civil monetary penalty under this section
3 against the defendants, and

4 “(B) one of the following conditions is met:

5 “(i) During the 60-day period that begins
6 on the date the Secretary receives the written
7 notice described in subparagraph (A), the Sec-
8 retary does not notify the person that the Sec-
9 retary intends to initiate an investigation to de-
10 termine whether to impose a civil monetary
11 penalty under this section against the defend-
12 ants.

13 “(ii) The Secretary notifies the person dur-
14 ing the 60-day period described in clause (i)
15 that the Secretary intends to initiate an inves-
16 tigation to determine whether to impose a civil
17 monetary penalty under this section against the
18 defendants, and the Secretary subsequently no-
19 tifies the person that the Secretary no longer
20 intends to initiate an investigation or proceed-
21 ing to impose a civil monetary penalty against
22 the defendants.

23 “(iii) After the expiration of the 2-year pe-
24 riod that begins on the date written notice is
25 provided to the Secretary, the Secretary has not

1 initiated a proceeding to impose a civil mone-
2 etary penalty against the defendants.

3 “(3) If a person is awarded any amounts in an action
4 brought under this subsection that are in excess of the
5 damages suffered by the person as a result of the defend-
6 ant’s activities, 20 percent of such amounts shall be with-
7 held from the person for payment into the Anti-Fraud and
8 Abuse Trust Fund established under section 101(b) of the
9 National Health Care Anti-Fraud and Abuse Act of 1993.

10 “(4) No action may be brought under this subsection
11 more than 6 years after the date of the activity with re-
12 spect to which the action is brought.”

13 **SEC. 205. ACTIONS SUBJECT TO CRIMINAL PENALTIES.**

14 (a) PERMITTING SECRETARY TO IMPOSE CIVIL MON-
15 ETARY PENALTY.—Section 1128A(b) of the Social Secu-
16 rity Act (42 U.S.C. 1320a–7a(a)) is amended by adding
17 the following new paragraph:

18 “(3) Any person (including any organization,
19 agency, or other entity, but excluding a beneficiary
20 as defined in subsection (i)(5)) who violates section
21 1128(B)(b) of this title shall be subject to a civil
22 monetary penalty of not more than \$10,000 for each
23 such violation. In addition, such person shall be sub-
24 ject to an assessment of not more than twice the
25 total amount of the remuneration offered, paid, so-

1 (1) IN GENERAL.—The second sentence of sec-
2 tion 1156(b)(1) of the Social Security Act (42
3 U.S.C. 1320c-5(b)(1)) is amended by striking “may
4 prescribe)” and inserting “may prescribe, except
5 that such period may not be less than 1 year”.

6 (2) CONFORMING AMENDMENT.—Section
7 1156(b)(2) of such Act (42 U.S.C. 1320c-5(b)(2)) is
8 amended by striking “shall remain” and inserting
9 “shall (subject to the minimum period specified in
10 the second sentence of paragraph (1)) remain”.

11 (b) REPEAL OF “UNWILLING OR UNABLE” CONDI-
12 TION FOR IMPOSITION OF SANCTION.—Section 1156(b)(1)
13 of such Act (42 U.S.C. 1320c-5(b)(1)) is amended—

14 (1) in the second sentence, by striking “and de-
15 termines” and all that follows through “such obliga-
16 tions,”; and

17 (2) by striking the third sentence.

18 (c) AMOUNT OF CIVIL MONEY PENALTY.—Section
19 1156(b)(3) of such Act (42 U.S.C. 1320c-5(b)(3)) is
20 amended by striking “the actual or estimated cost” and
21 inserting the following: “up to \$10,000 for each instance”.

22 **SEC. 207. INTERMEDIATE SANCTIONS FOR MEDICARE**
23 **HEALTH MAINTENANCE ORGANIZATIONS.**

24 (a) APPLICATION OF INTERMEDIATE SANCTIONS FOR
25 ANY PROGRAM VIOLATIONS.—

1 (1) IN GENERAL.—Section 1876(i)(1) of the
2 Social Security Act (42 U.S.C. 1395mm(i)(1)) is
3 amended by striking “the Secretary may terminate”
4 and all that follows and inserting the following: “in
5 accordance with procedures established under para-
6 graph (9), the Secretary may at any time terminate
7 any such contract or may impose the intermediate
8 sanctions described in paragraph (6)(B) or (6)(C)
9 (whichever is applicable) on the eligible organization
10 if the Secretary determines that the organization—

11 “(A) has failed substantially to carry out
12 the contract;

13 “(B) is carrying out the contract in a man-
14 ner inconsistent with the efficient and effective
15 administration of this section;

16 “(C) is operating in a manner that is not
17 in the best interests of the individuals covered
18 under the contract; or

19 “(D) no longer substantially meets the ap-
20 plicable conditions of subsections (b), (c), (e),
21 and (f).”.

