

105TH CONGRESS  
1ST SESSION

# H. R. 1761

To provide for improved coordination, communication, and enforcement related to health care fraud, waste, and abuse, to create a point of order against legislation which diverts savings achieved through Medicare waste, fraud, and abuse enforcement activities for purposes other than improving the solvency of the Federal Hospital Insurance Trust Fund under title XVIII of the Social Security Act, to ensure the integrity of such trust fund, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 3, 1997

Mr. DAVIS of Florida introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Commerce, and the Judiciary, 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 provide for improved coordination, communication, and enforcement related to health care fraud, waste, and abuse, to create a point of order against legislation which diverts savings achieved through Medicare waste, fraud, and abuse enforcement activities for purposes other than improving the solvency of the Federal Hospital Insurance Trust Fund under title XVIII of the Social Security Act, to ensure the integrity of such trust fund, 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; REFERENCES IN ACT; TABLE OF**  
 4 **CONTENTS.**

5 (a) **SHORT TITLE.**—This Act may be cited as the  
 6 “Medicare Antifraud Act of 1997”.

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

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

Sec. 1. Short title; references in act; table of contents.

**TITLE I—PROTECTING PROGRAM INTEGRITY**

- Sec. 101. Disclosure of information and surety bond requirements.
- Sec. 102. Requirements to disclose employer identification numbers and social security numbers.
- Sec. 103. Requirement to furnish diagnostic information.
- Sec. 104. Replacement of reasonable charge methodology by fee schedules.
- Sec. 105. Application of inherent reasonableness.
- Sec. 106. Exclusion of entity controlled by family member of a sanctioned individual.
- Sec. 107. Liability of medicare carriers and fiscal intermediaries and States for claims submitted by excluded providers.
- Sec. 108. Authority to refuse to enter into medicare or medicaid agreements with individuals or entities convicted of felonies.
- Sec. 109. Application of certain provisions of the bankruptcy code.
- Sec. 110. Inspector general access to national practitioner data bank.
- Sec. 111. State health care fraud control units.
- Sec. 112. Ensuring the integrity of the Federal hospital insurance trust fund.
- Sec. 113. Requirement for annual GAO report.
- Sec. 114. Prohibition on consideration of legislation that diverts savings achieved through medicare waste, fraud, and abuse enforcement activities for purposes other than improving the solvency of the Federal hospital insurance trust fund.

## TITLE II—SANCTIONS FOR FRAUD AND ABUSE

- Sec. 201. Civil monetary penalties for kickbacks.  
 Sec. 202. Civil monetary penalties for persons that contract with excluded individuals.  
 Sec. 203. Civil monetary penalties for services ordered or prescribed by an excluded individual or entity.

## TITLE III—TECHNICAL CLARIFICATIONS AND CORRECTIONS

- Sec. 301. Definition of the term conviction.  
 Sec. 302. Proper reference in advisory opinions.  
 Sec. 303. Ensuring proper implementation of Federal health care program exclusions.

## TITLE IV—COORDINATION OF BENEFITS

- Sec. 401. Permanent extension of certain secondary payer provisions.  
 Sec. 402. Technical changes concerning minimum sizes of group health plans.  
 Sec. 403. Information requirements.  
 Sec. 404. Clarification of time and filing limitations.  
 Sec. 405. Clarification of liability of third party administrators.  
 Sec. 406. Clarification of payment amounts to medicare.

1                   **TITLE I—PROTECTING**  
 2                   **PROGRAM INTEGRITY**

3   **SEC. 101. DISCLOSURE OF INFORMATION AND SURETY**  
 4                   **BOND REQUIREMENTS.**

5           (a) DISCLOSURE OF INFORMATION AND SURETY  
 6 BOND REQUIREMENT FOR SUPPLIERS OF DURABLE MED-  
 7 ICAL EQUIPMENT.—Section 1834(a) (42 U.S.C.  
 8 1395m(a)) is amended by inserting after paragraph (15)  
 9 the following:

10           “(16) DISCLOSURE OF INFORMATION.—

11                   “(A) IN GENERAL.—The Secretary shall not  
 12 provide for the issuance (or renewal) of a provider  
 13 number for a supplier of durable medical equipment,  
 14 for purposes of payment under this part for durable  
 15 medical equipment furnished by the supplier, unless

1 the supplier provides the Secretary on a continuing  
2 basis with—

3 “(i)(I) full and complete information as to  
4 the identity of each person with an ownership  
5 or control interest (as defined in section  
6 1124(a)(3)) in the supplier or in any sub-  
7 contractor (as defined by the Secretary in regu-  
8 lations) in which the supplier directly or indi-  
9 rectly has a 5 percent or more ownership inter-  
10 est, and

11 “(II) to the extent determined to be fea-  
12 sible under regulations of the Secretary, the  
13 name of any disclosing entity (as defined in sec-  
14 tion 1124(a)(2)) with respect to which a person  
15 with such an ownership or control interest in  
16 the supplier is a person with such an ownership  
17 or control interest in the disclosing entity; and

18 “(ii) a surety bond in a form specified by  
19 the Secretary and in an amount that is not less  
20 than \$50,000.”.

21 (b) SURETY BOND REQUIREMENT FOR HOME  
22 HEALTH AGENCIES.—

23 (1) IN GENERAL.—Section 1861(o)(7) (42  
24 U.S.C. 1395x(o)(7)) is amended by inserting “and  
25 including providing the Secretary on a continuing

1 basis with a surety bond in a form specified by the  
2 Secretary and in an amount that is not less than  
3 \$50,000” after “financial security of the program”.

4 (2) CONFORMING AMENDMENTS.—Section  
5 1861(v)(1)(H) (42 U.S.C. 1395x(v)(1)(H)) is  
6 amended by striking “the financial security require-  
7 ment” and inserting “the financial security and sur-  
8 ety bond requirements” each place it appears in  
9 clauses (i) and (ii).

10 (c) AUTHORIZING APPLICATION OF DISCLOSURE AND  
11 SURETY BOND REQUIREMENTS TO AMBULANCE SERV-  
12 ICES AND CERTAIN CLINICS.—Section 1834(a)(16) (42  
13 U.S.C. 1395m(a)(16)) (as added by subsection (a) of this  
14 section) is amended by adding at the end the following:

15 “(B) APPLICATION TO AMBULANCE SERVICES  
16 AND CERTAIN CLINICS.—The Secretary, in the Sec-  
17 retary’s discretion, may impose the requirements of  
18 the previous sentence with respect to some or all  
19 classes of suppliers of ambulance services described  
20 in section 1861(s)(7) and clinics that furnish medi-  
21 cal and other health services (other than physicians’  
22 services) under this part.”.

23 (d) EFFECTIVE DATES.—

24 (1) SUBSECTION (a).—The amendment made  
25 by subsection (a) shall apply to suppliers of durable

1 medical equipment with respect to such equipment  
2 furnished on or after January 1, 1998.

3 (2) SUBSECTION (b).—

4 (A) IN GENERAL.—The amendments made  
5 by subsection (b) shall apply to home health  
6 agencies with respect to services furnished on or  
7 after January 1, 1998.

8 (B) PARTICIPATION AGREEMENTS.—The  
9 Secretary of Health and Human Services shall  
10 modify participation agreements under section  
11 1866(a)(1) of the Social Security Act with re-  
12 spect to home health agencies to provide for im-  
13 plementation of such amendments on a timely  
14 basis.

15 (3) SUBSECTION (c).—The amendment made  
16 by subsection (c) shall take effect on the date of en-  
17 actment of this Act and may be applied with respect  
18 to items and services furnished on or after the date  
19 specified in paragraph (1).

