

106TH CONGRESS  
2D SESSION

# H. R. 5200

To amend title XVIII of the Social Security Act to ensure that the Secretary of Health and Human Services provides appropriate guidance to physicians and other health care providers that are attempting to properly submit claims under the medicare program and to ensure that the Secretary targets truly fraudulent activity for enforcement of medicare billing regulations, rather than inadvertent billing errors.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 2000

Mr. TOOMEY (for himself and Ms. BERKLEY) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Ways and Means, 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 amend title XVIII of the Social Security Act to ensure that the Secretary of Health and Human Services provides appropriate guidance to physicians and other health care providers that are attempting to properly submit claims under the medicare program and to ensure that the Secretary targets truly fraudulent activity for enforcement of medicare billing regulations, rather than inadvertent billing errors.

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

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

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Medicare Billing and Education Act of 2000”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions.

TITLE I—REGULATORY REFORM

- Sec. 101. Prospective application of certain regulations.
- Sec. 102. Requirements for judicial and regulatory challenges of regulations.
- Sec. 103. Prohibition of recovering past overpayments by certain means.
- Sec. 104. Prohibition of recovering past overpayments if appeal pending.

TITLE II—APPEALS PROCESS REFORMS

- Sec. 201. Reform of post-payment audit process.
- Sec. 202. Definitions relating to protections for physicians, suppliers, and providers of services.
- Sec. 203. Right to appeal on behalf of deceased beneficiaries.

TITLE III—EDUCATION COMPONENTS

- Sec. 301. Designated funding levels for provider education.
- Sec. 302. Advisory opinions.

TITLE IV—SUSTAINABLE GROWTH RATE REFORMS

- Sec. 401. Inclusion of regulatory costs in the calculation of the sustainable growth rate.

TITLE V—STUDIES AND REPORTS

- Sec. 501. GAO audit and report on compliance with certain statutory administrative procedure requirements.
- Sec. 502. GAO study and report on provider participation.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Physicians, providers of services, and sup-  
9 pliers of medical equipment and supplies that par-  
10 ticipate in the medicare program under title XVIII  
11 of the Social Security Act must contend with over

1 100,000 pages of complex medicare regulations,  
2 most of which are unknowable to the average health  
3 care provider.

4 (2) Many physicians are choosing to discontinue  
5 participation in the medicare program to avoid be-  
6 coming the target of an overzealous Government in-  
7 vestigation regarding compliance with the extensive  
8 regulations governing the submission and payment  
9 of medicare claims.

10 (3) Health Care Financing Administration con-  
11 tractors send post-payment review letters to physi-  
12 cians that require the physician to submit to addi-  
13 tional substantial Government interference with the  
14 practice of the physician in order to preserve the  
15 physician's right to due process.

16 (4) When a Health Care Financing Administra-  
17 tion contractor sends a post-payment review letter to  
18 a physician, that contractor often has no telephone  
19 or face-to-face communication with the physician,  
20 provider of services, or supplier.

21 (5) The Health Care Financing Administration  
22 targets billing errors as though health care providers  
23 have committed fraudulent acts, but has not ade-  
24 quately educated physicians, providers of services,

1 and suppliers regarding medicare billing require-  
2 ments.

3 (6) The Office of the Inspector General of the  
4 Department of Health and Human Services found  
5 that 75 percent of surveyed physicians had never re-  
6 ceived any educational materials from a Health Care  
7 Financing Administration contractor concerning the  
8 equipment and supply ordering process.

9 **SEC. 3. DEFINITIONS.**

10 In this Act:

11 (1) **APPLICABLE AUTHORITY.**—The term “ap-  
12 plicable authority” has the meaning given such term  
13 in section 1861(uu)(1) of the Social Security Act (as  
14 added by section 202).

15 (2) **CARRIER.**—The term “carrier” means a  
16 carrier (as defined in section 1842(f) of the Social  
17 Security Act (42 U.S.C. 1395u(f))) with a contract  
18 under title XVIII of such Act to administer benefits  
19 under part B of such title.

20 (3) **EXTRAPOLATION.**—The term “extrapo-  
21 lation” has the meaning given such term in section  
22 1861(uu)(2) of the Social Security Act (as added by  
23 section 202).

24 (4) **FISCAL INTERMEDIARY.**—The term “fiscal  
25 intermediary” means a fiscal intermediary (as de-

1        fined in section 1816(a) of the Social Security Act  
 2        (42 U.S.C. 1395h(a))) with an agreement under sec-  
 3        tion 1816 of such Act to administer benefits under  
 4        part A or B of such title.