22 (2) OTHER INTERMEDIATE SANCTIONS FOR
23 MISCELLANEOUS PROGRAM VIOLATIONS.—Section
24 1876(i)(6) of such Act (42 U.S.C. 1395mm(i)(6)) is

1 amended by adding at the end the following new
2 subparagraph:

3 “(C) In the case of an eligible organization for which
4 the Secretary makes a determination under paragraph (1)
5 the basis of which is not described in subparagraph (A),
6 the Secretary may apply the following intermediate sanc-
7 tions:

8 “(i) civil money penalties of not more than
9 \$25,000 for each determination under paragraph (1)
10 if the deficiency that is the basis of the determina-
11 tion has directly adversely affected (or has the sub-
12 stantial likelihood of adversely affecting) an individ-
13 ual covered under the organization’s contract;

14 “(ii) civil money penalties of not more than
15 \$10,000 for each week beginning after the initiation
16 of procedures by the Secretary under paragraph (9)
17 during which the deficiency that is the basis of a de-
18 termination under paragraph (1) exists; and

19 “(iii) suspension of enrollment of individuals
20 under this section after the date the Secretary noti-
21 fies the organization of a determination under para-
22 graph (1) and until the Secretary is satisfied that
23 the deficiency that is the basis for the determination
24 has been corrected and is not likely to recur.”.

1 (3) PROCEDURES FOR IMPOSING SANCTIONS.—
2 Section 1876(i) of such Act (42 U.S.C. 1395mm(i))
3 is amended by adding at the end the following new
4 paragraph:

5 “(9) The Secretary may terminate a contract with an
6 eligible organization under this section or may impose the
7 intermediate sanctions described in paragraph (6) on the
8 organization in accordance with formal investigation and
9 compliance procedures established by the Secretary under
10 which—

11 “(A) the Secretary provides the organization
12 with the opportunity to develop and implement a
13 corrective action plan to correct the deficiencies that
14 were the basis of the Secretary’s determination
15 under paragraph (1);

16 “(B) in deciding whether to impose sanctions,
17 the Secretary considers aggravating factors such as
18 whether an entity has a history of deficiencies or has
19 not taken action to correct deficiencies the Secretary
20 has brought to their attention;

21 “(C) there are no unreasonable or unnecessary
22 delays between the finding of a deficiency and the
23 imposition of sanctions; and

24 “(D) the Secretary provides the organization
25 with reasonable notice and opportunity for hearing

1 (including the right to appeal an initial decision) be-
2 fore imposing any sanction or terminating the con-
3 tract.”.

4 (4) CONFORMING AMENDMENTS.—

5 (A) IN GENERAL.—Section 1876(i)(6)(B)
6 of such Act (42 U.S.C. 1395mm(i)(6)(B)) is
7 amended by striking the second sentence.

8 (B) PROCEDURAL PROVISIONS.—Section
9 1876(i)(6) of such Act (42 U.S.C.
10 1395mm(i)(6)) is further amended by adding at
11 the end the following new subparagraph:

12 “(D) The provisions of section 1128A (other than
13 subsections (a) and (b)) shall apply to a civil money pen-
14 alty under subparagraph (A) or (B) in the same manner
15 as they apply to a civil money penalty or proceeding under
16 section 1128A(a).”.

17 (b) AGREEMENTS WITH PEER REVIEW ORGANIZA-
18 TIONS.—

19 (1) REQUIREMENT FOR WRITTEN AGREE-
20 MENT.—Section 1876(i)(7)(A) of the Social Security
21 Act (42 U.S.C. 1395mm(i)(7)(A)) is amended by
22 striking “an agreement” and inserting “a written
23 agreement”.

