

Calendar No. 91

105TH CONGRESS
1ST Session

S. 947

A BILL

To provide for reconciliation pursuant to section 104(a) of the concurrent resolution on the budget for fiscal year 1998.

JUNE 20, 1997

Read twice and placed on the calendar

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To provide for reconciliation pursuant to section 104(a) of the concurrent resolution on the budget for fiscal year 1998.

IN THE SENATE OF THE UNITED STATES

JUNE 20, 1997

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

A BILL

To provide for reconciliation pursuant to section 104(a) of the concurrent resolution on the budget for fiscal year 1998.

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.**

4 This Act may be cited as the “Balanced Budget Act
5 of 1997”.

6 **SEC. 2. TABLE OF TITLES.**

7 The table of titles for this Act is as follows:

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1 **TITLE I—COMMITTEE ON AGRI-**
 2 **CULTURE, NUTRITION, AND**
 3 **FORESTRY**

4 **SEC. 1001. HARDSHIP EXEMPTION.**

5 Section 6(o) of the Food Stamp Act of 1977 (7
 6 U.S.C. 2015(o)) is amended—

7 (1) in paragraph (2)(D), by striking “or (5)”
 8 and inserting “(5), or (6)”;

9 (2) by redesignating paragraph (6) as para-
 10 graph (7); and

11 (3) by inserting after paragraph (5) the follow-
 12 ing:

13 “(6) 15-PERCENT HARDSHIP EXEMPTION.—

14 “(A) DEFINITIONS.—In this paragraph:

15 “(i) CASELOAD.—The term ‘caseload’
 16 means the average monthly number of in-
 17 dividuals receiving food stamps during the
 18 12-month period ending the preceding
 19 June 30.

20 “(ii) COVERED INDIVIDUAL.—The
 21 term ‘covered individual’ means a food
 22 stamp recipient, or an individual denied

1 eligibility for food stamp benefits solely
2 due to paragraph (2), who—

3 “(I) is not eligible for an excep-
4 tion under paragraph (3);

5 “(II) does not reside in an area
6 covered by a waiver granted under
7 paragraph (4);

8 “(III) is not complying with sub-
9 paragraph (A), (B), or (C) of para-
10 graph (2);

11 “(IV) is not receiving food stamp
12 benefits during the 3 months of eligi-
13 bility provided under paragraph (2);
14 and

15 “(V) is not receiving food stamp
16 benefits under paragraph (5).

17 “(B) GENERAL RULE.—Subject to sub-
18 paragraphs (C) through (F), a State agency
19 may provide a hardship exemption from the re-
20 quirements of paragraph (2) for covered indi-
21 viduals.

22 “(C) FISCAL YEAR 1998.—Subject to sub-
23 paragraph (E), for fiscal year 1998, a State
24 agency may provide a number of hardship ex-
25 emptions such that the average monthly num-

1 ber of the exemptions in effect during the fiscal
2 year does not exceed 15 percent of the number
3 of covered individuals in the State in fiscal year
4 1998, as estimated by the Secretary, based on
5 the survey conducted to carry out section 16(c)
6 for fiscal year 1996 and such other factors as
7 the Secretary considers appropriate due to the
8 timing and limitations of the survey.

9 “(D) SUBSEQUENT FISCAL YEARS.—Sub-
10 ject to subparagraphs (E) and (F), for fiscal
11 year 1999 and each subsequent fiscal year, a
12 State agency may provide a number of hardship
13 exemptions such that the average monthly num-
14 ber of the exemptions in effect during the fiscal
15 year does not exceed 15 percent of the number
16 of covered individuals in the State, as estimated
17 by the Secretary under subparagraph (C), ad-
18 justed by the Secretary to reflect changes in the
19 State’s caseload and the Secretary’s estimate of
20 changes in the proportion of food stamp recipi-
21 ents covered by waivers granted under para-
22 graph (4).

23 “(E) CASELOAD ADJUSTMENTS.—The Sec-
24 retary shall adjust the number of individuals es-
25 timated for a State under subparagraph (C) or

1 (D) during a fiscal year if the number of food
2 stamp recipients in the State varies from the
3 caseload by more than 10 percent, as deter-
4 mined by the Secretary.

5 “(F) EXEMPTION ADJUSTMENTS.—For fis-
6 cal year 1999 and each subsequent fiscal year,
7 the Secretary shall increase or decrease the
8 number of individuals who may be granted a
9 hardship exemption by a State agency to the
10 extent that the average monthly number of
11 hardship exemptions in effect in the State for
12 the preceding fiscal year is greater or less than
13 the average monthly number of hardship ex-
14 emptions estimated for the State agency for
15 such preceding fiscal year.

16 “(G) REPORTING REQUIREMENT.—A State
17 agency shall submit such reports to the Sec-
18 retary as the Secretary determines are nec-
19 essary to ensure compliance with this para-
20 graph.”.

21 **SEC. 1002. ADDITIONAL FUNDING FOR EMPLOYMENT AND**
22 **TRAINING.**

23 Section 16(h) of the Food Stamp Act of 1977 (7
24 U.S.C. 2025(h)) is amended by striking paragraphs (1)
25 and (2) and inserting the following:

1 “(1) IN GENERAL.—

2 “(A) AMOUNTS.—To carry out employ-
3 ment and training programs, the Secretary
4 shall reserve for allocation to State agencies, to
5 remain available until expended, from funds
6 made available for each fiscal year under sec-
7 tion 18(a)(1) the amount of—

8 “(i) for fiscal year 1996, \$75,000,000;

9 “(ii) for fiscal year 1997,
10 \$79,000,000;

11 “(iii) for fiscal year 1998,
12 \$221,000,000;

13 “(iv) for fiscal year 1999,
14 \$224,000,000;

15 “(v) for fiscal year 2000,
16 \$226,000,000;

17 “(vi) for fiscal year 2001,
18 \$228,000,000; and

19 “(vii) for fiscal year 2002,
20 \$170,000,000.

21 “(B) ALLOCATION.—The Secretary shall
22 allocate the amounts reserved under subpara-
23 graph (A) among the State agencies using a
24 reasonable formula (as determined by the Sec-
25 retary) that reflects the proportion of food

1 stamp recipients who are not eligible for an ex-
2 ception under section 6(o)(3) that reside in
3 each State, as estimated by the Secretary based
4 on the survey conducted to carry out subsection
5 (c) for fiscal year 1996 and such other factors
6 as the Secretary considers appropriate due to
7 the timing and limitations of the survey (as ad-
8 justed by the Secretary each fiscal year to re-
9 flect changes in each State's caseload (as de-
10 fined in section 6(o)(5)(A)).

11 “(C) REALLOCATION.—If a State agency
12 will not expend all of the funds allocated to the
13 State agency for a fiscal year under subpara-
14 graph (B), the Secretary shall reallocate the un-
15 expended funds to other States (during the fis-
16 cal year or the subsequent fiscal year) as the
17 Secretary considers appropriate and equitable.

18 “(D) MINIMUM ALLOCATION.—Notwith-
19 standing subparagraph (B), the Secretary shall
20 ensure that each State agency operating an em-
21 ployment and training program shall receive not
22 less than \$50,000 for each fiscal year.

23 “(E) PLACEMENTS.—Of the amount of
24 funds reserved for a State agency for a fiscal
25 year under subparagraphs (A) through (D), the

1 State agency shall be eligible to receive for the
2 fiscal year not more than an amount equal to
3 the sum of—

4 “(i) the product obtained by multiply-
5 ing—

6 “(I) the average monthly number
7 of food stamp recipients who during
8 the fiscal year—

9 “(aa) are not eligible for an
10 exception under section 6(o)(3);
11 and

12 “(bb) are placed in and com-
13 ply with a program described in
14 subparagraph (B) or (C) of sec-
15 tion 6(o)(2), other than a pro-
16 gram described in subparagraph
17 (A) or (B) of section 6(o)(1); by

18 “(II) an amount determined by
19 the Secretary to reflect the reasonable
20 cost of efficiently and economically
21 providing services that meet the re-
22 quirements of subparagraph (B) or
23 (C) of section 6(o)(2) to food stamp
24 recipients described in subclause (I)

1 for the fiscal year, as periodically ad-
2 justed by the Secretary; and

3 “(ii) the product obtained by multiply-
4 ing—

5 “(I) the average monthly number
6 of food stamp recipients in activities
7 not described in clause (i)(I)(bb) who
8 during the fiscal year are placed in
9 and comply with an employment and
10 training program; by

11 “(II) an amount determined by
12 the Secretary to reflect the reasonable
13 cost of efficiently and economically
14 providing employment and training
15 services to food stamp recipients de-
16 scribed in subclause (I) for the fiscal
17 year that is less than the amount de-
18 termined under clause (i)(II), as peri-
19 odically adjusted by the Secretary.

20 “(F) USE OF FUNDS.—Of the amount of
21 funds a State agency receives under subpara-
22 graphs (A) through (E) for a fiscal year, not
23 less than 75 percent shall be used by the State
24 agency in the fiscal year to serve food stamp re-
25 cipients described in subparagraph (E)(i)(I)(aa)

1 who are placed in and comply with a program
2 described in subparagraph (E)(i)(I)(bb).

3 “(G) MAINTENANCE OF EFFORT.—To re-
4 ceive an amount reserved under subparagraph
5 (A), a State agency shall maintain the expendi-
6 tures of the State agency for employment and
7 training programs and workfare programs for
8 any fiscal year under paragraph (2), and ad-
9 ministrative expenses under section 20(g)(1), at
10 a level that is not less than 75 percent of the
11 level of the expenditures by the State agency to
12 carry out the programs for fiscal year 1996.

13 “(2) ADDITIONAL PAYMENTS TO STATES.—If a
14 State agency—

15 “(A) incurs costs to place individuals in
16 employment and training programs, including
17 the costs for case management and casework to
18 facilitate the transition from economic depend-
19 ency to self-sufficiency through work; and

20 “(B) does not use the funds provided
21 under paragraph (1)(A) to defray the costs in-
22 curred;

23 the Secretary shall pay the State agency an amount
24 equal to 50 percent of the costs incurred, subject to
25 paragraph (3).”.

1 **TITLE II—COMMITTEE ON BANK-**
 2 **ING, HOUSING, AND URBAN**
 3 **AFFAIRS**

4 **Subtitle A—Mortgage Assignment**
 5 **and Annual Adjustment Factors**

6 **SEC. 2001. TABLE OF CONTENTS.**

7 The table of contents for this title is as follows:

TITLE II—COMMITTEE ON BANKING, HOUSING, AND URBAN
AFFAIRS

Subtitle A—Mortgage Assignment and Annual Adjustment Factors

- Sec. 2001. Table of contents.
- Sec. 2002. Extension of foreclosure avoidance and borrower assistance provisions for FHA single family housing mortgage insurance program.
- Sec. 2003. Adjustment of maximum monthly rents for certain dwelling units in new construction and substantial or moderate rehabilitation projects assisted under section 8 rental assistance program.
- Sec. 2004. Adjustment of maximum monthly rents for nonturnover dwelling units assisted under section 8 rental assistance program.

Subtitle B—Multifamily Housing Reform

- Sec. 2100. Short title.

PART 1—FHA-INSURED MULTIFAMILY HOUSING MORTGAGE AND HOUSING
ASSISTANCE RESTRUCTURING

- Sec. 2101. Findings and purposes.
- Sec. 2102. Definitions.
- Sec. 2103. Authority of participating administrative entities.
- Sec. 2104. Mortgage restructuring and rental assistance sufficiency plan.
- Sec. 2105. Section 8 renewals and long-term affordability commitment by owner of project.
- Sec. 2106. Prohibition on restructuring.
- Sec. 2107. Restructuring tools.
- Sec. 2108. Shared savings incentive.
- Sec. 2109. Management standards.
- Sec. 2110. Monitoring of compliance.
- Sec. 2111. Review.
- Sec. 2112. GAO audit and review.
- Sec. 2113. Regulations.
- Sec. 2114. Technical and conforming amendments.
- Sec. 2115. Termination of authority.

PART 2—MISCELLANEOUS PROVISIONS

- Sec. 2201. Rehabilitation grants for certain insured projects.
 Sec. 2202. Minimum rent.
 Sec. 2203. Repeal of Federal preferences.

PART 3—ENFORCEMENT PROVISIONS

- Sec. 2301. Implementation.

SUBPART A—FHA SINGLE FAMILY AND MULTIFAMILY HOUSING

- Sec. 2311. Authorization to immediately suspend mortgagees.
 Sec. 2312. Extension of equity skimming to other single family and multifamily housing programs.
 Sec. 2313. Civil money penalties against mortgagees, lenders, and other participants in FHA programs.

SUBPART B—FHA MULTIFAMILY PROVISIONS

- Sec. 2320. Civil money penalties against general partners, officers, directors, and certain managing agents of multifamily projects.
 Sec. 2321. Civil money penalties for noncompliance with section 8 HAP contracts.
 Sec. 2322. Extension of double damages remedy.
 Sec. 2323. Obstruction of Federal audits.

1 **SEC. 2002. EXTENSION OF FORECLOSURE AVOIDANCE AND**
 2 **BORROWER ASSISTANCE PROVISIONS FOR**
 3 **FHA SINGLE FAMILY HOUSING MORTGAGE**
 4 **INSURANCE PROGRAM.**

5 Section 407 of The Balanced Budget Downpayment
 6 Act, I (12 U.S.C. 1710 note) is amended—

7 (1) in subsection (c)—

8 (A) by striking “only”; and

9 (B) by inserting “, on, or after” after “be-
 10 fore”; and

11 (2) by striking subsection (e).

1 **SEC. 2003. ADJUSTMENT OF MAXIMUM MONTHLY RENTS**
 2 **FOR CERTAIN DWELLING UNITS IN NEW CON-**
 3 **STRUCTION AND SUBSTANTIAL OR MOD-**
 4 **ERATE REHABILITATION PROJECTS AS-**
 5 **SISTED UNDER SECTION 8 RENTAL ASSIST-**
 6 **ANCE PROGRAM.**

7 The third sentence of section 8(c)(2)(A) of the United
 8 States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A))
 9 is amended by inserting before the period at the end the
 10 following: “, and during fiscal year 1999 and thereafter”.

11 **SEC. 2004. ADJUSTMENT OF MAXIMUM MONTHLY RENTS**
 12 **FOR NONTURNOVER DWELLING UNITS AS-**
 13 **SISTED UNDER SECTION 8 RENTAL ASSIST-**
 14 **ANCE PROGRAM.**

15 The last sentence of section 8(e)(2)(A) of the United
 16 States Housing Act of 1937 (42 U.S.C. 1437f(e)(2)(A))
 17 is amended by inserting before the period at the end the
 18 following: “, and during fiscal year 1999 and thereafter”.

19 **Subtitle B—Multifamily Housing**
 20 **Reform**

21 **SEC. 2100. SHORT TITLE.**

22 This subtitle may be cited as the “Multifamily As-
 23 sisted Housing Reform and Affordability Act of 1997”.

1 **Part 1—FHA-Insured Multifamily Housing Mortgage**
2 **and Housing Assistance Restructuring**

3 **SEC. 2101. FINDINGS AND PURPOSES.**

4 (a) FINDINGS.—Congress finds that—

5 (1) there exists throughout the Nation a need
6 for decent, safe, and affordable housing;

7 (2) as of the date of enactment of this Act, it
8 is estimated that—

9 (A) the insured multifamily housing port-
10 folio of the Federal Housing Administration
11 consists of 14,000 rental properties, with an ag-
12 gregate unpaid principal mortgage balance of
13 \$38,000,000,000; and

14 (B) approximately 10,000 of these prop-
15 erties contain housing units that are assisted
16 with project-based rental assistance under sec-
17 tion 8 of the United States Housing Act of
18 1937;

19 (3) FHA-insured multifamily rental properties
20 are a major Federal investment, providing affordable
21 rental housing to an estimated 2,000,000 low- and
22 very low-income families;

23 (4) approximately 1,600,000 of these families
24 live in dwelling units that are assisted with project-
25 based rental assistance under section 8 of the Unit-
26 ed States Housing Act of 1937;

1 (5) a substantial number of housing units re-
2 ceiving project-based assistance have rents that are
3 higher than the rents of comparable, unassisted
4 rental units in the same housing rental market;

5 (6) many of the contracts for project-based as-
6 sistance will expire during the several years following
7 the date of enactment of this Act;

8 (7) it is estimated that—

9 (A) if no changes in the terms and condi-
10 tions of the contracts for project-based assist-
11 ance are made before fiscal year 2000, the cost
12 of renewing all expiring rental assistance con-
13 tracts under section 8 of the United States
14 Housing Act of 1937 for both project-based and
15 tenant-based rental assistance will increase
16 from approximately \$3,600,000,000 in fiscal
17 year 1997 to over \$14,300,000,000 by fiscal
18 year 2000 and some \$22,400,000,000 in fiscal
19 year 2006;

20 (B) of those renewal amounts, the cost of
21 renewing project-based assistance will increase
22 from \$1,200,000,000 in fiscal year 1997 to al-
23 most \$7,400,000,000 by fiscal year 2006; and

24 (C) without changes in the manner in
25 which project-based rental assistance is pro-

1 vided, renewals of expiring contracts for
2 project-based rental assistance will require an
3 increasingly larger portion of the discretionary
4 budget authority of the Department of Housing
5 and Urban Development in each subsequent fis-
6 cal year for the foreseeable future;

7 (8) absent new budget authority for the renewal
8 of expiring rental contracts for project-based assist-
9 ance, many of the FHA-insured multifamily housing
10 projects that are assisted with project-based assist-
11 ance will likely default on their FHA-insured mort-
12 gage payments, resulting in substantial claims to the
13 FHA General Insurance Fund and Special Risk In-
14 surance Funds;

15 (9) more than 15 percent of federally assisted
16 multifamily housing projects are physically or finan-
17 cially distressed, including a number which suffer
18 from mismanagement;

19 (10) due to Federal budget constraints, the
20 downsizing of the Department of Housing and
21 Urban Development, and diminished administrative
22 capacity, the Department lacks the ability to ensure
23 the continued economic and physical well-being of
24 the stock of federally insured and assisted multifam-
25 ily housing projects; and

1 (11) the economic, physical, and management
2 problems facing the stock of federally insured and
3 assisted multifamily housing projects will be best
4 served by reforms that—

5 (A) reduce the cost of Federal rental as-
6 sistance, including project-based assistance, to
7 these projects by reducing the debt service and
8 operating costs of these projects while retaining
9 the low-income affordability and availability of
10 this housing;

11 (B) address physical and economic distress
12 of this housing and the failure of some project
13 managers and owners of projects to comply
14 with management and ownership rules and re-
15 quirements; and

16 (C) transfer and share many of the loan
17 and contract administration functions and re-
18 sponsibilities of the Secretary with capable
19 State, local, and other entities.

20 (b) PURPOSES.—The purposes of this part are—

21 (1) to preserve low-income rental housing af-
22 fordability and availability while reducing the long-
23 term costs of project-based assistance;

24 (2) to reform the design and operation of Fed-
25 eral rental housing assistance programs, adminis-

1 tered by the Secretary, to promote greater multifam-
2 ily housing project operating and cost efficiencies;

3 (3) to encourage owners of eligible multifamily
4 housing projects to restructure their FHA-insured
5 mortgages and project-based assistance contracts in
6 a manner that is consistent with this part before the
7 year in which the contract expires;

8 (4) to streamline and improve federally insured
9 and assisted multifamily housing project oversight
10 and administration;

11 (5) to resolve the problems affecting financially
12 and physically troubled federally insured and as-
13 sisted multifamily housing projects through coopera-
14 tion with residents, owners, State and local govern-
15 ments, and other interested entities and individuals;
16 and

17 (6) to grant additional enforcement tools to use
18 against those who violate agreements and program
19 requirements, in order to ensure that the public in-
20 terest is safeguarded and that Federal multifamily
21 housing programs serve their intended purposes.

22 **SEC. 2102. DEFINITIONS.**

23 In this part:

1 (1) COMPARABLE PROPERTIES.—The term
2 “comparable properties” means properties that
3 are—

4 (A) similar to the eligible multifamily
5 housing project in neighborhood (including risk
6 of crime), location, access, street appeal, age,
7 property size, apartment mix, physical configu-
8 ration, property and unit amenities, and utili-
9 ties;

10 (B) unregulated by contractual encum-
11 brances or local rent-control laws; and

12 (C) occupied predominantly by renters who
13 receive no rent supplements or rental assist-
14 ance.

15 (2) ELIGIBLE MULTIFAMILY HOUSING
16 PROJECT.—The term “eligible multifamily housing
17 project” means a property consisting of more than
18 4 dwelling units—

19 (A) with rents which, on an average per
20 unit or per room basis, exceed the fair market
21 rent or the rent of comparable properties in the
22 same market area, as determined by the Sec-
23 retary;

24 (B) that is covered in whole or in part by
25 a contract for project-based assistance under—

1 (i) the new construction and substan-
2 tial rehabilitation program under section
3 8(b)(2) of the United States Housing Act
4 of 1937 (as in effect before October 1,
5 1983);

6 (ii) the property disposition program
7 under section 8(b) of the United States
8 Housing Act of 1937;

9 (iii) the moderate rehabilitation pro-
10 gram under section 8(e)(2) of the United
11 States Housing Act of 1937;

12 (iv) the loan management assistance
13 program under section 8 of the United
14 States Housing Act of 1937;

15 (v) section 23 of the United States
16 Housing Act of 1937 (as in effect before
17 January 1, 1975);

18 (vi) the rent supplement program
19 under section 101 of the Housing and
20 Urban Development Act of 1965; or

21 (vii) section 8 of the United States
22 Housing Act of 1937, following conversion
23 from assistance under section 101 of the
24 Housing and Urban Development Act of
25 1965; and

1 (C) financed by a mortgage insured or held
2 by the Secretary under the National Housing
3 Act.

4 (3) EXPIRING CONTRACT.—The term “expiring
5 contract” means a project-based assistance contract
6 attached to an eligible multifamily housing project
7 which, under the terms of the contract, will expire.

8 (4) EXPIRATION DATE.—The term “expiration
9 date” means the date on which an expiring contract
10 expires.

11 (5) FAIR MARKET RENT.—The term “fair mar-
12 ket rent” means the fair market rental established
13 under section 8(c) of the United States Housing Act
14 of 1937.

15 (6) LOW-INCOME FAMILIES.—The term “low-in-
16 come families” has the same meaning as provided
17 under section 3(b)(2) of the United States Housing
18 Act of 1937.

19 (7) PORTFOLIO RESTRUCTURING AGREE-
20 MENT.—The term “Portfolio restructuring agree-
21 ment” means the agreement entered into between
22 the Secretary and a participating administrative en-
23 tity, as provided under section 2103.

24 (8) PARTICIPATING ADMINISTRATIVE ENTITY.—
25 The term “participating administrative entity”

1 means a public agency, including a State housing fi-
2 nance agency or local housing agency, which meets
3 the requirements under section 2103(b).

4 (9) PROJECT-BASED ASSISTANCE.—The term
5 “project-based assistance” means rental assistance
6 under section 8 of the United States Housing Act of
7 1937 that is attached to a multifamily housing
8 project.

9 (10) RENEWAL.—The term “renewal” means
10 the replacement of an expiring Federal rental con-
11 tract with a new contract under section 8 of the
12 United States Housing Act of 1937, consistent with
13 the requirements of this part.

14 (11) SECRETARY.—The term “Secretary”
15 means the Secretary of Housing and Urban Develop-
16 ment.

17 (12) STATE.—The term “State” has the same
18 meaning as in section 104 of the Cranston-Gonzalez
19 National Affordable Housing Act.

20 (13) TENANT-BASED ASSISTANCE.—The term
21 “tenant-based assistance” has the same meaning as
22 in section 8(f) of the United States Housing Act of
23 1937.

24 (14) UNIT OF GENERAL LOCAL GOVERN-
25 MENT.—The term “unit of general local govern-

1 ment” has the same meaning as in section 104 of
 2 the Cranston-Gonzalez National Affordable Housing
 3 Act.

4 (15) VERY LOW-INCOME FAMILY.—The term
 5 “very low-income family” has the same meaning as
 6 in section 3(b) of the United States Housing Act of
 7 1937.

8 (16) QUALIFIED MORTGAGEE.—The term
 9 “qualified mortgagee” means an entity approved by
 10 the Secretary that is capable of servicing, as well as
 11 originating, FHA-insured mortgages, and that—

12 (A) is not suspended or debarred by the
 13 Secretary;

14 (B) is not suspended or on probation im-
 15 posed by the Mortgagee Review Board;

16 (C) is not in default under any Govern-
 17 ment National Mortgage Association obligation;
 18 and

19 (D) meets previous participation require-
 20 ments.

