

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 4567**

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**AN ACT**

To amend titles XI and XVIII of the Social Security Act to revise the per beneficiary and per visit home health payment limits under the medicare program, to improve access to health care services for certain medicare-eligible veterans, to authorize additional exceptions to the imposition of civil money penalties in cases of payments to beneficiaries, and to expand the membership of the Medicare Payment Advisory Commission.

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beneficiaries, and to expand the membership of the Medicare Payment Advisory Commission.

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 “Medicare Home Health and Veterans Health Care Im-  
 6 provement Act of 1998”.

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

Sec. 1. Short title; table of contents.

**TITLE I—MEDICARE HOME HEALTH CARE INTERIM PAYMENT  
 SYSTEM REFINEMENT**

Sec. 101. Increase in per beneficiary limits and per visit payment limits for  
 payment for home health services.

**TITLE II—VETERANS MEDICARE ACCESS IMPROVEMENT**

Sec. 201. Improvement in veterans’ access to services.

**TITLE III—AUTHORIZATION OF ADDITIONAL EXCEPTIONS TO  
 IMPOSITION OF PENALTIES FOR CERTAIN INDUCEMENTS**

Sec. 301. Authorization of additional exceptions to imposition of penalties for  
 providing inducements to beneficiaries.

**TITLE IV—EXPANSION OF MEMBERSHIP OF THE MEDICARE  
 PAYMENT ADVISORY COMMISSION**

Sec. 401. Expansion of membership of MedPAC to 17.

**TITLE V—REVENUE OFFSET**

Sec. 501. Revenue offset.

1 **TITLE I—MEDICARE HOME**  
2 **HEALTH CARE INTERIM PAY-**  
3 **MENT SYSTEM REFINEMENT**

4 **SEC. 101. INCREASE IN PER BENEFICIARY LIMITS AND PER**  
5 **VISIT PAYMENT LIMITS FOR PAYMENT FOR**  
6 **HOME HEALTH SERVICES.**

7 (a) INCREASE IN PER BENEFICIARY LIMITS.—Sec-  
8 tion 1861(v)(1)(L) of the Social Security Act (42 U.S.C.  
9 1395x(v)(1)(L)) is amended—

10 (1) in the first sentence of clause (v), by insert-  
11 ing “subject to clause (viii)(I),” before “the Sec-  
12 retary”;

13 (2) in clause (vi)(I), by inserting “subject to  
14 clauses (viii)(II) and (viii)(III)” after “fiscal year  
15 1994”; and

16 (3) by adding at the end the following new  
17 clause:

18 “(viii)(I) In the case of a provider with a 12-month  
19 cost reporting period ending in fiscal year 1994, if the  
20 limit imposed under clause (v) (determined without regard  
21 to this subclause) for a cost reporting period beginning  
22 during or after fiscal year 1999 is less than the median  
23 described in clause (vi)(I) (but determined as if any ref-  
24 erence in clause (v) to ‘98 percent’ were a reference to  
25 ‘100 percent’), the limit otherwise imposed under clause

1 (v) for such provider and period shall be increased by  $\frac{1}{2}$   
2 of such difference.

3       “(II) Subject to subclause (IV), for new providers and  
4 those providers without a 12-month cost reporting period  
5 ending in fiscal year 1994, but for which the first cost  
6 reporting period begins before fiscal year 1999, for cost  
7 reporting periods beginning during or after fiscal year  
8 1999, the per beneficiary limitation described in clause  
9 (vi)(I) shall be equal to 50 percent of the median described  
10 in such clause plus 50 percent of the sum of 75 percent  
11 of such median and 25 percent of 98 percent of the stand-  
12 ardized regional average of such costs for the agency’s  
13 census division, described in clause (v)(I). However, in no  
14 case shall the limitation under this subclause be less than  
15 the median described in clause (vi)(I) (determined as if  
16 any reference in clause (v) to ‘98 percent’ were a reference  
17 to ‘100 percent’).

18       “(III) Subject to subclause (IV), in the case of a new  
19 home health agency for which the first cost reporting pe-  
20 riod begins during or after fiscal year 1999, the limitation  
21 applied under clause (vi)(I) (but only with respect to such  
22 provider) shall be equal to 75 percent of the median de-  
23 scribed in clause (vi)(I).

24       “(IV) In the case of a new provider or a provider  
25 without a 12-month cost reporting period ending in fiscal

1 year 1994, subclause (II) shall apply, instead of subclause  
2 (III), to a home health agency which filed an application  
3 for home health agency provider status under this title be-  
4 fore September 15, 1998, or which was approved as a  
5 branch of its parent agency before such date and becomes  
6 a subunit of the parent agency or a separate agency on  
7 or after such date.

8 “(V) Each of the amounts specified in subclauses (I)  
9 through (III) are such amounts as adjusted under clause  
10 (iii) to reflect variations in wages among different areas.”.

11 (b) REVISION OF PER VISIT LIMITS.—Section  
12 1861(v)(1)(L)(i) of such Act (42 U.S.C.  
13 1395x(v)(1)(L)(i)) is amended—

14 (1) in subclause (III), by striking “or”;

15 (2) in subclause (IV)—

16 (A) by inserting “and before October 1,  
17 1998,” after “October 1, 1997,”; and

18 (B) by striking the period at the end and  
19 inserting “, or”; and

20 (3) by adding at the end the following new sub-  
21 clause:

22 “(V) October 1, 1998, 108 percent of such me-  
23 dian.”.

24 (c) EXCLUSION OF ADDITIONAL PART B COSTS  
25 FROM DETERMINATION OF PART B MONTHLY PRE-

1 MIUM.—Section 1839 of such Act (42 U.S.C. 1395r) is  
2 amended—

3 (1) in subsection (a)(3), by inserting “(except  
4 as provided in subsection (g))” after “year that”;  
5 and

6 (2) by adding at the end the following new sub-  
7 section:

8 “(g) In estimating the benefits and administrative  
9 costs which will be payable from the Federal Supple-  
10 mentary Medical Insurance Trust Fund for a year for pur-  
11 poses of determining the monthly premium rate under  
12 subsection (a)(3), the Secretary shall exclude an estimate  
13 of any benefits and administrative costs attributable to the  
14 application of section 1861(v)(1)(L)(viii) or to the estab-  
15 lishment under section 1861(v)(1)(L)(i)(V) of a per visit  
16 limit at 108 percent of the median (instead of 105 percent  
17 of the median), but only to the extent payment for home  
18 health services under this title is not being made under  
19 section 1895 (relating to prospective payment for home  
20 health services).”.

