

# Calendar No. 317

114TH CONGRESS  
1ST SESSION

# S. 2368

[Report No. 114-177]

To amend title XVIII of the Social Security Act to improve the efficiency of the Medicare appeals process, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

DECEMBER 8, 2015

Mr. HATCH, from the Committee on Finance, reported the following original bill; which was read twice and placed on the calendar

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## A BILL

To amend title XVIII of the Social Security Act to improve the efficiency of the Medicare appeals process, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Audit & Appeals Fairness, Integrity, and Reforms in  
6 Medicare Act of 2015” or the “AFIRM Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Increased resources for the Office of Medicare Hearings and Appeals and the Departmental Appeals Board.
- Sec. 3. Establishment of Medicare magistrate review and revision of amount in controversy thresholds.
- Sec. 4. Remanding appeals to the redetermination level with the introduction of new evidence.
- Sec. 5. Expedited access to appeals.
- Sec. 6. Authority to use sampling and extrapolation methodologies and to consolidate appeals for administrative efficiency.
- Sec. 7. Identification and referral of fraud.
- Sec. 8. Study to assess hearing participation.
- Sec. 9. Improvements to the Office of Medicare Hearings and Appeals.
- Sec. 10. Review program improvements.
- Sec. 11. Creation of Medicare Provider and Supplier Ombudsman for Reviews and Appeals.
- Sec. 12. Limiting the audit and recovery period for patient status reviews.
- Sec. 13. Incentives and disincentives for Medicare contractors, providers, and suppliers.

3 **SEC. 2. INCREASED RESOURCES FOR THE OFFICE OF MEDI-**  
 4 **CARE HEARINGS AND APPEALS AND THE DE-**  
 5 **PARTMENTAL APPEALS BOARD.**

6 (a) IN GENERAL.—For fiscal year 2016 and for each  
 7 fiscal year thereafter, for purposes of conducting reviews,  
 8 hearings, and appeals under title XVIII of the Social Se-  
 9 curity Act, the Secretary of Health and Human Services  
 10 shall provide for the transfer from the Federal Hospital  
 11 Insurance Trust Fund under section 1817 of such Act (42  
 12 U.S.C. 1395i) and the Federal Supplementary Insurance  
 13 Trust Fund under section 1841 of such Act (42 U.S.C.  
 14 1395t), in such proportion as the Secretary may deter-  
 15 mine, of—

1           (1) \$125,000,000 to the Office of Medicare  
2           Hearings and Appeals; and

3           (2) \$2,000,000 to the Departmental Appeals  
4           Board of the Department of Health and Human  
5           Services.

6           Amounts transferred under the preceding sentence shall  
7           be in addition to any other amounts that may be available  
8           for such purposes and shall remain available until ex-  
9           pended.

10          (b) GAO STUDY AND REPORT.—

11           (1) STUDY.—The Comptroller General of the  
12           United States shall conduct a study of the use of the  
13           amount made available to the Office of Medicare  
14           Hearings and Appeals under subsection (a) to deter-  
15           mine whether the availability of such amounts led to  
16           any improvements in the Medicare appeals program,  
17           such as an increased number of appeals processed or  
18           a decrease in the time required to process an appeal.

19           (2) REPORT.—Not later than December 31,  
20           2018, the Comptroller General of the United States  
21           shall submit a report to Congress on the study re-  
22           quired under paragraph (1), together with rec-  
23           ommendations for such legislative and administrative  
24           actions as the Comptroller General determines ap-  
25           propriate.

1 **SEC. 3. ESTABLISHMENT OF MEDICARE MAGISTRATE RE-**  
 2 **VIEW AND REVISION OF AMOUNT IN CON-**  
 3 **TROVERSY THRESHOLDS.**

4 (a) ESTABLISHMENT OF MEDICARE MAGISTRATE  
 5 PROGRAM.—

6 (1) IN GENERAL.—Section 1869(b) of the So-  
 7 cial Security Act (42 U.S.C. 1395ff(b)) is amended  
 8 by adding at the end the following new paragraph:

9 “(4) CONDUCT OF REVIEWS BY MEDICARE MAG-  
 10 ISTRATES.—

11 “(A) IN GENERAL.—The Secretary shall  
 12 establish within the Office of Medicare Hear-  
 13 ings and Appeals decision-making officials to be  
 14 known as Medicare magistrates.

15 “(B) MEDICARE MAGISTRATE DEFINED.—  
 16 For purposes of this section, the term ‘Medicare  
 17 magistrate’ means an attorney who is licensed  
 18 by a State, has expertise in this title (including  
 19 regulations and policies promulgated there-  
 20 under), meets such other qualifications as the  
 21 Secretary shall require, and who performs re-  
 22 views and renders decisions in appeals described  
 23 in paragraph (1)(E)(i)(II).

24 “(C) REQUIREMENTS FOR REVIEWS CON-  
 25 DUCTED BY MAGISTRATES.—The provisions of  
 26 this subsection and subsection (d) that govern

1           hearings and decisions by administrative law  
2           judges (including provisions related to reviews  
3           of decisions by administrative law judges by the  
4           Departmental Appeals Board of the Depart-  
5           ment of Health and Human Services) shall  
6           apply to reviews and decisions by Medicare  
7           magistrates in the same manner and to the  
8           same extent as such provisions apply to hear-  
9           ings and decisions by an administrative law  
10          judge. The Secretary may establish by regula-  
11          tion such other requirements and procedures as  
12          may be necessary so that reviews by Medicare  
13          magistrates are resolved fairly, efficiently, and  
14          expeditiously.”.

15           (2) CONFORMING AMENDMENT.—Section  
16          1869(b)(1)(A) of the Social Security Act (42 U.S.C.  
17          1395ff(b)(1)(A)) is amended by inserting “and para-  
18          graph (4)” after “subject to subparagraphs (D) and  
19          (E)”.

20          (b) AMOUNT IN CONTROVERSY THRESHOLDS.—

21           (1) IN GENERAL.—Section 1869(b)(1)(E) of the  
22          Social Security Act (42 U.S.C. 1395ff(b)(1)(E)) is  
23          amended—

24                   (A) by striking clause (i) and inserting the  
25                   following:

1           “(i) IN GENERAL.—Except as other-  
2 wise provided in this section, subject to  
3 clause (iii)—

4           “(I) a review by a Medicare mag-  
5 istrate under paragraph (4), or a  
6 hearing by an administrative law  
7 judge under this subsection or sub-  
8 section (d), shall not be available to  
9 an individual if the amount in con-  
10 troversy is less than \$150;

11           “(II) a review by a Medicare  
12 magistrate under paragraph (4) shall  
13 be available to an individual if the  
14 amount in controversy is equal to or  
15 greater than the amount specified in  
16 subclause (I) but less than the  
17 amount specified in subclause (III);  
18 and

19           “(III) a hearing by an adminis-  
20 trative law judge shall be available to  
21 an individual under this subsection or  
22 subsection (d) if the amount in con-  
23 troversy is equal to or greater than  
24 \$1,500.”;

25           (B) in clause (iii)—

1 (i) by striking “For requests for hear-  
2 ings” and inserting “For requests for  
3 Medicare magistrate reviews, hearings,”;

4 (ii) by striking “2004” and inserting  
5 “2017”; and

6 (iii) by striking “2003” and inserting  
7 “2016”; and

8 (C) by adding at the end the following new  
9 clause:

10 “(iv) JUDICIAL REVIEW.—Judicial re-  
11 view shall not be available to an individual  
12 under this section if the amount in con-  
13 troversy is less than the amount specified  
14 in clause (i)(III).”.

