107TH CONGRESS
1ST SESSION

H. R. 3391

AN ACT

To amend title XVIII of the Social Security Act to provide regulatory relief and contracting flexibility under the Medicare Program.

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To amend title XVIII of the Social Security Act to provide regulatory relief and contracting flexibility under the Medicare Program.

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; AMENDMENTS TO SOCIAL SECU-**
2 **RITY ACT; TABLE OF CONTENTS.**

3 (a) SHORT TITLE.—This Act may be cited as the
4 "Medicare Regulatory and Contracting Reform Act of
5 2001".

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

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

Sec. 1. Short title; amendments to Social Security Act; table of contents.
Sec. 2. Findings and construction.
Sec. 3. Definitions.

TITLE I—REGULATORY REFORM

Sec. 101. Issuance of regulations.
Sec. 102. Compliance with changes in regulations and policies.
Sec. 103. Reports and studies relating to regulatory reform.

TITLE II—CONTRACTING REFORM

Sec. 201. Increased flexibility in medicare administration.
Sec. 202. Requirements for information security for medicare administrative contractors.

TITLE III—EDUCATION AND OUTREACH

Sec. 301. Provider education and technical assistance.
Sec. 302. Small provider technical assistance demonstration program.
Sec. 303. Medicare Provider Ombudsman; Medicare Beneficiary Ombudsman.
Sec. 304. Beneficiary outreach demonstration program.

TITLE IV—APPEALS AND RECOVERY

Sec. 401. Transfer of responsibility for medicare appeals.
Sec. 402. Process for expedited access to review.
Sec. 403. Revisions to medicare appeals process.
Sec. 404. Prepayment review.

Sec. 405. Recovery of overpayments.
Sec. 406. Provider enrollment process; right of appeal.
Sec. 407. Process for correction of minor errors and omissions on claims without pursuing appeals process.
Sec. 408. Prior determination process for certain items and services; advance beneficiary notices.

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Policy development regarding evaluation and management (E & M) documentation guidelines.
Sec. 502. Improvement in oversight of technology and coverage.
Sec. 503. Treatment of hospitals for certain services under medicare secondary payor (MSP) provisions.
Sec. 504. EMTALA improvements.
Sec. 505. Emergency Medical Treatment and Active Labor Act (EMTALA) Technical Advisory Group.
Sec. 506. Authorizing use of arrangements with other hospice programs to provide core hospice services in certain circumstances.
Sec. 507. Application of OSHA bloodborne pathogens standard to certain hospitals.
Sec. 508. One-year delay in lock in procedures for Medicare+Choice plans; change in Medicare+Choice reporting deadlines and annual, coordinated election period for 2002.
Sec. 509. BIPA-related technical amendments and corrections.
Sec. 510. Conforming authority to waive a program exclusion.
Sec. 511. Treatment of certain dental claims.
Sec. 512. Miscellaneous reports, studies, and publication requirements.

1 **SEC. 2. FINDINGS AND CONSTRUCTION.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) The overwhelming majority of providers of
4 services and suppliers in the United States are law-
5 abiding persons who provide important health care
6 services to patients each day.

7 (2) The Secretary of Health and Human Serv-
8 ices should work to streamline paperwork require-
9 ments under the medicare program and commu-
10 nicate clearer instructions to providers of services
11 and suppliers so that they may spend more time car-
12 ing for patients.

1 (b) CONSTRUCTION.—Nothing in this Act shall be
2 construed—
3 (1) to compromise or affect existing legal rem-
4 edies for addressing fraud or abuse, whether it be
5 criminal prosecution, civil enforcement, or adminis-
6 trative remedies, including under sections 3729
7 through 3733 of title 31, United States Code
8 (known as the False Claims Act); or
9 (2) to prevent or impede the Department of
10 Health and Human Services in any way from its on-
11 going efforts to eliminate waste, fraud, and abuse in
12 the medicare program.
13 Furthermore, the consolidation of medicare administrative
14 contracting set forth in this Act does not constitute con-
15 solidation of the Federal Hospital Insurance Trust Fund
16 and the Federal Supplementary Medical Insurance Trust
17 Fund or reflect any position on that issue.

18 **SEC. 3. DEFINITIONS.**

19 (a) USE OF TERM SUPPLIER IN MEDICARE.—Section
20 1861 (42 U.S.C. 1395x) is amended by inserting after
21 subsection (c) the following new subsection:
22 ''Supplier
23 ''(d) The term 'supplier' means, unless the context
24 otherwise requires, a physician or other practitioner, a fa-

cility, or other entity (other than a provider of services) that furnishes items or services under this title.''.

(b) OTHER TERMS USED IN ACT.—In this Act:

(1) BIPA.—The term ''BIPA'' means the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, as enacted into law by section 1(a)(6) of Public Law 106–554.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

TITLE I—REGULATORY REFORM

SEC. 101. ISSUANCE OF REGULATIONS.

(a) CONSOLIDATION OF PROMULGATION TO ONCE A MONTH.—

(1) IN GENERAL.—Section 1871 (42 U.S.C. 1395hh) is amended by adding at the end the following new subsection:

''(d)(1) Subject to paragraph (2), the Secretary shall issue proposed or final (including interim final) regulations to carry out this title only on one business day of every month.

''(2) The Secretary may issue a proposed or final regulation described in paragraph (1) on any other day than the day described in paragraph (1) if the Secretary—

1 “(A) finds that issuance of such regulation on
2 another day is necessary to comply with require-
3 ments under law; or
4 “(B) finds that with respect to that regulation
5 the limitation of issuance on the date described in
6 paragraph (1) is contrary to the public interest.
7 If the Secretary makes a finding under this paragraph,
8 the Secretary shall include such finding, and brief state-
9 ment of the reasons for such finding, in the issuance of
10 such regulation.
11 “(3) The Secretary shall coordinate issuance of new
12 regulations described in paragraph (1) relating to a cat-
13 egory of provider of services or suppliers based on an anal-
14 ysis of the collective impact of regulatory changes on that
15 category of providers or suppliers.”.
16 (2) GAO REPORT ON PUBLICATION OF REGULA-
17 TIONS ON A QUARTERLY BASIS.—Not later than 3
18 years after the date of the enactment of this Act, the
19 Comptroller General of the United States shall sub-
20 mit to Congress a report on the feasibility of requir-
21 ing that regulations described in section 1871(d) of
22 the Social Security Act be promulgated on a quar-
23 terly basis rather than on a monthly basis.
24 (3) EFFECTIVE DATE.—The amendment made
25 by paragraph (1) shall apply to regulations promul-

1 gated on or after the date that is 30 days after the
2 date of the enactment of this Act.

3 (b) REGULAR TIMELINE FOR PUBLICATION OF
4 FINAL RULES.—

5 (1) IN GENERAL.—Section 1871(a) (42 U.S.C.
6 1395hh(a)) is amended by adding at the end the fol-
7 lowing new paragraph:

8 ''(3)(A) The Secretary, in consultation with the Di-
9 rector of the Office of Management and Budget, shall es-
10 tablish and publish a regular timeline for the publication
11 of final regulations based on the previous publication of
12 a proposed regulation or an interim final regulation.

13 ''(B) Such timeline may vary among different regula-
14 tions based on differences in the complexity of the regula-
15 tion, the number and scope of comments received, and
16 other relevant factors, but shall not be longer than 3 years
17 except under exceptional circumstances. If the Secretary
18 intends to vary such timeline with respect to the publica-
19 tion of a final regulation, the Secretary shall cause to have
20 published in the Federal Register notice of the different
21 timeline by not later than the timeline previously estab-
22 lished with respect to such regulation. Such notice shall
23 include a brief explanation of the justification for such
24 variation.

1 "(C) In the case of interim final regulations, upon
2 the expiration of the regular timeline established under
3 this paragraph for the publication of a final regulation
4 after opportunity for public comment, the interim final
5 regulation shall not continue in effect unless the Secretary
6 publishes (at the end of the regular timeline and, if appli-
7 cable, at the end of each succeeding 1-year period) a notice
8 of continuation of the regulation that includes an expla-
9 nation of why the regular timeline (and any subsequent
10 1-year extension) was not complied with. If such a notice
11 is published, the regular timeline (or such timeline as pre-
12 viously extended under this paragraph) for publication of
13 the final regulation shall be treated as having been ex-
14 tended for 1 additional year.

15 "(D) The Secretary shall annually submit to Con-
16 gress a report that describes the instances in which the
17 Secretary failed to publish a final regulation within the
18 applicable regular timeline under this paragraph and that
19 provides an explanation for such failures.".

20 (2) EFFECTIVE DATE.—The amendment made
21 by paragraph (1) shall take effect on the date of the
22 enactment of this Act. The Secretary shall provide
23 for an appropriate transition to take into account
24 the backlog of previously published interim final reg-
25 ulations.

1 (c) LIMITATIONS ON NEW MATTER IN FINAL REGU-
2 LATIONS.—
3 (1) IN GENERAL.—Section 1871(a) (42 U.S.C.
4 1395hh(a)), as amended by subsection (b), is further
5 amended by adding at the end the following new
6 paragraph:
7 ''(4) If the Secretary publishes notice of proposed
8 rulemaking relating to a regulation (including an interim
9 final regulation), insofar as such final regulation includes
10 a provision that is not a logical outgrowth of such notice
11 of proposed rulemaking, that provision shall be treated as
12 a proposed regulation and shall not take effect until there
13 is the further opportunity for public comment and a publi-
14 cation of the provision again as a final regulation.''.
15 (2) EFFECTIVE DATE.—The amendment made
16 by paragraph (1) shall apply to final regulations
17 published on or after the date of the enactment of
18 this Act.

19 **SEC. 102. COMPLIANCE WITH CHANGES IN REGULATIONS**
20 **AND POLICIES.**

21 (a) NO RETROACTIVE APPLICATION OF SUB-
22 STANTIVE CHANGES.—
23 (1) IN GENERAL.—Section 1871 (42 U.S.C.
24 1395hh), as amended by section 101(a), is amended
25 by adding at the end the following new subsection:

1 ‘‘(e)(1)(A) A substantive change in regulations, man-
2 ual instructions, interpretative rules, statements of policy,
3 or guidelines of general applicability under this title shall
4 not be applied (by extrapolation or otherwise) retroactively
5 to items and services furnished before the effective date
6 of the change, unless the Secretary determines that—

7 ‘‘(i) such retroactive application is necessary to
8 comply with statutory requirements; or

9 ‘‘(ii) failure to apply the change retroactively
10 would be contrary to the public interest.’’.

11 (2) EFFECTIVE DATE.—The amendment made
12 by paragraph (1) shall apply to substantive changes
13 issued on or after the date of the enactment of this
14 Act.

15 (b) TIMELINE FOR COMPLIANCE WITH SUBSTANTIVE
16 CHANGES AFTER NOTICE.—

17 (1) IN GENERAL.—Section 1871(e)(1), as
18 added by subsection (a), is amended by adding at
19 the end the following:

20 ‘‘(B)(i) Except as provided in clause (ii), a sub-
21 stantive change referred to in subparagraph (A) shall not
22 become effective before the end of the 30-day period that
23 begins on the date that the Secretary has issued or pub-
24 lished, as the case may be, the substantive change.

1 “(ii) The Secretary may provide for such a sub-
2 stantive change to take effect on a date that precedes the
3 end of the 30-day period under clause (i) if the Secretary
4 finds that waiver of such 30-day period is necessary to
5 comply with statutory requirements or that the application
6 of such 30-day period is contrary to the public interest.
7 If the Secretary provides for an earlier effective date pur-
8 suant to this clause, the Secretary shall include in the
9 issuance or publication of the substantive change a finding
10 described in the first sentence, and a brief statement of
11 the reasons for such finding.

12 “(C) No action shall be taken against a provider of
13 services or supplier with respect to noncompliance with
14 such a substantive change for items and services furnished
15 before the effective date of such a change.”.

16 (2) EFFECTIVE DATE.—The amendment made
17 by paragraph (1) shall apply to compliance actions
18 undertaken on or after the date of the enactment of
19 this Act.

20 (c) RELIANCE ON GUIDANCE.—

21 (1) IN GENERAL.—Section 1871(e), as added
22 by subsection (a), is further amended by adding at
23 the end the following new paragraph:

24 “(2)(A) If—

1 ''(i) a provider of services or supplier follows
2 the written guidance (which may be transmitted
3 electronically) provided by the Secretary or by a
4 medicare contractor (as defined in section 1889(g))
5 acting within the scope of the contractor's contract
6 authority, with respect to the furnishing of items or
7 services and submission of a claim for benefits for
8 such items or services with respect to such provider
9 or supplier;

10 ''(ii) the Secretary determines that the provider
11 of services or supplier has accurately presented the
12 circumstances relating to such items, services, and
13 claim to the contractor in writing; and

14 ''(iii) the guidance was in error;

15 the provider of services or supplier shall not be subject
16 to any sanction (including any penalty or requirement for
17 repayment of any amount) if the provider of services or
18 supplier reasonably relied on such guidance.

19 ''(B) Subparagraph (A) shall not be construed as pre-
20 venting the recoupment or repayment (without any addi-
21 tional penalty) relating to an overpayment insofar as the
22 overpayment was solely the result of a clerical or technical
23 operational error.''.

24 (2) EFFECTIVE DATE.—The amendment made
25 by paragraph (1) shall take effect on the date of the

1 enactment of this Act but shall not apply to any
2 sanction for which notice was provided on or before
3 the date of the enactment of this Act.

4 **SEC. 103. REPORTS AND STUDIES RELATING TO REGU-**
5 **LATORY REFORM.**

6 (a) GAO STUDY ON ADVISORY OPINION AUTHOR-
7 ITY.—

8 (1) STUDY.—The Comptroller General of the
9 United States shall conduct a study to determine the
10 feasibility and appropriateness of establishing in the
11 Secretary authority to provide legally binding advi-
12 sory opinions on appropriate interpretation and ap-
13 plication of regulations to carry out the medicare
14 program under title XVIII of the Social Security
15 Act. Such study shall examine the appropriate time-
16 frame for issuing such advisory opinions, as well as
17 the need for additional staff and funding to provide
18 such opinions.

19 (2) REPORT.—The Comptroller General shall
20 submit to Congress a report on the study conducted
21 under paragraph (1) by not later than January 1,
22 2003.

23 (b) REPORT ON LEGAL AND REGULATORY INCON-
24 SISTENCIES.—Section 1871 (42 U.S.C. 1395hh), as

1 amended by section 2(a), is amended by adding at the end
2 the following new subsection:
3 ''(f)(1) Not later than 2 years after the date of the
4 enactment of this subsection, and every 2 years thereafter,
5 the Secretary shall submit to Congress a report with re-
6 spect to the administration of this title and areas of incon-
7 sistency or conflict among the various provisions under
8 law and regulation.
9 ''(2) In preparing a report under paragraph (1), the
10 Secretary shall collect—
11 ''(A) information from individuals entitled to
12 benefits under part A or enrolled under part B, or
13 both, providers of services, and suppliers and from
14 the Medicare Beneficiary Ombudsman and the Medi-
15 care Provider Ombudsman with respect to such
16 areas of inconsistency and conflict; and
17 ''(B) information from medicare contractors
18 that tracks the nature of written and telephone in-
19 quiries.
20 ''(3) A report under paragraph (1) shall include a de-
21 scription of efforts by the Secretary to reduce such incon-
22 sistency or conflicts, and recommendations for legislation
23 or administrative action that the Secretary determines ap-
24 propriate to further reduce such inconsistency or con-
25 flicts.''.

TITLE II—CONTRACTING REFORM

SEC. 201. INCREASED FLEXIBILITY IN MEDICARE ADMINISTRATION.

(a) CONSOLIDATION AND FLEXIBILITY IN MEDICARE ADMINISTRATION.—

(1) IN GENERAL.—Title XVIII is amended by inserting after section 1874 the following new section:

"CONTRACTS WITH MEDICARE ADMINISTRATIVE CONTRACTORS

"SEC. 1874A. (a) AUTHORITY.—

"(1) AUTHORITY TO ENTER INTO CONTRACTS.—The Secretary may enter into contracts with any eligible entity to serve as a medicare administrative contractor with respect to the performance of any or all of the functions described in paragraph (4) or parts of those functions (or, to the extent provided in a contract, to secure performance thereof by other entities).

"(2) ELIGIBILITY OF ENTITIES.—An entity is eligible to enter into a contract with respect to the performance of a particular function described in paragraph (4) only if—

1 ‘‘(A) the entity has demonstrated capa-
2 bility to carry out such function;
3 ‘‘(B) the entity complies with such conflict
4 of interest standards as are generally applicable
5 to Federal acquisition and procurement;
6 ‘‘(C) the entity has sufficient assets to fi-
7 nancially support the performance of such func-
8 tion; and
9 ‘‘(D) the entity meets such other require-
10 ments as the Secretary may impose.
11 ‘‘(3) MEDICARE ADMINISTRATIVE CONTRACTOR
12 DEFINED.—For purposes of this title and title XI—
13 ‘‘(A) IN GENERAL.—The term ‘medicare
14 administrative contractor’ means an agency, or-
15 ganization, or other person with a contract
16 under this section.
17 ‘‘(B) APPROPRIATE MEDICARE ADMINIS-
18 TRATIVE CONTRACTOR.—With respect to the
19 performance of a particular function in relation
20 to an individual entitled to benefits under part
21 A or enrolled under part B, or both, a specific
22 provider of services or supplier (or class of such
23 providers of services or suppliers), the ‘appro-
24 priate’ medicare administrative contractor is the
25 medicare administrative contractor that has a

1 contract under this section with respect to the
2 performance of that function in relation to that
3 individual, provider of services or supplier or
4 class of provider of services or supplier.

5 "(4) FUNCTIONS DESCRIBED.—The functions
6 referred to in paragraphs (1) and (2) are payment
7 functions, provider services functions, and functions
8 relating to services furnished to individuals entitled
9 to benefits under part A or enrolled under part B,
10 or both, as follows:

11 "(A) DETERMINATION OF PAYMENT
12 AMOUNTS.—Determining (subject to the provi-
13 sions of section 1878 and to such review by the
14 Secretary as may be provided for by the con-
15 tracts) the amount of the payments required
16 pursuant to this title to be made to providers
17 of services, suppliers and individuals.

18 "(B) MAKING PAYMENTS.—Making pay-
19 ments described in subparagraph (A) (including
20 receipt, disbursement, and accounting for funds
21 in making such payments).