21 **SEC. 2103. AUTHORITY OF PARTICIPATING ADMINISTRA-**
 22 **TIVE ENTITIES.**

23 (a) PARTICIPATING ADMINISTRATIVE ENTITIES.—

24 (1) IN GENERAL.—The Secretary shall enter
 25 into portfolio restructuring agreements with partici-

1 pating administrative entities for the implementation
2 of mortgage restructuring and rental assistance suf-
3 ficiency plans to restructure FHA-insured multifam-
4 ily housing mortgages, in order to—

5 (A) reduce the costs of current and expir-
6 ing contracts for assistance under section 8 of
7 the United States Housing Act of 1937;

8 (B) address financially and physically trou-
9 bled projects; and

10 (C) correct management and ownership de-
11 ficiencies.

12 (2) PORTFOLIO RESTRUCTURING AGREE-
13 MENTS.—Each portfolio restructuring agreement en-
14 tered into under this subsection shall—

15 (A) be a cooperative agreement to establish
16 the obligations and requirements between the
17 Secretary and the participating administrative
18 entity;

19 (B) identify the eligible multifamily hous-
20 ing projects or groups of projects for which the
21 participating administrative entity is responsible
22 for assisting in developing and implementing
23 approved mortgage restructuring and rental as-
24 sistance sufficiency plans under section 2104;

1 (C) require the participating administrative
2 entity to review and certify to the accuracy and
3 completeness of a comprehensive needs assess-
4 ment submitted by the owner of an eligible mul-
5 tifamily housing project, in accordance with the
6 information and data requirements of section
7 403 of the Housing and Community Develop-
8 ment Act of 1992, including such other data,
9 information, and requirements as the Secretary
10 may require to be included as part of the com-
11 prehensive needs assessment;

12 (D) identify the responsibilities of both the
13 participating administrative entity and the Sec-
14 retary in implementing a mortgage restructur-
15 ing and rental assistance sufficiency plan, in-
16 cluding any actions proposed to be taken under
17 section 2106 or 2107;

18 (E) require each mortgage restructuring
19 and rental assistance sufficiency plan to be pre-
20 pared in accordance with the requirements of
21 section 2104 for each eligible multifamily hous-
22 ing project;

23 (F) indemnify the participating adminis-
24 trative entity against lawsuits and penalties for
25 actions taken pursuant to the agreement, ex-

1 including actions involving gross negligence or
2 willful misconduct; and

3 (G) include compensation for all reasonable
4 expenses incurred by the participating adminis-
5 trative entity necessary to perform its duties
6 under this part, including such incentives as
7 may be authorized under section 2108.

8 (b) SELECTION OF PARTICIPATING ADMINISTRATIVE
9 ENTITY.—

10 (1) SELECTION CRITERIA.—The Secretary shall
11 select a participating administrative entity based on
12 the following criteria—

13 (A) is located in the State or local jurisdic-
14 tion in which the eligible multifamily housing
15 project or projects are located;

16 (B) has demonstrated expertise in the de-
17 velopment or management of low-income afford-
18 able rental housing;

19 (C) has a history of stable, financially
20 sound, and responsible administrative perform-
21 ance;

22 (D) has demonstrated financial strength in
23 terms of asset quality, capital adequacy, and li-
24 quidity; and

1 (E) is otherwise qualified, as determined
2 by the Secretary, to carry out the requirements
3 of this part.

4 (2) SELECTION OF MORTGAGE RISK-SHARING
5 ENTITIES AND FISCAL YEAR 1997 MULTIFAMILY
6 DEMONSTRATION AUTHORITY.—Any State housing
7 finance agency or local housing agency that is des-
8 ignated as a qualified participating entity under sec-
9 tion 542 of the Housing and Community Develop-
10 ment Act of 1992 or under section 212 of Public
11 Law 104–204, shall automatically qualify as a par-
12 ticipating administrative entity under this section.

13 (3) ALTERNATIVE ADMINISTRATORS.—With re-
14 spect to any eligible multifamily housing project that
15 is located in a State or local jurisdiction in which the
16 Secretary determines that a participating adminis-
17 trative entity is not located, is unavailable, or does
18 not qualify, the Secretary shall either—

19 (A) carry out the requirements of this part
20 with respect to that eligible multifamily housing
21 project; or

22 (B) contract with other qualified entities
23 that meet the requirements of subsection (b),
24 with the exception of subsection (b)(1)(A), the
25 authority to carry out all or a portion of the re-

1 quirements of this part with respect to that eli-
2 gible multifamily housing project.

3 (4) PREFERENCE FOR PUBLIC HOUSING FI-
4 NANCE AGENCIES AS PARTICIPATING ADMINISTRA-
5 TIVE ENTITIES.—In selecting participating adminis-
6 trative entities under this subsection, the Secretary
7 shall give preference to State housing finance agen-
8 cies and local housing agencies.

9 (5) STATE AND LOCAL PORTFOLIO REQUIRE-
10 MENTS.—

11 (A) IN GENERAL.—If the housing finance
12 agency of a State is selected as the participat-
13 ing administrative entity, that agency shall be
14 responsible for all eligible multifamily housing
15 projects in that State, except that a local hous-
16 ing agency selected as a participating adminis-
17 trative entity shall be responsible for all eligible
18 multifamily housing projects in the jurisdiction
19 of the agency.

20 (B) RIGHT OF FIRST REFUSAL.—A partici-
21 pating State housing finance agency or local
22 housing agency shall have the right of first re-
23 fusal to assume responsibility for any properties
24 it has financed.

1 (C) DELEGATION.—A participating admin-
2 istrative entity may delegate or transfer respon-
3 sibilities and functions under this part to one or
4 more interested and qualified public entities.

5 (D) WAIVER.—A State housing finance
6 agency or local housing agency may request a
7 waiver from the Secretary from the require-
8 ments of subparagraph (A) for good cause.

9 **SEC. 2104. MORTGAGE RESTRUCTURING AND RENTAL AS-**
10 **SISTANCE SUFFICIENCY PLAN.**

11 (a) IN GENERAL.—

12 (1) DEVELOPMENT OF PROCEDURES AND RE-
13 QUIREMENTS.—The Secretary shall develop proce-
14 dures and requirements for the submission of a
15 mortgage restructuring and rental assistance suffi-
16 ciency plan for each eligible multifamily housing
17 project with an expiring contract.

18 (2) TERMS AND CONDITIONS.—Each mortgage
19 restructuring and rental assistance sufficiency plan
20 submitted under this subsection shall be developed
21 at the initiative of an owner of an eligible multifam-
22 ily housing project, in cooperation with the qualified
23 mortgagee servicing the loan, with a participating
24 administrative entity, under such terms and condi-
25 tions as the Secretary shall require.

1 (3) CONSOLIDATION.—Mortgage restructuring
2 and rental assistance sufficiency plans submitted
3 under this subsection may be consolidated as part of
4 an overall strategy for more than one property.

5 (b) NOTICE REQUIREMENTS.—The Secretary shall
6 establish notice procedures and hearing requirements for
7 tenants and owners concerning the dates for the expiration
8 of project-based assistance contracts for any eligible multi-
9 family housing project.

10 (c) EXTENSION OF CONTRACT TERM.—Subject to
11 agreement by a project owner, the Secretary may extend
12 the term of any expiring contract or provide a section 8
13 contract with rent levels set in accordance with subsection
14 (g) for a period sufficient to facilitate the implementation
15 of a mortgage restructuring and rental assistance suffi-
16 ciency plan, as determined by the Secretary.

17 (d) TENANT RENT PROTECTION.—If the owner of a
18 project with an expiring Federal rental assistance contract
19 does not agree to extend the contract, not less than 12
20 months prior to terminating the contract, the project
21 owner shall provide written notice to the Secretary and
22 the tenants and the Secretary shall make tenant-based as-
23 sistance available to tenants residing in units assisted
24 under the expiring contract at the time of expiration.

1 (e) MORTGAGE RESTRUCTURING AND RENTAL AS-
2 SISTANCE SUFFICIENCY PLAN.—Each mortgage restruc-
3 turing and rental assistance sufficiency plan shall—

4 (1) except as otherwise provided, restructure
5 the project-based assistance rents for the eligible
6 multifamily housing project in a manner consistent
7 with subsection (g);

8 (2) allow for rent adjustments by applying an
9 operating cost adjustment factor established under
10 guidelines established by the Secretary;

11 (3) require the owner or purchaser of an eligible
12 multifamily housing project with an expiring con-
13 tract to submit to the participating administrative
14 entity a comprehensive needs assessment, in accord-
15 ance with the information and data requirements of
16 section 403 of the Housing and Community Devel-
17 opment Act of 1992, including such other data, in-
18 formation, and requirements as the Secretary may
19 require to be included as part of the comprehensive
20 needs assessment;

21 (4) require the owner or purchaser of the
22 project to provide or contract for competent manage-
23 ment of the project;

24 (5) require the owner or purchaser of the
25 project to take such actions as may be necessary to

1 rehabilitate, maintain adequate reserves, and to
2 maintain the project in decent and safe condition,
3 based on housing quality standards established by—

4 (A) the Secretary; or

5 (B) local housing codes or codes adopted
6 by public housing agencies that—

7 (i) meet or exceed housing quality
8 standards established by the Secretary;
9 and

10 (ii) do not severely restrict housing
11 choice;

12 (6) require the owner or purchaser of the
13 project to maintain affordability and use restrictions
14 for the remaining term of the existing mortgage and,
15 if applicable, the remaining term of the second mort-
16 gage, as the participating administrative entity de-
17 termines to be appropriate and consistent with the
18 rent levels established under subsection (g), which
19 restrictions shall be consistent with the long-term
20 physical and financial viability character of the
21 project as affordable housing;

22 (7) meet subsidy layering requirements under
23 guidelines established by the Secretary;

1 (8) require the owner or purchaser of the
2 project to meet such other requirements as the Sec-
3 retary determines to be appropriate; and

4 (9) prohibit the owner from refusing to lease
5 any available dwelling unit to a recipient of tenant-
6 based assistance under section 8 of the United
7 States Housing Act of 1937.

8 (f) TENANT AND COMMUNITY PARTICIPATION AND
9 CAPACITY BUILDING.—

10 (1) PROCEDURES.—

11 (A) IN GENERAL.—The Secretary shall es-
12 tablish procedures to provide an opportunity for
13 tenants of the project and other affected par-
14 ties, including local government and the com-
15 munity in which the project is located, to par-
16 ticipate effectively in the restructuring process
17 established by this part.

18 (B) CRITERIA.—These procedures shall in-
19 clude—

20 (i) the rights to timely and adequate
21 written notice of the proposed decisions of
22 the owner or the Secretary or participating
23 administrative entity;

24 (ii) timely access to all relevant infor-
25 mation (except for information determined

1 to be proprietary under standards estab-
2 lished by the Secretary);

3 (iii) an adequate period to analyze
4 this information and provide comments to
5 the Secretary or participating administra-
6 tive entity (which comments shall be taken
7 into consideration by the participating ad-
8 ministrative entity); and

9 (iv) if requested, a meeting with a
10 representative of the participating adminis-
11 trative entity and other affected parties.

12 (2) PROCEDURES REQUIRED.—The procedures
13 established under paragraph (1) shall permit tenant,
14 local government, and community participation in at
15 least the following decisions or plans specified in this
16 part:

17 (A) The Portfolio Restructuring Agree-
18 ment.

19 (B) Any proposed expiration of the section
20 8 contract.

21 (C) The project's eligibility for restructur-
22 ing pursuant to section 2106 and the mortgage
23 restructuring and rental assistance sufficiency
24 plan pursuant to section 2104.

25 (D) Physical inspections.

1 (E) Capital needs and management assess-
2 ments, whether before or after restructuring.

3 (F) Any proposed transfer of the project.

4 (3) FUNDING.—

5 (A) IN GENERAL.—The Secretary may
6 provide not more than \$10,000,000 annually in
7 funding to tenant groups, nonprofit organiza-
8 tions, and public entities for building the capac-
9 ity of tenant organizations, for technical assist-
10 ance in furthering any of the purposes of this
11 part (including transfer of developments to new
12 owners) and for tenant services, from those
13 amounts made available under appropriations
14 Acts for implementing this part.

15 (B) ALLOCATION.—The Secretary may al-
16 locate any funds made available under subpara-
17 graph (A) through existing technical assistance
18 programs pursuant to any other Federal law,
19 including the Low-Income Housing Preserva-
20 tion and Resident Homeownership Act of 1990
21 and the Multifamily Property Disposition Re-
22 form Act of 1994.

23 (C) PROHIBITION.—None of the funds
24 made available under subparagraph (A) may be
25 used directly or indirectly to pay for any per-

1 sonal service, advertisement, telegram, tele-
2 phone, letter, printed or written matter, or
3 other device, intended or designed to influence
4 in any manner a Member of Congress, to favor
5 or oppose, by vote or otherwise, any legislation
6 or appropriation by Congress, whether before or
7 after the introduction of any bill or resolution
8 proposing such legislation or appropriation.

9 (g) RENT LEVELS.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (2), each mortgage restructuring and rental
12 assistance sufficiency plan pursuant to the terms,
13 conditions, and requirements of this part shall estab-
14 lish for units assisted with project-based assistance
15 in eligible multifamily housing projects adjusted rent
16 levels that—

17 (A) are equivalent to rents derived from
18 comparable properties, if—

19 (i) the participating administrative en-
20 tity makes the rent determination not later
21 than 120 days after the owner submits a
22 mortgage restructuring and rental assist-
23 ance sufficiency plan; and

1 (ii) the market rent determination is
2 based on not less than 2 comparable prop-
3 erties; or

4 (B) if those rents cannot be determined,
5 are equal to 90 percent of the fair market rents
6 for the relevant market area.

7 (2) EXCEPTIONS.—

8 (A) IN GENERAL.—A contract under this
9 section may include rent levels that exceed the
10 rent level described in paragraph (1) at rent
11 levels that do not exceed 120 percent of the
12 local fair market rent if the participating ad-
13 ministrative entity—

14 (i) determines, that the housing needs
15 of the tenants and the community cannot
16 be adequately addressed through imple-
17 mentation of the rent limitation required
18 to be established through a mortgage re-
19 structuring and rental assistance suffi-
20 ciency plan under paragraph (1); and

21 (ii) follows the procedures under para-
22 graph (3).

23 (B) EXCEPTION RENTS.—In any fiscal
24 year, a participating administrative entity may
25 approve exception rents on not more than 20

1 percent of all units in the geographic jurisdic-
2 tion of the entity with expiring contracts in that
3 fiscal year, except that the Secretary may waive
4 this ceiling upon a finding of special need in the
5 geographic area served by the participating ad-
6 ministrative entity.

7 (3) RENT LEVELS FOR EXCEPTION
8 PROJECTS.—For purposes of this section, a project
9 eligible for an exception rent shall receive a rent cal-
10 culation on the actual and projected costs of operat-
11 ing the project, at a level that provides income suffi-
12 cient to support a budget-based rent that consists
13 of—

14 (A) the debt service of the project;
15 (B) the operating expenses of the project,
16 as determined by the participating administra-
17 tive entity, including—

18 (i) contributions to adequate reserves;
19 (ii) the costs of maintenance and nec-
20 essary rehabilitation; and

21 (iii) other eligible costs permitted
22 under section 8 of the United States Hous-
23 ing Act of 1937;

24 (C) an adequate allowance for potential op-
25 erating losses due to vacancies and failure to

1 collect rents, as determined by the participating
2 administrative entity;

3 (D) an allowance for a reasonable rate of
4 return to the owner or purchaser of the project,
5 as determined by the participating administra-
6 tive entity, which may be established to provide
7 incentives for owners or purchasers to meet
8 benchmarks of quality for management and
9 housing quality; and

10 (E) other expenses determined by the par-
11 ticipating administrative entity to be necessary
12 for the operation of the project.

13 (h) EXEMPTIONS FROM RESTRUCTURING.—Subject
14 to section 2106, the Secretary shall renew project-based
15 assistance contracts at existing rents, or at a level that
16 provides income sufficient to support a budget-based rent
17 (including a budget-based rent adjustment if justified by
18 reasonable and expected operating expenses), if—

19 (1) the project was financed through obligations
20 such that the implementation of a mortgage restruc-
21 turing and rental assistance sufficiency plan under
22 this section is inconsistent with applicable law or
23 agreements governing such financing;

24 (2) in the determination of the Secretary or the
25 participating administrative entity, the restructuring

1 would not result in significant section 8 savings to
2 the Secretary; or

3 (3) the project has an expiring contract under
4 section 8 of the United States Housing Act of 1937
5 but does not qualify as an eligible multifamily hous-
6 ing project pursuant to section 2102(2) of this part.

7 **SEC. 2105. SECTION 8 RENEWALS AND LONG-TERM AFFORD-**
8 **ABILITY COMMITMENT BY OWNER OF**
9 **PROJECT.**

10 (a) SECTION 8 RENEWALS OF RESTRUCTURED
11 PROJECTS.—Subject to the availability of amounts pro-
12 vided in advance in appropriations Acts, the Secretary
13 shall enter into contracts with participating administrative
14 entities pursuant to which the participating administrative
15 entity shall offer to renew or extend an expiring section
16 8 contract on an eligible multifamily housing project, and
17 the owner of the project shall accept the offer, provided
18 the initial renewal is in accordance with the terms and
19 conditions specified in the mortgage restructuring and
20 rental assistance sufficiency plan.

21 (b) REQUIRED COMMITMENT.—After the initial re-
22 newal of a section 8 contract pursuant to this section, the
23 owner shall accept each offer made pursuant to subsection
24 (a) to renew the contract, for the remaining term of the
25 existing mortgage and, if applicable, the remaining term

1 of an existing second mortgage, if the offer to renew is
2 on terms and conditions specified in the mortgage restruc-
3 turing and rental assistance sufficiency plan.

4 **SEC. 2106. PROHIBITION ON RESTRUCTURING.**

5 (a) PROHIBITION ON RESTRUCTURING.—The Sec-
6 retary shall not consider any mortgage restructuring and
7 rental assistance sufficiency plan or request for contract
8 renewal if the participating administrative entity deter-
9 mines that—

10 (1) the owner or purchaser of the project has
11 engaged in material adverse financial or managerial
12 actions or omissions with regard to this project (or
13 with regard to other similar projects if the Secretary
14 determines that those actions or omissions constitute
15 a pattern of mismanagement that would warrant
16 suspension or debarment by the Secretary), includ-
17 ing—

18 (A) materially violating any Federal, State,
19 or local law or regulation with regard to this
20 project or any other federally assisted project,
21 after receipt of notice and an opportunity to
22 cure;

23 (B) materially breaching a contract for as-
24 sistance under section 8 of the United States

1 Housing Act of 1937, after receipt of notice
2 and an opportunity to cure;

3 (C) materially violating any applicable reg-
4 ulatory or other agreement with the Secretary
5 or a participating administrative entity, after
6 receipt of notice and an opportunity to cure;

7 (D) repeatedly and materially violating any
8 Federal, State, or local law or regulation with
9 regard to the project or any other federally as-
10 sisted project;

11 (E) repeatedly and materially breaching a
12 contract for assistance under section 8 of the
13 United States Housing Act of 1937;

14 (F) repeatedly and materially violating any
15 applicable regulatory or other agreement with
16 the Secretary or a participating administrative
17 entity;

18 (G) repeatedly failing to make mortgage
19 payments at times when project income was
20 sufficient to maintain and operate the property;

21 (H) materially failing to maintain the
22 property according to housing quality standards
23 after receipt of notice and a reasonable oppor-
24 tunity to cure; or

1 (I) committing any actions or omissions
2 that would warrant suspension or debarment by
3 the Secretary;

4 (2) the owner or purchaser of the property ma-
5 terially failed to follow the procedures and require-
6 ments of this part, after receipt of notice and an op-
7 portunity to cure; or

8 (3) the poor condition of the project cannot be
9 remedied in a cost effective manner, as determined
10 by the participating administrative entity.

11 (b) OPPORTUNITY TO DISPUTE FINDINGS.—

12 (1) IN GENERAL.—During the 30-day period
13 beginning on the date on which the owner or pur-
14 chaser of an eligible multifamily housing project re-
15 ceives notice of a rejection under subsection (a) or
16 of a mortgage restructuring and rental assistance
17 sufficiency plan under section 2104, the Secretary or
18 participating administrative entity shall provide that
19 owner or purchaser with an opportunity to dispute
20 the basis for the rejection and an opportunity to
21 cure.

22 (2) AFFIRMATION, MODIFICATION, OR REVER-
23 SAL.—

24 (A) IN GENERAL.—After providing an op-
25 portunity to dispute under paragraph (1), the

1 Secretary or the participating administrative
2 entity may affirm, modify, or reverse any rejec-
3 tion under subsection (a) or rejection of a mort-
4 gage restructuring and rental assistance suffi-
5 ciency plan under section 2104.

6 (B) REASONS FOR DECISION.—The Sec-
7 retary or the participating administrative en-
8 tity, as applicable, shall identify the reasons for
9 any final decision under this paragraph.

10 (C) REVIEW PROCESS.—The Secretary
11 shall establish an administrative review process
12 to appeal any final decision under this para-
13 graph.

14 (c) FINAL DETERMINATION.—Any final determina-
15 tion under this section shall not be subject to judicial re-
16 view.

17 (d) DISPLACED TENANTS.—Subject to the availabil-
18 ity of amounts provided in advance in appropriations Acts,
19 for any low-income tenant that is residing in a project or
20 receiving assistance under section 8 of the United States
21 Housing Act of 1937 at the time of rejection under this
22 section, that tenant shall be provided with tenant-based
23 assistance and reasonable moving expenses, as determined
24 by the Secretary.

1 (e) TRANSFER OF PROPERTY.—For properties dis-
2 qualified from the consideration of a mortgage restructur-
3 ing and rental assistance sufficiency plan under this sec-
4 tion because of actions by an owner or purchaser in ac-
5 cordance with paragraph (1) or (2) of subsection (a), the
6 Secretary shall establish procedures to facilitate the vol-
7 untary sale or transfer of a property as part of a mortgage
8 restructuring and rental assistance sufficiency plan, with
9 a preference for tenant organizations and tenant-endorsed
10 community-based nonprofit and public agency purchasers
11 meeting such reasonable qualifications as may be estab-
12 lished by the Secretary, which purchasers shall be eligible
13 to receive project-based assistance under section 8 of the
14 United States Housing Act of 1937.

15 **SEC. 2107. RESTRUCTURING TOOLS.**

16 (a) RESTRUCTURING TOOLS.—In this part, and to
17 the extent these actions are consistent with this section,
18 an approved mortgage restructuring and rental assistance
19 sufficiency plan may include one or more of the following:

20 (1) FULL OR PARTIAL PAYMENT OF CLAIM.—
21 Making a full payment of claim or partial payment
22 of claim under section 541(b) of the National Hous-
23 ing Act. Any payment under this paragraph shall
24 not require the approval of a mortgagee.

1 (2) REFINANCING OF DEBT.—Refinancing of all
2 or part of the debt on a project, if the refinancing
3 would result in significant subsidy savings under
4 section 8 of the United States Housing Act of 1937.

5 (3) MORTGAGE INSURANCE.—Providing FHA
6 multifamily mortgage insurance, reinsurance or
7 other credit enhancement alternatives, including
8 multifamily risk-sharing mortgage programs, as pro-
9 vided under section 542 of the Housing and Commu-
10 nity Development Act of 1992. Any limitations on
11 the number of units available for mortgage insur-
12 ance under section 542 shall not apply to eligible
13 multifamily housing projects. Any credit subsidy
14 costs of providing mortgage insurance shall be paid
15 from the General Insurance Fund and the Special
16 Risk Insurance Fund.

17 (4) CREDIT ENHANCEMENT.—Any additional
18 State or local mortgage credit enhancements and
19 risk-sharing arrangements may be established with
20 State or local housing finance agencies, the Federal
21 Housing Finance Board, the Federal National Mort-
22 gage Association, and the Federal Home Loan Mort-
23 gage Corporation, to a modified first mortgage.

24 (5) COMPENSATION OF THIRD PARTIES.—En-
25 tering into agreements, incurring costs, or making

1 payments, as may be reasonably necessary, to com-
2 pensate the participation of participating adminis-
3 trative entities and other parties in undertaking ac-
4 tions authorized by this part. Upon request, partici-
5 pating administrative entities shall be considered to
6 be contract administrators under section 8 of the
7 United States Housing Act of 1937 for purposes of
8 any contracts entered into as part of an approved
9 mortgage restructuring and rental assistance suffi-
10 ciency plan. Subject to the availability of amounts
11 provided in advance in appropriations Acts for ad-
12 ministrative fees under section 8 of the United
13 States Housing Act of 1937, such fees shall be used
14 to compensate participating administrative entities
15 for compliance monitoring costs incurred under sec-
16 tion 2110.