15 (2) CONFORMING AMENDMENTS.—

16 (A) Section 1155 of the Social Security  
17 Act (42 U.S.C. 1320c–4) is amended—

18 (i) in the second sentence, by striking  
19 “\$200 or more” and inserting “equal to or  
20 greater than the amount specified in sec-  
21 tion 1869(b)(1)(E)(i)(III)”;

22 (ii) in the fourth sentence, by striking  
23 “\$2,000 or more” and inserting “equal to  
24 or greater than the amount specified in  
25 section 1869(b)(1)(E)(i)(III)”;

1 (iii) by adding at the end the fol-  
2 lowing new sentences: “Where the amount  
3 in controversy is equal to or greater than  
4 the amount specified in subclause (I) of  
5 section 1869(b)(1)(E)(i) but less than the  
6 amount specified in subclause (III) of such  
7 section, such beneficiary shall be entitled  
8 to a review by a Medicare magistrate in ac-  
9 cordance with procedures established by  
10 the Secretary pursuant to section 1869.  
11 The provisions of section  
12 1869(b)(1)(E)(iii) shall apply with respect  
13 to the dollar amounts referred to in this  
14 section in the same manner as they apply  
15 to the dollar amounts specified in section  
16 1869(b)(1)(E)(i).”.

17 (B) Section 1852(g)(5) of the Social Secu-  
18 rity Act (42 U.S.C. 1395w-22(g)(5)) is amend-  
19 ed—

20 (i) in the first sentence, by striking  
21 “\$100 or more” and inserting “equal to or  
22 greater than the amount specified in sec-  
23 tion 1869(b)(1)(E)(i)(III)”;

24 (ii) in the second sentence, by striking  
25 “\$1,000 or more” and inserting “equal to



1 or greater than the amount specified in  
2 section 1869(b)(1)(E)(i)(III)”;

3 (iii) by inserting after the second sen-  
4 tence the following new sentence: “If the  
5 amount in controversy is equal to or great-  
6 er than the amount specified in subclause  
7 (I) of section 1869(b)(1)(E)(i) but less  
8 than the amount specified in subclause  
9 (III) of such section, such enrollee shall be  
10 entitled to review by a Medicare magistrate  
11 in accordance with procedures established  
12 by the Secretary pursuant to section  
13 1869.”; and

14 (iv) in the last sentence, by striking  
15 “the first 2 sentences of”.

16 (C) Section 1876(c)(5)(B) of the Social  
17 Security Act (42 U.S.C. 1395mm(e)(5)(B)) is  
18 amended—

19 (i) in the first sentence, by striking  
20 “\$100 or more” and inserting “equal to or  
21 greater than the amount specified in sec-  
22 tion 1869(b)(1)(E)(i)(III)”;

23 (ii) in the second sentence, by striking  
24 “\$1,000 or more” and inserting “equal to

1 or greater than the amount specified in  
2 section 1869(b)(1)(E)(i)(III)”;

3 (iii) by inserting after the second sen-  
4 tence the following new sentence: “If the  
5 amount in controversy is equal to or great-  
6 er than the amount specified in subclause  
7 (I) of section 1869(b)(1)(E)(i) but less  
8 than the amount specified in subclause  
9 (III) of such section, such member shall be  
10 entitled to review by a Medicare magistrate  
11 in accordance with procedures established  
12 by the Secretary pursuant to section  
13 1869.”; and

14 (iv) in the last sentence, by striking  
15 “the first 2 sentences of”.

16 (c) CALCULATION OF AMOUNT IN CONTROVERSY FOR  
17 THE AGGREGATION OF CLAIMS.—Section  
18 1869(b)(1)(E)(ii) of the Social Security Act (42 U.S.C.  
19 1395ff(b)(1)(E)(ii)) is amended—

20 (1) by redesignating subclauses (I) and (II) as  
21 items (aa) and (bb), respectively, and indenting ap-  
22 propriately;

23 (2) in the matter preceding item (aa), as so re-  
24 designated, by striking “if the appeals involve” and  
25 inserting the following: “if—

1 “(I) the appeals involve—”;  
 2 (3) in item (bb), as so redesignated, by striking  
 3 the period at the end and inserting “; and”; and  
 4 (4) by adding at the end the following new sub-  
 5 clause:

6 “(II) all claims that an individual  
 7 seeks to aggregate are included in the  
 8 same request for an aggregated ap-  
 9 peal.”.

10 (d) EFFECTIVE DATE.—The amendments made by  
 11 this section shall take effect on January 1, 2017.

12 **SEC. 4. REMANDING APPEALS TO THE REDETERMINATION**  
 13 **LEVEL WITH THE INTRODUCTION OF NEW**  
 14 **EVIDENCE.**

15 (a) IN GENERAL.—Section 1869(b)(3) of the Social  
 16 Security Act (42 U.S.C. 1395ff(b)(3)) is amended by  
 17 striking “A provider of services” and all that follows  
 18 through the period and inserting the following new sub-  
 19 paragraphs:

20 “(A) REMAND UPON SUBMISSION OF NEW  
 21 EVIDENCE.—

22 “(i) IN GENERAL.—Except as pro-  
 23 vided in subparagraph (B), when a party  
 24 to an appeal, other than an individual enti-  
 25 tled to, or enrolled for, benefits under part

1 A or enrolled under part B or the Centers  
2 for Medicare & Medicaid Services or its  
3 contractors, introduces new evidence into  
4 the administrative record at a reconsideration  
5 conducted by a qualified independent  
6 contractor under subsection (c) or at any  
7 subsequent, higher level of appeal, the appeal  
8 shall be remanded for a de novo redetermination  
9 under subsection (a)(3), and  
10 any prior decisions (other than the initial  
11 determination made by the Secretary pursuant  
12 to subsection (a)(1)) on this appeal  
13 shall be vacated.

14 “(ii) REQUIREMENTS.—For purposes  
15 of clause (i), except to the extent otherwise  
16 provided by the Secretary in regulations,  
17 the provisions that apply to redeterminations  
18 under subsection (a) and this subsection  
19 shall apply to redeterminations of  
20 appeals that are remanded.

21 “(B) EXCEPTIONS.—The provisions of  
22 subparagraph (A) shall not apply in instances  
23 where an adjudicator determines that introduction  
24 of new evidence is justified due to—

1 “(i) an inadvertent omission or erro-  
2 neous decision by a lower-level adjudicator  
3 to omit the evidence from the administra-  
4 tive record when that evidence was timely  
5 submitted to the lower-level adjudicator by  
6 a party to the appeal;

7 “(ii) a decision by a lower-level adju-  
8 dicator to issue an unfavorable decision  
9 based on new or different grounds than  
10 were previously adjudicated; or

11 “(iii) such other circumstances for  
12 good cause as the Secretary may establish.

13 “(C) NO APPEAL.—A decision to remand  
14 an appeal under this paragraph shall not be  
15 subject to appeal.”.

16 (b) EFFECTIVE DATE.—The amendments made by  
17 this section shall take effect on January 1, 2017.

18 **SEC. 5. EXPEDITED ACCESS TO APPEALS.**

19 (a) IN GENERAL.—Section 1869(b)(1) of the Social  
20 Security Act (42 U.S.C. 1395ff(b)(1)) is amended by add-  
21 ing at the end the following new subparagraph:

22 “(H) EXPEDITED ACCESS TO APPEALS.—

23 “(i) DECISION ON THE RECORD.—Not  
24 later than January 1, 2017, the Secretary  
25 shall establish by regulation and implement

1 a process authorizing an administrative  
2 law judge reviewing a decision pursuant to  
3 this subsection or subsection (d) to issue a  
4 decision on the record in cases where,  
5 based on the evidence of record, there are  
6 no material issues of fact in dispute and  
7 the administrative law judge determines  
8 that there is a binding authority that con-  
9 trols the decision in the matter under re-  
10 view.