22 "(C) BENEFICIARY EDUCATION AND AS-
23 SISTANCE.—Providing education and outreach
24 to individuals entitled to benefits under part A
25 or enrolled under part B, or both, and pro-

1 viding assistance to those individuals with spe-
2 cific issues, concerns or problems.
3 "(D) PROVIDER CONSULTATIVE SERV-
4 ICES.—Providing consultative services to insti-
5 tutions, agencies, and other persons to enable
6 them to establish and maintain fiscal records
7 necessary for purposes of this title and other-
8 wise to qualify as providers of services or sup-
9 pliers.
10 "(E) COMMUNICATION WITH PRO-
11 VIDERS.—Communicating to providers of serv-
12 ices and suppliers any information or instruc-
13 tions furnished to the medicare administrative
14 contractor by the Secretary, and facilitating
15 communication between such providers and sup-
16 pliers and the Secretary.
17 "(F) PROVIDER EDUCATION AND TECH-
18 NICAL ASSISTANCE.—Performing the functions
19 relating to provider education, training, and
20 technical assistance.
21 "(G) ADDITIONAL FUNCTIONS.—Per-
22 forming such other functions as are necessary
23 to carry out the purposes of this title.
24 "(5) RELATIONSHIP TO MIP CONTRACTS.—

1 "(A) NONDUPLICATION OF DUTIES.—In
2 entering into contracts under this section, the
3 Secretary shall assure that functions of medi-
4 care administrative contractors in carrying out
5 activities under parts A and B do not duplicate
6 activities carried out under the Medicare Integ-
7 rity Program under section 1893. The previous
8 sentence shall not apply with respect to the ac-
9 tivity described in section 1893(b)(5) (relating
10 to prior authorization of certain items of dura-
11 ble medical equipment under section
12 1834(a)(15)).
13 "(B) CONSTRUCTION.—An entity shall not
14 be treated as a medicare administrative con-
15 tractor merely by reason of having entered into
16 a contract with the Secretary under section
17 1893.
18 "(6) APPLICATION OF FEDERAL ACQUISITION
19 REGULATION.—Except to the extent inconsistent
20 with a specific requirement of this title, the Federal
21 Acquisition Regulation applies to contracts under
22 this title.
23 "(b) CONTRACTING REQUIREMENTS.—
24 "(1) USE OF COMPETITIVE PROCEDURES.—

1 "(A) IN GENERAL.—Except as provided in
2 laws with general applicability to Federal acqui-
3 sition and procurement or in subparagraph (B),
4 the Secretary shall use competitive procedures
5 when entering into contracts with medicare ad-
6 ministrative contractors under this section, tak-
7 ing into account performance quality as well as
8 price and other factors.
9 "(B) RENEWAL OF CONTRACTS.—The Sec-
10 retary may renew a contract with a medicare
11 administrative contractor under this section
12 from term to term without regard to section 5
13 of title 41, United States Code, or any other
14 provision of law requiring competition, if the
15 medicare administrative contractor has met or
16 exceeded the performance requirements applica-
17 ble with respect to the contract and contractor,
18 except that the Secretary shall provide for the
19 application of competitive procedures under
20 such a contract not less frequently than once
21 every five years.
22 "(C) TRANSFER OF FUNCTIONS.—The
23 Secretary may transfer functions among medi-
24 care administrative contractors consistent with
25 the provisions of this paragraph. The Secretary

1 shall ensure that performance quality is consid-
2 ered in such transfers. The Secretary shall pro-
3 vide public notice (whether in the Federal Reg-
4 ister or otherwise) of any such transfer (includ-
5 ing a description of the functions so trans-
6 ferred, a description of the providers of services
7 and suppliers affected by such transfer, and
8 contact information for the contractors in-
9 volved).
10 ''(D) INCENTIVES FOR QUALITY.—The
11 Secretary shall provide incentives for medicare
12 administrative contractors to provide quality
13 service and to promote efficiency.
14 ''(2) COMPLIANCE WITH REQUIREMENTS.—No
15 contract under this section shall be entered into with
16 any medicare administrative contractor unless the
17 Secretary finds that such medicare administrative
18 contractor will perform its obligations under the con-
19 tract efficiently and effectively and will meet such
20 requirements as to financial responsibility, legal au-
21 thority, quality of services provided, and other mat-
22 ters as the Secretary finds pertinent.
23 ''(3) PERFORMANCE REQUIREMENTS.—
24 ''(A) DEVELOPMENT OF SPECIFIC PER-
25 FORMANCE REQUIREMENTS.—In developing

1 contract performance requirements, the Sec-
2 retary shall develop performance requirements
3 applicable to functions described in subsection
4 (a)(4).

5 "(B) CONSULTATION.— In developing such
6 requirements, the Secretary may consult with
7 providers of services and suppliers, organiza-
8 tions representing individuals entitled to bene-
9 fits under part A or enrolled under part B, or
10 both, and organizations and agencies per-
11 forming functions necessary to carry out the
12 purposes of this section with respect to such
13 performance requirements.

14 "(C) INCLUSION IN CONTRACTS.—All con-
15 tractor performance requirements shall be set
16 forth in the contract between the Secretary and
17 the appropriate medicare administrative con-
18 tractor. Such performance requirements—

19 "(i) shall reflect the performance re-
20 quirements developed under subparagraph
21 (A), but may include additional perform-
22 ance requirements;

23 "(ii) shall be used for evaluating con-
24 tractor performance under the contract;
25 and

1 "(iii) shall be consistent with the written statement of work provided under the contract.

"(4) INFORMATION REQUIREMENTS.—The Secretary shall not enter into a contract with a medicare administrative contractor under this section unless the contractor agrees—

"(A) to furnish to the Secretary such timely information and reports as the Secretary may find necessary in performing his functions under this title; and

"(B) to maintain such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of the information and reports under subparagraph (A) and otherwise to carry out the purposes of this title.

"(5) SURETY BOND.—A contract with a medicare administrative contractor under this section may require the medicare administrative contractor, and any of its officers or employees certifying payments or disbursing funds pursuant to the contract, or otherwise participating in carrying out the contract, to give surety bond to the United States in

1 such amount as the Secretary may deem appro-
2 priate.
3 "(c) TERMS AND CONDITIONS.—
4 "(1) IN GENERAL.—A contract with any medi-
5 care administrative contractor under this section
6 may contain such terms and conditions as the Sec-
7 retary finds necessary or appropriate and may pro-
8 vide for advances of funds to the medicare adminis-
9 trative contractor for the making of payments by it
10 under subsection (a)(4)(B).
11 "(2) PROHIBITION ON MANDATES FOR CERTAIN
12 DATA COLLECTION.—The Secretary may not require,
13 as a condition of entering into, or renewing, a con-
14 tract under this section, that the medicare adminis-
15 trative contractor match data obtained other than in
16 its activities under this title with data used in the
17 administration of this title for purposes of identi-
18 fying situations in which the provisions of section
19 1862(b) may apply.
20 "(d) LIMITATION ON LIABILITY OF MEDICARE AD-
21 MINISTRATIVE CONTRACTORS AND CERTAIN OFFICERS.—
22 "(1) CERTIFYING OFFICER.—No individual des-
23 ignated pursuant to a contract under this section as
24 a certifying officer shall, in the absence of gross neg-
25 ligence or intent to defraud the United States, be

1 liable with respect to any payments certified by the
2 individual under this section.
3 ‘‘(2) DISBURSING OFFICER.—No disbursing of-
4 ficer shall, in the absence of gross negligence or in-
5 tent to defraud the United States, be liable with re-
6 spect to any payment by such officer under this sec-
7 tion if it was based upon an authorization (which
8 meets the applicable requirements for such internal
9 controls established by the Comptroller General) of
10 a certifying officer designated as provided in para-
11 graph (1) of this subsection.
12 ‘‘(3) LIABILITY OF MEDICARE ADMINISTRATIVE
13 CONTRACTOR.—No medicare administrative con-
14 tractor shall be liable to the United States for a pay-
15 ment by a certifying or disbursing officer unless in
16 connection with such payment or in the supervision
17 of or selection of such officer the medicare adminis-
18 trative contractor acted with gross negligence.
19 ‘‘(4) INDEMNIFICATION BY SECRETARY.—
20 ‘‘(A) IN GENERAL.—Subject to subpara-
21 graphs (B) and (D), in the case of a medicare
22 administrative contractor (or a person who is a
23 director, officer, or employee of such a con-
24 tractor or who is engaged by the contractor to
25 participate directly in the claims administration

1 process) who is made a party to any judicial or
2 administrative proceeding arising from or relat-
3 ing directly to the claims administration process
4 under this title, the Secretary may, to the ex-
5 tent the Secretary determines to be appropriate
6 and as specified in the contract with the con-
7 tractor, indemnify the contractor and such per-
8 sons.

9 "(B) CONDITIONS.—The Secretary may
10 not provide indemnification under subparagraph
11 (A) insofar as the liability for such costs arises
12 directly from conduct that is determined by the
13 judicial proceeding or by the Secretary to be
14 criminal in nature, fraudulent, or grossly neg-
15 ligent. If indemnification is provided by the Sec-
16 retary with respect to a contractor before a de-
17 termination that such costs arose directly from
18 such conduct, the contractor shall reimburse the
19 Secretary for costs of indemnification.

20 "(C) SCOPE OF INDEMNIFICATION.—In-
21 demnification by the Secretary under subpara-
22 graph (A) may include payment of judgments,
23 settlements (subject to subparagraph (D)),
24 awards, and costs (including reasonable legal
25 expenses).

1 "(D) WRITTEN APPROVAL FOR SETTLE-
2 MENTS.—A contractor or other person de-
3 scribed in subparagraph (A) may not propose to
4 negotiate a settlement or compromise of a pro-
5 ceeding described in such subparagraph without
6 the prior written approval of the Secretary to
7 negotiate such settlement or compromise. Any
8 indemnification under subparagraph (A) with
9 respect to amounts paid under a settlement or
10 compromise of a proceeding described in such
11 subparagraph are conditioned upon prior writ-
12 ten approval by the Secretary of the final settle-
13 ment or compromise.
14 "(E) CONSTRUCTION.—Nothing in this
15 paragraph shall be construed—
16 "(i) to change any common law immu-
17 nity that may be available to a medicare
18 administrative contractor or person de-
19 scribed in subparagraph (A); or
20 "(ii) to permit the payment of costs
21 not otherwise allowable, reasonable, or allo-
22 cable under the Federal Acquisition Regu-
23 lations.".
24 (2) CONSIDERATION OF INCORPORATION OF
25 CURRENT LAW STANDARDS.—In developing contract

1 performance requirements under section 1874A(b)
2 of the Social Security Act, as inserted by paragraph
3 (1), the Secretary shall consider inclusion of the per-
4 formance standards described in sections 1816(f)(2)
5 of such Act (relating to timely processing of recon-
6 siderations and applications for exemptions) and sec-
7 tion 1842(b)(2)(B) of such Act (relating to timely
8 review of determinations and fair hearing requests),
9 as such sections were in effect before the date of the
10 enactment of this Act.

11 (b) CONFORMING AMENDMENTS TO SECTION 1816
12 (RELATING TO FISCAL INTERMEDIARIES).—Section 1816
13 (42 U.S.C. 1395h) is amended as follows:

14 (1) The heading is amended to read as follows:

15 ‘‘PROVISIONS RELATING TO THE ADMINISTRATION OF
16 PART A’’.

17 (2) Subsection (a) is amended to read as fol-
18 lows:

19 ‘‘(a) The administration of this part shall be con-
20 ducted through contracts with medicare administrative
21 contractors under section 1874A.’’.

22 (3) Subsection (b) is repealed.

23 (4) Subsection (c) is amended—

24 (A) by striking paragraph (1); and

25 (B) in each of paragraphs (2)(A) and
26 (3)(A), by striking ‘‘agreement under this sec-

1 tion'' and inserting ''contract under section
2 1874A that provides for making payments
3 under this part''.
4 (5) Subsections (d) through (i) are repealed.
5 (6) Subsections (j) and (k) are each amended—
6 (A) by striking ''An agreement with an
7 agency or organization under this section'' and
8 inserting ''A contract with a medicare adminis-
9 trative contractor under section 1874A with re-
10 spect to the administration of this part''; and
11 (B) by striking ''such agency or organiza-
12 tion'' and inserting ''such medicare administra-
13 tive contractor'' each place it appears.
14 (7) Subsection (l) is repealed.
15 (c) CONFORMING AMENDMENTS TO SECTION 1842
16 (RELATING TO CARRIERS).—Section 1842 (42 U.S.C.
17 1395u) is amended as follows:
18 (1) The heading is amended to read as follows:
19 ''PROVISIONS RELATING TO THE ADMINISTRATION OF
20 PART B''.
21 (2) Subsection (a) is amended to read as fol-
22 lows:
23 ''(a) The administration of this part shall be con-
24 ducted through contracts with medicare administrative
25 contractors under section 1874A.''.
26 (3) Subsection (b) is amended—

1 (A) by striking paragraph (1);
2 (B) in paragraph (2)—
3 (i) by striking subparagraphs (A) and
4 (B);
5 (ii) in subparagraph (C), by striking
6 “carriers” and inserting “medicare admin-
7 istrative contractors”; and
8 (iii) by striking subparagraphs (D)
9 and (E);
10 (C) in paragraph (3)—
11 (i) in the matter before subparagraph
12 (A), by striking “Each such contract shall
13 provide that the carrier” and inserting
14 “The Secretary”;
15 (ii) by striking “will” the first place it
16 appears in each of subparagraphs (A), (B),
17 (F), (G), (H), and (L) and inserting
18 “shall”;
19 (iii) in subparagraph (B), in the mat-
20 ter before clause (i), by striking “to the
21 policyholders and subscribers of the car-
22 rier” and inserting “to the policyholders
23 and subscribers of the medicare adminis-
24 trative contractor”;

1 (iv) by striking subparagraphs (C),
2 (D), and (E);
3 (v) in subparagraph (H)—
4 (I) by striking ‘‘if it makes deter-
5 minations or payments with respect to
6 physicians’ services,’’; and
7 (II) by striking ‘‘carrier’’ and in-
8 serting ‘‘medicare administrative con-
9 tractor’’;
10 (vi) by striking subparagraph (I);
11 (vii) in subparagraph (L), by striking
12 the semicolon and inserting a period;
13 (viii) in the first sentence, after sub-
14 paragraph (L), by striking ‘‘and shall con-
15 tain’’ and all that follows through the pe-
16 riod; and
17 (ix) in the seventh sentence, by insert-
18 ing ‘‘medicare administrative contractor,’’
19 after ‘‘carrier,’’; and
20 (D) by striking paragraph (5);
21 (E) in paragraph (6)(D)(iv), by striking
22 ‘‘carrier’’ and inserting ‘‘medicare administra-
23 tive contractor’’; and

1 (F) in paragraph (7), by striking "the car-
2 rier" and inserting "the Secretary" each place
3 it appears.
4 (4) Subsection (c) is amended—
5 (A) by striking paragraph (1);
6 (B) in paragraph (2), by striking "contract
7 under this section which provides for the dis-
8 bursement of funds, as described in subsection
9 (a)(1)(B)," and inserting "contract under sec-
10 tion 1874A that provides for making payments
11 under this part";
12 (C) in paragraph (3)(A), by striking "sub-
13 section (a)(1)(B)" and inserting "section
14 1874A(a)(3)(B)";
15 (D) in paragraph (4), by striking "carrier"
16 and inserting "medicare administrative con-
17 tractor"; and
18 (E) by striking paragraphs (5) and (6).
19 (5) Subsections (d), (e), and (f) are repealed.
20 (6) Subsection (g) is amended by striking "car-
21 rier or carriers" and inserting "medicare administra-
22 tive contractor or contractors".
23 (7) Subsection (h) is amended—
24 (A) in paragraph (2)—

1 (i) by striking ‘‘Each carrier having
2 an agreement with the Secretary under
3 subsection (a)’’ and inserting ‘‘The Sec-
4 retary’’; and
5 (ii) by striking ‘‘Each such carrier’’
6 and inserting ‘‘The Secretary’’;
7 (B) in paragraph (3)(A)—
8 (i) by striking ‘‘a carrier having an
9 agreement with the Secretary under sub-
10 section (a)’’ and inserting ‘‘medicare ad-
11 ministrative contractor having a contract
12 under section 1874A that provides for
13 making payments under this part’’; and
14 (ii) by striking ‘‘such carrier’’ and in-
15 serting ‘‘such contractor’’;
16 (C) in paragraph (3)(B)—
17 (i) by striking ‘‘a carrier’’ and insert-
18 ing ‘‘a medicare administrative contractor’’
19 each place it appears; and
20 (ii) by striking ‘‘the carrier’’ and in-
21 serting ‘‘the contractor’’ each place it ap-
22 pears; and
23 (D) in paragraphs (5)(A) and (5)(B)(iii),
24 by striking ‘‘carriers’’ and inserting ‘‘medicare

1 administrative contractors'' each place it appears.

3 (8) Subsection (l) is amended—

4 (A) in paragraph (1)(A)(iii), by striking ''carrier'' and inserting ''medicare administrative contractor''; and

7 (B) in paragraph (2), by striking ''carrier'' and inserting ''medicare administrative contractor''.

10 (9) Subsection (p)(3)(A) is amended by striking ''carrier'' and inserting ''medicare administrative contractor''.

13 (10) Subsection (q)(1)(A) is amended by striking ''carrier''.

15 (d) EFFECTIVE DATE; TRANSITION RULE.—

16 (1) EFFECTIVE DATE.—

17 (A) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on October 1, 2003, and the Secretary is authorized to take such steps before such date as may be necessary to implement such amendments on a timely basis.

24 (B) CONSTRUCTION FOR CURRENT CONTRACTS.—Such amendments shall not apply to

1 contracts in effect before the date specified
2 under subparagraph (A) that continue to retain
3 the terms and conditions in effect on such date
4 (except as otherwise provided under this Act,
5 other than under this section) until such date
6 as the contract is let out for competitive bid-
7 ding under such amendments.

8 (C) DEADLINE FOR COMPETITIVE BID-
9 DING.—The Secretary shall provide for the let-
10 ting by competitive bidding of all contracts for
11 functions of medicare administrative contrac-
12 tors for annual contract periods that begin on
13 or after October 1, 2008.

14 (D) WAIVER OF PROVIDER NOMINATION
15 PROVISIONS DURING TRANSITION.—During the
16 period beginning on the date of the enactment
17 of this Act and before the date specified under
18 subparagraph (A), the Secretary may enter into
19 new agreements under section 1816 of the So-
20 cial Security Act (42 U.S.C. 1395h) without re-
21 gard to any of the provider nomination provi-
22 sions of such section.

23 (2) GENERAL TRANSITION RULES.—The Sec-
24 retary shall take such steps, consistent with para-
25 graph (1)(B) and (1)(C), as are necessary to provide

1 for an appropriate transition from contracts under
2 section 1816 and section 1842 of the Social Security
3 Act (42 U.S.C. 1395h, 1395u) to contracts under
4 section 1874A, as added by subsection (a)(1).

5 (3) AUTHORIZING CONTINUATION OF MIP
6 FUNCTIONS UNDER CURRENT CONTRACTS AND
7 AGREEMENTS AND UNDER ROLLOVER CONTRACTS.—
8 The provisions contained in the exception in section
9 1893(d)(2) of the Social Security Act (42 U.S.C.
10 1395ddd(d)(2)) shall continue to apply notwith-
11 standing the amendments made by this section, and
12 any reference in such provisions to an agreement or
13 contract shall be deemed to include a contract under
14 section 1874A of such Act, as inserted by subsection
15 (a)(1), that continues the activities referred to in
16 such provisions.

17 (e) REFERENCES.—On and after the effective date
18 provided under subsection (d)(1), any reference to a fiscal
19 intermediary or carrier under title XI or XVIII of the So-
20 cial Security Act (or any regulation, manual instruction,
21 interpretative rule, statement of policy, or guideline issued
22 to carry out such titles) shall be deemed a reference to
23 an appropriate medicare administrative contractor (as
24 provided under section 1874A of the Social Security Act).

25 (f) REPORTS ON IMPLEMENTATION.—

1 (1) PLAN FOR IMPLEMENTATION.—By not later
2 than October 1, 2002, the Secretary shall submit a
3 report to Congress and the Comptroller General of
4 the United States that describes the plan for imple-
5 mentation of the amendments made by this section.
6 The Comptroller General shall conduct an evaluation
7 of such plan and shall submit to Congress, not later
8 than 6 months after the date the report is received,
9 a report on such evaluation and shall include in such
10 report such recommendations as the Comptroller
11 General deems appropriate.

12 (2) STATUS OF IMPLEMENTATION.—The Sec-
13 retary shall submit a report to Congress not later
14 than October 1, 2006, that describes the status of
15 implementation of such amendments and that in-
16 cludes a description of the following:

17 (A) The number of contracts that have
18 been competitively bid as of such date.

