104TH CONGRESS
2D SESSION

H. R. 3224

To improve Federal efforts to combat fraud and abuse against health care programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 1996

Mr. SCHIFF (for himself and Mr. SHAYS) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Government Reform and Oversight, Ways and Means, and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To improve Federal efforts to combat fraud and abuse against health care programs, 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 "Health Care Fraud and Abuse Prevention Act of 1996".
6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—COORDINATION OF FEDERAL ENFORCEMENT

Sec. 101. Federal enforcement by Inspectors General and Attorney General.
Sec. 102. State enforcement.
Sec. 103. Payments to States.
Sec. 104. Health Care Fraud and Abuse Control Account.
Sec. 105. Acceptance of gifts, bequests, and devises.
Sec. 106. Reimbursements of expenses and other payments to participating agencies.
Sec. 107. Account Payments Advisory Board.
Sec. 108. Establishment of health care fraud and abuse data base.
Sec. 109. Definitions.
Sec. 110. Effective date.

TITLE II—REVISIONS TO CRIMINAL LAW

Sec. 201. Definition of Federal health care offense.
Sec. 202. Health care fraud.
Sec. 203. Theft or embezzlement.
Sec. 204. False Statements.
Sec. 205. Bribery and graft.
Sec. 206. Illegal remuneration with respect to health care benefit programs.
Sec. 207. Obstruction of criminal investigations of health care offenses.
Sec. 208. Civil penalties for violations of Federal health care offenses.
Sec. 209. Injunctive relief relating to health care offenses.
Sec. 210. Authorized investigative demand procedures.
Sec. 211. Grand jury disclosure.
Sec. 212. Miscellaneous amendments to title 18, United States code.

TITLE III—ANTI-FRAUD INITIATIVES UNDER MEDICARE AND MEDICAID

Sec. 301. Revision to current penalties.
Sec. 302. Solicitation and publication of modifications to existing safe harbors and new safe harbors; additional exception for certain discounting and managed care arrangements.
Sec. 303. Expediting implementation of payment adjustments for durable medical equipment based upon inherent reasonableness.
Sec. 304. Requiring annual notice to medicare beneficiaries of need to prevent fraud and abuse against medicare program.
Sec. 305. Requiring use of single provider number in submission of claims for payment under medicare and medicaid.
Sec. 306. Liability of carriers and fiscal intermediaries for claims submitted by excluded providers.
Sec. 307. Requiring fiscal intermediaries and carriers to use automated data processing equipment comparable to equipment used in private insurance business.
Sec. 308. Nondischargeability under bankruptcy code of amounts owed for overpayments.

TITLE I—COORDINATION OF FEDERAL ENFORCEMENT

SEC. 101. FEDERAL ENFORCEMENT BY INSPECTORS GENERAL AND ATTORNEY GENERAL.

(a) AUDITS, INVESTIGATIONS, INSPECTIONS, AND EVALUATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Inspector General of each of the Department of Health and Human Services, the Department of Defense, the Department of Labor, the Office of Personnel Management, and the Department of Veterans Affairs, and the Attorney General shall conduct audits, civil and criminal investigations, inspections, and evaluations relating to the prevention, detection, and control of health care fraud and abuse in violation of any Federal law.

(2) LIMITATION.—An Inspector General, other than the Inspector General of the Department of Health and Human Services, may not conduct any audit, investigation, inspection, or evaluation under paragraph (1) with respect to health care fraud or abuse under title V, XI, XVIII, XIX, or XX of the Social Security Act.

(b) POWERS.—For purposes of carrying out duties and responsibilities under subsection (a), each Inspector

1 General referred to in subsection (a) may exercise powers
2 that are available to the Inspector General for purposes
3 of audits, investigations, and other activities under the In-
4 spector General Act of 1978 (5 U.S.C. App.).

5 (c) COORDINATION AND REVIEW OF ACTIVITIES OF
6 OTHER FEDERAL, STATE, AND LOCAL AGENCIES.—

7 (1) PROGRAM.—The Inspector General and the
8 Attorney General shall—

9 (A) jointly establish, on the effective date
10 specified in section 110(a), a program to pre-
11 vent, detect, and control health care fraud and
12 abuse in violation of any Federal law, which
13 takes into account the activities of Federal,
14 State, and local law enforcement agencies, Fed-
15 eral and State agencies responsible for the li-
16 censing and certification of health care provid-
17 ers, and State agencies designated under sec-
18 tion 102(a)(1); and

19 (B) publish a description of the program in
20 the Federal Register, by not later than 180
21 days after the date of the enactment of this
22 Act.

23 (2) ANNUAL INVESTIGATIVE PLAN.—Each In-
24 spector General referred to in subsection (a)(1) and
25 the Attorney General shall each develop an annual

investigative plan for the prevention, detection, and control of health care fraud and abuse in accordance with the program established under paragraph (1).

(d) CONSULTATIONS.—Each of the Inspectors General referred to in subsection (a)(1) and the Attorney General shall regularly consult with each other, with Federal, State, and local law enforcement agencies, with Federal and State agencies responsible for the licensing and certification of health care providers, and with Health Care Fraud and Abuse Control Units, in order to assist in coordinating the prevention, detection, and control of health care fraud and abuse in violation of any federal law.

SEC. 102. STATE ENFORCEMENT.

(a) DESIGNATION OF STATE AGENCIES AND ESTABLISHMENT OF HEALTH CARE FRAUD AND ABUSE CONTROL UNIT.—The Governor of each State—

(1) shall, consistent with State law, designate agencies of the State which conduct, supervise, and coordinate audits, civil and criminal investigations, inspections, and evaluations relating to the prevention, detection, and control of health care fraud and abuse in violation of any Federal law in the State; and

(2) may establish and maintain in accordance with subsection (b) a State agency to act as a

1 Health Care Fraud and Abuse Control Unit for pur-
2 poses of this title.
3 (b) HEALTH CARE FRAUD AND ABUSE CONTROL
4 UNIT REQUIREMENTS.—A Health Care Fraud and Abuse
5 Control Unit established by a State under subsection
6 (a)(2) shall be a single identifiable entity of State govern-
7 ment which is separate and distinct from any State agency
8 with principal responsibility for the administration of
9 health care programs, and which meets the following re-
10 quirements:
11 (1) The entity—
12 (A) is a unit of the office of the State At-
13 torney General or of another department of
14 State government that possesses statewide au-
15 thority to prosecute individuals for criminal vio-
16 lations;
17 (B) is in a State the constitution of which
18 does not provide for the criminal prosecution of
19 individuals by a statewide authority, and has
20 formal procedures, approved by the Secretary,
21 that assure it will refer suspected criminal vio-
22 lations relating to health care fraud or abuse in
23 violation of any Federal law to the appropriate
24 authority or authorities of the State for pros-

ecution and assure it will assist such authority or authorities in such prosecutions; or

(C) has a formal working relationship with the office of the State Attorney General or the appropriate authority or authorities for prosecution and has formal procedures (including procedures under which it will refer suspected criminal violations to such office), that provide effective coordination of activities between the Health Care Fraud and Abuse Control Unit and such office with respect to the detection, investigation, and prosecution of suspected health care fraud or abuse in violation of any Federal law.

(2) The entity conducts a statewide program for the investigation and prosecution of violations of all applicable State laws regarding any and all aspects of health care fraud and abuse under Federal law.

(3) The entity has procedures for—

(A) reviewing complaints of the abuse or neglect of patients of health care facilities in the State, and

(B) where appropriate, investigating and prosecuting such complaints under the criminal

1 laws of the State or for referring the complaints
2 to other State or Federal agencies for action.
3 (4) The entity provides for the collection, or re-
4 ferral for collection to the appropriate agency, of
5 overpayments that—
6 (A) are made under any federally funded
7 or mandated health care program required by
8 this Act, and
9 (B) it discovers in carrying out its activi-
10 ties.
11 (5) The entity employs attorneys, auditors, in-
12 vestigators, and other necessary personnel, is orga-
13 nized in such a manner, and provides sufficient re-
14 sources, as is necessary to promote the effective and
15 efficient conduct of its activities.
16 (c) SUBMISSION OF ANNUAL PLAN.—Each Health
17 Care Fraud and Abuse Control Unit may submit each year
18 to the Inspector General and the Attorney General a plan
19 for preventing, detecting, and controlling, consistent with
20 the program established under section 101(c)(1), health
21 care fraud and abuse in violation of any Federal law.
22 (d) APPROVAL OF ANNUAL PLAN.—The Inspector
23 General shall approve a plan submitted under subsection
24 (c) by the Health Care Fraud and Abuse Control Unit

of a State, unless the Inspector General establishes that the plan—

(1) is inconsistent with the program established under section 101(c)(1); or

(2) will not enable the agencies of the State designated under subsection (a)(1) to prevent, detect, and control health care fraud and abuse in violation of any Federal law.