20 **SEC. 102. REQUIREMENTS TO DISCLOSE EMPLOYER IDEN-**  
21 **TIFICATION NUMBERS AND SOCIAL SECU-**  
22 **RITY NUMBERS.**

23 (a) DISCLOSING ENTITIES, OWNERS, AND CONTROL-  
24 LING INTERESTS.—Section 1124 (42 U.S.C. 1320a–3) is  
25 amended by adding at the end the following:

1       “(c) REQUIREMENT TO FURNISH SOCIAL SECURITY  
2 NUMBERS AND EMPLOYER IDENTIFICATION NUMBERS.—

3 A payment shall not be made to a disclosing entity under  
4 title V, XVIII, or XIX unless the disclosing entity fur-  
5 nishes to the Secretary the employer identification number  
6 and social security number of—

7           “(1) the disclosing entity;

8           “(2) each person with an ownership or control  
9 interest; and

10          “(3) any subcontractor in which the entity di-  
11 rectly or indirectly has a 5 percent or more owner-  
12 ship interest.”.

13       (b) OTHER MEDICARE PROVIDERS.—Section 1124A  
14 (42 U.S.C. 1320a–3a) is amended—

15           (1) in subsection (a)—

16               (A) in paragraph (1), by striking “and” at  
17 the end;

18               (B) in paragraph (2), by striking the pe-  
19 riod at the end and inserting “; and”; and

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

21           “(3) including the employer identification num-  
22 ber and social security number of the disclosing part  
23 B provider and any person, managing employee, or  
24 other entity identified under paragraph (1) or (2).”;  
25 and

1           (2) in subsection (c)(1) by inserting “(or, for  
2           purposes of subsection (a)(3), any entity receiving  
3           payment)” after “on an assignment-related basis”.

4           (c) VERIFICATION BY SOCIAL SECURITY ADMINIS-  
5 TRATION.—Section 1124A (42 U.S.C. 1320a–3a) is  
6 amended—

7           (1) by redesignating subsection (c) as sub-  
8           section (d); and

9           (2) by inserting after subsection (b) the follow-  
10          ing:

11          “(c) VERIFICATION BY SOCIAL SECURITY ADMINIS-  
12 TRATION.—

13           “(1) TRANSMITTAL BY HHS.—The Secretary  
14           shall transmit to the Social Security Administration  
15           information concerning each social security number  
16           and employer identification number supplied to the  
17           Secretary under to subsection (a)(3) or section  
18           1124(c) as necessary for verification of the informa-  
19           tion required under paragraph (2).

20           “(2) VERIFICATION BY SSA.—The Social Secu-  
21           rity Administration shall verify the accuracy of and  
22           correct, if necessary, the information supplied by the  
23           Secretary under paragraph (1) and shall report the  
24           verification to the Secretary.

1           “(3) FEES FOR SSA VERIFICATION.—The Sec-  
2           retary shall reimburse the Commissioner of Social  
3           Security, at a rate negotiated between the Secretary  
4           and the Commissioner, for the costs incurred by the  
5           Commissioner in performing the verification and cor-  
6           rection services described in this subsection.”.

7   **SEC. 103. REQUIREMENT TO FURNISH DIAGNOSTIC INFOR-**  
8                                   **MATION.**

9           (a) INCLUSION OF NON-PHYSICIAN PRACTITIONERS  
10          IN REQUIREMENT TO PROVIDE DIAGNOSTIC CODES FOR  
11          PHYSICIAN SERVICES.—Paragraphs (1) and (2) of section  
12          1842(p) (42 U.S.C. 1395u(p)) are each amended by in-  
13          serting “or practitioner described in subsection  
14          (b)(18)(C)” after “by a physician”.

15          (b) REQUIREMENT TO PROVIDE DIAGNOSTIC INFOR-  
16          MATION WHEN ORDERING CERTAIN ITEMS OR SERVICES  
17          FURNISHED BY ANOTHER ENTITY.—Section 1842(p) (42  
18          U.S.C. 1395u(p)), as amended by subsection (a), is  
19          amended by adding at the end the following:

20                 “(4) In the case of an item of service (as described  
21                 in paragraph (3), (6), (8), or (9) of subsection 1861(s))  
22                 ordered by a physician or a practitioner described in sub-  
23                 section (b)(18)(C), but furnished by another entity, if the  
24                 Secretary (or fiscal agent of the Secretary) requires the  
25                 entity furnishing the item or service to provide diagnostic

1 or other medical information for payment to be made to  
2 the entity, the physician or practitioner shall provide that  
3 information to the entity at the time that the item or serv-  
4 ice is ordered by the physician or practitioner.”.

5 (c) EFFECTIVE DATE.—The amendments made by  
6 subsections (a) and (b) apply to items and services fur-  
7 nished on or after January 1, 1998.

8 **SEC. 104. REPLACEMENT OF REASONABLE CHARGE METH-**  
9 **ODOLOGY BY FEE SCHEDULES.**

10 (a) IN GENERAL.—Section 1833(a)(1) (42 U.S.C.  
11 1395l(a)(1)) is amended in the matter preceding subpara-  
12 graph (A) by striking “the reasonable charges for the serv-  
13 ices” and inserting “the lesser of the actual charges for  
14 the services and the amounts determined by the applicable  
15 fee schedules developed by the Secretary for the particular  
16 services”.

17 (b) CONFORMING AMENDMENTS.—

18 (1) SECTION 1833(a).—Section 1833(a) (42  
19 U.S.C. 1395l(a)) is amended—

20 (A) in paragraph (1)—

21 (i) in subparagraph (A), by striking  
22 “reasonable charges for” and inserting  
23 “payment basis otherwise applicable to”;

1 (ii) in subparagraph (B), by striking  
2 “reasonable charges” and inserting “fee  
3 schedule amounts”; and

4 (iii) by inserting after subparagraph  
5 (F) the following: “(G) with respect to  
6 services described in clause (i) or (ii) of  
7 section 1861(s)(2)(K) (relating to physi-  
8 cian assistants and nurse practitioners),  
9 the amounts paid shall be 80 percent of  
10 the lesser of the actual charge for the serv-  
11 ices and the applicable amount determined  
12 under subclause (I) or (II) of section  
13 1842(b)(12)(A)(ii),”; and

14 (B) in paragraph (2)—

15 (i) in subparagraph (B), in the matter  
16 preceding clause (i), by striking “(C),  
17 (D),” and inserting “(D)”; and

18 (ii) by striking subparagraph (C).

19 (2) SECTION 1833(l).—Section 1833(l) (42  
20 U.S.C. 1395l(l)) is amended—

21 (A) in paragraph (3)—

22 (i) by striking subparagraph (B); and

23 (ii) by striking “(3)(A)” and inserting  
24 “(3)”; and

25 (B) by striking paragraph (6).

1           (3) SECTION 1834.—Section 1834(g)(1)(A)(ii)  
2           (42 U.S.C. 1395m(g)(1)(A)(ii)) is amended in the  
3           heading by striking “REASONABLE CHARGES FOR  
4           PROFESSIONAL” and inserting “PROFESSIONAL”.

5           (4) SECTION 1842(a).—Section 1842(a) (42  
6           U.S.C. 1395u(a)) is amended—

7                   (A) in the matter preceding paragraph (1),  
8                   by striking “reasonable charge” and inserting  
9                   “fee schedule”; and

10                   (B) in paragraph (1)(A), by striking “rea-  
11                   sonable charge” and inserting “other”.