17 (6) RESIDUAL RECEIPTS.—Applying any ac-
18 quired residual receipts to maintain the long-term
19 affordability and physical condition of the property
20 or of other eligible multifamily housing projects. The
21 participating administrative entity may expedite the
22 acquisition of residual receipts by entering into
23 agreements with owners of housing covered by an
24 expiring contract to provide an owner with a share
25 of the receipts, not to exceed 10 percent.

1 (7) REHABILITATION NEEDS.—Assisting in ad-
2 dressing the necessary rehabilitation needs of the
3 project, except that assistance under this paragraph
4 shall not exceed the equivalent of \$5,000 per unit
5 for those units covered with project-based assistance.
6 Rehabilitation may be paid from the provision of
7 grants from residual receipts or, as provided in ap-
8 propriations Acts, from budget authority provided
9 for increases in the budget authority for assistance
10 contracts under section 8 of the United States
11 Housing Act of 1937, the rehabilitation grant pro-
12 gram established under section 2201 of this subtitle,
13 or through the debt restructuring transaction. Each
14 owner that receives rehabilitation assistance shall
15 contribute not less than 25 percent of the amount
16 of rehabilitation assistance received.

17 (8) MORTGAGE RESTRUCTURING.—Restructur-
18 ing mortgages to provide a structured first mortgage
19 to cover rents at levels that are established in sec-
20 tion 2104(g) and a second mortgage equal to the
21 difference between the restructured first mortgage
22 and the mortgage balance of the eligible multifamily
23 housing project at the time of restructuring. The
24 second mortgage shall bear interest at a rate not to
25 exceed the applicable Federal rate for a term not to

1 exceed 50 years. If the first mortgage remains out-
2 standing, payments of interest and principal on the
3 second mortgage shall be made from a portion of the
4 excess project income only after the payment of all
5 reasonable and necessary operating expenses (includ-
6 ing deposits in a reserve for replacement), debt serv-
7 ice on the first mortgage, and such other expendi-
8 tures as may be approved by the Secretary. Such
9 portion shall be equal to not less than 75 percent of
10 excess project income. The participating administra-
11 tive entity may provide up to 25 percent of the ex-
12 cess project income to the project owner if the par-
13 ticipating administrative entity determines that the
14 project owner meets benchmarks of quality for man-
15 agement and housing quality. During the period in
16 which the first mortgage remains outstanding, no
17 payments of interest or principal shall be required
18 on the second mortgage. The second mortgage shall
19 be assumable by any subsequent purchaser of any
20 multifamily housing project, pursuant to guidelines
21 established by the Secretary. The participating ad-
22 ministrative entity may be authorized to modify the
23 terms or forgive all or part of the second mortgage
24 upon acquisition by a tenant organization or tenant-
25 endorsed community-based nonprofit or public agen-

1 cy, pursuant to guidelines established by the Sec-
2 retary. The principal and accrued interest due under
3 the second mortgage shall be fully payable upon dis-
4 position of the property, unless the mortgage is as-
5 sumed under the preceding sentence. The owner
6 shall begin repayment of the second mortgage upon
7 full payment of the first mortgage in equal monthly
8 installments in an amount equal to the monthly
9 principal and interest payments formerly paid under
10 the first mortgage. The principal and interest of a
11 second mortgage shall be immediately due and pay-
12 able upon a finding by the Secretary that an owner
13 has failed to materially comply with this part or any
14 requirements of the United States Housing Act of
15 1937 as those requirements apply to the applicable
16 project, after receipt of notice of such failure and a
17 reasonable opportunity to cure such failure. The sec-
18 ond mortgage may be a direct obligation of the Sec-
19 retary or a loan financed through a lender, other
20 than the Secretary. If the second mortgage is a di-
21 rect obligation of the Secretary, the participating ad-
22 ministrative entity shall be authorized in the port-
23 folio restructuring agreement to act as the agent of
24 the Secretary in servicing such mortgage and enforc-
25 ing the rights of the Secretary thereunder. Any cred-

1 it subsidy costs of providing a second mortgage shall
2 be paid from the General Insurance Fund and the
3 Special Risk Insurance Fund.

4 (b) ROLE OF FNMA AND FHLMC.—Section 1335
5 of the Federal Housing Enterprises Financial Safety and
6 Soundness Act of 1992 (12 U.S.C. 4565) is amended—

7 (1) in paragraph (3), by striking “and” at the
8 end;

9 (2) paragraph (4), by striking the period at the
10 end and inserting “; and”;

11 (3) by striking “To meet” and inserting the fol-
12 lowing:

13 “(a) IN GENERAL.—To meet”; and

14 (4) by adding at the end the following:

15 “(5) assist in maintaining the affordability of
16 assisted units in eligible multifamily housing projects
17 with expiring contracts, as defined under the Multi-
18 family Assisted Housing Reform and Affordability
19 Act of 1997.

20 “(b) AFFORDABLE HOUSING GOALS.—Actions taken
21 under subsection (a)(5) shall constitute part of the con-
22 tribution of each entity in meeting their affordable hous-
23 ing goals under sections 1332, 1333, and 1334 for any
24 fiscal year, as determined by the Secretary.”.

1 (c) PROHIBITION ON EQUITY SHARING BY THE SEC-
2 RETARY.—The Secretary is prohibited from participating
3 in any equity agreement or profit-sharing agreement in
4 conjunction with any eligible multifamily housing project.

5 **SEC. 2108. SHARED SAVINGS INCENTIVE.**

6 (a) IN GENERAL.—At the time a participating ad-
7 ministrative entity is designated, the Secretary shall nego-
8 tiate an incentive agreement with the participating admin-
9 istrative entity, which agreement shall provide such entity
10 with a share of any principal and interest payments on
11 the second mortgage. The Secretary shall negotiate with
12 participating administrative entities a savings incentive
13 formula that provides for periodic payments over a period
14 of not less than 5 years, which is allocated as incentives
15 to participating administrative entities.

16 (b) USE OF SAVINGS.—Notwithstanding any other
17 provision of law, the incentive agreement under subsection
18 (a) shall require any savings provided to a participating
19 administrative entity under that agreement to be used only
20 for providing decent, safe, and affordable housing for very
21 low-income families and persons with a priority for eligible
22 multifamily housing projects.

23 **SEC. 2109. MANAGEMENT STANDARDS.**

24 Each participating administrative entity shall estab-
25 lish and implement management standards, including re-

1 requirements governing conflicts of interest between owners,
2 managers, contractors with an identity of interest, pursu-
3 ant to guidelines established by the Secretary and consist-
4 ent with industry standards.

5 **SEC. 2110. MONITORING OF COMPLIANCE.**

6 (a) COMPLIANCE AGREEMENTS.—Pursuant to regu-
7 lations issued by the Secretary after public notice and
8 comment, each participating administrative entity,
9 through binding contractual agreements with owners and
10 otherwise, shall ensure long-term compliance with the pro-
11 visions of this part. Each agreement shall, at a minimum,
12 provide for—

13 (1) enforcement of the provisions of this part;

14 and

15 (2) remedies for the breach of those provisions.

16 (b) PERIODIC MONITORING.—

17 (1) IN GENERAL.—Not less than annually, each
18 participating administrative entity shall review the
19 status of all multifamily housing projects for which
20 a mortgage restructuring and rental assistance suffi-
21 ciency plan has been implemented.

22 (2) INSPECTIONS.—Each review under this sub-
23 section shall include onsite inspection to determine
24 compliance with housing codes and other require-

1 ments as provided in this part and the portfolio re-
2 structuring agreements.

3 (c) **AUDIT BY THE SECRETARY.**—The Comptroller
4 General of the United States, the Secretary, and the In-
5 specter General of the Department of Housing and Urban
6 Development may conduct an audit at any time of any
7 multifamily housing project for which a mortgage restruc-
8 turing and rental assistance sufficiency plan has been im-
9 plemented.

10 **SEC. 2111. REVIEW.**

11 (a) **ANNUAL REVIEW.**—In order to ensure compliance
12 with this part, the Secretary shall conduct an annual re-
13 view and report to Congress on actions taken under this
14 part and the status of eligible multifamily housing
15 projects.

16 (b) **SUBSIDY LAYERING REVIEW.**—The participating
17 administrative entity shall certify, pursuant to guidelines
18 issued by the Secretary, that the requirements of section
19 102(d) of the Department of Housing and Urban Develop-
20 ment Reform Act of 1989 are satisfied so that the com-
21 bination of assistance provided in connection with a prop-
22 erty for which a mortgage is to be restructured shall not
23 be any greater than is necessary to provide affordable
24 housing.

1 **SEC. 2112. GAO AUDIT AND REVIEW.**

2 (a) INITIAL AUDIT.—Not later than 18 months after
3 the effective date of interim or final regulations promul-
4 gated under this part, the Comptroller General of the
5 United States shall conduct an audit to evaluate a rep-
6 resentative sample of all eligible multifamily housing
7 projects and the implementation of all mortgage restruc-
8 turing and rental assistance sufficiency plans.

9 (b) REPORT.—

10 (1) IN GENERAL.—Not later than 18 months
11 after the audit conducted under subsection (a), the
12 Comptroller General of the United States shall sub-
13 mit to Congress a report on the status of all eligible
14 multifamily housing projects and the implementation
15 of all mortgage restructuring and rental assistance
16 sufficiency plans.

17 (2) CONTENTS.—The report submitted under
18 paragraph (1) shall include—

19 (A) a description of the initial audit con-
20 ducted under subsection (a); and

21 (B) recommendations for any legislative
22 action to increase the financial savings to the
23 Federal Government of the restructuring of eli-
24 gible multifamily housing projects balanced with
25 the continued availability of the maximum num-
26 ber of affordable low-income housing units.

1 **SEC. 2113. REGULATIONS.**

2 (a) RULEMAKING AND IMPLEMENTATION.—The Sec-
3 retary shall issue interim regulations necessary to imple-
4 ment this part not later than the expiration of the 6-
5 month period beginning on the date of enactment of this
6 Act. Not later than 1 year after the date of enactment
7 of this subtitle, in accordance with the negotiated rule-
8 making procedures set forth in subchapter III of chapter
9 5 of title 5, United States Code, the Secretary shall imple-
10 ment final regulations implementing this part.

11 (b) REPEAL OF FHA MULTIFAMILY HOUSING DEM-
12 ONSTRATION AUTHORITY.—

13 (1) IN GENERAL.—Beginning upon the expira-
14 tion of the 6-month period beginning on the date of
15 enactment of this Act, the Secretary may not exer-
16 cise any authority or take any action under section
17 210 of the Balanced Budget Down Payment Act, II.

18 (2) UNUSED BUDGET AUTHORITY.—Any un-
19 used budget authority under section 210(f) of the
20 Balanced Budget Down Payment Act, II, shall be
21 available for taking actions under the requirements
22 established through regulations issued under sub-
23 section (a).

24 **SEC. 2114. TECHNICAL AND CONFORMING AMENDMENTS.**

25 (a) CALCULATION OF LIMIT ON PROJECT-BASED AS-
26 SISTANCE.—Section 8(d) of the United States Housing

1 Act of 1937 (42 U.S.C. 1437f(d)) is amended by adding
2 at the end the following:

3 “(5) CALCULATION OF LIMIT.—Any contract
4 entered into under section 2104 of the Multifamily
5 Assisted Housing Reform and Affordability Act of
6 1997 shall be excluded in computing the limit on
7 project-based assistance under this subsection.”.

8 (b) PARTIAL PAYMENT OF CLAIMS ON MULTIFAMILY
9 HOUSING PROJECTS.—Section 541 of the National Hous-
10 ing Act (12 U.S.C. 1735f–19) is amended—

11 (1) in subsection (a), in the subsection heading,
12 by striking “AUTHORITY” and inserting “DE-
13 FAULTED MORTGAGES”;

14 (2) by redesignating subsection (b) as sub-
15 section (c); and

16 (3) by inserting after subsection (a) the follow-
17 ing:

18 “(b) EXISTING MORTGAGES.—Notwithstanding any
19 other provision of law, the Secretary, in connection with
20 a mortgage restructuring under section 2104 of the Multi-
21 family Assisted Housing Reform and Affordability Act of
22 1997, may make a one time, nondefault partial payment
23 of the claim under the mortgage insurance contract, which
24 shall include a determination by the Secretary or the par-
25 ticipating administrative entity, in accordance with the

1 Multifamily Assisted Housing Reform and Affordability
2 Act of 1997, of the market value of the project and a re-
3 structuring of the mortgage, under such terms and condi-
4 tions as the Secretary may establish.”.

5 (c) REUSE AND RESCISSION OF CERTAIN RECAP-
6 TURED BUDGET AUTHORITY.—Section 8(bb) of the Unit-
7 ed States Housing Act of 1937 (42 U.S.C. 1437f(b)(b))
8 is amended to read as follows:

9 “(bb) REUSE AND RESCISSION OF CERTAIN RECAP-
10 TURED BUDGET AUTHORITY.—If a project-based assist-
11 ance contract for an eligible multifamily housing project
12 subject to actions authorized under title I is terminated
13 or amended as part of restructuring under section 107,
14 the Secretary shall recapture the budget authority not re-
15 quired for the terminated or amended contract and, with-
16 out regard to section 218 of the Departments of Veterans
17 Affairs and Housing and Urban Development, and Inde-
18 pendent Agencies Appropriations Act of 1997, use such
19 amounts as are necessary to provide housing assistance
20 for the same number of families covered by such contract
21 for the remaining term of such contract, under a contract
22 providing for project-based or tenant-based assistance.
23 The amount of budget authority saved as a result of the
24 shift to project-based or tenant-based assistance shall be
25 rescinded.”.

1 **SEC. 2115. TERMINATION OF AUTHORITY.**

2 (a) IN GENERAL.—Except as provided in subsection
3 (b), this part is repealed effective October 1, 2001.

4 (b) EXCEPTION.—The repeal under this section does
5 not apply with respect to projects and programs for which
6 binding commitments have been entered into before Octo-
7 ber 1, 2001.

8 **Part 2—Miscellaneous Provisions**

9 **SEC. 2201. REHABILITATION GRANTS FOR CERTAIN IN-**
10 **SURED PROJECTS.**

11 Section 236 of the National Housing Act (12 U.S.C.
12 1715z-1) is amended by adding at the end the following:

13 “(s) GRANT AUTHORITY.—

14 “(1) IN GENERAL.—The Secretary may make
15 grants for the capital costs of rehabilitation to own-
16 ers of projects that meet the eligibility and other cri-
17 teria set forth in, and in accordance with, this sub-
18 section.

19 “(2) PROJECT ELIGIBILITY.—A project may be
20 eligible for capital grant assistance under this sub-
21 section—

22 “(A) if—

23 “(i) the project was insured under
24 section 236 or section 221(d)(3) of the Na-
25 tional Housing Act; and

1 “(ii) the project was assisted by the
2 loan management assistance program
3 under section 8 of the United States Hous-
4 ing Act of 1937 on the date of enactment
5 of the Multifamily Assisted Housing Re-
6 form and Affordability Act of 1997;

7 “(B) if the project owner agrees to main-
8 tain the housing quality standards that were in
9 effect immediately prior to the extinguishment
10 of the mortgage insurance;

11 “(C) if the Secretary determines that the
12 owner or purchaser of the project has not en-
13 gaged in material adverse financial or manage-
14 rial actions or omissions with regard to this
15 project (or with regard to other similar projects
16 if the Secretary determines that those actions
17 or omissions constitute a pattern of mismanage-
18 ment that would warrant suspension or debar-
19 ment by the Secretary), including—

20 “(i) materially violating any Federal,
21 State, or local law or regulation with re-
22 gard to this project or any other federally
23 assisted project, after receipt of notice and
24 an opportunity to cure;

1 “(ii) materially breaching a contract
2 for assistance under section 8 of the Unit-
3 ed States Housing Act of 1937, after re-
4 ceipt of notice and an opportunity to cure;

5 “(iii) materially violating any applica-
6 ble regulatory or other agreement with the
7 Secretary or a participating administrative
8 entity, after receipt of notice and an oppor-
9 tunity to cure;

10 “(iv) repeatedly failing to make mort-
11 gage payments at times when project in-
12 come was sufficient to maintain and oper-
13 ate the property;

14 “(v) materially failing to maintain the
15 property according to housing quality
16 standards after receipt of notice and a rea-
17 sonable opportunity to cure; or

18 “(vi) committing any act or omission
19 that would warrant suspension or debar-
20 ment by the Secretary; and

21 “(D) if the project owner demonstrates to
22 the satisfaction of the Secretary—

23 “(i) using information in a com-
24 prehensive needs assessment, that capital

1 grant assistance is needed for rehabilita-
2 tion of the project; and

3 “(ii) that project income is not suffi-
4 cient to support such rehabilitation.

5 “(3) ELIGIBLE PURPOSES.—The Secretary may
6 make grants to the owners of eligible projects for the
7 purposes of—

8 “(A) payment into project replacement re-
9 serves;

10 “(B) providing a fair return on equity in-
11 vestment;

12 “(C) debt service payments on non-Federal
13 rehabilitation loans; and

14 “(D) payment of nonrecurring mainte-
15 nance and capital improvements, under such
16 terms and conditions as are determined by the
17 Secretary.

18 “(4) GRANT AGREEMENT.—

19 “(A) IN GENERAL.—The Secretary shall
20 provide in any grant agreement under this sub-
21 section that the grant shall be terminated if the
22 project fails to meet housing quality standards,
23 as applicable on the date of enactment of the
24 Multifamily Housing Reform and Affordability
25 Act of 1997, or any successor standards for the

1 physical conditions of projects, as are deter-
2 mined by the Secretary.

3 “(B) AFFORDABILITY AND USE
4 CLAUSES.—The Secretary shall include in a
5 grant agreement under this subsection a re-
6 quirement for the project owners to maintain
7 such affordability and use restrictions as the
8 Secretary determines to be appropriate.

9 “(C) OTHER TERMS.—The Secretary may
10 include in a grant agreement under this sub-
11 section such other terms and conditions as the
12 Secretary determines to be necessary.

13 “(5) DELEGATION.—

14 “(A) IN GENERAL.—In addition to the au-
15 thorities set forth in subsection (p), the Sec-
16 retary may delegate to State and local govern-
17 ments the responsibility for the administration
18 of grants under this subsection. Any such gov-
19 ernment may carry out such delegated respon-
20 sibilities directly or under contracts.

21 “(B) ADMINISTRATION COSTS.—In addi-
22 tion to other eligible purposes, amounts of
23 grants under this subsection may be made
24 available for costs of administration under sub-
25 paragraph (A).

1 “(6) FUNDING.—

2 “(A) IN GENERAL.—For purposes of carry-
3 ing out this subsection, the Secretary may make
4 available amounts that are unobligated amounts
5 for contracts for interest reduction payments—

6 “(i) that were previously obligated for
7 contracts for interest reduction payments
8 under this section until insurance under
9 this section was extinguished;

10 “(ii) that become available as a result
11 of the outstanding principal balance of a
12 mortgage having been written down;

13 “(iii) that are uncommitted balances
14 within the limitation on maximum pay-
15 ments that may have been, before the date
16 of enactment of the Multifamily Assisted
17 Housing Reform and Affordability Act of
18 1997, permitted in any fiscal year; or

19 “(iv) that become available from any
20 other source.

21 “(B) LIQUIDATION AUTHORITY.—The Sec-
22 retary may liquidate obligations entered into
23 under this subsection under section 1305(10) of
24 title 31, United States Code.

1 “(C) CAPITAL GRANTS.—In making capital
2 grants under the terms of this subsection, using
3 the amounts that the Secretary has recaptured
4 from contracts for interest reduction payments,
5 the Secretary shall ensure that the rates and
6 amounts of outlays do not at any one time ex-
7 ceed the rates and amounts of outlays that
8 would have been experienced if the insurance
9 had not been extinguished or the principal
10 amount had not been written down, and the in-
11 terest reduction payments that the Secretary
12 has recaptured had continued in accordance
13 with the terms in effect immediately prior to
14 such extinguishment or write-down.”.

15 **SEC. 2202. MINIMUM RENT.**

16 Notwithstanding section 3(a) of the United States
17 Housing Act of 1937, the Secretary of Housing and Urban
18 Development may provide that each family receiving
19 project-based assistance under section 8 shall pay a mini-
20 mum monthly rent in an amount not to exceed \$25 per
21 month.

22 **SEC. 2203. REPEAL OF FEDERAL PREFERENCES.**

23 (a) SECTION 8 EXISTING AND MODERATE REHABILI-
24 TATION.—Section 8(d)(1)(A) of the United States Hous-

1 ing Act of 1937 (42 U.S.C. 1437f(d)(1)(A)) is amended
2 to read as follows:

3 “(A) the selection of tenants shall be the func-
4 tion of the owner, subject to the annual contribu-
5 tions contract between the Secretary and the agency,
6 except that with respect to the certificate and mod-
7 erate rehabilitation programs only, for the purpose
8 of selecting families to be assisted, the public hous-
9 ing agency may establish, after public notice and an
10 opportunity for public comment, a written system of
11 preferences for selection that are not inconsistent
12 with the comprehensive housing affordability strat-
13 egy for the jurisdiction in which the project is lo-
14 cated, in accordance with title I of the Cranston-
15 Gonzalez National Affordable Housing Act;”.

16 (b) SECTION 8 NEW CONSTRUCTION AND SUBSTAN-
17 TIAL REHABILITATION.—

18 (1) REPEAL.—Section 545(c) of the Cranston-
19 Gonzalez National Affordable Housing Act (42
20 U.S.C. 1437f note) is amended to read as follows:

21 “(c) [Reserved.]”.

22 (2) PROHIBITION.—The provisions of section
23 8(e)(2) of the United States Housing Act of 1937,
24 as in existence on the day before October 1, 1983,

1 that require tenant selection preferences shall not
2 apply with respect to—

3 (A) housing constructed or substantially
4 rehabilitated pursuant to assistance provided
5 under section 8(b)(2) of the United States
6 Housing Act of 1937, as in existence on the day
7 before October 1, 1983; or

8 (B) projects financed under section 202 of
9 the Housing Act of 1959, as in existence on the
10 day before the date of enactment of the Cran-
11 ston-Gonzalez National Affordable Housing Act.

12 (c) RENT SUPPLEMENTS.—Section 101(k) of the
13 Housing and Urban Development Act of 1965 (12 U.S.C.
14 1701s(k)) is amended to read as follows:

15 “(k) [Reserved.]”.

16 (d) CONFORMING AMENDMENTS.—

17 (1) UNITED STATES HOUSING ACT OF 1937.—
18 The United States Housing Act of 1937 (42 U.S.C.
19 1437 et seq.) is amended—

20 (A) in section 6(o), by striking “preference
21 rules specified in” and inserting “written selec-
22 tion criteria established pursuant to”;

23 (B) in section 8(d)(2)(A), by striking the
24 last sentence; and

1 (C) in section 8(d)(2)(H), by striking
2 “Notwithstanding subsection (d)(1)(A)(i), an”
3 and inserting “An”.

4 (2) CRANSTON-GONZALEZ NATIONAL AFFORD-
5 ABLE HOUSING ACT.—The Cranston-Gonzalez Na-
6 tional Affordable Housing Act (42 U.S.C. 12704 et
7 seq.) is amended—

8 (A) in section 455(a)(2)(D)(iii), by striking
9 “would qualify for a preference under” and in-
10 sserting “meet the written selection criteria es-
11 tablished pursuant to”; and

12 (B) in section 522(f)(6)(B), by striking
13 “any preferences for such assistance under sec-
14 tion 8(d)(1)(A)(i)” and inserting “the written
15 selection criteria established pursuant to section
16 8(d)(1)(A)”.

17 (3) LOW-INCOME HOUSING PRESERVATION AND
18 RESIDENT HOMEOWNERSHIP ACT OF 1990.—The sec-
19 ond sentence of section 226(b)(6)(B) of the Low-In-
20 come Housing Preservation and Resident Home-
21 ownership Act of 1990 (12 U.S.C. 4116(b)(6)(B)) is
22 amended by striking “requirement for giving pref-
23 erences to certain categories of eligible families
24 under” and inserting “written selection criteria es-
25 tablished pursuant to”.

1 (4) HOUSING AND COMMUNITY DEVELOPMENT
2 ACT OF 1992.—Section 655 of the Housing and Com-
3 munity Development Act of 1992 (42 U.S.C. 13615)
4 is amended by striking “preferences for occupancy”
5 and all that follows before the period at the end and
6 inserting “selection criteria established by the owner
7 to elderly families according to such written selection
8 criteria, and to near-elderly families according to
9 such written selection criteria, respectively”.