5            (5) HEALTH CARE PROVIDER.—The term  
 6        “health care provider” has the meaning given the  
 7        term “eligible provider” in section 1897(a)(2) of the  
 8        Social Security Act (as added by section 301).

9            (6) MEDICARE PROGRAM.—The term “medicare  
 10        program” means the health benefits program under  
 11        title XVIII of the Social Security Act (42 U.S.C.  
 12        1395 et seq.).

13            (7) PREPAYMENT REVIEW.—The term “prepay-  
 14        ment review” has the meaning given such term in  
 15        section 1861(uu)(3) of the Social Security Act (as  
 16        added by section 202).

17            (8) SECRETARY.—The term “Secretary” means  
 18        the Secretary of Health and Human Services.

## 19    **TITLE I—REGULATORY REFORM**

### 20    **SEC. 101. PROSPECTIVE APPLICATION OF CERTAIN REGU-** 21        **LATIONS.**

22            (a) IN GENERAL.—Section 1871(a) of the Social Se-  
 23        curity Act (42 U.S.C. 1395hh(a)) is amended by adding  
 24        at the end the following new paragraph:

1           “(3) Any regulation described under paragraph  
 2           (2) may not take effect earlier than the date on  
 3           which such regulation becomes a final regulation.  
 4           Any regulation described under such paragraph that  
 5           applies to an agency action, including any agency  
 6           determination, shall only apply as that regulation is  
 7           in effect at the time that agency action is taken.”.

8           (b) EFFECTIVE DATE.—The amendment made by  
 9           this section shall take effect 60 days after the date of en-  
 10          actment of this Act.

11   **SEC. 102. REQUIREMENTS FOR JUDICIAL AND REGU-**  
 12                           **LATORY CHALLENGES OF REGULATIONS.**

13           (a) RIGHT TO CHALLENGE CONSTITUTIONALITY AND  
 14   STATUTORY AUTHORITY OF HCFA REGULATIONS.—Sec-  
 15   tion 1872 of the Social Security Act (42 U.S.C. 1395ii)  
 16   is amended to read as follows:

17           “APPLICATION OF CERTAIN PROVISIONS OF TITLE II

18           “SEC. 1872. The provisions of sections 206 and  
 19   216(j), and of subsections (a), (d), (e), (h), (i), (j), (k),  
 20   and (l) of section 205, shall also apply with respect to this  
 21   title to the same extent as they are applicable with respect  
 22   to title II, except that—

23           “(1) in applying such provisions with respect to  
 24           this title, any reference therein to the Commissioner  
 25           of Social Security or the Social Security Administra-  
 26           tion shall be considered a reference to the Secretary

1 or the Department of Health and Human Services,  
2 respectively; and

3 “(2) section 205(h) shall not apply with respect  
4 to any action brought against the Secretary under  
5 section 1331 or 1346 of title 28, United States  
6 Code, regardless of whether such action is unrelated  
7 to a specific determination of the Secretary, that  
8 challenges—

9 “(A) the constitutionality of the Sec-  
10 retary’s regulations or policies;

11 “(B) the Secretary’s statutory authority to  
12 promulgate such regulations or policies; or

13 “(C) a finding of good cause under sub-  
14 paragraph (B) of the sentence following section  
15 553(b)(3), United States Code.”.

16 (b) CONSTRUCTION OF HEARING RIGHTS RELATING  
17 TO DETERMINATIONS BY THE SECRETARY REGARDING  
18 AGREEMENTS WITH PROVIDERS OF SERVICES.—Section  
19 1866(h) of the Social Security Act (42 U.S.C. 1395cc(h))  
20 is amended by adding at the end the following new para-  
21 graph:

22 “(3) For purposes of applying paragraph (1), an in-  
23 stitution or agency dissatisfied with a determination by  
24 the Secretary described in such paragraph shall be entitled  
25 to a hearing thereon regardless of whether—

1 “(A) such determination has been made by the  
 2 Secretary or by a State pursuant to an agreement  
 3 entered into with the Secretary under section 1864;  
 4 or

5 “(B) the Secretary has imposed or may impose  
 6 a remedy, penalty, or other sanction on the institu-  
 7 tion or agency in connection with such determina-  
 8 tion.”.

9 (c) EFFECTIVE DATE.—The amendments made by  
 10 this section shall take effect 60 days after the date of en-  
 11 actment of this Act.