12           (5) SECTION 1842(b).—Section 1842(b) (42  
13           U.S.C. 1395u(b)) is amended—

14                   (A) in paragraph (3)—

15                           (i) in subparagraph (B)—

16                                   (I) in the matter preceding clause  
17                                   (i), by striking “assure that,” and all  
18                                   that follows through “such payment”  
19                                   and inserting the following: “where  
20                                   payment under this part for a service  
21                                   is on a basis other than a cost basis,  
22                                   such payment”; and

23                                   (II) in clause (ii), by amending  
24                                   subclause (I) to read as follows: “(I)  
25                                   the amount determined by the appli-

1 cable payment basis under this part is  
2 the full charge for the service,”; and  
3 (ii) by striking the second through the  
4 ninth sentences;

5 (B) by amending paragraph (4) to read as  
6 follows:

7 “(4) In the case of an enteral or parenteral pump  
8 that is furnished on a rental basis during a period of medi-  
9 cal need—

10 “(A) monthly rental payments shall not be  
11 made under this part for more than 15 months dur-  
12 ing that period, and

13 “(B) after monthly rental payments have been  
14 made for 15 months during that period, payment  
15 under this part shall be made for maintenance and  
16 servicing of the pump in amounts that the Secretary  
17 determines to be reasonable and necessary to ensure  
18 the proper operation of the pump.”;

19 (C) in paragraph (7)—

20 (i) in subparagraph (D)—

21 (I) in clause (i), in the matter  
22 preceding subclause (I), by striking “,  
23 to the extent that such payment is  
24 otherwise allowed under this para-  
25 graph”; and

1 (II) in clause (ii), by striking  
2 “subparagraph” and inserting “para-  
3 graph”;

4 (ii) by striking subparagraphs (A),  
5 (B), and (C);

6 (iii) by striking “(D)(i)” and inserting  
7 “(7)(A)”;

8 (iv) in subparagraph (A), as redesign-  
9 nated by clause (iii), by—

10 (I) redesignating clauses (ii) and  
11 (iii) as subparagraphs (B) and (C),  
12 respectively; and

13 (II) by redesignating subclauses  
14 (I), (II), and (III) as clauses (i), (ii),  
15 and (iii), respectively;

16 (D) by striking paragraphs (9) and (10);

17 (E) in paragraph (11)—

18 (i) by striking subparagraphs (B),  
19 (C), and (D);

20 (ii) by striking “(11)(A)” and insert-  
21 ing “(11)”, and

22 (iii) by redesignating clauses (i) and  
23 (ii) as subparagraphs (A) and (B), respec-  
24 tively;

25 (F) in paragraph (12)(A)(ii)—

1 (i) in the matter preceding subclause  
2 (I), by striking “prevailing charges deter-  
3 mined under paragraph (3)” and inserting  
4 “the amounts determined under section  
5 1833(a)(1)(G)”;

6 (ii) in subclause (II), by striking “pre-  
7 vailing charge rate” and all that follows  
8 through the period and inserting “fee  
9 schedule amount specified in section 1848  
10 for such services performed by physi-  
11 cians.”;

12 (G) by striking paragraphs (14), (15),  
13 (16), and (17);

14 (H) in paragraph (18)(A), by striking  
15 “reasonable charge or”;

16 (I) by redesignating paragraph (18) as  
17 paragraph (14).

18 (6) ELIMINATION OF REDUNDANT LAN-  
19 GUAGE.—Section 6112(b) of the Omnibus Reconcili-  
20 ation Act of 1989 (42 U.S.C. 1395m note; Public  
21 Law 101–239) is repealed.

22 (7) SECTION 1842(j).—Section 1842(j) (42  
23 U.S.C. 1395u(j)) is amended—

24 (A) by amending paragraph (1) to read as  
25 follows:

1 “(j)(1) Sanctions may be applied under paragraph  
2 (2) as provided in subsections (k), (l), (m), (n), and (p).”;  
3 and

4 (B) in paragraph (4), by striking “under  
5 paragraph (1)”.

6 (8) SECTION 1842(n).—Section 1842(n)(1)(A)  
7 (42 U.S.C. 1395u(n)(1)(A)) is amended by striking  
8 “reasonable charge (or other applicable limit)” and  
9 inserting “other applicable limit”.

10 (9) SECTION 1842(q).—Section 1842(q) (42  
11 U.S.C. 1395u(q)) is amended—

12 (A) by striking paragraph (1)(B); and

13 (B) by striking “(q)(1)(A)” and inserting  
14 “(q)(1)”.

15 (10) SECTION 1845.—Section 1845(b)(1) (42  
16 U.S.C. 1395w–1(b)(1)) is amended by striking “ad-  
17 justments to the reasonable charge levels for physi-  
18 cians’ services recognized under section 1842(b)  
19 and”.

20 (11) SECTION 1848.—Section 1848(i)(3) (42  
21 U.S.C. 1395w–4(i)(3)) is repealed.

22 (12) SECTION 1866.—Section 1866(a)(2)(A)(ii)  
23 (42 U.S.C. 1395cc(a)(2)(A)(ii)) is amended by strik-  
24 ing “reasonable charges” through “provider)” and

1 inserting “amount customarily charged for the items  
2 and services by the provider”.

3 (13) SECTION 1881.—Section 1881(b)(3)(A) (42  
4 U.S.C. 1395rr(b)(3)(A)) is amended by striking “a  
5 reasonable charge” and all that follows through  
6 “section 1848)” and inserting “the basis described  
7 in section 1848”.

8 (14) OBRA-86.—Section 9340 of the Omnibus  
9 Budget Reconciliation Act of 1986 (42 U.S.C.  
10 1395u note; Public Law 99–509) is repealed.

11 (c) EFFECTIVE DATES.—The amendments made by  
12 subsections (a) and (b), to the extent the amendments  
13 substitute fee schedules for reasonable charges, apply to  
14 particular services as of the date specified by the Secretary  
15 of Health and Human Services.

16 (d) INITIAL BUDGET NEUTRALITY.—The Secretary,  
17 in developing a fee schedule for particular services (under  
18 the amendments made by subsections (a) and (b)), shall  
19 set amounts for the first year period to which the fee  
20 schedule applies at such a level that the total payments  
21 under title XVIII of the Social Security Act (42 U.S.C.  
22 1395 et seq.) for those services for that period shall be  
23 approximately equal to the estimated total payments for  
24 those services if the amendments had not been made.

1 **SEC. 105. APPLICATION OF INHERENT REASONABLENESS.**

2 (a) IN GENERAL.—Section 1834(a)(10)(B) (42  
3 U.S.C. 1395m(a)(10)(B)) is amended—

4 (1) in the first sentence, by striking “apply the  
5 provisions” and all that follows through the period  
6 and inserting “describe by regulation the factors to  
7 be used in determining the cases (or particular  
8 items) in which the application of this subsection re-  
9 sults in the determination of an amount that, by  
10 reason of its being grossly excessive or grossly defi-  
11 cient, is not inherently reasonable, and to provide in  
12 such cases for the factors that will be considered in  
13 establishing an amount that is realistic and equi-  
14 table.”; and

15 (2) in the second sentence, by striking “apply-  
16 ing such provisions” and inserting “applying the  
17 previous provisions of this subsection”.

18 (b) CONFORMING AMENDMENT.—Section 1834(i)  
19 (42 U.S.C. 1395m(i)) is amended by adding at the end  
20 the following:

21 “(3) ADJUSTMENT FOR INHERENT REASON-  
22 ABLENESS.—The provisions of subsection (a)(10)(B)  
23 shall apply to payment for surgical dressings under  
24 this subsection.”.

1 **SEC. 106. EXCLUSION OF ENTITY CONTROLLED BY FAMILY**  
2 **MEMBER OF A SANCTIONED INDIVIDUAL.**

3 Section 1128 (42 U.S.C. 1320a-7) is amended—

4 (1) in subsection (b)(8), by inserting in the  
5 matter preceding subparagraph (A) “, an immediate  
6 family member of such person (as defined in section  
7 1128(j)), or a member of the household of such per-  
8 son (as defined in section 1128(k))” after “the Sec-  
9 retary determines that a person”; and

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

11 “(j) DEFINITION OF IMMEDIATE FAMILY MEM-  
12 BER.—For purposes of subsection (b)(8), the term ‘imme-  
13 diate family member’ means—

14 “(1) a spouse;

15 “(2) a biological or adoptive parent of the indi-  
16 vidual and the individual’s spouse;

17 “(3) a child or sibling;

18 “(4) a grandparent or grandchild; or

19 “(5) an individual that is married to any of the  
20 individuals listed in paragraphs (2) through (5).

21 “(k) DEFINITION OF MEMBER OF THE HOUSE-  
22 HOLD.—For purposes of subsection (b)(8), the term  
23 ‘member of the household’ means a person sharing a com-  
24 mon abode as part of a single family unit, including do-  
25 mestic employees and others who live together as a family  
26 unit, but not including a roomer or boarder.”.