21 (d) REPORTS ON SUMMARY OF RESEARCH CON-  
22 DUCTED BY THE SECRETARY ON THE PROSPECTIVE PAY-  
23 MENT SYSTEM.—By not later than January 1, 1999, the  
24 Secretary of Health and Human Services shall submit to  
25 Congress a report on the following matters:

1           (1) RESEARCH.—A description of any research  
2           paid for by the Secretary on the development of a  
3           prospective payment system for home health services  
4           furnished under the medicare care program under  
5           title XVIII of the Social Security Act, and a sum-  
6           mary of the results of such research.

7           (2) SCHEDULE FOR IMPLEMENTATION OF SYS-  
8           TEM.—The Secretary’s schedule for the implementa-  
9           tion of the prospective payment system for home  
10          health services under section 1895 of the Social Se-  
11          curity Act (42 U.S.C. 1395fff).

12          (3) ALTERNATIVE TO 15 PERCENT REDUCTION  
13          IN LIMITS.—The Secretary’s recommendations for  
14          one or more alternative means to provide for savings  
15          equivalent to the savings estimated to be made by  
16          the mandatory 15 percent reduction in payment lim-  
17          its for such home health services for fiscal year 2000  
18          under section 1895(b)(3)(A) of the Social Security  
19          Act (42 U.S.C. 1395fff(b)(3)(A)), or, in the case the  
20          Secretary does not establish and implement such  
21          prospective payment system, under section 4603(e)  
22          of the Balanced Budget Act of 1997.

23          (e) MEDPAC REPORTS.—

24                (1) REVIEW OF SECRETARY’S REPORT.—Not  
25          later than 60 days after the date the Secretary of

1 Health and Human Services submits to Congress  
2 the report under subsection (d), the Medicare Pay-  
3 ment Advisory Commission (established under sec-  
4 tion 1805 of the Social Security Act (42 U.S.C.  
5 1395b–6)) shall submit to Congress a report describ-  
6 ing the Commission’s analysis of the Secretary’s re-  
7 port, and shall include the Commission’s rec-  
8 ommendations with respect to the matters contained  
9 in such report.

10 (2) ANNUAL REPORT.—The Commission shall  
11 include in its annual report to Congress for June  
12 1999 an analysis of whether changes in law made by  
13 the Balanced Budget Act of 1997, as modified by  
14 the amendments made by this section, with respect  
15 to payments for home health services furnished  
16 under the medicare program under title XVIII of the  
17 Social Security Act impede access to such services  
18 by individuals entitled to benefits under such pro-  
19 gram.

20 (f) GAO AUDIT OF RESEARCH EXPENDITURES.—  
21 The Comptroller General of the United States shall con-  
22 duct an audit of sums obligated or expended by the Health  
23 Care Financing Administration for the research described  
24 in subsection (d)(1), and of the data, reports, proposals,  
25 or other information provided by such research.

1 (g) PROMPT IMPLEMENTATION.—The Secretary of  
2 Health and Human Services shall promptly issue (without  
3 regard to chapter 8 of title 5, United States Code) such  
4 regulations or program memoranda as may be necessary  
5 to effect the amendments made by this section for cost  
6 reporting periods beginning on or after October 1, 1998.  
7 In effecting the amendments made by subsection (a) for  
8 cost reporting periods beginning in fiscal year 1999, the  
9 “median” referred to in section 1861(v)(1)(L)(vi)(I) of  
10 the Social Security Act for such periods shall be the na-  
11 tional standardized per beneficiary limitation specified in  
12 Table 3C published in the Federal Register on August 11,  
13 1998, (63 FR 42926) and the “standardized regional av-  
14 erage of such costs” referred to in section  
15 1861(v)(1)(L)(v)(I) of such Act for a census division shall  
16 be the sum of the labor and nonlabor components of the  
17 standardized per-beneficiary limitation for that census di-  
18 vision specified in Table 3B published in the Federal Reg-  
19 ister on that date (63 FR 42926) (or in Table 3D as so  
20 published with respect to Puerto Rico and Guam).

1 **TITLE II—VETERANS MEDICARE**  
2 **ACCESS IMPROVEMENT**

3 **SEC. 201. IMPROVEMENT IN VETERANS' ACCESS TO SERV-**  
4 **ICES.**

5 (a) IN GENERAL.—Title XVIII of the Social Security  
6 Act, as amended by sections 4603, 4801, and 4015(a) of  
7 the Balanced Budget Act of 1997, is amended by adding  
8 at the end the following:

9 “IMPROVING VETERANS’ ACCESS TO SERVICES

10 “SEC. 1897. (a) DEFINITIONS.—In this section:

11 “(1) ADMINISTERING SECRETARIES.—The term  
12 ‘administering Secretaries’ means the Secretary of  
13 Health and Human Services and the Secretary of  
14 Veterans Affairs acting jointly.

15 “(2) PROGRAM.—The term ‘program’ means  
16 the program established under this section with re-  
17 spect to category A medicare-eligible veterans.

18 “(3) DEMONSTRATION PROJECT; PROJECT.—  
19 The terms ‘demonstration project’ and ‘project’  
20 mean the demonstration project carried out under  
21 this section with respect to category C medicare-eli-  
22 gible veterans.

23 “(4) MEDICARE-ELIGIBLE VETERANS.—

1           “(A) CATEGORY A MEDICARE-ELIGIBLE  
2 VETERAN.—The term ‘category A medicare-eli-  
3 gible veteran’ means an individual—

4           “(i) who is a veteran (as defined in  
5 section 101(2) of title 38, United States  
6 Code) and is described in paragraph (1) or  
7 (2) of section 1710(a) of title 38, United  
8 States Code;

9           “(ii) who is entitled to hospital insur-  
10 ance benefits under part A of the medicare  
11 program and is enrolled in the supple-  
12 mentary medical insurance program under  
13 part B of the medicare program; and

14           “(iii) for whom the medical center of  
15 the Department of Veterans Affairs that is  
16 closest to the individual’s place of resi-  
17 dence is geographically remote or inaces-  
18 sible from such place.