10 (5) REFERENCES IN OTHER LAW.—Any ref-
11 erence in any Federal law other than any provision
12 of any law amended by paragraphs (1) through (5)
13 of this subsection or to the preferences for assist-
14 ance under section 8(d)(1)(A)(i) of the United
15 States Housing Act of 1937, as that section existed
16 on the day before the effective date of this part,
17 shall be considered to refer to the written selection
18 criteria established pursuant to section 8(d)(1)(A) of
19 the United States Housing Act of 1937, as amended
20 by this subsection.

21 **Part 3—Enforcement Provisions**

22 **SEC. 2301. IMPLEMENTATION.**

23 (a) ISSUANCE OF NECESSARY REGULATIONS.—Not-
24 withstanding section 7(o) of the Department of Housing
25 and Urban Development Act or part 10 of title 24, Code

1 of Federal Regulations (as in existence on the date of en-
2 actment of this Act), the Secretary shall issue such regula-
3 tions as the Secretary determines to be necessary to imple-
4 ment this subtitle and the amendments made by this sub-
5 title in accordance with section 552 or 553 of title 5, Unit-
6 ed States Code, as determined by the Secretary.

7 (b) USE OF EXISTING REGULATIONS.—In imple-
8 menting any provision of this subtitle, the Secretary may,
9 in the discretion of the Secretary, provide for the use of
10 existing regulations to the extent appropriate, without
11 rulemaking.

12 **Subpart A—FHA Single Family and Multifamily**
13 **Housing**

14 **SEC. 2311. AUTHORIZATION TO IMMEDIATELY SUSPEND**
15 **MORTGAGEES.**

16 Section 202(c)(3)(C) of the National Housing Act
17 (12 U.S.C. 1708(c)(3)(C)) is amended by inserting after
18 the first sentence the following: “Notwithstanding para-
19 graph (4)(A), a suspension shall be effective upon issuance
20 by the Board if the Board determines that there exists
21 adequate evidence that immediate action is required to
22 protect the financial interests of the Department or the
23 public.”.

1 **SEC. 2312. EXTENSION OF EQUITY SKIMMING TO OTHER**
2 **SINGLE FAMILY AND MULTIFAMILY HOUSING**
3 **PROGRAMS.**

4 Section 254 of the National Housing Act (12 U.S.C.
5 1715z-19) is amended to read as follows:

6 **“SEC. 254. EQUITY SKIMMING PENALTY.**

7 “(a) IN GENERAL.—Whoever, as an owner, agent, or
8 manager, or who is otherwise in custody, control, or pos-
9 session of a multifamily project or a 1- to 4-family resi-
10 dence that is security for a mortgage note that is described
11 in subsection (b), willfully uses or authorizes the use of
12 any part of the rents, assets, proceeds, income, or other
13 funds derived from property covered by that mortgage
14 note for any purpose other than to meet reasonable and
15 necessary expenses that include expenses approved by the
16 Secretary if such approval is required, in a period during
17 which the mortgage note is in default or the project is
18 in a nonsurplus cash position, as defined by the regulatory
19 agreement covering the property, or the mortgagor has
20 failed to comply with the provisions of such other form
21 of regulatory control imposed by the Secretary, shall be
22 fined not more than \$500,000, imprisoned not more than
23 5 years, or both.

24 “(b) MORTGAGE NOTES DESCRIBED.—For purposes
25 of subsection (a), a mortgage note is described in this sub-
26 section if it—

1 “(1) is insured, acquired, or held by the Sec-
2 retary pursuant to this Act;

3 “(2) is made pursuant to section 202 of the
4 Housing Act of 1959 (including property still subject
5 to section 202 program requirements that existed
6 before the date of enactment of the Cranston-Gon-
7 zalez National Affordable Housing Act); or

8 “(3) is insured or held pursuant to section 542
9 of the Housing and Community Development Act of
10 1992, but is not reinsured under section 542 of the
11 Housing and Community Development Act of
12 1992.”.

13 **SEC. 2313. CIVIL MONEY PENALTIES AGAINST MORTGA-**
14 **GEES, LENDERS, AND OTHER PARTICIPANTS**
15 **IN FHA PROGRAMS.**

16 (a) CHANGE TO SECTION TITLE.—Section 536 of the
17 National Housing Act (12 U.S.C. 1735f–14) is amended
18 by striking the section heading and the section designation
19 and inserting the following:

20 **“SEC. 536. CIVIL MONEY PENALTIES AGAINST MORTGA-**
21 **GEES, LENDERS, AND OTHER PARTICIPANTS**
22 **IN FHA PROGRAMS.”.**

23 (b) EXPANSION OF PERSONS ELIGIBLE FOR PEN-
24 ALTY.—Section 536(a) of the National Housing Act (12
25 U.S.C. 1735f–14(a)) is amended—

1 (1) in paragraph (1), by striking the first sen-
2 tence and inserting the following: “If a mortgagee
3 approved under the Act, a lender holding a contract
4 of insurance under title I, or a principal, officer, or
5 employee of such mortgagee or lender, or other per-
6 son or entity participating in either an insured mort-
7 gage or title I loan transaction under this Act or
8 providing assistance to the borrower in connection
9 with any such loan, including sellers of the real es-
10 tate involved, borrowers, closing agents, title compa-
11 nies, real estate agents, mortgage brokers, apprais-
12 ers, loan correspondents and dealers, knowingly and
13 materially violates any applicable provision of sub-
14 section (b), the Secretary may impose a civil money
15 penalty on the mortgagee or lender, or such other
16 person or entity, in accordance with this section.
17 The penalty under this paragraph shall be in addi-
18 tion to any other available civil remedy or any avail-
19 able criminal penalty, and may be imposed whether
20 or not the Secretary imposes other administrative
21 sanctions.”; and

22 (2) in paragraph (2)—

23 (A) in the first sentence, by inserting “or
24 such other person or entity” after “lender”; and

1 (B) in the second sentence, by striking
2 “provision” and inserting “the provisions”.

3 (c) ADDITIONAL VIOLATIONS FOR MORTGAGEES,
4 LENDERS, AND OTHER PARTICIPANTS IN FHA PRO-
5 GRAMS.—Section 536(b) of the National Housing Act (12
6 U.S.C. 1735f–14(b)) is amended—

7 (1) by redesignating paragraph (2) as para-
8 graph (3);

9 (2) by inserting after paragraph (1) the follow-
10 ing:

11 “(2) The Secretary may impose a civil money
12 penalty under subsection (a) for any knowing and
13 material violation by a principal, officer, or employee
14 of a mortgagee or lender, or other participants in ei-
15 ther an insured mortgage or title I loan transaction
16 under this Act or provision of assistance to the bor-
17 rower in connection with any such loan, including
18 sellers of the real estate involved, borrowers, closing
19 agents, title companies, real estate agents, mortgage
20 brokers, appraisers, loan correspondents, and dealers
21 for—

22 “(A) submission to the Secretary of infor-
23 mation that was false, in connection with any
24 mortgage insured under this Act, or any loan

1 that is covered by a contract of insurance under
2 title I of this Act;

3 “(B) falsely certifying to the Secretary or
4 submitting to the Secretary a false certification
5 by another person or entity; or

6 “(C) failure by a loan correspondent or
7 dealer to submit to the Secretary information
8 which is required by regulations or directives in
9 connection with any loan that is covered by a
10 contract of insurance under title I.”; and

11 (3) in paragraph (3), as redesignated, by strik-
12 ing “or paragraph (1)(F)” and inserting “or (F), or
13 paragraph (2) (A), (B), or (C)”.

14 (d) CONFORMING AND TECHNICAL AMENDMENTS.—
15 Section 536 of the National Housing Act (12 U.S.C.
16 1735f–14) is amended—

17 (1) in subsection (c)(1)(B), by inserting after
18 “lender” the following: “or such other person or en-
19 tity”;

20 (2) in subsection (d)(1)—

21 (A) by inserting “or such other person or
22 entity” after “lender”; and

23 (B) by striking “part 25” and inserting
24 “parts 24 and 25”; and

1 (3) in subsection (e), by inserting “or such
2 other person or entity” after “lender” each place
3 that term appears.

4 **Subpart B—FHA Multifamily Provisions**

5 **SEC. 2320. CIVIL MONEY PENALTIES AGAINST GENERAL**
6 **PARTNERS, OFFICERS, DIRECTORS, AND CER-**
7 **TAIN MANAGING AGENTS OF MULTIFAMILY**
8 **PROJECTS.**

9 (a) CIVIL MONEY PENALTIES AGAINST MULTIFAM-
10 ILY MORTGAGORS.—Section 537 of the National Housing
11 Act (12 U.S.C. 1735f–15) is amended—

12 (1) in subsection (b)(1), by striking “on that
13 mortgagor” and inserting the following: “on that
14 mortgagor, on a general partner of a partnership
15 mortgagor, or on any officer or director of a cor-
16 porate mortgagor”;

17 (2) in subsection (c)—

18 (A) by striking the subsection heading and
19 inserting the following:

20 “(c) OTHER VIOLATIONS.—”; and

21 (B) in paragraph (1)—

22 (i) by striking “VIOLATIONS.—The
23 Secretary may” and all that follows
24 through the colon and inserting the follow-
25 ing:

1 “(A) LIABLE PARTIES.—The Secretary
2 may also impose a civil money penalty under
3 this section on—

4 “(i) any mortgagor of a property that
5 includes five or more living units and that
6 has a mortgage insured, coinsured, or held
7 pursuant to this Act;

8 “(ii) any general partner of a partner-
9 ship mortgagor of such property;

10 “(iii) any officer or director of a cor-
11 porate mortgagor;

12 “(iv) any agent employed to manage
13 the property that has an identity of inter-
14 est with the mortgagor, with the general
15 partner of a partnership mortgagor, or
16 with any officer or director of a corporate
17 mortgagor of such property; or

18 “(v) any member of a limited liability
19 company that is the mortgagor of such
20 property or is the general partner of a lim-
21 ited partnership mortgagor or is a partner
22 of a general partnership mortgagor.

23 “(B) VIOLATIONS.—A penalty may be im-
24 posed under this section upon any liable party

1 under subparagraph (A) that knowingly and
2 materially takes any of the following actions:”;

3 (ii) in subparagraph (B), as des-
4 ignated by clause (i), by redesignating the
5 subparagraph designations (A) through
6 (L) as clauses (i) through (xii), respec-
7 tively;

8 (iii) by adding after clause (xii), as re-
9 designated by clause (ii), the following:

10 “(xiii) Failure to maintain the prem-
11 ises, accommodations, any living unit in
12 the project, and the grounds and equip-
13 ment appurtenant thereto in good repair
14 and condition in accordance with regula-
15 tions and requirements of the Secretary,
16 except that nothing in this clause shall
17 have the effect of altering the provisions of
18 an existing regulatory agreement or feder-
19 ally insured mortgage on the property.

20 “(xiv) Failure, by a mortgagor, a gen-
21 eral partner of a partnership mortgagor, or
22 an officer or director of a corporate mort-
23 gagor, to provide management for the
24 project that is acceptable to the Secretary

1 pursuant to regulations and requirements
2 of the Secretary.”; and

3 (iv) in the last sentence, by deleting
4 “of such agreement” and inserting “of this
5 subsection”;

6 (3) in subsection (d)—

7 (A) in paragraph (1)(B), by inserting after
8 “mortgagor” the following: “, general partner
9 of a partnership mortgagor, officer or director
10 of a corporate mortgagor, or identity of interest
11 agent employed to manage the property”; and

12 (B) by adding at the end the following:

13 “(5) PAYMENT OF PENALTY.—No payment of a
14 civil money penalty levied under this section shall be
15 payable out of project income.”;

16 (4) in subsection (e)(1), by deleting “a mortga-
17 gor” and inserting “an entity or person”;

18 (5) in subsection (f), by inserting after “mort-
19 gagor” each place such term appears the following:
20 “, general partner of a partnership mortgagor, offi-
21 cer or director of a corporate mortgagor, or identity
22 of interest agent employed to manage the property”;

23 (6) by striking the heading of subsection (f)
24 and inserting the following: “CIVIL MONEY PEN-
25 ALTIES AGAINST MULTIFAMILY MORTGAGORS, GEN-

1 ERAL PARTNERS OF PARTNERSHIP MORTGAGORS,
2 OFFICERS AND DIRECTORS OF CORPORATE MORT-
3 GAGORS, AND CERTAIN MANAGING AGENTS”]; and

4 (7) by adding at the end the following:

5 “(k) IDENTITY OF INTEREST MANAGING AGENT.—

6 In this section, the terms ‘agent employed to manage the
7 property that has an identity of interest’ and ‘identity of
8 interest agent’ mean an entity—

9 “(1) that has management responsibility for a
10 project;

11 “(2) in which the ownership entity, including its
12 general partner or partners (if applicable) and its of-
13 ficers or directors (if applicable), has an ownership
14 interest; and

15 “(3) over which the ownership entity exerts ef-
16 fective control.”.

17 (b) IMPLEMENTATION.—

18 (1) PUBLIC COMMENT.—The Secretary shall
19 implement the amendments made by this section by
20 regulation issued after notice and opportunity for
21 public comment. The notice shall seek comments pri-
22 marily as to the definitions of the terms “ownership
23 interest in” and “effective control”, as those terms
24 are used in the definition of the terms “agent em-

1 employed to manage the property that has an identity
2 of interest” and “identity of interest agent”.

3 (2) **TIMING.**—A proposed rule implementing the
4 amendments made by this section shall be published
5 not later than 1 year after the date of enactment of
6 this Act.

7 (c) **APPLICABILITY OF AMENDMENTS.**—The amend-
8 ments made by subsection (a) shall apply only with respect
9 to—

10 (1) violations that occur on or after the effec-
11 tive date of the final regulations implementing the
12 amendments made by this section; and

13 (2) in the case of a continuing violation (as de-
14 termined by the Secretary of Housing and Urban
15 Development), any portion of a violation that occurs
16 on or after that date.

17 **SEC. 2321. CIVIL MONEY PENALTIES FOR NONCOMPLIANCE**
18 **WITH SECTION 8 HAP CONTRACTS.**

19 (a) **BASIC AUTHORITY.**—Title I of the United States
20 Housing Act of 1937 is amended—

21 (1) by designating the second section des-
22 ignated as section 27 (as added by section 903(b) of
23 Public Law 104–193 (110 Stat. 2348)) as section
24 28; and

25 (2) by adding at the end the following:

1 **“SEC. 29. CIVIL MONEY PENALTIES AGAINST SECTION 8**
2 **OWNERS.**

3 “(a) IN GENERAL.—

4 “(1) EFFECT ON OTHER REMEDIES.—The pen-
5 alties set forth in this section shall be in addition to
6 any other available civil remedy or any available
7 criminal penalty, and may be imposed regardless of
8 whether the Secretary imposes other administrative
9 sanctions.

10 “(2) FAILURE OF SECRETARY.—The Secretary
11 may not impose penalties under this section for a
12 violation, if a material cause of the violation is the
13 failure of the Secretary, an agent of the Secretary,
14 or a public housing agency to comply with an exist-
15 ing agreement.

16 “(b) VIOLATIONS OF HOUSING ASSISTANCE PAY-
17 MENT CONTRACTS FOR WHICH PENALTY MAY BE IM-
18 POSED.—

19 “(1) LIABLE PARTIES.—The Secretary may im-
20 pose a civil money penalty under this section on—

21 “(A) any owner of a property receiving
22 project-based assistance under section 8;

23 “(B) any general partner of a partnership
24 owner of that property; and

25 “(C) any agent employed to manage the
26 property that has an identity of interest with

1 the owner or the general partner of a partner-
2 ship owner of the property.

3 “(2) VIOLATIONS.—A penalty may be imposed
4 under this section for a knowing and material
5 breach of a housing assistance payments contract,
6 including the following—

7 “(A) failure to provide decent, safe, and
8 sanitary housing pursuant to section 8; or

9 “(B) knowing or willful submission of
10 false, fictitious, or fraudulent statements or re-
11 quests for housing assistance payments to the
12 Secretary or to any department or agency of
13 the United States.

14 “(3) AMOUNT OF PENALTY.—The amount of a
15 penalty imposed for a violation under this sub-
16 section, as determined by the Secretary, may not ex-
17 ceed \$25,000 per violation.

18 “(c) AGENCY PROCEDURES.—

19 “(1) ESTABLISHMENT.—The Secretary shall
20 issue regulations establishing standards and proce-
21 dures governing the imposition of civil money pen-
22 alties under subsection (b). These standards and
23 procedures—

1 “(A) shall provide for the Secretary or
2 other department official to make the deter-
3 mination to impose the penalty;

4 “(B) shall provide for the imposition of a
5 penalty only after the liable party has received
6 notice and the opportunity for a hearing on the
7 record; and

8 “(C) may provide for review by the Sec-
9 retary of any determination or order, or inter-
10 locutory ruling, arising from a hearing and ju-
11 dicial review, as provided under subsection (d).

12 “(2) FINAL ORDERS.—

13 “(A) IN GENERAL.—If a hearing is not re-
14 quested before the expiration of the 15-day pe-
15 riod beginning on the date on which the notice
16 of opportunity for hearing is received, the impo-
17 sition of a penalty under subsection (b) shall
18 constitute a final and unappealable determina-
19 tion.

20 “(B) EFFECT OF REVIEW.—If the Sec-
21 retary reviews the determination or order, the
22 Secretary may affirm, modify, or reverse that
23 determination or order.

24 “(C) FAILURE TO REVIEW.—If the Sec-
25 retary does not review that determination or

1 order before the expiration of the 90-day period
2 beginning on the date on which the determina-
3 tion or order is issued, the determination or
4 order shall be final.

5 “(3) FACTORS IN DETERMINING AMOUNT OF
6 PENALTY.—In determining the amount of a penalty
7 under subsection (b), the Secretary shall take into
8 consideration—

9 “(A) the gravity of the offense;

10 “(B) any history of prior offenses by the
11 violator (including offenses occurring before the
12 enactment of this section);

13 “(C) the ability of the violator to pay the
14 penalty;

15 “(D) any injury to tenants;

16 “(E) any injury to the public;

17 “(F) any benefits received by the violator
18 as a result of the violation;

19 “(G) deterrence of future violations; and

20 “(H) such other factors as the Secretary
21 may establish by regulation.

22 “(4) PAYMENT OF PENALTY.—No payment of a
23 civil money penalty levied under this section shall be
24 payable out of project income.

1 “(d) JUDICIAL REVIEW OF AGENCY DETERMINA-
2 TION.—Judicial review of determinations made under this
3 section shall be carried out in accordance with section
4 537(e) of the National Housing Act.

5 “(e) REMEDIES FOR NONCOMPLIANCE.—

6 “(1) JUDICIAL INTERVENTION.—

7 “(A) IN GENERAL.—If a person or entity
8 fails to comply with the determination or order
9 of the Secretary imposing a civil money penalty
10 under subsection (b), after the determination or
11 order is no longer subject to review as provided
12 by subsections (c) and (d), the Secretary may
13 request the Attorney General of the United
14 States to bring an action in an appropriate
15 United States district court to obtain a mone-
16 tary judgment against that person or entity and
17 such other relief as may be available.

18 “(B) FEES AND EXPENSES.—Any mone-
19 tary judgment awarded in an action brought
20 under this paragraph may, in the discretion of
21 the court, include the attorney’s fees and other
22 expenses incurred by the United States in con-
23 nection with the action.

24 “(2) NONREVIEWABILITY OF DETERMINATION
25 OR ORDER.—In an action under this subsection, the

1 validity and appropriateness of the determination or
2 order of the Secretary imposing the penalty shall not
3 be subject to review.

4 “(f) SETTLEMENT BY SECRETARY.—The Secretary
5 may compromise, modify, or remit any civil money penalty
6 which may be, or has been, imposed under this section.

7 “(g) DEPOSIT OF PENALTIES.—

8 “(1) IN GENERAL.—Notwithstanding any other
9 provision of law, if the mortgage covering the prop-
10 erty receiving assistance under section 8 is insured
11 or formerly insured by the Secretary, the Secretary
12 shall apply all civil money penalties collected under
13 this section to the appropriate insurance fund or
14 funds established under this Act, as determined by
15 the Secretary.

16 “(2) EXCEPTION.—Notwithstanding any other
17 provision of law, if the mortgage covering the prop-
18 erty receiving assistance under section 8 is neither
19 insured nor formerly insured by the Secretary, the
20 Secretary shall make all civil money penalties col-
21 lected under this section available for use by the ap-
22 propriate office within the Department for adminis-
23 trative costs related to enforcement of the require-
24 ments of the various programs administered by the
25 Secretary.

1 “(h) DEFINITIONS.—In this section—

2 “(1) the term ‘agent employed to manage the
3 property that has an identity of interest’ means an
4 entity—

5 “(A) that has management responsibility
6 for a project;

7 “(B) in which the ownership entity, includ-
8 ing its general partner or partners (if applica-
9 ble), has an ownership interest; and

10 “(C) over which such ownership entity ex-
11 erts effective control; and

12 “(2) the term ‘knowing’ means having actual
13 knowledge of or acting with deliberate ignorance of
14 or reckless disregard for the prohibitions under this
15 section.”.

16 (b) APPLICABILITY.—The amendments made by sub-
17 section (a) shall apply only with respect to—

18 (1) violations that occur on or after the effec-
19 tive date of final regulations implementing the
20 amendments made by this section; and

21 (2) in the case of a continuing violation (as de-
22 termined by the Secretary of Housing and Urban
23 Development), any portion of a violation that occurs
24 on or after such date.

25 (c) IMPLEMENTATION.—

1 (1) REGULATIONS.—

2 (A) IN GENERAL.—The Secretary shall im-
3 plement the amendments made by this section
4 by regulation issued after notice and oppor-
5 tunity for public comment.

6 (B) COMMENTS SOUGHT.—The notice
7 under subparagraph (A) shall seek comments as
8 to the definitions of the terms “ownership inter-
9 est in” and “effective control”, as such terms
10 are used in the definition of the term “agent
11 employed to manage such property that has an
12 identity of interest”.

13 (2) TIMING.—A proposed rule implementing the
14 amendments made by this section shall be published
15 not later than 1 year after the date of enactment of
16 this Act.

17 **SEC. 2322. EXTENSION OF DOUBLE DAMAGES REMEDY.**

18 Section 421 of the Housing and Community Develop-
19 ment Act of 1987 (12 U.S.C. 1715z–4a) is amended—

20 (1) in subsection (a)(1)—

21 (A) in the first sentence, by striking “Act;
22 or (B)” and inserting the following: “Act; (B)
23 a regulatory agreement that applies to a multi-
24 family project whose mortgage is insured or
25 held by the Secretary under section 202 of the

1 Housing Act of 1959 (including property sub-
2 ject to section 202 of such Act as it existed be-
3 fore enactment of the Cranston-Gonzalez Na-
4 tional Affordable Housing Act of 1990); (C) a
5 regulatory agreement or such other form of reg-
6 ulatory control as may be imposed by the Sec-
7 retary that applies to mortgages insured or held
8 by the Secretary under section 542 of the
9 Housing and Community Development Act of
10 1992, but not reinsured under section 542 of
11 the Housing and Community Development Act
12 of 1992; or (D)”; and

13 (B) in the second sentence, by inserting
14 after “agreement” the following: “, or such
15 other form of regulatory control as may be im-
16 posed by the Secretary,”;

17 (2) in subsection (a)(2), by inserting after
18 “Act,” the following: “under section 202 of the
19 Housing Act of 1959 (including section 202 of such
20 Act as it existed before enactment of the Cranston-
21 Gonzalez National Affordable Housing Act of 1990)
22 and under section 542 of the Housing and Commu-
23 nity Development Act of 1992,”;

1 (3) in subsection (b), by inserting after “agree-
2 ment” the following: “, or such other form of regu-
3 latory control as may be imposed by the Secretary,”;

4 (4) in subsection (c)—

5 (A) in the first sentence, by inserting after
6 “agreement” the following: “, or such other
7 form of regulatory control as may be imposed
8 by the Secretary,”; and

9 (B) in the second sentence, by inserting
10 before the period the following: “or under the
11 Housing Act of 1959, as appropriate”; and

12 (5) in subsection (d), by inserting after “agree-
13 ment” the following: “, or such other form of regu-
14 latory control as may be imposed by the Secretary,”.

15 **SEC. 2323. OBSTRUCTION OF FEDERAL AUDITS.**

16 Section 1516(a) of title 18, United States Code, is
17 amended by inserting after “under a contract or sub-
18 contract,” the following: “or relating to any property that
19 is security for a mortgage note that is insured, guaran-
20 teed, acquired, or held by the Secretary of Housing and
21 Urban Development pursuant to any Act administered by
22 the Secretary,”.