11 “(ii) EXPEDITED ACCESS TO JUDICIAL  
12 REVIEW NOT REQUESTED BY APPEL-  
13 LANT.—The Secretary shall by regulation  
14 establish a process authorizing an adminis-  
15 trative law judge reviewing a decision pur-  
16 suant to this subsection or subsection (d)  
17 to certify the appeal for expedited access to  
18 judicial review where—

19 “(I) the appellant does not re-  
20 quest expedited access to judicial re-  
21 view pursuant to paragraph (2);

22 “(II) there are no material issues  
23 of fact in dispute; and

24 “(III) neither the administrative  
25 law judge nor the Departmental Ap-

1 peals Board has authority to decide  
2 the questions of law or regulation rel-  
3 evant to the matters in controversy.

4 “(iii) APPLICATION OF HEARING  
5 RULES TO DECISIONS ON THE RECORD.—

6 The provisions of subsection (d) that gov-  
7 ern hearings by administrative law judges  
8 shall apply to a decision issued by an ad-  
9 ministrative law judge without a hearing  
10 pursuant to clause (i) in the same manner  
11 and to the same extent as such provisions  
12 apply to a hearing by an administrative  
13 law judge.

14 “(iv) EFFECT OF CERTIFICATION FOR  
15 JUDICIAL REVIEW.—Notwithstanding sub-  
16 section (d)(2), a decision to certify an ap-  
17 peal pursuant to clause (ii) shall not be  
18 subject to further review by the Secretary  
19 and shall be deemed a final decision by the  
20 Secretary as provided in section 205(g) (as  
21 applied to this section) for purposes of de-  
22 termining an individual’s entitlement to ju-  
23 dicial review.”.

24 (b) CONFORMING AMENDMENTS.—

1           (1) Section 1155 of the Social Security Act (42  
2 U.S.C. 1320c-4), as amended by section 3(b)(2)(A),  
3 is amended—

4           (A) in the second sentence, by striking  
5 “Where” and inserting “Subject to the suc-  
6 ceeding sentences of this section, where”; and

7           (B) by adding at the end the following new  
8 sentence: “The provisions of subparagraph (H)  
9 of section 1869(b)(1) shall apply with respect to  
10 decisions by an administrative law judge under  
11 this section in the same manner as they apply  
12 to decisions by an administrative law judge  
13 under such subparagraph (H).”.

14           (2) Section 1852(g)(5) of the Social Security  
15 Act (42 U.S.C. 1395w-22(g)(5)), as amended by  
16 section 3(b)(2)(B), is amended—

17           (A) in the first sentence, by striking “An  
18 enrollee” and inserting “Subject to the suc-  
19 ceeding sentences of this paragraph, an en-  
20 rollee”; and

21           (B) by adding at the end the following new  
22 sentence: “The provisions of subparagraph (H)  
23 of section 1869(b)(1) shall apply with respect to  
24 decisions by an administrative law judge under  
25 this paragraph in the same manner as they



1 apply to decisions by an administrative law  
2 judge under such subparagraph (H).”.

3 (3) Section 1869(b)(1)(A) of the Social Secu-  
4 rity Act (42 U.S.C. 1395ff(b)(1)(A)), as amended by  
5 section 3(a)(2), is amended by striking “subpara-  
6 graphs (D) and (E)” and inserting “subparagraphs  
7 (D), (E), and (H)”.

8 (4) Section 1876(c)(5)(B) of the Social Security  
9 Act (42 U.S.C. 1395mm(c)(5)(B)), as amended by  
10 section 3(b)(2)(C), is amended—

11 (A) in the first sentence, by striking “A  
12 member” and inserting “Subject to the suc-  
13 ceeding sentences of this subparagraph, a mem-  
14 ber”; and

15 (B) by adding at the end the following new  
16 sentence: “The provisions of subparagraph (H)  
17 of section 1869(b)(1) shall apply with respect to  
18 decisions by an administrative law judge under  
19 this subparagraph in the same manner as they  
20 apply to decisions by an administrative law  
21 judge under such subparagraph (H).”.

22 (c) EFFECTIVE DATE.—The amendments made by  
23 subsections (a) and (b) shall take effect on the date of  
24 the enactment of this Act and shall apply to cases that  
25 are pending as of such date.

1 **SEC. 6. AUTHORITY TO USE SAMPLING AND EXTRAPO-**  
 2 **LATION METHODOLOGIES AND TO CONSOLI-**  
 3 **DATE APPEALS FOR ADMINISTRATIVE EFFI-**  
 4 **CIENCY.**

5 (a) IN GENERAL.—Section 1869 of the Social Secu-  
 6 rity Act (42 U.S.C. 1395ff) is amended by adding at the  
 7 end the following new subsection:

8 “(j) **AUTHORITIES TO PROMOTE ADMINISTRATIVE**  
 9 **EFFICIENCIES.**—

10 “(1) **AUTHORITY TO CONSOLIDATE APPEALS.**—

11 “(A) IN GENERAL.—Any individual or en-  
 12 tity conducting redeterminations, reconsider-  
 13 ations, reviews, or hearings under subsection  
 14 (a)(3), (b), (c), or (d) (in this section, referred  
 15 to as an ‘adjudicator’) may consolidate pending  
 16 requests for review into a single action, and  
 17 may issue a single decision, or separate deci-  
 18 sions, with respect to such review requests—

19 “(i) if such requests involve one or  
 20 more common questions of fact or law for  
 21 similar claims submitted by the same indi-  
 22 vidual or entity;

23 “(ii) if such requests involve claims  
 24 that were included within a statistical sam-  
 25 ple during the initial determination or any  
 26 previous level of appeal;

1           “(iii) if the appellant requests aggreg-  
2           gation of two or more claims under sub-  
3           section (b)(1)(E)(ii); or

4           “(iv) in any other case in which the  
5           adjudicator determines that consolidation  
6           would promote administrative efficiency,  
7           consistent with such standards as the Sec-  
8           retary shall establish by regulation.

9           “(B) DEADLINES.—The Secretary may es-  
10          tablish the applicable timeframe for requesting  
11          consolidations and for issuing decisions on ap-  
12          peals that have been consolidated.

13          “(2) REQUIREMENTS FOR CLAIMS THAT WERE  
14          INCLUDED IN AN EXTRAPOLATED OVERPAYMENT OR  
15          PREVIOUSLY CONSOLIDATED.—An individual or enti-  
16          ty requesting a redetermination, reconsideration, re-  
17          view or hearing under subsection (a)(3), (b), (c), or  
18          (d) with respect to two or more claims that were in-  
19          cluded in an extrapolated overpayment, or claims  
20          that were consolidated into a single appeal at a  
21          lower-level adjudication under this section, must sub-  
22          mit a single request for review or hearing with re-  
23          spect to such claims in order to be entitled to a re-  
24          view or hearing.

1           “(3) AUTHORITY TO USE STATISTICAL SAM-  
2           PLING AND EXTRAPOLATION METHODOLOGIES IN  
3           ADJUDICATIONS.—With the consent of the appellant,  
4           an adjudicator may use statistical sampling and ex-  
5           trapolation methodologies in reaching a decision with  
6           respect to a claim or claims for benefits for items or  
7           services furnished under part A or B. When an ap-  
8           peal involves a decision that was based on a statis-  
9           tical sample at the lower level, the adjudicator’s de-  
10          cision shall be based on the same statistical sam-  
11          ple.”.