19 (B) The distribution of functions among
20 contracts and contractors.

21 (C) A timeline for complete transition to
22 full competition.

23 (D) A detailed description of how the Sec-
24 retary has modified oversight and management

1 of medicare contractors to adapt to full com-
2 petition.

3 **SEC. 202. REQUIREMENTS FOR INFORMATION SECURITY**
4 **FOR MEDICARE ADMINISTRATIVE CONTRAC-**
5 **TORS.**

6 (a) IN GENERAL.—Section 1874A, as added by sec-
7 tion 201(a)(1), is amended by adding at the end the fol-
8 lowing new subsection:

9 "(e) REQUIREMENTS FOR INFORMATION SECU-
10 RITY.—

11 "(1) DEVELOPMENT OF INFORMATION SECU-
12 RITY PROGRAM.—A medicare administrative con-
13 tractor that performs the functions referred to in
14 subparagraphs (A) and (B) of subsection (a)(4) (re-
15 lating to determining and making payments) shall
16 implement a contractor-wide information security
17 program to provide information security for the op-
18 eration and assets of the contractor with respect to
19 such functions under this title. An information secu-
20 rity program under this paragraph shall meet the re-
21 quirements for information security programs im-
22 posed on Federal agencies under section 3534(b)(2)
23 of title 44, United States Code (other than require-
24 ments under subparagraphs (B)(ii), (F)(iii), and
25 (F)(iv) of such section).

1 "(2) INDEPENDENT AUDITS.—
2 "(A) PERFORMANCE OF ANNUAL EVALUA-
3 TIONS.—Each year a medicare administrative
4 contractor that performs the functions referred
5 to in subparagraphs (A) and (B) of subsection
6 (a)(4) (relating to determining and making pay-
7 ments) shall undergo an evaluation of the infor-
8 mation security of the contractor with respect
9 to such functions under this title. The evalua-
10 tion shall—
11 "(i) be performed by an entity that
12 meets such requirements for independence
13 as the Inspector General of the Depart-
14 ment of Health and Human Services may
15 establish; and
16 "(ii) test the effectiveness of informa-
17 tion security control techniques for an ap-
18 propriate subset of the contractor's infor-
19 mation systems (as defined in section
20 3502(8) of title 44, United States Code)
21 relating to such functions under this title
22 and an assessment of compliance with the
23 requirements of this subsection and related
24 information security policies, procedures,
25 standards and guidelines.

1 "(B) DEADLINE FOR INITIAL EVALUA-
2 TION.—
3 "(i) NEW CONTRACTORS.—In the case
4 of a medicare administrative contractor
5 covered by this subsection that has not
6 previously performed the functions referred
7 to in subparagraphs (A) and (B) of sub-
8 section (a)(4) (relating to determining and
9 making payments) as a fiscal intermediary
10 or carrier under section 1816 or 1842, the
11 first independent evaluation conducted
12 pursuant subparagraph (A) shall be com-
13 pleted prior to commencing such functions.
14 "(ii) OTHER CONTRACTORS.—In the
15 case of a medicare administrative con-
16 tractor covered by this subsection that is
17 not described in clause (i), the first inde-
18 pendent evaluation conducted pursuant
19 subparagraph (A) shall be completed with-
20 in 1 year after the date the contractor
21 commences functions referred to in clause
22 (i) under this section.
23 "(C) REPORTS ON EVALUATIONS.—
24 "(i) TO THE INSPECTOR GENERAL.—
25 The results of independent evaluations

1 under subparagraph (A) shall be submitted
2 promptly to the Inspector General of the
3 Department of Health and Human Serv-
4 ices.

5 "(ii) TO CONGRESS.—The Inspector
6 General of Department of Health and
7 Human Services shall submit to Congress
8 annual reports on the results of such eval-
9 uations.".

10 (b) APPLICATION OF REQUIREMENTS TO FISCAL
11 INTERMEDIARIES AND CARRIERS.—

12 (1) IN GENERAL.—The provisions of section
13 1874A(e)(2) of the Social Security Act (other than
14 subparagraph (B)), as added by subsection (a), shall
15 apply to each fiscal intermediary under section 1816
16 of the Social Security Act (42 U.S.C. 1395h) and
17 each carrier under section 1842 of such Act (42
18 U.S.C. 1395u) in the same manner as they apply to
19 medicare administrative contractors under such pro-
20 visions.

21 (2) DEADLINE FOR INITIAL EVALUATION.—In
22 the case of such a fiscal intermediary or carrier with
23 an agreement or contract under such respective sec-
24 tion in effect as of the date of the enactment of this
25 Act, the first evaluation under section

1874A(e)(2)(A) of the Social Security Act (as added by subsection (a)), pursuant to paragraph (1), shall be completed (and a report on the evaluation submitted to the Secretary) by not later than 1 year after such date.

TITLE III—EDUCATION AND OUTREACH

SEC. 301. PROVIDER EDUCATION AND TECHNICAL ASSISTANCE.

(a) COORDINATION OF EDUCATION FUNDING.—

(1) IN GENERAL.—The Social Security Act is amended by inserting after section 1888 the following new section:

"PROVIDER EDUCATION AND TECHNICAL ASSISTANCE

"SEC. 1889. (a) COORDINATION OF EDUCATION FUNDING.—The Secretary shall coordinate the educational activities provided through medicare contractors (as defined in subsection (g), including under section 1893) in order to maximize the effectiveness of Federal education efforts for providers of services and suppliers.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(3) REPORT.—Not later than October 1, 2002, the Secretary shall submit to Congress a report that includes a description and evaluation of the steps

1 taken to coordinate the funding of provider edu-
2 cation under section 1889(a) of the Social Security
3 Act, as added by paragraph (1).
4 (b) INCENTIVES TO IMPROVE CONTRACTOR PER-
5 FORMANCE.—
6 (1) IN GENERAL.—Section 1874A, as added by
7 section 201(a)(1) and as amended by section 202(a),
8 is amended by adding at the end the following new
9 subsection:
10 "(f) INCENTIVES TO IMPROVE CONTRACTOR PER-
11 FORMANCE IN PROVIDER EDUCATION AND OUTREACH.—
12 In order to give medicare administrative contractors an
13 incentive to implement effective education and outreach
14 programs for providers of services and suppliers, the Sec-
15 retary shall develop and implement a methodology to
16 measure the specific claims payment error rates of such
17 contractors in the processing or reviewing of medicare
18 claims.".
19 (2) APPLICATION TO FISCAL INTERMEDIARIES
20 AND CARRIERS.—The provisions of section 1874A(f)
21 of the Social Security Act, as added by paragraph
22 (1), shall apply to each fiscal intermediary under
23 section 1816 of the Social Security Act (42 U.S.C.
24 1395h) and each carrier under section 1842 of such
25 Act (42 U.S.C. 1395u) in the same manner as they

1 apply to medicare administrative contractors under
2 such provisions.
3 (3) GAO REPORT ON ADEQUACY OF METHOD-
4 OLOGY.—Not later than October 1, 2002, the Comp-
5 troller General of the United States shall submit to
6 Congress and to the Secretary a report on the ade-
7 quacy of the methodology under section 1874A(f)(1)
8 of the Social Security Act, as added by paragraph
9 (1), and shall include in the report such rec-
10 ommendations as the Comptroller General deter-
11 mines appropriate with respect to the methodology.
12 (4) REPORT ON USE OF METHODOLOGY IN AS-
13 SESSING CONTRACTOR PERFORMANCE.—Not later
14 than October 1, 2002, the Secretary shall submit to
15 Congress a report that describes how the Secretary
16 intends to use such methodology in assessing medi-
17 care contractor performance in implementing effec-
18 tive education and outreach programs, including
19 whether to use such methodology as a basis for per-
20 formance bonuses. The report shall include an anal-
21 ysis of the sources of identified errors and potential
22 changes in systems of contractors and rules of the
23 Secretary that could reduce claims error rates.

1 (c) PROVISION OF ACCESS TO AND PROMPT RE-
2 SPONSES FROM MEDICARE ADMINISTRATIVE CONTRAC-
3 TORS.—
4 (1) IN GENERAL.—Section 1874A, as added by
5 section 201(a)(1) and as amended by section 202(a)
6 and subsection (b), is further amended by adding at
7 the end the following new subsection:
8 ''(g) COMMUNICATIONS WITH BENEFICIARIES, PRO-
9 VIDERS OF SERVICES AND SUPPLIERS.—
10 ''(1) COMMUNICATION STRATEGY.—The Sec-
11 retary shall develop a strategy for communications
12 with individuals entitled to benefits under part A or
13 enrolled under part B, or both, and with providers
14 of services and suppliers under this title.
15 ''(2) RESPONSE TO WRITTEN INQUIRIES.—Each
16 medicare administrative contractor shall, for those
17 providers of services and suppliers which submit
18 claims to the contractor for claims processing and
19 for those individuals entitled to benefits under part
20 A or enrolled under part B, or both, with respect to
21 whom claims are submitted for claims processing,
22 provide general written responses (which may be
23 through electronic transmission) in a clear, concise,
24 and accurate manner to inquiries of providers of
25 services, suppliers and individuals entitled to bene-

1 fits under part A or enrolled under part B, or both,
2 concerning the programs under this title within 45
3 business days of the date of receipt of such inquiries.
4 ‘‘(3) RESPONSE TO TOLL-FREE LINES.—The
5 Secretary shall ensure that each medicare adminis-
6 trative contractor shall provide, for those providers
7 of services and suppliers which submit claims to the
8 contractor for claims processing and for those indi-
9 viduals entitled to benefits under part A or enrolled
10 under part B, or both, with respect to whom claims
11 are submitted for claims processing, a toll-free tele-
12 phone number at which such individuals, providers
13 of services and suppliers may obtain information re-
14 garding billing, coding, claims, coverage, and other
15 appropriate information under this title.
16 ‘‘(4) MONITORING OF CONTRACTOR RE-
17 SPONSES.—
18 ‘‘(A) IN GENERAL.—Each medicare admin-
19 istrative contractor shall, consistent with stand-
20 ards developed by the Secretary under subpara-
21 graph (B)—
22 ‘‘(i) maintain a system for identifying
23 who provides the information referred to in
24 paragraphs (2) and (3); and

1 "(ii) monitor the accuracy, consist-
2 ency, and timeliness of the information so
3 provided.
4 "(B) DEVELOPMENT OF STANDARDS.—
5 "(i) IN GENERAL.—The Secretary
6 shall establish and make public standards
7 to monitor the accuracy, consistency, and
8 timeliness of the information provided in
9 response to written and telephone inquiries
10 under this subsection. Such standards shall
11 be consistent with the performance require-
12 ments established under subsection (b)(3).
13 "(ii) EVALUATION.—In conducting
14 evaluations of individual medicare adminis-
15 trative contractors, the Secretary shall
16 take into account the results of the moni-
17 toring conducted under subparagraph (A)
18 taking into account as performance re-
19 quirements the standards established
20 under clause (i). The Secretary shall, in
21 consultation with organizations rep-
22 resenting providers of services, suppliers,
23 and individuals entitled to benefits under
24 part A or enrolled under part B, or both,
25 establish standards relating to the accu-

1 racy, consistency, and timeliness of the in-
2 formation so provided.''.
3 ''(C) DIRECT MONITORING.—Nothing in
4 this paragraph shall be construed as preventing
5 the Secretary from directly monitoring the ac-
6 curacy, consistency, and timeliness of the infor-
7 mation so provided.''.
8 (2) EFFECTIVE DATE.—The amendment made
9 by paragraph (1) shall take effect October 1, 2002.
10 (3) APPLICATION TO FISCAL INTERMEDIARIES
11 AND CARRIERS.—The provisions of section 1874A(g)
12 of the Social Security Act, as added by paragraph
13 (1), shall apply to each fiscal intermediary under
14 section 1816 of the Social Security Act (42 U.S.C.
15 1395h) and each carrier under section 1842 of such
16 Act (42 U.S.C. 1395u) in the same manner as they
17 apply to medicare administrative contractors under
18 such provisions.
19 (d) IMPROVED PROVIDER EDUCATION AND TRAIN-
20 ING.—
21 (1) IN GENERAL.—Section 1889, as added by
22 subsection (a), is amended by adding at the end the
23 following new subsections:
24 ''(b) ENHANCED EDUCATION AND TRAINING.—

1 "(1) ADDITIONAL RESOURCES.—There are au-
2 thorized to be appropriated to the Secretary (in ap-
3 propriate part from the Federal Hospital Insurance
4 Trust Fund and the Federal Supplementary Medical
5 Insurance Trust Fund) $25,000,000 for each of fis-
6 cal years 2003 and 2004 and such sums as may be
7 necessary for succeeding fiscal years.

8 "(2) USE.—The funds made available under
9 paragraph (1) shall be used to increase the conduct
10 by medicare contractors of education and training of
11 providers of services and suppliers regarding billing,
12 coding, and other appropriate items and may also be
13 used to improve the accuracy, consistency, and time-
14 liness of contractor responses.

15 "(c) TAILORING EDUCATION AND TRAINING ACTIVI-
16 TIES FOR SMALL PROVIDERS OR SUPPLIERS.—

17 "(1) IN GENERAL.—Insofar as a medicare con-
18 tractor conducts education and training activities, it
19 shall tailor such activities to meet the special needs
20 of small providers of services or suppliers (as defined
21 in paragraph (2)).

22 "(2) SMALL PROVIDER OF SERVICES OR SUP-
23 PLIER.—In this subsection, the term 'small provider
24 of services or supplier' means—

1 ''(A) a provider of services with fewer than
2 25 full-time-equivalent employees; or
3 ''(B) a supplier with fewer than 10 full-
4 time-equivalent employees.''.
5 (2) EFFECTIVE DATE.—The amendment made
6 by paragraph (1) shall take effect on October 1,
7 2002.
8 (e) REQUIREMENT TO MAINTAIN INTERNET
9 SITES.—
10 (1) IN GENERAL.—Section 1889, as added by
11 subsection (a) and as amended by subsection (d), is
12 further amended by adding at the end the following
13 new subsection:
14 ''(d) INTERNET SITES; FAQS.—The Secretary, and
15 each medicare contractor insofar as it provides services
16 (including claims processing) for providers of services or
17 suppliers, shall maintain an Internet site which—
18 ''(1) provides answers in an easily accessible
19 format to frequently asked questions, and
20 ''(2) includes other published materials of the
21 contractor,
22 that relate to providers of services and suppliers under the
23 programs under this title (and title XI insofar as it relates
24 to such programs).''.

1 (2) EFFECTIVE DATE.—The amendment made
2 by paragraph (1) shall take effect on October 1,
3 2002.
4 (f) ADDITIONAL PROVIDER EDUCATION PROVI-
5 SIONS.—
6 (1) IN GENERAL.—Section 1889, as added by
7 subsection (a) and as amended by subsections (d)
8 and (e), is further amended by adding at the end the
9 following new subsections:
10 ''(e) ENCOURAGEMENT OF PARTICIPATION IN EDU-
11 CATION PROGRAM ACTIVITIES.—A medicare contractor
12 may not use a record of attendance at (or failure to at-
13 tend) educational activities or other information gathered
14 during an educational program conducted under this sec-
15 tion or otherwise by the Secretary to select or track pro-
16 viders of services or suppliers for the purpose of con-
17 ducting any type of audit or prepayment review.
18 ''(f) CONSTRUCTION.—Nothing in this section or sec-
19 tion 1893(g) shall be construed as providing for disclosure
20 by a medicare contractor of information that would com-
21 promise pending law enforcement activities or reveal find-
22 ings of law enforcement-related audits.
23 ''(g) DEFINITIONS.—For purposes of this section, the
24 term 'medicare contractor' includes the following:

"(1) A medicare administrative contractor with a contract under section 1874A, including a fiscal intermediary with a contract under section 1816 and a carrier with a contract under section 1842.

"(2) An eligible entity with a contract under section 1893.

Such term does not include, with respect to activities of a specific provider of services or supplier an entity that has no authority under this title or title IX with respect to such activities and such provider of services or supplier.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

SEC. 302. SMALL PROVIDER TECHNICAL ASSISTANCE DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall establish a demonstration program (in this section referred to as the "demonstration program") under which technical assistance described in paragraph (2) is made available, upon request and on a voluntary basis, to small providers of services or suppliers in order to improve compliance with the applicable requirements of the programs under medicare program under title

1 XVIII of the Social Security Act (including provi-
2 sions of title XI of such Act insofar as they relate
3 to such title and are not administered by the Office
4 of the Inspector General of the Department of
5 Health and Human Services).
6 (2) FORMS OF TECHNICAL ASSISTANCE.—The
7 technical assistance described in this paragraph is—
8 (A) evaluation and recommendations re-
9 garding billing and related systems; and
10 (B) information and assistance regarding
11 policies and procedures under the medicare pro-
12 gram, including coding and reimbursement.
13 (3) SMALL PROVIDERS OF SERVICES OR SUP-
14 PLIERS.—In this section, the term ''small providers
15 of services or suppliers'' means—
16 (A) a provider of services with fewer than
17 25 full-time-equivalent employees; or
18 (B) a supplier with fewer than 10 full-
19 time-equivalent employees.
20 (b) QUALIFICATION OF CONTRACTORS.—In con-
21 ducting the demonstration program, the Secretary shall
22 enter into contracts with qualified organizations (such as
23 peer review organizations or entities described in section
24 1889(g)(2) of the Social Security Act, as inserted by sec-
25 tion 5(f)(1)) with appropriate expertise with billing sys-

1 tems of the full range of providers of services and sup-
2 pliers to provide the technical assistance. In awarding such
3 contracts, the Secretary shall consider any prior investiga-
4 tions of the entity's work by the Inspector General of De-
5 partment of Health and Human Services or the Comp-
6 troller General of the United States.

7 (c) DESCRIPTION OF TECHNICAL ASSISTANCE.—The
8 technical assistance provided under the demonstration
9 program shall include a direct and in-person examination
10 of billing systems and internal controls of small providers
11 of services or suppliers to determine program compliance
12 and to suggest more efficient or effective means of achiev-
13 ing such compliance.

14 (d) AVOIDANCE OF RECOVERY ACTIONS FOR PROB-
15 LEMS IDENTIFIED AS CORRECTED.—The Secretary shall
16 provide that, absent evidence of fraud and notwith-
17 standing any other provision of law, any errors found in
18 a compliance review for a small provider of services or sup-
19 plier that participates in the demonstration program shall
20 not be subject to recovery action if the technical assistance
21 personnel under the program determine that—

22 (1) the problem that is the subject of the com-
23 pliance review has been corrected to their satisfac-
24 tion within 30 days of the date of the visit by such

1 personnel to the small provider of services or sup-
2 plier; and
3 (2) such problem remains corrected for such pe-
4 riod as is appropriate.
5 The previous sentence applies only to claims filed as part
6 of the demonstration program and lasts only for the dura-
7 tion of such program and only as long as the small pro-
8 vider of services or supplier is a participant in such pro-
9 gram.
10 (e) GAO EVALUATION.—Not later than 2 years after
11 the date of the date the demonstration program is first
12 implemented, the Comptroller General, in consultation
13 with the Inspector General of the Department of Health
14 and Human Services, shall conduct an evaluation of the
15 demonstration program. The evaluation shall include a de-
16 termination of whether claims error rates are reduced for
17 small providers of services or suppliers who participated
18 in the program and the extent of improper payments made
19 as a result of the demonstration program. The Comp-
20 troller General shall submit a report to the Secretary and
21 the Congress on such evaluation and shall include in such
22 report recommendations regarding the continuation or ex-
23 tension of the demonstration program.
24 (f) FINANCIAL PARTICIPATION BY PROVIDERS.—The
25 provision of technical assistance to a small provider of

1 services or supplier under the demonstration program is
2 conditioned upon the small provider of services or supplier
3 paying an amount estimated (and disclosed in advance of
4 a provider's or supplier's participation in the program) to
5 be equal to 25 percent of the cost of the technical assist-
6 ance.