(e) REPORTS.—Each Health Care Fraud and Abuse Control Unit shall submit to the Inspector General an annual report containing such information as the Inspector General determines to be necessary.

(f) SEMIANNUAL REPORTS OF INSPECTOR GENERAL OF HEALTH AND HUMAN SERVICES.—The Inspector General shall include in its semiannual reports to the Congress under section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.) an assessment of the Inspector General of the effectiveness of States in preventing, detecting, and controlling health care fraud and abuse.

SEC. 103. PAYMENTS TO STATES.

(a) IN GENERAL.—For each year for which a State has an annual plan approved under section 102(d), and subject to the availability of appropriations, the Inspector General shall pay to the State for each quarter an amount equal to 75 percent of the sums expended during the quar-

1 ter by agencies designated by the Governor of the State
2 under section 102(a)(1) in conducting activities described
3 in that subsection.

4 (b) TIME OF PAYMENT.—The Inspector General shall
5 make a payment under subsection (a) for a quarter by
6 not later than 30 days after the end of the quarter.

7 (c) PAYMENTS ARE ADDITIONAL.—Payments to a
8 State under this subsection shall be in addition to any
9 amounts paid under section 106.

10 **SEC. 104. HEALTH CARE FRAUD AND ABUSE CONTROL AC-**
11 **COUNT.**

12 (a) ESTABLISHMENT.—There is established on the
13 books of the Treasury of the United States a separate ac-
14 count, which shall be known as the Health Care Fraud
15 and Abuse Control Account. The Account shall consist
16 of—

17 (1) the Health Care Fraud and Abuse Expenses
18 Subaccount; and

19 (2) the Health Care Fraud and Abuse Reserve
20 Subaccount.

21 (b) EXPENSES SUBACCOUNT.—

22 (1) CONTENTS.—The Expenses Subaccount
23 consists of—

24 (A) amounts deposited under paragraph
25 (2); and

1 (B) amounts transferred from the Reserve
2 Subaccount under subsection (c)(2).
3 (2) DEPOSITS.—Except as provided in sub-
4 section (c)(1), there shall be deposited in the Ex-
5 penses Subaccount all amounts received by the Unit-
6 ed States as—
7 (A) fines imposed in cases involving a Fed-
8 eral health care offense;
9 (B) civil penalties or damages (other than
10 restitution) in actions under section 3729 or
11 3730 of title 31, United States Code (commonly
12 referred to as the "False Claims Act"), that are
13 based on claims related to the provision of
14 health care items and services;
15 (C) administrative penalties under titles
16 XI, XVIII, and XIX of the Social Security Act;
17 (D) proceeds of seizures and forfeitures of
18 property for acts or omissions in violation of
19 any Federal law related to the provision of
20 health care items and services; and
21 (E) money and proceeds of property that
22 are accepted under section 105.
23 (3) USE.—Amounts in the Expenses Sub-
24 account shall be available to the Inspector General
25 and the Attorney General, under such terms and

1 conditions as the Inspector General and the Attor-
2 ney General jointly determine to be appropriate,
3 for—
4 (A) paying expenses incurred by their re-
5 spective agencies in carrying out activities
6 under section 101; and
7 (B) making reimbursements to other In-
8 spectors General and Federal, State, and local
9 agencies in accordance with section 106.
10 (c) RESERVE SUBACCOUNT.—
11 (1) DEPOSITS.—An amount otherwise required
12 under subsection (b)(1) to be deposited in the Ex-
13 penses Subaccount in a fiscal year shall be deposited
14 in the Reserve Subaccount, if—
15 (A) the amount in the Expenses Sub-
16 account is greater than $500,000,000; and
17 (B) the deposit of that amount in the Ex-
18 penses Subaccount would result in the amount
19 in the Expenses Subaccount exceeding 110 per-
20 cent of the total amount deposited in the Ex-
21 penses Subaccount in the preceding fiscal year.
22 (2) TRANSFERS TO EXPENSES SUBACCOUNT.—
23 (A) ESTIMATION OF SHORTFALL.—Not
24 later than the first day of the last quarter of
25 each fiscal year, the Inspector General (in con-

1 sultation with the Attorney General) shall esti-
2 mate whether sufficient amounts will be avail-
3 able during such quarter in the Expenses Sub-
4 account for the uses described in subsection
5 (b)(3).

6 (B) TRANSFER TO COVER SHORTFALL.—If
7 the Inspector General estimates under sub-
8 section (a) that there will not be available suffi-
9 cient amounts in the Expenses Subaccount dur-
10 ing the last quarter of a fiscal year, there shall
11 be transferred from the Reserve Subaccount to
12 the Expenses Subaccount such amount as the
13 Inspector General estimates is required to en-
14 sure that sufficient amounts are available in the
15 Expenses Subaccount during such quarter.

16 (3) LIMITATION ON AMOUNT CARRIED OVER TO
17 SUCCEEDING FISCAL YEAR.—There shall be trans-
18 ferred to the general fund of the Treasury any
19 amount remaining in the Reserve Subaccount at the
20 end of a fiscal year (after any transfer made under
21 paragraph (2)) in excess of 10 percent of the total
22 amount authorized to be deposited in the Expenses
23 Subaccount (consistent with paragraph (1)) during
24 the fiscal year.

1 (d) ANNUAL REPORT TO CONGRESS.—Not later than
2 180 days after the end of each fiscal year (beginning with
3 fiscal year 1997), the Secretary of Health and Human
4 Services and the Attorney General shall submit a report
5 to the Committee on Government Reform and Oversight
6 of the House of Representatives and the Committee on
7 Governmental Affairs of the Senate on the operations of
8 the Account during the fiscal year, including a description
9 of the deposits made into the Account and the payments
10 made from the Account during the year.

11 **SEC. 105. ACCEPTANCE OF GIFTS, BEQUESTS, AND DEVISES.**

12 The Attorney General or any Inspector General re-
13 ferred to in section 101(a) may accept, use, and dispose
14 of gifts, bequests, or devises of services or property (real
15 or personal), for the purpose of aiding or facilitating ac-
16 tivities under this title regarding health care fraud and
17 abuse. Gifts, bequests, or devises of money and proceeds
18 from sales of other property received as gifts, bequests,
19 or devises shall be deposited in the Account and shall be
20 available for use in accordance with section 104(b)(3).

21 **SEC. 106. REIMBURSEMENTS OF EXPENSES AND OTHER**
22 **PAYMENTS TO PARTICIPATING AGENCIES.**

23 (a) REIMBURSEMENT OF EXPENSES OF FEDERAL
24 AGENCIES.—The Inspector General and the Attorney
25 General, subject to the availability of amounts in the Ac-

1 count, shall jointly and promptly reimburse Federal agen-
2 cies for expenses incurred in carrying out section 101.
3 (b) PAYMENTS TO STATE AND LOCAL LAW EN-
4 FORCEMENT AGENCIES.—The Inspector General and the
5 Attorney General, subject to the availability of amounts
6 in the Account, shall jointly and promptly pay to any State
7 or local law enforcement agency that participated directly
8 in any activity which led to deposits in the Account, or
9 property the proceeds of which are deposited in the Ac-
10 count, an amount that reflects generally and equitably the
11 participation of the agency in the activity.
12 (c) FUNDS USED TO SUPPLEMENT AGENCY APPRO-
13 PRIATIONS.—It is intended that disbursements made from
14 the Account to any Federal agency be used to increase
15 and not supplant the recipient agency's appropriated oper-
16 ating budget.