12          (b) EFFECTIVE DATE.—The amendments made by  
13          this section shall apply to requests for review that are  
14          pending at any level of appeal as of the date of the enact-  
15          ment of this Act and to those filed after such date.

16          **SEC. 7. IDENTIFICATION AND REFERRAL OF FRAUD.**

17          Not later than January 1, 2017, the Secretary of  
18          Health and Human Services, in consultation with the In-  
19          specter General of the Department of Health and Human  
20          Services and the Attorney General of the United States,  
21          shall establish and implement a process under which the  
22          Office of Medicare Hearings and Appeals and the Depart-  
23          mental Appeals Board of the Department of Health and  
24          Human Services shall refer cases in which there is a cred-  
25          ible suspicion of fraudulent activity to appropriate law en-

1 enforcement agencies and to the Centers for Medicare &  
2 Medicaid Services.

3 **SEC. 8. STUDY TO ASSESS HEARING PARTICIPATION.**

4 (a) STUDY.—Not later than January 1, 2017, the  
5 Secretary of Health and Human Services shall conduct a  
6 study to determine whether it would be feasible to increase  
7 the participation, with respect to hearings conducted by  
8 the Office of Medicare Hearings and Appeals, of—

9 (1) the Centers for Medicare & Medicaid Serv-  
10 ices;

11 (2) entities serving as qualified independent  
12 contractors under section 1869(c) of the Social Se-  
13 curity Act (42 U.S.C. 1395ff(c));

14 (3) entities serving as medicare administrative  
15 contractors under section 1874A of such Act (42  
16 U.S.C. 1395kk-1);

17 (4) entities services as recovery audit contrac-  
18 tors under section 1893(h) of such Act (42 U.S.C.  
19 1395ddd(h)); and

20 (5) other Medicare claims review entities deter-  
21 mined appropriate by the Secretary.

22 (b) REPORT.—Not later than 1 year after the date  
23 of the enactment of this Act, the Secretary of Health and  
24 Human Services shall publish a report containing the re-  
25 sults of the study required under subsection (a) on the

1 Internet website of the Department of Health and Human  
2 Services.

3 **SEC. 9. IMPROVEMENTS TO THE OFFICE OF MEDICARE**  
4 **HEARINGS AND APPEALS.**

5 (a) TRAINING FOR ALJS AND MEDICARE MAG-  
6 ISTRATES.—Section 1869(e)(3) of the Social Security Act  
7 (42 U.S.C. 1395ff(e)(3)) is amended—

8 (1) in the paragraph heading, by striking “AND  
9 ADMINISTRATIVE LAW JUDGES” and inserting “, AD-  
10 MINISTRATIVE LAW JUDGES, AND MEDICARE MAG-  
11 ISTRATES; ANNUAL TRAINING FOR ADMINISTRATIVE  
12 LAW JUDGES AND MEDICARE MAGISTRATES”;

13 (2) by striking “The Secretary” and inserting  
14 the following:

15 “(A) CONTINUING EDUCATION REQUIRE-  
16 MENT.—The Secretary”;

17 (3) by inserting “and, beginning in 2017, to  
18 Medicare magistrates” after “administrative law  
19 judges” the first place it appears;

20 (4) by striking “and administrative law judges”  
21 and inserting “, administrative law judges, and  
22 Medicare magistrates”; and

23 (5) by adding at the end the following new sub-  
24 paragraph:

1           “(B) ANNUAL TRAINING.—Beginning with  
2           2017, each year the Secretary shall provide to  
3           each administrative law judge and Medicare  
4           magistrate within the Office of Medicare Hear-  
5           ings and Appeals training on Medicare policies,  
6           including any policies that were changed or in-  
7           stituted in the previous year.”.

8           (b) TREATMENT OF QIC DECISIONS.—Section  
9           1869(d)(4) of the Social Security Act (42 U.S.C.  
10          1395ff(d)(4)) is amended—

11           (1) in subparagraph (B), by striking “and” at  
12          the end;

13           (2) in subparagraph (C), by striking the period  
14          at the end and inserting “; and”; and

15           (3) by adding at the end the following new sub-  
16          paragraph:

17           “(D) in the case of a review conducted on  
18          or after January 1, 2017, of a decision by a  
19          qualified independent contractor in which the  
20          administrative law judge reaches a different de-  
21          cision than the qualified independent con-  
22          tractor, the reasons why the decision of the ad-  
23          ministrative law judge differs from the decision  
24          of the qualified independent contractor.”.

1 (c) PUBLICATION OF APPEALS INFORMATION.—Sec-  
2 tion 1869(e) of the Social Security Act (42 U.S.C.  
3 1395ff(e)) is amended by adding at the end the following  
4 new paragraph:

5 “(5) PUBLICATION OF APPEALS INFORMA-  
6 TION.—Not later than January 1, 2017, and annu-  
7 ally thereafter, the Secretary of Health and Human  
8 Services shall publish and maintain on the Internet  
9 website of the Department of Health and Human  
10 Services the following information, which may be ef-  
11 fectuated through the use of statistical sampling, re-  
12 garding appeals heard by the Office of Medicare  
13 Hearings and Appeals for each fiscal year:

14 “(A) The percentage of appeals that re-  
15 ceived fully favorable, partially favorable, and  
16 unfavorable decisions.

17 “(B) For each administrative law judge,  
18 the percentage of appeals that received fully fa-  
19 vorable, partially favorable, and unfavorable de-  
20 cisions.

21 “(C) For each type of service, the percent-  
22 age of appeals that received fully favorable, par-  
23 tially favorable, and unfavorable decisions.



1           “(D) The average length of time elapsed  
2           between the initial request for review and a  
3           final decision.

4           “(E) Such other information as the Sec-  
5           retary determines necessary to ensure greater  
6           transparency for the Office of Medicare Hear-  
7           ings and Appeals.”.

8           (d) GAO REVIEW OF CONSISTENCY OF OMHA DECI-  
9           SIONS.—

10           (1) STUDY.—

11           (A) IN GENERAL.—The Comptroller Gen-  
12           eral of the United States shall conduct a study  
13           of decisions rendered by the Office of Medicare  
14           Hearings and Appeals to determine the fre-  
15           quency with which decisions by administrative  
16           law judges or Medicare magistrates—

17                   (i) diverge from the interpretation of  
18                   Medicare policy and program instruction of  
19                   the Centers for Medicare & Medicaid Serv-  
20                   ices;

21                   (ii) demonstrate significant variation  
22                   in the interpretation of similar Medicare  
23                   policies or instructions; and

24                   (iii) fail to apply applicable Medicare  
25                   law, regulation, policy, or instruction.

1 (B) METHODOLOGY.—In conducting the  
2 study required under this paragraph, the Comptroller General of the United States shall focus  
3 on decisions rendered by the Office of Medicare  
4 Hearings and Appeals not less than 1 year  
5 after the date of the enactment of this Act and,  
6 if the Comptroller so chooses, may use sampling  
7 to identify decisions to evaluate.  
8

9 (2) REPORT.—Not later than January 1, 2018,  
10 the Comptroller General of the United States shall  
11 submit a report to Congress on the study required  
12 under paragraph (1), together with recommenda-  
13 tions for such legislative and administrative actions  
14 as the Comptroller General determines appropriate.