19           “(B) CATEGORY C MEDICARE-ELIGIBLE  
20 VETERAN.—The term ‘category C medicare-eli-  
21 gible veteran’ means an individual who—

22           “(i) is a veteran (as defined in section  
23 101(2) of title 38, United States Code)  
24 and is described in section 1710(a)(3) of  
25 title 38, United States Code; and

1           “(ii) is entitled to hospital insurance  
2           benefits under part A of the medicare pro-  
3           gram and is enrolled in the supplementary  
4           medical insurance program under part B  
5           of the medicare program.

6           “(5) MEDICARE HEALTH CARE SERVICES.—The  
7           term ‘medicare health care services’ means items or  
8           services covered under part A or B of this title.

9           “(6) TRUST FUNDS.—The term ‘trust funds’  
10          means the Federal Hospital Insurance Trust Fund  
11          established in section 1817 and the Federal Supple-  
12          mentary Medical Insurance Trust Fund established  
13          in section 1841.

14          “(b) PROGRAM AND DEMONSTRATION PROJECT.—

15                 “(1) IN GENERAL.—

16                         “(A) ESTABLISHMENT.—The administer-  
17                         ing Secretaries are authorized to establish—

18                                 “(i) a program (under an agreement  
19                                 entered into by the administering Secretar-  
20                                 ies) under which the Secretary of Health  
21                                 and Human Services shall reimburse the  
22                                 Secretary of Veterans Affairs, from the  
23                                 trust funds, for medicare health care serv-  
24                                 ices furnished to category A medicare-eli-  
25                                 gible veterans; and

1           “(ii) a demonstration project (under  
2           such an agreement) under which the Sec-  
3           retary of Health and Human Services shall  
4           reimburse the Secretary of Veterans Af-  
5           fairs, from the trust funds, for medicare  
6           health care services furnished to category  
7           C medicare-eligible veterans.

8           “(B) AGREEMENT.—The agreement en-  
9           tered into under subparagraph (A) shall include  
10          at a minimum—

11           “(i) a description of the benefits to be  
12           provided to the participants of the program  
13           and the demonstration project established  
14           under this section;

15           “(ii) a description of the eligibility  
16           rules for participation in the program and  
17           demonstration project, including any cost  
18           sharing requirements;

19           “(iii) a description of the process for  
20           enrolling veterans for participation in the  
21           program, which process may, to the extent  
22           practicable, be administered in the same or  
23           similar manner to the registration process  
24           established to implement section 1705 of  
25           title 38, United States Code;

1           “(iv) a description of how the pro-  
2           gram and the demonstration project will  
3           satisfy the requirements under this title;

4           “(v) a description of the sites selected  
5           under paragraph (2);

6           “(vi) a description of how reimburse-  
7           ment requirements under subsection (g)  
8           and maintenance of effort requirements  
9           under subsection (h) will be implemented  
10          in the program and in the demonstration  
11          project;

12          “(vii) a statement that all data of the  
13          Department of Veterans Affairs and of the  
14          Department of Health and Human Serv-  
15          ices that the administering Secretaries de-  
16          termine is necessary to conduct independ-  
17          ent estimates and audits of the mainte-  
18          nance of effort requirement, the annual  
19          reconciliation, and related matters required  
20          under the program and the demonstration  
21          project shall be available to the administer-  
22          ing Secretaries;

23          “(viii) a description of any require-  
24          ment that the Secretary of Health and

1 Human Services waives pursuant to sub-  
2 section (d);

3 “(ix) a requirement that the Secretary  
4 of Veterans Affairs undertake and main-  
5 tain outreach and marketing activities,  
6 consistent with capacity limits under the  
7 program, for category A medicare-eligible  
8 veterans;

9 “(x) a description of how the admin-  
10 istering Secretaries shall conduct the data  
11 matching program under subparagraph  
12 (F), including the frequency of updates to  
13 the comparisons performed under subpara-  
14 graph (F)(ii); and

15 “(xi) a statement by the Secretary of  
16 Veterans Affairs that the type or amount  
17 of health care services furnished under  
18 chapter 17 of title 38, United States Code,  
19 to veterans who are entitled to benefits  
20 under part A or enrolled under part B, or  
21 both, shall not be reduced by reason of the  
22 program or project.

23 “(C) COST-SHARING UNDER DEMONSTRA-  
24 TION PROJECT.—Notwithstanding any provision  
25 of title 38, United States Code, in order—

1           “(i) to maintain and broaden access  
2           to services,

3           “(ii) to encourage appropriate use of  
4           services, and

5           “(iii) to control costs,

6           the Secretary of Veterans Affairs may establish  
7           enrollment fees and copayment requirements  
8           under the demonstration project under this sec-  
9           tion consistent with subsection (d)(1). Such fees  
10          and requirements may vary based on income.

11          “(D) HEALTH CARE BENEFITS.—The ad-  
12          ministering Secretaries shall prescribe the mini-  
13          mum health care benefits to be provided under  
14          the program and demonstration project to  
15          medicare-eligible veterans enrolled in the pro-  
16          gram or project. Those benefits shall include at  
17          least all medicare health care services covered  
18          under this title.

19          “(E) ESTABLISHMENT OF SERVICE NET-  
20          WORKS.—

21          “(i) USE OF VA OUTPATIENT CLIN-  
22          ICS.—The Secretary of Veterans Affairs, to  
23          the extent practicable, shall use outpatient  
24          clinics of the Department of Veterans Af-

1           fairs in providing services under the pro-  
2           gram.

3           “(ii) AUTHORITY TO CONTRACT FOR  
4           SERVICES.—The Secretary of Veterans Af-  
5           fairs may enter into contracts and arrange-  
6           ments with entities (such as private practi-  
7           tioners, providers of services, preferred  
8           provider organizations, and health care  
9           plans) for the provision of services for  
10          which the Secretary of Health and Human  
11          Services is responsible under the program  
12          or project under this section and shall take  
13          into account the existence of qualified  
14          practitioners and providers in the areas in  
15          which the program or project is being con-  
16          ducted. Under such contracts and arrange-  
17          ments, such Secretary of Health and  
18          Human Services may require the entities  
19          to furnish such information as such Sec-  
20          retary may require to carry out this sec-  
21          tion.