17 **SEC. 107. ACCOUNT PAYMENTS ADVISORY BOARD.**

18 (a) ESTABLISHMENT.—There is established the Ac-
19 count Payments Advisory Board, which shall make rec-
20 ommendations to the Inspector General and the Attorney
21 General regarding the equitable allocation of payments
22 from the Account.
23 (b) MEMBERSHIP.—The Board shall consist of—
24 (1) each of the Inspectors General referred to
25 in section 101(a), other than the Inspector General

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

3 (2) 10 members appointed by the Inspector
4 General of the Department of Health and Human
5 Services to represent Health Care Fraud and Abuse
6 Control Units, of whom one shall be appointed—

7 (A) for each of the 10 regions established
8 by the Director of the Office of Management
9 and Budget under Office of Management and
10 Budget Circular A–105, to represent Units in
11 that region; and

12 (B) from among individuals recommended
13 by the heads of those agencies in that region.

14 (c) TERMS.—The term of a Member of the Board ap-
15 pointed under subsection (b)(2) shall be 3 years, except
16 that of such members first appointed 3 members shall
17 serve an initial term of one year and 3 members shall serve
18 an initial term of 2 years, as specified by the Inspector
19 General at the time of appointment.

20 (d) VACANCIES.—A vacancy on the Board shall be
21 filled in the same manner in which the original appoint-
22 ment was made, except that an individual appointed to
23 fill a vacancy occurring before the expiration of the term
24 for which the individual is appointed shall be appointed
25 only for the remainder of that term.

1 (e) CHAIRPERSON AND BYLAWS.—The Board shall
2 elect one of its members as chairperson and shall adopt
3 bylaws.
4 (f) COMPENSATION AND EXPENSES.—Members of
5 the Board shall serve without compensation, except that
6 the Inspector General may pay the expenses reasonably
7 incurred by the Board in carrying out its functions under
8 this section.
9 (g) NO TERMINATION.—Section 14(a)(2) of the Fed-
10 eral Advisory Committee Act (5 U.S.C. App.) does not
11 apply to the Board.

12 **SEC. 108. ESTABLISHMENT OF HEALTH CARE FRAUD AND**
13 **ABUSE DATA BASE.**

14 (a) IN GENERAL.—The Secretary of Health and
15 Human Services, in consultation with the Attorney Gen-
16 eral, shall establish a data base for the reporting of final
17 adverse actions taken by a Government agency against
18 health care providers, suppliers, or practitioners, or
19 against health care benefit programs, in order to provide
20 a central repository of such information to assist in the
21 prevention, detection, and prosecution of health care fraud
22 and abuse.
23 (b) REPORTING INFORMATION.—
24 (1) IN GENERAL.—For purposes of establishing
25 and maintaining the data base under this section,

each Government agency shall report any final adverse action taken against a health care provider, supplier, or practitioner, or against a health care benefit program, together with the information described in paragraph (2).

(2) INFORMATION TO BE REPORTED.—The information referred to in this paragraph is as follows:

(A) The name of any health care insurer, provider, supplier, or practitioner or health care benefit program which is the subject of the final adverse action reported under paragraph (1).

(B) In the case of a final adverse action taken against a health care provider, supplier, or practitioner, the name (if known) of any health care benefit program with which the insurer, provider, supplier, or practitioner is affiliated or associated.

(C) The nature of the final adverse action.

(D) A description of the acts or omissions and injuries upon which the final adverse action was based.

(E) Such other information as required by the Secretary.

(3) CONFIDENTIALITY.—The Secretary shall establish procedures to assure that in the submission

1 of information under this subsection the privacy of
2 individuals receiving health care services is appro-
3 priately protected.

4 (4) FORM AND MANNER OF REPORTING.—The
5 information required to be reported under this sub-
6 section shall be reported on a monthly basis and in
7 such form and manner as determined by the Sec-
8 retary. Such information shall first be required to be
9 reported on a date specified by the Secretary.

10 (5) TO WHOM REPORTED.—The information re-
11 quired to be reported under this subsection shall be
12 reported to the Secretary or such person or persons
13 designated by the Secretary.

14 (c) CORRECTION OF ERRONEOUS INFORMATION.—

15 (1) DISCLOSURE AND CORRECTION.—The Sec-
16 retary shall provide for a procedure through which
17 a person, to whom information within the data base
18 established under this section pertains, may review
19 that information and obtain the correction of errors
20 pertaining to that person.

21 (2) OTHER CORRECTIONS.—Each Government
22 agency shall report corrections of information al-
23 ready reported about any final adverse action taken
24 against a health care provider, supplier, or practi-

tioner, or a health care benefit program, in such form and manner as required by the Secretary.

(d) ACCESS TO REPORTED INFORMATION.—

(1) AVAILABILITY.—The information in this data base shall be available to the public, Federal and State law enforcement agencies, Federal and State government agencies, and health care benefit programs pursuant to procedures established by the Secretary and Attorney General.

(2) FEES.—The Secretary may establish reasonable fees for the disclosure of information in this data base.

(e) PROTECTION FROM LIABILITY FOR REPORTING.—No person may be held liable in any civil action with respect to reporting information required to be reported under this section, unless the information reported was false and the person had knowledge of the falsity of the information.

(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section:

(1) The term ''final adverse action'' includes the following:

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

1 (B) Federal or State criminal convictions
2 related to the delivery of a health care item or
3 service, as determined in accordance with proce-
4 dures applicable to the exclusion of individuals
5 and entities under section 1128(j) of the Social
6 Security Act.
7 (C) Actions by State or Federal agencies
8 responsible for the licensing and certification of
9 health care providers, suppliers, and licensed
10 health care practitioners, including—
11 (i) formal or official actions, such as
12 revocation or suspension of a license (and
13 the length of any such suspension), rep-
14 rimand, censure or probation;
15 (ii) any other loss of license of the
16 provider, supplier, or practitioner, whether
17 by operation of law, voluntary surrender or
18 otherwise; or
19 (iii) any other negative action or find-
20 ing by such State or Federal agency that
21 is publicly available information.
22 (D) Exclusion from participation in Fed-
23 eral or State health care programs.
24 (E) Any other actions as required by the
25 Secretary.

1 (2) The term ''Government agency'' includes—
2 (A) the Department of Justice;
3 (B) the Department of Health and Human
4 Services;
5 (C) any other Federal agency that either
6 administers or provides payment for the deliv-
7 ery of health care services, including (but not
8 limited to) the Department of Defense and the
9 Department of Veterans Affairs;
10 (D) State law enforcement agencies;
11 (E) State Medicaid fraud and abuse con-
12 trol units described in section 1903(q) of the
13 Social Security Act; and
14 (F) State or Federal agencies responsible
15 for the licensing and certification of health care
16 providers and licensed health care practitioners.
17 (3) The term ''health care benefit program'' has
18 the meaning given such term in section 1347(b) of
19 title 18, United States Code, as added by section
20 202(b).
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 or group medical

1 practice, that provides health care services (as speci-
2 fied by the Secretary in regulations).
3 (5) The terms ''licensed health care practi-
4 tioner'' and ''practitioner'' mean, with respect to a
5 State, an individual who is licensed or otherwise au-
6 thorized by the State to provide health care services
7 (or any individual who without authority holds him-
8 self or herself out to be so licensed or authorized).
9 (6) The term ''Secretary'' means the Secretary
10 of Health and Human Services.
11 (7) The term ''supplier'' means a supplier of
12 items and services for which payment may be made
13 under part B of title XVIII of the Social Security
14 Act.
15 **SEC. 109. DEFINITIONS.**
16 In this title:
17 (1) ACCOUNT.—The term ''Account'' means the
18 Health Care Fraud and Abuse Control Account es-
19 tablished by section 104(a).
20 (2) EXPENSES SUBACCOUNT.—The term ''Ex-
21 penses Subaccount'' means the Health Care Fraud
22 and Abuse Expenses Subaccount of the Account.
23 (3) FEDERAL HEALTH CARE OFFENSE.—The
24 term ''Federal health care offense'' has the meaning

1 given such term in section 24(a) of title 18, United
2 States Code.
3 (4) HEALTH CARE FRAUD AND ABUSE CONTROL
4 UNIT.—The term ''Health Care Fraud and Abuse
5 Control Unit'' means such a unit established by a
6 State in accordance with section 102(b).
7 (5) INSPECTOR GENERAL.—Except as otherwise
8 provided, the term ''Inspector General'' means the
9 Inspector General of the Department of Health and
10 Human Services.
11 (6) RESERVE SUBACCOUNT.—The term ''Re-
12 serve Subaccount'' means the Health Care Fraud
13 and Abuse Reserve Subaccount of the Account.