15 (e) IDENTIFICATION OF INCONSISTENT INTERPRETA-  
16 TIONS OF POLICIES ACROSS REVIEW ENTITIES.—Not  
17 later than January 1, 2017, the Secretary of Health and  
18 Human Services shall establish and implement a process  
19 for identifying policies or coverage determinations relating  
20 to title XVIII of the Social Security Act that are most  
21 frequently interpreted and applied differently by review  
22 entities, Medicare magistrates, administrative law judges,  
23 or the Department Appeals Board of the Department of  
24 Health and Human Services. As a part of such process,  
25 the Secretary shall, where appropriate, issue guidance or

1 take other administrative action to clarify how a policy or  
2 coverage decision should be interpreted in order to prevent  
3 future conflicting interpretations.

4 (f) STUDY AND REPORT ON ADMINISTRATIVE LAW  
5 JUDGE SPECIALIZATION.—

6 (1) STUDY.—The Secretary of Health and  
7 Human Services shall conduct a study to determine  
8 if the specialization of administrative law judges  
9 within the Office of Medicare Hearings and Appeals  
10 by type of appeal would lead to more consistent deci-  
11 sions by administrative law judges determining cases  
12 with similar facts.

13 (2) REPORT.—Not later than January 1, 2018,  
14 the Secretary of Health and Human services shall  
15 submit to Congress a report containing the results  
16 of the study required under paragraph (1), together  
17 with recommendations for such legislative and ad-  
18 ministrative action as the Secretary determines ap-  
19 propriate.

20 (g) ALTERNATIVE DISPUTE RESOLUTION.—

21 (1) IN GENERAL.—Section 1869(b) of the So-  
22 cial Security Act (42 U.S.C. 1395ff(b)), as amended  
23 by section 3(a), is amended by adding at the end the  
24 following new paragraph:

25 “(5) ALTERNATIVE DISPUTE RESOLUTION.—

1 “(A) IN GENERAL.—

2 “(i) REDETERMINATION AND RECON-  
3 SIDERATION ADR PROCESS.—The Sec-  
4 retary shall establish one or more alter-  
5 native dispute resolution processes where-  
6 by, at the Secretary’s discretion, an indi-  
7 vidual or entity entitled to a redetermina-  
8 tion under subsection (a)(3) by a medicare  
9 administrative contractor or a reconsider-  
10 ation under subsection (c) by a qualified  
11 independent contractor may have the op-  
12 tion to enter into alternative dispute reso-  
13 lution with the Centers for Medicare &  
14 Medicaid Services, consistent with the fol-  
15 lowing:

16 “(I) During the alternative dis-  
17 pute resolution process, the request  
18 for review with respect to the claims  
19 covered by the alternative dispute res-  
20 olution shall be suspended.

21 “(II) In the event that an alter-  
22 native dispute resolution does not re-  
23 sult in a settlement, the request for  
24 review with respect to the claims cov-  
25 ered by the alternative dispute resolu-

1           tion shall resume under subsection  
2           (a)(3) or subsection (c), as applicable.

3           “(ii) HEARING AND REVIEW MEDI-  
4           ATION.—The Secretary shall establish an  
5           alternative dispute resolution process  
6           whereby, at the Secretary’s discretion, an  
7           individual or entity entitled to a review or  
8           hearing on a decision of a qualified inde-  
9           pendent contractor by a Medicare mag-  
10          istrate or an administrative law judge may  
11          have the option to enter into an alternative  
12          dispute resolution process mediated by  
13          staff members of the Office of Medicare  
14          Hearings and Appeals selected for the pur-  
15          pose of mediating alternative dispute reso-  
16          lutions under this paragraph.

17          “(B) EFFECT OF ALTERNATIVE DISPUTE  
18          RESOLUTION.—

19                 “(i) IN GENERAL.—As part of any al-  
20                 ternative dispute resolution settlement  
21                 under this paragraph, an appellant shall be  
22                 required to—

23                         “(I) forego the right to such re-  
24                         determination, reconsideration, review,  
25                         or hearing, as applicable; and

1                   “(II) withdraw all requests for  
2                   review with respect to the claims cov-  
3                   ered by the settlement.

4                   “(ii) NO JUDICIAL REVIEW.—There  
5                   shall be no administrative or judicial re-  
6                   view under section 1869, 1878, or other-  
7                   wise of the alternative dispute resolution  
8                   settlement and the claims covered by the  
9                   settlement.

10                  “(C) COORDINATION WITH LAW ENFORCE-  
11                  MENT AND CMS.—The Secretary shall establish  
12                  a process under which the officers responsible  
13                  for conducting an alternative dispute resolution  
14                  process shall coordinate with appropriate law  
15                  enforcement agencies and the Centers for Medi-  
16                  care & Medicaid Services to avoid the inad-  
17                  vertent settlement of cases that involve fraud or  
18                  other criminal activity.

19                  “(D) NO ENTITLEMENT TO ALTERNATIVE  
20                  DISPUTE RESOLUTION.—Nothing in this para-  
21                  graph shall be construed as creating an entitle-  
22                  ment to alternative dispute resolution.”.

23                  (2) CONFORMING AMENDMENTS.—

24                  (A) Section 1869(a)(3)(A) of the Social  
25                  Security Act (42 U.S.C. 1395ff(a)(3)(A)) is

1 amended by inserting “, subject to subsection  
2 (b)(5),” after “regulations shall”.

3 (B) Section 1869(b)(1)(A) of the Social  
4 Security Act (42 U.S.C. 1395ff(b)(1)(A)), as  
5 amended by section 3(a)(2), is amended—

6 (i) by inserting “and paragraph (5)”  
7 after “Subject to subparagraph (D)”; and

8 (ii) by striking “and paragraph (4)”  
9 and inserting “and paragraphs (4) and  
10 (5)”.

11 **SEC. 10. REVIEW PROGRAM IMPROVEMENTS.**

12 (a) IN GENERAL.—Section 1893 of the Social Secu-  
13 rity Act (42 U.S.C. 1395ddd) is amended—

14 (1) in subsection (b), by adding at the end the  
15 following new paragraph:

16 “(7) The review program improvements de-  
17 scribed in subsection (j).”;

18 (2) by redesignating subsection (i) as subsection  
19 (j); and

20 (3) by inserting after subsection (h) the fol-  
21 lowing new subsection:

22 “(i) REVIEW PROGRAM IMPROVEMENTS.—

23 “(1) IN GENERAL.—”.

24 “(A) GUIDELINES.—

1           “(i) IN GENERAL.—To ensure uni-  
2           formity and consistency in initial deter-  
3           minations and appeals decisions relating to  
4           the appropriateness of payment with re-  
5           spect to items or services furnished under  
6           this title, the Secretary shall ensure that  
7           claim review guidelines are established for  
8           reviewing claims for payment submitted by  
9           providers of services and suppliers.

10           “(ii) REQUIREMENTS.—Prior to the  
11           implementation of the claim review guide-  
12           lines described in subparagraph (A)(i), the  
13           Secretary shall—

14                   “(I) approve the claim review  
15                   guidelines;

16                   “(II) make the claim review  
17                   guidelines publicly available as de-  
18                   scribed in subparagraph (B);

19                   “(III) ensure that review contrac-  
20                   tors apply the claim review guidelines  
21                   consistently, as appropriate; and

22                   “(IV) ensure that Medicare mag-  
23                   istrates, administrative law judges,  
24                   and the Departmental Appeals Board



1                   are trained in the application of the  
2                   claim review guidelines.

3                   “(iii) TRANSITION PERIOD.—The Sec-  
4                   retary may provide for or establish one or  
5                   more transition periods, during which the  
6                   use of existing claim review guidelines for  
7                   reviewing claims submitted by providers of  
8                   services and suppliers shall be permitted to  
9                   continue until such time as the Secretary  
10                  is able to review and approve the claim re-  
11                  view guidelines established under this sub-  
12                  paragraph.