22          “(F) DATA MATCH.—

23          “(i) ESTABLISHMENT OF DATA  
24          MATCHING PROGRAM.—The administering  
25          Secretaries shall establish a data matching

1 program under which there is an exchange  
2 of information of the Department of Veter-  
3 ans Affairs and of the Department of  
4 Health and Human Services as is nec-  
5 essary to identify veterans who are entitled  
6 to benefits under part A or enrolled under  
7 part B, or both, in order to carry out this  
8 section. The provisions of section 552a of  
9 title 5, United States Code, shall apply  
10 with respect to such matching program  
11 only to the extent the administering Sec-  
12 retaries find it feasible and appropriate in  
13 carrying out this section in a timely and  
14 efficient manner.

15 “(ii) PERFORMANCE OF DATA  
16 MATCH.—The administering Secretaries,  
17 using the data matching program estab-  
18 lished under clause (i), shall perform a  
19 comparison in order to identify veterans  
20 who are entitled to benefits under part A  
21 or enrolled under part B, or both. To the  
22 extent such Secretaries deem appropriate  
23 to carry out this section, the comparison  
24 and identification may distinguish among  
25 such veterans by category of veterans, by

1 entitlement to benefits under this title, or  
2 by other characteristics.

3 “(iii) DEADLINE FOR FIRST DATA  
4 MATCH.—The administering Secretaries  
5 shall first perform a comparison under  
6 clause (ii) by not later than October 31,  
7 1998.

8 “(iv) CERTIFICATION BY INSPECTOR  
9 GENERAL.—

10 “(I) IN GENERAL.—The admin-  
11 istering Secretaries may not conduct  
12 the program unless the Inspector Gen-  
13 eral of the Department of Health and  
14 Human Services certifies to Congress  
15 that the administering Secretaries  
16 have established the data matching  
17 program under clause (i) and have  
18 performed a comparison under clause  
19 (ii).

20 “(II) DEADLINE FOR CERTIFI-  
21 CATION.—Not later than December  
22 15, 1998, the Inspector General of the  
23 Department of Health and Human  
24 Services shall submit a report to Con-  
25 gress containing the certification

1                   under subclause (I) or the denial of  
2                   such certification.

3                   “(2) NUMBER OF SITES.—The program and  
4                   demonstration project shall be conducted in geo-  
5                   graphic service areas of the Department of Veterans  
6                   Affairs, designated jointly by the administering Sec-  
7                   retaries after review of all such areas, as follows:

8                   “(A) PROGRAM SITES.—

9                   “(i) IN GENERAL.—Except as pro-  
10                  vided in clause (ii), the program shall be  
11                  conducted in not more than 3 such areas  
12                  with respect to category A medicare-eli-  
13                  gible veterans.

14                  “(ii) ADDITIONAL PROGRAM SITES.—  
15                  Subject to the certification required under  
16                  subsection (h)(1)(B)(iii), for a year begin-  
17                  ning on or after January 1, 2003, the pro-  
18                  gram shall be conducted in such areas as  
19                  are designated jointly by the administering  
20                  Secretaries after review of all such areas.

21                  “(B) PROJECT SITES.—

22                  “(i) IN GENERAL.—The demonstra-  
23                  tion project shall be conducted in not more  
24                  than 3 such areas with respect to category  
25                  C medicare-eligible veterans.

1           “(ii) MANDATORY SITE.—At least one  
2           of the areas designated under clause (i)  
3           shall encompass the catchment area of a  
4           military medical facility which was closed  
5           pursuant to either the Defense Base Clo-  
6           sure and Realignment Act of 1990 (part A  
7           of title XXIX of Public Law 101–510; 10  
8           U.S.C. 2687 note) or title II of the De-  
9           fense Authorization Amendments and Base  
10          Closure and Realignment Act (Public Law  
11          100–526; 10 U.S.C. 2687 note).

12          “(3) RESTRICTION.—Funds from the program  
13          or demonstration project shall not be used for—

14                 “(A) the construction of any treatment fa-  
15                 cility of the Department of Veterans Affairs; or

16                 “(B) the renovation, expansion, or other  
17                 construction at such a facility.

18          “(4) DURATION.—The administering Secretar-  
19          ies shall conduct and implement the program and  
20          the demonstration project as follows:

21                 “(A) PROGRAM.—

22                         “(i) IN GENERAL.—The program shall  
23                         begin on January 1, 2000, in the sites des-  
24                         ignated under paragraph (2)(A)(i) and,  
25                         subject to subsection (h)(1)(B)(iii)(II), for

1 a year beginning on or after January 1,  
2 2003, the program may be conducted in  
3 such additional sites designated under  
4 paragraph (2)(A)(ii).

5 “(ii) LIMITATION ON NUMBER OF  
6 VETERANS COVERED UNDER CERTAIN CIR-  
7 CUMSTANCES.—If for a year beginning on  
8 or after January 1, 2003, the program is  
9 conducted only in the sites designated  
10 under paragraph (2)(A)(i), medicare health  
11 care services may not be provided under  
12 the program to a number of category-A  
13 medicare-eligible veterans that exceeds the  
14 aggregate number of such veterans covered  
15 under the program as of December 31,  
16 2002.

17 “(B) PROJECT.—The demonstration  
18 project shall begin on January 1, 1999, and  
19 end on December 31, 2001.

20 “(C) IMPLEMENTATION.—The administer-  
21 ing Secretaries may implement the program  
22 and demonstration project through the publica-  
23 tion of regulations that take effect on an in-  
24 terim basis, after notice and pending oppor-  
25 tunity for public comment.

1 “(5) REPORTS.—

2 “(A) PROGRAM.—By not later than Sep-  
3 tember 1, 1999, the administering Secretaries  
4 shall submit a copy of the agreement entered  
5 into under paragraph (1) with respect to the  
6 program to Congress.

7 “(B) PROJECT.—By not later than No-  
8 vember 1, 1998, the administering Secretaries  
9 shall submit a copy of the agreement entered  
10 into under paragraph (1) with respect to the  
11 project to Congress.