12 **SEC. 103. PROHIBITION OF RECOVERING PAST OVERPAY-**  
 13 **MENTS BY CERTAIN MEANS.**

14 (a) IN GENERAL.—Except as provided in subsection  
 15 (b) and notwithstanding sections 1815(a), 1842(b), and  
 16 1861(v)(1)(A)(ii) of the Social Security Act (42 U.S.C.  
 17 1395g(a), 1395u(a), and 1395x(v)(1)(A)(ii)), or any other  
 18 provision of law, for purposes of applying sections  
 19 1842(b)(3)(B)(ii), 1866(a)(1)(B)(ii), 1870, and 1893 of  
 20 such Act (42 U.S.C. 1395u(b)(3)(B)(ii),  
 21 1395cc(a)(1)(B)(ii), 1395gg, and 1395ddd), the Secretary  
 22 may not offset any future payment to a health care pro-  
 23 vider to recoup a previously made overpayment, but in-  
 24 stead shall establish a repayment plan to recoup such an  
 25 overpayment.



(b) EXCEPTION.—This section shall not apply to cases in which the Secretary finds clear and convincing evidence of fraud or similar fault on the part of such provider.

**SEC. 104. PROHIBITION OF RECOVERING PAST OVERPAYMENTS IF APPEAL PENDING.**

Notwithstanding any provision of law, for purposes of applying sections 1842(b)(3)(B)(ii), 1866(a)(1)(B)(ii), 1870, and 1893 of the Social Security Act (42 U.S.C. 1395u(b)(3)(B)(ii), 1395cc(a)(1)(B)(ii), 1395gg, and 1395ddd), the Secretary may not take any action (or authorize any other person, including any fiscal intermediary, carrier, and contractor under section 1893 of such Act (42 U.S.C. 1395ddd)) to recoup an overpayment during the period in which a health care provider is appealing a determination that such an overpayment has been made or the amount of the overpayment.

**TITLE II—APPEALS PROCESS  
REFORMS**

**SEC. 201. REFORM OF POST-PAYMENT AUDIT PROCESS.**

(a) COMMUNICATIONS TO PHYSICIANS.—Section 1842 of the Social Security Act (42 U.S.C. 1395u) is amended by adding at the end the following new subsection:

1       “(u) In carrying out its contract under subsection  
2 (b)(3), with respect to physicians’ services, the carrier  
3 shall provide for the recoupment of overpayments in the  
4 following manner:

5               “(1)(A) During the 1-year period beginning on  
6 the date on which a physician receives an overpay-  
7 ment, the physician may return the overpayment to  
8 the carrier making such overpayment if—

9                       “(i) the carrier or a contractor under sec-  
10 tion 1893 has not requested any relevant record  
11 or file; and

12                       “(ii) the case has not been referred to the  
13 Department of Justice or the Office of Inspec-  
14 tor General.

15               “(B) If a physician returns an overpayment  
16 under subparagraph (A), neither the carrier, con-  
17 tractor under section 1893, nor any law enforcement  
18 agency may begin an investigation or target such  
19 physician based on any claim associated with the  
20 amount the physician has repaid.

21               “(2) If a carrier or a contractor under section  
22 1893 identifies (before or during post-payment re-  
23 view activities) that a physician has submitted a  
24 claim with a coding, documentation, or billing incon-  
25 sistency, before sending any written communication

1 to such physician, the carrier or a contractor under  
2 section 1893 shall contact the physician by telephone  
3 or in person at the physician’s place of business dur-  
4 ing regular business hours and shall—

5 “(A) identify the billing anomaly;

6 “(B) inform the physician of how to ad-  
7 dress the anomaly; and

8 “(C) describe the type of coding or docu-  
9 mentation that is required for the claim.

10 “(3) The carrier or a contractor under section  
11 1893 may not recoup or offset payment amounts  
12 based on extrapolation (as defined in section  
13 1861(uu)(2)) if the physician has not been the sub-  
14 ject of a post-payment audit.

15 “(4) As part of any written consent settlement  
16 communication, the carrier or a contractor under  
17 section 1893 shall clearly state that the physician  
18 may submit additional information (including evi-  
19 dence other than medical records) to dispute the  
20 overpayment amount without waiving any adminis-  
21 trative remedy or right to appeal the amount of the  
22 overpayment.

23 “(5) As part of the administrative appeals proc-  
24 ess for any amount in controversy, a physician may  
25 directly appeal any adverse determination of the car-

1 rier or a contractor under section 1893 to an admin-  
2 istrative law judge.