7 (g) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated to the Secretary (in ap-
9 propriate part from the Federal Hospital Insurance Trust
10 Fund and the Federal Supplementary Medical Insurance
11 Trust Fund) to carry out the demonstration program—

12 (1) for fiscal year 2003, $1,000,000, and

13 (2) for fiscal year 2004, $6,000,000.

14 **SEC. 303. MEDICARE PROVIDER OMBUDSMAN; MEDICARE**
15 **BENEFICIARY OMBUDSMAN.**

16 (a) MEDICARE PROVIDER OMBUDSMAN.—Section
17 1868 (42 U.S.C. 1395ee) is amended—

18 (1) by adding at the end of the heading the fol-
19 lowing: ''; MEDICARE PROVIDER OMBUDSMAN'';

20 (2) by inserting ''PRACTICING PHYSICIANS AD-
21 VISORY COUNCIL.—(1)'' after ''(a)'';

22 (3) in paragraph (1), as so redesignated under
23 paragraph (2), by striking ''in this section'' and in-
24 serting ''in this subsection'';

1 (4) by redesignating subsections (b) and (c) as
2 paragraphs (2) and (3), respectively; and
3 (5) by adding at the end the following new sub-
4 section:
5 "(b) MEDICARE PROVIDER OMBUDSMAN.—The Sec-
6 retary shall appoint within the Department of Health and
7 Human Services a Medicare Provider Ombudsman. The
8 Ombudsman shall—
9 "(1) provide assistance, on a confidential basis,
10 to providers of services and suppliers with respect to
11 complaints, grievances, and requests for information
12 concerning the programs under this title (including
13 provisions of title XI insofar as they relate to this
14 title and are not administered by the Office of the
15 Inspector General of the Department of Health and
16 Human Services) and in the resolution of unclear or
17 conflicting guidance given by the Secretary and
18 medicare contractors to such providers of services
19 and suppliers regarding such programs and provi-
20 sions and requirements under this title and such
21 provisions; and
22 "(2) submit recommendations to the Secretary
23 for improvement in the administration of this title
24 and such provisions, including—

1 "(A) recommendations to respond to recur-
2 ring patterns of confusion in this title and such
3 provisions (including recommendations regard-
4 ing suspending imposition of sanctions where
5 there is widespread confusion in program ad-
6 ministration), and
7 "(B) recommendations to provide for an
8 appropriate and consistent response (including
9 not providing for audits) in cases of self-identi-
10 fied overpayments by providers of services and
11 suppliers.
12 The Ombudsman shall not serve as an advocate for any
13 increases in payments or new coverage of services, but
14 may identify issues and problems in payment or coverage
15 policies.".
16 (b) MEDICARE BENEFICIARY OMBUDSMAN.—Title
17 XVIII is amended by inserting after section 1806 the fol-
18 lowing new section:
19 "MEDICARE BENEFICIARY OMBUDSMAN
20 "SEC. 1807. (a) IN GENERAL.—The Secretary shall
21 appoint within the Department of Health and Human
22 Services a Medicare Beneficiary Ombudsman who shall
23 have expertise and experience in the fields of health care
24 and education of (and assistance to) individuals entitled
25 to benefits under this title.

1 “(b) DUTIES.—The Medicare Beneficiary Ombuds-
2 man shall—
3 “(1) receive complaints, grievances, and re-
4 quests for information submitted by individuals enti-
5 tled to benefits under part A or enrolled under part
6 B, or both, with respect to any aspect of the medi-
7 care program;
8 “(2) provide assistance with respect to com-
9 plaints, grievances, and requests referred to in para-
10 graph (1), including—
11 “(A) assistance in collecting relevant infor-
12 mation for such individuals, to seek an appeal
13 of a decision or determination made by a fiscal
14 intermediary, carrier, Medicare+Choice organi-
15 zation, or the Secretary; and
16 “(B) assistance to such individuals with
17 any problems arising from disenrollment from a
18 Medicare+Choice plan under part C; and
19 “(3) submit annual reports to Congress and the
20 Secretary that describe the activities of the Office
21 and that include such recommendations for improve-
22 ment in the administration of this title as the Om-
23 budsman determines appropriate.
24 The Ombudsman shall not serve as an advocate for any
25 increases in payments or new coverage of services, but

1 may identify issues and problems in payment or coverage
2 policies.

3 "(c) WORKING WITH HEALTH INSURANCE COUN-
4 SELING PROGRAMS.—To the extent possible, the Ombuds-
5 man shall work with health insurance counseling programs
6 (receiving funding under section 4360 of Omnibus Budget
7 Reconciliation Act of 1990) to facilitate the provision of
8 information to individuals entitled to benefits under part
9 A or enrolled under part B, or both regarding
10 Medicare+Choice plans and changes to those plans. Noth-
11 ing in this subsection shall preclude further collaboration
12 between the Ombudsman and such programs.".

13 (c) DEADLINE FOR APPOINTMENT.—The Secretary
14 shall appoint the Medicare Provider Ombudsman and the
15 Medicare Beneficiary Ombudsman, under the amendments
16 made by subsections (a) and (b), respectively, by not later
17 than 1 year after the date of the enactment of this Act.

18 (d) FUNDING.—There are authorized to be appro-
19 priated to the Secretary (in appropriate part from the
20 Federal Hospital Insurance Trust Fund and the Federal
21 Supplementary Medical Insurance Trust Fund) to carry
22 out the provisions of subsection (b) of section 1868 of the
23 Social Security Act (relating to the Medicare Provider
24 Ombudsman), as added by subsection (a)(5) and section
25 1807 of such Act (relating to the Medicare Beneficiary

1 Ombudsman), as added by subsection (b), such sums as
2 are necessary for fiscal year 2002 and each succeeding fis-
3 cal year.

4 (e) USE OF CENTRAL, TOLL-FREE NUMBER (1-800-
5 MEDICARE).—

6 (1) PHONE TRIAGE SYSTEM; LISTING IN MEDI-
7 CARE HANDBOOK INSTEAD OF OTHER TOLL-FREE
8 NUMBERS.—Section 1804(b) (42 U.S.C. 1395b–
9 2(b)) is amended by adding at the end the following:
10 ''The Secretary shall provide, through the toll-free
11 number 1-800-MEDICARE, for a means by which
12 individuals seeking information about, or assistance
13 with, such programs who phone such toll-free num-
14 ber are transferred (without charge) to appropriate
15 entities for the provision of such information or as-
16 sistance. Such toll-free number shall be the toll-free
17 number listed for general information and assistance
18 in the annual notice under subsection (a) instead of
19 the listing of numbers of individual contractors.''.

20 (2) MONITORING ACCURACY.—

21 (A) STUDY.—The Comptroller General of
22 the United States shall conduct a study to mon-
23 itor the accuracy and consistency of information
24 provided to individuals entitled to benefits
25 under part A or enrolled under part B, or both,

1 through the toll-free number 1-800-MEDI-
2 CARE, including an assessment of whether the
3 information provided is sufficient to answer
4 questions of such individuals. In conducting the
5 study, the Comptroller General shall examine
6 the education and training of the individuals
7 providing information through such number.

8 (B) REPORT.—Not later than 1 year after
9 the date of the enactment of this Act, the
10 Comptroller General shall submit to Congress a
11 report on the study conducted under subpara-
12 graph (A).

13 **SEC. 304. BENEFICIARY OUTREACH DEMONSTRATION PRO-**
14 **GRAM.**

15 (a) IN GENERAL.—The Secretary shall establish a
16 demonstration program (in this section referred to as the
17 "demonstration program") under which medicare special-
18 ists employed by the Department of Health and Human
19 Services provide advice and assistance to individuals enti-
20 tled to benefits under part A of title XVIII of the Social
21 Security Act, or enrolled under part B of such title, or
22 both, regarding the medicare program at the location of
23 existing local offices of the Social Security Administration.

24 (b) LOCATIONS.—

1 (1) IN GENERAL.—The demonstration program
2 shall be conducted in at least 6 offices or areas.
3 Subject to paragraph (2), in selecting such offices
4 and areas, the Secretary shall provide preference for
5 offices with a high volume of visits by individuals re-
6 ferred to in subsection (a).

7 (2) ASSISTANCE FOR RURAL BENEFICIARIES.—
8 The Secretary shall provide for the selection of at
9 least 2 rural areas to participate in the demonstra-
10 tion program. In conducting the demonstration pro-
11 gram in such rural areas, the Secretary shall provide
12 for medicare specialists to travel among local offices
13 in a rural area on a scheduled basis.

14 (c) DURATION.—The demonstration program shall be
15 conducted over a 3-year period.

16 (d) EVALUATION AND REPORT.—

17 (1) EVALUATION.—The Secretary shall provide
18 for an evaluation of the demonstration program.
19 Such evaluation shall include an analysis of—

20 (A) utilization of, and satisfaction of those
21 individuals referred to in subsection (a) with,
22 the assistance provided under the program; and

23 (B) the cost-effectiveness of providing ben-
24 eficiary assistance through out-stationing medi-

1 care specialists at local offices of the Social Se-
2 curity Administration.
3 (2) REPORT.—The Secretary shall submit to
4 Congress a report on such evaluation and shall in-
5 clude in such report recommendations regarding the
6 feasibility of permanently out-stationing medicare
7 specialists at local offices of the Social Security Ad-
8 ministration.

9 TITLE IV—APPEALS AND 10 RECOVERY

11 SEC. 401. TRANSFER OF RESPONSIBILITY FOR MEDICARE 12 APPEALS.

13 (a) TRANSITION PLAN.—
14 (1) IN GENERAL.—Not later than October 1,
15 2002, the Commissioner of Social Security and the
16 Secretary shall develop and transmit to Congress
17 and the Comptroller General of the United States a
18 plan under which the functions of administrative law
19 judges responsible for hearing cases under title
20 XVIII of the Social Security Act (and related provi-
21 sions in title XI of such Act) are transferred from
22 the responsibility of the Commissioner and the So-
23 cial Security Administration to the Secretary and
24 the Department of Health and Human Services.

(2) GAO EVALUATION.—The Comptroller General of the United States shall evaluate the plan and, not later than April 1, 2003, shall submit to Congress a report on such evaluation.

(b) TRANSFER OF ADJUDICATION AUTHORITY.—

(1) IN GENERAL.—Not earlier than July 1, 2003, and not later than October 1, 2003, the Commissioner of Social Security and the Secretary shall implement the transition plan under subsection (a) and transfer the administrative law judge functions described in such subsection from the Social Security Administration to the Secretary.

(2) ASSURING INDEPENDENCE OF JUDGES.—The Secretary shall assure the independence of administrative law judges performing the administrative law judge functions transferred under paragraph (1) from the Centers for Medicare & Medicaid Services and its contractors.

(3) GEOGRAPHIC DISTRIBUTION.—The Secretary shall provide for an appropriate geographic distribution of administrative law judges performing the administrative law judge functions transferred under paragraph (1) throughout the United States to ensure timely access to such judges.

1 (4) HIRING AUTHORITY.—Subject to the
2 amounts provided in advance in appropriations Act,
3 the Secretary shall have authority to hire adminis-
4 trative law judges to hear such cases, giving priority
5 to those judges with prior experience in handling
6 medicare appeals and in a manner consistent with
7 paragraph (3), and to hire support staff for such
8 judges.
9 (5) FINANCING.—Amounts payable under law
10 to the Commissioner for administrative law judges
11 performing the administrative law judge functions
12 transferred under paragraph (1) from the Federal
13 Hospital Insurance Trust Fund and the Federal
14 Supplementary Medical Insurance Trust Fund shall
15 become payable to the Secretary for the functions so
16 transferred.
17 (6) SHARED RESOURCES.—The Secretary shall
18 enter into such arrangements with the Commissioner
19 as may be appropriate with respect to transferred
20 functions of administrative law judges to share office
21 space, support staff, and other resources, with ap-
22 propriate reimbursement from the Trust Funds de-
23 scribed in paragraph (5).
24 (c) INCREASED FINANCIAL SUPPORT.—In addition to
25 any amounts otherwise appropriated, to ensure timely ac-

1 tion on appeals before administrative law judges and the
2 Departmental Appeals Board consistent with section 1869
3 of the Social Security Act (as amended by section 521 of
4 BIPA, 114 Stat. 2763A–534), there are authorized to be
5 appropriated (in appropriate part from the Federal Hos-
6 pital Insurance Trust Fund and the Federal Supple-
7 mentary Medical Insurance Trust Fund) to the Secretary
8 such sums as are necessary for fiscal year 2003 and each
9 subsequent fiscal year to—

10 (1) increase the number of administrative law
11 judges (and their staffs) under subsection (b)(4);

12 (2) improve education and training opportuni-
13 ties for administrative law judges (and their staffs);
14 and

15 (3) increase the staff of the Departmental Ap-
16 peals Board.

17 (d) CONFORMING AMENDMENT.—Section
18 1869(f)(2)(A)(i) (42 U.S.C. 1395ff(f)(2)(A)(i)), as added
19 by section 522(a) of BIPA (114 Stat. 2763A–543), is
20 amended by striking ''of the Social Security Administra-
21 tion''.

22 **SEC. 402. PROCESS FOR EXPEDITED ACCESS TO REVIEW.**

23 (a) EXPEDITED ACCESS TO JUDICIAL REVIEW.—Sec-
24 tion 1869(b) (42 U.S.C. 1395ff(b)) as amended by BIPA,
25 is amended—

1 (1) in paragraph (1)(A), by inserting ", subject
2 to paragraph (2)," before "to judicial review of the
3 Secretary's final decision";
4 (2) in paragraph (1)(F)—
5 (A) by striking clause (ii);
6 (B) by striking "PROCEEDING" and all
7 that follows through "DETERMINATION" and in-
8 serting "DETERMINATIONS AND RECONSIDER-
9 ATIONS"; and
10 (C) by redesignating subclauses (I) and
11 (II) as clauses (i) and (ii) and by moving the
12 indentation of such subclauses (and the matter
13 that follows) 2 ems to the left; and
14 (3) by adding at the end the following new
15 paragraph:
16 "(2) EXPEDITED ACCESS TO JUDICIAL RE-
17 VIEW.—
18 "(A) IN GENERAL.—The Secretary shall
19 establish a process under which a provider of
20 services or supplier that furnishes an item or
21 service or an individual entitled to benefits
22 under part A or enrolled under part B, or both,
23 who has filed an appeal under paragraph (1)
24 may obtain access to judicial review when a re-
25 view panel (described in subparagraph (D)), on

1 its own motion or at the request of the appel-
2 lant, determines that no entity in the adminis-
3 trative appeals process has the authority to de-
4 cide the question of law or regulation relevant
5 to the matters in controversy and that there is
6 no material issue of fact in dispute. The appel-
7 lant may make such request only once with re-
8 spect to a question of law or regulation in a
9 case of an appeal.

10 ''(B) PROMPT DETERMINATIONS.—If, after
11 or coincident with appropriately filing a request
12 for an administrative hearing, the appellant re-
13 quests a determination by the appropriate re-
14 view panel that no review panel has the author-
15 ity to decide the question of law or regulations
16 relevant to the matters in controversy and that
17 there is no material issue of fact in dispute and
18 if such request is accompanied by the docu-
19 ments and materials as the appropriate review
20 panel shall require for purposes of making such
21 determination, such review panel shall make a
22 determination on the request in writing within
23 60 days after the date such review panel re-
24 ceives the request and such accompanying docu-
25 ments and materials. Such a determination by

1 such review panel shall be considered a final de-
2 cision and not subject to review by the Sec-
3 retary.
4 “(C) ACCESS TO JUDICIAL REVIEW.—
5 “(i) IN GENERAL.—If the appropriate
6 review panel—
7 “(I) determines that there are no
8 material issues of fact in dispute and
9 that the only issue is one of law or
10 regulation that no review panel has
11 the authority to decide; or
12 “(II) fails to make such deter-
13 mination within the period provided
14 under subparagraph (B);
15 then the appellant may bring a civil action
16 as described in this subparagraph.
17 “(ii) DEADLINE FOR FILING.—Such
18 action shall be filed, in the case described
19 in—
20 “(I) clause (i)(I), within 60 days
21 of date of the determination described
22 in such subparagraph; or
23 “(II) clause (i)(II), within 60
24 days of the end of the period provided

1 under subparagraph (B) for the deter-
2 mination.
3 ‘‘(iii) VENUE.—Such action shall be
4 brought in the district court of the United
5 States for the judicial district in which the
6 appellant is located (or, in the case of an
7 action brought jointly by more than one
8 applicant, the judicial district in which the
9 greatest number of applicants are located)
10 or in the district court for the District of
11 Columbia.
12 ‘‘(iv) INTEREST ON AMOUNTS IN CON-
13 TROVERSY.—Where a provider of services
14 or supplier seeks judicial review pursuant
15 to this paragraph, the amount in con-
16 troversy shall be subject to annual interest
17 beginning on the first day of the first
18 month beginning after the 60-day period
19 as determined pursuant to clause (ii) and
20 equal to the rate of interest on obligations
21 issued for purchase by the Federal Hos-
22 pital Insurance Trust Fund and by the
23 Federal Supplementary Medical Insurance
24 Trust Fund for the month in which the
25 civil action authorized under this para-

1 graph is commenced, to be awarded by the
2 reviewing court in favor of the prevailing
3 party. No interest awarded pursuant to the
4 preceding sentence shall be deemed income
5 or cost for the purposes of determining re-
6 imbursement due providers of services or
7 suppliers under this Act.

8 ''(D) REVIEW PANELS.—For purposes of
9 this subsection, a 'review panel' is a panel con-
10 sisting of 3 members (who shall be administra-
11 tive law judges, members of the Departmental
12 Appeals Board, or qualified individuals associ-
13 ated with a qualified independent contractor (as
14 defined in subsection (c)(2)) or with another
15 independent entity) designated by the Secretary
16 for purposes of making determinations under
17 this paragraph.''.

18 (b) APPLICATION TO PROVIDER AGREEMENT DETER-
19 MINATIONS.—Section 1866(h)(1) (42 U.S.C.
20 1395cc(h)(1)) is amended—

21 (1) by inserting ''(A)'' after ''(h)(1)''; and

22 (2) by adding at the end the following new sub-
23 paragraph:

24 ''(B) An institution or agency described in subpara-
25 graph (A) that has filed for a hearing under subparagraph

1 (A) shall have expedited access to judicial review under
2 this subparagraph in the same manner as providers of
3 services, suppliers, and individuals entitled to benefits
4 under part A or enrolled under part B, or both, may ob-
5 tain expedited access to judicial review under the process
6 established under section 1869(b)(2). Nothing in this sub-
7 paragraph shall be construed to affect the application of
8 any remedy imposed under section 1819 during the pend-
9 ency of an appeal under this subparagraph.''.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to appeals filed on or after October
12 1, 2002.

13 (d) EXPEDITED REVIEW OF CERTAIN PROVIDER
14 AGREEMENT DETERMINATIONS.—

15 (1) TERMINATION AND CERTAIN OTHER IMME-
16 DIATE REMEDIES.—The Secretary shall develop and
17 implement a process to expedite proceedings under
18 sections 1866(h) of the Social Security Act (42
19 U.S.C. 1395cc(h)) in which the remedy of termi-
20 nation of participation, or a remedy described in
21 clause (i) or (iii) of section 1819(h)(2)(B) of such
22 Act (42 U.S.C. 1395i–3(h)(2)(B)) which is applied
23 on an immediate basis, has been imposed. Under
24 such process priority shall be provided in cases of
25 termination.