12 “(6) REPORT ON MAINTENANCE OF LEVEL OF  
13 HEALTH CARE SERVICES.—

14 “(A) IN GENERAL.—The Secretary of Vet-  
15 erans Affairs may not implement the program  
16 at a site designated under paragraph (2)(A) un-  
17 less, by not later than 90 days before the date  
18 of the implementation, the Secretary of Veter-  
19 ans Affairs submits to Congress and to the  
20 Comptroller General of the United States a re-  
21 port that contains the information described in  
22 subparagraph (B). The Secretary of Veterans  
23 Affairs shall periodically update the report  
24 under this paragraph as appropriate.

1           “(B) INFORMATION DESCRIBED.—For pur-  
2           poses of subparagraph (A), the information de-  
3           scribed in this subparagraph is a description of  
4           the operation of the program at the site and of  
5           the steps to be taken by the Secretary of Veter-  
6           ans Affairs to prevent the reduction of the type  
7           or amount of health care services furnished  
8           under chapter 17 of title 38, United States  
9           Code, to veterans who are entitled to benefits  
10          under part A or enrolled under part B, or both,  
11          within the geographic service area of the De-  
12          partment of Veterans Affairs in which the site  
13          is located by reason of the program or project.

14          “(c) CREDITING OF PAYMENTS.—A payment received  
15          by the Secretary of Veterans Affairs under the program  
16          or demonstration project shall be credited to the applicable  
17          Department of Veterans Affairs medical care appropria-  
18          tion (and within that appropriation). Any such payment  
19          received during a fiscal year for services provided during  
20          a prior fiscal year may be obligated by the Secretary of  
21          Veterans Affairs during the fiscal year during which the  
22          payment is received.

23          “(d) APPLICATION OF CERTAIN MEDICARE RE-  
24          QUIREMENTS.—

25          “(1) AUTHORITY.—

1           “(A) IN GENERAL.—Except as provided  
2           under subparagraph (B), the program and the  
3           demonstration project shall meet all require-  
4           ments of Medicare+Choice plans under part C  
5           and regulations pertaining thereto, and other  
6           requirements for receiving medicare payments,  
7           except that the prohibition of payments to Fed-  
8           eral providers of services under sections 1814(c)  
9           and 1835(d), and paragraphs (2) and (3) of  
10          section 1862(a) shall not apply.

11          “(B) WAIVER.—Except as provided in  
12          paragraph (2), the Secretary of Health and  
13          Human Services is authorized to waive any re-  
14          quirement described under subparagraph (A),  
15          or approve equivalent or alternative ways of  
16          meeting such a requirement, but only if such  
17          waiver or approval—

18                 “(i) reflects the unique status of the  
19                 Department of Veterans Affairs as an  
20                 agency of the Federal Government; and

21                 “(ii) is necessary to carry out the pro-  
22                 gram or demonstration project.

23          “(2) BENEFICIARY PROTECTIONS AND OTHER  
24          MATTERS.—The program and the demonstration  
25          project shall comply with the requirements of part C

1 of this title that relate to beneficiary protections and  
2 other matters, including such requirements relating  
3 to the following areas, to the extent not inconsistent  
4 with subsection (b)(1)(B)(iii):

5 “(A) Enrollment and disenrollment.

6 “(B) Nondiscrimination.

7 “(C) Information provided to beneficiaries.

8 “(D) Cost-sharing limitations.

9 “(E) Appeal and grievance procedures.

10 “(F) Provider participation.

11 “(G) Access to services.

12 “(H) Quality assurance and external re-  
13 view.

14 “(I) Advance directives.

15 “(J) Other areas of beneficiary protections  
16 that the administering Secretaries determine  
17 are applicable to such program or project.

18 “(e) INSPECTOR GENERAL.—Nothing in the agree-  
19 ment entered into under subsection (b) shall limit the In-  
20 spector General of the Department of Health and Human  
21 Services from investigating any matters regarding the ex-  
22 penditure of funds under this title for the program and  
23 demonstration project, including compliance with the pro-  
24 visions of this title and all other relevant laws.

1       “(f) VOLUNTARY PARTICIPATION.—Participation of a  
2 category A medicare-eligible veteran in the program or  
3 category C medicare-eligible veteran in the demonstration  
4 project shall be voluntary.

5       “(g) PAYMENTS BASED ON REGULAR MEDICARE  
6 PAYMENT RATES.—

7           “(1) IN GENERAL.—Subject to the succeeding  
8 provisions of this subsection, the Secretary of Health  
9 and Human Services shall reimburse the Secretary  
10 of Veterans Affairs for services provided under the  
11 program or demonstration project at a rate equal to  
12 95 percent of the amount paid to a  
13 Medicare+Choice organization under part C of this  
14 title with respect to such an enrollee. In cases in  
15 which a payment amount may not otherwise be read-  
16 ily computed, the Secretary of Health and Human  
17 Services shall establish rules for computing equiva-  
18 lent or comparable payment amounts.

19           “(2) EXCLUSION OF CERTAIN AMOUNTS.—In  
20 computing the amount of payment under paragraph  
21 (1), the following shall be excluded:

22           “(A) SPECIAL PAYMENTS.—Any amount  
23 attributable to an adjustment under subpara-  
24 graphs (B) and (F) of section 1886(d)(5) and  
25 subsection (h) of such section.

1           “(B) PERCENTAGE OF CAPITAL PAY-  
2           MENTS.—An amount determined by the admin-  
3           istering Secretaries for amounts attributable to  
4           payments for capital-related costs under sub-  
5           section (g) of such section.

6           “(3) PERIODIC PAYMENTS FROM MEDICARE  
7           TRUST FUNDS.—Payments under this subsection  
8           shall be made—

9                   “(A) on a periodic basis consistent with  
10                   the periodicity of payments under this title; and

11                   “(B) in appropriate part, as determined by  
12                   the Secretary of Health and Human Services,  
13                   from the trust funds.

14           “(4) CAP ON REIMBURSEMENT AMOUNTS.—The  
15           aggregate amount to be reimbursed under this sub-  
16           section pursuant to the agreement entered into be-  
17           tween the administering Secretaries under sub-  
18           section (b) is as follows:

19                   “(A) PROGRAM.—With respect to category  
20                   A medicare-eligible veterans, such aggregate  
21                   amount shall not exceed—

22                           “(i) for 2000, a total of \$50,000,000;

23                           “(ii) for 2001, a total of \$75,000,000;

24                           and

1                   “(iii) subject to subparagraph (B), for  
2                   2002 and each succeeding year, a total of  
3                   \$100,000,000.