14 **SEC. 110. EFFECTIVE DATE.**

15 (a) IN GENERAL.—Except as provided in subsection
16 (b), this title shall take effect after the expiration of the
17 180-day period which begins on the date of the enactment
18 of this Act.
19 (b) DEVELOPMENT AND PUBLICATION OF DESCRIP-
20 TION OF PROGRAM.—Section 101(c)(1) shall take effect
21 on the date of the enactment of this Act.

TITLE II—REVISIONS TO CRIMINAL LAW

SEC. 201. DEFINITION OF FEDERAL HEALTH CARE OFFENSE.

(a) IN GENERAL.—Chapter 2 of title 18, United States Code, is amended by adding at the end the following:

"§ 24. Definition of Federal health care offense

"(a) As used in this title, the term 'Federal health care offense' means—

"(1) a violation of, or criminal conspiracy to violate section 226, 227, 669, 1035, 1347, or 1518 of this title;

"(2) a violation of, or criminal conspiracy to violate section 1128B of the Social Security Act (42 U.S.C. 1320a–7b);

"(3) a violation of, or criminal conspiracy to violate section 201, 287, 371, 664, 666, 1001, 1027, 1341, 1343, or 1954 of this title, if the violation or conspiracy relates to a health care benefit program;

"(4) a violation of, or criminal conspiracy to violate section 411, 501, or 511 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1111; 29 U.S.C. 1131; 29 U.S.C. 1141), if the viola-

1 tion or conspiracy relates to a health care benefit
2 program; or
3 ''(5) a violation of, or criminal conspiracy to
4 violate, section 3 of the Anti-Kickback Act of 1986
5 (41 U.S.C. 53), if the violation or conspiracy relates
6 to a health care benefit program.
7 ''(b) As used in this title, the term 'health care bene-
8 fit program' has the meaning given such term in section
9 1347(b) of this title.''.
10 (b) CLERICAL AMENDMENT.—The table of sections
11 at the beginning of chapter 2 of title 18, United States
12 Code, is amended by inserting after the item relating to
13 section 23 the following new item:

''24. Definition relating to Federal health care offense defined.''.

14 **SEC. 202. HEALTH CARE FRAUD.**

15 (a) IN GENERAL.—Chapter 63 of title 18, United
16 States Code, is amended by adding at the end the follow-
17 ing:

18 **''§ 1347. Health care fraud**

19 ''(a) Whoever, having devised or intending to devise
20 a scheme or artifice, commits or attempts to commit an
21 act in furtherance of or for the purpose of executing such
22 scheme or artifice—
23 ''(1) to defraud any health care benefit pro-
24 gram; or

1 "(2) to obtain, by means of false or fraudulent
2 pretenses, representations, or promises, any of the
3 money or property owned by, or under the custody
4 or control of, any health care benefit program,
5 shall be fined under this title or imprisoned not more than
6 10 years, or both. If the violation results in serious bodily
7 injury (as defined in section 1365 of this title), such per-
8 son shall be fined under this title or imprisoned not more
9 than 20 years, or both; and if the violation results in
10 death, such person shall be fined under this title, or im-
11 prisoned for any term of years or for life, or both.
12 "(b) As used in this section, the term 'health care
13 benefit program' means any public or private plan or con-
14 tract under which any medical benefit, item, or service is
15 provided to any individual, and includes any individual or
16 entity who is providing a medical benefit, item, or service
17 for which payment may be made under the plan or con-
18 tract.".
19 (b) CLERICAL AMENDMENT.—The table of sections
20 at the beginning of chapter 63 of title 18, United States
21 Code, is amended by adding at the end the following:

"1347. Health care fraud.".

22 **SEC. 203. THEFT OR EMBEZZLEMENT.**

23 (a) IN GENERAL.—Chapter 31 of title 18, United
24 States Code, is amended by adding at the end the follow-
25 ing:

1 **"§ 669. Theft or embezzlement in connection with**
2 **health care**

3 "(a) Whoever embezzles, steals, or otherwise without
4 authority willfully and unlawfully converts to the use of
5 any person other than the rightful owner, or intentionally
6 misapplies any of the moneys, funds, securities, premiums,
7 credits, property, or other assets of a health care benefit
8 program, shall be fined under this title or imprisoned not
9 more than 10 years, or both.

10 "(b) As used in this section, the term 'health care
11 benefit program' has the meaning given such term in sec-
12 tion 1347(b) of this title.".

13 (b) CLERICAL AMENDMENT.—The table of sections
14 at the beginning of chapter 31 of title 18, United States
15 Code, is amended by adding at the end the following:

"669. Theft or embezzlement in connection with health care.".

16 **SEC. 204. FALSE STATEMENTS.**

17 (a) IN GENERAL.—Chapter 47 of title 18, United
18 States Code, is amended by adding at the end the follow-
19 ing:

20 **"§ 1035. False statements relating to health care mat-**
21 **ters**

22 "(a) Whoever, in any matter involving a health care
23 benefit program, knowingly and willfully falsifies, conceals,
24 or covers up by any trick, scheme, or device a material
25 fact, or makes any false, fictitious, or fraudulent state-

ments or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined under this title or imprisoned not more than 5 years, or both.

''(b) As used in this section, the term 'health care benefit program' has the meaning given such term in section 1347(b) of this title.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by adding at the end the following new item:

''1035. False statements relating to health care matters.''.

SEC. 205. BRIBERY AND GRAFT.

(a) IN GENERAL.—Chapter 11 of title 18, United States Code, is amended by adding at the end the following:

''§ 226. Bribery and graft in connection with health care

''(a) Whoever—

''(1) directly or indirectly, corruptly gives, offers, or promises anything of value to a health care official, or offers or promises to give anything of value to any other person, or attempts to violate this subsection, with intent—

1 "(A) to influence any of the health care of-
2 ficial's actions, decisions, or duties relating to a
3 health care benefit program;
4 "(B) to influence such an official to com-
5 mit or aid in the committing, or collude in or
6 allow, any fraud, or make opportunity for the
7 commission of any fraud, on a health care bene-
8 fit program; or
9 "(C) to induce such an official to engage
10 in any conduct in violation of the lawful duty of
11 such official; or
12 "(2) being a health care official, directly or in-
13 directly, corruptly demands, seeks, receives, accepts,
14 or agrees to accept anything of value personally or
15 for any other person or entity, the giving of which
16 violates paragraph (1) of this subsection, or at-
17 tempts to violate this subsection,
18 shall be fined under this title or imprisoned not more than
19 15 years, or both.
20 "(b) Whoever—
21 "(1) otherwise than as provided by law for the
22 proper discharge of any duty, directly or indirectly
23 gives, offers, or promises anything of value to a
24 health care official, for or because of any of the
25 health care official's actions, decisions, or duties re-

1 lating to a health care benefit program, or attempts
2 to violate this subsection; or
3 ''(2) being a health care official, otherwise than
4 as provided by law for the proper discharge of any
5 duty, directly or indirectly, demands, seeks, receives,
6 accepts or agrees to accept anything of value person-
7 ally or for any other person or entity, the giving of
8 which violates paragraph (1) of this subsection, or
9 attempts to violate this subsection,
10 shall be fined under this title, or imprisoned not more than
11 2 years, or both.
12 ''(c) As used in this section—
13 ''(1) the term 'health care official' means—
14 ''(A) an administrator, officer, trustee, fi-
15 duciary, custodian, counsel, agent, or employee
16 of any health care benefit program;
17 ''(B) an officer, counsel, agent, or em-
18 ployee, of an organization that provides services
19 under contract to any health care benefit pro-
20 gram; or
21 ''(C) an official, employee, or agent of an
22 entity having regulatory authority over any
23 health care benefit program; and

1 "(2) the term 'health care benefit program' has
2 the meaning given such term in section 1347(b) of
3 this title.".

4 (b) CLERICAL AMENDMENT.—The table of chapters
5 at the beginning of chapter 11 of title 18, United States
6 Code, is amended by adding at the end the following new
7 item:

"226. Bribery and graft in connection with health care.".