1 **SEC. 107. LIABILITY OF MEDICARE CARRIERS AND FISCAL**  
2 **INTERMEDIARIES AND STATES FOR CLAIMS**  
3 **SUBMITTED BY EXCLUDED PROVIDERS.**

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

6 (1) REQUIREMENTS FOR FISCAL  
7 INTERMEDIARIES.—

8 (A) IN GENERAL.—Section 1816 (42  
9 U.S.C. 1395h) is amended by adding at the end  
10 the following:

11 “(m) An agreement with an agency or organization  
12 under this section shall require that the agency or organi-  
13 zation reimburse the Secretary for any amounts paid for  
14 a service under this title which is furnished, directed, or  
15 prescribed by an individual or entity during any period  
16 for which the individual or entity is excluded pursuant to  
17 section 1128, 1128A, or 1156 from participation in the  
18 program under this title, if the amounts are paid after  
19 the Secretary notifies the agency or organization of the  
20 exclusion.”.

21 (B) CONFORMING AMENDMENT.—Section  
22 1816(i) (42 U.S.C. 1395h(i)) is amended by  
23 adding at the end the following:

24 “(4) Nothing in this subsection shall be con-  
25 strued to prohibit reimbursement by an agency or  
26 organization under subsection (m).”.

1           (2) REQUIREMENTS FOR CARRIERS.—Section  
2   1842(b)(3) (42 U.S.C. 1395u(b)(3)) is amended—

3           (A) by striking “and” at the end of sub-  
4   paragraph (I); and

5           (B) by inserting after subparagraph (I) the  
6   following:

7           “(J) will reimburse the Secretary for any  
8   amounts paid for an item or service under this part  
9   which is furnished, directed, or prescribed by an in-  
10   dividual or entity during any period for which the in-  
11   dividual or entity is excluded pursuant to section  
12   1128, 1128A, or 1156 from participation in the pro-  
13   gram under this title, if the amounts are paid after  
14   the Secretary notifies the carrier of the exclusion;  
15   and”.

16          (3) REQUIREMENTS FOR STATES.—Section  
17   1902(a)(39) (42 U.S.C. 1396a(a)(39)) is amended  
18   by striking the semicolon at the end and inserting “,  
19   and provide further for reimbursement to the Sec-  
20   retary of any payments made under the plan for any  
21   item or service furnished, directed, or prescribed by  
22   the excluded individual or entity during such period,  
23   after the Secretary notifies the State of such exclu-  
24   sion;”.

1 (b) CONFORMING REPEAL OF MANDATORY PAYMENT  
2 RULE.—Section 1862(e)(2) (42 U.S.C. 1395y(e)(2)) is  
3 amended to read as follows:

4 “(2) No individual or entity may bill (or collect any  
5 amount from) any individual for any item or service for  
6 which payment is denied under paragraph (1). No person  
7 is liable for payment of any amounts billed for such an  
8 item or service in violation of the previous sentence.”.

9 **SEC. 108. AUTHORITY TO REFUSE TO ENTER INTO MEDI-**  
10 **CARE OR MEDICAID AGREEMENTS WITH IN-**  
11 **DIVIDUALS OR ENTITIES CONVICTED OF**  
12 **FELONIES.**

13 (a) MEDICARE PART A.—Section 1866(b)(2) (42  
14 U.S.C. 1395cc(b)(2)) is amended—

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

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

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

20 “(D) has ascertained that the provider has  
21 been convicted of a felony under Federal or  
22 State law for an offense that the Secretary de-  
23 termines is inconsistent with the best interests  
24 of program beneficiaries.”.

1 (b) MEDICARE PART B.—Section 1842 (42 U.S.C.  
2 1395u) is amended by adding at the end the following:

3 “(s) The Secretary may refuse to enter into an agree-  
4 ment with a physician or supplier under subsection (h)  
5 or may terminate or refuse to renew such agreement, in  
6 the event that such physician or supplier has been con-  
7 victed of a felony under Federal or State law for an of-  
8 fense which the Secretary determines is inconsistent with  
9 the best interests of program beneficiaries.”.

10 (c) MEDICAID.—Section 1902(a)(23) (42 U.S.C.  
11 1396(a)(23)) is amended—

12 (1) by inserting a comma after “1915”; and

13 (2) by inserting after “Guam,” the following:

14 “and except that this provision does not require a State  
15 to provide medical assistance for such services furnished  
16 by a person or entity convicted of a felony under Federal  
17 or State law for an offense which the State agency deter-  
18 mines is inconsistent with the best interests of bene-  
19 ficiaries under the State plan,”.

20 **SEC. 109. APPLICATION OF CERTAIN PROVISIONS OF THE**  
21 **BANKRUPTCY CODE.**

22 (a) RESTRICTED APPLICABILITY OF BANKRUPTCY  
23 STAY, DISCHARGE, AND PREFERENTIAL TRANSFER PRO-  
24 VISIONS TO MEDICARE AND MEDICAID DEBTS.—Part A

1 of title XI (42 U.S.C. 1301 et seq.) is amended by insert-  
2 ing after section 1143 the following:

3 “APPLICATION OF CERTAIN PROVISIONS OF THE  
4 BANKRUPTCY CODE

5 “SEC. 1144. (a) MEDICARE AND MEDICAID-RELAT-  
6 ED ACTIONS NOT STAYED BY BANKRUPTCY PROCEED-  
7 INGS.—The commencement or continuation of any action  
8 against a debtor under this title or title XVIII or XIX  
9 (other than an action with respect to health care services  
10 for the debtor under title XVIII), including any action or  
11 proceeding to exclude or suspend the debtor from program  
12 participation, assess civil money penalties, recoup or set  
13 off overpayments, or deny or suspend payment of claims  
14 shall not be subject to the provisions of section 362(a) of  
15 title 11, United States Code.

16 “(b) MEDICARE- AND MEDICAID-RELATED DEBT  
17 NOT DISCHARGEABLE IN BANKRUPTCY.—A debt owed to  
18 the United States or to a State for an overpayment under  
19 title XVIII or XIX (other than an overpayment for health  
20 care services for the debtor under title XVIII), or for a  
21 penalty, fine, or assessment under this title or title XVIII  
22 or XIX, shall not be dischargeable under any provision  
23 of title 11, United States Code.

24 “(c) REPAYMENT OF CERTAIN DEBTS CONSIDERED  
25 FINAL.—Payments made to repay a debt to the United  
26 States or to a State with respect to items or services pro-

1 vided, or claims for payment made, under title XVIII or  
2 XIX (including repayment of an overpayment (other than  
3 an overpayment for health care services for the debtor  
4 under title XVIII)), or to pay a penalty, fine, or assess-  
5 ment under this title or title XVIII or XIX, shall be con-  
6 sidered final and not preferential transfers under section  
7 547 of title 11, United States Code.”.

8 (b) MEDICARE RULES APPLICABLE TO BANKRUPTCY  
9 PROCEEDINGS.—Title XVIII (42 U.S.C. 1395 et seq.) is  
10 amended by adding at the end the following:

11 “APPLICATION OF PROVISIONS OF THE BANKRUPTCY  
12 CODE

13 “SEC. 1894. (a) USE OF MEDICARE STANDARDS AND  
14 PROCEDURES.—Notwithstanding any provision of title 11,  
15 United States Code, or any other provision of law, in the  
16 case of claims by a debtor in bankruptcy for payment  
17 under this title, the determination of whether the claim  
18 is allowable and of the amount payable, shall be made in  
19 accordance with the provisions of this title and title XI  
20 and implementing regulations.

21 “(b) NOTICE TO CREDITOR OF BANKRUPTCY PETI-  
22 TIONER.—In the case of a debt owed to the United States  
23 with respect to items or services provided, or claims for  
24 payment made, under this title (including a debt arising  
25 from an overpayment or a penalty, fine, or assessment  
26 under title XI or this title), the notices to the creditor of

1 bankruptcy petitions, proceedings, and relief required  
2 under title 11, United States Code (including under sec-  
3 tion 342 of that title and section 2002(j) of the Federal  
4 Rules of Bankruptcy Procedure), shall be given to the Sec-  
5 retary. Provision of such notice to a fiscal agent of the  
6 Secretary shall not be considered to satisfy this require-  
7 ment.