13                  “(B) TRANSPARENCY.—

14                         “(i) IN GENERAL.—The Secretary  
15                         shall ensure that the information described  
16                         in clause (iii)—

17                                 “(I) is published on the Internet  
18                                 website of the Department of Health  
19                                 and Human Services for not less than  
20                                 30 days prior to its implementation;

21   “(II) remains available on such  
22   Internet website after such publica-  
23   tion; and

24   “(III) is updated at least annu-  
25   ally.

1                   “(ii) EXPEDITED PROCESS.—The Sec-  
2                   retary of Health and Human Services may  
3                   expedite the process described in clause (i)  
4                   for claims review guidelines that are ex-  
5                   pected to impact the improper payment  
6                   rate, frequency of denials of payment, or  
7                   costs to the Medicare program.

8                   “(iii) INFORMATION DESCRIBED.—  
9                   The information described in this clause is  
10                  the following:

11                   “(I) Subject to clause (ii) and  
12                   subparagraph (A), any new claim re-  
13                   view guideline approved for use under  
14                   this paragraph.

15                   “(II) Any updates or revisions to  
16                   existing claim review guidelines.

17                   “(C) LIMITATION.—Nothing in this section  
18                  is intended to—

19                   “(i) delineate sample size or how  
20                   claims are to be selected for review;

21                   “(ii) require the publication of algo-  
22                   rithms or methodologies used for claim se-  
23                   lection; or

1           “(iii) require the publication of infor-  
2           mation that could promote fraud or poten-  
3           tial gaming.

4           “(D) REVIEW CONTRACTOR DEFINED.—In  
5           this subsection, the term ‘review contractor’  
6           means—

7                   “(i) a medicare administrative con-  
8                   tractor (as defined in section  
9                   1874A(a)(3)(A)) with a contract to con-  
10                  duct prepayment or post-payment reviews  
11                  of claims for payment by providers of serv-  
12                  ices or suppliers;

13                   “(ii) a recovery audit contractor with  
14                  a contract under subsection (h); or

15                   “(iii) any other contractor the Sec-  
16                  retary determines appropriate.

17           “(2) PROGRAM INTEGRITY INITIATIVES.—To  
18           improve existing and future Medicare program integ-  
19           rity initiatives, and to limit unnecessary burdens on  
20           providers of services and suppliers, the Secretary  
21           shall designate a point of contact to oversee and un-  
22           dertake the following:

23                   “(A) Develop a comprehensive strategy for  
24                  claim review determinations made on a prepay-

1           ment, post-payment, or prior-authorization  
2           basis that—

3                   “(i) focuses on identifying and reduc-  
4                   ing those claim errors that have the largest  
5                   impact on the improper payment rate, pose  
6                   the greatest risk to the Federal Hospital  
7                   Insurance Trust Fund under section 1817  
8                   of the Social Security Act (42 U.S.C.  
9                   1395i) or the Federal Supplementary Med-  
10                  ical Insurance Trust Fund under section  
11                  1841 of such Act (42 U.S.C. 1395t), or  
12                  are likely to negatively affect quality of  
13                  care;

14                  “(ii) reduces unnecessary burden on  
15                  providers of services and suppliers and  
16                  minimizes any negative effects on Medicare  
17                  beneficiaries; and

18                  “(iii) utilizes data and other sources,  
19                  including claims data, improper payment  
20                  rate data, and reports from the Office of  
21                  the Inspector General of the Department  
22                  of Health and Human Services, the Gen-  
23                  eral Accountability Office, the Medicare  
24                  Payment Advisory Commission, and the  
25                  media.

1           “(B) Develop methods to ensure, using all  
2 available data, that review contractors do not  
3 unnecessarily conduct duplicate reviews of spe-  
4 cific individual claims.

5           “(C) To the extent possible given the spe-  
6 cific mission of each entity that has contracted  
7 with the Secretary, work with all review con-  
8 tractors to develop a uniform, consistent, and  
9 transparent review process to reduce the burden  
10 on providers of services and suppliers to the  
11 greatest extent possible, including a uniform  
12 approach for such entities to notify parties of  
13 pending reviews and to request medical docu-  
14 mentation, improved communication with pro-  
15 viders of services and suppliers, better refine-  
16 ment of audits to target claims that are at the  
17 highest risk for improper payments or other er-  
18 rors, and any other areas in which the Sec-  
19 retary determines that the burden on providers  
20 of services and suppliers may be decreased.

21           “(D) Identify local coverage determina-  
22 tions, national coverage determinations, regula-  
23 tions, and program instructions issued by the  
24 Centers for Medicare & Medicaid Services for  
25 the Medicare program that need updating or

1 that inappropriately conflict with other Medi-  
2 care policies and make modifications where ap-  
3 propriate, and, if necessary, establish new poli-  
4 cies or claim review guidelines with input from  
5 stakeholders as appropriate.

6 “(E) Publish on the Internet website of the  
7 Department of Health and Human Services the  
8 volume and type of prepayment and post-pay-  
9 ment claim reviews performed by medicare ad-  
10 ministrative contractors under section 1874A of  
11 the Social Security Act (42 U.S.C. 1395kk-1)  
12 and recovery audit contractors under section  
13 1893(h) of such Act (42 U.S.C. 1395ddd(h)).

14 “(F) Coordinate with the Office of Medi-  
15 care Hearings and Appeals and the Depart-  
16 mental Appeals Board of the Department of  
17 Health and Human Services to ensure that the  
18 improved claim review guidelines and evi-  
19 dentiary standards established by the provisions  
20 of, and the amendments made by, this Act,  
21 such as the decision to remand an appeal, are  
22 properly implemented.

23 “(G) Ensure that providers of services and  
24 suppliers subject to post-payment review by a  
25 medicare administrative contractor are granted

1 a discussion period with the contractor of at  
2 least 30 days from the letter from the con-  
3 tractor regarding the result of the review.

4 “(H) Develop qualification standards for  
5 review contractors that require prepayment and  
6 post-payment reviews of claims for payment  
7 submitted by providers of services or suppliers  
8 to be conducted or approved by medical doctors  
9 with knowledge of relevant Medicare laws, regu-  
10 lations, and program instruction, as appro-  
11 priate.

12 “(I) Verify, through the use of sampling if  
13 the Secretary so chooses, that decisions by re-  
14 view contractors are consistent with Medicare  
15 laws, regulations, and program instruction (tak-  
16 ing into account geographical variations that  
17 are a result of local coverage determinations).

18 “(J) Determine whether additional puni-  
19 tive actions against ineffective review contrac-  
20 tors could be taken and what, if any, financial  
21 incentives or disincentives could be used to pro-  
22 mote the accuracy of a review contractor’s re-  
23 views.

24 “(3) MEDICARE PROVIDER CLAIM AUDIT INTER-  
25 NET PORTAL.—

1           “(A) IN GENERAL.—The Secretary shall  
2 establish a secure, Internet-based system (which  
3 may be based on the existing database system  
4 of claims under review used by review contrac-  
5 tors or a similar existing system) through which  
6 a provider of services, a supplier, or other ap-  
7 propriate entity may track the status of any  
8 claim for payment submitted by such provider  
9 or supplier that is being audited or processed as  
10 an appeal by—

11                   “(i) a medicare administrative con-  
12 tractor under section 1874A; or

13                   “(ii) a qualified independent con-  
14 tractor, Medicare magistrate, administra-  
15 tive law judge, or the Departmental Ap-  
16 peals Board of the Department of Health  
17 and Human Services under section 1869.