1 (2) INCREASED FINANCIAL SUPPORT.—In addi-
2 tion to any amounts otherwise appropriated, to re-
3 duce by 50 percent the average time for administra-
4 tive determinations on appeals under section
5 1866(h) of the Social Security Act (42 U.S.C.
6 1395cc(h)), there are authorized to be appropriated
7 (in appropriate part from the Federal Hospital In-
8 surance Trust Fund and the Federal Supplementary
9 Medical Insurance Trust Fund) to the Secretary
10 such additional sums for fiscal year 2003 and each
11 subsequent fiscal year as may be necessary. The
12 purposes for which such amounts are available in-
13 clude increasing the number of administrative law
14 judges (and their staffs) and the appellate level staff
15 at the Departmental Appeals Board of the Depart-
16 ment of Health and Human Services and educating
17 such judges and staffs on long-term care issues.

18 **SEC. 403. REVISIONS TO MEDICARE APPEALS PROCESS.**

19 (a) REQUIRING FULL AND EARLY PRESENTATION OF
20 EVIDENCE.—
21 (1) IN GENERAL.—Section 1869(b) (42 U.S.C.
22 1395ff(b)), as amended by BIPA and as amended by
23 section 402(a), is further amended by adding at the
24 end the following new paragraph:

1 “(3) REQUIRING FULL AND EARLY PRESEN-
2 TATION OF EVIDENCE BY PROVIDERS.—A provider
3 of services or supplier may not introduce evidence in
4 any appeal under this section that was not presented
5 at the reconsideration conducted by the qualified
6 independent contractor under subsection (c), unless
7 there is good cause which precluded the introduction
8 of such evidence at or before that reconsideration.”.
9 (2) EFFECTIVE DATE.—The amendment made
10 by paragraph (1) shall take effect on October 1,
11 2002.
12 (b) USE OF PATIENTS' MEDICAL RECORDS.—Section
13 1869(c)(3)(B)(i) (42 U.S.C. 1395ff(c)(3)(B)(i)), as
14 amended by BIPA, is amended by inserting “(including
15 the medical records of the individual involved)” after
16 “clinical experience”.
17 (c) NOTICE REQUIREMENTS FOR MEDICARE AP-
18 PEALS.—
19 (1) INITIAL DETERMINATIONS AND REDETER-
20 MINATIONS.—Section 1869(a) (42 U.S.C.
21 1395ff(a)), as amended by BIPA, is amended by
22 adding at the end the following new paragraph:
23 “(4) REQUIREMENTS OF NOTICE OF DETER-
24 MINATIONS AND REDETERMINATIONS.—A written
25 notice of a determination on an initial determination

1 or on a redetermination, insofar as such determina-
2 tion or redetermination results in a denial of a claim
3 for benefits, shall include—
4 ‘‘(A) the specific reasons for the deter-
5 mination, including—
6 ‘‘(i) upon request, the provision of the
7 policy, manual, or regulation used in mak-
8 ing the determination; and
9 ‘‘(ii) as appropriate in the case of a
10 redetermination, a summary of the clinical
11 or scientific evidence used in making the
12 determination;
13 ‘‘(B) the procedures for obtaining addi-
14 tional information concerning the determination
15 or redetermination; and
16 ‘‘(C) notification of the right to seek a re-
17 determination or otherwise appeal the deter-
18 mination and instructions on how to initiate
19 such a redetermination or appeal under this
20 section.
21 The written notice on a redetermination shall be
22 provided in printed form and written in a manner
23 calculated to be understood by the individual entitled
24 to benefits under part A or enrolled under part B,
25 or both.’’.

1 (2) RECONSIDERATIONS.—Section
2 1869(c)(3)(E) (42 U.S.C. 1395ff(c)(3)(E)), as
3 amended by BIPA, is amended—
4 (A) by inserting "be written in a manner
5 calculated to be understood by the individual
6 entitled to benefits under part A or enrolled
7 under part B, or both, and shall include (to the
8 extent appropriate)" after "in writing, "; and
9 (B) by inserting "and a notification of the
10 right to appeal such determination and instruc-
11 tions on how to initiate such appeal under this
12 section" after "such decision, ".
13 (3) APPEALS.—Section 1869(d) (42 U.S.C.
14 1395ff(d)), as amended by BIPA, is amended—
15 (A) in the heading, by inserting "; NO-
16 TICE" after "SECRETARY"; and
17 (B) by adding at the end the following new
18 paragraph:
19 "(4) NOTICE.—Notice of the decision of an ad-
20 ministrative law judge shall be in writing in a man-
21 ner calculated to be understood by the individual en-
22 titled to benefits under part A or enrolled under part
23 B, or both, and shall include—
24 "(A) the specific reasons for the deter-
25 mination (including, to the extent appropriate,

1 a summary of the clinical or scientific evidence
2 used in making the determination);
3 ''(B) the procedures for obtaining addi-
4 tional information concerning the decision; and
5 ''(C) notification of the right to appeal the
6 decision and instructions on how to initiate
7 such an appeal under this section.''.
8 (4) SUBMISSION OF RECORD FOR APPEAL.—
9 Section 1869(c)(3)(J)(i) (42 U.S.C.
10 1395ff(c)(3)(J)(i)) by striking ''prepare'' and insert-
11 ing ''submit'' and by striking ''with respect to'' and
12 all that follows through ''and relevant policies''.
13 (d) QUALIFIED INDEPENDENT CONTRACTORS.—
14 (1) ELIGIBILITY REQUIREMENTS OF QUALIFIED
15 INDEPENDENT CONTRACTORS.—Section 1869(c)(3)
16 (42 U.S.C. 1395ff(c)(3)), as amended by BIPA, is
17 amended—
18 (A) in subparagraph (A), by striking ''suf-
19 ficient training and expertise in medical science
20 and legal matters'' and inserting ''sufficient
21 medical, legal, and other expertise (including
22 knowledge of the program under this title) and
23 sufficient staffing''; and
24 (B) by adding at the end the following new
25 subparagraph:

1 "(K) INDEPENDENCE REQUIREMENTS.—
2 "(i) IN GENERAL.—Subject to clause
3 (ii), a qualified independent contractor
4 shall not conduct any activities in a case
5 unless the entity—
6 "(I) is not a related party (as de-
7 fined in subsection (g)(5));
8 "(II) does not have a material fa-
9 milial, financial, or professional rela-
10 tionship with such a party in relation
11 to such case; and
12 "(III) does not otherwise have a
13 conflict of interest with such a party.
14 "(ii) EXCEPTION FOR REASONABLE
15 COMPENSATION.—Nothing in clause (i)
16 shall be construed to prohibit receipt by a
17 qualified independent contractor of com-
18 pensation from the Secretary for the con-
19 duct of activities under this section if the
20 compensation is provided consistent with
21 clause (iii).
22 "(iii) LIMITATIONS ON ENTITY COM-
23 PENSATION.—Compensation provided by
24 the Secretary to a qualified independent
25 contractor in connection with reviews

1 under this section shall not be contingent
2 on any decision rendered by the contractor
3 or by any reviewing professional.''.
4 (2) ELIGIBILITY REQUIREMENTS FOR REVIEW-
5 ERS.—Section 1869 (42 U.S.C. 1395ff), as amended
6 by BIPA, is amended—
7 (A) by amending subsection (c)(3)(D) to
8 read as follows:
9 ''(D) QUALIFICATIONS FOR REVIEWERS.—
10 The requirements of subsection (g) shall be met
11 (relating to qualifications of reviewing profes-
12 sionals).''; and
13 (B) by adding at the end the following new
14 subsection:
15 ''(g) QUALIFICATIONS OF REVIEWERS.—
16 ''(1) IN GENERAL.—In reviewing determina-
17 tions under this section, a qualified independent con-
18 tractor shall assure that—
19 ''(A) each individual conducting a review
20 shall meet the qualifications of paragraph (2);
21 ''(B) compensation provided by the con-
22 tractor to each such reviewer is consistent with
23 paragraph (3); and
24 ''(C) in the case of a review by a panel de-
25 scribed in subsection (c)(3)(B) composed of

1 physicians or other health care professionals
2 (each in this subsection referred to as a 'review-
3 ing professional'), each reviewing professional
4 meets the qualifications described in paragraph
5 (4) and, where a claim is regarding the fur-
6 nishing of treatment by a physician (allopathic
7 or osteopathic) or the provision of items or
8 services by a physician (allopathic or osteo-
9 pathic), each reviewing professional shall be a
10 physician (allopathic or osteopathic).
11 ''(2) INDEPENDENCE.—
12 ''(A) IN GENERAL.—Subject to subpara-
13 graph (B), each individual conducting a review
14 in a case shall—
15 ''(i) not be a related party (as defined
16 in paragraph (5));
17 ''(ii) not have a material familial, fi-
18 nancial, or professional relationship with
19 such a party in the case under review; and
20 ''(iii) not otherwise have a conflict of
21 interest with such a party.
22 ''(B) EXCEPTION.—Nothing in subpara-
23 graph (A) shall be construed to—
24 ''(i) prohibit an individual, solely on
25 the basis of a participation agreement with

1 a fiscal intermediary, carrier, or other con-
2 tractor, from serving as a reviewing profes-
3 sional if—
4 "(I) the individual is not involved
5 in the provision of items or services in
6 the case under review;
7 "(II) the fact of such an agree-
8 ment is disclosed to the Secretary and
9 the individual entitled to benefits
10 under part A or enrolled under part
11 B, or both, (or authorized representa-
12 tive) and neither party objects; and
13 "(III) the individual is not an
14 employee of the intermediary, carrier,
15 or contractor and does not provide
16 services exclusively or primarily to or
17 on behalf of such intermediary, car-
18 rier, or contractor;
19 "(ii) prohibit an individual who has
20 staff privileges at the institution where the
21 treatment involved takes place from serv-
22 ing as a reviewer merely on the basis of
23 having such staff privileges if the existence
24 of such privileges is disclosed to the Sec-
25 retary and such individual (or authorized

1 representative), and neither party objects;
2 or
3 "(iii) prohibit receipt of compensation
4 by a reviewing professional from a con-
5 tractor if the compensation is provided
6 consistent with paragraph (3).
7 For purposes of this paragraph, the term 'par-
8 ticipation agreement' means an agreement re-
9 lating to the provision of health care services by
10 the individual and does not include the provi-
11 sion of services as a reviewer under this sub-
12 section.
13 "(3) LIMITATIONS ON REVIEWER COMPENSA-
14 TION.—Compensation provided by a qualified inde-
15 pendent contractor to a reviewer in connection with
16 a review under this section shall not be contingent
17 on the decision rendered by the reviewer.
18 "(4) LICENSURE AND EXPERTISE.—Each re-
19 viewing professional shall be—
20 "(A) a physician (allopathic or osteopathic)
21 who is appropriately credentialed or licensed in
22 one or more States to deliver health care serv-
23 ices and has medical expertise in the field of
24 practice that is appropriate for the items or
25 services at issue; or

1 ''(B) a health care professional who is le-
2 gally authorized in one or more States (in ac-
3 cordance with State law or the State regulatory
4 mechanism provided by State law) to furnish
5 the health care items or services at issue and
6 has medical expertise in the field of practice
7 that is appropriate for such items or services.
8 ''(5) RELATED PARTY DEFINED.—For purposes
9 of this section, the term 'related party' means, with
10 respect to a case under this title involving a specific
11 individual entitled to benefits under part A or en-
12 rolled under part B, or both, any of the following:
13 ''(A) The Secretary, the medicare adminis-
14 trative contractor involved, or any fiduciary, of-
15 ficer, director, or employee of the Department
16 of Health and Human Services, or of such con-
17 tractor.
18 ''(B) The individual (or authorized rep-
19 resentative).
20 ''(C) The health care professional that pro-
21 vides the items or services involved in the case.
22 ''(D) The institution at which the items or
23 services (or treatment) involved in the case are
24 provided.

1 "(E) The manufacturer of any drug or
2 other item that is included in the items or serv-
3 ices involved in the case.

4 "(F) Any other party determined under
5 any regulations to have a substantial interest in
6 the case involved.".

7 (3) EFFECTIVE DATE.—The amendments made
8 by paragraphs (1) and (2) shall be effective as if in-
9 cluded in the enactment of the respective provisions
10 of subtitle C of title V of BIPA, (114 Stat. 2763A–
11 534).

12 (4) TRANSITION.—In applying section 1869(g)
13 of the Social Security Act (as added by paragraph
14 (2)), any reference to a medicare administrative con-
15 tractor shall be deemed to include a reference to a
16 fiscal intermediary under section 1816 of the Social
17 Security Act (42 U.S.C. 1395h) and a carrier under
18 section 1842 of such Act (42 U.S.C. 1395u).

19 **SEC. 404. PREPAYMENT REVIEW.**

20 (a) IN GENERAL.—Section 1874A, as added by sec-
21 tion 201(a)(1) and as amended by sections 202(b),
22 301(b)(1), and 301(c)(1), is further amended by adding
23 at the end the following new subsection:

24 "(h) CONDUCT OF PREPAYMENT REVIEW.—

1 "(1) CONDUCT OF RANDOM PREPAYMENT RE-
2 VIEW.—
3 "(A) IN GENERAL.—A medicare adminis-
4 trative contractor may conduct random prepay-
5 ment review only to develop a contractor-wide
6 or program-wide claims payment error rates or
7 under such additional circumstances as may be
8 provided under regulations, developed in con-
9 sultation with providers of services and sup-
10 pliers.
11 "(B) USE OF STANDARD PROTOCOLS
12 WHEN CONDUCTING PREPAYMENT REVIEWS.—
13 When a medicare administrative contractor con-
14 ducts a random prepayment review, the con-
15 tractor may conduct such review only in accord-
16 ance with a standard protocol for random pre-
17 payment audits developed by the Secretary.
18 "(C) CONSTRUCTION.—Nothing in this
19 paragraph shall be construed as preventing the
20 denial of payments for claims actually reviewed
21 under a random prepayment review.
22 "(D) RANDOM PREPAYMENT REVIEW.—
23 For purposes of this subsection, the term 'ran-
24 dom prepayment review' means a demand for

1 the production of records or documentation ab-
2 sent cause with respect to a claim.
3 "(2) LIMITATIONS ON NON-RANDOM PREPAY-
4 MENT REVIEW.—
5 "(A) LIMITATIONS ON INITIATION OF NON-
6 RANDOM PREPAYMENT REVIEW.—A medicare
7 administrative contractor may not initiate non-
8 random prepayment review of a provider of
9 services or supplier based on the initial identi-
10 fication by that provider of services or supplier
11 of an improper billing practice unless there is a
12 likelihood of sustained or high level of payment
13 error (as defined in subsection (i)(3)(A)).
14 "(B) TERMINATION OF NON-RANDOM PRE-
15 PAYMENT REVIEW.—The Secretary shall issue
16 regulations relating to the termination, includ-
17 ing termination dates, of non-random prepay-
18 ment review. Such regulations may vary such a
19 termination date based upon the differences in
20 the circumstances triggering prepayment re-
21 view.".
22 (b) EFFECTIVE DATE.—
23 (1) IN GENERAL.—Except as provided in this
24 subsection, the amendment made by subsection (a)

1 shall take effect 1 year after the date of the enact-
2 ment of this Act.
3 (2) DEADLINE FOR PROMULGATION OF CER-
4 TAIN REGULATIONS.—The Secretary shall first issue
5 regulations under section 1874A(h) of the Social Se-
6 curity Act, as added by subsection (a), by not later
7 than 1 year after the date of the enactment of this
8 Act.
9 (3) APPLICATION OF STANDARD PROTOCOLS
10 FOR RANDOM PREPAYMENT REVIEW.—Section
11 1874A(h)(1)(B) of the Social Security Act, as added
12 by subsection (a), shall apply to random prepayment
13 reviews conducted on or after such date (not later
14 than 1 year after the date of the enactment of this
15 Act) as the Secretary shall specify.
16 (c) APPLICATION TO FISCAL INTERMEDIARIES AND
17 CARRIERS.—The provisions of section 1874A(h) of the So-
18 cial Security Act, as added by subsection (a), shall apply
19 to each fiscal intermediary under section 1816 of the So-
20 cial Security Act (42 U.S.C. 1395h) and each carrier
21 under section 1842 of such Act (42 U.S.C. 1395u) in the
22 same manner as they apply to medicare administrative
23 contractors under such provisions.

1 **SEC. 405. RECOVERY OF OVERPAYMENTS.**

2 (a) IN GENERAL.—Section 1893 (42 U.S.C.
3 1395ddd) is amended by adding at the end the following
4 new subsection:

5 ''(f) RECOVERY OF OVERPAYMENTS.—

6 ''(1) USE OF REPAYMENT PLANS.—

7 ''(A) IN GENERAL.—If the repayment,
8 within 30 days by a provider of services or sup-
9 plier, of an overpayment under this title would
10 constitute a hardship (as defined in subpara-
11 graph (B)), subject to subparagraph (C), upon
12 request of the provider of services or supplier
13 the Secretary shall enter into a plan with the
14 provider of services or supplier for the repay-
15 ment (through offset or otherwise) of such over-
16 payment over a period of at least 6 months but
17 not longer than 3 years (or not longer than 5
18 years in the case of extreme hardship, as deter-
19 mined by the Secretary). Interest shall accrue
20 on the balance through the period of repay-
21 ment. Such plan shall meet terms and condi-
22 tions determined to be appropriate by the Sec-
23 retary.

24 ''(B) HARDSHIP.—

25 ''(i) IN GENERAL.—For purposes of
26 subparagraph (A), the repayment of an

1 overpayment (or overpayments) within 30
2 days is deemed to constitute a hardship
3 if—
4 "(I) in the case of a provider of
5 services that files cost reports, the ag-
6 gregate amount of the overpayments
7 exceeds 10 percent of the amount paid
8 under this title to the provider of
9 services for the cost reporting period
10 covered by the most recently sub-
11 mitted cost report; or
12 "(II) in the case of another pro-
13 vider of services or supplier, the ag-
14 gregate amount of the overpayments
15 exceeds 10 percent of the amount paid
16 under this title to the provider of
17 services or supplier for the previous
18 calendar year.
19 "(ii) RULE OF APPLICATION.—The
20 Secretary shall establish rules for the ap-
21 plication of this subparagraph in the case
22 of a provider of services or supplier that
23 was not paid under this title during the
24 previous year or was paid under this title
25 only during a portion of that year.