24 (2) DEVELOPMENT OF MODEL AGREEMENT.—

25 Not later than July 1, 1994, the Secretary of Health

1 and Human Services shall develop a model of the
2 agreement that an eligible organization with a risk-
3 sharing contract under section 1876 of the Social
4 Security Act must enter into with an entity provid-
5 ing peer review services with respect to services pro-
6 vided by the organization under section
7 1876(i)(7)(A) of such Act.

8 (3) REPORT BY GAO.—

9 (A) STUDY.—The Comptroller General
10 shall conduct a study of the costs incurred by
11 eligible organizations with risk-sharing con-
12 tracts under section 1876(b) of such Act of
13 complying with the requirement of entering into
14 a written agreement with an entity providing
15 peer review services with respect to services pro-
16 vided by the organization, together with an
17 analysis of how information generated by such
18 entities is used by the Secretary of Health and
19 Human Services to assess the quality of
20 services provided by such eligible organizations.

21 (B) REPORT TO CONGRESS.—Not later
22 than July 1, 1996, the Comptroller General
23 shall submit a report to the Committee on
24 Ways and Means and the Committee on Energy
25 and Commerce of the House of Representatives

1 and the Committee on Finance and the Special
 2 Committee on Aging of the Senate on the study
 3 conducted under subparagraph (A).

4 (c) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply with respect to contract years be-
 6 ginning on or after January 1, 1995.

7 **SEC. 208. EFFECTIVE DATE.**

8 The amendments made by this title shall take effect
 9 January 1, 1995.

10 **TITLE III—ADMINISTRATIVE**
 11 **AND MISCELLANEOUS PROVI-**
 12 **SIONS**

13 **SEC. 301. REQUIREMENTS FOR UNIFORM CLAIMS AND**
 14 **ELECTRONIC CLAIMS DATA SET.**

15 (a) REQUIREMENTS.—

16 (1) SUBMISSION OF CLAIMS.—Each health serv-
 17 ice provider that furnishes services in the United
 18 States for which payment may be made under a
 19 health benefit plan shall submit any claim for pay-
 20 ment for such services only in a form and manner
 21 consistent with standards established under sub-
 22 section (b).

23 (2) ACCEPTANCE OF CLAIMS.—A health benefit
 24 plan may not reject a claim for payment under the
 25 plan on the basis of the form or manner in which

1 the claim is submitted if the claim is submitted in
2 accordance with the standards established under
3 subsection (b).

4 (3) EFFECTIVE DATE.—This subsection shall
5 apply to claims for services furnished on or after the
6 date that is 6 months after the date standards are
7 established under subsection (b).

8 (b) STANDARDS RELATING TO UNIFORM CLAIMS.—

9 (1) ESTABLISHMENT OF STANDARDS.—The
10 Secretary shall establish standards that relate to the
11 form and manner of submission of claims for bene-
12 fits under a health benefit plan.

13 (2) SCOPE OF INFORMATION.—

14 (A) IN GENERAL.—The standards under
15 this subsection are intended to cover substan-
16 tially most claims that are filed under health
17 benefit plans. Such information need not in-
18 clude all elements that may potentially be re-
19 quired to be reported under utilization review
20 provisions of plans.

21 (B) ENSURING ACCOUNTABILITY FOR
22 CLAIMS SUBMITTED ELECTRONICALLY.—In es-
23 tablishing such standards, the Secretary, in
24 consultation with appropriate agencies, includ-
25 ing the Department of Justice, shall include

1 such methods of ensuring provider responsibil-
2 ity and accountability for claims submitted elec-
3 tronically that are designed to control fraud
4 and abuse in the submission of such claims.

5 (C) COMPONENTS.—In establishing such
6 standards the Secretary shall—

7 (i) with respect to data elements, de-
8 fine data fields, formats, and medical no-
9 menclature, and plan benefit and insurance
10 information; and

11 (ii) develop a single, uniform coding
12 system for diagnostic and procedure codes.

13 (3) USE OF TASK FORCES.—In adopting stand-
14 ards under this subsection, the Secretary shall take
15 into account the recommendations of current task
16 forces, including at least the Workgroup on Elec-
17 tronic Data Interchange, National Uniform Billing
18 Committee, the Uniform Claim Task Force, and the
19 Computer-based Patient Record Institute.