18           “(B) FRAUD PREVENTION.—The Secretary  
19 shall ensure that the system established under  
20 paragraph (1) does not impede any ongoing in-  
21 vestigations of potential fraud.

22           “(C) PROGRESS REPORT.—Not later than  
23 180 days after the date of the enactment of this  
24 Act, the Secretary shall submit a report to Con-



1           gress describing the plan to establish and oper-  
2           ate the system described in paragraph (1).”.

3           (b) ANNUAL RAC REPORT.—Section 1893(h)(8) is  
4 amended by inserting “, and, with respect to reports sub-  
5 mitted after the date of the enactment of the Audit & Ap-  
6 peals Fairness, Integrity, and Reforms in Medicare Act  
7 of 2015, the number of claims corrected in the discussion  
8 period, the percentage of appeals of determinations by re-  
9 covery audit contractors that were ultimately successful,  
10 a careful description of the denominator of total audits  
11 and appeals (given the likelihood that many appeals in a  
12 given year will not have a decision in that year), and sepa-  
13 rate reports on complex Medicare part A, complex Medi-  
14 care part B, semiautomated, and automated reviews” be-  
15 fore the period at the end.

16           (c) INDEPENDENCE OF ADJUDICATORS.—Nothing in  
17 this section or the amendments made thereby shall be con-  
18 strued as authorizing the Secretary to limit the authority  
19 or decisional independence of Medicare magistrates, ad-  
20 ministrative law judges, or the Departmental Appeals  
21 Board of the Department of Health and Human Services.

1 **SEC. 11. CREATION OF MEDICARE PROVIDER AND SUP-**  
2 **PLIER OMBUDSMAN FOR REVIEWS AND AP-**  
3 **PEALS.**

4 Section 1808 of the Social Security Act (42 U.S.C.  
5 1395b–9) is amended by adding at the end the following  
6 new subsection:

7 “(d) MEDICARE REVIEWS AND APPEALS OMBUDS-  
8 MAN.—

9 “(1) IN GENERAL.—Not later than 1 year after  
10 the date of the enactment of this subsection, the  
11 Secretary shall appoint within the Centers for Medi-  
12 care & Medicaid Services a Medicare Reviews and  
13 Appeals Ombudsman.

14 “(2) DUTIES.—The Medicare Reviews and Ap-  
15 peals Ombudsman shall—

16 “(A) identify, investigate, and assist in the  
17 resolution of complaints and inquiries related to  
18 the Medicare audits and appeals process from  
19 providers of services or suppliers with respect to  
20 benefits under part A or B;

21 “(B) identify trends in complaints and in-  
22 quiries regarding the current Medicare review  
23 and appeals systems to provide recommenda-  
24 tions for improvements to the Secretary that  
25 would improve the efficacy and efficiency of  
26 claim review and appeals systems, as well as

1 communication to beneficiaries, providers of  
2 services, and suppliers;

3 “(C) design a system by which to objec-  
4 tively measure and evaluate reviewer responsive-  
5 ness to addressing inquiries from providers of  
6 services and suppliers and inquiries from the  
7 Ombudsman;

8 “(D) provide administrative and technical  
9 assistance to appellants and those considering  
10 an appeal;

11 “(E) publish data regarding the number of  
12 review determinations appealed, each appeal’s  
13 outcome, and aggregate appeal statistics—

14 “(i) for each medicare administrative  
15 contractor conducting redeterminations  
16 under section 1869(a)(3);

17 “(ii) for each qualified independent  
18 contractor conducting reconsiderations  
19 under section 1869(e);

20 “(iii) for each recovery audit con-  
21 tractor conducting reviews under section  
22 1893(h);

23 “(iv) by type of provider of services;  
24 and

25 “(v) by type of supplier;

1           “(F) assist in education and training ef-  
 2           forts for providers of services, suppliers, and re-  
 3           view contractors (as defined in section  
 4           1893(i)(1)(D));

5           “(G) communicate with the Medicare Ben-  
 6           eficiary Ombudsman to assist with the identi-  
 7           fication, investigation, and resolution of bene-  
 8           ficiary-related complaints, including those that  
 9           overlap with requests for review and appeals  
 10          submitted by providers of services or suppliers;  
 11          and

12          “(H) perform such other duties as deter-  
 13          mined appropriate by the Secretary.”.

14 **SEC. 12. LIMITING THE AUDIT AND RECOVERY PERIOD FOR**  
 15 **PATIENT STATUS REVIEWS.**

16          (a) IN GENERAL.—Section 1893(h)(4) of the Social  
 17          Security Act (42 U.S.C. 1395ddd(h)(4) is amended—

18               (1) by redesignating subparagraphs (A) and  
 19               (B) as clauses (i) and (ii), respectively, and moving  
 20               such clauses 2 ems to the right;

21               (2) by striking “Each such” and inserting the  
 22               following:

23                       “(A) IN GENERAL.—Except as provided in  
 24                       subparagraph (B), each such”; and

1           (3) by adding at the end the following new sub-  
2 paragraph:

3           “(B) LIMITATION.—

4                   “(i) IN GENERAL.—With respect to  
5 the classification of an individual entitled  
6 to, or enrolled for, benefits under part A or  
7 enrolled under part B, or both, as an inpa-  
8 tient or an outpatient for purposes of hos-  
9 pital claims for payment for items or serv-  
10 ices furnished to such individual under this  
11 title, such contracts shall provide that a re-  
12 covery audit contractor shall only send ad-  
13 ditional documentation requests related to  
14 the appropriateness of such classification  
15 in the first 6 months after the date on  
16 which such items or services were fur-  
17 nished.

18                   “(ii) EXCEPTION.—The limitation de-  
19 scribed in clause (i) shall not apply where  
20 a claim for payment is submitted more  
21 than 3 months after the date on which  
22 such items or services were furnished.”.

23           (b) STUDY ON SHORTENING THE AUDIT AND RECOV-  
24 ERY PERIOD FOR OTHER REVIEWS.—

1           (1) STUDY.—The Secretary of Health and  
2 Human Services shall conduct a study to assess—

3           (A) the potential burden on providers of  
4 services (as defined in subsection (u) of section  
5 1861 of the Social Security Act (42 U.S.C.  
6 1395x)) and suppliers (as defined in subsection  
7 (d) of such section 1861) under the Medicare  
8 program of the audit and recovery period appli-  
9 cable to audit and recovery activities conducted  
10 by recovery audit contractors under section  
11 1893(h)(4) of such Act (42 U.S.C.  
12 1395ddd(h)(4)); and

13           (B) the impact of shortening such period  
14 with respect to different types of reviews.

15           (2) REPORT.—Not later than 1 year after the  
16 date of the enactment of this Act, the Secretary of  
17 Health and Human Services shall publish a report  
18 containing the results of the study required under  
19 paragraph (1) on the Internet website of the Depart-  
20 ment of Health and Human Services.

21           (c) AUTHORITY TO IMPLEMENT SHORTER AUDIT  
22 AND RECOVERY PERIOD.—Section 1893(h)(4) of the So-  
23 cial Security Act (42 U.S.C. 1395ddd(h)(4)), as amended  
24 by subsection (a), is further amended—

1           (1) in subparagraph (A), by striking “subpara-  
2           graph (B)” and inserting “subparagraphs (B) and  
3           (C)”;

4           (2) by adding at the end the following new sub-  
5           paragraph:

6                   “(C) AUTHORITY TO IMPLEMENT SHORTER  
7           AUDIT AND RECOVERY PERIOD.—Notwith-  
8           standing subparagraph (A)(ii), with respect to  
9           payments made under this title for specific cat-  
10          egories of services, the Secretary may enter into  
11          contracts under paragraph (1) that provide for  
12          a retrospective period during which audit and  
13          recovery activities may be conducted of not  
14          more than 3 years.”.