1 "(iii) TREATMENT OF PREVIOUS
2 OVERPAYMENTS.—If a provider of services
3 or supplier has entered into a repayment
4 plan under subparagraph (A) with respect
5 to a specific overpayment amount, such
6 payment amount under the repayment plan
7 shall not be taken into account under
8 clause (i) with respect to subsequent over-
9 payment amounts.
10 "(C) EXCEPTIONS.—Subparagraph (A)
11 shall not apply if—
12 "(i) the Secretary has reason to sus-
13 pect that the provider of services or sup-
14 plier may file for bankruptcy or otherwise
15 cease to do business or discontinue partici-
16 pation in the program under this title; or
17 "(ii) there is an indication of fraud or
18 abuse committed against the program.
19 "(D) IMMEDIATE COLLECTION IF VIOLA-
20 TION OF REPAYMENT PLAN.—If a provider of
21 services or supplier fails to make a payment in
22 accordance with a repayment plan under this
23 paragraph, the Secretary may immediately seek
24 to offset or otherwise recover the total balance

1 outstanding (including applicable interest)
2 under the repayment plan.
3 "(E) RELATION TO NO FAULT PROVI-
4 SION.—Nothing in this paragraph shall be con-
5 strued as affecting the application of section
6 1870(c) (relating to no adjustment in the cases
7 of certain overpayments).
8 "(2) LIMITATION ON RECOUPMENT.—
9 "(A) IN GENERAL.—In the case of a pro-
10 vider of services or supplier that is determined
11 to have received an overpayment under this title
12 and that seeks a reconsideration by a qualified
13 independent contractor on such determination
14 under section 1869(b)(1), the Secretary may
15 not take any action (or authorize any other per-
16 son, including any medicare contractor, as de-
17 fined in subparagraph (C) to recoup the over-
18 payment until the date the decision on the re-
19 consideration has been rendered. If the provi-
20 sions of section 1869(b)(1) (providing for such
21 a reconsideration by a qualified independent
22 contractor) are not in effect, in applying the
23 previous sentence any reference to such a recon-
24 sideration shall be treated as a reference to a

1 redetermination by the fiscal intermediary or
2 carrier involved.
3 "(B) COLLECTION WITH INTEREST.—Inso-
4 far as the determination on such appeal is
5 against the provider of services or supplier, in-
6 terest on the overpayment shall accrue on and
7 after the date of the original notice of overpay-
8 ment. Insofar as such determination against the
9 provider of services or supplier is later reversed,
10 the Secretary shall provide for repayment of the
11 amount recouped plus interest at the same rate
12 as would apply under the previous sentence for
13 the period in which the amount was recouped.
14 "(C) MEDICARE CONTRACTOR DEFINED.—
15 For purposes of this subsection, the term 'medi-
16 care contractor' has the meaning given such
17 term in section 1889(g).
18 "(3) LIMITATION ON USE OF EXTRAPO-
19 LATION.—A medicare contractor may not use ex-
20 trapolation to determine overpayment amounts to be
21 recovered by recoupment, offset, or otherwise
22 unless—
23 "(A) there is a sustained or high level of
24 payment error (as defined by the Secretary by
25 regulation); or

1 "(B) documented educational intervention
2 has failed to correct the payment error (as de-
3 termined by the Secretary).
4 "(4) PROVISION OF SUPPORTING DOCUMENTA-
5 TION.—In the case of a provider of services or sup-
6 plier with respect to which amounts were previously
7 overpaid, a medicare contractor may request the
8 periodic production of records or supporting docu-
9 mentation for a limited sample of submitted claims
10 to ensure that the previous practice is not con-
11 tinuing.
12 "(5) CONSENT SETTLEMENT REFORMS.—
13 "(A) IN GENERAL.—The Secretary may
14 use a consent settlement (as defined in sub-
15 paragraph (D)) to settle a projected overpay-
16 ment.
17 "(B) OPPORTUNITY TO SUBMIT ADDI-
18 TIONAL INFORMATION BEFORE CONSENT SET-
19 TLEMENT OFFER.—Before offering a provider
20 of services or supplier a consent settlement, the
21 Secretary shall—
22 "(i) communicate to the provider of
23 services or supplier—
24 "(I) that, based on a review of
25 the medical records requested by the

1 Secretary, a preliminary evaluation of
2 those records indicates that there
3 would be an overpayment;
4 ‘‘(II) the nature of the problems
5 identified in such evaluation; and
6 ‘‘(III) the steps that the provider
7 of services or supplier should take to
8 address the problems; and
9 ‘‘(ii) provide for a 45-day period dur-
10 ing which the provider of services or sup-
11 plier may furnish additional information
12 concerning the medical records for the
13 claims that had been reviewed.
14 ‘‘(C) CONSENT SETTLEMENT OFFER.—The
15 Secretary shall review any additional informa-
16 tion furnished by the provider of services or
17 supplier under subparagraph (B)(ii). Taking
18 into consideration such information, the Sec-
19 retary shall determine if there still appears to
20 be an overpayment. If so, the Secretary—
21 ‘‘(i) shall provide notice of such deter-
22 mination to the provider of services or sup-
23 plier, including an explanation of the rea-
24 son for such determination; and

1 “(ii) in order to resolve the overpay-
2 ment, may offer the provider of services or
3 supplier—
4 “(I) the opportunity for a statis-
5 tically valid random sample; or
6 “(II) a consent settlement.
7 The opportunity provided under clause (ii)(I)
8 does not waive any appeal rights with respect to
9 the alleged overpayment involved.
10 “(D) CONSENT SETTLEMENT DEFINED.—
11 For purposes of this paragraph, the term ‘con-
12 sent settlement’ means an agreement between
13 the Secretary and a provider of services or sup-
14 plier whereby both parties agree to settle a pro-
15 jected overpayment based on less than a statis-
16 tically valid sample of claims and the provider
17 of services or supplier agrees not to appeal the
18 claims involved.
19 “(6) NOTICE OF OVER-UTILIZATION OF
20 CODES.—The Secretary shall establish, in consulta-
21 tion with organizations representing the classes of
22 providers of services and suppliers, a process under
23 which the Secretary provides for notice to classes of
24 providers of services and suppliers served by the con-
25 tractor in cases in which the contractor has identi-

1 fied that particular billing codes may be overutilized
2 by that class of providers of services or suppliers
3 under the programs under this title (or provisions of
4 title XI insofar as they relate to such programs).

5 ''(7) PAYMENT AUDITS.—

6 ''(A) WRITTEN NOTICE FOR POST-PAY-
7 MENT AUDITS.—Subject to subparagraph (C), if
8 a medicare contractor decides to conduct a
9 post-payment audit of a provider of services or
10 supplier under this title, the contractor shall
11 provide the provider of services or supplier with
12 written notice (which may be in electronic form)
13 of the intent to conduct such an audit.

14 ''(B) EXPLANATION OF FINDINGS FOR ALL
15 AUDITS.—Subject to subparagraph (C), if a
16 medicare contractor audits a provider of serv-
17 ices or supplier under this title, the contractor
18 shall—

19 ''(i) give the provider of services or
20 supplier a full review and explanation of
21 the findings of the audit in a manner that
22 is understandable to the provider of serv-
23 ices or supplier and permits the develop-
24 ment of an appropriate corrective action
25 plan;

1 ''(ii) inform the provider of services or
2 supplier of the appeal rights under this
3 title as well as consent settlement options
4 (which are at the discretion of the Sec-
5 retary);
6 ''(iii) give the provider of services or
7 supplier an opportunity to provide addi-
8 tional information to the contractor; and
9 ''(iv) take into account information
10 provided, on a timely basis, by the provider
11 of services or supplier under clause (iii).
12 ''(C) EXCEPTION.—Subparagraphs (A)
13 and (B) shall not apply if the provision of no-
14 tice or findings would compromise pending law
15 enforcement activities, whether civil or criminal,
16 or reveal findings of law enforcement-related
17 audits.
18 ''(8) STANDARD METHODOLOGY FOR PROBE
19 SAMPLING.—The Secretary shall establish a stand-
20 ard methodology for medicare contractors to use in
21 selecting a sample of claims for review in the case
22 of an abnormal billing pattern.''.
23 (b) EFFECTIVE DATES AND DEADLINES.—
24 (1) USE OF REPAYMENT PLANS.—Section
25 1893(f)(1) of the Social Security Act, as added by

1 subsection (a), shall apply to requests for repayment
2 plans made after the date of the enactment of this
3 Act.

4 (2) LIMITATION ON RECOUPMENT.—Section
5 1893(f)(2) of the Social Security Act, as added by
6 subsection (a), shall apply to actions taken after the
7 date of the enactment of this Act.

8 (3) USE OF EXTRAPOLATION.—Section
9 1893(f)(3) of the Social Security Act, as added by
10 subsection (a), shall apply to statistically valid ran-
11 dom samples initiated after the date that is 1 year
12 after the date of the enactment of this Act.

13 (4) PROVISION OF SUPPORTING DOCUMENTA-
14 TION.—Section 1893(f)(4) of the Social Security
15 Act, as added by subsection (a), shall take effect on
16 the date of the enactment of this Act.

17 (5) CONSENT SETTLEMENT.—Section
18 1893(f)(5) of the Social Security Act, as added by
19 subsection (a), shall apply to consent settlements en-
20 tered into after the date of the enactment of this
21 Act.

22 (6) NOTICE OF OVERUTILIZATION.—Not later
23 than 1 year after the date of the enactment of this
24 Act, the Secretary shall first establish the process
25 for notice of overutilization of billing codes under

1 section 1893A(f)(6) of the Social Security Act, as
2 added by subsection (a).
3 (7) PAYMENT AUDITS.—Section 1893A(f)(7) of
4 the Social Security Act, as added by subsection (a),
5 shall apply to audits initiated after the date of the
6 enactment of this Act.
7 (8) STANDARD FOR ABNORMAL BILLING PAT-
8 TERNS.—Not later than 1 year after the date of the
9 enactment of this Act, the Secretary shall first es-
10 tablish a standard methodology for selection of sam-
11 ple claims for abnormal billing patterns under sec-
12 tion 1893(f)(8) of the Social Security Act, as added
13 by subsection (a).
14 **SEC. 406. PROVIDER ENROLLMENT PROCESS; RIGHT OF AP-**
15 **PEAL.**
16 (a) IN GENERAL.—Section 1866 (42 U.S.C. 1395cc)
17 is amended—
18 (1) by adding at the end of the heading the fol-
19 lowing: ''; ENROLLMENT PROCESSES''; and
20 (2) by adding at the end the following new sub-
21 section:
22 ''(j) ENROLLMENT PROCESS FOR PROVIDERS OF
23 SERVICES AND SUPPLIERS.—
24 ''(1) ENROLLMENT PROCESS.—

1 "(A) IN GENERAL.—The Secretary shall
2 establish by regulation a process for the enroll-
3 ment of providers of services and suppliers
4 under this title.

5 "(B) DEADLINES.—The Secretary shall es-
6 tablish by regulation procedures under which
7 there are deadlines for actions on applications
8 for enrollment (and, if applicable, renewal of
9 enrollment). The Secretary shall monitor the
10 performance of medicare administrative con-
11 tractors in meeting the deadlines established
12 under this subparagraph.

13 "(C) CONSULTATION BEFORE CHANGING
14 PROVIDER ENROLLMENT FORMS.—The Sec-
15 retary shall consult with providers of services
16 and suppliers before making changes in the pro-
17 vider enrollment forms required of such pro-
18 viders and suppliers to be eligible to submit
19 claims for which payment may be made under
20 this title.

21 "(2) HEARING RIGHTS IN CASES OF DENIAL OR
22 NON-RENEWAL.—A provider of services or supplier
23 whose application to enroll (or, if applicable, to
24 renew enrollment) under this title is denied may
25 have a hearing and judicial review of such denial

1 under the procedures that apply under subsection
2 (h)(1)(A) to a provider of services that is dissatisfied
3 with a determination by the Secretary.''.
4 (b) EFFECTIVE DATES.—
5 (1) ENROLLMENT PROCESS.—The Secretary
6 shall provide for the establishment of the enrollment
7 process under section 1866(j)(1) of the Social Secu-
8 rity Act, as added by subsection (a)(2), within 6
9 months after the date of the enactment of this Act.
10 (2) CONSULTATION.—Section 1866(j)(1)(C) of
11 the Social Security Act, as added by subsection
12 (a)(2), shall apply with respect to changes in pro-
13 vider enrollment forms made on or after January 1,
14 2002.
15 (3) HEARING RIGHTS.—Section 1866(j)(2) of
16 the Social Security Act, as added by subsection
17 (a)(2), shall apply to denials occurring on or after
18 such date (not later than 1 year after the date of
19 the enactment of this Act) as the Secretary specifies.

20 **SEC. 407. PROCESS FOR CORRECTION OF MINOR ERRORS**
21 **AND OMISSIONS ON CLAIMS WITHOUT PUR-**
22 **SUING APPEALS PROCESS.**

23 The Secretary shall develop, in consultation with ap-
24 propriate medicare contractors (as defined in section
25 1889(g) of the Social Security Act, as inserted by section

1 301(a)(1)) and representatives of providers of services and
2 suppliers, a process whereby, in the case of minor errors
3 or omissions (as defined by the Secretary) that are de-
4 tected in the submission of claims under the programs
5 under title XVIII of such Act, a provider of services or
6 supplier is given an opportunity to correct such an error
7 or omission without the need to initiate an appeal. Such
8 process shall include the ability to resubmit corrected
9 claims.

10 **SEC. 408. PRIOR DETERMINATION PROCESS FOR CERTAIN**
11 **ITEMS AND SERVICES; ADVANCE BENE-**
12 **FICIARY NOTICES.**

13 (a) IN GENERAL.—Section 1869 (42 U.S.C.
14 1395ff(b)), as amended by sections 521 and 522 of BIPA
15 and section 403(d)(2)(B), is further amended by adding
16 at the end the following new subsection:

17 "(h) PRIOR DETERMINATION PROCESS FOR CERTAIN
18 ITEMS AND SERVICES.—

19 "(1) ESTABLISHMENT OF PROCESS.—

20 "(A) IN GENERAL.—With respect to a
21 medicare administrative contractor that has a
22 contract under section 1874A that provides for
23 making payments under this title with respect
24 to eligible items and services described in sub-
25 paragraph (C), the Secretary shall establish a

1 prior determination process that meets the re-
2 quirements of this subsection and that shall be
3 applied by such contractor in the case of eligible
4 requesters.

5 "(B) ELIGIBLE REQUESTER.—For pur-
6 poses of this subsection, each of the following
7 shall be an eligible requester:

8 "(i) A physician, but only with respect
9 to eligible items and services for which the
10 physician may be paid directly.

11 "(ii) An individual entitled to benefits
12 under this title, but only with respect to an
13 item or service for which the individual re-
14 ceives, from the physician who may be paid
15 directly for the item or service, an advance
16 beneficiary notice under section 1879(a)
17 that payment may not be made (or may no
18 longer be made) for the item or service
19 under this title.

20 "(C) ELIGIBLE ITEMS AND SERVICES.—
21 For purposes of this subsection and subject to
22 paragraph (2), eligible items and services are
23 items and services which are physicians' serv-
24 ices (as defined in paragraph (4)(A) of section

1 1848(f) for purposes of calculating the sustain-
2 able growth rate under such section).
3 "(2) SECRETARIAL FLEXIBILITY.—The Sec-
4 retary shall establish by regulation reasonable limits
5 on the categories of eligible items and services for
6 which a prior determination of coverage may be re-
7 quested under this subsection. In establishing such
8 limits, the Secretary may consider the dollar amount
9 involved with respect to the item or service, adminis-
10 trative costs and burdens, and other relevant factors.
11 "(3) REQUEST FOR PRIOR DETERMINATION.—
12 "(A) IN GENERAL.—Subject to paragraph
13 (2), under the process established under this
14 subsection an eligible requester may submit to
15 the contractor a request for a determination,
16 before the furnishing of an eligible item or serv-
17 ice involved as to whether the item or service is
18 covered under this title consistent with the ap-
19 plicable requirements of section 1862(a)(1)(A)
20 (relating to medical necessity).
21 "(B) ACCOMPANYING DOCUMENTATION.—
22 The Secretary may require that the request be
23 accompanied by a description of the item or
24 service, supporting documentation relating to
25 the medical necessity for the item or service,

1 and any other appropriate documentation. In
2 the case of a request submitted by an eligible
3 requester who is described in paragraph
4 (1)(B)(ii), the Secretary may require that the
5 request also be accompanied by a copy of the
6 advance beneficiary notice involved.
7 ''(4) RESPONSE TO REQUEST.—
8 ''(A) IN GENERAL.—Under such process,
9 the contractor shall provide the eligible re-
10 quester with written notice of a determination
11 as to whether—
12 ''(i) the item or service is so covered;
13 ''(ii) the item or service is not so cov-
14 ered; or
15 ''(iii) the contractor lacks sufficient
16 information to make a coverage determina-
17 tion.
18 If the contractor makes the determination de-
19 scribed in clause (iii), the contractor shall in-
20 clude in the notice a description of the addi-
21 tional information required to make the cov-
22 erage determination.
23 ''(B) DEADLINE TO RESPOND.—Such no-
24 tice shall be provided within the same time pe-
25 riod as the time period applicable to the con-

1 tractor providing notice of initial determinations
2 on a claim for benefits under subsection
3 (a)(2)(A).
4 "(C) INFORMING BENEFICIARY IN CASE OF
5 PHYSICIAN REQUEST.—In the case of a request
6 in which an eligible requester is not the indi-
7 vidual described in paragraph (1)(B)(ii), the
8 process shall provide that the individual to
9 whom the item or service is proposed to be fur-
10 nished shall be informed of any determination
11 described in clause (ii) (relating to a determina-
12 tion of non-coverage) and the right (referred to
13 in paragraph (6)(B)) to obtain the item or serv-
14 ice and have a claim submitted for the item or
15 service.
16 "(5) EFFECT OF DETERMINATIONS.—
17 "(A) BINDING NATURE OF POSITIVE DE-
18 TERMINATION.—If the contractor makes the de-
19 termination described in paragraph (4)(A)(i),
20 such determination shall be binding on the con-
21 tractor in the absence of fraud or evidence of
22 misrepresentation of facts presented to the con-
23 tractor.
24 "(B) NOTICE AND RIGHT TO REDETER-
25 MINATION IN CASE OF A DENIAL.—

1 "(i) IN GENERAL.—If the contractor
2 makes the determination described in para-
3 graph (4)(A)(ii)—
4 "(I) the eligible requester has the
5 right to a redetermination by the con-
6 tractor on the determination that the
7 item or service is not so covered; and
8 "(II) the contractor shall include
9 in notice under paragraph (4)(A) a
10 brief explanation of the basis for the
11 determination, including on what na-
12 tional or local coverage or noncov-
13 erage determination (if any) the de-
14 termination is based, and the right to
15 such a redetermination.
16 "(ii) DEADLINE FOR REDETERMINA-
17 TIONS.—The contractor shall complete and
18 provide notice of such redetermination
19 within the same time period as the time
20 period applicable to the contractor pro-
21 viding notice of redeterminations relating
22 to a claim for benefits under subsection
23 (a)(3)(C)(ii).
24 "(6) LIMITATION ON FURTHER REVIEW.—

1 "(A) IN GENERAL.—Contractor determina-
2 tions described in paragraph (4)(A)(ii) or
3 (4)(A)(iii) (and redeterminations made under
4 paragraph (5)(B)), relating to pre-service
5 claims are not subject to further administrative
6 appeal or judicial review under this section or
7 otherwise.

8 "(B) DECISION NOT TO SEEK PRIOR DE-
9 TERMINATION OR NEGATIVE DETERMINATION
10 DOES NOT IMPACT RIGHT TO OBTAIN SERVICES,
11 SEEK REIMBURSEMENT, OR APPEAL RIGHTS.—
12 Nothing in this subsection shall be construed as
13 affecting the right of an individual who—

14 "(i) decides not to seek a prior deter-
15 mination under this subsection with re-
16 spect to items or services; or

17 "(ii) seeks such a determination and
18 has received a determination described in
19 paragraph (4)(A)(ii)),

20 from receiving (and submitting a claim for)
21 such items services and from obtaining adminis-
22 trative or judicial review respecting such claim
23 under the other applicable provisions of this
24 section. Failure to seek a prior determination
25 under this subsection with respect to items and

1 services shall not be taken into account in such
2 administrative or judicial review.

3 ''(C) NO PRIOR DETERMINATION AFTER
4 RECEIPT OF SERVICES.—Once an individual is
5 provided items and services, there shall be no
6 prior determination under this subsection with
7 respect to such items or services.''.

