

108TH CONGRESS
1ST SESSION

H. R. 3584

To amend title XVIII of the Social Security Act to increase the amount of payment for physicians' services under the Medicare Program and to provide regulatory relief and contracting flexibility under the Medicare Program.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 21, 2003

Ms. BERKLEY introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to increase the amount of payment for physicians' services under the Medicare Program and 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 SECUR-**
 2 **RITY ACT; REFERENCES TO BIPA AND SEC-**
 3 **RETARY; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
 5 “Medicare Regulatory Fairness and Physician Fee Update
 6 Act”.

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

13 (c) **BIPA; SECRETARY.**—In this Act:

14 (1) **BIPA.**—The term “BIPA” means the
 15 Medicare, Medicaid, and SCHIP Benefits Improve-
 16 ment and Protection Act of 2000, as enacted into
 17 law by section 1(a)(6) of Public Law 106–554.

18 (2) **SECRETARY.**—The term “Secretary” means
 19 the Secretary of Health and Human Services.

20 (d) **TABLE OF CONTENTS.**—The table of contents of
 21 this Act is as follows:

Sec. 1. Short title; amendments to Social Security Act; references to BIPA and Secretary; table of contents.

TITLE I—PROVISIONS RELATING TO PAYMENT FOR PHYSICIANS’ SERVICES

Sec. 101. Revision of updates for physicians’ services.

TITLE II—ADMINISTRATIVE IMPROVEMENTS, REGULATORY REDUCTION, AND CONTRACTING REFORM

Subtitle A—Regulatory Reform

- Sec. 201. Construction; definition of supplier.
- Sec. 202. Issuance of regulations.
- Sec. 203. Compliance with changes in regulations and policies.
- Sec. 204. Reports and studies relating to regulatory reform.

Subtitle B—Contracting Reform

- Sec. 211. Increased flexibility in medicare administration.
- Sec. 212. Requirements for information security for medicare administrative contractors.

Subtitle C—Education and Outreach

- Sec. 221. Provider education and technical assistance.
- Sec. 222. Small provider technical assistance demonstration program.
- Sec. 223. Medicare Beneficiary Ombudsman.
- Sec. 224. Beneficiary outreach demonstration program.
- Sec. 225. Inclusion of additional information in notices to beneficiaries about skilled nursing facility benefits.
- Sec. 226. Information on medicare-certified skilled nursing facilities in hospital discharge plans.

Subtitle D—Appeals and Recovery

- Sec. 231. Transfer of responsibility for medicare appeals.
- Sec. 232. Process for expedited access to review.
- Sec. 233. Revisions to medicare appeals process.
- Sec. 234. Prepayment review.
- Sec. 235. Recovery of overpayments.
- Sec. 236. Provider enrollment process; right of appeal.
- Sec. 237. Process for correction of minor errors and omissions without pursuing appeals process.
- Sec. 238. Prior determination process for certain items and services; advance beneficiary notices.
- Sec. 239. Appeals by providers when there is no other party available.
- Sec. 240. Revisions to appeals timeframes and amounts.
- Sec. 241. Mediation process for local coverage determinations.

1 **TITLE I—PROVISIONS RELATING**
 2 **TO PAYMENT FOR PHYSI-**
 3 **CIANS’ SERVICES**

4 **SEC. 101. REVISION OF UPDATES FOR PHYSICIANS’ SERV-**
 5 **ICES.**

6 (a) UPDATE FOR 2004 AND 2005.—Section 1848(d)
 7 of the Social Security Act (42 U.S.C. 1395w-4(d)) is

1 amended by adding at the end the following new para-
2 graph:

3 “(5) UPDATE FOR 2004 AND 2005.—The update
4 to the single conversion factor established in para-
5 graph (1)(C) for each of 2004 and 2005 shall be not
6 less than 1.5 percent.”.

7 (b) CONFORMING AMENDMENT.—Paragraph (4)(B)
8 of such section is amended, in the matter before clause
9 (i), by inserting “and paragraph (5)” after “subparagraph
10 (D)”.

11 (c) NOT TREATED AS CHANGE IN LAW AND REGULA-
12 TION IN SUSTAINABLE GROWTH RATE DETERMINA-
13 TION.—The amendments made by this subsection shall
14 not be treated as a change in law for purposes of applying
15 section 1848(f)(2)(D) of the Social Security Act (42
16 U.S.C. 1395w–4(f)(2)(D)).

17 **TITLE II—ADMINISTRATIVE IM-**
18 **PROVEMENTS, REGULATORY**
19 **REDUCTION, AND CON-**
20 **TRACTING REFORM**

21 **Subtitle A—Regulatory Reform**

22 **SEC. 201. CONSTRUCTION; DEFINITION OF SUPPLIER.**

23 (a) CONSTRUCTION.—Nothing in this title shall be
24 construed—

1 **SEC. 202. ISSUANCE OF REGULATIONS.**

2 (a) REGULAR TIMELINE FOR PUBLICATION OF
3 FINAL RULES.—

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

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

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

24 “(C) In the case of interim final regulations, upon
25 the expiration of the regular timeline established under
26 this paragraph for the publication of a final regulation

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

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

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

23 (b) LIMITATIONS ON NEW MATTER IN FINAL REGU-
24 LATIONS.—

1 (1) IN GENERAL.—Section 1871(a) (42 U.S.C.
2 1395hh(a)), as amended by subsection (a), is
3 amended by adding at the end the following new
4 paragraph:

5 “(4) If the Secretary publishes a final regulation that
6 includes a provision that is not a logical outgrowth of a
7 previously published notice of proposed rulemaking or in-
8 terim final rule, such provision shall be treated as a pro-
9 posed regulation and shall not take effect until there is
10 the further opportunity for public comment and a publica-
11 tion of the provision again as a final regulation.”.

12 (2) EFFECTIVE DATE.—The amendment made
13 by paragraph (1) shall apply to final regulations
14 published on or after the date of the enactment of
15 this Act.

16 **SEC. 203. COMPLIANCE WITH CHANGES IN REGULATIONS**
17 **AND POLICIES.**

18 (a) NO RETROACTIVE APPLICATION OF SUB-
19 STANTIVE CHANGES.—

20 (1) IN GENERAL.—Section 1871 (42 U.S.C.
21 1395hh), as amended by section 202(a), is amended
22 by adding at the end the following new subsection:
23 “(e)(1)(A) A substantive change in regulations, man-
24 ual instructions, interpretative rules, statements of policy,
25 or guidelines of general applicability under this title shall

1 not be applied (by extrapolation or otherwise) retroactively
2 to items and services furnished before the effective date
3 of the change, unless the Secretary determines that—

4 “(i) such retroactive application is necessary to
5 comply with statutory requirements; or

6 “(ii) failure to apply the change retroactively
7 would be contrary to the public interest.”.

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

12 (b) TIMELINE FOR COMPLIANCE WITH SUBSTANTIVE
13 CHANGES AFTER NOTICE.—

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

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

22 “(ii) The Secretary may provide for such a sub-
23 stantive change to take effect on a date that precedes the
24 end of the 30-day period under clause (i) if the Secretary
25 finds that waiver of such 30-day period is necessary to

1 comply with statutory requirements or that the application
2 of such 30-day period is contrary to the public interest.
3 If the Secretary provides for an earlier effective date pur-
4 suant to this clause, the Secretary shall include in the
5 issuance or publication of the substantive change a finding
6 described in the first sentence, and a brief statement of
7 the reasons for such finding.

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

12 (2) EFFECTIVE DATE.—The amendment made
13 by paragraph (1) shall apply to compliance actions
14 undertaken on or after the date of the enactment of
15 this Act.

16 (c) RELIANCE ON GUIDANCE.—

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

20 “(2)(A) If—

21 “(i) a provider of services or supplier follows
22 the written guidance (which may be transmitted
23 electronically) provided by the Secretary or by a
24 medicare contractor (as defined in section 1889(g))
25 acting within the scope of the contractor’s contract

1 authority, with respect to the furnishing of items or
2 services and submission of a claim for benefits for
3 such items or services with respect to such provider
4 or supplier;

5 “(ii) the Secretary determines that the provider
6 of services or supplier has accurately presented the
7 circumstances relating to such items, services, and
8 claim to the contractor in writing; and

9 “(iii) the guidance was in error;

10 the provider of services or supplier shall not be subject
11 to any penalty or interest under this title or the provisions
12 of title XI insofar as they relate to this title (including
13 interest under a repayment plan under section 1893 or
14 otherwise) relating to the provision of such items or serv-
15 ice or such claim if the provider of services or supplier
16 reasonably relied on such guidance.

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

22 (2) EFFECTIVE DATE.—The amendment made
23 by paragraph (1) shall take effect on the date of the
24 enactment of this Act and shall only apply to a pen-

1 alty or interest imposed with respect to guidance
2 provided on or after July 24, 2003.

3 **SEC. 204. REPORTS AND STUDIES RELATING TO REGU-**
4 **LATORY REFORM.**

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

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

18 (2) REPORT.—The Comptroller General shall
19 submit to Congress a report on the study conducted
20 under paragraph (1) by not later than 1 year after
21 the date of the enactment of this Act.

22 (b) REPORT ON LEGAL AND REGULATORY INCON-
23 SISTENCIES.—Section 1871 (42 U.S.C. 1395hh), as
24 amended by section 203(a)(1), is amended by adding at
25 the end the following new subsection:

1 “(f)(1) Not later than 2 years after the date of the
2 enactment of this subsection, and every 3 years thereafter,
3 the Secretary shall submit to Congress a report with re-
4 spect to the administration of this title and areas of incon-
5 sistency or conflict among the various provisions under
6 law and regulation.

7 “(2) In preparing a report under paragraph (1), the
8 Secretary shall collect—

9 “(A) information from individuals entitled to
10 benefits under part A or enrolled under part B, or
11 both, providers of services, and suppliers and from
12 the Medicare Beneficiary Ombudsman with respect
13 to such areas of inconsistency and conflict; and

14 “(B) information from medicare contractors
15 that tracks the nature of written and telephone in-
16 quires.

17 “(3) A report under paragraph (1) shall include a de-
18 scription of efforts by the Secretary to reduce such incon-
19 sistency or conflicts, and recommendations for legislation
20 or administrative action that the Secretary determines ap-
21 propriate to further reduce such inconsistency or con-
22 flicts.”.

1 “(B) the entity complies with such conflict
2 of interest standards as are generally applicable
3 to Federal acquisition and procurement;

4 “(C) the entity has sufficient assets to fi-
5 nancially support the performance of such func-
6 tion; and

7 “(D) the entity meets such other require-
8 ments as the Secretary may impose.

9 “(3) MEDICARE ADMINISTRATIVE CONTRACTOR
10 DEFINED.—For purposes of this title and title XI—

11 “(A) IN GENERAL.—The term ‘medicare
12 administrative contractor’ means an agency, or-
13 ganization, or other person with a contract
14 under this section.

15 “(B) APPROPRIATE MEDICARE ADMINIS-
16 TRATIVE CONTRACTOR.—With respect to the
17 performance of a particular function in relation
18 to an individual entitled to benefits under part
19 A or enrolled under part B, or both, a specific
20 provider of services or supplier (or class of such
21 providers of services or suppliers), the ‘appro-
22 priate’ medicare administrative contractor is the
23 medicare administrative contractor that has a
24 contract under this section with respect to the
25 performance of that function in relation to that

1 individual, provider of services or supplier or
2 class of provider of services or supplier.

3 “(4) FUNCTIONS DESCRIBED.—The functions
4 referred to in paragraphs (1) and (2) are payment
5 functions (including the function of developing local
6 coverage determinations, as defined in section
7 1869(f)(2)(B)), provider services functions, and
8 functions relating to services furnished to individuals
9 entitled to benefits under part A or enrolled under
10 part B, 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 providing 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, including (subject
23 to paragraph (5)) functions under the Medicare
24 Integrity Program under section 1893, as are
25 necessary to carry out the purposes of this title.

1 “(5) RELATIONSHIP TO MIP CONTRACTS.—

2 “(A) NONDUPLICATION OF DUTIES.—In
3 entering into contracts under this section, the
4 Secretary shall assure that functions of medi-
5 care administrative contractors in carrying out
6 activities under parts A and B do not duplicate
7 activities carried out under a contract entered
8 into under the Medicare Integrity Program
9 under section 1893. The previous sentence shall
10 not apply with respect to the activity described
11 in section 1893(b)(5) (relating to prior author-
12 ization of certain items of durable medical
13 equipment under section 1834(a)(15)).

14 “(B) CONSTRUCTION.—An entity shall not
15 be treated as a medicare administrative con-
16 tractor merely by reason of having entered into
17 a contract with the Secretary under section
18 1893.

19 “(6) APPLICATION OF FEDERAL ACQUISITION
20 REGULATION.—Except to the extent inconsistent
21 with a specific requirement of this section, the Fed-
22 eral Acquisition Regulation applies to contracts
23 under this section.

24 “(b) CONTRACTING REQUIREMENTS.—

25 “(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 5 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.—

1 “(i) IN GENERAL.—The Secretary
2 shall develop contract performance require-
3 ments to carry out the specific require-
4 ments applicable under this title to a func-
5 tion described in subsection (a)(4) and
6 shall develop standards for measuring the
7 extent to which a contractor has met such
8 requirements.