20 (4) UNIFORM, UNIQUE PROVIDER IDENTIFICA-
21 TION CODES.—In establishing standards under this
22 subsection—

23 (A) the Secretary shall provide for a
24 unique identifier code for each health service
25 provider that furnishes services for which a

1 claim may be submitted under a health benefit
2 plan, and

3 (B) in the case of a provider that has a
4 unique identifier issued for purposes of the
5 medicare program, the code provided under
6 subparagraph (A) shall be the same as such
7 unique identifier.

8 (5) DEADLINE.—The Secretary shall first pro-
9 vide for the standards for the uniform claims under
10 this subsection by not later than 1 year after the
11 date of the enactment of this Act.

12 (c) USE UNDER MEDICARE AND MEDICAID PRO-
13 GRAMS.—

14 (1) REQUIREMENT FOR PROVIDERS.—In the
15 case of a health service provider that submits a
16 claim for services furnished under the medicare pro-
17 gram or medicaid program in violation of subsection
18 (a)(1), no payment shall be made under such pro-
19 gram for such services.

20 (2) REQUIREMENTS OF INTERMEDIARIES AND
21 CARRIERS UNDER MEDICARE PROGRAM.—The Sec-
22 retary shall provide, in regulations promulgated to
23 carry out title XVIII of the Social Security Act, that
24 the claims process provided under that title is modi-

1 fied to the extent required to conform to the stand-
2 ards established under subsection (b).

3 (3) REQUIREMENTS OF STATE MEDICAID
4 PLANS.—As a condition for the approval of State
5 plans under the medicaid program, effective as of
6 the effective date specified in subsection (a)(3), each
7 such plan shall provide, in accordance with regula-
8 tions of the Secretary, that the claims process pro-
9 vided under the plan is modified to the extent re-
10 quired to conform to the standards established under
11 subsection (b).

12 (d) DEFINITIONS.—

13 (1) HEALTH BENEFIT PLAN.—In this section:

14 (A) IN GENERAL.—The term “health bene-
15 fit plan” means, except as provided in subpara-
16 graphs (B) through (D), any public or private
17 entity or program that provides for payments
18 for health care services, including—

19 (i) a group health plan (as defined in
20 section 5000(b)(1) of the Internal Revenue
21 Code of 1986),

22 (ii) any other health insurance ar-
23 rangement, including any arrangement
24 consisting of a hospital or medical expense
25 incurred policy or certificate, hospital or

1 medical service plan contract, or health
2 maintenance organization subscriber con-
3 tract, and

4 (iii) the medicare program and State
5 health care programs (as defined in section
6 1128(h) of the Social Security Act).

7 (B) PLANS EXCLUDED.—Such term does
8 not include—

9 (i) accident-only, credit, or disability
10 income insurance;

11 (ii) coverage issued as a supplement
12 to liability insurance;

13 (iii) an individual making payment on
14 the individual's own behalf (or on behalf of
15 a relative or other individual) for
16 deductibles, coinsurance, or services not
17 covered under a health benefit plan; and

18 (iv) such other plans as the Secretary
19 may determine, because of the limitation of
20 benefits to a single type or kind of health
21 care, such as dental services, or other rea-
22 sons should not be subject to the require-
23 ments of this section.

24 (C) PLANS INCLUDED.—Such term in-
25 cludes—

1 (i) worker's compensation or similar
2 insurance, and

3 (ii) automobile medical-payment in-
4 surance.

5 (D) TREATMENT OF DIRECT FEDERAL
6 PROVISION OF SERVICES.—Such term does not
7 include a Federal program that provides di-
8 rectly for the provision of health services to
9 beneficiaries.

10 (2) HEALTH SERVICE PROVIDER.—In this sec-
11 tion, the term “health service provider” includes a
12 provider of services (as defined in section 1861(u) of
13 the Social Security Act), physician, supplier, and
14 other person furnishing health care services.

15 (3) SECRETARY.—In this section, the term
16 “Secretary” means the Secretary of Health and
17 Human Services.

18 **SEC. 302. ESTABLISHMENT OF THE HEALTH CARE FRAUD**

19 **AND ABUSE DATA COLLECTION PROGRAM.**

20 (a) FINDINGS.—The Congress finds the following:

21 (1) Fraud and abuse with respect to the deliv-
22 ery of and payment for health care services is a sig-
23 nificant contributor to the growing costs of the
24 Nation's health care.