3 “(6)(A) Each consent settlement communica-  
4 tion from the carrier or a contractor under section  
5 1893 shall clearly state that prepayment review (as  
6 defined in section 1861(uu)(3)) may be imposed  
7 where the physician submits an actual or projected  
8 repayment to the carrier or a contractor under sec-  
9 tion 1893. Any prepayment review shall cease if the  
10 physician demonstrates to the carrier that the physi-  
11 cian has properly submitted clean claims (as defined  
12 in section 1816(c)(2)(B)(i)).

13 “(B) Prepayment review may not be applied as  
14 a result of an action under section 201(a), 301(b),  
15 or 302.”.

16 (b) EFFECTIVE DATE.—The amendments made by  
17 this section shall take effect 60 days after the date of en-  
18 actment of this Act.

19 **SEC. 202. DEFINITIONS RELATING TO PROTECTIONS FOR**  
20 **PHYSICIANS, SUPPLIERS, AND PROVIDERS OF**  
21 **SERVICES.**

22 (a) IN GENERAL.—Section 1861 of the Social Secu-  
23 rity Act (42 U.S.C. 1395 et seq.) is amended by adding  
24 at the end the following new subsection:

1 “Definitions Relating to Protections for Physicians,  
2 Suppliers, and Providers of Services

3 “(uu) For purposes of provisions of this title relating  
4 to protections for physicians, suppliers of medical equip-  
5 ment and supplies, and providers of services:

6 “(1) APPLICABLE AUTHORITY.—The term ‘ap-  
7 plicable authority’ means the carrier, contractor  
8 under section 1893, or fiscal intermediary that is re-  
9 sponsible for making any determination regarding a  
10 payment for any item or service under the medicare  
11 program under this title.

12 “(2) EXTRAPOLATION.—The term ‘extrapo-  
13 lation’ means the application of an overpayment dol-  
14 lar amount to a larger grouping of physician claims  
15 than those in the audited sample to calculate a pro-  
16 jected overpayment figure.

17 “(3) PREPAYMENT REVIEW.—The term ‘pre-  
18 payment review’ means the carriers’ and fiscal inter-  
19 mediaries’ practice of withholding claim reimburse-  
20 ments from eligible providers even if the claims have  
21 been properly submitted and reflect medical services  
22 provided.”.

1 **SEC. 203. RIGHT TO APPEAL ON BEHALF OF DECEASED**  
2 **BENEFICIARIES.**

3 Notwithstanding section 1870 of the Social Security  
4 Act (42 U.S.C. 1395gg) or any other provision of law, the  
5 Secretary shall permit any health care provider to appeal  
6 any determination of the Secretary under the medicare  
7 program on behalf of a deceased beneficiary where no sub-  
8 stitute party is available.

9 **TITLE III—EDUCATION**  
10 **COMPONENTS**

11 **SEC. 301. DESIGNATED FUNDING LEVELS FOR PROVIDER**  
12 **EDUCATION.**

13 (a) EDUCATION PROGRAMS FOR PHYSICIANS, PRO-  
14 VIDERS OF SERVICES, AND SUPPLIERS.—Title XVIII of  
15 the Social Security Act (42 U.S.C. 1395 et seq.) is amend-  
16 ed by adding at the end the following new section:

17 “EDUCATION PROGRAMS FOR PHYSICIANS, PROVIDERS OF  
18 SERVICES, AND SUPPLIERS

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

20 “(1) EDUCATION PROGRAMS.—The term ‘edu-  
21 cation programs’ means programs undertaken in  
22 conjunction with State and local medical societies  
23 and specialty societies that focus on current billing,  
24 coding, and documentation laws, regulations, and  
25 carrier manual instructions and that place special  
26 emphasis on billing, coding, and documentation er-

1 rors that the Secretary has found occur with the  
2 highest frequency and remedies for these improper  
3 billing, coding, and documentation practices.

4 “(2) ELIGIBLE PROVIDERS.—The term ‘eligible  
5 provider’ means a physician (as defined in section  
6 1861(r)), a provider of services (as defined in sec-  
7 tion 1861(u)), or a supplier of medical equipment  
8 and supplies (as defined in section 1834(j)(5)).

9 “(b) CONDUCT OF EDUCATION PROGRAMS.—

10 “(1) IN GENERAL.—Carriers and fiscal inter-  
11 mediaries shall conduct education programs for any  
12 eligible provider that submits a claim under para-  
13 graph (2)(A).