9 “(ii) CONSULTATION.—In developing
10 such performance requirements and stand-
11 ards for measurement, the Secretary shall
12 consult with providers of services, organi-
13 zations representative of beneficiaries
14 under this title, and organizations and
15 agencies performing functions necessary to
16 carry out the purposes of this section with
17 respect to such performance requirements.

18 “(iii) PUBLICATION OF STANDARDS.—
19 The Secretary shall make such perform-
20 ance requirements and measurement
21 standards available to the public.

22 “(B) CONSIDERATIONS.—The Secretary
23 shall include, as one of the standards developed
24 under subparagraph (A), provider and bene-
25 ficiary satisfaction levels.

1 “(C) INCLUSION IN CONTRACTS.—All con-
2 tractor performance requirements shall be set
3 forth in the contract between the Secretary and
4 the appropriate medicare administrative con-
5 tractor. Such performance requirements—

6 “(i) shall reflect the performance re-
7 quirements published under subparagraph
8 (A), but may include additional perform-
9 ance requirements;

10 “(ii) shall be used for evaluating con-
11 tractor performance under the contract;
12 and

13 “(iii) shall be consistent with the writ-
14 ten statement of work provided under the
15 contract.

16 “(4) INFORMATION REQUIREMENTS.—The Sec-
17 retary shall not enter into a contract with a medi-
18 care administrative contractor under this section un-
19 less the contractor agrees—

20 “(A) to furnish to the Secretary such time-
21 ly information and reports as the Secretary may
22 find necessary in performing his functions
23 under this title; and

24 “(B) to maintain such records and afford
25 such access thereto as the Secretary finds nec-

1 essary to assure the correctness and verification
2 of the information and reports under subpara-
3 graph (A) and otherwise to carry out the pur-
4 poses of this title.

5 “(5) SURETY BOND.—A contract with a medi-
6 care administrative contractor under this section
7 may require the medicare administrative contractor,
8 and any of its officers or employees certifying pay-
9 ments or disbursing funds pursuant to the contract,
10 or otherwise participating in carrying out the con-
11 tract, to give surety bond to the United States in
12 such amount as the Secretary may deem appro-
13 priate.

14 “(c) TERMS AND CONDITIONS.—

15 “(1) IN GENERAL.—A contract with any medi-
16 care administrative contractor under this section
17 may contain such terms and conditions as the Sec-
18 retary finds necessary or appropriate and may pro-
19 vide for advances of funds to the medicare adminis-
20 trative contractor for the making of payments by it
21 under subsection (a)(4)(B).

22 “(2) PROHIBITION ON MANDATES FOR CERTAIN
23 DATA COLLECTION.—The Secretary may not require,
24 as a condition of entering into, or renewing, a con-
25 tract under this section, that the medicare adminis-

1 trative contractor match data obtained other than in
2 its activities under this title with data used in the
3 administration of this title for purposes of identi-
4 fying situations in which the provisions of section
5 1862(b) may apply.

6 “(d) LIMITATION ON LIABILITY OF MEDICARE AD-
7 MINISTRATIVE CONTRACTORS AND CERTAIN OFFICERS.—

8 “(1) CERTIFYING OFFICER.—No individual des-
9 ignated pursuant to a contract under this section as
10 a certifying officer shall, in the absence of the reck-
11 less disregard of the individual’s obligations or the
12 intent by that individual to defraud the United
13 States, be liable with respect to any payments cer-
14 tified by the individual under this section.

15 “(2) DISBURSING OFFICER.—No disbursing of-
16 ficer shall, in the absence of the reckless disregard
17 of the officer’s obligations or the intent by that offi-
18 cer to defraud the United States, be liable with re-
19 spect to any payment by such officer under this sec-
20 tion if it was based upon an authorization (which
21 meets the applicable requirements for such internal
22 controls established by the Comptroller General of
23 the United States) of a certifying officer designated
24 as provided in paragraph (1) of this subsection.

1 “(3) LIABILITY OF MEDICARE ADMINISTRATIVE
2 CONTRACTOR.—

3 “(A) IN GENERAL.—No medicare adminis-
4 trative contractor shall be liable to the United
5 States for a payment by a certifying or dis-
6 bursing officer unless, in connection with such
7 payment, the medicare administrative con-
8 tractor acted with reckless disregard of its obli-
9 gations under its medicare administrative con-
10 tract or with intent to defraud the United
11 States.

12 “(B) RELATIONSHIP TO FALSE CLAIMS
13 ACT.—Nothing in this subsection shall be con-
14 strued to limit liability for conduct that would
15 constitute a violation of sections 3729 through
16 3731 of title 31, United States Code.

17 “(4) INDEMNIFICATION BY SECRETARY.—

18 “(A) IN GENERAL.—Subject to subpara-
19 graphs (B) and (D), in the case of a medicare
20 administrative contractor (or a person who is a
21 director, officer, or employee of such a con-
22 tractor or who is engaged by the contractor to
23 participate directly in the claims administration
24 process) who is made a party to any judicial or
25 administrative proceeding arising from or relat-

1 ing directly to the claims administration process
2 under this title, the Secretary may, to the ex-
3 tent the Secretary determines to be appropriate
4 and as specified in the contract with the con-
5 tractor, indemnify the contractor and such per-
6 sons.

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

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

24 “(D) WRITTEN APPROVAL FOR SETTLE-
25 MENTS OR COMPROMISES.—A contractor or

1 other person described in subparagraph (A)
2 may not propose to negotiate a settlement or
3 compromise of a proceeding described in such
4 subparagraph without the prior written ap-
5 proval of the Secretary to negotiate such settle-
6 ment or compromise. Any indemnification under
7 subparagraph (A) with respect to amounts paid
8 under a settlement or compromise of a pro-
9 ceeding described in such subparagraph are
10 conditioned upon prior written approval by the
11 Secretary of the final settlement or compromise.

12 “(E) CONSTRUCTION.—Nothing in this
13 paragraph shall be construed—

14 “(i) to change any common law immu-
15 nity that may be available to a medicare
16 administrative contractor or person de-
17 scribed in subparagraph (A); or

18 “(ii) to permit the payment of costs
19 not otherwise allowable, reasonable, or allo-
20 cable under the Federal Acquisition Regu-
21 lation.”.

22 (2) CONSIDERATION OF INCORPORATION OF
23 CURRENT LAW STANDARDS.—In developing contract
24 performance requirements under section 1874A(b)
25 of the Social Security Act, as inserted by paragraph

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

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

12 (1) The heading is amended to read as follows:
13 “PROVISIONS RELATING TO THE ADMINISTRATION OF
14 PART A”.

15 (2) Subsection (a) is amended to read as fol-
16 lows:
17 “(a) The administration of this part shall be con-
18 ducted through contracts with medicare administrative
19 contractors under section 1874A.”.

20 (3) Subsection (b) is repealed.

21 (4) Subsection (c) is amended—

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

23 (B) in each of paragraphs (2)(A) and
24 (3)(A), by striking “agreement under this sec-
25 tion” and inserting “contract under section

1 1874A that provides for making payments
2 under this part”.

3 (5) Subsections (d) through (i) are repealed.

4 (6) Subsections (j) and (k) are each amended—

5 (A) by striking “An agreement with an
6 agency or organization under this section” and
7 inserting “A contract with a medicare adminis-
8 trative contractor under section 1874A with re-
9 spect to the administration of this part”; and

10 (B) by striking “such agency or organiza-
11 tion” and inserting “such medicare administra-
12 tive contractor” each place it appears.

13 (7) Subsection (l) is repealed.

14 (c) CONFORMING AMENDMENTS TO SECTION 1842
15 (RELATING TO CARRIERS).—Section 1842 (42 U.S.C.
16 1395u) is amended as follows:

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

18 “PROVISIONS RELATING TO THE ADMINISTRATION OF
19 PART B”.

20 (2) Subsection (a) is amended to read as fol-
21 lows:

22 “(a) The administration of this part shall be con-
23 ducted through contracts with medicare administrative
24 contractors under section 1874A.”.

25 (3) Subsection (b) is amended—

26 (A) by striking paragraph (1);

1 (B) in paragraph (2)—

2 (i) by striking subparagraphs (A) and
3 (B);

4 (ii) in subparagraph (C), by striking
5 “carriers” and inserting “medicare admin-
6 istrative contractors”; and

7 (iii) by striking subparagraphs (D)
8 and (E);

9 (C) in paragraph (3)—

10 (i) in the matter before subparagraph
11 (A), by striking “Each such contract shall
12 provide that the carrier” and inserting
13 “The Secretary”;

14 (ii) by striking “will” the first place it
15 appears in each of subparagraphs (A), (B),
16 (F), (G), (H), and (L) and inserting
17 “shall”;

18 (iii) in subparagraph (B), in the mat-
19 ter before clause (i), by striking “to the
20 policyholders and subscribers of the car-
21 rier” and inserting “to the policyholders
22 and subscribers of the medicare adminis-
23 trative contractor”;

24 (iv) by striking subparagraphs (C),
25 (D), and (E);

1 (v) in subparagraph (H)—

2 (I) by striking “if it makes deter-
3 minations or payments with respect to
4 physicians’ services,” in the matter
5 preceding clause (i); and

6 (II) by striking “carrier” and in-
7 serting “medicare administrative con-
8 tractor” in clause (i);

9 (vi) by striking subparagraph (I);

10 (vii) in subparagraph (L), by striking
11 the semicolon and inserting a period;

12 (viii) in the first sentence, after sub-
13 paragraph (L), by striking “and shall con-
14 tain” and all that follows through the pe-
15 riod; and

16 (ix) in the seventh sentence, by insert-
17 ing “medicare administrative contractor,”
18 after “carrier,”;

19 (D) by striking paragraph (5);

20 (E) in paragraph (6)(D)(iv), by striking
21 “carrier” and inserting “medicare administra-
22 tive contractor”; and

23 (F) in paragraph (7), by striking “the car-
24 rier” and inserting “the Secretary” each place
25 it appears.

1 (4) Subsection (c) is amended—

2 (A) by striking paragraph (1);

3 (B) in paragraph (2)(A), by striking “con-
4 tract under this section which provides for the
5 disbursement of funds, as described in sub-
6 section (a)(1)(B),” and inserting “contract
7 under section 1874A that provides for making
8 payments under this part”;

9 (C) in paragraph (3)(A), by striking “sub-
10 section (a)(1)(B)” and inserting “section
11 1874A(a)(3)(B)”;

12 (D) in paragraph (4), in the matter pre-
13 ceding subparagraph (A), by striking “carrier”
14 and inserting “medicare administrative con-
15 tractor”; and

16 (E) by striking paragraphs (5) and (6).

17 (5) Subsections (d), (e), and (f) are repealed.

18 (6) Subsection (g) is amended by striking “car-
19 rier or carriers” and inserting “medicare administra-
20 tive contractor or contractors”.

21 (7) Subsection (h) is amended—

22 (A) in paragraph (2)—

23 (i) by striking “Each carrier having
24 an agreement with the Secretary under

1 subsection (a)” and inserting “The Sec-
2 retary”; and

3 (ii) by striking “Each such carrier”
4 and inserting “The Secretary”;

5 (B) in paragraph (3)(A)—

6 (i) by striking “a carrier having an
7 agreement with the Secretary under sub-
8 section (a)” and inserting “medicare ad-
9 ministrative contractor having a contract
10 under section 1874A that provides for
11 making payments under this part”; and

12 (ii) by striking “such carrier” and in-
13 serting “such contractor”;

14 (C) in paragraph (3)(B)—

15 (i) by striking “a carrier” and insert-
16 ing “a medicare administrative contractor”
17 each place it appears; and

18 (ii) by striking “the carrier” and in-
19 serting “the contractor” each place it ap-
20 pears; and

21 (D) in paragraphs (5)(A) and (5)(B)(iii),
22 by striking “carriers” and inserting “medicare
23 administrative contractors” each place it ap-
24 pears.

25 (8) Subsection (l) is amended—

1 (A) in paragraph (1)(A)(iii), by striking
2 “carrier” and inserting “medicare administra-
3 tive contractor”; and

4 (B) in paragraph (2), by striking “carrier”
5 and inserting “medicare administrative con-
6 tractor”.

7 (9) Subsection (p)(3)(A) is amended by striking
8 “carrier” and inserting “medicare administrative
9 contractor”.

10 (10) Subsection (q)(1)(A) is amended by strik-
11 ing “carrier”.

12 (d) EFFECTIVE DATE; TRANSITION RULE.—

13 (1) EFFECTIVE DATE.—

14 (A) IN GENERAL.—Except as otherwise
15 provided in this subsection, the amendments
16 made by this section shall take effect on Octo-
17 ber 1, 2005, and the Secretary is authorized to
18 take such steps before such date as may be nec-
19 essary to implement such amendments on a
20 timely basis.

21 (B) CONSTRUCTION FOR CURRENT CON-
22 TRACTS.—Such amendments shall not apply to
23 contracts in effect before the date specified
24 under subparagraph (A) that continue to retain
25 the terms and conditions in effect on such date

1 (except as otherwise provided under this Act,
2 other than under this section) until such date
3 as the contract is let out for competitive bid-
4 ding under such amendments.

5 (C) DEADLINE FOR COMPETITIVE BID-
6 DING.—The Secretary shall provide for the let-
7 ting by competitive bidding of all contracts for
8 functions of medicare administrative contrac-
9 tors for annual contract periods that begin on
10 or after October 1, 2011.