4                   “(B) EXPANSION OF PROGRAM.—If for a  
5                   year beginning on or after January 1, 2003, the  
6                   program is conducted in sites designated under  
7                   subsection (b)(2)(A)(ii), the limitation under  
8                   subparagraph (A)(iii) shall not apply to the pro-  
9                   gram for such a year.

10                   “(C) PROJECT.—With respect to category  
11                   C medicare-eligible veterans, such aggregate  
12                   amount shall not exceed a total of \$50,000,000  
13                   for each of calendar years 1999 through 2001.

14                   “(h) MAINTENANCE OF EFFORT.—

15                   “(1) MONITORING EFFECT OF PROGRAM AND  
16                   DEMONSTRATION PROJECT ON COSTS TO MEDICARE  
17                   PROGRAM.—

18                   “(A) IN GENERAL.—The administering  
19                   Secretaries, in consultation with the Comptrol-  
20                   ler General of the United States, shall closely  
21                   monitor the expenditures made under this title  
22                   for category A and C medicare-eligible veterans  
23                   compared to the expenditures that would have  
24                   been made for such veterans if the program and  
25                   demonstration project had not been conducted.

1           The agreement entered into by the administer-  
2           ing Secretaries under subsection (b) shall re-  
3           quire the Department of Veterans Affairs to  
4           maintain overall the level of effort for services  
5           covered under this title to such categories of  
6           veterans by reference to a base year as deter-  
7           mined by the administering Secretaries.

8           “(B) DETERMINATION OF MEASURE OF  
9           COSTS OF MEDICARE HEALTH CARE SERV-  
10          ICES.—

11           “(i) IMPROVEMENT OF INFORMATION  
12          MANAGEMENT SYSTEM.—Not later than  
13          October 1, 2001, the Secretary of Veterans  
14          Affairs shall improve its information man-  
15          agement system such that, for a year be-  
16          ginning on or after January 1, 2002, the  
17          Secretary of Veterans Affairs is able to  
18          identify costs incurred by the Department  
19          of Veterans Affairs in providing medicare  
20          health care services to medicare-eligible  
21          veterans for purposes of meeting the re-  
22          quirements with respect to maintenance of  
23          effort under an agreement under sub-  
24          section (b)(1)(A).

1           “(ii) IDENTIFICATION OF MEDICARE  
2 HEALTH CARE SERVICES.—The Secretary  
3 of Health and Human Services shall pro-  
4 vide such assistance as is necessary for the  
5 Secretary of Veterans Affairs to determine  
6 which health care services furnished by the  
7 Secretary of Veterans Affairs qualify as  
8 medicare health care services.

9           “(iii) CERTIFICATION BY HHS INSPEC-  
10 TOR GENERAL.—

11           “(I) REQUEST FOR CERTIFI-  
12 CATION.—The Secretary of Veterans  
13 Affairs may request the Inspector  
14 General of the Department of Health  
15 and Human Services to make a cer-  
16 tification to Congress that the Sec-  
17 retary of Veterans Affairs has im-  
18 proved its management system under  
19 clause (i) such that the Secretary of  
20 Veterans Affairs is able to identify the  
21 costs described in such clause in a  
22 reasonably reliable and accurate man-  
23 ner.

24           “(II) REQUIREMENT FOR EXPAN-  
25 SION OF PROGRAM.—The program

1 may be conducted in the additional  
2 sites under paragraph (2)(A)(ii) and  
3 cover such additional category A  
4 medicare eligible veterans in such ad-  
5 ditional sites only if the Inspector  
6 General of the Department of Health  
7 and Human Services has made the  
8 certification described in subclause  
9 (I).

10 “(III) DEADLINE FOR CERTIFI-  
11 CATION.—Not later than the date that  
12 is the earlier of the date that is 60  
13 days after the Secretary of Veterans  
14 Affairs requests a certification under  
15 subclause (I) or June 1, 2002, the In-  
16 spector General of the Department of  
17 Health and Human Services shall sub-  
18 mit a report to Congress containing  
19 the certification under subclause (I)  
20 or the denial of such certification.

21 “(C) MAINTENANCE OF LEVEL OF EF-  
22 FORT.—

23 “(i) REPORT BY SECRETARY OF VET-  
24 ERANS AFFAIRS ON BASIS FOR CALCULA-  
25 TION.—Not later than the date that is 60

1 days after the date on which the admin-  
2 istering Secretaries enter into an agree-  
3 ment under subsection (b)(1)(A), the Sec-  
4 retary of Veterans Affairs shall submit a  
5 report to Congress and the Comptroller  
6 General of the United States explaining  
7 the methodology used and basis for cal-  
8 culating the level of effort of the Depart-  
9 ment of Veterans Affairs under the pro-  
10 gram and project.

11 “(ii) REPORT BY COMPTROLLER GEN-  
12 ERAL.—Not later than the date that is 180  
13 days after the date described in clause (i),  
14 the Comptroller General of the United  
15 States shall submit to Congress and the  
16 administering Secretaries a report setting  
17 forth the Comptroller General’s findings,  
18 conclusion, and recommendations with re-  
19 spect to the report submitted by the Sec-  
20 retary of Veterans Affairs under clause (i).

21 “(iii) RESPONSE BY SECRETARY OF  
22 VETERANS AFFAIRS.—The Secretary of  
23 Veterans Affairs shall submit to Congress  
24 not later than 60 days after the date de-  
25 scribed in clause (ii) a report setting forth

1           such Secretary’s response to the report  
2           submitted by the Comptroller General  
3           under clause (ii).

4           “(D) ANNUAL REPORT BY THE COMPTROL-  
5           LER GENERAL.—Not later than December 31 of  
6           each year during which the program and dem-  
7           onstration project is conducted, the Comptroller  
8           General of the United States shall submit to  
9           the administering Secretaries and to Congress a  
10          report on the extent, if any, to which the costs  
11          of the Secretary of Health and Human Services  
12          under the medicare program under this title in-  
13          creased during the preceding fiscal year as a re-  
14          sult of the program or demonstration project.