8 **SEC. 206. ILLEGAL REMUNERATION WITH RESPECT TO**
9 **HEALTH CARE BENEFIT PROGRAMS.**

10 (a) IN GENERAL.—Chapter 11 of title 18, United
11 States Code, is amended by adding at the end the follow-
12 ing:

13 **"§ 227. Illegal remuneration with respect to health**
14 **care benefit programs**

15 "(a) Whoever knowingly and willfully solicits or re-
16 ceives any remuneration (including any kickback, bribe, or
17 rebate) directly or indirectly, overtly or covertly, in cash
18 or in kind—

19 "(1) in return for referring any individual to a
20 person for the furnishing or arranging for the fur-
21 nishing of any item or service for which payment
22 may be made in whole or in part by any health care
23 benefit program; or

24 "(2) in return for purchasing, leasing, ordering,
25 or arranging for or recommending purchasing, leas-

1 ing, or ordering any good, facility, service, or item
2 for which payment may be made in whole or in part
3 by any health care benefit program, or attempting to
4 do so,
5 shall be fined under this title or imprisoned for not more
6 than 5 years, or both.
7 ''(b) Whoever knowingly and willfully offers or pays
8 any remuneration (including any kickback, bribe, or re-
9 bate) directly or indirectly, overtly, or covertly, in cash or
10 in kind to any person to induce such person—
11 ''(1) to refer an individual to a person for the
12 furnishing or arranging for the furnishing of any
13 item or service for which payment may be made in
14 whole or in part by any health benefit program; or
15 ''(2) to purchase, lease, order, or arrange for or
16 recommend purchasing, leasing, or ordering any
17 good, facility, service, or item for which payment
18 may be made in whole or in part by any health bene-
19 fit program or attempts to do so,
20 shall be fined under this title or imprisoned for not more
21 than 5 years, or both.
22 ''(c) Subsections (a) and (b) shall not apply to—
23 ''(1) a discount or other reduction in price ob-
24 tained by a provider of services or other entity under
25 a health care benefit program if the reduction in

1 price is properly disclosed and appropriately re-
2 flected in the costs claimed or charges made by the
3 provider or entity under a health care benefit pro-
4 gram;
5 ''(2) any amount paid by an employer to an em-
6 ployee (who has a bona fide employment relationship
7 with such employer) for employment in the provision
8 of covered items or services if the amount of the re-
9 muneration under the arrangement is consistent
10 with the fair market value of the services and is not
11 determined in a manner that takes into account (di-
12 rectly or indirectly) the volume or value of any refer-
13 rals;
14 ''(3) any amount paid by a vendor of goods or
15 services to a person authorized to act as a purchas-
16 ing agent for a group of individuals or entities who
17 are furnishing services reimbursed under a health
18 care benefit program if—
19 ''(A) the person has a written contract,
20 with each such individual or entity, which speci-
21 fies the amount to be paid the person, which
22 amount may be a fixed amount or a percentage
23 of the value of the purchases made by each
24 such individual or entity under the contract,
25 and

1 "(B) in the case of an entity that is a pro-
2 vider of services (as defined in section 1861(u)
3 of the Social Security Act, the person discloses
4 (in such form and manner as the Secretary of
5 Health and Human Services requires) to the
6 entity and, upon request, to the Secretary the
7 amount received from each such vendor with re-
8 spect to purchases made by or on behalf of the
9 entity;
10 "(4) a waiver of any coinsurance under part B
11 of title XVIII of the Social Security Act by a feder-
12 ally qualified health care center with respect to an
13 individual who qualifies for subsidized services under
14 a provision of the Public Health Service Act; and
15 "(5) any payment practice specified by the Sec-
16 retary of Health and Human Services in regulations
17 promulgated pursuant to section 14(a) of the Medi-
18 care and Medicaid Patient and Program Protection
19 Act of 1987.
20 "(d) Any person injured in his business or property
21 by reason of a violation of this section or section 226 of
22 this title may sue therefor in any appropriate United
23 States district court and shall recover threefold the dam-
24 ages such person sustains and the cost of the suit, includ-
25 ing a reasonable attorney's fee.

1 ''(e) As used in this section, 'health care benefit pro-
2 gram' has the meaning given such term in section 1347(b)
3 of this title.''.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 at the beginning of chapter 11 of title 18, United States
6 Code, is amended by adding at the end the following:

''227. Illegal remuneration with respect to health care benefit programs.''.

7 (c) CONFORMING AMENDMENT.—Section 1128B of
8 the Social Security Act (42 U.S.C. 1320a–7b) is amended
9 by striking subsection (b).

10 **SEC. 207. OBSTRUCTION OF CRIMINAL INVESTIGATIONS OF**
11 **HEALTH CARE OFFENSES.**

12 (a) IN GENERAL.—Chapter 73 of title 18, United
13 States Code, is amended by adding at the end the follow-
14 ing:

15 **''§ 1518. Obstruction of criminal investigations of**
16 **health care offenses**

17 ''(a) Whoever willfully prevents, obstructs, misleads,
18 delays or attempts to prevent, obstruct, mislead, or delay
19 the communication of information or records relating to
20 a violation of a health care offense to a criminal investiga-
21 tor shall be fined under this title or imprisoned not more
22 than 5 years, or both.

23 ''(b) As used in this section the term 'health care of-
24 fense' has the meaning given such term in section 24 of
25 this title.

1 ‘‘(c) As used in this section the term ‘criminal inves-
2 tigator’ means any individual duly authorized by a depart-
3 ment, agency, or armed force of the United States to con-
4 duct or engage in investigations for prosecutions for viola-
5 tions of health care offenses.’’.

6 (b) CLERICAL AMENDMENT.—The table of sections
7 at the beginning of chapter 73 of title 18, United States
8 Code, is amended by adding at the end the following new
9 item:

‘‘1518. Obstruction of criminal investigations of health care offenses.’’.

10 **SEC. 208. CIVIL PENALTIES FOR VIOLATIONS OF FEDERAL**
11 **HEALTH CARE OFFENSES.**

12 (a) IN GENERAL.—Chapter 63 of title 18, United
13 States Code, is amended by adding at the end the follow-
14 ing:

15 **‘‘§ 1348. Civil penalties for violations of Federal**
16 **health care offenses**

17 ‘‘The Attorney General may bring a civil action in
18 the appropriate United States district court against any
19 person who engages in conduct constituting a Federal
20 health care offense, as that term is defined in section 24
21 of this title and, upon proof of such conduct by a prepon-
22 derance of the evidence, such person shall be subject to
23 a civil penalty of not more than 3 times the amount of
24 compensation or proceeds which the person received or of-
25 fered for the prohibited conduct. The imposition of a civil

1 penalty under this section does not preclude any other
2 criminal or civil statutory, common law, or administrative
3 remedy, which is available by law to the United States or
4 any other person.''.

5 (b) CLERICAL AMENDMENT.—The table of sections
6 for chapter 63 of title 18, United States Code, is amended
7 by adding at the end the following item:

''1348. Civil penalties for violations of Federal health care offenses.''.

8 **SEC. 209. INJUNCTIVE RELIEF RELATING TO HEALTH CARE**
9 **OFFENSES.**

10 (a) IN GENERAL.—Section 1345(a)(1) of title 18,
11 United States Code, is amended—

12 (1) by striking ''or'' at the end of subparagraph
13 (A);

14 (2) by inserting ''or'' at the end of subpara-
15 graph (B); and

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

17 ''(C) committing or about to commit a
18 Federal health care offense (as defined in sec-
19 tion 24 of this title).''.

20 (b) FREEZING OF ASSETS.—Section 1345(a)(2) of
21 title 18, United States Code, is amended by inserting ''or
22 a Federal health care offense (as defined in section 24)''
23 after ''title)''.