1 **TITLE III—COMMITTEE ON COM-**
2 **MERCE SCIENCE AND TRANS-**
3 **PORTATION**

4 **Subtitle A—Spectrum Auctions and**
5 **License Fees**

6 **SEC. 3001. SPECTRUM AUCTIONS.**

7 (a) EXTENSION AND EXPANSION OF AUCTION AU-
8 THORITY.—

9 (1) IN GENERAL.—Section 309(j) of the Com-
10 munications Act of 1934 (47 U.S.C. 309(j)) is
11 amended—

12 (A) by striking paragraphs (1) and (2) and
13 inserting in lieu thereof the following:

14 “(1) GENERAL AUTHORITY.—If mutually exclu-
15 sive applications are accepted for any initial license
16 or construction permit that will involve an exclusive
17 use of the electromagnetic spectrum, then, except as
18 provided in paragraph (2), the Commission shall
19 grant the license or permit to a qualified applicant
20 through a system of competitive bidding that meets
21 the requirements of this subsection. The Commis-
22 sion, subject to paragraphs (2) and (7) of this sub-
23 section, also may—

24 “(A) use auctions as a means to assign
25 spectrum when it determines that such an auc-

1 tion is consistent with the public interest, con-
2 venience, and necessity, and the purposes of
3 this Act; and

4 “(B) grant the licenses or permits for
5 which the spectrum is so assigned, by competi-
6 tive bidding at a later date than the date re-
7 quired by this section if—

8 “(i) the Commission determines, in its
9 discretion, that postponing the bidding to
10 that later date will better attain the objec-
11 tives of recovering for the public a fair por-
12 tion of the value of the public spectrum re-
13 source and avoiding unjust enrichment;
14 and

15 “(ii) the bidding is conducted in time
16 for the assignment of those licenses or per-
17 mits by September 30, 2002.

18 “(2) EXCEPTIONS.—The competitive bidding
19 authority granted by this subsection shall not apply
20 to a license or construction permit the Commission
21 issues—

22 “(A) for public safety services, including
23 private internal radio services used by State
24 and local government and non-government enti-
25 ties that—

1 “(i) protect the safety of life, health,
2 or property; and

3 “(ii) are not made commercially avail-
4 able to the public;

5 “(B) for public telecommunications serv-
6 ices, as defined in section 397(14) of this Act,
7 when the license application is for channels re-
8 served for noncommercial use;

9 “(C) for spectrum and associated orbits
10 used in the provision of any communications
11 within a global satellite system;

12 “(D) for initial licenses or construction
13 permits for new digital television service given
14 to existing terrestrial broadcast licensees to re-
15 place their current television licenses;

16 “(E) for terrestrial radio and television
17 broadcasting when the Commission determines
18 that an alternative method of resolving mutu-
19 ally exclusive applications serves the public in-
20 terest substantially better than competitive bid-
21 ding; or

22 “(F) for spectrum allocated for unlicensed
23 use pursuant to part 15 of the Commission’s
24 regulations (47 C.F.R. part 15), if the competi-
25 tive bidding for licenses would interfere with op-

1 eration of end-user products permitted under
2 such regulations.”;

3 (B) by striking “1998” in paragraph (11)
4 and inserting “2007”; and

5 (C) by inserting after paragraph (13) the
6 following:

7 “(14) OUT-OF-BAND EFFECTS.—The Commis-
8 sion and the National Telecommunications and In-
9 formation Administration shall seek to create incen-
10 tives to minimize the effects of out-of-band emissions
11 to promote more efficient use of the electromagnetic
12 spectrum. The Commission and the National Tele-
13 communications and Information Administration
14 also shall encourage licensees to minimize the effects
15 of interference.”.

16 (2) CONFORMING AMENDMENT.—Subsection (i)
17 of section 309 of the Communications Act of 1934
18 is repealed.

19 (b) AUCTION OF 45 MEGAHERTZ LOCATED AT
20 1,710–1,755 MEGAHERTZ.—

21 (1) IN GENERAL.—The Commission shall assign
22 by competitive bidding 45 megahertz located at
23 1,710–1,755 megahertz no later than December 31,
24 2001, for commercial use.

1 (2) FEDERAL GOVERNMENT USERS.—Any Fed-
2 eral government station that, on the date of enact-
3 ment of this Act, is assigned to use electromagnetic
4 spectrum located in the 1,710–1,755 megahertz
5 band shall retain that use until December 31, 2003,
6 unless exempted from relocation.

7 (c) COMMISSION TO MAKE ADDITIONAL SPECTRUM
8 AVAILABLE BY AUCTION.—

9 (1) IN GENERAL.—The Federal Communica-
10 tions Commission shall complete all actions nec-
11 essary to permit the assignment, by September 30,
12 2002, by competitive bidding pursuant to section
13 309(j) of the Communications Act of 1934 (47
14 U.S.C. 309(j)), of licenses for the use of bands of
15 frequencies currently allocated by the Commission
16 that—

17 (A) in the aggregate span not less than
18 100 megahertz;

19 (B) are located below 10 gigahertz, of
20 which no less than 40 megahertz shall be lo-
21 cated below 3 gigahertz; and

22 (C) as of the date of enactment of this
23 Act, have not been—

1 (i) designated by Commission regula-
2 tion for assignment pursuant to section
3 309(j);

4 (ii) identified by the Secretary of
5 Commerce pursuant to section 113 of the
6 National Telecommunications and Infor-
7 mation Administration Organization Act
8 (47 U.S.C. 923); or

9 (iii) allocated for Federal Government
10 use pursuant to section 305 of the Com-
11 munications Act of 1934 (47 U.S.C. 305).

12 (2) CRITERIA FOR REASSIGNMENT.—In making
13 available bands of frequencies for competitive bid-
14 ding pursuant to paragraph (1), the Commission
15 shall—

16 (A) seek to promote the most efficient use
17 of the electromagnetic spectrum;

18 (B) consider the cost to incumbent licens-
19 ees of relocating existing uses to other bands of
20 frequencies or other means of communication;

21 (C) consider the needs of public safety
22 radio services;

23 (D) comply with the requirements of inter-
24 national agreements concerning spectrum allo-
25 cations; and

1 (E) coordinate with the Secretary of Com-
2 merce when there is any impact on Federal
3 Government spectrum use.

4 (3) PROTECTION OF SPACE RESEARCH USES.—
5 Any license assigned under paragraph (1) shall re-
6 quire the licensee to avoid interference with commu-
7 nications in space research and earth exploration
8 satellite services authorized under notes 750A and
9 US90 to section 2.106 of the regulations of the Fed-
10 eral Communications Commission (47 C.F.R.
11 2.106), as those regulations are in effect on the date
12 of enactment of this Act.

13 (4) REALLOCATION REPORT.—The Commission
14 shall submit a report to the President, the Senate
15 Committee on Commerce, Science, and Transpor-
16 tation, and the House of Representatives Committee
17 on Commerce, containing its recommendations for
18 reallocating bands of frequencies for competitive bid-
19 ding pursuant to paragraph (1) and plans for reloca-
20 tion of displaced users.

21 (5) NOTIFICATION TO THE SECRETARY OF COM-
22 MERCE.—The Commission shall attempt to accom-
23 modate incumbent licensees displaced under this sec-
24 tion by relocating them to other frequencies available
25 to the Commission. The Commission shall notify the

1 Secretary of Commerce whenever the Commission is
2 not able to provide for the effective relocation of an
3 incumbent licensee to a band of frequencies available
4 to the Commission for assignment. The notification
5 shall include—

6 (A) specific information on the incumbent
7 licensee;

8 (B) the bands the Commission considered
9 for relocation of the licensee; and

10 (C) the reasons the incumbent cannot be
11 accommodated in these bands.

12 (6) REPORT TO THE SECRETARY OF COM-
13 MERCE.—

14 (A) TECHNICAL REPORT.—The Commis-
15 sion, in consultation with the National Tele-
16 communications and Information Administra-
17 tion, shall submit a detailed technical report to
18 the Secretary of Commerce setting forth—

19 (i) the reasons the incumbent licens-
20 ees described in paragraph (5) could not be
21 accommodated in existing non-government
22 spectrum; and

23 (ii) the Commission's recommenda-
24 tions for relocating those incumbents.

1 (B) NTIA USE OF REPORT.—The National
2 Telecommunications and Information Adminis-
3 tration shall review this report when assessing
4 whether a commercial licensee can be accommo-
5 dated by being reassigned to a frequency allo-
6 cated for government use.

7 (d) IDENTIFICATION AND REALLOCATION OF FRE-
8 QUENCIES.—

9 (1) IN GENERAL.—Section 113 of the National
10 Telecommunications and Information Administration
11 Organization Act (47 U.S.C. 901 et seq.) is amend-
12 ed by adding at the end thereof the following:

13 “(f) ADDITIONAL REALLOCATION REPORT.—If the
14 Secretary receives a report from the Commission pursuant
15 to section 3001(c)(6) of the Balanced Budget Act of 1997,
16 the Secretary shall submit to the President, the Congress,
17 and the Commission a report with the Secretary’s rec-
18 ommendations.

19 “(g) REIMBURSEMENT OF FEDERAL SPECTRUM
20 USERS FOR RELOCATION COSTS.—

21 “(1) IN GENERAL.—

22 “(A) ACCEPTANCE OF COMPENSATION AU-
23 THORIZED.—In order to expedite the efficient
24 use of the electromagnetic spectrum, and not-
25 withstanding section 3302(b) of title 31, United

1 States Code, any Federal entity that operates a
2 Federal Government station that has been iden-
3 tified by NTIA for relocation may accept pay-
4 ment, including in-kind compensation and shall
5 be reimbursed if required to relocate by the
6 service applicant, provider, licensee, or rep-
7 resentative entering the band as a result of a li-
8 cense assignment by the Commission or other-
9 wise authorized by Commission rules.

10 “(B) DUTY TO COMPENSATE OUSTED FED-
11 ERAL ENTITY.—Any such service applicant,
12 provider, licensee, or representative shall com-
13 pensate the Federal entity in advance for relo-
14 cating through monetary or in-kind payment for
15 the cost of relocating the Federal entity’s oper-
16 ations from one or more electromagnetic spec-
17 trum frequencies to any other frequency or fre-
18 quencies, or to any other telecommunications
19 transmission media.

20 “(C) COMPENSABLE COSTS—Compensa-
21 tion shall include, but not be limited to, the
22 costs of any modification, replacement, or re-
23 issuance of equipment, facilities, operating
24 manuals, regulations, or other relocation ex-
25 penses incurred by that entity.

1 “(D) DISPOSITION OF PAYMENTS.—Pay-
2 ments, other than in-kind compensation, pursu-
3 ant to this section shall be deposited by elec-
4 tronic funds transfer in a separate agency ac-
5 count or accounts which shall be used to pay di-
6 rectly the costs of relocation, to repay or make
7 advances to appropriations or funds which do or
8 will initially bear all or part of such costs, or
9 to refund excess sums when necessary, and
10 shall remain available until expended.

11 “(E) APPLICATION TO CERTAIN OTHER
12 RELOCATIONS.—The provisions of this para-
13 graph also apply to any Federal entity that op-
14 erates a Federal Government station assigned
15 to use electromagnetic spectrum identified for
16 reallocation under subsection (a), if before the
17 date of enactment of the Balanced Budget Act
18 of 1997 the Commission has not identified that
19 spectrum for service or assigned licenses or oth-
20 erwise authorized service for that spectrum.

21 “(2) PETITIONS FOR RELOCATION.—Any per-
22 son seeking to relocate a Federal Government sta-
23 tion that has been assigned a frequency within a
24 band allocated for mixed Federal and non-Federal
25 use under this Act shall submit a petition for reloca-

1 tion to NTIA. The NTIA shall limit or terminate the
2 Federal Government station's operating license with-
3 in 6 months after receiving the petition if the follow-
4 ing requirements are met:

5 “(A) The proposed relocation is consistent
6 with obligations undertaken by the United
7 States in international agreements and with
8 United States national security and public safe-
9 ty interests.

10 “(B) The person seeking relocation of the
11 Federal Government station has guaranteed to
12 defray entirely, through payment in advance,
13 advance in-kind payment of costs, or a com-
14 bination of payment in advance and advance in-
15 kind payment, all relocation costs incurred by
16 the Federal entity, including, but not limited to,
17 all engineering, equipment, site acquisition and
18 construction, and regulatory fee costs.

19 “(C) The person seeking relocation com-
20 pletes all activities necessary for implementing
21 the relocation, including construction of replace-
22 ment facilities (if necessary and appropriate)
23 and identifying and obtaining on the Federal
24 entity's behalf new frequencies for use by the
25 relocated Federal Government station (if the

1 station is not relocating to spectrum reserved
2 exclusively for Federal use).

3 “(D) Any necessary replacement facilities,
4 equipment modifications, or other changes have
5 been implemented and tested by the Federal en-
6 tity to ensure that the Federal Government sta-
7 tion is able to accomplish successfully its pur-
8 poses including maintaining communication sys-
9 tem performance.

10 “(E) The Secretary has determined that
11 the proposed use of any spectrum frequency
12 band to which a Federal entity relocates its op-
13 erations is suitable for the technical characteris-
14 tics of the band and consistent with other uses
15 of the band. In exercising authority under this
16 subparagraph, the Secretary shall consult with
17 the Secretary of Defense, the Secretary of
18 State, and other appropriate Federal officials.

19 “(3) RIGHT TO RECLAIM.—If within one year
20 after the relocation of a Federal Government sta-
21 tion, the Federal entity affected demonstrates to the
22 Secretary and the Commission that the new facilities
23 or spectrum are not comparable to the facilities or
24 spectrum from which the Federal Government sta-
25 tion was relocated, the person who sought the reloca-

1 tion shall take reasonable steps to remedy any de-
2 fects or pay the Federal entity for the costs of re-
3 turning the Federal Government station to the elec-
4 tromagnetic spectrum from which the station was re-
5 located.

6 “(h) FEDERAL ACTION TO EXPEDITE SPECTRUM
7 TRANSFER.—Any Federal Government station which op-
8 erates on electromagnetic spectrum that has been identi-
9 fied for reallocation under this Act for mixed Federal and
10 non-Federal use in any reallocation report under sub-
11 section (a), to the maximum extent practicable through
12 the use of subsection (g) and any other applicable law,
13 shall take prompt action to make electromagnetic spec-
14 trum available for use in a manner that maximizes effi-
15 cient use of the electromagnetic spectrum.

16 “(i) FEDERAL SPECTRUM ASSIGNMENT RESPON-
17 SIBILITY.—This section does not modify NTLA’s authority
18 under section 103(b)(2)(A) of this Act.

19 “(j) DEFINITIONS.—As used in this section—

20 “(1) the term ‘Federal entity’ means any de-
21 partment, agency, or instrumentality of the Federal
22 Government that utilizes a Government station li-
23 cense obtained under section 305 of the 1934 Act
24 (47 U.S.C. 305);

1 “(2) the term ‘digital television services’ means
2 television services provided using digital technology
3 to enhance audio quality and video resolution, as
4 further defined in the Memorandum Opinion, Re-
5 port, and Order of the Commission entitled ‘Ad-
6 vanced Television Systems and Their Impact Upon
7 the Existing Television Service,’ MM Docket No. 87-
8 268 and any subsequent FCC proceedings dealing
9 with digital television; and

10 “(3) the term ‘analog television licenses’ means
11 licenses issued pursuant to 47 CFR 73.682 et seq.”.

12 (2) Section 114(a) of that Act (47 U.S.C.
13 924(a)) is amended by striking “(a) or (d)(1)” and
14 inserting “(a), (d)(1), or (f)”.

15 (e) IDENTIFICATION AND REALLOCATION OF
16 AUCTIONABLE FREQUENCIES.—

17 (1) SECOND REPORT REQUIRED.—Section
18 113(a) of the National Telecommunications and In-
19 formation Administration Organization Act (47
20 U.S.C. 923(a)) is amended by inserting “and within
21 6 months after the date of enactment of the Bal-
22 anced Budget Act of 1997” after “Act of 1993”.

23 (2) IN GENERAL.—Section 113(b) of the Na-
24 tional Telecommunications and Information Admin-

1 Administration Organization Act (47 U.S.C. 923(b)) is
2 amended—

3 (A) by striking the caption of paragraph
4 (1) and inserting “INITIAL REALLOCATION RE-
5 PORT.—”;

6 (B) by inserting “in the initial report re-
7 quired by subsection (a)” after “recommend for
8 reallocation” in paragraph (1);

9 (C) by inserting “or (3)” after “paragraph
10 (1)” each place it appears in paragraph (2);
11 and

12 (D) by adding at the end thereof the fol-
13 lowing:

14 “(3) SECOND REALLOCATION REPORT.—The
15 Secretary shall make available for reallocation a
16 total of 20 megahertz in the second report required
17 by subsection (a), for use other than by Federal
18 Government stations under section 305 of the 1934
19 Act (47 U.S.C. 305), that is located below 3
20 gigahertz and that meets the criteria specified in
21 paragraphs (1) through (5) of subsection (a).”.

22 (3) ALLOCATION AND ASSIGNMENT.—Section
23 115 of that Act (47 U.S.C. 925) is amended—

24 (A) by striking “the report required by
25 section 113(a)” in subsection (b) and inserting

1 “the initial reallocation report required by sec-
2 tion 113(a)”; and

3 (B) by adding at the end thereof the fol-
4 lowing:

5 “(c) ALLOCATION AND ASSIGNMENT OF FRE-
6 QUENCIES IDENTIFIED IN THE SECOND ALLOCATION RE-
7 PORT.—

8 “(1) PLAN.—Within 12 months after it receives
9 a report from the Secretary under section 113(f) of
10 this Act, the Commission shall—

11 “(A) submit a plan, prepared in coordina-
12 tion with the Secretary of Commerce, to the
13 President and to the Senate Committee on
14 Commerce, Science, and Transportation and the
15 House of Representatives Committee on Com-
16 merce, for the allocation and assignment under
17 the 1934 Act of frequencies identified in the re-
18 port; and

19 “(B) implement the plan.

20 “(2) CONTENTS.—The plan prepared by the
21 Commission under paragraph (1) shall consist of a
22 schedule of reallocation and assignment of those fre-
23 quencies in accordance with section 309(j) of the
24 1934 Act.”.

1 **SEC. 3002. DIGITAL TELEVISION SERVICES.**

2 Section 309(j) of the Communications Act of 1934
3 (47 U.S.C. 309(j)) is amended by adding at the end there-
4 of the following:

5 “(15) AUCTION OF RECAPTURED BROADCAST
6 TELEVISION SPECTRUM AND POTENTIAL DIGITAL
7 TELEVISION LICENSE FEES.—

8 “(A) LIMITATIONS ON TERMS OF TERRES-
9 TRIAL TELEVISION BROADCAST LICENSES.—

10 “(i) A television license that author-
11 izes analog television services may not be
12 renewed to authorize such services for a
13 period that extends beyond December 31,
14 2006. The Commission shall extend or
15 waive this date for any station in any tele-
16 vision market unless 95 percent of the tele-
17 vision households have access to digital
18 local television signals, either by direct off-
19 air reception or by other means.

20 “(ii) A commercial digital television li-
21 cense that is issued shall expire on Sep-
22 tember 30, 2003. A commercial digital tel-
23 evision license shall be re-issued only sub-
24 ject to fulfillment of the licensee’s obliga-
25 tions under subparagraph (C).

1 “(iii) No later than December 31,
2 2001, and every 2 years thereafter, the
3 Commission shall report to Congress on
4 the status of digital television conversion in
5 each television market. In preparing this
6 report, the Commission shall consult with
7 other departments and agencies of the
8 Federal government. The report shall con-
9 tain the following information:

10 “(I) Actual consumer purchases
11 of analog and digital television receiv-
12 ers, including the price, availability,
13 and use of conversion equipment to
14 allow analog sets to receive a digital
15 signal.

16 “(II) The percentage of television
17 households in each market that has
18 access to digital local television signals
19 as defined in paragraph (a)(1), wheth-
20 er such access is attained by direct
21 off-air reception or by some other
22 means.

23 “(III) The cost to consumers of
24 purchasing digital television receivers
25 (or conversion equipment to prevent

1 obsolescence of existing analog equip-
2 ment) and other related changes in
3 the marketplace, such as increases in
4 the cost of cable converter boxes.

5 “(B) SPECTRUM REVERSION AND RE-
6 SALE.—

7 “(i) The Commission shall—

8 “(I) ensure that, as analog tele-
9 vision licenses expire pursuant to sub-
10 paragraph (A)(i), each broadcaster
11 shall return electromagnetic spectrum
12 according to the Commission’s direc-
13 tion; and

14 “(II) reclaim and organize the
15 electromagnetic spectrum in a manner
16 to maximize the deployment of new
17 and existing services.

18 “(ii) Licensees for new services occu-
19 pying electromagnetic spectrum previously
20 used for the broadcast of analog television
21 shall be selected by competitive bidding.
22 The Commission shall start the competitive
23 bidding process by July 1, 2001, with pay-
24 ment pursuant to the competitive bidding
25 rules established by the Commission. The

1 Commission shall report the total revenues
2 from the competitive bidding by January
3 1, 2002.

4 “(C) DIGITAL BUILDOUT REQUIRE-
5 MENTS.—The Commission shall encourage
6 broadcasters to transmit programming in digi-
7 tal format in the 30 largest markets by Novem-
8 ber 1, 1999.

9 “(D) DEFINITIONS.—As used in this para-
10 graph—

11 “(i) the term ‘digital television serv-
12 ices’ means television services provided
13 using digital technology to enhance audio
14 quality and video resolution, as further de-
15 fined in the Memorandum Opinion, Report,
16 and Order of the Commission entitled ‘Ad-
17 vanced Television Systems and Their Im-
18 pact Upon the Existing Television Service,’
19 MM Docket No. 87–268 and any subse-
20 quent Commission proceedings dealing
21 with digital television; and

22 “(ii) the term ‘analog television li-
23 censes’ means licenses issued pursuant to
24 47 CFR 73.682 et seq.”.

1 **SEC. 3003. ALLOCATION AND ASSIGNMENT OF NEW PUBLIC**
2 **SAFETY AND COMMERCIAL LICENSES.**

3 (a) IN GENERAL.—The Federal Communications
4 Commission, not later than January 1, 1998, shall allocate
5 from electromagnetic spectrum between 746 megahertz
6 and 806 megahertz—

7 (1) 24 megahertz of that spectrum for public
8 safety services according to terms and conditions es-
9 tablished by the Commission, in consultation with
10 the Secretary of Commerce and the Attorney Gen-
11 eral; and

12 (2) 36 megahertz of that spectrum for commer-
13 cial purposes to be assigned by competitive bidding.

14 (b) ASSIGNMENT.—The Commission shall—

15 (1) commence assignment of the licenses for
16 public safety created pursuant to subsection (a) no
17 later than September 30, 1998; and

18 (2) commence competitive bidding for the com-
19 mercial licenses created pursuant to subsection (a)
20 no later than March 31, 1998.

21 (c) LICENSING OF UNUSED FREQUENCIES FOR PUB-
22 LIC SAFETY RADIO SERVICES.—

23 (1) USE OF UNUSED CHANNELS FOR PUBLIC
24 SAFETY.—It shall be the policy of the Federal Com-
25 munications Commission, notwithstanding any other
26 provision of this Act or any other law, to waive

1 whatever licensee eligibility and other requirements
2 (including bidding requirements) are applicable in
3 order to permit the use of unassigned frequencies for
4 public safety purposes by a State or local govern-
5 ment agency upon a showing that—

6 (A) no other existing satisfactory public
7 safety channel is immediately available to sat-
8 isfy the requested use;

9 (B) the proposed use is technically feasible
10 without causing harmful interference to existing
11 stations in the frequency band entitled to pro-
12 tection from such interference under the rules
13 of the Commission; and

14 (C) use of the channel for public safety
15 purposes is consistent with other existing public
16 safety channel allocations in the geographic
17 area of proposed use.

18 (2) APPLICABILITY.—Paragraph (1) shall apply
19 to any application—

20 (A) is pending before the Commission on
21 the date of enactment of this Act;

22 (B) was not finally determined under sec-
23 tion 402 or 405 of the Communications Act of
24 1934 (47 U.S.C. 402 or 405) on May 15, 1997;

25 or

1 (C) is filed after May 15, 1997.

2 (d) PROTECTION OF BROADCAST TV LICENSEES
3 DURING DIGITAL TRANSITION.—Public safety and com-
4 mercial licenses granted pursuant to this subsection—

5 (1) shall enjoy flexibility in use, subject to—

6 (A) interference limits set by the Commis-
7 sion at the boundaries of the electromagnetic
8 spectrum block and service area; and

9 (B) any additional technical restrictions
10 imposed by the Commission to protect full-serv-
11 ice analog and digital television licenses during
12 a transition to digital television;

13 (2) may aggregate multiple licenses to create
14 larger spectrum blocks and service areas;

15 (3) may disaggregate or partition licenses to
16 create smaller spectrum blocks or service areas; and

17 (4) may transfer a license to any other person
18 qualified to be a licensee.