1 (2) Control of fraud and abuse in health care
2 services warrants greater efforts of coordination
3 than those that can be undertaken by individual
4 States or the various Federal, State, and local law
5 enforcement programs.

6 (3) There is a national need to coordinate infor-
7 mation about health care providers and entities that
8 have engaged in fraud and abuse in the delivery of
9 and payment for health care services.

10 (4) There is no comprehensive national data
11 collection program for the reporting of public infor-
12 mation about final adverse actions against health
13 care providers, suppliers, or licensed health care
14 practitioners that have engaged in fraud and abuse
15 in the deliver of and payment for health care
16 services.

17 (5) A comprehensive national data collection
18 program for the reporting of public information
19 about final adverse actions will facilitate the enforce-
20 ment of the provisions of the Social Security Act and
21 other statutes applicable to health care fraud and
22 abuse.

23 (b) GENERAL PURPOSE.—Not later than January 1,
24 1995, the Secretary shall establish a national health care
25 fraud and abuse data collection program for the reporting

1 of final adverse actions against health care providers, sup-
2 pliers, or practitioners as required by subsection (c), with
3 access as set forth in subsection (d).

4 (c) REPORTING OF INFORMATION.—

5 (1) IN GENERAL.—Each government agency
6 and health care plan shall report any final adverse
7 action taken against a health care provider, supplier,
8 or practitioner.

9 (2) INFORMATION TO BE REPORTED.—The in-
10 formation to be reported under paragraph (1)
11 includes:

12 (A) The name of any health care provider,
13 supplier, or practitioner who is the subject of a
14 final adverse action.

15 (B) The name (if known) of any health
16 care entity with which a health care provider,
17 supplier, or practitioner is affiliated or associ-
18 ated.

19 (C) The nature of the final adverse action.

20 (D) A description of the acts or omissions
21 and injuries upon which the final adverse action
22 was based, and such other information as the
23 Secretary determines by regulation is required
24 for appropriate interpretation of information re-
25 ported under this section.

1 (3) CONFIDENTIALITY.—In determining what
2 information is required, the Secretary shall include
3 procedures to assure that the privacy of individuals
4 receiving health care services is appropriately pro-
5 tected.

6 (4) TIMING AND FORM OF REPORTING.—The
7 information required to be reported under this sub-
8 section shall be reported regularly (but not less often
9 than monthly) and in such form and manner as the
10 Secretary prescribes. Such information shall first be
11 required to be reported on a date specified by the
12 Secretary.

13 (5) TO WHOM REPORTED.—The information re-
14 quired to be reported under this subsection shall be
15 reported to the Secretary or, in the Secretary's dis-
16 cretion, to an appropriate private or public agency
17 which has made suitable arrangements with the Sec-
18 retary with respect to receipt, storage, protection of
19 confidentiality of patients, and dissemination of the
20 information described in paragraph (2).

21 (d) DISCLOSURE AND CORRECTION OF INFORMA-
22 TION.—

23 (1) DISCLOSURE.—With respect to the informa-
24 tion about final adverse actions reported to the Sec-
25 retary under this section respecting a health care

1 provider, supplier, or practitioner, the Secretary
2 shall, by regulation, provide for—

3 (A) disclosure of the information, upon re-
4 quest, to the health care provider, supplier, or
5 licensed practitioner, and

6 (B) procedures in the case of disputed ac-
7 curacy of the information.

8 (2) CORRECTIONS.—Each Government agency
9 and health care plan shall report corrections of in-
10 formation already reported about any final adverse
11 action taken against a health care provider, supplier,
12 or practitioner, in such form and manner that the
13 Secretary prescribes by regulation.

14 (e) ACCESS TO REPORTED INFORMATION.—

15 (1) AVAILABILITY.—The information in this
16 database shall be available to the public, Federal
17 and State government agencies, and health care
18 plans pursuant to procedures that the Secretary
19 shall provide by regulation.

20 (2) FEES FOR DISCLOSURE.—The Secretary
21 may establish or approve reasonable fees for the dis-
22 closure of information in this database. The amount
23 of such a fee may not exceed the costs of processing
24 the requests for disclosure and of providing such in-
25 formation. Such fees shall be available to the Sec-

1 retary or, in the Secretary’s discretion to the agency
2 designated under this section to cover such costs.