1 **SEC. 210. AUTHORIZED INVESTIGATIVE DEMAND PROCE-**
2 **DURES.**

3 (a) IN GENERAL.—Chapter 223 of title 18, United
4 States Code, is amended by adding after section 3485 the
5 following:

6 **"§ 3486. Authorized investigative demand procedures**

7 "(a) AUTHORIZATION.—(1) In any investigation re-
8 lating to functions set forth in paragraph (2), the Attorney
9 General or the Attorney General's designee may issue in
10 writing and cause to be served a summons compelling the
11 attendance and testimony of witnesses and requiring the
12 production of any records (including any books, papers,
13 documents, electronic media, or other objects or tangible
14 things), which may be relevant to an authorized law en-
15 forcement inquiry, that a person or legal entity may pos-
16 sess or have care, custody, or control. The attendance of
17 witnesses and the production of records may be required
18 from any place in any State or in any territory or other
19 place subject to the jurisdiction of the United States at
20 any designated place of hearing; except that a witness
21 shall not be required to appear at any hearing more than
22 500 miles distant from the place where he was served with
23 a subpoena. Witnesses summoned under this section shall
24 be paid the same fees and mileage that are paid witnesses
25 in the courts of the United States. A summons requiring
26 the production of records shall describe the objects re-

1 quired to be produced and prescribe a return date within
2 a reasonable period of time within which the objects can
3 be assembled and made available.

4 ''(2) Investigative demands utilizing an administra-
5 tive summons are authorized for:

6 ''(A) Any investigation with respect to any act
7 or activity constituting an offense involving a Fed-
8 eral health care offense as that term is defined in
9 section 24 of title 18, United States Code.

10 ''(B) Any investigation, with respect to viola-
11 tions of sections 1073 and 1074 of title 18, United
12 States Code, or in which an individual has been law-
13 fully charged with a Federal offense and such indi-
14 vidual is avoiding prosecution or custody or confine-
15 ment after conviction of such offense or attempt.

16 ''(b) SERVICE.—A subpoena issued under this section
17 may be served by any person designated in the subpoena
18 to serve it. Service upon a natural person may be made
19 by personal delivery of the subpoena to him. Service may
20 be made upon a domestic or foreign corporation or upon
21 a partnership or other unincorporated association which
22 is subject to suit under a common name, by delivering the
23 subpoena to an officer, to a managing or general agent,
24 or to any other agent authorized by appointment or by
25 law to receive service of process. The affidavit of the per-

1 son serving the subpoena entered on a true copy thereof
2 by the person serving it shall be proof of service.
3 "(c) ENFORCEMENT.—In the case of contumacy by
4 or refusal to obey a subpoena issued to any person, the
5 Attorney General may invoke the aid of any court of the
6 United States within the jurisdiction of which the inves-
7 tigation is carried on or of which the subpoenaed person
8 is an inhabitant, or in which he carries on business or may
9 be found, to compel compliance with the subpoena. The
10 court may issue an order requiring the subpoenaed person
11 to appear before the Attorney General to produce records,
12 if so ordered, or to give testimony touching the matter
13 under investigation. Any failure to obey the order of the
14 court may be punished by the court as a contempt thereof.
15 All process in any such case may be served in any judicial
16 district in which such person may be found.
17 "(d) IMMUNITY FROM CIVIL LIABILITY.—Notwith-
18 standing any Federal, State, or local law, any person, in-
19 cluding officers, agents, and employees, receiving a sum-
20 mons under this section, who complies in good faith with
21 the summons and thus produces the materials sought,
22 shall not be liable in any court of any State or the United
23 States to any customer or other person for such produc-
24 tion or for nondisclosure of that production to the cus-
25 tomer.".

1 (b) CLERICAL AMENDMENT.—The table of sections
2 at the beginning of chapter 223 of title 18, United States
3 Code, is amended by inserting after the item relating to
4 section 3485 the following new item:

"3486. Authorized investigative demand procedures.".

5 (c) CONFORMING AMENDMENT.—Section
6 1510(b)(3)(B) of title 18, United States Code, is amended
7 by inserting "or a Federal Bureau of Investigation sum-
8 mons (issued under section 3486 of title 18)," after "sub-
9 poena".

10 **SEC. 211. GRAND JURY DISCLOSURE.**

11 Section 3322 of title 18, United States Code, is
12 amended—

13 (1) by redesignating subsections (c) and (d) as
14 subsections (d) and (e), respectively; and

15 (2) by inserting after subsection (b) the follow-
16 ing:

17 "(c) A person who is privy to grand jury information
18 concerning a health care offense—

19 "(1) received in the course of duty as an attor-
20 ney for the Government; or

21 "(2) disclosed under rule 6(e)(3)(A)(ii) of the
22 Federal Rules of Criminal Procedure;

23 may disclose that information to an attorney for the Gov-
24 ernment to use in any civil investigation or proceeding re-

1 lated to a Federal health care offense (as defined in sec-
2 tion 24 of this title).''.

3 **SEC. 212. MISCELLANEOUS AMENDMENTS TO TITLE 18,**
4 **UNITED STATES CODE.**

5 (a) LAUNDERING OF MONETARY INSTRUMENTS.—
6 Section 1956(c)(7) of title 18, United States Code, is
7 amended by adding at the end thereof the following:

8 ''(F) Any act or activity constituting an offense
9 involving a Federal health care offense as that term
10 is defined in section 24 of title 18, United States
11 Code.''.

12 (b) ENHANCED PENALTIES.—Section 2326(2) of title
13 18, United States Code, is amended by striking ''sections
14 that—'' and inserting ''or in the case of a Federal health
15 care offense as that term is defined in section 24 of this
16 title, that—''.

17 (c) AUTHORIZATION FOR INTERCEPTION OF WIRE,
18 ORAL, OR ELECTRONIC COMMUNICATIONS.—Section
19 2516(1)(c) of title 18, United States Code, is amended—

20 (1) by inserting ''section 226 (bribery and graft
21 in connection with health care), section 227 (illegal
22 remunerations)'' after ''section 224 (bribery in
23 sporting contests),''; and

1 (2) by inserting "section 1347 (health care
2 fraud)" after "section 1344 (relating to bank
3 fraud)," .

4 (d) DEFINITIONS.—Section 1961(1) of title 18,
5 United States Code, is amended—

6 (1) by inserting "sections 226 and 227 (relating
7 to bribery and graft, and illegal remuneration in
8 connection with health care)" after "section 224 (re-
9 lating to sports bribery),";

10 (2) by inserting "section 669 (relating to theft
11 or embezzlement in connection with health care)"
12 after "section 664 (relating to embezzlement from
13 pension and welfare funds),"; and

14 (3) by inserting "section 1347 (relating to
15 health care fraud)" after "section 1344 (relating to
16 financial institution fraud),".

17 (e) CRIMINAL FORFEITURE.—Section 982(a) of title
18 18, United States Code, is amended by adding at the end
19 the following new paragraph:

20 "(6) The court in imposing sentence on a per-
21 son convicted of a Federal health care offense as de-
22 fined in section 24 of this title, shall order that the
23 offender forfeit to the United States any real or per-
24 sonal property constituting or derived from proceeds

1 that the offender obtained directly or indirectly as
2 the result of the offense.''.
3 (f) REWARDS FOR INFORMATION LEADING TO PROS-
4 ECUTION AND CONVICTION.—Section 3059(c)(1) of title
5 18, United States Code, is amended by inserting ''or fur-
6 nishes information unknown to the Government relating
7 to a possible prosecution of a Federal health care offense
8 as defined in section 24 of this title, which results in a
9 conviction'' before the period at the end.

10 TITLE III—ANTI-FRAUD INITIA-
11 TIVES UNDER MEDICARE AND
12 MEDICAID

13 SEC. 301. REVISION TO CURRENT PENALTIES.

14 (a) PERMISSIVE EXCLUSION OF INDIVIDUALS WITH
15 OWNERSHIP OR CONTROL INTEREST IN SANCTIONED EN-
16 TITIES.—Section 1128(b) of the Social Security Act (42
17 U.S.C. 1320a–7(b)) is amended by adding at the end the
18 following new paragraph:
19 ''(15) INDIVIDUALS CONTROLLING A SANC-
20 TIONED ENTITY.—Any individual who has a direct
21 or indirect ownership or control interest of 5 percent
22 or more, or an ownership or control interest (as de-
23 fined in section 1124(a)(3)) in, or who is an officer,
24 director, agent, or managing employee (as defined in
25 section 1126(b)) of, an entity—

1 "(A) that has been convicted of any offense described in subsection (a) or in paragraph (1), (2), or (3) of this subsection;
4 "(B) against which a civil monetary penalty has been assessed under section 1128A; or
6 "(C) that has been excluded from participation under a program under title XVIII or under a State health care program.".
9 (b) IMPOSITION OF CIVIL MONETARY PENALTY ON EMPLOYER BILLING FOR SERVICES FURNISHED BY EXCLUDED EMPLOYEE.—Section 1128A(a)(1) of the Social Security Act (42 U.S.C. 1320a–7a(a)(1)) is amended—
13 (1) by striking "or" at the end of subparagraph (C);
15 (2) by striking "; or" at the end of subparagraph (D) and inserting ", or"; and
17 (3) by adding at the end the following new subparagraph:
19 "(E) is for a medical or other item or service furnished by an individual who is an employee or agent of the person during a period in which such employee or agent was excluded from the program under which the claim was made on any of the grounds for exclusion described in subparagraph (D);".