19 (e) PROTECTION OF PUBLIC SAFETY LICENSEES
20 DURING DIGITAL TRANSITION.—The Commission shall
21 establish rules insuring that public safety licensees using
22 spectrum reallocated pursuant to subsection (a)(1) shall
23 not be subject to harmful interference from television
24 broadcast licensees.

1 (f) DIGITAL TELEVISION ALLOTMENT.—In assigning
2 temporary transitional digital licenses, the Commission
3 shall—

4 (1) minimize the number of allotments between
5 746 and 806 megahertz and maximize the amount
6 of spectrum available for public safety and new serv-
7 ices;

8 (2) minimize the number of allotments between
9 698 and 746 megahertz in order to facilitate the re-
10 covery of spectrum at the end of the transition;

11 (3) consider minimizing the number of allot-
12 ments between 54 and 72 megahertz to facilitate the
13 recovery of spectrum at the end of the transition;
14 and

15 (4) develop an allotment plan designed to re-
16 cover 78 megahertz of spectrum to be assigned by
17 competitive bidding, in addition to the 60 megahertz
18 identified in paragraph (a) of this subsection.

19 (g) INCUMBENT BROADCAST LICENSEES.—Any per-
20 son who holds an analog television license or a digital tele-
21 vision license between 746 and 806 megahertz—

22 (1) may not operate at that frequency after the
23 date on which the digital television services transi-
24 tion period terminates, as determined by the Com-
25 mission; and

1 (2) shall surrender immediately the license or
2 permit to construct pursuant to Commission rules.

3 (h) PROTECTION OF QUALIFYING LOW-POWER STA-
4 TIONS.—In making any allocation or assignment under
5 subsection (a)(2), the Commission shall assure that each
6 qualifying low-power television station is assigned a fre-
7 quency below 746 megahertz to permit the continued oper-
8 ation of such station, if that allocation or reassignment
9 causes no new or additional interference with primary li-
10 censees.

11 (i) DEFINITIONS.—For purposes of this section—

12 (1) COMMISSION.—The term “Commission”
13 means the Federal Communications Commission.

14 (2) DIGITAL TELEVISION (DTV) SERVICE.—The
15 term “digital television (DTV) service” means ter-
16 restrial broadcast services provided using digital
17 technology to enhance audio quality and video reso-
18 lution, as further defined in the Memorandum Opin-
19 ion, Report, and Order of the Commission entitled
20 “Advanced Television Systems and Their Impact
21 Upon the Existing Television Service,” MM Docket
22 No. 87–268, or subsequent findings of the Commis-
23 sion.

24 (3) DIGITAL TELEVISION LICENSE.—The term
25 “digital television license” means a full-service li-

1 cense issued pursuant to rules adopted for digital
2 television service.

3 (4) ANALOG TELEVISION LICENSE.—The term
4 “analog television license” means a full-service li-
5 cense issued pursuant to 47 CFR 73.682 et seq.

6 (5) PUBLIC SAFETY SERVICES.—The term
7 “public safety services” means services whose sole or
8 principal purpose is to protect the safety of life,
9 health, or property.

10 (6) SERVICE AREA.—The term “service area”
11 means the geographic area over which a licensee
12 may provide service and is protected from inter-
13 ference.

14 (7) SPECTRUM BLOCK.—The term “spectrum
15 block” means the range of frequencies over which
16 the apparatus licensed by the Commission is author-
17 ized to transmit signals.

18 (8) QUALIFYING LOW-POWER TELEVISION STA-
19 TIONS.—The term “qualifying low-power television
20 station” means—

21 (A) during the 90-day period immediately
22 preceding the date of enactment of this Act—

23 (i) the station broadcast a minimum
24 of 18 hours per day;

1 (ii) the station broadcast an average
2 of at least 3 hours per week of program-
3 ming that was produced within the pri-
4 mary service area of the station; and

5 (iii) the station was in compliance
6 with the requirements applicable to low-
7 power television stations;

8 (B) the station rebroadcasts the signal of
9 a broadcast television station the signal of
10 which would otherwise be unavailable to the
11 community of license of the rebroadcasting sta-
12 tion; or

13 (B) the Commission determines that the
14 public interest, convenience, and necessity
15 would be served by treating the station as a
16 qualifying low-power television station for pur-
17 poses of this section.

18 **SEC. 3004. FLEXIBLE USE OF ELECTROMAGNETIC SPEC-**
19 **TRUM.**

20 Section 303 of the Communications Act of 1934 (47
21 U.S.C. 303) is amended by adding at the end thereof the
22 following:

23 “(y) Shall allocate electromagnetic spectrum so as to
24 provide flexibility of use, except—

1 “(1) as required by international agreements
2 relating to global satellite systems or other tele-
3 communication services to which the United States
4 is a party;

5 “(2) as required by public safety allocations;

6 “(3) to the extent that the Commission finds,
7 after notice and an opportunity for public comment,
8 that such an allocation would not be in the public
9 interest;

10 “(4) to the extent that flexible use would retard
11 investment in communications services and systems,
12 or technology development thereby lessening the
13 value of the electromagnetic spectrum; or

14 “(5) to the extent that flexible use would result
15 in harmful interference among users.”.

16 **SEC. 3005. PRIVATE WIRELESS SPECTRUM AVAILABILITY.**

17 (a) SPECTRUM LEASING FEES.—Title I of the Com-
18 munications Act of 1934 (47 U.S.C. 151 et seq.) is
19 amended by adding at the end thereof the following:

20 **“SEC. 12. SPECTRUM LEASE FEE PROGRAM.**

21 “(a) SPECTRUM LEASE FEES.—

22 “(1) IN GENERAL.—Within 6 months after the
23 date of enactment of the Balanced Budget Act of
24 1997, the Commission shall by rule—

1 “(A) implement a system of spectrum lease
2 fees applicable to newly allocated frequency
3 bands, as described in section 5 of the Balanced
4 Budget Act of 1997, assigned to systems (other
5 than public safety systems (as defined in sec-
6 tion 2(2) of the Balanced Budget Act of 1997))
7 in private wireless service;

8 “(B) provide appropriate incentives for li-
9 censees to confine their radio communication to
10 the area of operation actually required for that
11 communication; and

12 “(C) permit private land mobile frequency
13 advisory committees certified by the Commis-
14 sion to assist in the computation, assessment,
15 collection, and processing of amounts received
16 under the system of spectrum lease fees.

17 “(2) FORMULA.—The Commission shall include
18 as a part of the rulemaking carried out under para-
19 graph (1)—

20 “(A) a formula to be used by private wire-
21 less licensees and certified frequency advisory
22 committees to compute spectrum lease fees; and

23 “(B) an explanation of the technical fac-
24 tors included in the electromagnetic spectrum

1 lease fee formula, including the relative weight
2 given to each factor.

3 “(b) FREE BASIS.—

4 “(1) INITIAL FEES.—Fees assessed under the
5 electromagnetic spectrum lease fee system estab-
6 lished under subsection (a) shall be based on the ap-
7 proximate value of the assigned frequencies to the li-
8 censees. In assessing the value of the assigned fre-
9 quencies to licensees under this subsection, the Com-
10 mission shall take into account all relevant factors,
11 including the amount of assigned bandwidth, the
12 coverage area of a system, the geographic location of
13 the system, and the degree of frequency sharing with
14 other licensees in the same area. These factors shall
15 be incorporated in the formula described in sub-
16 section (a)(2).

17 “(2) ADJUSTMENT OF FEES.—The Commission
18 may adjust the formula developed under subsection
19 (a)(2) whenever it determines that adjustment is
20 necessary in order to calculate the lease fees more
21 accurately or fairly.

22 “(3) FEE CAP.—The spectrum lease fees shall
23 be set so that, over a 10-year license term, the
24 amount of revenues generated will not exceed the
25 revenues generated from the auction of comparable

1 spectrum. For purposes of this paragraph, the ‘com-
2 parable spectrum’ shall mean electromagnetic spec-
3 trum located within 500 megahertz of that spectrum
4 licensed in a concluded auction for mobile radio com-
5 munication licenses.

6 “(c) APPLICATION TO PRIVATE WIRELESS SYS-
7 TEMS.—After the Commission has implemented the elec-
8 tromagnetic spectrum leasing fee system under subsection
9 (a) and provided licensees access to new spectrum as de-
10 fined in section 5(c)(2) of the Balanced Budget Act of
11 1997, it shall assess the fees established for that system
12 against all licensees authorized in any new frequency
13 bands allocated for private wireless use.”.

14 (b) INITIATION OF PROGRAM.—

15 (1) IN GENERAL.—The Commission shall allo-
16 cate for use in the electromagnetic spectrum lease
17 fee program under section 12 of the Communica-
18 tions Act of 1934 (47 U.S.C. 162) not less than 12
19 megahertz of electromagnetic spectrum, previously
20 unallocated to private wireless, located between 150
21 megahertz and 1000 megahertz on a nationwide
22 basis.

23 (2) EXISTING INCUMBENTS.—In allocating elec-
24 tromagnetic spectrum under subsection (a), the
25 Commission shall ensure that existing incumbencies

1 do not inhibit effective access to use of newly allo-
2 cated spectrum to the detriment of the electro-
3 magnetic spectrum lease fee program.

4 (3) TIMEFRAME.—

5 (A) ALLOCATION.—The Commission shall
6 allocate electromagnetic spectrum under sub-
7 section (b) within 6 months after the date of
8 enactment of this Act.

9 (B) ACCESS.—The Commission shall take
10 such reasonable action as may be necessary to
11 ensure that initial access to electromagnetic
12 spectrum allocated under subsection (a) com-
13 mences not later than 12 months after the date
14 of enactment of this Act.

15 (c) DELEGATION OF AUTHORITY.—Section 5 of the
16 Communications Act of 1934 (47 U.S.C. 155) is amended
17 by adding at the end thereof the following:

18 “(f) DELEGATION TO CERTIFIED FREQUENCY ADVI-
19 SORY COMMITTEES.—

20 “(1) IN GENERAL.—The Commission may, by
21 published rule or order, utilize the services of cer-
22 tified private land mobile frequency advisory com-
23 mittees to assist in the computation, assessment,
24 collection, and processing of funds generated
25 through the electromagnetic spectrum lease fee pro-

1 gram under section 12 of this Act. Except as pro-
2 vided in paragraph (3), a decision or order made or
3 taken pursuant to such delegation shall have the
4 same force and effect, and shall be made, evidenced,
5 and enforced in the same manner, as decisions or or-
6 ders of the Commission.

7 “(2) PROCESSING AND DEPOSITING OF FEES.—
8 A frequency advisory committee shall deposit any
9 spectrum lease fees collected by it under Commission
10 authority with a banking agent designated by the
11 Commission in the same manner as it deposits appli-
12 cation filing fees collected under section 8 of this
13 Act.

14 “(3) REVIEW OF ACTIONS.—A decision or order
15 under paragraph (1) is subject to review in the same
16 manner, and to the same extent, as decisions or or-
17 ders under subsection (c)(1) are subject to review
18 under paragraphs (4) through (7) of subsection
19 (c).”.

20 (d) PROHIBITION OF USE OF COMPETITIVE BID-
21 DING.—Section 309(j)(6) of the Communications Act of
22 1934 (47 U.S.C. 309(j)(6)) is amended—

23 (1) by striking “or” at the end of subparagraph
24 (G);

1 (2) by striking the period at the end of sub-
2 paragraph (H) and inserting a semicolon and “or”;
3 and

4 (3) by adding at the end thereof the following:

5 “(I) preclude the Commission from consid-
6 ering the public interest benefits of private
7 wireless communications systems and making
8 allocations in circumstances in which—

9 “(i) the pre-defined geographic mar-
10 ket areas required for competitive bidding
11 processes are incompatible with the needs
12 of radio services for site-specific system de-
13 ployment;

14 “(ii) the unique operating characteris-
15 tics and requirements of Federal agency
16 electromagnetic spectrum users demand, as
17 a prerequisite for sharing of Federal spec-
18 trum, that non-government access to the
19 electromagnetic spectrum be restricted to
20 radio systems that are non subscriber-
21 based;

22 “(iii) licensee concern for operational
23 safety, security, and productivity are of
24 paramount importance and, as a con-
25 sequence, there is no incentive, interest, or

1 intent to use the assigned frequency for
2 producing subscriber-based revenue; or

3 “(iv) the Commission, in its discre-
4 tion, deems competitive bidding processes
5 to be incompatible with the public interest,
6 convenience, and necessity.”.

7 (e) USE OF PROCEEDS FROM SPECTRUM LEASE
8 FEES.—

9 (1) ESTABLISHMENT OF ACCOUNT.—There is
10 hereby established on the books of the Treasury an
11 account for the electromagnetic spectrum license fees
12 generated by the electromagnetic spectrum license
13 fee system established under section 12 of the Com-
14 munications Act of 1934 (47 U.S.C. 162). Except as
15 provided in paragraph (2), all proceeds from spec-
16 trum lease fees shall be deposited in the Treasury in
17 accordance with chapter 33 of title 31, United
18 States Code, and credited to the account established
19 by this subsection.

20 (2) ADMINISTRATIVE EXPENSES.—Out of
21 amounts received from spectrum lease payments a
22 fair and reasonable amount, as determined by the
23 Commission, may be retained by a certified fre-
24 quency advisory committee acting under section 5(f)
25 of the Communications Act of 1934 (47 U.S.C.

1 155(f)) to cover costs incurred by it in administering
2 the electromagnetic spectrum lease fee program.

3 (f) DEFINITIONS.—As used in this section—

4 (1) COMMISSION.—The term “Commission”
5 means the Federal Communications Commission.

6 (2) PUBLIC SAFETY.—The term “public safety”
7 means fire, police, or emergency medical service in-
8 cluding critical care medical telemetry, and such
9 other services related to public safety as the Com-
10 mission may include within the definition of public
11 safety for purposes of this section.

12 (3) PRIVATE WIRELESS.—The term “private
13 wireless” encompasses all land mobile telecommuni-
14 cations systems operated by or through industrial,
15 business, transportation, educational, philanthropic
16 or ecclesiastical organizations where these systems,
17 the operation of which may be shared, are for the
18 licensees’ internal use, rather than subscriber-based
19 Commercial Mobile Radio Services (CMRS) systems.

20 (4) SPECTRUM LEASE FEE.—The term “spec-
21 trum lease fee” means a periodic payment for the
22 use of a given amount of electromagnetic spectrum
23 in a given area in consideration of which the user is
24 granted a license for such use.

1 **SUBTITLE B—MERCHANT**
2 **MARINE PROVISIONS**

3 **SEC. 3501. EXTENSION OF VESSEL TONNAGE DUTIES.**

4 (a) EXTENSION OF DUTIES.—Section 36 of the Act
5 of August 5, 1909 (36 Stat. 111; 46 U.S.C. App. 121),
6 is amended by inserting “1999, 2000, 2001, and 2002,”
7 after “1998,” each place it appears.

8 (b) CONFORMING AMENDMENT.—The Act of March
9 8, 1910 (36 Stat. 234; 46 U.S.C. 132), is amended by
10 striking “and 1998,” and inserting “1998, 1999, 2000,
11 2001, and 2002,”.

12 **TITLE IV—COMMITTEE ON EN-**
13 **ERGY AND NATURAL RE-**
14 **SOURCES**

15 **SEC. 4001. LEASE OF EXCESS STRATEGIC PETROLEUM RE-**
16 **SERVE CAPACITY.**

17 Part B of title I of the Energy Policy and Conserva-
18 tion Act (42 U.S.C. 6231 et seq.) is amended by adding
19 at the end the following new section:

20 “USE OF UNDERUTILIZED FACILITIES

21 “SEC. 168. Notwithstanding section 649(b) of the
22 Department of Energy Organization Act (42 U.S.C.
23 7259(b)), the Secretary is authorized to store in underuti-
24 lized Strategic Petroleum Reserve facilities, by lease or
25 otherwise, petroleum product owned by a foreign govern-

1 ment or its representative: *Provided*, That funds resulting
 2 from the leasing or other use of a Reserve facility on or
 3 after October 1, 2002, shall be available to the Secretary,
 4 without further appropriation, for the purchase of petro-
 5 leum products for the Reserve: *Provided further*, That pe-
 6 troleum product stored under this section is not part of
 7 the Strategic Petroleum Reserve, is not subject to part C
 8 of this title, and notwithstanding any provision of this Act,
 9 may be exported from the United States.”.

10 **TITLE V—COMMITTEE ON**
 11 **FINANCE**

12 **SEC. 5000. AMENDMENTS TO SOCIAL SECURITY ACT AND**
 13 **REFERENCES TO OBRA; TABLE OF CONTENTS**
 14 **OF TITLE.**

15 (a) AMENDMENTS TO SOCIAL SECURITY ACT.—Ex-
 16 cept as otherwise specifically provided, whenever in this
 17 title an amendment is expressed in terms of an amend-
 18 ment to or repeal of a section or other provision, the ref-
 19 erence shall be considered to be made to that section or
 20 other provision of the Social Security Act.

21 (b) REFERENCES TO OBRA.—In this title, the terms
 22 “OBRA–1986”, “OBRA–1987”, “OBRA–1989”,
 23 “OBRA–1990”, and “OBRA–1993” refer to the Omnibus
 24 Budget Reconciliation Act of 1986 (Public Law 99–509),
 25 the Omnibus Budget Reconciliation Act of 1987 (Public

1 Law 100–203), the Omnibus Budget Reconciliation Act
 2 of 1989 (Public Law 101–239), the Omnibus Budget Rec-
 3 onciliation Act of 1990 (Public Law 101–508), and the
 4 Omnibus Budget Reconciliation Act of 1993 (Public Law
 5 103–66), respectively.

6 (c) TABLE OF CONTENTS.—The table of contents of
 7 this title is as follows:

TITLE V—COMMITTEE ON FINANCE

Sec. 5000. Amendments to Social Security Act and references to OBRA; table
 of contents of title.

DIVISION 1—MEDICARE

Subtitle A—Medicare Choice Program

CHAPTER 1—MEDICARE CHOICE PROGRAM

SUBCHAPTER A—MEDICARE CHOICE PROGRAM

Sec. 5001. Establishment of Medicare Choice program.

“PART C—MEDICARE CHOICE PROGRAM

“Sec. 1851. Eligibility, election, and enrollment.

“Sec. 1852. Benefits and beneficiary protections.

“Sec. 1853. Payments to Medicare Choice organizations.

“Sec. 1854. Premiums.

“Sec. 1855. Organizational and financial requirements for Medicare Choice
 organizations; provider-sponsored organizations.

“Sec. 1856. Establishment of standards.

“Sec. 1857. Contracts with Medicare Choice organizations.

“Sec. 1859. Definitions; miscellaneous provisions.

Sec. 5002. Transitional rules for current medicare HMO program.

Sec. 5003. Conforming changes in Medigap program.

SUBCHAPTER B—SPECIAL RULES FOR MEDICARE CHOICE MEDICAL SAVINGS
 ACCOUNTS

Sec. 5006. Medicare Choice MSA.

CHAPTER 2—INTEGRATED LONG-TERM CARE PROGRAMS

SUBCHAPTER A—PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY
 (PACE)

Sec. 5011. Coverage of PACE under the medicare program.

Sec. 5012. Effective date; transition.

Sec. 5013. Study and reports.

SUBCHAPTER B—SOCIAL HEALTH MAINTENANCE ORGANIZATIONS

Sec. 5015. Social health maintenance organizations (SHMOs).

SUBCHAPTER C—OTHER PROGRAMS

Sec. 5018. Extension of certain medicare community nursing organization demonstration projects.

CHAPTER 3—COMMISSIONS

Sec. 5021. National Bipartisan Commission on the Future of Medicare.
 Sec. 5022. Medicare Payment Advisory Commission.

CHAPTER 4—MEDIGAP PROTECTIONS

Sec. 5031. Medigap protections.
 Sec. 5032. Addition of high deductible Medigap policy.

CHAPTER 5—DEMONSTRATIONS

SUBCHAPTER A—MEDICARE CHOICE COMPETITIVE PRICING DEMONSTRATION PROJECT

Sec. 5041. Medicare Choice competitive pricing demonstration project.
 Sec. 5042. Determination of annual Medicare Choice capitation rates.
 Sec. 5043. Benefits and beneficiary premiums.

SUBCHAPTER B—OTHER PROJECTS

Sec. 5045. Medicare enrollment demonstration project.
 Sec. 5046. Medicare coordinated care demonstration project.
 Sec. 5047. Establishment of medicare reimbursement demonstration projects.

CHAPTER 6—TAX TREATMENT OF HOSPITALS PARTICIPATING IN PROVIDER-SPONSORED ORGANIZATIONS

Sec. 5049. Tax treatment of hospitals which participate in provider-sponsored organizations.

Subtitle B—Prevention Initiatives

Sec. 5101. Annual screening mammography for women over age 39.
 Sec. 5102. Coverage of colorectal screening.
 Sec. 5103. Diabetes screening tests.
 Sec. 5104. Coverage of bone mass measurements.

Subtitle C—Rural Initiatives

Sec. 5151. Sole community hospitals.
 Sec. 5152. Medicare-dependent, small rural hospital payment extension.
 Sec. 5153. Medicare rural hospital flexibility program.
 Sec. 5154. Prohibiting denial of request by rural referral centers for reclassification on basis of comparability of wages.
 Sec. 5155. Rural health clinic services.
 Sec. 5156. Medicare reimbursement for telehealth services.
 Sec. 5157. Telemedicine, informatics, and education demonstration project.

Subtitle D—Anti-Fraud and Abuse Provisions and Improvements in Protecting Program Integrity

CHAPTER 1—REVISIONS TO SANCTIONS FOR FRAUD AND ABUSE

- Sec. 5201. Authority to refuse to enter into medicare agreements with individuals or entities convicted of felonies.
- Sec. 5202. Exclusion of entity controlled by family member of a sanctioned individual.
- Sec. 5203. Imposition of civil money penalties.

CHAPTER 2—IMPROVEMENTS IN PROTECTING PROGRAM INTEGRITY

- Sec. 5211. Disclosure of information, surety bonds, and accreditation.
- Sec. 5212. Provision of certain identification numbers.
- Sec. 5213. Application of certain provisions of the bankruptcy code.
- Sec. 5214. Replacement of reasonable charge methodology by fee schedules.
- Sec. 5215. Application of inherent reasonableness to all part B services other than physicians' services.
- Sec. 5216. Requirement to furnish diagnostic information.
- Sec. 5217. Report by GAO on operation of fraud and abuse control program.
- Sec. 5218. Competitive bidding.

CHAPTER 3—CLARIFICATIONS AND TECHNICAL CHANGES

- Sec. 5221. Other fraud and abuse related provisions.

Subtitle E—Prospective Payment Systems

CHAPTER 1—PROVISIONS RELATING TO PART A

- Sec. 5301. Prospective payment for inpatient rehabilitation hospital services.
- Sec. 5302. Study and report on payments for long-term care hospitals.

CHAPTER 2—PROVISIONS RELATING TO PART B

SUBCHAPTER A—PAYMENT FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES

- Sec. 5311. Elimination of formula-driven overpayments (FDO) for certain outpatient hospital services.
- Sec. 5312. Extension of reductions in payments for costs of hospital outpatient services.
- Sec. 5313. Prospective payment system for hospital outpatient department services.

SUBCHAPTER B—AMBULANCE SERVICES

- Sec. 5321. Payments for ambulance services.

CHAPTER 3—PROVISIONS RELATING TO PARTS A AND B

SUBCHAPTER A—PAYMENTS TO SKILLED NURSING FACILITIES

- Sec. 5331. Basing updates to per diem limits effective for fiscal year 1998 on cost limits effective for fiscal year 1997.
- Sec. 5332. Prospective payment for skilled nursing facility services.

SUBCHAPTER B—HOME HEALTH SERVICES AND BENEFITS

PART I—PAYMENTS FOR HOME HEALTH SERVICES

- Sec. 5341. Recapturing savings resulting from temporary freeze on payment increases for home health services.
- Sec. 5342. Interim payments for home health services.
- Sec. 5343. Prospective payment for home health services.
- Sec. 5344. Payment based on location where home health service is furnished.

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- Sec. 5361. Modification of part A home health benefit for individuals enrolled under part B.
- Sec. 5362. Imposition of \$5 copayment for part B home health services.
- Sec. 5363. Clarification of part-time or intermittent nursing care.
- Sec. 5364. Study on definition of homebound.
- Sec. 5365. Normative standards for home health claims denials.
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Subtitle F—Provisions Relating to Part A

CHAPTER 1—PAYMENT OF PPS HOSPITALS

- Sec. 5401. PPS hospital payment update.
- Sec. 5402. Capital payments for PPS hospitals.