15          “(2) REQUIRED RESPONSE IN CASE OF IN-  
16          CREASE IN COSTS.—

17                 “(A) IN GENERAL.—If the administering  
18                 Secretaries find, based on paragraph (1), that  
19                 the expenditures under the medicare program  
20                 under this title increased (or are expected to in-  
21                 crease) during a fiscal year because of the pro-  
22                 gram or demonstration project, the administer-  
23                 ing Secretaries shall take such steps as may be  
24                 needed—

1           “(i) to recoup for the medicare pro-  
2           gram the amount of such increase in ex-  
3           penditures; and

4           “(ii) to prevent any such increase in  
5           the future.

6           “(B) STEPS.—Such steps—

7           “(i) under subparagraph (A)(i) shall  
8           include payment of the amount of such in-  
9           creased expenditures by the Secretary of  
10          Veterans Affairs from the current medical  
11          care appropriation for the Department of  
12          Veterans Affairs to the trust funds; and

13          “(ii) under subparagraph (A)(ii) shall  
14          include lowering the amount of payment  
15          under the program or project under sub-  
16          section (g)(1), and may include, in the case  
17          of the demonstration project, suspending  
18          or terminating the project (in whole or in  
19          part).

20          “(i) EVALUATION AND REPORTS.—

21                  “(1) INDEPENDENT EVALUATION BY GAO.—

22                          “(A) IN GENERAL.—The Comptroller Gen-  
23                          eral of the United States shall conduct an eval-  
24                          uation of the program and an evaluation of the  
25                          demonstration project, and shall submit annual

1 reports on the program and demonstration  
2 project to the administering Secretaries and to  
3 Congress.

4 “(B) FIRST REPORT.—The first report for  
5 the program or demonstration project under  
6 subparagraph (A) shall be submitted not later  
7 than 12 months after the date on which the  
8 Secretary of Veterans Affairs first provides  
9 services under the program or project, respec-  
10 tively.

11 “(C) FINAL REPORT ON DEMONSTRATION  
12 PROJECT.—A final report shall be submitted  
13 with respect to the demonstration project not  
14 later than 3½ years after the date of the first  
15 report on the project under subparagraph (B).

16 “(D) CONTENTS.—The evaluation and re-  
17 ports under this paragraph for the program or  
18 demonstration project shall include an assess-  
19 ment, based on the agreement entered into  
20 under subsection (b), of the following:

21 “(i) Any savings or costs to the medi-  
22 care program under this title resulting  
23 from the program or project.

24 “(ii) The cost to the Department of  
25 Veterans Affairs of providing care to cat-

1 category A medicare-eligible veterans under  
2 the program or to category C medicare-eli-  
3 gible veterans under the demonstration  
4 project, respectively.

5 “(iii) An analysis of how such pro-  
6 gram or project affects the overall acces-  
7 sibility of medical care through the De-  
8 partment of Veterans Affairs, and a de-  
9 scription of the unintended effects (if any)  
10 upon the patient enrollment system under  
11 section 1705 of title 38, United States  
12 Code.

13 “(iv) Compliance by the Department  
14 of Veterans Affairs with the requirements  
15 under this title.

16 “(v) The number of category A medi-  
17 care-eligible veterans or category C medi-  
18 care-eligible veterans, respectively, opting  
19 to participate in the program or project in-  
20 stead of receiving health benefits through  
21 another health insurance plan (including  
22 benefits under this title).

23 “(vi) A list of the health insurance  
24 plans and programs that were the primary  
25 payers for medicare-eligible veterans dur-

1           ing the year prior to their participation in  
2           the program or project, respectively, and  
3           the distribution of their previous enroll-  
4           ment in such plans and programs.

5           “(vii) Any impact of the program or  
6           project, respectively, on private health care  
7           providers and beneficiaries under this title  
8           that are not enrolled in the program or  
9           project.

10          “(viii) An assessment of the access to  
11          care and quality of care for medicare-eli-  
12          gible veterans under the program or project,  
13          respectively.

14          “(ix) An analysis of whether, and in  
15          what manner, easier access to medical cen-  
16          ters of the Department of Veterans Affairs  
17          affects the number of category A medicare-  
18          eligible veterans or C medicare-eligible vet-  
19          erans, respectively, receiving medicare  
20          health care services.

21          “(x) Any impact of the program or  
22          project, respectively, on the access to care  
23          for category A medicare-eligible veterans  
24          or C medicare-eligible veterans, respec-  
25          tively, who did not enroll in the program or

1 project and for other individuals entitled to  
2 benefits under this title.

3 “(xi) A description of the difficulties  
4 (if any) experienced by the Department of  
5 Veterans Affairs in managing the program  
6 or project, respectively.

7 “(xii) Any additional elements speci-  
8 fied in the agreement entered into under  
9 subsection (b).

10 “(xiii) Any additional elements that  
11 the Comptroller General of the United  
12 States determines is appropriate to assess  
13 regarding the program or project, respec-  
14 tively.

15 “(2) REPORTS BY SECRETARIES ON PROGRAM  
16 AND DEMONSTRATION PROJECT WITH RESPECT TO  
17 MEDICARE-ELIGIBLE VETERANS.—

18 “(A) DEMONSTRATION PROJECT.—Not  
19 later than 6 months after the date of the sub-  
20 mission of the final report by the Comptroller  
21 General of the United States on the demonstra-  
22 tion project under paragraph (1)(C), the admin-  
23 istering Secretaries shall submit to Congress a  
24 report containing their recommendation as to—

1           “(i) whether there is a cost to the  
2 health care program under this title in  
3 conducting the demonstration project;

4           “(ii) whether to extend the dem-  
5 onstration project or make the project per-  
6 manent; and

7           “(iii) whether the terms and condi-  
8 tions of the project should otherwise be  
9 continued (or modified) with respect to  
10 medicare-eligible veterans.

11           “(B) PROGRAM.—Not later than 6 months  
12 after the date of the submission of the report  
13 by the Comptroller General of the United  
14 States on the third year of the operation of the  
15 program, the administering Secretaries shall  
16 submit to Congress a report containing their  
17 recommendation as to—

18           “(i) whether there is a cost to the  
19 health care program under this title in  
20 conducting the program under this section;

21           “(ii) whether to discontinue the pro-  
22 gram with respect to category A medicare-  
23 eligible veterans; and

24           “(iii) whether the terms and condi-  
25 tions of the program should otherwise be

1 continued (or modified) with respect to  
2 medicare-eligible veterans.