14 “(2) ELIGIBLE PROVIDER EDUCATION.—

15 “(A) SUBMISSION OF CLAIMS AND  
16 RECORDS.—Any eligible provider may volun-  
17 tarily submit any present or prior claim or med-  
18 ical record to the applicable authority (as de-  
19 fined in section 1861(uu)(1)) to determine  
20 whether the billing, coding, and documentation  
21 associated with the claim is appropriate.

22 “(B) PROHIBITION OF EXTRAPOLATION.—  
23 No claim submitted under subparagraph (A) is  
24 subject to any type of extrapolation (as defined  
25 in section 1861(uu)(2)).

1       “(c) SAFE HARBOR.—No submission of a claim or  
2 record under this section shall result in the carrier, a con-  
3 tractor under section 1893, or any law enforcement agency  
4 beginning an investigation or targeting an investigation  
5 based on any claim or record submitted under such sub-  
6 paragraph.

7       “(3) TREATMENT OF IMPROPER CLAIMS.—If  
8 the carrier or fiscal intermediary finds a claim to be  
9 improper, the eligible provider shall have the fol-  
10 lowing options:

11               “(A) CORRECTION OF PROBLEMS.—To  
12 correct the documentation, coding, or billing  
13 problem to appropriately substantiate the claim  
14 and either—

15                       “(i) remit the actual overpayment; or

16                       “(ii) receive the appropriate additional  
17 payment from the carrier or fiscal inter-  
18 mediary.

19       “(B) REPAYMENT.—To repay the actual  
20 overpayment amount if the service was not cov-  
21 ered under the medicare program under this  
22 title or if adequate documentation does not  
23 exist.

24       “(4) PROHIBITION OF ELIGIBLE PROVIDER  
25 TRACKING.—The applicable authorities may not use



the record of attendance of any eligible provider at an education program conducted under this section or the inquiry regarding claims under paragraph (2)(A) to select, identify, or track such eligible provider for the purpose of conducting any type of audit or prepayment review.”.

(b) FUNDING OF EDUCATION PROGRAMS.—

(1) MEDICARE INTEGRITY PROGRAM.—Section 1893(b)(4) of the Social Security Act (42 U.S.C. 1395ddd(b)(4)) is amended by adding at the end the following new sentence: “No less than 10 percent of the program funds shall be devoted to the education programs for eligible providers under section 1897.”.

(2) CARRIERS.—Section 1842(b)(3)(H) of the Social Security Act (42 U.S.C. 1395u(b)(3)(H)) is amended by adding at the end the following new clause:

“(iii) No less than 2 percent of carrier funds shall be devoted to the education programs for eligible providers under section 1897.”.

(3) FISCAL INTERMEDIARIES.—Section 1816(b)(1) of the Social Security Act (42 U.S.C. 1395h(b)(1)) is amended—

1 (A) in subparagraph (A), by striking  
2 “and” at the end;

3 (B) in subparagraph (B), by striking  
4 “; and” and inserting a comma; and

5 (C) by adding at the end the following new  
6 subparagraph:

7 “(C) that such agency or organization is  
8 using no less than 1 percent of its funding for  
9 education programs for eligible providers under  
10 section 1897.”.

11 (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall take effect 60 days after the date of en-  
13 actment of this Act.

14 **SEC. 302. ADVISORY OPINIONS.**

15 (a) STRAIGHT ANSWERS.—Fiscal intermediaries and  
16 carriers shall do their utmost to provide health care pro-  
17 viders with one, straight and correct answer regarding bill-  
18 ing and cost reporting questions under the medicare pro-  
19 gram, and will, when requested, give their true first and  
20 last names to providers.

21 (b) WRITTEN REQUESTS.—

22 (1) IN GENERAL.—The Secretary shall establish  
23 a process under which a health care provider may  
24 request, in writing from a fiscal intermediary or car-  
25 rier, assistance in addressing questionable coverage,

1 billing, documentation, coding and cost reporting  
2 procedures under the medicare program and then  
3 the fiscal intermediary or carrier shall respond in  
4 writing within 30 business days with the correct bill-  
5 ing or procedural answer.

6 (2) USE OF WRITTEN STATEMENT.—

7 (A) IN GENERAL.—Subject to subpara-  
8 graph (B), a written statement under para-  
9 graph (1) may be used as proof against a fu-  
10 ture audit or overpayment under the medicare  
11 program.