8 (b) EFFECTIVE DATE; TRANSITION.—

9 (1) EFFECTIVE DATE.—The Secretary shall es-
10 tablish the prior determination process under the
11 amendment made by subsection (a) in such a man-
12 ner as to provide for the acceptance of requests for
13 determinations under such process filed not later
14 than 18 months after the date of the enactment of
15 this Act.

16 (2) TRANSITION.—During the period in which
17 the amendment made by subsection (a) has become
18 effective but contracts are not provided under sec-
19 tion 1874A of the Social Security Act with medicare
20 administrative contractors, any reference in section
21 1869(g) of such Act (as added by such amendment)
22 to such a contractor is deemed a reference to a fiscal
23 intermediary or carrier with an agreement under
24 section 1816, or contract under section 1842, re-
25 spectively, of such Act.

1 (3) LIMITATION ON APPLICATION TO SGR.—For
2 purposes of applying section 1848(f)(2)(D) of the
3 Social Security Act (42 U.S.C. 1395w–4(f)(2)(D)),
4 the amendment made by subsection (a) shall not be
5 considered to be a change in law or regulation.

6 (c) PROVISIONS RELATING TO ADVANCE BENE-
7 FICIARY NOTICES; REPORT ON PRIOR DETERMINATION
8 PROCESS.—

9 (1) DATA COLLECTION.—The Secretary shall
10 establish a process for the collection of information
11 on the instances in which an advance beneficiary no-
12 tice (as defined in paragraph (4)) has been provided
13 and on instances in which a beneficiary indicates on
14 such a notice that the beneficiary does not intend to
15 seek to have the item or service that is the subject
16 of the notice furnished.

17 (2) OUTREACH AND EDUCATION.—The Sec-
18 retary shall establish a program of outreach and
19 education for beneficiaries and providers of services
20 and other persons on the appropriate use of advance
21 beneficiary notices and coverage policies under the
22 medicare program.

23 (3) GAO REPORT REPORT ON USE OF ADVANCE
24 BENEFICIARY NOTICES.—Not later than 18 months
25 after the date on which section 1869(g) of the Social

1 Security Act (as added by subsection (a)) takes ef-
2 fect, the Comptroller General of the United States
3 shall submit to Congress a report on the use of ad-
4 vance beneficiary notices under title XVIII of such
5 Act. Such report shall include information con-
6 cerning the providers of services and other persons
7 that have provided such notices and the response of
8 beneficiaries to such notices.

9 (4) GAO REPORT ON USE OF PRIOR DETER-
10 MINATION PROCESS.—Not later than 18 months
11 after the date on which section 1869(g) of the Social
12 Security Act (as added by subsection (a)) takes ef-
13 fect, the Comptroller General of the United States
14 shall submit to Congress a report on the use of the
15 prior determination process under such section. Such
16 report shall include—

17 (A) information concerning the types of
18 procedures for which a prior determination has
19 been sought, determinations made under the
20 process, and changes in receipt of services re-
21 sulting from the application of such process;
22 and

23 (B) an evaluation of whether the process
24 was useful for physicians (and other suppliers)
25 and beneficiaries, whether it was timely, and

1 whether the amount of information required
2 was burdensome to physicians and beneficiaries.
3 (5) ADVANCE BENEFICIARY NOTICE DE-
4 FINED.—In this subsection, the term ''advance bene-
5 ficiary notice'' means a written notice provided
6 under section 1879(a) of the Social Security Act (42
7 U.S.C. 1395pp(a)) to an individual entitled to bene-
8 fits under part A or B of title XVIII of such Act
9 before items or services are furnished under such
10 part in cases where a provider of services or other
11 person that would furnish the item or service be-
12 lieves that payment will not be made for some or all
13 of such items or services under such title.

14 TITLE V—MISCELLANEOUS 15 PROVISIONS

16 SEC. 501. POLICY DEVELOPMENT REGARDING EVALUATION 17 AND MANAGEMENT (E & M) DOCUMENTATION 18 GUIDELINES.

19 (a) IN GENERAL.—The Secretary may not implement
20 any new documentation guidelines for evaluation and man-
21 agement physician services under the title XVIII of the
22 Social Security Act on or after the date of the enactment
23 of this Act unless the Secretary—
24 (1) has developed the guidelines in collaboration
25 with practicing physicians (including both generalists

1 and specialists) and provided for an assessment of
2 the proposed guidelines by the physician community;
3 (2) has established a plan that contains specific
4 goals, including a schedule, for improving the use of
5 such guidelines;
6 (3) has conducted appropriate and representa-
7 tive pilot projects under subsection (b) to test modi-
8 fications to the evaluation and management docu-
9 mentation guidelines;
10 (4) finds that the objectives described in sub-
11 section (c) will be met in the implementation of such
12 guidelines; and
13 (5) has established, and is implementing, a pro-
14 gram to educate physicians on the use of such guide-
15 lines and that includes appropriate outreach.
16 The Secretary shall make changes to the manner in which
17 existing evaluation and management documentation guide-
18 lines are implemented to reduce paperwork burdens on
19 physicians.
20 (b) PILOT PROJECTS TO TEST EVALUATION AND
21 MANAGEMENT DOCUMENTATION GUIDELINES.—
22 (1) IN GENERAL.—The Secretary shall conduct
23 under this subsection appropriate and representative
24 pilot projects to test new evaluation and manage-

1 ment documentation guidelines referred to in sub-
2 section (a).
3 (2) LENGTH AND CONSULTATION.—Each pilot
4 project under this subsection shall—
5 (A) be voluntary;
6 (B) be of sufficient length as determined
7 by the Secretary to allow for preparatory physi-
8 cian and medicare contractor education, anal-
9 ysis, and use and assessment of potential eval-
10 uation and management guidelines; and
11 (C) be conducted, in development and
12 throughout the planning and operational stages
13 of the project, in consultation with practicing
14 physicians (including both generalists and spe-
15 cialists).
16 (3) RANGE OF PILOT PROJECTS.—Of the pilot
17 projects conducted under this subsection—
18 (A) at least one shall focus on a peer re-
19 view method by physicians (not employed by a
20 medicare contractor) which evaluates medical
21 record information for claims submitted by phy-
22 sicians identified as statistical outliers relative
23 to definitions published in the Current Proce-
24 dures Terminology (CPT) code book of the
25 American Medical Association;

1 (B) at least one shall focus on an alter-
2 native method to detailed guidelines based on
3 physician documentation of face to face encoun-
4 ter time with a patient;
5 (C) at least one shall be conducted for
6 services furnished in a rural area and at least
7 one for services furnished outside such an area;
8 and
9 (D) at least one shall be conducted in a
10 setting where physicians bill under physicians'
11 services in teaching settings and at least one
12 shall be conducted in a setting other than a
13 teaching setting.
14 (4) BANNING OF TARGETING OF PILOT
15 PROJECT PARTICIPANTS.—Data collected under this
16 subsection shall not be used as the basis for overpay-
17 ment demands or post-payment audits. Such limita-
18 tion applies only to claims filed as part of the pilot
19 project and lasts only for the duration of the pilot
20 project and only as long as the provider is a partici-
21 pant in the pilot project.
22 (5) STUDY OF IMPACT.—Each pilot project
23 shall examine the effect of the new evaluation and
24 management documentation guidelines on—

1 (A) different types of physician practices,
2 including those with fewer than 10 full-time-
3 equivalent employees (including physicians);
4 and
5 (B) the costs of physician compliance, in-
6 cluding education, implementation, auditing,
7 and monitoring.
8 (6) PERIODIC REPORTS.—The Secretary shall
9 submit to Congress periodic reports on the pilot
10 projects under this subsection.
11 (c) OBJECTIVES FOR EVALUATION AND MANAGE-
12 MENT GUIDELINES.—The objectives for modified evalua-
13 tion and management documentation guidelines developed
14 by the Secretary shall be to—
15 (1) identify clinically relevant documentation
16 needed to code accurately and assess coding levels
17 accurately;
18 (2) decrease the level of non-clinically pertinent
19 and burdensome documentation time and content in
20 the physician's medical record;
21 (3) increase accuracy by reviewers; and
22 (4) educate both physicians and reviewers.
23 (d) STUDY OF SIMPLER, ALTERNATIVE SYSTEMS OF
24 DOCUMENTATION FOR PHYSICIAN CLAIMS.—

1 (1) STUDY.—The Secretary shall carry out a
2 study of the matters described in paragraph (2).
3 (2) MATTERS DESCRIBED.—The matters re-
4 ferred to in paragraph (1) are—
5 (A) the development of a simpler, alter-
6 native system of requirements for documenta-
7 tion accompanying claims for evaluation and
8 management physician services for which pay-
9 ment is made under title XVIII of the Social
10 Security Act; and
11 (B) consideration of systems other than
12 current coding and documentation requirements
13 for payment for such physician services.
14 (3) CONSULTATION WITH PRACTICING PHYSI-
15 CIANS.—In designing and carrying out the study
16 under paragraph (1), the Secretary shall consult
17 with practicing physicians, including physicians who
18 are part of group practices and including both gen-
19 eralists and specialists.
20 (4) APPLICATION OF HIPAA UNIFORM CODING
21 REQUIREMENTS.—In developing an alternative sys-
22 tem under paragraph (2), the Secretary shall con-
23 sider requirements of administrative simplification
24 under part C of title XI of the Social Security Act.

1 (5) REPORT TO CONGRESS.—(A) Not later than
2 October 1, 2003, the Secretary shall submit to Con-
3 gress a report on the results of the study conducted
4 under paragraph (1).
5 (B) The Medicare Payment Advisory Commis-
6 sion shall conduct an analysis of the results of the
7 study included in the report under subparagraph (A)
8 and shall submit a report on such analysis to Con-
9 gress.
10 (e) STUDY ON APPROPRIATE CODING OF CERTAIN
11 EXTENDED OFFICE VISITS.—The Secretary shall conduct
12 a study of the appropriateness of coding in cases of ex-
13 tended office visits in which there is no diagnosis made.
14 Not later than October 1, 2003, the Secretary shall submit
15 a report to Congress on such study and shall include rec-
16 ommendations on how to code appropriately for such visits
17 in a manner that takes into account the amount of time
18 the physician spent with the patient.
19 (f) DEFINITIONS.—In this section—
20 (1) the term ''rural area'' has the meaning
21 given that term in section 1886(d)(2)(D) of the So-
22 cial Security Act, 42 U.S.C. 1395ww(d)(2)(D); and
23 (2) the term ''teaching settings'' are those set-
24 tings described in section 415.150 of title 42, Code
25 of Federal Regulations.

SEC. 502. IMPROVEMENT IN OVERSIGHT OF TECHNOLOGY AND COVERAGE.

(a) IMPROVED COORDINATION BETWEEN FDA AND CMS ON COVERAGE OF BREAKTHROUGH MEDICAL DEVICES.—

(1) IN GENERAL.—Upon request by an applicant and to the extent feasible (as determined by the Secretary), the Secretary shall, in the case of a class III medical device that is subject to premarket approval under section 515 of the Federal Food, Drug, and Cosmetic Act, ensure the sharing of appropriate information from the review for application for premarket approval conducted by the Food and Drug Administration for coverage decisions under title XVIII of the Social Security Act.

(2) PUBLICATION OF PLAN.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall submit to appropriate Committees of Congress a report that contains the plan for improving such coordination and for shortening the time lag between the premarket approval by the Food and Drug Administration and coding and coverage decisions by the Centers for Medicare & Medicaid Services.

(3) CONSTRUCTION.—Nothing in this subsection shall be construed as changing the criteria

1 for coverage of a medical device under title XVIII of
2 the Social Security Act nor premarket approval by
3 the Food and Drug Administration and nothing in
4 this subsection shall be construed to increase pre-
5 market approval application requirements under the
6 Federal Food, Drug, and Cosmetic Act.

7 (b) COUNCIL FOR TECHNOLOGY AND INNOVATION.—
8 Section 1868 (42 U.S.C. 1395ee), as amended by section
9 301(a), is amended by adding at the end the following new
10 subsection:

11 ''(c) COUNCIL FOR TECHNOLOGY AND INNOVA-
12 TION.—

13 ''(1) ESTABLISHMENT.—The Secretary shall es-
14 tablish a Council for Technology and Innovation
15 within the Centers for Medicare & Medicaid Services
16 (in this section referred to as 'CMS').

17 ''(2) COMPOSITION.—The Council shall be com-
18 posed of senior CMS staff and clinicians and shall
19 be chaired by the Executive Coordinator for Tech-
20 nology and Innovation (appointed or designated
21 under paragraph (4)).

22 ''(3) DUTIES.—The Council shall coordinate the
23 activities of coverage, coding, and payment processes
24 under this title with respect to new technologies and
25 procedures, including new drug therapies, and shall

coordinate the exchange of information on new technologies between CMS and other entities that make similar decisions.

"(4) EXECUTIVE COORDINATOR FOR TECHNOLOGY AND INNOVATION.—The Secretary shall appoint (or designate) a noncareer appointee (as defined in section 3132(a)(7) of title 5, United States Code) who shall serve as the Executive Coordinator for Technology and Innovation. Such executive coordinator shall report to the Administrator of CMS, shall chair the Council, shall oversee the execution of its duties, and shall serve as a single point of contact for outside groups and entities regarding the coverage, coding, and payment processes under this title.".

(c) GAO STUDY ON IMPROVEMENTS IN EXTERNAL DATA COLLECTION FOR USE IN THE MEDICARE INPATIENT PAYMENT SYSTEM.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study that analyzes which external data can be collected in a shorter time frame by the Centers for Medicare & Medicaid Services for use in computing payments for inpatient hospital services. The study may include an evaluation of the feasibility and appropriateness of using

1 of quarterly samples or special surveys or any other
2 methods. The study shall include an analysis of
3 whether other executive agencies, such as the Bu-
4 reau of Labor Statistics in the Department of Com-
5 merce, are best suited to collect this information.
6 (2) REPORT.—By not later than October 1,
7 2002, the Comptroller General shall submit a report
8 to Congress on the study under paragraph (1).
9 (d) IOM STUDY ON LOCAL COVERAGE DETERMINA-
10 TIONS.—
11 (1) STUDY.—The Secretary shall enter into an
12 arrangement with the Institute of Medicine of the
13 National Academy of Sciences under which the Insti-
14 tute shall conduct a study on local coverage deter-
15 minations (including the application of local medical
16 review policies) under the medicare program under
17 title XVIII of the Social Security Act. Such study
18 shall examine—
19 (A) the consistency of the definitions used
20 in such determinations;
21 (B) the types of evidence on which such
22 determinations are based, including medical and
23 scientific evidence;
24 (C) the advantages and disadvantages of
25 local coverage decisionmaking, including the

1 flexibility it offers for ensuring timely patient
2 access to new medical technology for which data
3 are still be collected;

4 (D) the manner in which the local coverage
5 determination process is used to develop data
6 needed for a national coverage determination,
7 including the need for collection of such data
8 within a protocol and informed consent by indi-
9 viduals entitled to benefits under part A of title
10 XVIII of the Social Security Act, or enrolled
11 under part B of such title, or both; and

12 (E) the advantages and disadvantages of
13 maintaining local medicare contractor advisory
14 committees that can advise on local coverage
15 decisions based on an open, collaborative public
16 process.

17 (2) REPORT.—Such arrangement shall provide
18 that the Institute shall submit to the Secretary a re-
19 port on such study by not later than 3 years after
20 the date of the enactment of this Act. The Secretary
21 shall promptly transmit a copy of such report to
22 Congress.

23 (e) METHODS FOR DETERMINING PAYMENT BASIS
24 FOR NEW LAB TESTS.—Section 1833(h) (42 U.S.C.
25 1395l(h)) is amended by adding at the end the following:

1 "(8)(A) The Secretary shall establish by regulation
2 procedures for determining the basis for, and amount of,
3 payment under this subsection for any clinical diagnostic
4 laboratory test with respect to which a new or substan-
5 tially revised HCPCS code is assigned on or after January
6 1, 2003 (in this paragraph referred to as 'new tests').
7 "(B) Determinations under subparagraph (A) shall
8 be made only after the Secretary—
9 "(i) makes available to the public (through an
10 Internet site and other appropriate mechanisms) a
11 list that includes any such test for which establish-
12 ment of a payment amount under this subsection is
13 being considered for a year;
14 "(ii) on the same day such list is made avail-
15 able, causes to have published in the Federal Reg-
16 ister notice of a meeting to receive comments and
17 recommendations (and data on which recommenda-
18 tions are based) from the public on the appropriate
19 basis under this subsection for establishing payment
20 amounts for the tests on such list;
21 "(iii) not less than 30 days after publication of
22 such notice convenes a meeting, that includes rep-
23 resentatives of officials of the Centers for Medicare
24 & Medicaid Services involved in determining pay-
25 ment amounts, to receive such comments and rec-

1 ommendations (and data on which the recommenda-
2 tions are based);

3 ‘‘(iv) taking into account the comments and rec-
4 ommendations (and accompanying data) received at
5 such meeting, develops and makes available to the
6 public (through an Internet site and other appro-
7 priate mechanisms) a list of proposed determinations
8 with respect to the appropriate basis for establishing
9 a payment amount under this subsection for each
10 such code, together with an explanation of the rea-
11 sons for each such determination, the data on which
12 the determinations are based, and a request for pub-
13 lic written comments on the proposed determination;
14 and

15 ‘‘(v) taking into account the comments received
16 during the public comment period, develops and
17 makes available to the public (through an Internet
18 site and other appropriate mechanisms) a list of
19 final determinations of the payment amounts for
20 such tests under this subsection, together with the
21 rationale for each such determination, the data on
22 which the determinations are based, and responses
23 to comments and suggestions received from the pub-
24 lic.

1 ‘‘(C) Under the procedures established pursuant to
2 subparagraph (A), the Secretary shall—
3 ‘‘(i) set forth the criteria for making determina-
4 tions under subparagraph (A); and
5 ‘‘(ii) make available to the public the data
6 (other than proprietary data) considered in making
7 such determinations.
8 ‘‘(D) The Secretary may convene such further public
9 meetings to receive public comments on payment amounts
10 for new tests under this subsection as the Secretary deems
11 appropriate.
12 ‘‘(E) For purposes of this paragraph:
13 ‘‘(i) The term ‘HCPCS’ refers to the Health
14 Care Procedure Coding System.
15 ‘‘(ii) A code shall be considered to be ‘substan-
16 tially revised’ if there is a substantive change to the
17 definition of the test or procedure to which the code
18 applies (such as a new analyte or a new methodology
19 for measuring an existing analyte-specific test).’’.

20 **SEC. 503. TREATMENT OF HOSPITALS FOR CERTAIN SERV-**
21 **ICES UNDER MEDICARE SECONDARY PAYOR**
22 **(MSP) PROVISIONS.**

23 (a) IN GENERAL.—The Secretary shall not require
24 a hospital (including a critical access hospital) to ask ques-
25 tions (or obtain information) relating to the application

1 of section 1862(b) of the Social Security Act (relating to
2 medicare secondary payor provisions) in the case of ref-
3 erence laboratory services described in subsection (b), if
4 the Secretary does not impose such requirement in the
5 case of such services furnished by an independent labora-
6 tory.

7 (b) REFERENCE LABORATORY SERVICES DE-
8 SCRIBED.—Reference laboratory services described in this
9 subsection are clinical laboratory diagnostic tests (or the
10 interpretation of such tests, or both) furnished without a
11 face-to-face encounter between the individual entitled to
12 benefits under part A or enrolled under part B, or both,
13 and the hospital involved and in which the hospital sub-
14 mits a claim only for such test or interpretation.