CHAPTER 2—PAYMENT OF PPS EXEMPT HOSPITALS

- Sec. 5421. Payment update.
- Sec. 5422. Reductions to capital payments for certain PPS-exempt hospitals and units.
- Sec. 5423. Cap on TEFRA limits.
- Sec. 5424. Change in bonus and relief payments.
- Sec. 5425. Target amounts for rehabilitation hospitals, long-term care hospitals, and psychiatric hospitals.
- Sec. 5426. Treatment of certain long-term care hospitals located within other hospitals.
- Sec. 5427. Elimination of exemptions; report on exceptions and adjustments.
- Sec. 5428. Technical correction relating to subsection (d) hospitals.
- Sec. 5429. Certain cancer hospitals.

CHAPTER 3—GRADUATE MEDICAL EDUCATION PAYMENTS

SUBCHAPTER A—DIRECT MEDICAL EDUCATION

- Sec. 5441. Limitation on number of residents and rolling average FTE count.
- Sec. 5442. Permitting payment to nonhospital providers.

SUBCHAPTER B—INDIRECT MEDICAL EDUCATION

- Sec. 5446. Indirect graduate medical education payments.

SUBCHAPTER C—GRADUATE MEDICAL EDUCATION PAYMENTS FOR MANAGED CARE ENROLLEES

- Sec. 5451. Direct and indirect medical education payments to hospitals for managed care enrollees.
- Sec. 5452. Demonstration project on use of consortia.

CHAPTER 4—OTHER HOSPITAL PAYMENTS

- Sec. 5461. Disproportionate share payments to hospitals for managed care and Medicare Choice enrollees.
- Sec. 5462. Reform of disproportionate share payments to hospitals serving vulnerable populations.
- Sec. 5463. Medicare capital asset sales price equal to book value.
- Sec. 5464. Elimination of IME and DSH payments attributable to outlier payments.
- Sec. 5465. Treatment of transfer cases.
- Sec. 5466. Reductions in payments for enrollee bad debt.
- Sec. 5467. Floor on area wage index.
- Sec. 5468. Increase base payment rate to Puerto Rico hospitals.
- Sec. 5469. Permanent extension of hemophilia pass-through.
- Sec. 5470. Coverage of services in religious nonmedical health care institutions under the medicare and medicaid programs.

CHAPTER 5—PAYMENTS FOR HOSPICE SERVICES

- Sec. 5481. Payment for home hospice care based on location where care is furnished.
- Sec. 5482. Hospice care benefits periods.
- Sec. 5483. Other items and services included in hospice care.
- Sec. 5484. Contracting with independent physicians or physician groups for hospice care services permitted.
- Sec. 5485. Waiver of certain staffing requirements for hospice care programs in non-urbanized areas.
- Sec. 5486. Limitation on liability of beneficiaries for certain hospice coverage denials.
- Sec. 5487. Extending the period for physician certification of an individual's terminal illness.
- Sec. 5488. Effective date.

Subtitle G—Provisions Relating to Part B Only

CHAPTER 1—PAYMENTS FOR PHYSICIANS AND OTHER HEALTH CARE PROVIDERS

- Sec. 5501. Establishment of single conversion factor for 1998.
- Sec. 5502. Establishing update to conversion factor to match spending under sustainable growth rate.
- Sec. 5503. Replacement of volume performance standard with sustainable growth rate.
- Sec. 5504. Payment rules for anesthesia services.
- Sec. 5505. Implementation of resource-based physician practice expense.
- Sec. 5506. Increased medicare reimbursement for nurse practitioners and clinical nurse specialists.
- Sec. 5507. Increased medicare reimbursement for physician assistants.
- Sec. 5508. Chiropractic services coverage demonstration project.

CHAPTER 2—OTHER PAYMENT PROVISIONS

- Sec. 5521. Reduction in updates to payment amounts for clinical diagnostic laboratory tests; study on laboratory services.
- Sec. 5522. Improvements in administration of laboratory services benefit.
- Sec. 5523. Payments for durable medical equipment.
- Sec. 5524. Oxygen and oxygen equipment.
- Sec. 5525. Updates for ambulatory surgical services.
- Sec. 5526. Reimbursement for drugs and biologicals.

CHAPTER 3—PART B PREMIUM AND RELATED PROVISIONS

- Sec. 5541. Part B premium.
 Sec. 5542. Income-related reduction in medicare part B deductible to reflect recapture of part B subsidy.

Subtitle H—Provisions Relating to Parts A and B

CHAPTER 1—SECONDARY PAYOR PROVISIONS

- Sec. 5601. Extension and expansion of existing requirements.
 Sec. 5602. Improvements in recovery of payments.

CHAPTER 2—OTHER PROVISIONS

- Sec. 5611. Conforming age for eligibility under medicare to retirement age for social security benefits.
 Sec. 5612. Increased certification period for certain organ procurement organizations.

DIVISION 2—MEDICAID AND CHILDREN'S HEALTH INSURANCE INITIATIVES

Subtitle I—Medicaid

CHAPTER 1—MEDICAID SAVINGS

SUBCHAPTER A—MANAGED CARE REFORMS

- Sec. 5701. State option for mandatory managed care.

“PART B—PROVISIONS RELATING TO MANAGED CARE

- “Sec. 1941. Beneficiary choice; enrollment.
 “Sec. 1942. Beneficiary access to services generally.
 “Sec. 1943. Requirements for access to emergency care.
 “Sec. 1944. Other beneficiary protections.
 “Sec. 1945. Assuring quality care.
 “Sec. 1946. Protections for providers.
 “Sec. 1947. Assuring adequacy of payments to medicaid managed care organizations and entities.
 “Sec. 1948. Fraud and abuse.
 “Sec. 1949. Sanctions for noncompliance by managed care entities.
 “Sec. 1950. Definitions; miscellaneous provisions.”
 Sec. 5702. Primary care case management services as State option without need for waiver.
 Sec. 5703. Additional reforms to expand and simplify managed care.

SUBCHAPTER B—MANAGEMENT FLEXIBILITY REFORMS

- Sec. 5711. Elimination of Boren amendment requirements for provider payment rates.
 Sec. 5712. Medicaid payment rates for qualified medicare beneficiaries.
 Sec. 5713. No waiver required for provider selectivity.

SUBCHAPTER C—REDUCTION OF DISPROPORTIONATE SHARE HOSPITAL (DSH) PAYMENTS

- Sec. 5721. Disproportionate share hospital (DSH) payments.

CHAPTER 2—EXPANSION OF MEDICAID ELIGIBILITY

- Sec. 5731. State option to permit workers with disabilities to buy into medicaid.
 Sec. 5732. 12-month continuous eligibility for children.

CHAPTER 3—PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY
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- Sec. 5741. Establishment of PACE program as medicaid State option.
 Sec. 5742. Effective date; transition.
 Sec. 5743. Study and reports.

CHAPTER 4—MEDICAID MANAGEMENT AND PROGRAM REFORMS

- Sec. 5751. Elimination of requirement to pay for private insurance.
 Sec. 5752. Elimination of obstetrical and pediatric payment rate requirements.
 Sec. 5753. Physician qualification requirements.
 Sec. 5754. Expanded cost-sharing requirements.
 Sec. 5755. Penalty for fraudulent eligibility.
 Sec. 5756. Elimination of waste, fraud, and abuse.
 Sec. 5757. Study on EPSDT benefits.
 Sec. 5758. Study on effectiveness of managed care entities in meeting the needs of enrollees with special health care needs.

CHAPTER 5—MISCELLANEOUS

- Sec. 5761. Increased FMAPs.
 Sec. 5762. Increase in payment caps for territories.
 Sec. 5763. Community-based mental health services.
 Sec. 5764. Optional medicaid coverage of certain CDC-screened breast cancer patients.
 Sec. 5765. Treatment of State taxes imposed on certain hospitals that provide free care.
 Sec. 5766. Treatment of veterans pensions under medicaid.
 Sec. 5767. Effective date.

Subtitle J—Children’s Health Insurance Initiatives

- Sec. 5801. Establishment of children’s health insurance initiatives.

“TITLE XXI—CHILD HEALTH INSURANCE INITIATIVES

- “Sec. 2101. Purpose.
 “Sec. 2102. Definitions.
 “Sec. 2103. Appropriation.
 “Sec. 2104. Program outline.
 “Sec. 2105. Distribution of funds.
 “Sec. 2106. Use of funds.
 “Sec. 2107. State option for the purchase or provision of children’s health insurance.
 “Sec. 2108. Program integrity.
 “Sec. 2109. Annual reports.”

DIVISION 3—INCOME SECURITY AND OTHER PROVISIONS

Subtitle K—Income Security, Welfare-to-Work Grant Program, and Other Provisions

CHAPTER 1—INCOME SECURITY

- Sec. 5811. SSI eligibility for aliens receiving SSI on August 22, 1996.
- Sec. 5812. Extension of eligibility period for refugees and certain other qualified aliens from 5 to 7 years for SSI and medicaid.
- Sec. 5813. SSI eligibility for permanent resident aliens who are members of an Indian tribe.
- Sec. 5814. SSI eligibility for disabled legal aliens in the United States on August 22, 1996.
- Sec. 5815. Exemption from restriction on supplemental security income program participation by certain recipients eligible on the basis of very old applications.
- Sec. 5816. Reinstatement of eligibility for benefits.
- Sec. 5817. Exemption for children who are legal aliens from 5-year ban on medicaid eligibility.
- Sec. 5818. Effective date.

CHAPTER 2—WELFARE-TO-WORK GRANT PROGRAM

- Sec. 5821. Welfare-to-Work grants.
- Sec. 5822. Enrollment flexibility.
- Sec. 5823. Clarification of a State's ability to sanction an individual receiving assistance under TANF for noncompliance.

CHAPTER 3—UNEMPLOYMENT COMPENSATION

- Sec. 5831. Increase in Federal unemployment account ceiling.
- Sec. 5832. Special distribution to States from unemployment trust fund.
- Sec. 5833. Clarifying provision relating to base periods.
- Sec. 5834. Treatment of certain services performed by inmates.

DIVISION 4—EARNED INCOME CREDIT AND OTHER PROVISIONS

Subtitle L—Earned Income Credit and Other Provisions

CHAPTER 1—EARNED INCOME CREDIT

- Sec. 5851. Restrictions on availability of earned income credit for taxpayers who improperly claimed credit in prior year.

CHAPTER 2—INCREASE IN PUBLIC DEBT LIMIT

- Sec. 5861. Increase in public debt limit.

CHAPTER 3—MISCELLANEOUS

- Sec. 5871. Sense of the Senate regarding the correction of cost-of-living adjustments.

Subtitle M—Welfare Reform Technical Corrections

- Sec. 5900. Short title of subtitle.

CHAPTER 1—BLOCK GRANTS FOR TEMPORARY ASSISTANCE TO NEEDY FAMILIES

- Sec. 5901. Amendment of the Social Security Act.
- Sec. 5902. Eligible States; State plan.
- Sec. 5903. Grants to States.

- Sec. 5904. Use of grants.
- Sec. 5905. Mandatory work requirements.
- Sec. 5906. Prohibitions; requirements.
- Sec. 5907. Penalties.
- Sec. 5908. Data collection and reporting.
- Sec. 5909. Direct funding and administration by Indian tribes.
- Sec. 5910. Research, evaluations, and national studies.
- Sec. 5911. Report on data processing.
- Sec. 5912. Study on alternative outcomes measures.
- Sec. 5913. Limitation on payments to the territories.
- Sec. 5914. Conforming amendments to the Social Security Act.
- Sec. 5915. Other conforming amendments.
- Sec. 5916. Modifications to the job opportunities for certain low-income individuals program.
- Sec. 5917. Denial of assistance and benefits for drug-related convictions.
- Sec. 5918. Transition rule.
- Sec. 5919. Effective dates.

CHAPTER 2—SUPPLEMENTAL SECURITY INCOME

- Sec. 5921. Conforming and technical amendments relating to eligibility restrictions.
- Sec. 5922. Conforming and technical amendments relating to benefits for disabled children.
- Sec. 5923. Additional technical amendments to title XVI.
- Sec. 5924. Additional technical amendments relating to title XVI.
- Sec. 5925. Effective dates.

CHAPTER 3—CHILD SUPPORT

- Sec. 5935. State obligation to provide child support enforcement services.
- Sec. 5936. Distribution of collected support.
- Sec. 5937. Civil penalties relating to State directory of new hires.
- Sec. 5938. Federal Parent Locator Service.
- Sec. 5939. Access to registry data for research purposes.
- Sec. 5940. Collection and use of social security numbers for use in child support enforcement.
- Sec. 5941. Adoption of uniform State laws.
- Sec. 5942. State laws providing expedited procedures.
- Sec. 5943. Voluntary paternity acknowledgement.
- Sec. 5944. Calculation of paternity establishment percentage.
- Sec. 5945. Means available for provision of technical assistance and operation of Federal Parent Locator Service.
- Sec. 5946. Authority to collect support from Federal employees.
- Sec. 5947. Definition of support order.
- Sec. 5948. State law authorizing suspension of licenses.
- Sec. 5949. International support enforcement.
- Sec. 5950. Child support enforcement for Indian tribes.
- Sec. 5951. Continuation of rules for distribution of support in the case of a title IV–E child.
- Sec. 5952. Good cause in foster care and food stamp cases.
- Sec. 5953. Date of collection of support.
- Sec. 5954. Administrative enforcement in interstate cases.
- Sec. 5955. Work orders for arrearages.
- Sec. 5956. Additional technical State plan amendments.
- Sec. 5957. Federal case registry of child support orders.

- Sec. 5958. Full faith and credit for child support orders.
- Sec. 5959. Development costs of automated systems.
- Sec. 5960. Additional technical amendments.
- Sec. 5961. Effective date.

CHAPTER 4—RESTRICTING WELFARE AND PUBLIC BENEFITS FOR ALIENS

SUBCHAPTER A—ELIGIBILITY FOR FEDERAL BENEFITS

- Sec. 5965. Alien eligibility for Federal benefits: limited application to medicare and benefits under the Railroad Retirement Act.
- Sec. 5966. Exceptions to benefit limitations: corrections to reference concerning aliens whose deportation is withheld.
- Sec. 5967. Veterans exception: application of minimum active duty service requirement; extension to unremarried surviving spouse; expanded definition of veteran.
- Sec. 5968. Correction of reference concerning Cuban and Haitian entrants.
- Sec. 5969. Notification concerning aliens not lawfully present: correction of terminology.
- Sec. 5970. Freely associated States: contracts and licenses.
- Sec. 5971. Congressional statement regarding benefits for Hmong and other Highland Lao veterans.

SUBCHAPTER B—GENERAL PROVISIONS

- Sec. 5972. Determination of treatment of battered aliens as qualified aliens; inclusion of alien child of battered parent as qualified alien.
- Sec. 5973. Verification of eligibility for benefits.
- Sec. 5974. Qualifying quarters: disclosure of quarters of coverage information; correction to assure that crediting applies to all quarters earned by parents before child is 18.
- Sec. 5975. Statutory construction: benefit eligibility limitations applicable only with respect to aliens present in the United States.

SUBCHAPTER C—MISCELLANEOUS CLERICAL AND TECHNICAL AMENDMENTS; EFFECTIVE DATE

- Sec. 5976. Correcting miscellaneous clerical and technical errors.
- Sec. 5977. Effective date.

CHAPTER 5—CHILD PROTECTION

- Sec. 5981. Conforming and technical amendments relating to child protection.
- Sec. 5982. Additional technical amendments relating to child protection.
- Sec. 5983. Effective date.

CHAPTER 6—CHILD CARE

- Sec. 5985. Conforming and technical amendments relating to child care.
- Sec. 5986. Additional conforming and technical amendments.
- Sec. 5987. Repeals.
- Sec. 5988. Effective dates.

CHAPTER 7—ERISA AMENDMENTS RELATING TO MEDICAL CHILD SUPPORT ORDERS

- Sec. 5991. Amendments relating to section 303 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Sec. 5992. Amendment relating to section 381 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Sec. 5993. Amendments relating to section 382 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

1 **DIVISION 1—MEDICARE**
 2 **Subtitle A—Medicare Choice**
 3 **Program**

4 **CHAPTER 1—MEDICARE CHOICE**
 5 **PROGRAM**

6 **Subchapter A—Medicare Choice Program**

7 **SEC. 5001. ESTABLISHMENT OF MEDICARE CHOICE PRO-**
 8 **GRAM.**

9 Title XVIII is amended by redesignating part C as
 10 part D and by inserting after part B the following new
 11 part:

12 “PART C—MEDICARE CHOICE PROGRAM

13 “ELIGIBILITY, ELECTION, AND ENROLLMENT

14 “SEC. 1851. (a) CHOICE OF MEDICARE BENEFITS
 15 THROUGH MEDICARE CHOICE PLANS.—

16 “(1) IN GENERAL.—Subject to the provisions of
 17 this section, each Medicare Choice eligible individual
 18 (as defined in paragraph (3)) is entitled to elect to
 19 receive benefits under this title—

20 “(A) through the traditional medicare fee-
 21 for-service program under parts A and B, or

22 “(B) through enrollment in a Medicare
 23 Choice plan under this part.

1 “(2) TYPES OF MEDICARE CHOICE PLANS THAT
2 MAY BE AVAILABLE.—A Medicare Choice plan may
3 be any of the following types of plans of health in-
4 surance:

5 “(A) FEE-FOR-SERVICE PLANS.—A plan
6 that reimburses hospitals, physicians, and other
7 providers on the basis of a privately determined
8 fee schedule or other basis.

9 “(B) PLANS OFFERED BY PREFERRED
10 PROVIDER ORGANIZATIONS.—A Medicare
11 Choice plan offered by a preferred provider or-
12 ganization.

13 “(C) POINT OF SERVICE PLANS.—A point
14 of service plan.

15 “(D) PLANS OFFERED BY PROVIDER-SPON-
16 SORED ORGANIZATION.—A Medicare Choice
17 plan offered by a provider-sponsored organiza-
18 tion, as defined in section 1855(e).

19 “(E) PLANS OFFERED BY HEALTH MAIN-
20 TENANCE ORGANIZATIONS.—A Medicare Choice
21 plan offered by a health maintenance organiza-
22 tion.

23 “(F) COMBINATION OF MSA PLAN AND
24 CONTRIBUTIONS TO MEDICARE CHOICE MSA.—
25 An MSA plan, as defined in section 1859(b)(3),

1 and a contribution into a Medicare Choice med-
 2 ical savings account (MSA).

3 “(G) OTHER HEALTH CARE PLANS.—Any
 4 other private plan for the delivery of health care
 5 items and services that is not described in a
 6 preceding subparagraph.

7 “(3) MEDICARE CHOICE ELIGIBLE INDIVID-
 8 UAL.—

9 “(A) IN GENERAL.—In this title, subject to
 10 subparagraph (B), the term ‘Medicare Choice
 11 eligible individual’ means an individual who is
 12 entitled to benefits under part A and enrolled
 13 under part B.

14 “(B) SPECIAL RULE FOR END-STAGE
 15 RENAL DISEASE.—Such term shall not include
 16 an individual medically determined to have end-
 17 stage renal disease, except that an individual
 18 who develops end-stage renal disease while en-
 19 rolled in a Medicare Choice plan may continue
 20 to be enrolled in that plan.

21 “(b) SPECIAL RULES.—

22 “(1) RESIDENCE REQUIREMENT.—

23 “(A) IN GENERAL.—Except as the Sec-
 24 retary may otherwise provide, an individual is
 25 eligible to elect a Medicare Choice plan offered

1 by a Medicare Choice organization only if the
2 plan serves the geographic area in which the in-
3 dividual resides.

4 “(B) CONTINUATION OF ENROLLMENT
5 PERMITTED.—Pursuant to rules specified by
6 the Secretary, the Secretary shall provide that
7 an individual may continue enrollment in a
8 plan, notwithstanding that the individual no
9 longer resides in the service area of the plan, so
10 long as the plan provides benefits for enrollees
11 located in the area in which the individual re-
12 sides.

13 “(2) SPECIAL RULE FOR CERTAIN INDIVIDUALS
14 COVERED UNDER FEHBP OR ELIGIBLE FOR VETER-
15 ANS OR MILITARY HEALTH BENEFITS, VETERANS.—

16 “(A) FEHBP.—An individual who is en-
17 rolled in a health benefit plan under chapter 89
18 of title 5, United States Code, is not eligible to
19 enroll in an MSA plan until such time as the
20 Director of the Office of Management and
21 Budget certifies to the Secretary that the Office
22 of Personnel Management has adopted policies
23 which will ensure that the enrollment of such
24 individuals in such plans will not result in in-
25 creased expenditures for the Federal Govern-

1 ment for health benefit plans under such chap-
2 ter.

3 “(B) VA AND DOD.—The Secretary may
4 apply rules similar to the rules described in
5 subparagraph (A) in the case of individuals who
6 are eligible for health care benefits under chap-
7 ter 55 of title 10, United States Code, or under
8 chapter 17 of title 38 of such Code.

9 “(3) LIMITATION ON ELIGIBILITY OF QUALI-
10 FIED MEDICARE BENEFICIARIES AND OTHER MEDIC-
11 AID BENEFICIARIES TO ENROLL IN AN MSA PLAN.—
12 An individual who is a qualified medicare beneficiary
13 (as defined in section 1905(p)(1)), a qualified dis-
14 abled and working individual (described in section
15 1905(s)), an individual described in section
16 1902(a)(10)(E)(iii), or otherwise entitled to medi-
17 care cost-sharing under a State plan under title XIX
18 is not eligible to enroll in an MSA plan.

19 “(4) COVERAGE UNDER MSA PLANS ON A DEM-
20 ONSTRATION BASIS.—

21 “(A) IN GENERAL.—An individual is not
22 eligible to enroll in an MSA plan under this
23 part—

24 “(i) on or after January 1, 2003, un-
25 less the enrollment is the continuation of

1 such an enrollment in effect as of such
2 date; or

3 “(ii) as of any date if the number of
4 such individuals so enrolled as of such date
5 has reached 100,000.

6 Under rules established by the Secretary, an in-
7 dividual is not eligible to enroll (or continue en-
8 rollment) in an MSA plan for a year unless the
9 individual provides assurances satisfactory to
10 the Secretary that the individual will reside in
11 the United States for at least 183 days during
12 the year.

13 “(B) EVALUATION.—The Secretary shall
14 regularly evaluate the impact of permitting en-
15 rollment in MSA plans under this part on selec-
16 tion (including adverse selection), use of preven-
17 tive care, access to care, and the financial sta-
18 tus of the Trust Funds under this title.

19 “(C) REPORTS.—The Secretary shall sub-
20 mit to Congress periodic reports on the num-
21 bers of individuals enrolled in such plans and
22 on the evaluation being conducted under sub-
23 paragraph (B). The Secretary shall submit such
24 a report, by not later than March 1, 2002, on
25 whether the time limitation under subparagraph

1 (A)(i) should be extended or removed and
2 whether to change the numerical limitation
3 under subparagraph (A)(ii).

4 “(c) PROCESS FOR EXERCISING CHOICE.—

5 “(1) IN GENERAL.—The Secretary shall estab-
6 lish a process through which elections described in
7 subsection (a) are made and changed, including the
8 form and manner in which such elections are made
9 and changed. Such elections shall be made or
10 changed as provided in subsection (e) and shall be-
11 come effective as provided in subsection (f).

12 “(2) COORDINATION THROUGH MEDICARE
13 CHOICE ORGANIZATIONS.—

14 “(A) ENROLLMENT.—Such process shall
15 permit an individual who wishes to elect a Med-
16 icare Choice plan offered by a Medicare Choice
17 organization to make such election through the
18 filing of an appropriate election form with the
19 organization.

20 “(B) DISENROLLMENT.—Such process
21 shall permit an individual, who has elected a
22 Medicare Choice plan offered by a Medicare
23 Choice organization and who wishes to termi-
24 nate such election, to terminate such election

1 through the filing of an appropriate election
2 form with the organization.

3 “(3) DEFAULT.—

4 “(A) INITIAL ELECTION.—

5 “(i) IN GENERAL.—Subject to clause
6 (ii), an individual who fails to make an
7 election during an initial election period
8 under subsection (e)(1) is deemed to have
9 chosen the traditional medicare fee-for-
10 service program option.