11 (2) GENERAL TRANSITION RULES.—

12 (A) AUTHORITY TO CONTINUE TO ENTER
13 INTO NEW AGREEMENTS AND CONTRACTS AND
14 WAIVER OF PROVIDER NOMINATION PROVISIONS
15 DURING TRANSITION.—Prior to October 1,
16 2005, the Secretary may, consistent with sub-
17 paragraph (B), continue to enter into agree-
18 ments under section 1816 and contracts under
19 section 1842 of the Social Security Act (42
20 U.S.C. 1395h, 1395u). The Secretary may
21 enter into new agreements under section 1816
22 prior to October 1, 2005, without regard to any
23 of the provider nomination provisions of such
24 section.

1 (B) APPROPRIATE TRANSITION.—The Sec-
2 retary shall take such steps as are necessary to
3 provide for an appropriate transition from
4 agreements under section 1816 and contracts
5 under section 1842 of the Social Security Act
6 (42 U.S.C. 1395h, 1395u) to contracts under
7 section 1874A, as added by subsection (a)(1).

8 (3) AUTHORIZING CONTINUATION OF MIP
9 FUNCTIONS UNDER CURRENT CONTRACTS AND
10 AGREEMENTS AND UNDER TRANSITION CON-
11 TRACTS.—Notwithstanding the amendments made
12 by this section, the provisions contained in the ex-
13 ception in section 1893(d)(2) of the Social Security
14 Act (42 U.S.C. 1395ddd(d)(2)) shall continue to
15 apply during the period that begins on the date of
16 the enactment of this Act and ends on October 1,
17 2011, and any reference in such provisions to an
18 agreement or contract shall be deemed to include a
19 contract under section 1874A of such Act, as in-
20 serted by subsection (a)(1), that continues the activi-
21 ties referred to in such provisions.

22 (e) REFERENCES.—On and after the effective date
23 provided under subsection (d)(1), any reference to a fiscal
24 intermediary or carrier under title XI or XVIII of the So-
25 cial Security Act (or any regulation, manual instruction,

1 interpretative rule, statement of policy, or guideline issued
2 to carry out such titles) shall be deemed a reference to
3 a medicare administrative contractor (as provided under
4 section 1874A of the Social Security Act).

5 (f) SECRETARIAL SUBMISSION OF LEGISLATIVE PRO-
6 POSAL.—Not later than 6 months after the date of the
7 enactment of this Act, the Secretary shall submit to the
8 appropriate committees of Congress a legislative proposal
9 providing for such technical and conforming amendments
10 in the law as are required by the provisions of this section.

11 (g) REPORTS ON IMPLEMENTATION.—

12 (1) PLAN FOR IMPLEMENTATION.—By not later
13 than October 1, 2004, the Secretary shall submit a
14 report to Congress and the Comptroller General of
15 the United States that describes the plan for imple-
16 mentation of the amendments made by this section.
17 The Comptroller General shall conduct an evaluation
18 of such plan and shall submit to Congress, not later
19 than 6 months after the date the report is received,
20 a report on such evaluation and shall include in such
21 report such recommendations as the Comptroller
22 General deems appropriate.

23 (2) STATUS OF IMPLEMENTATION.—The Sec-
24 retary shall submit a report to Congress not later
25 than October 1, 2008, that describes the status of

1 implementation of such amendments and that in-
2 cludes a description of the following:

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

5 (B) The distribution of functions among
6 contracts and contractors.

7 (C) A timeline for complete transition to
8 full competition.

9 (D) A detailed description of how the Sec-
10 retary has modified oversight and management
11 of medicare contractors to adapt to full com-
12 petition.

13 **SEC. 212. REQUIREMENTS FOR INFORMATION SECURITY**
14 **FOR MEDICARE ADMINISTRATIVE CONTRAC-**
15 **TORS.**

16 (a) IN GENERAL.—Section 1874A, as added by sec-
17 tion 211(a)(1), is amended by adding at the end the fol-
18 lowing new subsection:

19 “(e) REQUIREMENTS FOR INFORMATION SECUR-
20 RITY.—

21 “(1) DEVELOPMENT OF INFORMATION SECUR-
22 RITY PROGRAM.—A medicare administrative con-
23 tractor that performs the functions referred to in
24 subparagraphs (A) and (B) of subsection (a)(4) (re-
25 lating to determining and making payments) shall

1 implement a contractor-wide information security
2 program to provide information security for the op-
3 eration and assets of the contractor with respect to
4 such functions under this title. An information secu-
5 rity program under this paragraph shall meet the re-
6 quirements for information security programs im-
7 posed on Federal agencies under paragraphs (1)
8 through (8) of section 3544(b) of title 44, United
9 States Code (other than the requirements under
10 paragraphs (2)(D)(i), (5)(A), and (5)(B) of such
11 section).

12 “(2) INDEPENDENT AUDITS.—

13 “(A) PERFORMANCE OF ANNUAL EVALUA-
14 TIONS.—Each year a medicare administrative
15 contractor that performs the functions referred
16 to in subparagraphs (A) and (B) of subsection
17 (a)(4) (relating to determining and making pay-
18 ments) shall undergo an evaluation of the infor-
19 mation security of the contractor with respect
20 to such functions under this title. The evalua-
21 tion shall—

22 “(i) be performed by an entity that
23 meets such requirements for independence
24 as the Inspector General of the Depart-

1 ment of Health and Human Services may
2 establish; and

3 “(ii) test the effectiveness of informa-
4 tion security control techniques of an ap-
5 propriate subset of the contractor’s infor-
6 mation systems (as defined in section
7 3502(8) of title 44, United States Code)
8 relating to such functions under this title
9 and an assessment of compliance with the
10 requirements of this subsection and related
11 information security policies, procedures,
12 standards and guidelines, including policies
13 and procedures as may be prescribed by
14 the Director of the Office of Management
15 and Budget and applicable information se-
16 curity standards promulgated under sec-
17 tion 11331 of title 40, United States Code.

18 “(B) DEADLINE FOR INITIAL EVALUA-
19 TION.—

20 “(i) NEW CONTRACTORS.—In the case
21 of a medicare administrative contractor
22 covered by this subsection that has not
23 previously performed the functions referred
24 to in subparagraphs (A) and (B) of sub-
25 section (a)(4) (relating to determining and

1 making payments) as a fiscal intermediary
2 or carrier under section 1816 or 1842, the
3 first independent evaluation conducted
4 pursuant to subparagraph (A) shall be
5 completed prior to commencing such func-
6 tions.

7 “(ii) OTHER CONTRACTORS.—In the
8 case of a medicare administrative con-
9 tractor covered by this subsection that is
10 not described in clause (i), the first inde-
11 pendent evaluation conducted pursuant to
12 subparagraph (A) shall be completed with-
13 in 1 year after the date the contractor
14 commences functions referred to in clause
15 (i) under this section.

16 “(C) REPORTS ON EVALUATIONS.—

17 “(i) TO THE DEPARTMENT OF
18 HEALTH AND HUMAN SERVICES.—The re-
19 sults of independent evaluations under sub-
20 paragraph (A) shall be submitted promptly
21 to the Inspector General of the Depart-
22 ment of Health and Human Services and
23 to the Secretary.

24 “(ii) TO CONGRESS.—The Inspector
25 General of the Department of Health and

1 Human Services shall submit to Congress
2 annual reports on the results of such eval-
3 uations, including assessments of the scope
4 and sufficiency of such evaluations.

5 “(iii) AGENCY REPORTING.—The Sec-
6 retary shall address the results of such
7 evaluations in reports required under sec-
8 tion 3544(c) of title 44, United States
9 Code.”.

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

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

6 **Subtitle C—Education and** 7 **Outreach**

8 **SEC. 221. PROVIDER EDUCATION AND TECHNICAL ASSIST-** 9 **ANCE.**

10 (a) COORDINATION OF EDUCATION FUNDING.—

11 (1) IN GENERAL.—Title XVIII is amended by
12 inserting after section 1888 the following new sec-
13 tion:

14 “PROVIDER EDUCATION AND TECHNICAL ASSISTANCE
15 “SEC. 1889. (a) COORDINATION OF EDUCATION
16 FUNDING.—The Secretary shall coordinate the edu-
17 cational activities provided through medicare contractors
18 (as defined in subsection (g), including under section
19 1893) in order to maximize the effectiveness of Federal
20 education efforts for providers of services and suppliers.”.

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

24 (3) REPORT.—Not later than October 1, 2004,
25 the Secretary shall submit to Congress a report that
26 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 211(a)(1) and as amended by section 212(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 The Secretary shall use specific claims payment error
13 rates or similar methodology of medicare administrative
14 contractors in the processing or reviewing of medicare
15 claims in order to give such contractors an incentive to
16 implement effective education and outreach programs for
17 providers of services and suppliers.”.

18 (2) APPLICATION TO FISCAL INTERMEDIARIES
19 AND CARRIERS.—The provisions of section 1874A(f)
20 of the Social Security Act, as added by paragraph
21 (1), shall apply to each fiscal intermediary under
22 section 1816 of the Social Security Act (42 U.S.C.
23 1395h) and each carrier under section 1842 of such
24 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, 2004, 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) of
8 the Social Security Act, as added by paragraph (1),
9 and shall include in the report such recommenda-
10 tions as the Comptroller General determines appro-
11 priate with respect to the methodology.

12 (4) REPORT ON USE OF METHODOLOGY IN AS-
13 SESSING CONTRACTOR PERFORMANCE.—Not later
14 than October 1, 2004, 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 211(a)(1) and as amended by section 212(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 “(5) AUTHORIZATION OF APPROPRIATIONS.—
9 There are authorized to be appropriated such sums
10 as are necessary to carry out this subsection.”.

11 (2) EFFECTIVE DATE.—The amendment made
12 by paragraph (1) shall take effect October 1, 2004.

13 (3) APPLICATION TO FISCAL INTERMEDIARIES
14 AND CARRIERS.—The provisions of section 1874A(g)
15 of the Social Security Act, as added by paragraph
16 (1), shall apply to each fiscal intermediary under
17 section 1816 of the Social Security Act (42 U.S.C.
18 1395h) and each carrier under section 1842 of such
19 Act (42 U.S.C. 1395u) in the same manner as they
20 apply to medicare administrative contractors under
21 such provisions.

22 (d) IMPROVED PROVIDER EDUCATION AND TRAIN-
23 ING.—

1 (1) IN GENERAL.—Section 1889, as added by
2 subsection (a), is amended by adding at the end the
3 following new subsections:

4 “(b) ENHANCED EDUCATION AND TRAINING.—

5 “(1) ADDITIONAL RESOURCES.—There are au-
6 thORIZED to be appropriated to the Secretary (in ap-
7 propriate part from the Federal Hospital Insurance
8 Trust Fund and the Federal Supplementary Medical
9 Insurance Trust Fund) such sums as may be nec-
10 essary for fiscal years beginning with fiscal year
11 2005.

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

19 “(c) TAILORING EDUCATION AND TRAINING ACTIVI-
20 TIES FOR SMALL PROVIDERS OR SUPPLIERS.—

21 “(1) IN GENERAL.—Insofar as a medicare con-
22 tractor conducts education and training activities, it
23 shall tailor such activities to meet the special needs
24 of small providers of services or suppliers (as defined
25 in paragraph (2)). Such education and training ac-

1 activities for small providers of services and suppliers
2 may include the provision of technical assistance
3 (such as review of billing systems and internal con-
4 trols to determine program compliance and to sug-
5 gest more efficient and effective means of achieving
6 such compliance).

7 “(2) SMALL PROVIDER OF SERVICES OR SUP-
8 PLIER.—In this subsection, the term ‘small provider
9 of services or supplier’ means—

10 “(A) a provider of services with fewer than
11 25 full-time-equivalent employees; or

12 “(B) a supplier with fewer than 10 full-
13 time-equivalent employees.”.

14 (2) EFFECTIVE DATE.—The amendment made
15 by paragraph (1) shall take effect on October 1,
16 2004.

17 (e) REQUIREMENT TO MAINTAIN INTERNET
18 WEBSITES.—

19 (1) IN GENERAL.—Section 1889, as added by
20 subsection (a) and as amended by subsection (d), is
21 further amended by adding at the end the following
22 new subsection:

23 “(d) INTERNET WEBSITES; FAQs.—The Secretary,
24 and each medicare contractor insofar as it provides serv-

1 ices (including claims processing) for providers of services
 2 or suppliers, shall maintain an Internet website which—

3 “(1) provides answers in an easily accessible
 4 format to frequently asked questions, and

5 “(2) includes other published materials of the
 6 contractor,

7 that relate to providers of services and suppliers under the
 8 programs under this title (and title XI insofar as it relates
 9 to such programs).”.

10 (2) EFFECTIVE DATE.—The amendment made
 11 by paragraph (1) shall take effect on October 1,
 12 2004.

13 (f) ADDITIONAL PROVIDER EDUCATION PROVI-
 14 SIONS.—

15 (1) IN GENERAL.—Section 1889, as added by
 16 subsection (a) and as amended by subsections (d)
 17 and (e), is further amended by adding at the end the
 18 following new subsections:

19 “(e) ENCOURAGEMENT OF PARTICIPATION IN EDU-
 20 CATION PROGRAM ACTIVITIES.—A medicare contractor
 21 may not use a record of attendance at (or failure to at-
 22 tend) educational activities or other information gathered
 23 during an educational program conducted under this sec-
 24 tion or otherwise by the Secretary to select or track pro-

1 viders of services or suppliers for the purpose of con-
2 ducting any type of audit or prepayment review.