8 “(c) **TURNOVER OF PROPERTY TO THE BANKRUPTCY**  
9 **ESTATE.**—For purposes of section 542(b) of title 11,  
10 United States Code, a claim for payment under this title  
11 shall not be considered to be a matured debt payable to  
12 the estate of a debtor until such claim has been allowed  
13 by the Secretary in accordance with procedures under this  
14 title.”.

15 **SEC. 110. INSPECTOR GENERAL ACCESS TO NATIONAL**  
16 **PRACTITIONER DATA BANK.**

17 Section 427 of the Health Care Quality Improvement  
18 Act of 1986 (42 U.S.C. 11137) is amended—

19 (1) in subsection (a), by adding at the end the  
20 following: “Information reported under this part  
21 shall also be made available, upon request, to the In-  
22 spector General of the Departments of Health and  
23 Human Services, Defense, and Labor, the Office of  
24 Personnel Management, and the Railroad Retire-  
25 ment Board.”; and

1           (2) by amending subsection (b)(4) to read as  
2 follows:

3           “(4) FEES.—

4                   “(A) IMPOSITION OF FEES.—The Sec-  
5 retary may impose fees for the disclosure of in-  
6 formation under this part sufficient to recover  
7 the full costs of carrying out the provisions of  
8 this part, including reporting, disclosure, and  
9 administration, except that a fee may not be  
10 imposed for requests made by the Inspector  
11 General of the Department of Health and  
12 Human Services.

13                   “(B) AVAILABILITY OF FEES.—The fees  
14 shall remain available to the Secretary (or, in  
15 the Secretary’s discretion, to the agency des-  
16 ignated in section 424(b)) until expended.”.

17 **SEC. 111. STATE HEALTH CARE FRAUD CONTROL UNITS.**

18           (a) EXTENSION OF CONCURRENT AUTHORITY TO IN-  
19 VESTIGATE AND PROSECUTE FRAUD IN OTHER FEDERAL  
20 PROGRAMS.—Section 1903(q)(3) (42 U.S.C. 1396b(q)(3))  
21 is amended—

22                   (1) by striking “in connection with any aspect”  
23 and inserting “in connection with—

24                           “(A) any aspect”;

1 (2) by striking the period at the end and insert-  
2 ing “; and”; and

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

4 “(B) in cases where the entity’s function is  
5 also described by subparagraph (A), and upon  
6 the approval of the relevant Federal agency,  
7 any aspect of the provision of health care serv-  
8 ices and activities of providers of such services  
9 under any Federal health care program (as de-  
10 fined in section 1128B(f)).”.

11 (b) EXTENSION OF AUTHORITY TO INVESTIGATE  
12 AND PROSECUTE PATIENT ABUSE IN NON-MEDICAID  
13 BOARD AND CARE FACILITIES.—Section 1903(q)(4) (42  
14 U.S.C. 1396b(q)(4)) is amended to read as follows:

15 “(4)(A) The entity has—

16 “(i) procedures for reviewing complaints of  
17 abuse or neglect of patients in health care fa-  
18 cilities which receive payments under the State  
19 plan under this title;

20 “(ii) at the option of the entity, procedures  
21 for reviewing complaints of abuse or neglect of  
22 patients residing in board and care facilities;  
23 and

24 “(iii) procedures for acting upon such com-  
25 plaints under the criminal laws of the State or

1           for referring such complaints to other State  
2           agencies for action.

3           “(B) For purposes of this paragraph, the term  
4           ‘board and care facility’ means a residential setting  
5           which receives payment from or on behalf of two or  
6           more unrelated adults who reside in such facility,  
7           and for whom one or both of the following is pro-  
8           vided:

9                   “(i) Nursing care services provided by, or  
10                   under the supervision of, a registered nurse, li-  
11                   censed practical nurse, or licensed nursing as-  
12                   sistant.

13                   “(ii) Personal care services that assist resi-  
14                   dents with the activities of daily living, includ-  
15                   ing personal hygiene, dressing, bathing, eating,  
16                   toileting, ambulation, transfer, positioning, self-  
17                   medication, body care, travel to medical serv-  
18                   ices, essential shopping, meal preparation, laun-  
19                   dry, and housework.”.

20 **SEC. 112. ENSURING THE INTEGRITY OF THE FEDERAL**  
21 **HOSPITAL INSURANCE TRUST FUND.**

22           (a) DETERMINATION.—Prior to the end of each fiscal  
23 year, the Secretary of Health and Human Services (in this  
24 section referred to as the “Secretary”) and the Attorney  
25 General shall jointly determine—

1           (1) the portion of the costs charged during the  
2           fiscal year to any account established within the  
3           Federal Hospital Insurance Trust Fund (in this sec-  
4           tion referred to as “trust fund”) under title XVIII  
5           of the Social Security Act (42 U.S.C. 1395 et seq.)  
6           to combat health care waste, fraud, and abuse, that  
7           do not relate to the administration of the medicare  
8           program; and

9           (2) the amount of funds deposited into such ac-  
10          count of the trust fund during a fiscal year that  
11          were attributable to enforcement activities that were  
12          intended to combat health care waste, fraud, and  
13          abuse, that do not relate to the administration of the  
14          medicare program.

15          (b) CERTIFICATION.—If the portion determined  
16          under paragraph (1) of subsection (a) exceeds the amount  
17          determined under paragraph (2) of such subsection, the  
18          Secretary and the Attorney General shall certify to the  
19          Secretary of the Treasury the amount, which shall be  
20          equal to the amount of the excess, which should be trans-  
21          ferred from the General Fund of the Treasury to the trust  
22          fund, in order to ensure that the trust fund is fully reim-  
23          bursed for any expenditures made from the account de-  
24          scribed in subsection (a) that are not related to the admin-

1 istration of the medicare program under title XVIII of the  
2 Social Security Act.

3 (c) TRANSFER OF FUNDS.—The Secretary of the  
4 Treasury shall transfer to the trust fund from the General  
5 Fund of the Treasury, out of any funds in the General  
6 Fund that are not otherwise appropriated, an amount  
7 equal to the amount certified under subsection (b).

8 **SEC. 113. REQUIREMENT FOR ANNUAL GAO REPORT.**

9 Section 1817(k)(6) (42 U.S.C. 1395i(k)(6)) is  
10 amended—

11 (1) in the matter preceding subparagraph (A),  
12 by striking “2000, 2002, and 2004,” and inserting  
13 “2000 and each subsequent year through 2004”;  
14 and

15 (2) in subparagraph (A)—

16 (A) in clause (i), by striking “two fiscal  
17 years” and inserting “fiscal year”; and

18 (B) in clause (ii), by striking “fiscal years”  
19 and inserting “fiscal year”.

1 **SEC. 114. PROHIBITION ON CONSIDERATION OF LEGISLA-**  
2 **TION THAT DIVERTS SAVINGS ACHIEVED**  
3 **THROUGH MEDICARE WASTE, FRAUD, AND**  
4 **ABUSE ENFORCEMENT ACTIVITIES FOR PUR-**  
5 **POSES OTHER THAN IMPROVING THE SOL-**  
6 **VENCY OF THE FEDERAL HOSPITAL INSUR-**  
7 **ANCE TRUST FUND.**

8 (a) POINT OF ORDER.—It shall not be in order in  
9 the Senate to consider any bill, conference report, or any  
10 other legislation that would use savings achieved through  
11 enforcement activities that are intended to combat waste,  
12 fraud, and abuse under the medicare program under title  
13 XVIII of the Social Security Act as offsets for purposes  
14 other than to improve the solvency of the Federal Hospital  
15 Insurance Trust Fund established under section 1817 of  
16 such Act (42 U.S.C. 1395i).