3 (f) PROTECTION FROM LIABILITY FOR REPORT-
4 ING.—No person or entity, including the agency des-
5 ignated by the Secretary in subsection (c)(5) shall be held
6 liable in any civil action with respect to any report made
7 as required by this section, without knowledge of the fal-
8 sity of the information contained in the report.

9 (g) DEFINITIONS AND SPECIAL RULES.—For pur-
10 poses of this section:

11 (1) The term “Secretary” means the Secretary
12 of the Department of Health and Human Services.

13 (2) The term “final adverse action” includes:

14 (A) Civil judgments in Federal or State
15 court related to the delivery of a health care
16 item or service.

17 (B) Federal or State criminal convictions
18 related to the delivery of a health care item or
19 service.

20 (C) Actions by State or Federal agencies
21 responsible for the licensing and certification of
22 health care providers, suppliers, and licensed
23 health care practitioners, including—

24 (i) formal or official actions, such as
25 revocation or suspension of a license (and

1 the length of any such suspension), rep-
2 rimand, censure or probation,

3 (ii) any other loss of license of the
4 provider, supplier, or practitioner, whether
5 by operation of law, voluntary surrender or
6 otherwise, or

7 (iii) any other negative action or find-
8 ing by such State or Federal agency that
9 is publicly available information.

10 (D) Exclusion from participation in Fed-
11 eral or State health care programs.

12 (E) Any other actions that the Secretary
13 shall establish by regulation.

14 (3) The terms “licensed health care practi-
15 tioner”, “licensed practitioner”, and “practitioner”
16 mean, with respect to a State, an individual who is
17 licensed or otherwise authorized by the State to pro-
18 vide health care services (or any individual who,
19 without authority holds himself or herself out to be
20 so licensed or authorized).

21 (4) The term “health care provider” means a
22 provider of services as defined in section 1861(u) of
23 the Social Security Act, and any entity, including a
24 health maintenance organization, group medical

1 practice, or any other entity listed by the Secretary
2 in regulation, that provides health care services.

3 (5) The term “supplier” means a supplier of
4 health care items and services described in sections
5 1819 (a) and (b), and section 1861 of the Social
6 Security Act.

7 (6) The term “Government agency” shall in-
8 clude:

9 (A) The Department of Justice.

10 (B) The Department of Health and
11 Human Services.

12 (C) Any other Federal agency that either
13 administers or provides payment for the deliv-
14 ery of health care services, including, but not
15 limited to the Department of Defense and the
16 Veterans’ Administration.

17 (D) State law enforcement agencies.

18 (E) State medicaid fraud and abuse units.

19 (F) State or Federal agencies responsible
20 for the licensing and certification of health care
21 providers and licensed health care practitioners.

22 (7) The term “health care plan” has the mean-
23 ing given to such term by section 1128(i) of the
24 Social Security Act.

1 (8) For purposes of paragraph (2), the exist-
2 ence of a conviction shall be determined under para-
3 graph (4) of section 1128(j) of the Social Security
4 Act.

5 (h) CONFORMING AMENDMENT.—Section 1921(d) of
6 the Social Security Act is amended by inserting “and sec-
7 tion 301 of the National Health Care Anti-Fraud and
8 Abuse Act of 1993” after “section 422 of the Health Care
9 Quality Improvement Act of 1986”.

10 **SEC. 303. QUARTERLY PUBLICATION OF ADVERSE ACTIONS**

11 **TAKEN.**

12 (a) IN GENERAL.—Part A of title XI of the Social
13 Security Act (42 U.S.C. 1301 et seq.) is amended by
14 adding at the end the following new section:

15 “QUARTERLY PUBLICATION OF ADVERSE ACTIONS TAKEN
16 “SEC. 1144. Not later than 30 days after the end
17 of each calendar quarter, the Secretary shall publish in
18 the Federal Register a listing of all final adverse actions
19 taken during the quarter under this part (including pen-
20 alties imposed under section 1107, exclusions under sec-
21 tion 1128, the imposition of civil monetary penalties under
22 section 1128A, and the imposition of criminal penalties
23 under section 1128B) and under section 1156.”.

24 (b) EFFECTIVE DATE.—The amendment made by
25 subsection (a) shall apply to calendar quarters beginning
26 on or after January 1, 1995.



S 867 IS—2

S 867 IS—3

S 867 IS—4