3 “(f) CONSTRUCTION.—Nothing in this section or sec-
4 tion 1893(g) shall be construed as providing for disclosure
5 by a medicare contractor—

6 “(1) of the screens used for identifying claims
7 that will be subject to medical review; or

8 “(2) of information that would compromise
9 pending law enforcement activities or reveal findings
10 of law enforcement-related audits.

11 “(g) DEFINITIONS.—For purposes of this section, the
12 term ‘medicare contractor’ includes the following:

13 “(1) A medicare administrative contractor with
14 a contract under section 1874A, including a fiscal
15 intermediary with a contract under section 1816 and
16 a carrier with a contract under section 1842.

17 “(2) An eligible entity with a contract under
18 section 1893.

19 Such term does not include, with respect to activities of
20 a specific provider of services or supplier an entity that
21 has no authority under this title or title IX with respect
22 to such activities and such provider of services or sup-
23 plier.”.

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

4 **SEC. 222. SMALL PROVIDER TECHNICAL ASSISTANCE DEM-**
5 **ONSTRATION PROGRAM.**

6 (a) ESTABLISHMENT.—

7 (1) IN GENERAL.—The Secretary shall establish
8 a demonstration program (in this section referred to
9 as the “demonstration program”) under which tech-
10 nical assistance described in paragraph (2) is made
11 available, upon request and on a voluntary basis, to
12 small providers of services or suppliers in order to
13 improve compliance with the applicable requirements
14 of the programs under medicare program under title
15 XVIII of the Social Security Act (including provi-
16 sions of title XI of such Act insofar as they relate
17 to such title and are not administered by the Office
18 of the Inspector General of the Department of
19 Health and Human Services).

20 (2) FORMS OF TECHNICAL ASSISTANCE.—The
21 technical assistance described in this paragraph is—

22 (A) evaluation and recommendations re-
23 garding billing and related systems; and

1 (B) information and assistance regarding
2 policies and procedures under the medicare pro-
3 gram, including coding and reimbursement.

4 (3) SMALL PROVIDERS OF SERVICES OR SUP-
5 PLIERS.—In this section, the term “small providers
6 of services or suppliers” means—

7 (A) a provider of services with fewer than
8 25 full-time-equivalent employees; or

9 (B) a supplier with fewer than 10 full-
10 time-equivalent employees.

11 (b) QUALIFICATION OF CONTRACTORS.—In con-
12 ducting the demonstration program, the Secretary shall
13 enter into contracts with qualified organizations (such as
14 peer review organizations or entities described in section
15 1889(g)(2) of the Social Security Act, as inserted by sec-
16 tion 221(f)(1)) with appropriate expertise with billing sys-
17 tems of the full range of providers of services and sup-
18 pliers to provide the technical assistance. In awarding such
19 contracts, the Secretary shall consider any prior investiga-
20 tions of the entity’s work by the Inspector General of De-
21 partment of Health and Human Services or the Comp-
22 troller General of the United States.

23 (c) DESCRIPTION OF TECHNICAL ASSISTANCE.—The
24 technical assistance provided under the demonstration
25 program shall include a direct and in-person examination

1 of billing systems and internal controls of small providers
2 of services or suppliers to determine program compliance
3 and to suggest more efficient or effective means of achiev-
4 ing such compliance.

5 (d) GAO EVALUATION.—Not later than 2 years after
6 the date the demonstration program is first implemented,
7 the Comptroller General, in consultation with the Inspec-
8 tor General of the Department of Health and Human
9 Services, shall conduct an evaluation of the demonstration
10 program. The evaluation shall include a determination of
11 whether claims error rates are reduced for small providers
12 of services or suppliers who participated in the program
13 and the extent of improper payments made as a result
14 of the demonstration program. The Comptroller General
15 shall submit a report to the Secretary and the Congress
16 on such evaluation and shall include in such report rec-
17 ommendations regarding the continuation or extension of
18 the demonstration program.

19 (e) FINANCIAL PARTICIPATION BY PROVIDERS.—The
20 provision of technical assistance to a small provider of
21 services or supplier under the demonstration program is
22 conditioned upon the small provider of services or supplier
23 paying an amount estimated (and disclosed in advance of
24 a provider's or supplier's participation in the program) to

1 be equal to 25 percent of the cost of the technical assist-
2 ance.

3 (f) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated, from amounts not oth-
5 erwise appropriated in the Treasury, such sums as may
6 be necessary to carry out this section.

7 **SEC. 223. MEDICARE BENEFICIARY OMBUDSMAN.**

8 (a) IN GENERAL.—Section 1807, as added and
9 amended by section 200, is amended by adding at the end
10 the following new subsection:

11 “(c) MEDICARE BENEFICIARY OMBUDSMAN.—

12 “(1) IN GENERAL.—The Secretary shall appoint
13 within the Department of Health and Human Serv-
14 ices a Medicare Beneficiary Ombudsman who shall
15 have expertise and experience in the fields of health
16 care and education of (and assistance to) individuals
17 entitled to benefits under this title.

18 “(2) DUTIES.—The Medicare Beneficiary Om-
19 budsman shall—

20 “(A) receive complaints, grievances, and
21 requests for information submitted by individ-
22 uals entitled to benefits under part A or en-
23 rolled under part B, or both, with respect to
24 any aspect of the medicare program;

1 “(B) provide assistance with respect to
2 complaints, grievances, and requests referred to
3 in subparagraph (A), including—

4 “(i) assistance in collecting relevant
5 information for such individuals, to seek
6 an appeal of a decision or determination
7 made by a fiscal intermediary, carrier, MA
8 organization, or the Secretary;

9 “(ii) assistance to such individuals
10 with any problems arising from
11 disenrollment from an MA plan under part
12 C; and

13 “(iii) assistance to such individuals in
14 presenting information under section
15 1839(i)(4)(C) (relating to income-related
16 premium adjustment; and

17 “(C) submit annual reports to Congress
18 and the Secretary that describe the activities of
19 the Office and that include such recommenda-
20 tions for improvement in the administration of
21 this title as the Ombudsman determines appro-
22 priate.

23 The Ombudsman shall not serve as an advocate for
24 any increases in payments or new coverage of serv-

1 ices, but may identify issues and problems in pay-
2 ment or coverage policies.

3 “(3) WORKING WITH HEALTH INSURANCE
4 COUNSELING PROGRAMS.—To the extent possible,
5 the Ombudsman shall work with health insurance
6 counseling programs (receiving funding under sec-
7 tion 4360 of Omnibus Budget Reconciliation Act of
8 1990) to facilitate the provision of information to in-
9 dividuals entitled to benefits under part A or en-
10 rolled under part B, or both regarding MA plans
11 and changes to those plans. Nothing in this para-
12 graph shall preclude further collaboration between
13 the Ombudsman and such programs.”.

14 (b) DEADLINE FOR APPOINTMENT.—By not later
15 than 1 year after the date of the enactment of this Act,
16 the Secretary shall appoint the Medicare Beneficiary Om-
17 budsman under section 1807(c) of the Social Security Act,
18 as added by subsection (a).

19 (c) FUNDING.—There are authorized to be appro-
20 priated to the Secretary (in appropriate part from the
21 Federal Hospital Insurance Trust Fund, established
22 under section 1817 of the Social Security Act (42 U.S.C.
23 1395i), and the Federal Supplementary Medical Insurance
24 Trust Fund, established under section 1841 of such Act
25 (42 U.S.C. 1395t)) to carry out section 1807(c) of such

1 Act (relating to the Medicare Beneficiary Ombudsman),
2 as added by subsection (a), such sums as are necessary
3 for fiscal year 2004 and each succeeding fiscal year.

4 (d) 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 telephone number 1-800-MEDICARE, for a means
12 by which individuals seeking information about, or
13 assistance with, such programs who phone such toll-
14 free number are transferred (without charge) to ap-
15 propriate entities for the provision of such informa-
16 tion or assistance. Such toll-free number shall be the
17 toll-free number listed for general information and
18 assistance in the annual notice under subsection (a)
19 instead of the listing of numbers of individual con-
20 tractors.”.

21 (2) MONITORING ACCURACY.—

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

1 under part A or enrolled under part B, or both,
2 through the toll-free telephone number 1-800-
3 MEDICARE, including an assessment of
4 whether the information provided is sufficient
5 to answer questions of such individuals. In con-
6 ducting the study, the Comptroller General
7 shall examine the education and training of the
8 individuals providing information through such
9 number.

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

15 **SEC. 224. BENEFICIARY OUTREACH DEMONSTRATION PRO-**
16 **GRAM.**

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

1 (b) LOCATIONS.—

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

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

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

17 (d) EVALUATION AND REPORT.—

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

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

24 (B) the cost-effectiveness of providing ben-
25 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 **SEC. 225. INCLUSION OF ADDITIONAL INFORMATION IN NO-**
10 **TICES TO BENEFICIARIES ABOUT SKILLED**
11 **NURSING FACILITY BENEFITS.**

12 (a) IN GENERAL.—The Secretary shall provide that
13 in medicare beneficiary notices provided (under section
14 1806(a) of the Social Security Act, 42 U.S.C. 1395b–7(a))
15 with respect to the provision of post-hospital extended care
16 services under part A of title XVIII of the Social Security
17 Act, there shall be included information on the number
18 of days of coverage of such services remaining under such
19 part for the medicare beneficiary and spell of illness in-
20 volved.

21 (b) EFFECTIVE DATE.—Subsection (a) shall apply to
22 notices provided during calendar quarters beginning more
23 than 6 months after the date of the enactment of this Act.

1 **SEC. 226. INFORMATION ON MEDICARE-CERTIFIED**
2 **SKILLED NURSING FACILITIES IN HOSPITAL**
3 **DISCHARGE PLANS.**

4 (a) AVAILABILITY OF DATA.—The Secretary shall
5 publicly provide information that enables hospital dis-
6 charge planners, medicare beneficiaries, and the public to
7 identify skilled nursing facilities that are participating in
8 the medicare program.

9 (b) INCLUSION OF INFORMATION IN CERTAIN HOS-
10 PITAL DISCHARGE PLANS.—

11 (1) IN GENERAL.—Section 1861(ee)(2)(D) (42
12 U.S.C. 1395x(ee)(2)(D)) is amended—

13 (A) by striking “hospice services” and in-
14 serting “hospice care and post-hospital ex-
15 tended care services”; and

16 (B) by inserting before the period at the
17 end the following: “and, in the case of individ-
18 uals who are likely to need post-hospital ex-
19 tended care services, the availability of such
20 services through facilities that participate in the
21 program under this title and that serve the area
22 in which the patient resides”.

23 (2) EFFECTIVE DATE.—The amendments made
24 by paragraph (1) shall apply to discharge plans
25 made on or after such date as the Secretary shall
26 specify, but not later than 6 months after the date

1 the Secretary provides for availability of information
2 under subsection (a).

3 **Subtitle D—Appeals and Recovery**

4 **SEC. 231. TRANSFER OF RESPONSIBILITY FOR MEDICARE**

5 **APPEALS.**

6 (a) TRANSITION PLAN.—

7 (1) IN GENERAL.—Not later than April 1,
8 2004, the Commissioner of Social Security and the
9 Secretary shall develop and transmit to Congress
10 and the Comptroller General of the United States a
11 plan under which the functions of administrative law
12 judges responsible for hearing cases under title
13 XVIII of the Social Security Act (and related provi-
14 sions in title XI of such Act) are transferred from
15 the responsibility of the Commissioner and the So-
16 cial Security Administration to the Secretary and
17 the Department of Health and Human Services.

18 (2) CONTENTS.—The plan shall include infor-
19 mation on the following:

20 (A) WORKLOAD.—The number of such ad-
21 ministrative law judges and support staff re-
22 quired now and in the future to hear and decide
23 such cases in a timely manner, taking into ac-
24 count the current and anticipated claims vol-

1 ume, appeals, number of beneficiaries, and stat-
2 utory changes.

3 (B) COST PROJECTIONS AND FINANC-
4 ING.—Funding levels required for fiscal year
5 2005 and subsequent fiscal years to carry out
6 the functions transferred under the plan.

7 (C) TRANSITION TIMETABLE.—A timetable
8 for the transition.

9 (D) REGULATIONS.—The establishment of
10 specific regulations to govern the appeals proc-
11 ess.

12 (E) CASE TRACKING.—The development of
13 a unified case tracking system that will facili-
14 tate the maintenance and transfer of case spe-
15 cific data across both the fee-for-service and
16 managed care components of the medicare pro-
17 gram.

18 (F) FEASIBILITY OF PRECEDENTIAL AU-
19 THORITY.—The feasibility of developing a proc-
20 ess to give decisions of the Departmental Ap-
21 peals Board in the Department of Health and
22 Human Services addressing broad legal issues
23 binding, precedential authority.

24 (G) ACCESS TO ADMINISTRATIVE LAW
25 JUDGES.—The feasibility of—

1 (i) filing appeals with administrative
2 law judges electronically; and

3 (ii) conducting hearings using tele- or
4 video-conference technologies.

5 (H) INDEPENDENCE OF ADMINISTRATIVE
6 LAW JUDGES.—The steps that should be taken
7 to ensure the independence of administrative
8 law judges consistent with the requirements of
9 subsection (b)(2).