3 “(j) APPLICATION OF MEDIGAP PROTECTIONS TO  
4 DEMONSTRATION PROJECT ENROLLEES.—(1) Subject to  
5 paragraph (2), the provisions of section 1882(s)(3) (other  
6 than clauses (i) through (iv) of subparagraph (B)) and  
7 1882(s)(4) shall apply to enrollment (and termination of  
8 enrollment) in the demonstration project, in the same  
9 manner as they apply to enrollment (and termination of  
10 enrollment) with a Medicare+Choice organization in a  
11 Medicare+Choice plan.

12 “(2) In applying paragraph (1)—

13 “(A) any reference in clause (v) or (vi) of sec-  
14 tion 1882(s)(3)(B) to 12 months is deemed a ref-  
15 erence to 36 months; and

16 “(B) the notification required under section  
17 1882(s)(3)(D) shall be provided in a manner speci-  
18 fied by the Secretary of Veterans Affairs.”.

19 (b) REPEAL OF PLAN REQUIREMENT.—Subsection  
20 (b) of section 4015 of the Balanced Budget Act of 1997  
21 (relating to an implementation plan for Veterans sub-  
22 vention) is repealed.

23 (c) REPORT TO CONGRESS ON A METHOD TO IN-  
24 CLUDE THE COSTS OF VETERANS AFFAIRS AND MILI-  
25 TARY FACILITY SERVICES TO MEDICARE-ELIGIBLE BENE-

1 FICIARIES IN THE CALCULATION OF MEDICARE+CHOICE  
2 PAYMENT RATES.—The Secretary of Health and Human  
3 Services shall report to the Congress by not later than  
4 January 1, 2001, on a method to phase-in the costs of  
5 military facility services furnished by the Department of  
6 Veterans Affairs or the Department of Defense to medi-  
7 care-eligible beneficiaries in the calculation of an area’s  
8 Medicare+Choice capitation payment. Such report shall  
9 include on a county-by- county basis—

10 (1) the actual or estimated cost of such services  
11 to medicare-eligible beneficiaries;

12 (2) the change in Medicare+Choice capitation  
13 payment rates if such costs are included in the cal-  
14 culation of payment rates;

15 (3) one or more proposals for the implementa-  
16 tion of payment adjustments to Medicare+Choice  
17 plans in counties where the payment rate has been  
18 affected due to the failure to calculate the cost of  
19 such services to medicare-eligible beneficiaries; and

20 (4) a system to ensure that when a  
21 Medicare+Choice enrollee receives covered services  
22 through a facility of the Department of Veterans Af-  
23 fairs or the Department of Defense there is an ap-  
24 propriate payment recovery to the medicare pro-  
25 gram.

1 **TITLE III—AUTHORIZATION OF**  
2 **ADDITIONAL EXCEPTIONS TO**  
3 **IMPOSITION OF PENALTIES**  
4 **FOR CERTAIN INDUCEMENTS**

5 **SEC. 301. AUTHORIZATION OF ADDITIONAL EXCEPTIONS TO**  
6 **IMPOSITION OF PENALTIES FOR PROVIDING**  
7 **INDUCEMENTS TO BENEFICIARIES.**

8 (a) **IN GENERAL.**—Subparagraph (B) of section  
9 1128A(i)(6) of the Social Security Act (42 U.S.C. 1320a–  
10 7a(i)(6)) is amended to read as follows:

11 “(B) any permissible practice described in  
12 any subparagraph of section 1128B(b)(3) or in  
13 regulations issued by the Secretary;”.

14 (b) **EXTENSION OF ADVISORY OPINION AUTHOR-**  
15 **ITY.**—Section 1128D(b)(2)(A) of such Act (42 U.S.C.  
16 1320a–7d(b)(2)(A)) is amended by inserting “or section  
17 1128A(i)(6)” after “1128B(b)”.

18 (c) **EFFECTIVE DATE.**—The amendments made by  
19 this section shall take effect on the date of the enactment  
20 of this Act.

21 (d) **INTERIM FINAL RULEMAKING AUTHORITY.**—The  
22 Secretary of Health and Human Services may promulgate  
23 regulations that take effect on an interim basis, after no-  
24 tice and pending opportunity for public comment, in order

1 to implement the amendments made by this section in a  
2 timely manner.

3 **TITLE IV—EXPANSION OF MEM-**  
4 **BERSHIP OF THE MEDICARE**  
5 **PAYMENT ADVISORY COMMIS-**  
6 **SION**

7 **SEC. 401. EXPANSION OF MEMBERSHIP OF MEDPAC TO 17.**

8 (a) IN GENERAL.—Section 1805(c)(1) of the Social  
9 Security Act (42 U.S.C. 1395b–6(c)(1)), as added by sec-  
10 tion 4022 of the Balanced Budget Act of 1997, is amend-  
11 ed by striking “15” and inserting “17”.

12 (b) INITIAL TERMS OF ADDITIONAL MEMBERS.—

13 (1) IN GENERAL.—For purposes of staggering  
14 the initial terms of members of the Medicare Pay-  
15 ment Advisory Commission (under section  
16 1805(c)(3) of such Act (42 U.S.C. 1395b–6(c)(3)),  
17 the initial terms of the two additional members of  
18 the Commission provided for by the amendment  
19 under subsection (a) are as follows:

20 (A) One member shall be appointed for one  
21 year.

22 (B) One member shall be appointed for  
23 two years.

24 (2) COMMENCEMENT OF TERMS.—Such terms  
25 shall begin on May 1, 1999.

1       **TITLE V—REVENUE OFFSET**

2       **SEC. 501. REVENUE OFFSET.**

3       (a) IN GENERAL.—Subparagraph (B) of section  
4 408A(c)(3) of the Internal Revenue Code of 1986 is  
5 amended by striking “relates” and all that follows and in-  
6 serting “relates, the taxpayer’s adjusted gross income ex-  
7 ceeds \$145,000 (\$290,000 in the case of a joint return).”

8       (b) EFFECTIVE DATE.—The amendment made by  
9 subsection (a) shall apply to distributions after December  
10 31, 1998.

      Passed the House of Representatives October 10,  
1998.

Attest:

*Clerk.*