15 **SEC. 504. EMTALA IMPROVEMENTS.**

16 (a) PAYMENT FOR EMTALA-MANDATED SCREEN-
17 ING AND STABILIZATION SERVICES.—

18 (1) IN GENERAL.—Section 1862 (42 U.S.C.
19 1395y) is amended by inserting after subsection (c)
20 the following new subsection:

21 ‘‘(d) For purposes of subsection (a)(1)(A), in the case
22 of any item or service that is required to be provided pur-
23 suant to section 1867 to an individual who is entitled to
24 benefits under this title, determinations as to whether the
25 item or service is reasonable and necessary shall be made

1 on the basis of the information available to the treating
2 physician or practitioner (including the patient's pre-
3 senting symptoms or complaint) at the time the item or
4 service was ordered or furnished by the physician or prac-
5 titioner (and not on the patient's principal diagnosis).
6 When making such determinations with respect to such
7 an item or service, the Secretary shall not consider the
8 frequency with which the item or service was provided to
9 the patient before or after the time of the admission or
10 visit.''.

11 (2) EFFECTIVE DATE.—The amendment made
12 by paragraph (1) shall apply to items and services
13 furnished on or after January 1, 2002.

14 (b) NOTIFICATION OF PROVIDERS WHEN EMTALA
15 INVESTIGATION CLOSED.—Section 1867(d) (42 U.S.C. 42
16 U.S.C. 1395dd(d)) is amended by adding at the end the
17 following new paragraph:

18 ''(4) NOTICE UPON CLOSING AN INVESTIGA-
19 TION.—The Secretary shall establish a procedure to
20 notify hospitals and physicians when an investigation
21 under this section is closed.''.

22 (c) PRIOR REVIEW BY PEER REVIEW ORGANIZA-
23 TIONS IN EMTALA CASES INVOLVING TERMINATION OF
24 PARTICIPATION.—

1 (1) IN GENERAL.—Section 1867(d)(3) (42
2 U.S.C. 1395dd(d)(3)) is amended—
3 (A) in the first sentence, by inserting ''or
4 in terminating a hospital's participation under
5 this title'' after ''in imposing sanctions under
6 paragraph (1)''; and
7 (B) by adding at the end the following new
8 sentences: ''Except in the case in which a delay
9 would jeopardize the health or safety of individ-
10 uals, the Secretary shall also request such a re-
11 view before making a compliance determination
12 as part of the process of terminating a hos-
13 pital's participation under this title for viola-
14 tions related to the appropriateness of a med-
15 ical screening examination, stabilizing treat-
16 ment, or an appropriate transfer as required by
17 this section, and shall provide a period of 5
18 days for such review. The Secretary shall pro-
19 vide a copy of the report on the organization's
20 report to the hospital or physician consistent
21 with confidentiality requirements imposed on
22 the organization under such part B.''.
23 (2) EFFECTIVE DATE.—The amendments made
24 by paragraph (1) shall apply to terminations of par-

1 ticipation initiated on or after the date of the enact-
2 ment of this Act.

3 **SEC. 505. EMERGENCY MEDICAL TREATMENT AND ACTIVE**
4 **LABOR ACT (EMTALA) TECHNICAL ADVISORY**
5 **GROUP.**

6 (a) ESTABLISHMENT.—The Secretary shall establish
7 a Technical Advisory Group (in this section referred to
8 as the ''Advisory Group'') to review issues related to the
9 Emergency Medical Treatment and Active Labor Act
10 (EMTALA) and its implementation. In this section, the
11 term ''EMTALA'' refers to the provisions of section 1867
12 of the Social Security Act (42 U.S.C. 1395dd).

13 (b) MEMBERSHIP.—The Advisory Group shall be
14 composed of 19 members, including the Administrator of
15 the Centers for Medicare & Medicaid Services and the In-
16 spector General of the Department of Health and Human
17 Services and of which—

18 (1) 4 shall be representatives of hospitals, in-
19 cluding at least one public hospital, that have experi-
20 ence with the application of EMTALA and at least
21 2 of which have not been cited for EMTALA viola-
22 tions;

23 (2) 7 shall be practicing physicians drawn from
24 the fields of emergency medicine, cardiology or
25 cardiothoracic surgery, orthopedic surgery, neuro-

1 surgery, pediatrics or a pediatric subspecialty, ob-
2 stetrics-gynecology, and psychiatry, with not more
3 than one physician from any particular field;
4 (3) 2 shall represent patients;
5 (4) 2 shall be staff involved in EMTALA inves-
6 tigations from different regional offices of the Cen-
7 ters for Medicare & Medicaid Services; and
8 (5) 1 shall be from a State survey office in-
9 volved in EMTALA investigations and 1 shall be
10 from a peer review organization, both of whom shall
11 be from areas other than the regions represented
12 under paragraph (4).
13 In selecting members described in paragraphs (1) through
14 (3), the Secretary shall consider qualified individuals nom-
15 inated by organizations representing providers and pa-
16 tients.
17 (c) GENERAL RESPONSIBILITIES.—The Advisory
18 Group—
19 (1) shall review EMTALA regulations;
20 (2) may provide advice and recommendations to
21 the Secretary with respect to those regulations and
22 their application to hospitals and physicians;
23 (3) shall solicit comments and recommendations
24 from hospitals, physicians, and the public regarding
25 the implementation of such regulations; and

1 (4) may disseminate information on the applica-
2 tion of such regulations to hospitals, physicians, and
3 the public.

4 (d) ADMINISTRATIVE MATTERS.—

5 (1) CHAIRPERSON.—The members of the Advi-
6 sory Group shall elect a member to serve as chair-
7 person of the Advisory Group for the life of the Ad-
8 visory Group.

9 (2) MEETINGS.—The Advisory Group shall first
10 meet at the direction of the Secretary. The Advisory
11 Group shall then meet twice per year and at such
12 other times as the Advisory Group may provide.

13 (e) TERMINATION.—The Advisory Group shall termi-
14 nate 30 months after the date of its first meeting.

15 (f) WAIVER OF ADMINISTRATIVE LIMITATION.—The
16 Secretary shall establish the Advisory Group notwith-
17 standing any limitation that may apply to the number of
18 advisory committees that may be established (within the
19 Department of Health and Human Services or otherwise).

1 **SEC. 506. AUTHORIZING USE OF ARRANGEMENTS WITH**
2 **OTHER HOSPICE PROGRAMS TO PROVIDE**
3 **CORE HOSPICE SERVICES IN CERTAIN CIR-**
4 **CUMSTANCES.**

5 (a) IN GENERAL.—Section 1861(dd)(5) (42 U.S.C.
6 1395x(dd)(5)) is amended by adding at the end the fol-
7 lowing new subparagraph:

8 ''(D) In extraordinary, exigent, or other non-routine
9 circumstances, such as unanticipated periods of high pa-
10 tient loads, staffing shortages due to illness or other
11 events, or temporary travel of a patient outside a hospice
12 program's service area, a hospice program may enter into
13 arrangements with another hospice program for the provi-
14 sion by that other program of services described in para-
15 graph (2)(A)(ii)(I). The provisions of paragraph
16 (2)(A)(ii)(II) shall apply with respect to the services pro-
17 vided under such arrangements.''.

18 (b) CONFORMING PAYMENT PROVISION.—Section
19 1814(i) (42 U.S.C. 1395f(i)) is amended by adding at the
20 end the following new paragraph:

21 ''(4) In the case of hospice care provided by a hospice
22 program under arrangements under section
23 1861(dd)(5)(D) made by another hospice program, the
24 hospice program that made the arrangements shall bill
25 and be paid for the hospice care.''.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to hospice care provided on or after
3 the date of the enactment of this Act.

4 **SEC. 507. APPLICATION OF OSHA BLOODBORNE PATHO-**
5 **GENS STANDARD TO CERTAIN HOSPITALS.**

6 (a) IN GENERAL.—Section 1866 (42 U.S.C. 1395cc)
7 is amended—
8 (1) in subsection (a)(1)—
9 (A) in subparagraph (R), by striking
10 "and" at the end;
11 (B) in subparagraph (S), by striking the
12 period at the end and inserting ", and"; and
13 (C) by inserting after subparagraph (S)
14 the following new subparagraph:
15 "(T) in the case of hospitals that are not other-
16 wise subject to the Occupational Safety and Health
17 Act of 1970, to comply with the Bloodborne Patho-
18 gens standard under section 1910.1030 of title 29 of
19 the Code of Federal Regulations (or as subsequently
20 redesignated)."; and
21 (B) by adding at the end of subsection (b)
22 the following new paragraph:
23 "(4)(A) A hospital that fails to comply with the re-
24 quirement of subsection (a)(1)(T) (relating to the
25 Bloodborne Pathogens standard) is subject to a civil

1 money penalty in an amount described in subparagraph
2 (B), but is not subject to termination of an agreement
3 under this section.

4 ''(B) The amount referred to in subparagraph (A) is
5 an amount that is similar to the amount of civil penalties
6 that may be imposed under section 17 of the Occupational
7 Safety and Health Act of 1970 for a violation of the
8 Bloodborne Pathogens standard referred to in subsection
9 (a)(1)(T) by a hospital that is subject to the provisions
10 of such Act.

11 ''(C) A civil money penalty under this paragraph shall
12 be imposed and collected in the same manner as civil
13 money penalties under subsection (a) of section 1128A are
14 imposed and collected under that section.''.

15 (b) EFFECTIVE DATE.—The amendments made by
16 this subsection (a) shall apply to hospitals as of July 1,
17 2002.

18 **SEC. 508. ONE-YEAR DELAY IN LOCK IN PROCEDURES FOR**
19 **MEDICARE+CHOICE PLANS; CHANGE IN**
20 **MEDICARE+CHOICE REPORTING DEADLINES**
21 **AND ANNUAL, COORDINATED ELECTION PE-**
22 **RIOD FOR 2002.**

23 (a) LOCK-IN DELAY.—Section 1851(e) (42 U.S.C.
24 1395w–21(e)) is amended—

1 (1) in paragraph (2)(A), by striking ''THROUGH
2 2001'' and ''and 2001'' and inserting ''THROUGH
3 2002'' and ''2001, and 2002'', respectively;
4 (2) in paragraph (2)(B), by striking ''DURING
5 2002'' and inserting ''DURING 2003'';
6 (3) in paragraphs (2)(B)(i) and (2)(C)(i), by
7 striking ''2002'' and inserting ''2003'' each place it
8 appears;
9 (4) in paragraph (2)(D), by striking ''2001''
10 and inserting ''2002''; and
11 (5) in paragraph (4), by striking ''2002'' and
12 inserting ''2003'' each place it appears.
13 (b) CHANGE IN DEADLINES AND ELECTION PE-
14 RIOD.—
15 (1) IN GENERAL.—Notwithstanding any other
16 provision of law—
17 (A) the deadline for submittal of informa-
18 tion under section 1854(a)(1) of the Social Se-
19 curity Act (42 U.S.C. 1395w–24(a)(1)) for
20 2002 is changed from July 1, 2002, to the third
21 Monday in September of 2002; and
22 (B) the annual, coordinated election period
23 under section 1851(e)(3)(B) of such Act (42
24 U.S.C. 1395w–21(e)(3)(B)) with respect to
25 2003 shall be the period beginning on Novem-

1 ber 15, 2002, and ending on December 31,
2 2002.
3 (2) GAO STUDY ON IMPACT OF CHANGE ON
4 BENEFICIARIES AND PLANS.—The Comptroller Gen-
5 eral of the United States shall conduct a review of
6 the Medicare+Choice open enrollment process that
7 occurred during 2001, including the offering of
8 Medicare+Choice plans for 2002. By not later than
9 May 31, 2002, the Comptroller General shall submit
10 a report to Congress and the Secretary on such re-
11 view. Such report shall include the following:
12 (A) An analysis of the effect of allowing
13 additional time for the submittal of adjusted
14 community rates and other data on the extent
15 of participation of Medicare+Choice organiza-
16 tions and on the benefits offered under
17 Medicare+Choice plans.
18 (B) An evaluation of the plan-specific in-
19 formation provided to beneficiaries, the timeli-
20 ness of the receipt of such information, the ade-
21 quacy of the duration of the open enrollment
22 period, and relevant operational issues that
23 arise as a result of the timing and duration of
24 the open enrollment period, including any prob-

1 lems related to the provision services imme-
2 diately following enrollment.
3 (C) The results of surveys of beneficiaries
4 and Medicare+Choice organizations.
5 (D) Such recommendations regarding the
6 appropriateness of the changes provided under
7 paragraph (1) as the Comptroller General finds
8 appropriate.

9 **SEC. 509. BIPA-RELATED TECHNICAL AMENDMENTS AND**
10 **CORRECTIONS.**

11 (a) TECHNICAL AMENDMENTS RELATING TO ADVI-
12 SORY COMMITTEE UNDER BIPA SECTION 522.—(1) Sub-
13 section (i) of section 1114 (42 U.S.C. 1314)—
14 (A) is transferred to section 1862 and added at
15 the end of such section; and
16 (B) is redesignated as subsection (j).
17 (2) Section 1862 (42 U.S.C. 1395y) is amended—
18 (A) in the last sentence of subsection (a), by
19 striking ''established under section 1114(f)''; and
20 (B) in subsection (j), as so transferred and
21 redesignated—
22 (i) by striking ''under subsection (f)''; and
23 (ii) by striking ''section 1862(a)(1)'' and
24 inserting ''subsection (a)(1)''.

1 (b) TERMINOLOGY CORRECTIONS.—(1) Section
2 1869(c)(3)(I)(ii) (42 U.S.C. 1395ff(c)(3)(I)(ii)), as
3 amended by section 521 of BIPA, is amended—
4 (A) in subclause (III), by striking ''policy'' and
5 inserting ''determination''; and
6 (B) in subclause (IV), by striking ''medical re-
7 view policies'' and inserting ''coverage determina-
8 tions''.
9 (2) Section 1852(a)(2)(C) (42 U.S.C. 1395w–
10 22(a)(2)(C)) is amended by striking ''policy'' and ''POL-
11 ICY'' and inserting ''determination'' each place it appears
12 and ''DETERMINATION'', respectively.
13 (c) REFERENCE CORRECTIONS.—Section 1869(f)(4)
14 (42 U.S.C. 1395ff(f)(4)), as added by section 522 of
15 BIPA, is amended—
16 (1) in subparagraph (A)(iv), by striking ''sub-
17 clause (I), (II), or (III)'' and inserting ''clause (i),
18 (ii), or (iii)'';
19 (2) in subparagraph (B), by striking ''clause
20 (i)(IV)'' and ''clause (i)(III)'' and inserting ''sub-
21 paragraph (A)(iv)'' and ''subparagraph (A)(iii)'', re-
22 spectively; and
23 (3) in subparagraph (C), by striking ''clause
24 (i)'', ''subclause (IV)'' and ''subparagraph (A)'' and
25 inserting ''subparagraph (A)'', ''clause (iv)'' and

1 "paragraph (1)(A)", respectively each place it ap-
2 pears.
3 (d) OTHER CORRECTIONS.—Effective as if included
4 in the enactment of section 521(c) of BIPA, section
5 1154(e) (42 U.S.C. 1320c–3(e)) is amended by striking
6 paragraph (5).
7 (e) EFFECTIVE DATE.—Except as otherwise pro-
8 vided, the amendments made by this section shall be effec-
9 tive as if included in the enactment of BIPA.

10 **SEC. 510. CONFORMING AUTHORITY TO WAIVE A PROGRAM**
11 **EXCLUSION.**

12 The first sentence of section 1128(c)(3)(B) (42
13 U.S.C. 1320a–7(c)(3)(B)) is amended to read as follows:
14 "Subject to subparagraph (G), in the case of an exclusion
15 under subsection (a), the minimum period of exclusion
16 shall be not less than five years, except that, upon the
17 request of the administrator of a Federal health care pro-
18 gram (as defined in section 1128B(f)) who determines
19 that the exclusion would impose a hardship on individuals
20 entitled to benefits under part A of title XVIII or enrolled
21 under part B of such title, or both, the Secretary may
22 waive the exclusion under subsection (a)(1), (a)(3), or
23 (a)(4) with respect to that program in the case of an indi-
24 vidual or entity that is the sole community physician or

1 sole source of essential specialized services in a commu-
2 nity.''.

3 **SEC. 511. TREATMENT OF CERTAIN DENTAL CLAIMS.**

4 (a) IN GENERAL.—Section 1862 (42 U.S.C. 1395y)
5 is amended by inserting after subsection (c) the following
6 new subsection:

7 ''(d)(1) Subject to paragraph (2), a group health plan
8 (as defined in subsection (a)(1)(A)(v)) providing supple-
9 mental or secondary coverage to individuals also entitled
10 to services under this title shall not require a medicare
11 claims determination under this title for dental benefits
12 specifically excluded under subsection (a)(12) as a condi-
13 tion of making a claims determination for such benefits
14 under the group health plan.

15 ''(2) A group health plan may require a claims deter-
16 mination under this title in cases involving or appearing
17 to involve inpatient dental hospital services or dental serv-
18 ices expressly covered under this title pursuant to actions
19 taken by the Secretary.''.

20 (b) EFFECTIVE DATE.—The amendment made by
21 subsection (a) shall take effect on the date that is 60 days
22 after the date of the enactment of this Act.

1 **SEC. 512. MISCELLANEOUS REPORTS, STUDIES, AND PUBLI-**
2 **CATION REQUIREMENTS.**
3 (a) GAO REPORTS ON THE PHYSICIAN COMPENSA-
4 TION.—
5 (1) SUSTAINABLE GROWTH RATE AND UP-
6 DATES.—Not later than 6 months after the date of
7 the enactment of this Act, the Comptroller General
8 of the United States shall submit to Congress a re-
9 port on the appropriateness of the updates in the
10 conversion factor under subsection (d)(3) of section
11 1848 of the Social Security Act (42 U.S.C. 1395w–
12 4), including the appropriateness of the sustainable
13 growth rate formula under subsection (f) of such
14 section for 2002 and succeeding years. Such report
15 shall examine the stability and predictability of such
16 updates and rate and alternatives for the use of such
17 rate in the updates.
18 (2) PHYSICIAN COMPENSATION GENERALLY.—
19 Not later than 12 months after the date of the en-
20 actment of this Act, the Comptroller General shall
21 submit to Congress a report on all aspects of physi-
22 cian compensation for services furnished under title
23 XVIII of the Social Security Act, and how those as-
24 pects interact and the effect on appropriate com-
25 pensation for physician services. Such report shall
26 review alternatives for the physician fee schedule

1 under section 1848 of such title (42 U.S.C. 1395w–
2 4).
3 (b) PROMPT SUBMISSION OF OVERDUE REPORTS ON
4 PAYMENT AND UTILIZATION OF OUTPATIENT THERAPY
5 SERVICES.—The Secretary shall submit to Congress as ex-
6 peditiously as practicable the reports required under sec-
7 tion 4541(d)(2) of the Balanced Budget Act of 1997 (re-
8 lating to alternatives to a single annual dollar cap on out-
9 patient therapy) and under section 221(d) of the Medi-
10 care, Medicaid, and SCHIP Balanced Budget Refinement
11 Act of 1999 (relating to utilization patterns for outpatient
12 therapy).
13 (c) ANNUAL PUBLICATION OF LIST OF NATIONAL
14 COVERAGE DETERMINATIONS.—The Secretary shall pro-
15 vide, in an appropriate annual publication available to the
16 public, a list of national coverage determinations made
17 under title XVIII of the Social Security Act in the pre-
18 vious year and information on how to get more informa-
19 tion with respect to such determinations.

Passed the House of Representatives December 4, 2001.

Attest:

Clerk.