10 (I) GEOGRAPHIC DISTRIBUTION.—The
11 steps that should be taken to provide for an ap-
12 propriate geographic distribution of administra-
13 tive law judges throughout the United States to
14 carry out subsection (b)(3).

15 (J) HIRING.—The steps that should be
16 taken to hire administrative law judges (and
17 support staff) to carry out subsection (b)(4).

18 (K) PERFORMANCE STANDARDS.—The ap-
19 propriateness of establishing performance
20 standards for administrative law judges with re-
21 spect to timelines for decisions in cases under
22 title XVIII of the Social Security Act taking
23 into account requirements under subsection
24 (b)(2) for the independence of such judges and

1 consistent with the applicable provisions of title
2 5, United States Code relating to impartiality.

3 (L) SHARED RESOURCES.—The steps that
4 should be taken to carry out subsection (b)(6)
5 (relating to the arrangements with the Commis-
6 sioner of Social Security to share office space,
7 support staff, and other resources, with appro-
8 priate reimbursement).

9 (M) TRAINING.—The training that should
10 be provided to administrative law judges with
11 respect to laws and regulations under title
12 XVIII of the Social Security Act.

13 (3) ADDITIONAL INFORMATION.—The plan may
14 also include recommendations for further congres-
15 sional action, including modifications to the require-
16 ments and deadlines established under section 1869
17 of the Social Security Act (42 U.S.C. 1395ff) (as
18 amended by this Act).

19 (4) GAO EVALUATION.—The Comptroller Gen-
20 eral of the United States shall evaluate the plan
21 and, not later than the date that is 6 months after
22 the date on which the plan is received by the Comp-
23 troller General, shall submit to Congress a report on
24 such evaluation.

25 (b) TRANSFER OF ADJUDICATION AUTHORITY.—

1 (1) IN GENERAL.—Not earlier than July 1,
2 2005, and not later than October 1, 2005, the Com-
3 missioner of Social Security and the Secretary shall
4 implement the transition plan under subsection (a)
5 and transfer the administrative law judge functions
6 described in such subsection from the Social Secu-
7 rity Administration to the Secretary.

8 (2) ASSURING INDEPENDENCE OF JUDGES.—
9 The Secretary shall assure the independence of ad-
10 ministrative law judges performing the administra-
11 tive law judge functions transferred under para-
12 graph (1) from the Centers for Medicare & Medicaid
13 Services and its contractors. In order to assure such
14 independence, the Secretary shall place such judges
15 in an administrative office that is organizationally
16 and functionally separate from such Centers. Such
17 judges shall report to, and be under the general su-
18 pervision of, the Secretary, but shall not report to,
19 or be subject to supervision by, another officer of the
20 Department of Health and Human Services.

21 (3) GEOGRAPHIC DISTRIBUTION.—The Sec-
22 retary shall provide for an appropriate geographic
23 distribution of administrative law judges performing
24 the administrative law judge functions transferred

1 under paragraph (1) throughout the United States
2 to ensure timely access to such judges.

3 (4) HIRING AUTHORITY.—Subject to the
4 amounts provided in advance in appropriations Acts,
5 the Secretary shall have authority to hire adminis-
6 trative law judges to hear such cases, taking into
7 consideration those judges with expertise in handling
8 medicare appeals and in a manner consistent with
9 paragraph (3), and to hire support staff for such
10 judges.

11 (5) FINANCING.—Amounts payable under law
12 to the Commissioner for administrative law judges
13 performing the administrative law judge functions
14 transferred under paragraph (1) from the Federal
15 Hospital Insurance Trust Fund and the Federal
16 Supplementary Medical Insurance Trust Fund shall
17 become payable to the Secretary for the functions so
18 transferred.

19 (6) SHARED RESOURCES.—The Secretary shall
20 enter into such arrangements with the Commissioner
21 as may be appropriate with respect to transferred
22 functions of administrative law judges to share office
23 space, support staff, and other resources, with ap-
24 propriate reimbursement from the Trust Funds de-
25 scribed in paragraph (5).

1 (c) INCREASED FINANCIAL SUPPORT.—In addition to
2 any amounts otherwise appropriated, to ensure timely ac-
3 tion on appeals before administrative law judges and the
4 Departmental Appeals Board consistent with section 1869
5 of the Social Security Act (42 U.S.C. 1395ff) (as amended
6 by this Act), there are authorized to be appropriated (in
7 appropriate part from the Federal Hospital Insurance
8 Trust Fund, established under section 1817 of the Social
9 Security Act (42 U.S.C. 1395i), and the Federal Supple-
10 mentary Medical Insurance Trust Fund, established under
11 section 1841 of such Act (42 U.S.C. 1395t)) to the Sec-
12 retary such sums as are necessary for fiscal year 2005
13 and each subsequent fiscal year to—

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

16 (2) improve education and training opportuni-
17 ties for administrative law judges (and their staffs);
18 and

19 (3) increase the staff of the Departmental Ap-
20 peals Board.

21 (d) CONFORMING AMENDMENT.—Section
22 1869(f)(2)(A)(i) (42 U.S.C. 1395ff(f)(2)(A)(i)) is amend-
23 ed by striking “of the Social Security Administration”.

24 **SEC. 232. PROCESS FOR EXPEDITED ACCESS TO REVIEW.**

25 (a) EXPEDITED ACCESS TO JUDICIAL REVIEW.—

1 (1) IN GENERAL.—Section 1869(b) (42 U.S.C.
2 1395ff(b)) is amended—

3 (A) in paragraph (1)(A), by inserting “,
4 subject to paragraph (2),” before “to judicial
5 review of the Secretary’s final decision”; and

6 (B) by adding at the end the following new
7 paragraph:

8 “(2) EXPEDITED ACCESS TO JUDICIAL RE-
9 VIEW.—

10 “(A) IN GENERAL.—The Secretary shall
11 establish a process under which a provider of
12 services or supplier that furnishes an item or
13 service or an individual entitled to benefits
14 under part A or enrolled under part B, or both,
15 who has filed an appeal under paragraph (1)
16 (other than an appeal filed under paragraph
17 (1)(F)(i)) may obtain access to judicial review
18 when a review entity (described in subpara-
19 graph (D)), on its own motion or at the request
20 of the appellant, determines that the Depart-
21 mental Appeals Board does not have the au-
22 thority to decide the question of law or regula-
23 tion relevant to the matters in controversy and
24 that there is no material issue of fact in dis-
25 pute. The appellant may make such request

1 only once with respect to a question of law or
2 regulation for a specific matter in dispute in a
3 case of an appeal.

4 “(B) PROMPT DETERMINATIONS.—If, after
5 or coincident with appropriately filing a request
6 for an administrative hearing, the appellant re-
7 quests a determination by the appropriate re-
8 view entity that the Departmental Appeals
9 Board does not have the authority to decide the
10 question of law or regulations relevant to the
11 matters in controversy and that there is no ma-
12 terial issue of fact in dispute, and if such re-
13 quest is accompanied by the documents and
14 materials as the appropriate review entity shall
15 require for purposes of making such determina-
16 tion, such review entity shall make a determina-
17 tion on the request in writing within 60 days
18 after the date such review entity receives the re-
19 quest and such accompanying documents and
20 materials. Such a determination by such review
21 entity shall be considered a final decision and
22 not subject to review by the Secretary.

23 “(C) ACCESS TO JUDICIAL REVIEW.—

24 “(i) IN GENERAL.—If the appropriate
25 review entity—

1 “(I) determines that there are no
2 material issues of fact in dispute and
3 that the only issues to be adjudicated
4 are ones of law or regulation that the
5 Departmental Appeals Board does not
6 have authority to decide; or

7 “(II) fails to make such deter-
8 mination within the period provided
9 under subparagraph (B),

10 then the appellant may bring a civil action
11 as described in this subparagraph.

12 “(ii) DEADLINE FOR FILING.—Such
13 action shall be filed, in the case described
14 in—

15 “(I) clause (i)(I), within 60 days
16 of the date of the determination de-
17 scribed in such clause; or

18 “(II) clause (i)(II), within 60
19 days of the end of the period provided
20 under subparagraph (B) for the deter-
21 mination.

22 “(iii) VENUE.—Such action shall be
23 brought in the district court of the United
24 States for the judicial district in which the
25 appellant is located (or, in the case of an

1 action brought jointly by more than one
2 applicant, the judicial district in which the
3 greatest number of applicants are located)
4 or in the District Court for the District of
5 Columbia.

6 “(iv) INTEREST ON ANY AMOUNTS IN
7 CONTROVERSY.—Where a provider of serv-
8 ices or supplier is granted judicial review
9 pursuant to this paragraph, the amount in
10 controversy (if any) shall be subject to an-
11 nual interest beginning on the first day of
12 the first month beginning after the 60-day
13 period as determined pursuant to clause
14 (ii) and equal to the rate of interest on ob-
15 ligations issued for purchase by the Fed-
16 eral Supplementary Medical Insurance
17 Trust Fund for the month in which the
18 civil action authorized under this para-
19 graph is commenced, to be awarded by the
20 reviewing court in favor of the prevailing
21 party. No interest awarded pursuant to the
22 preceding sentence shall be deemed income
23 or cost for the purposes of determining re-
24 imbursement due providers of services or
25 suppliers under this title.

1 “(D) REVIEW ENTITY DEFINED.—For pur-
2 poses of this subsection, the term ‘review entity’
3 means an entity of up to three reviewers who
4 are administrative law judges or members of
5 the Departmental Appeals Board selected for
6 purposes of making determinations under this
7 paragraph.”.

8 (2) CONFORMING AMENDMENT.—Section
9 1869(b)(1)(F)(ii) (42 U.S.C. 1395ff(b)(1)(F)(ii)) is
10 amended to read as follows:

11 “(ii) REFERENCE TO EXPEDITED AC-
12 CESS TO JUDICIAL REVIEW.—For the pro-
13 vision relating to expedited access to judi-
14 cial review, see paragraph (2).”.

15 (b) APPLICATION TO PROVIDER AGREEMENT DETER-
16 MINATIONS.—Section 1866(h)(1) (42 U.S.C.
17 1395cc(h)(1)) is amended—

18 (1) by inserting “(A)” after “(h)(1)”; and

19 (2) by adding at the end the following new sub-
20 paragraph:

21 “(B) An institution or agency described in subpara-
22 graph (A) that has filed for a hearing under subparagraph
23 (A) shall have expedited access to judicial review under
24 this subparagraph in the same manner as providers of
25 services, suppliers, and individuals entitled to benefits

1 under part A or enrolled under part B, or both, may ob-
2 tain expedited access to judicial review under the process
3 established under section 1869(b)(2). Nothing in this sub-
4 paragraph shall be construed to affect the application of
5 any remedy imposed under section 1819 during the pend-
6 ency of an appeal under this subparagraph.”.

7 (c) EXPEDITED REVIEW OF CERTAIN PROVIDER
8 AGREEMENT DETERMINATIONS.—

9 (1) TERMINATION AND CERTAIN OTHER IMME-
10 DIATE REMEDIES.—Section 1866(h)(1) (42 U.S.C.
11 1395cc(h)(1)), as amended by subsection (b), is
12 amended by adding at the end the following new
13 subparagraph:

14 “(C)(i) The Secretary shall develop and implement a
15 process to expedite proceedings under this subsection in
16 which—

17 “(I) the remedy of termination of participation
18 has been imposed;

19 “(II) a remedy described in clause (i) or (iii) of
20 section 1819(h)(2)(B) has been imposed, but only if
21 such remedy has been imposed on an immediate
22 basis; or

23 “(III) a determination has been made as to a
24 finding of substandard quality of care that results in

1 the loss of approval of a skilled nursing facility's
2 nurse aide training program.

3 “(ii) Under such process under clause (i), priority
4 shall be provided in cases of termination described in
5 clause (i)(I).

6 “(iii) Nothing in this subparagraph shall be con-
7 strued to affect the application of any remedy imposed
8 under section 1819 during the pendency of an appeal
9 under this subparagraph.”.

10 (2) WAIVER OF DISAPPROVAL OF NURSE-AIDE
11 TRAINING PROGRAMS.—Sections 1819(f)(2) and sec-
12 tion 1919(f)(2) (42 U.S.C. 1395i-3(f)(2) and
13 1396r(f)(2)) are each amended—

14 (A) in subparagraph (B)(iii), by striking
15 “subparagraph (C)” and inserting “subpara-
16 graphs (C) and (D)”; and

17 (B) by adding at the end the following new
18 subparagraph:

19 “(D) WAIVER OF DISAPPROVAL OF NURSE-
20 AIDE TRAINING PROGRAMS.—Upon application
21 of a nursing facility, the Secretary may waive
22 the application of subparagraph (B)(iii)(I)(c) if
23 the imposition of the civil monetary penalty was
24 not related to the quality of care provided to
25 residents of the facility. Nothing in this sub-

1 paragraph shall be construed as eliminating any
2 requirement upon a facility to pay a civil mone-
3 tary penalty described in the preceding sen-
4 tence.”.