17 (b) WAIVER.—The point of order described in sub-  
18 section (a) may be waived or suspended in the Senate by  
19 a  $\frac{3}{5}$  majority vote of the Senators duly chosen and sworn,  
20 or by the unanimous consent of the Senate.

21 (c) APPEALS.—

22 (1) IN GENERAL.—Appeals in the Senate from  
23 decisions of the Chair relating to this section shall  
24 be limited to 1 hour, to be equally divided between  
25 and controlled by, the appellant and the manager of

1 the bill, conference report, or other legislation, as  
2 the case may be.

3 (2) WAIVER.—An affirmative  $\frac{3}{5}$  majority vote  
4 of the Senators duly chosen and sworn, or a unani-  
5 mous consent agreement of the Senate shall be re-  
6 quired to sustain an appeal of the ruling of the  
7 Chair on a point of order raised under this section.

8 **TITLE II—SANCTIONS FOR**  
9 **FRAUD AND ABUSE**

10 **SEC. 201. CIVIL MONETARY PENALTIES FOR KICKBACKS.**

11 (a) PERMITTING SECRETARY TO IMPOSE CIVIL MON-  
12 ETARY PENALTY.—Section 1128A(a) (42 U.S.C. 1320a-  
13 7a(a)) is amended—

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

16 (2) by adding “or” at the end of paragraph (5);  
17 and

18 (3) by adding after paragraph (5) the following:

19 “(6) commits an act described in paragraph (1)  
20 or (2) of section 1128B(b);”.

21 (b) DESCRIPTION OF CIVIL MONETARY PENALTY AP-  
22 PPLICABLE.—Section 1128A(a) (42 U.S.C. 1320a-7a(a))  
23 (as amended by subsection (a) of this section) is amended  
24 in the matter following paragraph (6)—

1           (1) by striking “occurs).” and inserting “oc-  
2           curs; in cases under paragraph (6), \$50,000 for each  
3           such act).”; and

4           (2) by inserting after “of such claim” the fol-  
5           lowing: “(or, in cases under paragraph (6), damages  
6           of not more than 3 times the total amount of remu-  
7           neration offered, paid, solicited, or received, without  
8           regard to whether a portion of such remuneration  
9           was offered, paid, solicited, or received for a lawful  
10          purpose)”.

11 **SEC. 202. CIVIL MONETARY PENALTIES FOR PERSONS THAT**  
12 **CONTRACT WITH EXCLUDED INDIVIDUALS.**

13          Section 1128A(a) (42 U.S.C. 1320a–7a(a)) (as  
14          amended by section 201(a) of this Act) is amended—

15                 (1) by striking “or” at the end of paragraph  
16                 (5);

17                 (2) by adding “or” at the end of paragraph (6);  
18                 and

19                 (3) by adding after paragraph (6) the following:

20                         “(7) arranges or contracts (by employment or  
21                         otherwise) with an individual or entity that the per-  
22                         son knows or should know is excluded from partici-  
23                         pation in a Federal health care program (as defined  
24                         in section 1128B(f)), for the provision of items or

1 services for which payment may be made under such  
2 a program;”.

3 **SEC. 203. CIVIL MONETARY PENALTIES FOR SERVICES OR-**  
4 **DERED OR PRESCRIBED BY AN EXCLUDED IN-**  
5 **DIVIDUAL OR ENTITY.**

6 Section 1128A(a)(1) (42 U.S.C. 1320a-7a(a)(1)) is  
7 amended—

8 (1) in subparagraph (D)—

9 (A) by inserting “, ordered, or prescribed  
10 by a person” after “other item or service fur-  
11 nished”;

12 (B) by inserting “(under this title or title  
13 XVIII) after “period in which the person was  
14 excluded”;

15 (C) by striking “pursuant to a determina-  
16 tion by the Secretary” and all that follows  
17 through “the provisions of section 1842(j)”;  
18 and

19 (D) by striking “or” at the end; and

20 (2) by redesignating subparagraph (E) as sub-  
21 paragraph (F); and

22 (3) by adding after subparagraph (D) the fol-  
23 lowing:

24 “(E) is for a medical or other item or serv-  
25 ice ordered or prescribed by a person excluded

1 (under this title or title XVIII) from the pro-  
2 gram under which the claim was made, and the  
3 person furnishing such item or service knows or  
4 should know of such exclusion, or”.

5 **TITLE III—TECHNICAL CLARI-**  
6 **FICATIONS AND CORREC-**  
7 **TIONS**

8 **SEC. 301. DEFINITION OF THE TERM CONVICTION.**

9 Section 1128E(g)(5) (42 U.S.C. 1320a–7e(g)(5)) is  
10 amended by striking “paragraph (4) of” and inserting  
11 “paragraphs (1) through (4)”.

12 **SEC. 302. PROPER REFERENCE IN ADVISORY OPINIONS.**

13 Section 1128D(b)(2)(D) (42 U.S.C. 1320a–  
14 7d(b)(2)(D)) is amended by striking “1128B(b)” and in-  
15 serting “1128A(b)”.

16 **SEC. 303. ENSURING PROPER IMPLEMENTATION OF FED-**  
17 **ERAL HEALTH CARE PROGRAM EXCLUSIONS.**

18 Section 1128 (42 U.S.C. 1320a–7) is amended—

19 (1) in subsection (a), by striking “program  
20 under title XVIII and shall direct that the following  
21 individuals and entities be excluded from participa-  
22 tion in any State health care program (as defined in  
23 subsection (h))” and inserting “Federal health care  
24 program (as defined in section 1128B(f))”; and

1           (2) in subsection (b), by striking “program  
 2           under title XVIII and may direct that the following  
 3           individuals and entities be excluded from participa-  
 4           tion in any State health care program” and inserting  
 5           “Federal health care program (as defined in section  
 6           1128B(f))”.

## 7           **TITLE IV—COORDINATION OF** 8           **BENEFITS**

### 9           **SEC. 401. PERMANENT EXTENSION OF CERTAIN SECOND-** 10           **ARY PAYER PROVISIONS.**

11           (a) **WORKING DISABLED.**—Section 1862(b)(1)(B)  
 12           (42 U.S.C. 1395y(b)(1)(B)) is amended by striking clause  
 13           (iii).

14           (b) **INDIVIDUALS WITH END STAGE RENAL DIS-**  
 15           **EASE.**—Section 1862(b)(1)(C) (42 U.S.C.  
 16           1395y(b)(1)(C)) is amended—

17           (1) in the first sentence, by striking “12-  
 18           month” each place it occurs and inserting “18-  
 19           month”; and

20           (2) by striking the second sentence.

21           (c) **IRS-SSA-HCFA DATA MATCH.**—

22           (1) **SOCIAL SECURITY ACT.**—Section  
 23           1862(b)(5)(C) (42 U.S.C. 1395y(b)(5)(C)) is  
 24           amended by striking clause (iii).

1           (2) INTERNAL REVENUE CODE.—Section  
2           6103(l)(12) of the Internal Revenue Code of 1986 is  
3           amended by striking subparagraph (F).

4 **SEC. 402. TECHNICAL CHANGES CONCERNING MINIMUM**  
5 **SIZES OF GROUP HEALTH PLANS.**

6           (a) PLACEMENT OF “GROUP HEALTH PLAN” DEFINI-  
7           TION IN SOCIAL SECURITY ACT.—

8           (1) DEFINITION.—Section 1862(b)(1)(E) (42  
9           U.S.C. 1395y(b)(1)(E)) is amended by adding at the  
10          end the following:

11                   “(iv) GROUP HEALTH PLAN DE-  
12                   FINED.—The term ‘group health plan’  
13                   means a plan (including a self-insured  
14                   plan) of, or contributed to by, an employer  
15                   or employee organization to provide health  
16                   care (directly or otherwise) to the employ-  
17                   ees, former employees, the employer, oth-  
18                   ers associated or formerly associated with  
19                   the employer in a business relationship, or  
20                   their families.”.