1 (c) DEPOSIT OF PENALTIES INTO HEALTH CARE
2 FRAUD AND ABUSE CONTROL ACCOUNT.—Section
3 1128A(f)(3) of such Act (42 U.S.C. 1320a–7a(f)(3)) is
4 amended by striking ''as miscellaneous receipts of the
5 Treasury of the United States'' and inserting ''in the
6 Health Care Fraud and Abuse Control Account estab-
7 lished under section 104 of the Health Care Fraud and
8 Abuse Prevention Act of 1996''.
9 (d) EFFECTIVE DATE.—The amendments made by
10 this section shall apply with respect to sanctions imposed
11 for acts or omissions occurring on or after the date of the
12 enactment of this Act.

13 **SEC. 302. SOLICITATION AND PUBLICATION OF MODIFICA-**
14 **TIONS TO EXISTING SAFE HARBORS AND NEW**
15 **SAFE HARBORS; ADDITIONAL EXCEPTION**
16 **FOR CERTAIN DISCOUNTING AND MANAGED**
17 **CARE ARRANGEMENTS.**

18 (a) IN GENERAL.—
19 (1) SOLICITATION OF PROPOSALS FOR SAFE
20 HARBORS.—Not later than one year after the date
21 of the enactment of this Act and not less than every
22 2 years thereafter, the Secretary of Health and
23 Human Services (hereafter in this title referred to as
24 the ''Secretary'') shall publish a notice in the Fed-

1 eral Register soliciting proposals, which will be ac-
2 cepted during a 60-day period, for—
3 (A) modifications to existing safe harbors
4 issued pursuant to section 14(a) of the Medi-
5 care and Medicaid Patient and Program Protec-
6 tion Act of 1987; and
7 (B) additional safe harbors specifying pay-
8 ment practices that shall not be treated as a
9 criminal offense under section 1128B(b) of the
10 Social Security Act and shall not serve as the
11 basis for an exclusion under section 1128(b)(7)
12 of such Act.
13 (2) PUBLICATION OF PROPOSED MODIFICA-
14 TIONS AND PROPOSED ADDITIONAL SAFE HAR-
15 BORS.—After considering the proposals described in
16 paragraph (1), the Secretary, in consultation with
17 the Attorney General, shall publish in the Federal
18 Register proposed modifications to existing safe har-
19 bors and proposed additional safe harbors, if appro-
20 priate, with a 60-day comment period. After consid-
21 ering any public comments received during this pe-
22 riod, the Secretary shall issue final rules modifying
23 the existing safe harbors and establishing new safe
24 harbors, as appropriate.

1 (3) REPORT.—The Inspector General of the
2 Department of Health and Human Services (here-
3 after in this section referred to as the ''Inspector
4 General'') shall, in an annual report to Congress or
5 as part of the year-end semiannual report required
6 by section 5 of the Inspector General Act of 1978,
7 describe the proposals received under paragraph (1)
8 and explain which proposals were included in the
9 publication described in paragraph (2), which pro-
10 posals were not included in that publication, and the
11 reasons for the rejection of the proposals that were
12 not included.

13 (b) CRITERIA FOR MODIFYING AND ESTABLISHING
14 SAFE HARBORS.—In modifying and establishing safe har-
15 bors under subsection (a)(2), the Secretary may consider
16 the extent to which providing a safe harbor for the speci-
17 fied payment practice may result in any of the following:

18 (1) An increase or decrease in access to health
19 care services.

20 (2) An increase or decrease in the quality of
21 health care services.

22 (3) An increase or decrease in patient freedom
23 of choice among health care providers.

24 (4) An increase or decrease in competition
25 among health care providers.

(5) An increase or decrease in the ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

(6) An increase or decrease in the cost to health care programs operated or financed by the Federal, State, or local governments.

(7) An increase or decrease in the potential overutilization of health care services.

(8) The existence or nonexistence of any potential financial benefit to a health care professional or provider which may vary based on their decisions of—

(A) whether to order a health care item or service; or

(B) whether to arrange for a referral of health care items or services to a particular practitioner or provider.

(9) Any other factors the Secretary deems appropriate in the interest of preventing fraud and abuse in health care programs operated or financed by the Federal, State, or local governments.

(c) EXCEPTION TO ANTI-KICKBACK PROHIBITIONS FOR CERTAIN DISCOUNTING AND MANAGED CARE ARRANGEMENTS.—

1 (1) IN GENERAL.—Section 1128B(b)(3) of the
2 Social Security Act (42 U.S.C. 1320a–7b(b)(3)) is
3 amended—
4 (A) by striking "and" at the end of sub-
5 paragraph (D);
6 (B) by striking the period at the end of
7 subparagraph (E) and inserting "; and"; and
8 (C) by adding at the end the following new
9 subparagraph:
10 "(F) any remuneration between an organization
11 and an individual or entity providing items or serv-
12 ices, or a combination thereof, pursuant to a written
13 agreement between the organization and the individ-
14 ual or entity if the organization is an eligible organi-
15 zation under section 1876 or if the written agree-
16 ment places the individual or entity at substantial fi-
17 nancial risk for the cost or utilization of the items
18 or services, or a combination thereof, which the indi-
19 vidual or entity is obligated to provide, whether
20 through a withhold, capitation, incentive pool, per
21 diem payment, or any other similar risk arrange-
22 ment which places the individual or entity at sub-
23 stantial financial risk.".

1 (2) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply to written agreements
3 entered into on or after January 1, 1997.

4 **SEC. 303. EXPEDITING IMPLEMENTATION OF PAYMENT AD-**
5 **JUSTMENTS FOR DURABLE MEDICAL EQUIP-**
6 **MENT BASED UPON INHERENT REASONABLE-**
7 **NESS.**

8 The first sentence of section 1834(a)(10)(B) of the
9 Social Security Act (42 U.S.C. 1395m(a)(10)(B)) is
10 amended by striking the period and inserting the follow-
11 ing: '', except that (notwithstanding any provision of such
12 paragraphs or this title) the Secretary shall make an ad-
13 justment in payment for an item under this subsection
14 pursuant to this subparagraph through the issuance of an
15 interim final regulation issued not later than 1 year after
16 the Secretary initially proposes to make the adjustment.''.

17 **SEC. 304. REQUIRING ANNUAL NOTICE TO MEDICARE**
18 **BENEFICIARIES OF NEED TO PREVENT**
19 **FRAUD AND ABUSE AGAINST MEDICARE PRO-**
20 **GRAM.**

21 (a) IN GENERAL.—Section 1804(a) of the Social Se-
22 curity Act (42 U.S.C. 1395b–2(a)) is amended—
23 (1) by striking ''and'' at the end of paragraph
24 (2);

1 (2) by striking the period at the end of para-
2 graph (3) and inserting ", and"; and
3 (3) by inserting after paragraph (3) the follow-
4 ing new paragraph:
5 "(4) a description of the costs to the medicare
6 program of waste, fraud, and abuse, together with
7 suggestions for steps which medicare beneficiaries
8 may take to help combat waste, fraud, and abuse
9 against the program, including the toll-free tele-
10 phone number operated by the Secretary and the In-
11 spector General of the Department of Health and
12 Human Services for reporting information on fraud
13 and abuse against the program and the potential
14 availability of a reward for individuals reporting in-
15 formation which leads to a criminal prosecution and
16 conviction for health care fraud under title 18, Unit-
17 ed States Code.".
18 (b) EFFECTIVE DATE.—The amendment made by
19 subsection (a) shall apply to the annual notice mailed
20 under section 1804(a) of the Social Security Act for years
21 beginning with 1997.