5 (3) INCREASED FINANCIAL SUPPORT.—In addi-
6 tion to any amounts otherwise appropriated, to re-
7 duce by 50 percent the average time for administra-
8 tive determinations on appeals under section
9 1866(h) of the Social Security Act (42 U.S.C.
10 1395cc(h)), there are authorized to be appropriated
11 (in appropriate part from the Federal Hospital In-
12 surance Trust Fund, established under section 1817
13 of the Social Security Act (42 U.S.C. 1395i), and
14 the Federal Supplementary Medical Insurance Trust
15 Fund, established under section 1841 of such Act
16 (42 U.S.C. 1395t)) to the Secretary such additional
17 sums for fiscal year 2004 and each subsequent fiscal
18 year as may be necessary. The purposes for which
19 such amounts are available include increasing the
20 number of administrative law judges (and their
21 staffs) and the appellate level staff at the Depart-
22 mental Appeals Board of the Department of Health
23 and Human Services and educating such judges and
24 staffs on long-term care issues.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to appeals filed on or after October
3 1, 2004.

4 **SEC. 233. REVISIONS TO MEDICARE APPEALS PROCESS.**

5 (a) REQUIRING FULL AND EARLY PRESENTATION OF
6 EVIDENCE.—

7 (1) IN GENERAL.—Section 1869(b) (42 U.S.C.
8 1395ff(b)), as amended by section 232(a), is further
9 amended by adding at the end the following new
10 paragraph:

11 “(3) REQUIRING FULL AND EARLY PRESEN-
12 TATION OF EVIDENCE BY PROVIDERS.—A provider
13 of services or supplier may not introduce evidence in
14 any appeal under this section that was not presented
15 at the reconsideration conducted by the qualified
16 independent contractor under subsection (c), unless
17 there is good cause which precluded the introduction
18 of such evidence at or before that reconsideration.”.

19 (2) EFFECTIVE DATE.—The amendment made
20 by paragraph (1) shall take effect on October 1,
21 2004.

22 (b) USE OF PATIENTS’ MEDICAL RECORDS.—Section
23 1869(c)(3)(B)(i) (42 U.S.C. 1395ff(c)(3)(B)(i)) is amend-
24 ed by inserting “(including the medical records of the indi-
25 vidual involved)” after “clinical experience”.

1 (c) NOTICE REQUIREMENTS FOR MEDICARE AP-
2 PEALS.—

3 (1) INITIAL DETERMINATIONS AND REDETER-
4 MINATIONS.—Section 1869(a) (42 U.S.C. 1395ff(a))
5 is amended by adding at the end the following new
6 paragraphs:

7 “(4) REQUIREMENTS OF NOTICE OF DETER-
8 MINATIONS.—With respect to an initial determina-
9 tion insofar as it results in a denial of a claim for
10 benefits—

11 “(A) the written notice on the determina-
12 tion shall include—

13 “(i) the reasons for the determination,
14 including whether a local medical review
15 policy or a local coverage determination
16 was used;

17 “(ii) the procedures for obtaining ad-
18 ditional information concerning the deter-
19 mination, including the information de-
20 scribed in subparagraph (B); and

21 “(iii) notification of the right to seek
22 a redetermination or otherwise appeal the
23 determination and instructions on how to
24 initiate such a redetermination under this
25 section;

1 “(B) such written notice shall be provided
2 in printed form and written in a manner cal-
3 culated to be understood by the individual enti-
4 tled to benefits under part A or enrolled under
5 part B, or both; and

6 “(C) the individual provided such written
7 notice may obtain, upon request, information on
8 the specific provision of the policy, manual, or
9 regulation used in making the redetermination.

10 “(5) REQUIREMENTS OF NOTICE OF REDETER-
11 MINATIONS.—With respect to a redetermination in-
12 sofar as it results in a denial of a claim for bene-
13 fits—

14 “(A) the written notice on the redeter-
15 mination shall include—

16 “(i) the specific reasons for the rede-
17 termination;

18 “(ii) as appropriate, a summary of the
19 clinical or scientific evidence used in mak-
20 ing the redetermination;

21 “(iii) a description of the procedures
22 for obtaining additional information con-
23 cerning the redetermination; and

24 “(iv) notification of the right to ap-
25 peal the redetermination and instructions

1 on how to initiate such an appeal under
2 this section;

3 “(B) such written notice shall be provided
4 in printed form and written in a manner cal-
5 culated to be understood by the individual enti-
6 tled to benefits under part A or enrolled under
7 part B, or both; and

8 “(C) the individual provided such written
9 notice may obtain, upon request, information on
10 the specific provision of the policy, manual, or
11 regulation used in making the redetermina-
12 tion.”.

13 (2) RECONSIDERATIONS.—Section
14 1869(c)(3)(E) (42 U.S.C. 1395ff(c)(3)(E)) is
15 amended—

16 (A) by inserting “be written in a manner
17 calculated to be understood by the individual
18 entitled to benefits under part A or enrolled
19 under part B, or both, and shall include (to the
20 extent appropriate)” after “in writing,”; and

21 (B) by inserting “and a notification of the
22 right to appeal such determination and instruc-
23 tions on how to initiate such appeal under this
24 section” after “such decision,”.

1 (3) APPEALS.—Section 1869(d) (42 U.S.C.
2 1395ff(d)) is amended—

3 (A) in the heading, by inserting “; NO-
4 TICE” after “SECRETARY”; and

5 (B) by adding at the end the following new
6 paragraph:

7 “(4) NOTICE.—Notice of the decision of an ad-
8 ministrative law judge shall be in writing in a man-
9 ner calculated to be understood by the individual en-
10 titled to benefits under part A or enrolled under part
11 B, or both, and shall include—

12 “(A) the specific reasons for the deter-
13 mination (including, to the extent appropriate,
14 a summary of the clinical or scientific evidence
15 used in making the determination);

16 “(B) the procedures for obtaining addi-
17 tional information concerning the decision; and

18 “(C) notification of the right to appeal the
19 decision and instructions on how to initiate
20 such an appeal under this section.”.

21 (4) SUBMISSION OF RECORD FOR APPEAL.—
22 Section 1869(c)(3)(J)(i) (42 U.S.C.
23 1395ff(c)(3)(J)(i)) is amended by striking “prepare”
24 and inserting “submit” and by striking “with re-

1 spect to” and all that follows through “and relevant
2 policies”.

3 (d) QUALIFIED INDEPENDENT CONTRACTORS.—

4 (1) ELIGIBILITY REQUIREMENTS OF QUALIFIED
5 INDEPENDENT CONTRACTORS.—Section 1869(c)(3)
6 (42 U.S.C. 1395ff(c)(3)) is amended—

7 (A) in subparagraph (A), by striking “suf-
8 ficient training and expertise in medical science
9 and legal matters” and inserting “sufficient
10 medical, legal, and other expertise (including
11 knowledge of the program under this title) and
12 sufficient staffing”; and

13 (B) by adding at the end the following new
14 subparagraph:

15 “(K) INDEPENDENCE REQUIREMENTS.—

16 “(i) IN GENERAL.—Subject to clause
17 (ii), a qualified independent contractor
18 shall not conduct any activities in a case
19 unless the entity—

20 “(I) is not a related party (as de-
21 fined in subsection (g)(5));

22 “(II) does not have a material fa-
23 miliary, financial, or professional rela-
24 tionship with such a party in relation
25 to such case; and

1 “(III) does not otherwise have a
2 conflict of interest with such a party.

3 “(ii) EXCEPTION FOR REASONABLE
4 COMPENSATION.—Nothing in clause (i)
5 shall be construed to prohibit receipt by a
6 qualified independent contractor of com-
7 pensation from the Secretary for the con-
8 duct of activities under this section if the
9 compensation is provided consistent with
10 clause (iii).

11 “(iii) LIMITATIONS ON ENTITY COM-
12 PENSATION.—Compensation provided by
13 the Secretary to a qualified independent
14 contractor in connection with reviews
15 under this section shall not be contingent
16 on any decision rendered by the contractor
17 or by any reviewing professional.”.

18 (2) ELIGIBILITY REQUIREMENTS FOR REVIEW-
19 ERS.—Section 1869 (42 U.S.C. 1395ff) is
20 amended—

21 (A) by amending subsection (c)(3)(D) to
22 read as follows:

23 “(D) QUALIFICATIONS FOR REVIEWERS.—
24 The requirements of subsection (g) shall be met

1 (relating to qualifications of reviewing profes-
2 sionals).”; and

3 (B) by adding at the end the following new
4 subsection:

5 “(g) QUALIFICATIONS OF REVIEWERS.—

6 “(1) IN GENERAL.—In reviewing determina-
7 tions under this section, a qualified independent con-
8 tractor shall assure that—

9 “(A) each individual conducting a review
10 shall meet the qualifications of paragraph (2);

11 “(B) compensation provided by the con-
12 tractor to each such reviewer is consistent with
13 paragraph (3); and

14 “(C) in the case of a review by a panel de-
15 scribed in subsection (c)(3)(B) composed of
16 physicians or other health care professionals
17 (each in this subsection referred to as a ‘review-
18 ing professional’), a reviewing professional
19 meets the qualifications described in paragraph
20 (4) and, where a claim is regarding the fur-
21 nishing of treatment by a physician (allopathic
22 or osteopathic) or the provision of items or
23 services by a physician (allopathic or osteo-
24 pathic), a reviewing professional shall be a phy-
25 sician (allopathic or osteopathic).

1 “(2) INDEPENDENCE.—

2 “(A) IN GENERAL.—Subject to subpara-
3 graph (B), each individual conducting a review
4 in a case shall—

5 “(i) not be a related party (as defined
6 in paragraph (5));

7 “(ii) not have a material familial, fi-
8 nancial, or professional relationship with
9 such a party in the case under review; and

10 “(iii) not otherwise have a conflict of
11 interest with such a party.

12 “(B) EXCEPTION.—Nothing in subpara-
13 graph (A) shall be construed to—

14 “(i) prohibit an individual, solely on
15 the basis of a participation agreement with
16 a fiscal intermediary, carrier, or other con-
17 tractor, from serving as a reviewing profes-
18 sional if—

19 “(I) the individual is not involved
20 in the provision of items or services in
21 the case under review;

22 “(II) the fact of such an agree-
23 ment is disclosed to the Secretary and
24 the individual entitled to benefits
25 under part A or enrolled under part

1 B, or both, or such individual's au-
2 thORIZED representative, and neither
3 party objects; and

4 “(III) the individual is not an
5 employee of the intermediary, carrier,
6 or contractor and does not provide
7 services exclusively or primarily to or
8 on behalf of such intermediary, car-
9 rier, or contractor;

10 “(ii) prohibit an individual who has
11 staff privileges at the institution where the
12 treatment involved takes place from serv-
13 ing as a reviewer merely on the basis of
14 having such staff privileges if the existence
15 of such privileges is disclosed to the Sec-
16 retary and such individual (or authorized
17 representative), and neither party objects;
18 or

19 “(iii) prohibit receipt of compensation
20 by a reviewing professional from a con-
21 tractor if the compensation is provided
22 consistent with paragraph (3).

23 For purposes of this paragraph, the term ‘par-
24 ticipation agreement’ means an agreement re-
25 lating to the provision of health care services by

1 the individual and does not include the provi-
2 sion of services as a reviewer under this sub-
3 section.

4 “(3) LIMITATIONS ON REVIEWER COMPENSA-
5 TION.—Compensation provided by a qualified inde-
6 pendent contractor to a reviewer in connection with
7 a review under this section shall not be contingent
8 on the decision rendered by the reviewer.

9 “(4) LICENSURE AND EXPERTISE.—Each re-
10 viewing professional shall be—

11 “(A) a physician (allopathic or osteopathic)
12 who is appropriately credentialed or licensed in
13 one or more States to deliver health care serv-
14 ices and has medical expertise in the field of
15 practice that is appropriate for the items or
16 services at issue; or

17 “(B) a health care professional who is le-
18 gally authorized in one or more States (in ac-
19 cordance with State law or the State regulatory
20 mechanism provided by State law) to furnish
21 the health care items or services at issue and
22 has medical expertise in the field of practice
23 that is appropriate for such items or services.

24 “(5) RELATED PARTY DEFINED.—For purposes
25 of this section, the term ‘related party’ means, with

1 respect to a case under this title involving a specific
2 individual entitled to benefits under part A or en-
3 rolled under part B, or both, any of the following:

4 “(A) The Secretary, the medicare adminis-
5 trative contractor involved, or any fiduciary, of-
6 ficer, director, or employee of the Department
7 of Health and Human Services, or of such con-
8 tractor.

9 “(B) The individual (or authorized rep-
10 resentative).

11 “(C) The health care professional that pro-
12 vides the items or services involved in the case.

13 “(D) The institution at which the items or
14 services (or treatment) involved in the case are
15 provided.

16 “(E) The manufacturer of any drug or
17 other item that is included in the items or serv-
18 ices involved in the case.

19 “(F) Any other party determined under
20 any regulations to have a substantial interest in
21 the case involved.”.

22 (3) REDUCING MINIMUM NUMBER OF QUALI-
23 FIED INDEPENDENT CONTRACTORS.—Section
24 1869(c)(4) (42 U.S.C. 1395ff(c)(4)) is amended by
25 striking “not fewer than 12 qualified independent

1 contractors under this subsection” and inserting “a
2 sufficient number of qualified independent contrac-
3 tors (but not fewer than 4 such contractors) to con-
4 duct reconsiderations consistent with the timeframes
5 applicable under this subsection”.