12 (B) EXTRAPOLATION PROHIBITION.—Sub-  
13 ject to subparagraph (C), no claim submitted  
14 under this section shall be subject to extrapo-  
15 lation.

16 (C) LIMITATION ON APPLICATION.—Sub-  
17 paragraphs (A) and (B) shall not apply to cases  
18 of fraudulent billing.

19 (3) SAFE HARBOR.—If a physician requests an  
20 advisory opinion under this subsection, neither the  
21 fiscal intermediary, the carrier, a contractor under  
22 section 1893 of the Social Security Act (42 U.S.C.  
23 1395ddd), nor any law enforcement agency may  
24 begin an investigation or target such physician based  
25 on any claim cited in the request.

**TITLE IV—SUSTAINABLE  
GROWTH RATE REFORMS**

**SEC. 401. INCLUSION OF REGULATORY COSTS IN THE CALCULATION OF THE SUSTAINABLE GROWTH RATE.**

(a) IN GENERAL.—Section 1848(f)(2) of the Social Security Act (42 U.S.C. 1395w–4(f)(2)) is amended—

(1) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively;

(2) by striking “SPECIFICATION OF GROWTH RATE.—The sustainable growth rate” and inserting “SPECIFICATION OF GROWTH RATE.—

“(A) IN GENERAL.—The sustainable growth rate”; and

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

“(B) INCLUSION OF SGR REGULATORY COSTS.—The Secretary shall include in the estimate established under clause (iv)—

“(i) the costs for each physicians’ service resulting from any regulation implemented by the Secretary during the year for which the sustainable growth rate is estimated, including those regulations that may be implemented during such year; and

1 “(ii) the costs described in subpara-  
2 graph (C).

3 “(C) INCLUSION OF OTHER REGULATORY  
4 COSTS.—The costs described in this subpara-  
5 graph are any per procedure costs incurred by  
6 each physicians’ practice in complying with  
7 each regulation promulgated by the Secretary,  
8 regardless of whether such regulation affects  
9 the fee schedule established under subsection  
10 (b)(1).

11 “(D) INCLUSION OF COSTS IN REGU-  
12 LATORY IMPACT ANALYSES.—With respect to  
13 any regulation promulgated on or after January  
14 1, 2001, that may impose a regulatory cost de-  
15 scribed in subparagraph (B)(i) or (C) on a phy-  
16 sician, the Secretary shall include in the regu-  
17 latory impact analysis accompanying such regu-  
18 lation an estimate of any such cost.”.

19 (b) EFFECTIVE DATE.—The amendments made by  
20 subsection (a) shall apply with respect to any estimate  
21 made by the Secretary of Health and Human Services on  
22 or after the date of enactment of this Act.

## **TITLE V—STUDIES AND REPORTS**

### **SEC. 501. GAO AUDIT AND REPORT ON COMPLIANCE WITH CERTAIN STATUTORY ADMINISTRATIVE PRO- CEDURE REQUIREMENTS.**

(a) AUDIT.—The Comptroller General of the United States shall conduct an audit of the compliance of the Health Care Financing Administration and all regulations promulgated by the Department of Health and Human Resources under statutes administered by the Health Care Financing Administration with—

(1) the provisions of such statutes;

(2) subchapter II of chapter 5 of title 5, United States Code (including section 553 of such title);  
and

(3) chapter 6 of title 5, United States Code.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to Congress a report on the audit conducted under subsection (a), together with such recommendations for legislative and administrative action as the Comptroller General determines appropriate.

1 **SEC. 502. GAO STUDY AND REPORT ON PROVIDER PARTICI-**  
2 **PATION.**

3 (a) STUDY.—The Comptroller General of the United  
4 States shall conduct a study on provider participation in  
5 the medicare program to determine whether policies or en-  
6 forcement efforts against health care providers have re-  
7 duced access to care for medicare beneficiaries. Such study  
8 shall include a determination of the total cost to physician  
9 practices of compliance with medicare laws and regula-  
10 tions, the number of physician audits, the actual overpay-  
11 ments assessed in consent settlements, and the attendant  
12 projected overpayments communicated to physicians as  
13 part of the consent settlement process.

14 (b) REPORT.—Not later than 18 months after the  
15 date of enactment of this Act, the Comptroller General  
16 shall submit to Congress a report on the study conducted  
17 under subsection (a), together with such recommendations  
18 for legislative and administrative action as the Comp-  
19 troller General determines appropriate.

○