21           (2) CONFORMING AMENDMENTS.—

22           (A) SECTION 1862(b)(1)(A).—Section  
23           1862(b)(1)(A) (42 U.S.C. 1395y(b)(1)(A)) is  
24           amended by striking clause (v).

1           (B)     SECTION     1862(b)(1)(C).—Section  
2     1862(b)(1)(C) (42 U.S.C. 1395y(b)(1)(C)) is  
3     amended in the matter preceding clause (i) by  
4     striking “plan (as defined in subparagraph  
5     (A)(v))—” and inserting “plan—”.

6           (C) SECTIONS 1837 AND 1839.—Subpara-  
7     graph (A) of the first sentence of section  
8     1837(i)(1) (42 U.S.C. 1395p(i)(1)), subpara-  
9     graph (B) of the first sentence of section  
10    1837(i)(2) (42 U.S.C. 1395p(i)(2)), section  
11    1837(i)(3)(A) (42 U.S.C. 1395p(i)(3)(A)), and  
12    paragraph (2) of the second sentence of section  
13    1839(b) (42 U.S.C. 1395r(b)), are each amend-  
14    ed by striking “1862(b)(1)(A)(v)” and inserting  
15    “1862(b)(1)(E)(iv)”.

16           (D) SECTION 5000 OF THE INTERNAL REV-  
17     ENUE CODE.—Section 5000(b) of the Internal  
18     Revenue Code of 1986 is amended to read as  
19     follows:

20           “(b) GROUP HEALTH PLAN.—For purposes of this  
21     section, the term ‘group health plan’ has the meaning  
22     given that term in section 1862(b)(1)(E)(iv) of the Social  
23     Security Act (42 U.S.C. 1395y(b)(1)(E)(iv)).”.

24           (E) SECTION 7701(a) OF THE INTERNAL  
25     REVENUE CODE.—Section 7701(a) of the Inter-

1           nal Revenue Code of 1986 is amended by add-  
2           ing at the end the following:

3           “(47) GROUP HEALTH PLAN.—The term ‘group  
4           health plan’ means a plan (including a self-insured  
5           plan) of, or contributed to by, an employer (includ-  
6           ing a self-employed person) or employee organization  
7           to provide health care (directly or otherwise) to the  
8           employees, former employees, the employer, others  
9           associated or formerly associated with the employer  
10          in a business relationship, or their families.”.

11           (F) SECTIONS 4980B, 9805, AND 6103 OF  
12          THE INTERNAL REVENUE CODE.—Sections  
13          4980B, 9805, and 6103(l)(12)(E)(ii) of the In-  
14          ternal Revenue Code of 1986 are amended by  
15          striking “5000(b)(1)” each place it occurs and  
16          inserting “7701(a)(47)”.

17          (b) CONSOLIDATION OF SIZE REQUIREMENTS.—

18           (1) IN GENERAL.—Section 1862(b)(1)(E) (42  
19          U.S.C. 1395y(b)(1)(E)) (as amended by subsection  
20          (a)(1) of this section) is amended by adding at the  
21          end the following:

22                   “(v) EXCLUSION OF GROUP HEALTH  
23                   PLANS OF SMALL AND MEDIUM EMPLOY-  
24                   ERS.—

1           “(I) Subparagraph (A) does not  
2           apply to a group health plan unless  
3           the plan involves at least one employer  
4           that has 20 or more employees in  
5           each of 20 or more calendar weeks in  
6           the current or preceding calendar  
7           year.

8           “(II) Subparagraph (B) does not  
9           apply to a group health plan unless  
10          the plan involves at least one employer  
11          that has 100 or more employees in  
12          each of 20 or more calendar weeks in  
13          the current or preceding calendar  
14          year.”.

15          (2) CONFORMING AMENDMENTS.—

16                 (A)       SECTION     1862(b)(1)(A).—Section  
17                 1862(b)(1)(A) (42 U.S.C. 1395y(b)(1)(A)) (as  
18                 amended by subsection (a)(2)(A) of this sec-  
19                 tion) is amended—

20                         (i) by striking clauses (ii) and (iii),

21                                 and

22                         (ii) by redesignating clause (iv) as  
23                                 clause (ii).

1           (B)       SECTION       1862(b)(1)(B).—Section  
2       1862(b)(1)(B) (42 U.S.C. 1395y(b)(1)(B)) is  
3       amended—

4           (i)     in the heading, by striking  
5       “LARGE”,

6           (ii)    in clause (i), by striking “large  
7       group health plan (as defined in clause  
8       (iv))” and inserting “group health plan”,  
9       and

10          (iii) by striking clause (iv).

11          (C) SECTION 1862(b)(2).—The second sen-  
12       tence of section 1862(b)(2)(A) (42 U.S.C.  
13       1395y(b)(2)(A)) is amended by striking “or  
14       large group health plan”.

15          (D)       SECTION       1862(b)(3).—Section  
16       1862(b)(3)(C) (42 U.S.C. 1395y(b)(3)(C)) is  
17       amended—

18           (i)     in the heading, by striking “OR A  
19       LARGE GROUP HEALTH PLAN”, and

20           (ii)    in the first sentence, by striking  
21       “or a large group health plan”.

22          (E)       SECTION       1837(i)(1).—Section  
23       1837(i)(1) (42 U.S.C. 1395p(i)(1)) is amend-  
24       ed—

1 (i) in the first sentence, in subpara-  
2 graph (A), by striking “(or the individual’s  
3 spouse’s) current employment status” and  
4 inserting “current employment status (or  
5 the current employment status of a family  
6 member of the individual)”; and

7 (ii) by striking the second sentence.

8 (F) SECTION 1837(i)(2).—Section  
9 1837(i)(2) (42 U.S.C. 1395p(i)(2)) is amend-  
10 ed—

11 (i) in the first sentence, in subpara-  
12 graph (B), by striking “(or the individual’s  
13 spouse’s) current employment status” and  
14 inserting “current employment status (or  
15 the current employment status of a family  
16 member of the individual)”; and

17 (ii) by striking the second sentence.

18 (G) SECTION 1837(i)(3).—Section  
19 1837(i)(3) (42 U.S.C. 1395p(i)(3)) is amend-  
20 ed—

21 (i) by striking subparagraph (B), and

22 (ii) by striking “(3)(A)” and inserting  
23 “(3)”.

24 (H) SECTION 1839(b).—Paragraph (2) of  
25 the second sentence of section 1839(b) (42

1 U.S.C. 1395r(b)) is amended by striking “by  
2 reason of the individual’s” and all that follows  
3 through “section 1862(b)(1)(B)(iv)”.

4 (I) SECTION 5000 OF THE INTERNAL REVE-  
5 NUE CODE.—Section 5000(c) of the Internal  
6 Revenue Code of 1986 is amended by striking  
7 “or large group health plan” and all that fol-  
8 lows up to the period and inserting “that at any  
9 time during a calendar year does not comply  
10 with any applicable requirement of paragraph  
11 (1) or (2) of section 1862(b) of the Social Secu-  
12 rity Act”.

13 **SEC. 403. INFORMATION REQUIREMENTS.**

14 (a) INFORMATION FROM GROUP HEALTH PLANS.—  
15 Section 1862(b) (42 U.S.C. 1395y(b)) is amended by add-  
16 ing at the end the following:

17 “(7) INFORMATION FROM GROUP HEALTH  
18 PLANS.—

19 “(A) PROVISION OF INFORMATION BY  
20 GROUP HEALTH PLANS.—The administrator of  
21 a group health plan (other than a plan exempt,  
22 under paragraph (1)(E)(v), from the require-  
23 ments of paragraph (1)) shall provide to the  
24 Secretary any or all of the information elements  
25 listed in subparagraph (C) in the manner and

1 at times (but not more frequently than 4 times  
2 per year) the Secretary may specify, with re-  
3 spect to each individual covered under the plan  
4 and entitled to benefits under this title.