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

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

18 **SEC. 234. PREPAYMENT REVIEW.**

19 (a) IN GENERAL.—Section 1874A, as added by sec-
20 tion 211(a)(1) and as amended by sections 212(b),
21 221(b)(1), and 221(c)(1), is further amended by adding
22 at the end the following new subsection:

23 “(h) CONDUCT OF PREPAYMENT REVIEW.—

24 “(1) CONDUCT OF RANDOM PREPAYMENT RE-
25 VIEW.—

1 “(A) IN GENERAL.—A medicare adminis-
2 trative contractor may conduct random prepay-
3 ment review only to develop a contractor-wide
4 or program-wide claims payment error rates or
5 under such additional circumstances as may be
6 provided under regulations, developed in con-
7 sultation with providers of services and sup-
8 pliers.

9 “(B) USE OF STANDARD PROTOCOLS
10 WHEN CONDUCTING PREPAYMENT REVIEWS.—
11 When a medicare administrative contractor con-
12 ducts a random prepayment review, the con-
13 tractor may conduct such review only in accord-
14 ance with a standard protocol for random pre-
15 payment audits developed by the Secretary.

16 “(C) CONSTRUCTION.—Nothing in this
17 paragraph shall be construed as preventing the
18 denial of payments for claims actually reviewed
19 under a random prepayment review.

20 “(D) RANDOM PREPAYMENT REVIEW.—
21 For purposes of this subsection, the term ‘ran-
22 dom prepayment review’ means a demand for
23 the production of records or documentation ab-
24 sent cause with respect to a claim.

1 “(2) LIMITATIONS ON NON-RANDOM PREPAY-
2 MENT REVIEW.—

3 “(A) LIMITATIONS ON INITIATION OF NON-
4 RANDOM PREPAYMENT REVIEW.—A medicare
5 administrative contractor may not initiate non-
6 random prepayment review of a provider of
7 services or supplier based on the initial identi-
8 fication by that provider of services or supplier
9 of an improper billing practice unless there is a
10 likelihood of sustained or high level of payment
11 error under section 1893(f)(3)(A).

12 “(B) TERMINATION OF NON-RANDOM PRE-
13 PAYMENT REVIEW.—The Secretary shall issue
14 regulations relating to the termination, includ-
15 ing termination dates, of non-random prepay-
16 ment review. Such regulations may vary such a
17 termination date based upon the differences in
18 the circumstances triggering prepayment re-
19 view.”.

20 (b) EFFECTIVE DATE.—

21 (1) IN GENERAL.—Except as provided in this
22 subsection, the amendment made by subsection (a)
23 shall take effect 1 year after the date of the enact-
24 ment of this Act.

1 (2) DEADLINE FOR PROMULGATION OF CER-
2 TAIN REGULATIONS.—The Secretary shall first issue
3 regulations under section 1874A(h) of the Social Se-
4 curity Act, as added by subsection (a), by not later
5 than 1 year after the date of the enactment of this
6 Act.

7 (3) APPLICATION OF STANDARD PROTOCOLS
8 FOR RANDOM PREPAYMENT REVIEW.—Section
9 1874A(h)(1)(B) of the Social Security Act, as added
10 by subsection (a), shall apply to random prepayment
11 reviews conducted on or after such date (not later
12 than 1 year after the date of the enactment of this
13 Act) as the Secretary shall specify.

14 (c) APPLICATION TO FISCAL INTERMEDIARIES AND
15 CARRIERS.—The provisions of section 1874A(h) of the So-
16 cial Security Act, as added by subsection (a), shall apply
17 to each fiscal intermediary under section 1816 of the So-
18 cial Security Act (42 U.S.C. 1395h) and each carrier
19 under section 1842 of such Act (42 U.S.C. 1395u) in the
20 same manner as they apply to medicare administrative
21 contractors under such provisions.

22 **SEC. 235. RECOVERY OF OVERPAYMENTS.**

23 (a) IN GENERAL.—Section 1893 (42 U.S.C.
24 1395ddd) is amended by adding at the end the following
25 new subsection:

1 “(f) RECOVERY OF OVERPAYMENTS.—

2 “(1) USE OF REPAYMENT PLANS.—

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

20 “(B) HARDSHIP.—

21 “(i) IN GENERAL.—For purposes of
22 subparagraph (A), the repayment of an
23 overpayment (or overpayments) within 30
24 days is deemed to constitute a hardship
25 if—

1 “(I) in the case of a provider of
2 services that files cost reports, the ag-
3 gregate amount of the overpayments
4 exceeds 10 percent of the amount paid
5 under this title to the provider of
6 services for the cost reporting period
7 covered by the most recently sub-
8 mitted cost report; or

9 “(II) in the case of another pro-
10 vider of services or supplier, the ag-
11 gregate amount of the overpayments
12 exceeds 10 percent of the amount paid
13 under this title to the provider of
14 services or supplier for the previous
15 calendar year.

16 “(ii) RULE OF APPLICATION.—The
17 Secretary shall establish rules for the ap-
18 plication of this subparagraph in the case
19 of a provider of services or supplier that
20 was not paid under this title during the
21 previous year or was paid under this title
22 only during a portion of that year.

23 “(iii) TREATMENT OF PREVIOUS
24 OVERPAYMENTS.—If a provider of services
25 or supplier has entered into a repayment

1 plan under subparagraph (A) with respect
2 to a specific overpayment amount, such
3 payment amount under the repayment plan
4 shall not be taken into account under
5 clause (i) with respect to subsequent over-
6 payment amounts.

7 “(C) EXCEPTIONS.—Subparagraph (A)
8 shall not apply if—

9 “(i) the Secretary has reason to sus-
10 pect that the provider of services or sup-
11 plier may file for bankruptcy or otherwise
12 cease to do business or discontinue partici-
13 pation in the program under this title; or

14 “(ii) there is an indication of fraud or
15 abuse committed against the program.

16 “(D) IMMEDIATE COLLECTION IF VIOLA-
17 TION OF REPAYMENT PLAN.—If a provider of
18 services or supplier fails to make a payment in
19 accordance with a repayment plan under this
20 paragraph, the Secretary may immediately seek
21 to offset or otherwise recover the total balance
22 outstanding (including applicable interest)
23 under the repayment plan.

24 “(E) RELATION TO NO FAULT PROVI-
25 SION.—Nothing in this paragraph shall be con-

1 strued as affecting the application of section
2 1870(c) (relating to no adjustment in the cases
3 of certain overpayments).

4 “(2) LIMITATION ON RECOUPMENT.—

5 “(A) IN GENERAL.—In the case of a pro-
6 vider of services or supplier that is determined
7 to have received an overpayment under this title
8 and that seeks a reconsideration by a qualified
9 independent contractor on such determination
10 under section 1869(b)(1), the Secretary may
11 not take any action (or authorize any other per-
12 son, including any medicare contractor, as de-
13 fined in subparagraph (C)) to recoup the over-
14 payment until the date the decision on the re-
15 consideration has been rendered. If the provi-
16 sions of section 1869(b)(1) (providing for such
17 a reconsideration by a qualified independent
18 contractor) are not in effect, in applying the
19 previous sentence any reference to such a recon-
20 sideration shall be treated as a reference to a
21 redetermination by the fiscal intermediary or
22 carrier involved.

23 “(B) COLLECTION WITH INTEREST.—Inso-
24 far as the determination on such appeal is
25 against the provider of services or supplier, in-

1 terest on the overpayment shall accrue on and
2 after the date of the original notice of overpay-
3 ment. Insofar as such determination against the
4 provider of services or supplier is later reversed,
5 the Secretary shall provide for repayment of the
6 amount recouped plus interest at the same rate
7 as would apply under the previous sentence for
8 the period in which the amount was recouped.

9 “(C) MEDICARE CONTRACTOR DEFINED.—

10 For purposes of this subsection, the term ‘medi-
11 care contractor’ has the meaning given such
12 term in section 1889(g).

13 “(3) LIMITATION ON USE OF EXTRAPO-
14 LATION.—A medicare contractor may not use ex-
15 trapolation to determine overpayment amounts to be
16 recovered by recoupment, offset, or otherwise unless
17 the Secretary determines that—

18 “(A) there is a sustained or high level of
19 payment error; or

20 “(B) documented educational intervention
21 has failed to correct the payment error.

22 There shall be no administrative or judicial review
23 under section 1869, section 1878, or otherwise, of
24 determinations by the Secretary of sustained or high
25 levels of payment errors under this paragraph.

1 “(4) PROVISION OF SUPPORTING DOCUMENTA-
2 TION.—In the case of a provider of services or sup-
3 plier with respect to which amounts were previously
4 overpaid, a medicare contractor may request the
5 periodic production of records or supporting docu-
6 mentation for a limited sample of submitted claims
7 to ensure that the previous practice is not con-
8 tinuing.

9 “(5) CONSENT SETTLEMENT REFORMS.—

10 “(A) IN GENERAL.—The Secretary may
11 use a consent settlement (as defined in sub-
12 paragraph (D)) to settle a projected overpay-
13 ment.

14 “(B) OPPORTUNITY TO SUBMIT ADDI-
15 TIONAL INFORMATION BEFORE CONSENT SET-
16 TLEMENT OFFER.—Before offering a provider
17 of services or supplier a consent settlement, the
18 Secretary shall—

19 “(i) communicate to the provider of
20 services or supplier—

21 “(I) that, based on a review of
22 the medical records requested by the
23 Secretary, a preliminary evaluation of
24 those records indicates that there
25 would be an overpayment;

1 “(II) the nature of the problems
2 identified in such evaluation; and

3 “(III) the steps that the provider
4 of services or supplier should take to
5 address the problems; and

6 “(ii) provide for a 45-day period dur-
7 ing which the provider of services or sup-
8 plier may furnish additional information
9 concerning the medical records for the
10 claims that had been reviewed.

11 “(C) CONSENT SETTLEMENT OFFER.—The
12 Secretary shall review any additional informa-
13 tion furnished by the provider of services or
14 supplier under subparagraph (B)(ii). Taking
15 into consideration such information, the Sec-
16 retary shall determine if there still appears to
17 be an overpayment. If so, the Secretary—

18 “(i) shall provide notice of such deter-
19 mination to the provider of services or sup-
20 plier, including an explanation of the rea-
21 son for such determination; and

22 “(ii) in order to resolve the overpay-
23 ment, may offer the provider of services or
24 supplier—

1 “(I) the opportunity for a statis-
2 tically valid random sample; or

3 “(II) a consent settlement.

4 The opportunity provided under clause (ii)(I)
5 does not waive any appeal rights with respect to
6 the alleged overpayment involved.

7 “(D) CONSENT SETTLEMENT DEFINED.—

8 For purposes of this paragraph, the term ‘con-
9 sent settlement’ means an agreement between
10 the Secretary and a provider of services or sup-
11 plier whereby both parties agree to settle a pro-
12 jected overpayment based on less than a statis-
13 tically valid sample of claims and the provider
14 of services or supplier agrees not to appeal the
15 claims involved.

16 “(6) NOTICE OF OVER-UTILIZATION OF
17 CODES.—The Secretary shall establish, in consulta-
18 tion with organizations representing the classes of
19 providers of services and suppliers, a process under
20 which the Secretary provides for notice to classes of
21 providers of services and suppliers served by the con-
22 tractor in cases in which the contractor has identi-
23 fied that particular billing codes may be overutilized
24 by that class of providers of services or suppliers

1 under the programs under this title (or provisions of
2 title XI insofar as they relate to such programs).

3 “(7) PAYMENT AUDITS.—

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

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

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

24 “(ii) inform the provider of services or
25 supplier of the appeal rights under this

1 title as well as consent settlement options
2 (which are at the discretion of the Sec-
3 retary);

4 “(iii) give the provider of services or
5 supplier an opportunity to provide addi-
6 tional information to the contractor; and

7 “(iv) take into account information
8 provided, on a timely basis, by the provider
9 of services or supplier under clause (iii).

10 “(C) EXCEPTION.—Subparagraphs (A)
11 and (B) shall not apply if the provision of no-
12 tice or findings would compromise pending law
13 enforcement activities, whether civil or criminal,
14 or reveal findings of law enforcement-related
15 audits.

16 “(8) STANDARD METHODOLOGY FOR PROBE
17 SAMPLING.—The Secretary shall establish a stand-
18 ard methodology for medicare contractors to use in
19 selecting a sample of claims for review in the case
20 of an abnormal billing pattern.”.

21 (b) EFFECTIVE DATES AND DEADLINES.—

22 (1) USE OF REPAYMENT PLANS.—Section
23 1893(f)(1) of the Social Security Act, as added by
24 subsection (a), shall apply to requests for repayment

1 plans made after the date of the enactment of this
2 Act.

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

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

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

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

21 (6) NOTICE OF OVERUTILIZATION.—Not later
22 than 1 year after the date of the enactment of this
23 Act, the Secretary shall first establish the process
24 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. 236. 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 2004.

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. 237. PROCESS FOR CORRECTION OF MINOR ERRORS**
21 **AND OMISSIONS WITHOUT PURSUING AP-**
22 **PEALS PROCESS.**

23 (a) CLAIMS.—The Secretary shall develop, in con-
24 sultation with appropriate medicare contractors (as de-
25 fined in section 1889(g) of the Social Security Act, as in-

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

10 (b) DEADLINE.—Not later than 1 year after the date
 11 of the enactment of this Act, the Secretary shall first de-
 12 velop the process under subsection (a).