15          (d) REPORT ON RAC PAYMENT STRUCTURE.—Not  
16          later than 6 months after the date of the enactment of  
17          this Act, the Secretary of Health and Human Services  
18          shall submit to Congress a report on ways to change, in  
19          a budget neutral manner, the payment structure for recov-  
20          ery audit contractors under section 1893(h)(1) of the So-  
21          cial Security Act (42 U.S.C. 1395ddd(h)(1)) from an in-  
22          centive-based model to a non-incentive based approach  
23          that does not impose additional financial burdens on pro-  
24          viders.

1 (e) EFFECTIVE DATE.—The amendments made by  
 2 this section shall take effect on January 1, 2017, and shall  
 3 apply to contracts between the Secretary and recovery  
 4 audit contractors entered into on or after such date.

5 **SEC. 13. INCENTIVES AND DISINCENTIVES FOR MEDICARE**  
 6 **CONTRACTORS, PROVIDERS, AND SUPPLIERS.**

7 Section 1893 of the Social Security Act (42 U.S.C.  
 8 1395ddd), as amended by section 10, is further amend-  
 9 ed—

10 (1) by redesignating subsection (j) as sub-  
 11 section (k); and

12 (2) by inserting after subsection (i) the fol-  
 13 lowing new subsection:

14 “(j) COMPLIANCE INCENTIVE PROGRAM.—

15 “(1) IN GENERAL.—Not later than January 1,  
 16 2017, the Secretary shall establish a compliance in-  
 17 centive program, consisting of the components de-  
 18 scribed in paragraphs (2) and (3), to encourage—

19 “(A) providers of services and suppliers to  
 20 submit accurate claims that comply with this  
 21 title and the policies, regulations, and program  
 22 instructions promulgated thereunder, as well as  
 23 any applicable national or local coverage deter-  
 24 minations; and



1           “(B) entities that have entered into con-  
2 tracts with the Secretary under subsection (h)  
3 or section 1874A (referred to in this subsection  
4 as ‘review contractors’) to conduct reviews  
5 under this section or section 1874A, as applica-  
6 ble, in a manner that is consistent with the pro-  
7 visions of this title and the claim review guide-  
8 lines, regulations, and program instructions  
9 promulgated thereunder, as well as any applica-  
10 ble national or local coverage determinations.

11           “(2) COMPLIANCE WITH CLAIM PROCEDURES  
12 BY PROVIDERS OF SERVICES AND SUPPLIERS.—

13           “(A) IN GENERAL.—Not later than Janu-  
14 ary 1, 2017, the Secretary shall establish a sys-  
15 tem through which a provider of services or  
16 supplier that has achieved a low rate of denials  
17 of claims for payment subject to additional doc-  
18 umentation requests over a 2 year period, as  
19 determined by the Secretary, shall be exempt  
20 for a period of 1 year from any post-payment  
21 review of claims for payment conducted by re-  
22 view contractors.

23           “(B) LIMITATION.—The Secretary shall  
24 not exempt or shall rescind an exemption grant-  
25 ed to a provider of services or supplier under

1           subparagraph (A) if the Secretary determines  
2           that there is evidence of systematic gaming,  
3           fraud, abuse, or delay in the provision of serv-  
4           ices or items by such provider or services or  
5           supplier.

6           “(3) COMPLIANCE WITH REVIEW PROCEDURES  
7           BY MEDICARE CONTRACTORS.—

8                   “(A) IN GENERAL.—Not later than Janu-  
9                   ary 1, 2017, the Secretary shall establish a  
10                   process, which may include the use of sampling,  
11                   for determining the frequency with which the  
12                   decisions made by a review contractor with re-  
13                   spect to reviews conducted under this section or  
14                   section 1874A are consistent with the provi-  
15                   sions of this title and the policies, regulations,  
16                   and program instructions promulgated there-  
17                   under, as well as any applicable national or  
18                   local coverage determinations. The results of  
19                   this process shall be made available to the pub-  
20                   lic on the Internet website of the Department of  
21                   Health and Human Services.

22                   “(B) ACCESS TO MEDICAL RECORDS BY  
23                   REVIEW CONTRACTORS.—

24                           “(i) ACCESS TO RECORDS BASED ON  
25                           PERFORMANCE REVIEW.—Not later than

1           January 1, 2017, the Secretary shall es-  
2           tablish a system under which, for any in-  
3           centive period—

4                   “(I) the number of medical  
5                   records that a review contractor that  
6                   was a high-performing review con-  
7                   tractor in the performance review pe-  
8                   riod associated with such incentive pe-  
9                   riod may request from a provider of  
10                  services or supplier in carrying out ac-  
11                  tivities under this section or section  
12                  1874, as applicable, may be increased  
13                  (on a sliding scale); and

14                  “(II) the number of medical  
15                  records that a review contractor that  
16                  was a low-performing review con-  
17                  tractor in the performance review pe-  
18                  riod associated with such incentive pe-  
19                  riod may request from a provider of  
20                  services or supplier in carrying out ac-  
21                  tivities under this section or section  
22                  1874A, as applicable, may be de-  
23                  creased (on a sliding scale).

24                  “(ii) DEFINITIONS.—In this subpara-  
25                  graph:

1                   “(I) HIGH-PERFORMING REVIEW  
2                   CONTRACTOR.—The term ‘high-per-  
3                   forming review contractor’ means a  
4                   review contractor that, for a given  
5                   performance review period, makes de-  
6                   cisions with respect to reviews con-  
7                   ducted under this section or section  
8                   1874A, as applicable, of the activities  
9                   of providers of services and suppliers  
10                  that are consistent with the provisions  
11                  of this title and the policies, regula-  
12                  tions, and program instructions pro-  
13                  mulgated thereunder, as well as any  
14                  applicable national or local coverage  
15                  determinations, at a rate that is equal  
16                  to or greater than 95 percent.

17                  “(II) INCENTIVE PERIOD.—The  
18                  term ‘incentive period’ means, with re-  
19                  spect to a performance review period,  
20                  a period of time (to be determined by  
21                  the Secretary) following such perform-  
22                  ance review period during which the  
23                  number of medical records that a re-  
24                  view contractor may request from a  
25                  provider of services or supplier may be

1 increased or decreased based on such  
2 contractor's status as a high-per-  
3 forming review contractor or a low-  
4 performing review contractor for such  
5 performance review period.

6 “(III) LOW-PERFORMING REVIEW  
7 CONTRACTOR.—The term ‘low-per-  
8 forming review contractor’ means a  
9 review contractor that, for a given  
10 performance review period, is not de-  
11 scribed in subclause (I).

12 “(IV) PERFORMANCE REVIEW  
13 PERIOD.—The term ‘performance re-  
14 view period’ means a period of time  
15 (to be determined by the Secretary)  
16 during which a review contractor's de-  
17 cisions with respect to reviews con-  
18 ducted under this section or section  
19 1874A, as applicable, are evaluated to  
20 determine if such review contractor is  
21 a high-performing contractor or a low-  
22 performing contractor for such pe-  
23 riod.”.

Calendar No. 317

114<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**S. 2368**

[Report No. 114-177]

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## **A BILL**

To amend title XVIII of the Social Security Act to improve the efficiency of the Medicare appeals process, and for other purposes.

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DECEMBER 8, 2015

Read twice and placed on the calendar