5 “(B) PROVISION OF INFORMATION BY EM-  
6 PLOYERS AND EMPLOYEE ORGANIZATIONS.—An  
7 employer (or employee organization) that main-  
8 tains or participates in a group health plan  
9 (other than a plan exempt, under paragraph  
10 (1)(E)(v), from the requirements of paragraph  
11 (1)) shall provide to the administrator of the  
12 plan any or all of the information elements list-  
13 ed in subparagraph (C) in the manner and at  
14 times (but not more frequently than 4 times per  
15 year) the Secretary may specify, with respect to  
16 each individual covered under the plan and enti-  
17 tled to benefits under this title.

18 “(C) INFORMATION ELEMENTS TO BE PRO-  
19 VIDED.—The information elements to be pro-  
20 vided under subparagraph (A) or (B) are:

21 “(i) ELEMENTS CONCERNING THE IN-  
22 DIVIDUAL.—Elements concerning the indi-  
23 vidual are as follows:

24 “(I) The individual’s name.

1                   “(II) The individual’s date of  
2 birth.

3                   “(III) The individual’s social se-  
4 curity number.

5                   “(IV) The number assigned by  
6 the Secretary to the individual for  
7 claims under this title.

8                   “(V) The family relationship of  
9 the individual to the person who has  
10 or had current employment status  
11 with the employer.

12                   “(ii) ELEMENTS CONCERNING THE  
13 FAMILY MEMBER WITH CURRENT OR  
14 FORMER EMPLOYMENT STATUS.—Elements  
15 concerning the family member with current  
16 or former employment status are as fol-  
17 lows:

18                   “(I) The name of the person in  
19 the individual’s family who has or had  
20 current employment status with the  
21 employer.

22                   “(II) That person’s social secu-  
23 rity number.

1           “(III) The number or other iden-  
2           tifier assigned by the plan to that per-  
3           son.

4           “(IV) The periods of coverage for  
5           that person under the plan.

6           “(V) The employment status of  
7           that person (current or former) dur-  
8           ing those periods of coverage.

9           “(VI) The classes (of that per-  
10          son’s family members) covered under  
11          the plan.

12          “(iii) PLAN ELEMENTS.—Plan ele-  
13          ments are as follows:

14               “(I) The nature of the items and  
15               services covered under the plan.

16               “(II) The name and address to  
17               which claims under the plan are to be  
18               sent.

19               “(iv) ELEMENTS CONCERNING THE  
20               EMPLOYER.—Elements concerning the em-  
21               ployer are as follows:

22                       “(I) The employer’s name.

23                       “(II) The employer’s address.

24                       “(III) The employer identifica-  
25                       tion number of the employer.

1           “(D) USE OF IDENTIFIERS.—The adminis-  
2           trator of a group health plan shall utilize an  
3           identifier for the plan (that the Secretary may  
4           furnish) in providing information under sub-  
5           paragraph (A) and in other transactions, as  
6           may be specified by the Secretary, related to  
7           the provisions of this subsection.

8           “(E) APPLICABILITY OF ELECTRONIC  
9           TRANSMISSION REQUIREMENTS.—Part C of  
10          title XI applies to the preceding subparagraphs  
11          of this paragraph.

12          “(F) PENALTY FOR NONCOMPLIANCE.—  
13          Any entity that knowingly and willfully fails to  
14          comply with a requirement imposed by subpara-  
15          graphs (A), (B), (C), (D), or (E) is subject to  
16          a civil money penalty not to exceed \$1,000 for  
17          each incident of failure. The provisions of sec-  
18          tion 1128A (other than subsections (a) and (b))  
19          apply to a civil money penalty under the pre-  
20          vious sentence in the same manner as those  
21          provisions apply to a penalty or proceeding  
22          under section 1128A(a).”.

23          (b) EFFECTIVE DATE.—The amendment made by  
24          subsection (a) is effective 180 days after the date of enact-  
25          ment of this Act.

1 **SEC. 404. CLARIFICATION OF TIME AND FILING LIMITA-**  
2 **TIONS.**

3 (a) IN GENERAL.—Section 1862(b)(2)(B) (42 U.S.C.  
4 1395y(b)(2)(B)) is amended by adding at the end the fol-  
5 lowing:

6 “(v) TIME, FILING, AND RELATED  
7 PROVISIONS UNDER PRIMARY PLAN.—Re-  
8 quirements under a primary plan as to the  
9 filing of a claim, time limitations for the  
10 filing of a claim, information not main-  
11 tained by the Secretary, or notification or  
12 preadmission review, shall not apply to a  
13 claim by the United States under clause  
14 (ii) or (iii).”.

15 (b) EFFECTIVE DATE.—The amendment made by  
16 subsection (a) applies to items and services furnished after  
17 1997.

18 **SEC. 405. CLARIFICATION OF LIABILITY OF THIRD PARTY**  
19 **ADMINISTRATORS.**

20 (a) IN GENERAL.—Section 1862(b)(2)(B)(ii) (42  
21 U.S.C. 1395y(b)(2)(B)(ii)) is amended by inserting “, or  
22 which determines claims under the primary plan” after  
23 “primary plan”.

24 (b) CLAIMS BETWEEN PARTIES OTHER THAN THE  
25 UNITED STATES.—Section 1862(b)(2)(B) (42 U.S.C.

1 1395y(b)(2)(B)) (as amended by section 404 of this Act)  
2 is amended by adding at the end the following:

3                   “(vi) CLAIMS BETWEEN PARTIES  
4                   OTHER THAN THE UNITED STATES.—A  
5                   claim by the United States under clause  
6                   (ii) or (iii) shall not preclude claims be-  
7                   tween other parties.”.

8           (c) EFFECTIVE DATE.—The amendments made by  
9 this section shall apply to items and services furnished  
10 after 1997.

11 **SEC. 406. CLARIFICATION OF PAYMENT AMOUNTS TO MEDI-**  
12 **CARE.**

13           (a) IN GENERAL.—Section 1862(b)(2)(B)(i) (42  
14 U.S.C. 1395y(b)(2)(B)(i)) is amended to read as follows:

15                   “(i) REPAYMENT REQUIRED.—

16                           “(I) IN GENERAL.—Any payment  
17                           under this title, with respect to any  
18                           item or service for which payment by  
19                           a primary plan is required under the  
20                           preceding provisions of this sub-  
21                           section, shall be conditioned on reim-  
22                           bursement to the appropriate Trust  
23                           Fund established by this title when  
24                           notice or other information is received  
25                           that payment for that item or service

1 has been or should have been made  
2 under those provisions. If reimburse-  
3 ment is not made to the appropriate  
4 Trust Fund before the expiration of  
5 the 60-day period that begins on the  
6 date such notice or other information  
7 is received, the Secretary may charge  
8 interest (beginning with the date on  
9 which the notice or other information  
10 is received) on the amount of the re-  
11 imbursement until reimbursement is  
12 made (at a rate determined by the  
13 Secretary in accordance with regula-  
14 tions of the Secretary of the Treasury  
15 applicable to charges for late pay-  
16 ments).

17 “(II) DETERMINATION OF  
18 AMOUNT OWED.—The amount owed  
19 by a primary plan under the first sen-  
20 tence of subclause (I) is the lesser of  
21 the full primary payment required (if  
22 that amount is readily determinable)  
23 and the amount paid under this title  
24 for that item or service.”.

25 (b) CONFORMING AND TECHNICAL AMENDMENTS.—

1           (1) Subparagraphs (A)(i)(I) and (B)(i) of sec-  
2           tion 1862(b)(1) (42 U.S.C. 1395y(b)(1)) are each  
3           amended by inserting “(or eligible to be covered)”  
4           after “covered”.

5           (2) Section 1862(b)(1)(C)(ii) (42 U.S.C.  
6           1395y(b)(1)(C)(ii)) is amended by striking “covered  
7           by such plan”.

8           (3) Section 1862(b)(2)(A) (42 U.S.C.  
9           1395y(b)(2)(A)) is amended in the matter preceding  
10          clause (i) by striking “, except as provided in sub-  
11          paragraph (B),”.

12          (c) EFFECTIVE DATE.—The amendments made by  
13          this section shall apply to items and services furnished  
14          after 1997.

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