13 **SEC. 238. PRIOR DETERMINATION PROCESS FOR CERTAIN**
 14 **ITEMS AND SERVICES; ADVANCE BENE-**
 15 **FICIARY NOTICES.**

16 (a) IN GENERAL.—Section 1869 (42 U.S.C.
 17 1395ff(b)), as amended by section 233(d)(2)(B), is fur-
 18 ther amended by adding at the end the following new sub-
 19 section:

20 “(h) PRIOR DETERMINATION PROCESS FOR CERTAIN
 21 ITEMS AND SERVICES.—

22 “(1) ESTABLISHMENT OF PROCESS.—

23 “(A) IN GENERAL.—With respect to a
 24 medicare administrative contractor that has a
 25 contract under section 1874A that provides for

1 making payments under this title with respect
2 to physicians' services (as defined in section
3 1848(j)(3)), the Secretary shall establish a
4 prior determination process that meets the re-
5 quirements of this subsection and that shall be
6 applied by such contractor in the case of eligible
7 requesters.

8 “(B) ELIGIBLE REQUESTER.—For pur-
9 poses of this subsection, each of the following
10 shall be an eligible requester:

11 “(i) A participating physician, but
12 only with respect to physicians' services to
13 be furnished to an individual who is enti-
14 tled to benefits under this title and who
15 has consented to the physician making the
16 request under this subsection for those
17 physicians' services.

18 “(ii) An individual entitled to benefits
19 under this title, but only with respect to a
20 physicians' service for which the individual
21 receives, from a physician, an advance ben-
22 efiary notice under section 1879(a).

23 “(2) SECRETARIAL FLEXIBILITY.—The Sec-
24 retary shall establish by regulation reasonable limits
25 on the physicians' services for which a prior deter-

1 mination of coverage may be requested under this
2 subsection. In establishing such limits, the Secretary
3 may consider the dollar amount involved with re-
4 spect to the physicians' service, administrative costs
5 and burdens, and other relevant factors.

6 “(3) REQUEST FOR PRIOR DETERMINATION.—

7 “(A) IN GENERAL.—Subject to paragraph
8 (2), under the process established under this
9 subsection an eligible requester may submit to
10 the contractor a request for a determination,
11 before the furnishing of a physicians' service, as
12 to whether the physicians' service is covered
13 under this title consistent with the applicable
14 requirements of section 1862(a)(1)(A) (relating
15 to medical necessity).

16 “(B) ACCOMPANYING DOCUMENTATION.—

17 The Secretary may require that the request be
18 accompanied by a description of the physicians'
19 service, supporting documentation relating to
20 the medical necessity for the physicians' service,
21 and any other appropriate documentation. In
22 the case of a request submitted by an eligible
23 requester who is described in paragraph
24 (1)(B)(ii), the Secretary may require that the

1 request also be accompanied by a copy of the
2 advance beneficiary notice involved.

3 “(4) RESPONSE TO REQUEST.—

4 “(A) IN GENERAL.—Under such process,
5 the contractor shall provide the eligible re-
6 quester with written notice of a determination
7 as to whether—

8 “(i) the physicians’ service is so cov-
9 ered;

10 “(ii) the physicians’ service is not so
11 covered; or

12 “(iii) the contractor lacks sufficient
13 information to make a coverage determina-
14 tion with respect to the physicians’ service.

15 “(B) CONTENTS OF NOTICE FOR CERTAIN
16 DETERMINATIONS.—

17 “(i) NONCOVERAGE.—If the con-
18 tractor makes the determination described
19 in subparagraph (A)(ii), the contractor
20 shall include in the notice a brief expla-
21 nation of the basis for the determination,
22 including on what national or local cov-
23 erage or noncoverage determination (if
24 any) the determination is based, and a de-

1 description of any applicable rights under
2 subsection (a).

3 “(ii) INSUFFICIENT INFORMATION.—

4 If the contractor makes the determination
5 described in subparagraph (A)(iii), the
6 contractor shall include in the notice a de-
7 scription of the additional information re-
8 quired to make the coverage determination.

9 “(C) DEADLINE TO RESPOND.—Such no-
10 tice shall be provided within the same time pe-
11 riod as the time period applicable to the con-
12 tractor providing notice of initial determinations
13 on a claim for benefits under subsection
14 (a)(2)(A).

15 “(D) INFORMING BENEFICIARY IN CASE OF
16 PHYSICIAN REQUEST.—In the case of a request
17 by a participating physician under paragraph
18 (1)(B)(i), the process shall provide that the in-
19 dividual to whom the physicians’ service is pro-
20 posed to be furnished shall be informed of any
21 determination described in subparagraph (A)(ii)
22 (relating to a determination of non-coverage)
23 and the right (referred to in paragraph (6)(B))
24 to obtain the physicians’ service and have a
25 claim submitted for the physicians’ service.

1 “(5) BINDING NATURE OF POSITIVE DETER-
2 MINATION.—If the contractor makes the determina-
3 tion described in paragraph (4)(A)(i), such deter-
4 mination shall be binding on the contractor in the
5 absence of fraud or evidence of misrepresentation of
6 facts presented to the contractor.

7 “(6) LIMITATION ON FURTHER REVIEW.—

8 “(A) IN GENERAL.—Contractor determina-
9 tions described in paragraph (4)(A)(ii) or
10 (4)(A)(iii) (relating to pre-service claims) are
11 not subject to further administrative appeal or
12 judicial review under this section or otherwise.

13 “(B) DECISION NOT TO SEEK PRIOR DE-
14 TERMINATION OR NEGATIVE DETERMINATION
15 DOES NOT IMPACT RIGHT TO OBTAIN SERVICES,
16 SEEK REIMBURSEMENT, OR APPEAL RIGHTS.—
17 Nothing in this subsection shall be construed as
18 affecting the right of an individual who—

19 “(i) decides not to seek a prior deter-
20 mination under this subsection with re-
21 spect to physicians’ services; or

22 “(ii) seeks such a determination and
23 has received a determination described in
24 paragraph (4)(A)(ii),

1 from receiving (and submitting a claim for)
2 such physicians' services and from obtaining
3 administrative or judicial review respecting such
4 claim under the other applicable provisions of
5 this section. Failure to seek a prior determina-
6 tion under this subsection with respect to physi-
7 cians' service shall not be taken into account in
8 such administrative or judicial review.

9 “(C) NO PRIOR DETERMINATION AFTER
10 RECEIPT OF SERVICES.—Once an individual is
11 provided physicians' services, there shall be no
12 prior determination under this subsection with
13 respect to such physicians' services.”.

14 (b) EFFECTIVE DATE; SUNSET; TRANSITION.—

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

22 (2) SUNSET.—Such prior determination process
23 shall not apply to requests filed after the end of the
24 5-year period beginning on the first date on which

1 requests for determinations under such process are
2 accepted.

3 (3) TRANSITION.—During the period in which
4 the amendment made by subsection (a) has become
5 effective but contracts are not provided under sec-
6 tion 1874A of the Social Security Act with medicare
7 administrative contractors, any reference in section
8 1869(g) of such Act (as added by such amendment)
9 to such a contractor is deemed a reference to a fiscal
10 intermediary or carrier with an agreement under
11 section 1816, or contract under section 1842, re-
12 spectively, of such Act.

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

18 (c) PROVISIONS RELATING TO ADVANCE BENE-
19 FICIARY NOTICES; REPORT ON PRIOR DETERMINATION
20 PROCESS.—

21 (1) DATA COLLECTION.—The Secretary shall
22 establish a process for the collection of information
23 on the instances in which an advance beneficiary no-
24 tice (as defined in paragraph (5)) has been provided
25 and on instances in which a beneficiary indicates on

1 such a notice that the beneficiary does not intend
2 to seek to have the item or service that is the subject
3 of the notice furnished.

4 (2) OUTREACH AND EDUCATION.—The Sec-
5 retary shall establish a program of outreach and
6 education for beneficiaries and providers of services
7 and other persons on the appropriate use of advance
8 beneficiary notices and coverage policies under the
9 medicare program.

10 (3) GAO REPORT ON USE OF ADVANCE BENE-
11 FICIARY NOTICES.—Not later than 18 months after
12 the date on which section 1869(h) of the Social Se-
13 curity Act (as added by subsection (a)) takes effect,
14 the Comptroller General of the United States shall
15 submit to Congress a report on the use of advance
16 beneficiary notices under title XVIII of such Act.
17 Such report shall include information concerning the
18 providers of services and other persons that have
19 provided such notices and the response of bene-
20 ficiaries to such notices.

21 (4) GAO REPORT ON USE OF PRIOR DETER-
22 MINATION PROCESS.—Not later than 36 months
23 after the date on which section 1869(h) of the Social
24 Security Act (as added by subsection (a)) takes ef-
25 fect, the Comptroller General of the United States

1 shall submit to Congress a report on the use of the
2 prior determination process under such section. Such
3 report shall include—

4 (A) information concerning—

5 (i) the number and types of proce-
6 dures for which a prior determination has
7 been sought;

8 (ii) determinations made under the
9 process;

10 (iii) the percentage of beneficiaries
11 prevailing;

12 (iv) in those cases in which the bene-
13 ficiaries do not prevail, the reasons why
14 such beneficiaries did not prevail; and

15 (v) changes in receipt of services re-
16 sulting from the application of such pro-
17 cess;

18 (B) an evaluation of whether the process
19 was useful for physicians (and other suppliers)
20 and beneficiaries, whether it was timely, and
21 whether the amount of information required
22 was burdensome to physicians and beneficiaries;
23 and

24 (C) recommendations for improvements or
25 continuation of such process.

1 ment of this Act and shall apply to items and services fur-
2 nished on or after such date.

3 **SEC. 240. REVISIONS TO APPEALS TIMEFRAMES AND**
4 **AMOUNTS.**

5 (a) TIMEFRAMES.—Section 1869 (42 U.S.C. 1395ff)
6 is amended—

7 (1) in subsection (a)(3)(C)(ii), by striking “30-
8 day period” each place it appears and inserting “60-
9 day period”; and

10 (2) in subsection (c)(3)(C)(i), by striking “30-
11 day period” and inserting “60-day period”.

12 (b) AMOUNTS.—

13 (1) IN GENERAL.—Section 1869(b)(1)(E) (42
14 U.S.C. 1395ff(b)(1)(E)) is amended by adding at
15 the end the following new clause:

16 “(iii) ADJUSTMENT OF DOLLAR
17 AMOUNTS.—For requests for hearings or
18 judicial review made in a year after 2004,
19 the dollar amounts specified in clause (i)
20 shall be equal to such dollar amounts in-
21 creased by the percentage increase in the
22 medical care component of the consumer
23 price index for all urban consumers (U.S.
24 city average) for July 2003 to the July
25 preceding the year involved. Any amount

1 determined under the previous sentence
2 that is not a multiple of \$10 shall be
3 rounded to the nearest multiple of \$10.”.

4 (2) CONFORMING AMENDMENTS.—(A) Section
5 1852(g)(5) (42 U.S.C. 1395w–22(g)(5)) is amended
6 by adding at the end the following: “The provisions
7 of section 1869(b)(1)(E)(iii) shall apply with respect
8 to dollar amounts specified in the first 2 sentences
9 of this paragraph in the same manner as they apply
10 to the dollar amounts specified in section
11 1869(b)(1)(E)(i).”.

12 (B) Section 1876(b)(5)(B) (42 U.S.C.
13 1395mm(b)(5)(B)) is amended by adding at the end
14 the following: “The provisions of section
15 1869(b)(1)(E)(iii) shall apply with respect to dollar
16 amounts specified in the first 2 sentences of this
17 subparagraph in the same manner as they apply to
18 the dollar amounts specified in section
19 1869(b)(1)(E)(i).”.

20 **SEC. 241. MEDIATION PROCESS FOR LOCAL COVERAGE DE-**
21 **TERMINATIONS.**

22 (a) IN GENERAL.—Section 1869 (42 U.S.C. 1395ff),
23 as amended by section 238(a), is amended by adding at
24 the end the following new subsection:

1 “(i) MEDIATION PROCESS FOR LOCAL COVERAGE
2 DETERMINATIONS.—

3 “(1) ESTABLISHMENT OF PROCESS.—The Sec-
4 retary shall establish a mediation process under this
5 subsection through the use of a physician trained in
6 mediation and employed by the Centers for Medicare
7 & Medicaid Services.

8 “(2) RESPONSIBILITY OF MEDIATOR.—Under
9 the process established in paragraph (1), such a me-
10 diator shall mediate in disputes between groups rep-
11 resenting providers of services, suppliers (as defined
12 in section 1861(d)), and the medical director for a
13 medicare administrative contractor whenever the re-
14 gional administrator (as defined by the Secretary)
15 involved determines that there was a systematic pat-
16 tern and a large volume of complaints from such
17 groups regarding decisions of such director or there
18 is a complaint from the co-chair of the advisory com-
19 mittee for that contractor to such regional adminis-
20 trator regarding such dispute.”.

21 (b) INCLUSION IN MAC CONTRACTS.—Section
22 1874A(b)(3)(A)(i), as added by section 211(a)(1), is
23 amended by adding at the end the following: “Such re-
24 quirements shall include specific performance duties ex-
25 pected of a medical director of a medicare administrative

1 contractor, including requirements relating to professional
2 relations and the availability of such director to conduct
3 medical determination activities within the jurisdiction of
4 such a contractor.”.

○