1 **SEC. 305. REQUIRING USE OF SINGLE PROVIDER NUMBER**
2 **IN SUBMISSION OF CLAIMS FOR PAYMENT**
3 **UNDER MEDICARE AND MEDICAID.**

4 (a) USE OF SINGLE NUMBER UNDER MEDICARE; IN-
5 CLUDING DOCUMENTATION ON SOLVENCY AND FISCAL
6 INTEGRITY.—Section 1842(r) of the Social Security Act
7 (42 U.S.C. 1395u(r)) is amended to read as follows:

8 ''(r)(1) Not later than 1 year after the date of the
9 enactment of the Health Care Fraud and Abuse Preven-
10 tion Act of 1996, the Secretary shall establish a system
11 which provides for a unique identifier for each individual
12 or entity who furnishes items or services for which pay-
13 ment may be made under this part.

14 ''(2) The Secretary may not provide a unique identi-
15 fier to an individual or entity under the system established
16 under paragraph (1) unless the individual or entity sub-
17 mits such documentation relating to financial solvency and
18 fiscal integrity as the Secretary may require to ensure that
19 the issuance of the unique identifier to the individual or
20 entity will not expose the program under this part to
21 waste, fraud, and abuse, except that the Secretary may
22 waive the application of this paragraph in the case of—

23 ''(A) a provider of services (as defined in sec-
24 tion 1861(u)); or

25 ''(B) an individual or entity eligible to receive
26 payment for items or services furnished under this

part on the basis of licensure or authorization under State law (or the State regulatory mechanism provided by State law) to furnish the items or services.

"(3) No payment may be made under this title for any item or service furnished by an individual or entity unless the claim for payment with respect to the item or service includes the unique identifier provided to the individual or entity under the system established under paragraph (1).".

(b) PROVIDING MEDICARE NUMBER FOR SUBMISSION OF MEDICAID CLAIMS.—Section 1902(x) of such Act (42 U.S.C. 1396a(x)) is amended—

(1) by striking "(x)" and inserting "(x)(1)"; and

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

"(2) If an individual or entity submitting a claim to the State for payment for providing medical assistance under the State plan has a unique identifier assigned by the Secretary pursuant to section 1842(r) for purposes of title XVIII, the individual or entity shall include the identifier with such claim.".

1 **SEC. 306. LIABILITY OF CARRIERS AND FISCAL**
2 **INTERMEDIARIES FOR CLAIMS SUBMITTED**
3 **BY EXCLUDED PROVIDERS.**

4 (a) REIMBURSEMENT TO SECRETARY FOR AMOUNTS
5 PAID TO EXCLUDED PROVIDERS.—

6 (1) REQUIREMENT FOR FISCAL
7 INTERMEDIARIES.—

8 (A) IN GENERAL.—Section 1816 of the So-
9 cial Security Act (42 U.S.C. 1395h) is amended
10 by adding at the end the following new sub-
11 section:

12 ''(l) An agreement with an agency or organization
13 under this section shall require that such agency or orga-
14 nization reimburse the Secretary for any amounts paid for
15 a service under this title which is furnished by an individ-
16 ual or entity during any period for which the individual
17 or entity is excluded pursuant to section 1128, 1128A,
18 1156, or subsection (j)(2) from participation in the pro-
19 gram under this title, if the amounts are paid after the
20 Secretary notifies the agency or organization of the exclu-
21 sion.''.

22 (B) CONFORMING AMENDMENT.—Section
23 1816(i) of such Act (42 U.S.C. 1395h(i)) is
24 amended by adding at the end the following
25 new paragraph:

1 ''(4) Nothing in this subsection shall be construed to
2 prohibit reimbursement by an agency or organization
3 under subsection (l).''.

4 (2) REQUIREMENT FOR CARRIERS.—Section
5 1842(b)(3) of such Act (42 U.S.C. 1395u(b)(3)) is
6 amended—

7 (A) by striking ''and'' at the end of sub-
8 paragraph (I); and

9 (B) by inserting after subparagraph (I) the
10 following new subparagraph:

11 ''(J) will reimburse the Secretary for any
12 amounts paid for an item or service under this part
13 which is furnished by an individual or entity during
14 any period for which the individual or entity is ex-
15 cluded pursuant to section 1128, 1128A, 1156, or
16 subsection (j)(2) from participation in the program
17 under this title, if the amounts are paid after the
18 Secretary notifies the carrier of the exclusion; and''.

19 (b) CONFORMING REPEAL OF MANDATORY PAYMENT
20 RULE.—Section 1862(e)(2) of such Act (42 U.S.C.
21 1395y(e)(2)) is amended to read as follows:

22 ''(2) No individual or entity may bill (or collect any
23 amount from) any individual for any item or service for
24 which payment is denied under paragraph (1). No person
25 is liable for payment of any amounts billed for such an

1 item or service in violation of the previous sentence. If an
2 individual or entity knowingly and willfully bills (or col-
3 lects an amount) for such an item or service in violation
4 of such sentence, the Secretary may apply sanctions
5 against the individual or entity in the same manner as
6 the Secretary may apply sanctions against a physician in
7 accordance with subsection (j)(2) in the same manner as
8 such section applies with respect to a physician. Para-
9 graph (4) of subsection (j) shall apply in this paragraph
10 in the same manner as such paragraph applies to such
11 section.''.

12 **SEC. 307. REQUIRING FISCAL INTERMEDIARIES AND CAR-**
13 **RIERS TO USE AUTOMATED DATA PROCESS-**
14 **ING EQUIPMENT COMPARABLE TO EQUIP-**
15 **MENT USED IN PRIVATE INSURANCE BUSI-**
16 **NESS.**

17 (a) IN GENERAL.—

18 (1) REQUIREMENT FOR FISCAL
19 INTERMEDIARIES.—Section 1816(f)(2) of the Social
20 Security Act (42 U.S.C. 1395h(f)(2)) is amended—

21 (A) by striking ''and'' at the end of sub-
22 paragraph (A);

23 (B) by striking the period at the end of
24 subparagraph (B) and inserting ''; and''; and

1 (C) by adding at the end the following new
2 subparagraph:
3 ''(C) in the case of an agency or organization
4 which processes claims for private insurance, a re-
5 quirement that the automated data processing equip-
6 ment used by the agency or organization in carrying
7 out the agreement under this section is as effective
8 (or more effective) in detecting code manipulations,
9 unbundling, global service violations, double billings,
10 and other forms of waste, fraud, and abuse as the
11 equipment the agency or organization uses in proc-
12 essing claims for private insurance.''.
13 (2) REQUIREMENT FOR CARRIERS.—Section
14 1842(b)(3) of such Act (42 U.S.C. 1395u(b)(3)) is
15 amended—
16 (A) by striking ''and'' at the end of sub-
17 paragraph (I); and
18 (B) by inserting after subparagraph (I) the
19 following new subparagraph:
20 ''(J) if it processes claims for private insurance,
21 will use automated data processing equipment in
22 carrying out the contract that is as effective (or
23 more effective) in detecting code manipulations,
24 unbundling, global service violations, double billings,
25 and other forms of waste, fraud, and abuse as the

equipment it uses in processing claims for private insurance; and''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to agreements with agencies and organizations under section 1816 of the Social Security Act and contracts with carriers under section 1842 of such Act for contract years beginning after the date of the enactment of this Act.

SEC. 308. NONDISCHARGEABILITY UNDER BANKRUPTCY CODE OF AMOUNTS OWED FOR OVERPAYMENTS.

(a) IN GENERAL.—Section 523(a) of title 11, United States Code, is amended—

(1) by striking the period at the end of paragraph (16) and inserting ''; or''; and

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

''(17) to the extent such debt is for amounts owed for overpayments made under title XVIII of the Social Security Act.''.

(b) APPLICABILITY UNDER CHAPTER 13.—Section 1328(a)(2) of title 11, United States Code, is amended by striking ''or (9)'' and inserting ''(9), or (17)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply only with respect to cases com-

1 menced under title 11, United States Code, after the date
2 of the enactment of this Act.

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