11 “(ii) SEAMLESS CONTINUATION OF
12 COVERAGE.—The Secretary may establish
13 procedures under which an individual who
14 is enrolled in a health plan (other than
15 Medicare Choice plan) offered by a Medi-
16 care Choice organization at the time of the
17 initial election period and who fails to elect
18 to receive coverage other than through the
19 organization is deemed to have elected the
20 Medicare Choice plan offered by the orga-
21 nization (or, if the organization offers
22 more than one such plan, such plan or
23 plans as the Secretary identifies under
24 such procedures).

1 “(B) CONTINUING PERIODS.—An individ-
2 ual who has made (or is deemed to have made)
3 an election under this section is considered to
4 have continued to make such election until such
5 time as—

6 “(i) the individual changes the elec-
7 tion under this section, or

8 “(ii) the Medicare Choice plan with
9 respect to which such election is in effect
10 is discontinued.

11 “(d) PROVIDING INFORMATION TO PROMOTE IN-
12 FORMED CHOICE.—

13 “(1) IN GENERAL.—The Secretary shall provide
14 for activities under this subsection to broadly dis-
15 seminate information to medicare beneficiaries (and
16 prospective medicare beneficiaries) on the coverage
17 options provided under this section in order to pro-
18 mote an active, informed selection among such op-
19 tions.

20 “(2) PROVISION OF NOTICE.—

21 “(A) OPEN SEASON NOTIFICATION.—At
22 least 15 days before the beginning of each an-
23 nual, coordinated election period (as defined in
24 subsection (e)(3)(B)), the Secretary shall mail

1 to each Medicare Choice eligible individual re-
2 siding in an area the following:

3 “(i) GENERAL INFORMATION.—The
4 general information described in paragraph
5 (3).

6 “(ii) LIST OF PLANS AND COMPARI-
7 SON OF PLAN OPTIONS.—A list identifying
8 the Medicare Choice plans that are (or will
9 be) available to residents of the area and
10 information described in paragraph (4)
11 concerning such plans. Such information
12 shall be presented in a comparative, chart-
13 like form.

14 “(iii) ADDITIONAL INFORMATION.—
15 Any other information that the Secretary
16 determines will assist the individual in
17 making the election under this section.

18 The mailing of such information shall be coordi-
19 nated with the mailing of any annual notice
20 under section 1804.

21 “(B) NOTIFICATION TO NEWLY MEDICARE
22 CHOICE ELIGIBLE INDIVIDUALS.—To the extent
23 practicable, the Secretary shall, not later than
24 30 days before the beginning of the initial Med-
25 icare Choice enrollment period for an individual

1 described in subsection (e)(1)(A), mail to the
2 individual the information described in subpara-
3 graph (A).

4 “(C) FORM.—The information dissemi-
5 nated under this paragraph shall be written and
6 formatted using language that is easily under-
7 standable by medicare beneficiaries.

8 “(D) PERIODIC UPDATING.—The informa-
9 tion described in subparagraph (A) shall be up-
10 dated on at least an annual basis to reflect
11 changes in the availability of Medicare Choice
12 plans and the benefits and net monthly pre-
13 miums for such plans.

14 “(3) GENERAL INFORMATION.—General infor-
15 mation under this paragraph, with respect to cov-
16 erage under this part during a year, shall include
17 the following:

18 “(A) BENEFITS UNDER TRADITIONAL
19 MEDICARE FEE-FOR-SERVICE PROGRAM OP-
20 TION.—A general description of the benefits
21 covered under the traditional medicare fee-for-
22 service program under parts A and B, includ-
23 ing—

24 “(i) covered items and services,

1 “(ii) beneficiary cost sharing, such as
2 deductibles, coinsurance, and copayment
3 amounts, and

4 “(iii) any beneficiary liability for bal-
5 ance billing.

6 “(B) PART B PREMIUM.—The part B pre-
7 mium rates that will be charged for part B cov-
8 erage.

9 “(C) ELECTION PROCEDURES.—Informa-
10 tion and instructions on how to exercise election
11 options under this section.

12 “(D) RIGHTS.—A general description of
13 procedural rights (including grievance and ap-
14 peals procedures) of beneficiaries under the tra-
15 ditional medicare fee-for-service program and
16 the Medicare Choice program and the right to
17 be protected against discrimination based on
18 health status-related factors under section
19 1852(b).

20 “(E) INFORMATION ON MEDIGAP AND
21 MEDICARE SELECT.—A general description of
22 the benefits, enrollment rights, and other re-
23 quirements applicable to medicare supplemental
24 policies under section 1882 and provisions relat-

1 ing to medicare select policies described in sec-
2 tion 1882(t).

3 “(F) POTENTIAL FOR CONTRACT TERMI-
4 NATION.—The fact that a Medicare Choice or-
5 ganization may terminate or refuse to renew its
6 contract under this part and the effect the ter-
7 mination or nonrenewal of its contract may
8 have on individuals enrolled with the Medicare
9 Choice plan under this part.

10 “(4) INFORMATION COMPARING PLAN OP-
11 TIONS.—Information under this paragraph, with re-
12 spect to a Medicare Choice plan for a year, shall in-
13 clude the following:

14 “(A) BENEFITS.—The benefits covered
15 under the plan, including—

16 “(i) covered items and services beyond
17 those provided under the traditional medi-
18 care fee-for-service program,

19 “(ii) any beneficiary cost sharing,

20 “(iii) any maximum limitations on
21 out-of-pocket expenses, and

22 “(iv) in the case of an MSA plan, dif-
23 ferences in cost sharing and balance billing
24 under such a plan compared to under
25 other Medicare Choice plans.

1 “(B) PREMIUMS.—The net monthly pre-
2 mium, if any, for the plan.

3 “(C) SERVICE AREA.—The service area of
4 the plan.

5 “(D) QUALITY AND PERFORMANCE.—To
6 the extent available, plan quality and perform-
7 ance indicators for the benefits under the plan
8 (and how they compare to such indicators
9 under the traditional medicare fee-for-service
10 program under parts A and B in the area in-
11 volved), including—

12 “(i) disenrollment rates for medicare
13 enrollees electing to receive benefits
14 through the plan for the previous 2 years
15 (excluding disenrollment due to death or
16 moving outside the plan’s service area),

17 “(ii) information on medicare enrollee
18 satisfaction,

19 “(iii) information on health outcomes,

20 “(iv) the extent to which a medicare
21 enrollee may select the health care provider
22 of their choice, including health care pro-
23 viders within the plan’s network and out-
24 of-network health care providers (if the

1 plan covers out-of-network items and serv-
2 ices), and

3 “(v) an indication of medicare enrollee
4 exposure to balance billing and the restric-
5 tions on coverage of items and services
6 provided to such enrollee by an out-of-net-
7 work health care provider.

8 “(E) SUPPLEMENTAL BENEFITS OP-
9 TIONS.—Whether the organization offering the
10 plan offers optional supplemental benefits and
11 the terms and conditions (including premiums)
12 for such coverage.

13 “(F) PHYSICIAN COMPENSATION.—An
14 overall summary description as to the method
15 of compensation of participating physicians.

16 “(5) MAINTAINING A TOLL-FREE NUMBER AND
17 INTERNET SITE.—The Secretary shall maintain a
18 toll-free number for inquiries regarding Medicare
19 Choice options and the operation of this part in all
20 areas in which Medicare Choice plans are offered
21 and an Internet site through which individuals may
22 electronically obtain information on such options and
23 Medicare Choice plans.

1 “(6) USE OF NON-FEDERAL ENTITIES.—The
2 Secretary may enter into contracts with non-Federal
3 entities to carry out activities under this subsection.

4 “(7) PROVISION OF INFORMATION.—A Medi-
5 care Choice organization shall provide the Secretary
6 with such information on the organization and each
7 Medicare Choice plan it offers as may be required
8 for the preparation of the information referred to in
9 paragraph (2)(A).

10 “(8) COORDINATION WITH STATES.—The Sec-
11 retary shall coordinate with States to the maximum
12 extent feasible in developing and distributing infor-
13 mation provided to beneficiaries.

14 “(e) COVERAGE ELECTION PERIODS.—

15 “(1) INITIAL CHOICE UPON ELIGIBILITY TO
16 MAKE ELECTION IF MEDICARE CHOICE PLANS AVAIL-
17 ABLE TO INDIVIDUAL.—If, at the time an individual
18 first becomes entitled to benefits under part A and
19 enrolled under part B, there is one or more Medi-
20 care Choice plans offered in the area in which the
21 individual resides, the individual shall make the elec-
22 tion under this section during a period specified by
23 the Secretary such that if the individual elects a
24 Medicare Choice plan during the period, coverage

1 under the plan becomes effective as of the first date
2 on which the individual may receive such coverage.

3 “(2) OPEN ENROLLMENT AND DISENROLLMENT
4 OPPORTUNITIES.—Subject to paragraph (5), a Medi-
5 care Choice eligible individual may change the elec-
6 tion under subsection (a)(1) at any time, except that
7 such individual may only enroll in a Medicare Choice
8 plan which has an open enrollment period in effect
9 at that time.

10 “(3) ANNUAL, COORDINATED ELECTION PE-
11 RIOD.—

12 “(A) IN GENERAL.—Subject to paragraph
13 (5), a Medicare Choice eligible individual may
14 change an election under subsection (a)(1) dur-
15 ing an annual, coordinated election period.

16 “(B) ANNUAL, COORDINATED ELECTION
17 PERIOD.—For purposes of this section, the
18 term ‘annual, coordinated election period’
19 means, with respect to a calendar year (begin-
20 ning with 1998), the month of November before
21 such year.

22 “(C) MEDICARE CHOICE HEALTH INFOR-
23 MATION FAIRS.—In the month of November of
24 each year (beginning with 1997), the Secretary
25 shall provide for a nationally coordinated edu-

1 cational and publicity campaign to inform Medi-
2 care Choice eligible individuals about Medicare
3 Choice plans and the election process provided
4 under this section.

5 “(4) SPECIAL ELECTION PERIODS.—A Medicare
6 Choice individual may make a new election under
7 this section if—

8 “(A) the organization’s or plan’s certifi-
9 cation under this part has been terminated or
10 the organization has terminated or otherwise
11 discontinued providing the plan;

12 “(B) the individual is no longer eligible to
13 elect the plan because of a change in the indi-
14 vidual’s place of residence or other change in
15 circumstances (specified by the Secretary, but
16 not including termination of the individual’s en-
17 rollment on the basis described in clause (i) or
18 (ii) subsection (g)(3)(B));

19 “(C) the individual demonstrates (in ac-
20 cordance with guidelines established by the Sec-
21 retary) that—

22 “(i) the organization offering the plan
23 substantially violated a material provision
24 of the organization’s contract under this
25 part in relation to the individual (including

1 the failure to provide an enrollee on a
2 timely basis medically necessary care for
3 which benefits are available under the plan
4 or the failure to provide such covered care
5 in accordance with applicable quality
6 standards); or

7 “(ii) the organization (or an agent or
8 other entity acting on the organization’s
9 behalf) materially misrepresented the
10 plan’s provisions in marketing the plan to
11 the individual; or

12 “(D) the individual meets such other ex-
13 ceptional conditions as the Secretary may pro-
14 vide.

15 “(5) SPECIAL RULES FOR MSA PLANS.—Not-
16 withstanding the preceding provisions of this sub-
17 section, an individual—

18 “(A) may elect an MSA plan only during—

19 “(i) an initial open enrollment period
20 described in paragraph (1), or

21 “(ii) an annual, coordinated election
22 period described in paragraph (3)(B), and

23 “(B) may not discontinue an election of an
24 MSA plan except during the periods described
25 in subparagraph (A) and under paragraph (4).

1 “(6) OPEN ENROLLMENT PERIODS.—A Medi-
2 care Choice organization—

3 “(A) shall accept elections or changes to
4 elections described in paragraphs (1), (3), and
5 (4) during the periods prescribed in such para-
6 graphs, and

7 “(B) may accept other changes to elections
8 at such other times as the organization pro-
9 vides.

10 “(f) EFFECTIVENESS OF ELECTIONS AND CHANGES
11 OF ELECTIONS.—

12 “(1) DURING INITIAL COVERAGE ELECTION PE-
13 RIOD.—An election of coverage made during the ini-
14 tial coverage election period under subsection
15 (e)(1)(A) shall take effect upon the date the individ-
16 ual becomes entitled to benefits under part A and
17 enrolled under part B, except as the Secretary may
18 provide (consistent with section 1838) in order to
19 prevent retroactive coverage.

20 “(2) DURING CONTINUOUS OPEN ENROLLMENT
21 PERIODS.—An election or change of coverage made
22 under subsection (e)(2) shall take effect with the
23 first day of the first calendar month following the
24 date on which the election is made.

1 “(3) ANNUAL, COORDINATED ELECTION PE-
2 RIOD.—An election or change of coverage made dur-
3 ing an annual, coordinated election period (as de-
4 fined in subsection (e)(3)(B)) in a year shall take ef-
5 fect as of the first day of the following year unless
6 the individual elects to have it take effect on Decem-
7 ber 1 of the election year.

8 “(4) OTHER PERIODS.—An election or change
9 of coverage made during any other period under
10 subsection (e)(4) shall take effect in such manner as
11 the Secretary provides in a manner consistent (to
12 the extent practicable) with protecting continuity of
13 health benefit coverage.

14 “(g) GUARANTEED ISSUE AND RENEWAL.—

15 “(1) IN GENERAL.—Except as provided in this
16 subsection, a Medicare Choice organization shall
17 provide that at any time during which elections are
18 accepted under this section with respect to a Medi-
19 care Choice plan offered by the organization, the or-
20 ganization will accept without restrictions individuals
21 who are eligible to make such election.

22 “(2) PRIORITY.—If the Secretary determines
23 that a Medicare Choice organization, in relation to
24 a Medicare Choice plan it offers, has a capacity limit
25 and the number of Medicare Choice eligible individ-

1 uals who elect the plan under this section exceeds
 2 the capacity limit, the organization may limit the
 3 election of individuals of the plan under this section
 4 but only if priority in election is provided—

5 “(A) first to such individuals as have elect-
 6 ed the plan at the time of the determination,
 7 and

8 “(B) then to other such individuals in such
 9 a manner that does not discriminate, on a basis
 10 described in section 1852(b), among the individ-
 11 uals (who seek to elect the plan).

12 The preceding sentence shall not apply if it would
 13 result in the enrollment of enrollees substantially
 14 nonrepresentative, as determined in accordance with
 15 regulations of the Secretary, of the medicare popu-
 16 lation in the service area of the plan.

17 “(3) LIMITATION ON TERMINATION OF ELEC-
 18 TION.—

19 “(A) IN GENERAL.—Subject to subpara-
 20 graph (B), a Medicare Choice organization may
 21 not for any reason terminate the election of any
 22 individual under this section for a Medicare
 23 Choice plan it offers.

24 “(B) BASIS FOR TERMINATION OF ELEC-
 25 TION.—A Medicare Choice organization may

1 terminate an individual's election under this
2 section with respect to a Medicare Choice plan
3 it offers if—

4 “(i) any net monthly premiums re-
5 quired with respect to such plan are not
6 paid on a timely basis (consistent with
7 standards under section 1856 that provide
8 for a grace period for late payment of net
9 monthly premiums),

10 “(ii) the individual has engaged in
11 disruptive behavior (as specified in such
12 standards), or

13 “(iii) the plan is terminated with re-
14 spect to all individuals under this part in
15 the area in which the individual resides.

16 “(C) CONSEQUENCE OF TERMINATION.—

17 “(i) TERMINATIONS FOR CAUSE.—
18 Any individual whose election is terminated
19 under clause (i) or (ii) of subparagraph
20 (B) is deemed to have elected the tradi-
21 tional medicare fee-for-service program op-
22 tion described in subsection (a)(1)(A).

23 “(ii) TERMINATION BASED ON PLAN
24 TERMINATION OR SERVICE AREA REDUC-
25 TION.—Any individual whose election is

1 terminated under subparagraph (B)(iii)
2 shall have a special election period under
3 subsection (e)(4)(A) in which to change
4 coverage to coverage under another Medi-
5 care Choice plan. Such an individual who
6 fails to make an election during such pe-
7 riod is deemed to have chosen to change
8 coverage to the traditional medicare fee-
9 for-service program option described in
10 subsection (a)(1)(A).

11 “(D) ORGANIZATION OBLIGATION WITH
12 RESPECT TO ELECTION FORMS.—Pursuant to a
13 contract under section 1857, each Medicare
14 Choice organization receiving an election form
15 under subsection (c)(3) shall transmit to the
16 Secretary (at such time and in such manner as
17 the Secretary may specify) a copy of such form
18 or such other information respecting the elec-
19 tion as the Secretary may specify.

20 “(h) APPROVAL OF MARKETING MATERIAL AND AP-
21 PPLICATION FORMS.—

22 “(1) SUBMISSION.—No marketing material or
23 application form may be distributed by a Medicare
24 Choice organization to (or for the use of) Medicare
25 Choice eligible individuals unless—

1 “(A) at least 45 days before the date of
2 distribution the organization has submitted the
3 material or form to the Secretary for review,
4 and

5 “(B) the Secretary has not disapproved the
6 distribution of such material or form.

7 “(2) REVIEW.—The standards established
8 under section 1856 shall include guidelines for the
9 review of any material or form submitted and under
10 such guidelines the Secretary shall disapprove (or
11 later require the correction of) such material or form
12 if the material or form is materially inaccurate or
13 misleading or otherwise makes a material misrepre-
14 sentation.

15 “(3) DEEMED APPROVAL (1-STOP SHOPPING).—
16 In the case of material or form that is submitted
17 under paragraph (1)(A) to the Secretary or a re-
18 gional office of the Department of Health and
19 Human Services and the Secretary or the office has
20 not disapproved the distribution of marketing mate-
21 rial or form under paragraph (1)(B) with respect to
22 a Medicare Choice plan in an area, the Secretary is
23 deemed not to have disapproved such distribution in
24 all other areas covered by the plan and organization

1 except to the extent that such material or form is
2 specific only to an area involved.

3 “(4) PROHIBITION OF CERTAIN MARKETING
4 PRACTICES.—Each Medicare Choice organization
5 shall conform to fair marketing standards, in rela-
6 tion to Medicare Choice plans offered under this
7 part, included in the standards established under
8 section 1856.

9 “(i) EFFECT OF ELECTION OF MEDICARE CHOICE
10 PLAN OPTION.—Subject to sections 1852(a)(5) and
11 1857(f)(2)—

12 “(1) payments under a contract with a Medi-
13 care Choice organization under section 1853(a) with
14 respect to an individual electing a Medicare Choice
15 plan offered by the organization shall be instead of
16 the amounts which (in the absence of the contract)
17 would otherwise be payable under parts A and B for
18 items and services furnished to the individual, and

19 “(2) subject to subsections (e) and (g) of sec-
20 tion 1853, only the Medicare Choice organization
21 shall be entitled to receive payments from the Sec-
22 retary under this title for services furnished to the
23 individual.

24 “BENEFITS AND BENEFICIARY PROTECTIONS

25 “SEC. 1852. (a) BASIC BENEFITS.—

1 “(1) IN GENERAL.—Except as provided in sec-
2 tion 1859(b)(3) for MSA plans, each Medicare
3 Choice plan shall provide to members enrolled under
4 this part, through providers and other persons that
5 meet the applicable requirements of this title and
6 part A of title XI—

7 “(A) those items and services for which
8 benefits are available under parts A and B to
9 individuals residing in the area served by the
10 plan, and

11 “(B) additional benefits required under
12 section 1854(f)(1)(A).

13 “(2) SUPPLEMENTAL BENEFITS.—

14 “(A) BENEFITS INCLUDED SUBJECT TO
15 SECRETARY’S APPROVAL.—Each Medicare
16 Choice organization may provide to individuals
17 enrolled under this part (without affording
18 those individuals an option to decline the cov-
19 erage) supplemental health care benefits that
20 the Secretary may approve. The Secretary shall
21 approve any such supplemental benefits unless
22 the Secretary determines that including such
23 supplemental benefits would substantially dis-
24 courage enrollment by Medicare Choice eligible
25 individuals with the organization.

1 “(B) AT ENROLLEES’ OPTION.—A Medi-
2 care Choice organization may provide to indi-
3 viduals enrolled under this part (other than
4 under an MSA plan) supplemental health care
5 benefits that the individuals may elect, at their
6 option, to have covered.

7 “(3) ORGANIZATION AS SECONDARY PAYER.—
8 Notwithstanding any other provision of law, a Medi-
9 care Choice organization may (in the case of the
10 provision of items and services to an individual
11 under a Medicare Choice plan under circumstances
12 in which payment under this title is made secondary
13 pursuant to section 1862(b)(2)) charge or authorize
14 the provider of such services to charge, in accord-
15 ance with the charges allowed under a law, plan, or
16 policy described in such section—

17 “(A) the insurance carrier, employer, or
18 other entity which under such law, plan, or pol-
19 icy is to pay for the provision of such services,
20 or

21 “(B) such individual to the extent that the
22 individual has been paid under such law, plan,
23 or policy for such services.

24 “(4) NATIONAL COVERAGE DETERMINATIONS.—
25 If there is a national coverage determination made

1 in the period beginning on the date of an announce-
2 ment under section 1853(b) and ending on the date
3 of the next announcement under such section and
4 the Secretary projects that the determination will re-
5 sult in a significant change in the costs to a Medi-
6 care Choice organization of providing the benefits
7 that are the subject of such national coverage deter-
8 mination and that such change in costs was not in-
9 corporated in the determination of the annual Medi-
10 care Choice capitation rate under section 1853 in-
11 cluded in the announcement made at the beginning
12 of such period, then, unless otherwise required by
13 law—

14 “(A) such determination shall not apply to
15 contracts under this part until the first contract
16 year that begins after the end of such period,
17 and

18 “(B) if such coverage determination pro-
19 vides for coverage of additional benefits or cov-
20 erage under additional circumstances, section
21 1851(i) shall not apply to payment for such ad-
22 ditional benefits or benefits provided under such
23 additional circumstances until the first contract
24 year that begins after the end of such period.

25 “(b) ANTIDISCRIMINATION.—

1 “(1) BENEFICIARIES.—

2 “(A) IN GENERAL.—A Medicare Choice or-
3 ganization may not deny, limit, or condition the
4 coverage or provision of benefits under this
5 part, for individuals permitted to be enrolled
6 with the organization under this part, based on
7 any health status-related factor described in
8 section 2702(a)(1) of the Public Health Service
9 Act.

10 “(B) CONSTRUCTION.—Subparagraph (A)
11 shall not be construed as requiring a Medicare
12 Choice organization to enroll individuals who
13 are determined to have end-stage renal disease,
14 except as provided under section 1851(a)(3)(B).

15 “(2) PROVIDERS.—A Medicare Choice organiza-
16 tion shall not discriminate with respect to participa-
17 tion, reimbursement, or indemnification as to any
18 provider who is acting within the scope of the pro-
19 vider’s license or certification under applicable State
20 law, solely on the basis of such license or certifi-
21 cation. This paragraph shall not be construed to
22 prohibit a plan from including providers only to the
23 extent necessary to meet the needs of the plan’s en-
24 rollees or from establishing any measure designed to

1 maintain quality and control costs consistent with
2 the responsibilities of the plan.

3 “(c) DISCLOSURE REQUIREMENTS.—

4 “(1) DETAILED DESCRIPTION OF PLAN PROVI-
5 SIONS.—A Medicare Choice organization shall dis-
6 close, in clear, accurate, and standardized form to
7 each enrollee with a Medicare Choice plan offered by
8 the organization under this part at the time of en-
9 rollment and at least annually thereafter, the follow-
10 ing information regarding such plan:

11 “(A) SERVICE AREA.—The plan’s service
12 area.

13 “(B) BENEFITS.—Benefits offered under
14 the plan, including information described in sec-
15 tion 1851(d)(3)(A) and exclusions from cov-
16 erage and, if it is an MSA plan, a comparison
17 of benefits under such a plan with benefits
18 under other Medicare Choice plans.

19 “(C) ACCESS.—The number, mix, and dis-
20 tribution of plan providers.

21 “(D) OUT-OF-AREA COVERAGE.—Out-of-
22 area coverage provided by the plan.

23 “(E) EMERGENCY COVERAGE.—Coverage
24 of emergency services and urgently needed care,
25 including—

1 “(i) the appropriate use of emergency
2 services, including use of the 911 telephone
3 system or its local equivalent in emergency
4 situations and an explanation of what con-
5 stitutes an emergency situation;

6 “(ii) the process and procedures of the
7 plan for obtaining emergency services; and

8 “(iii) the locations of (I) emergency
9 departments, and (II) other settings, in
10 which plan physicians and hospitals pro-
11 vide emergency services and post-stabiliza-
12 tion care.

13 “(F) SUPPLEMENTAL BENEFITS.—Supple-
14 mental benefits available from the organization
15 offering the plan, including—

16 “(i) whether the supplemental benefits
17 are optional,

18 “(ii) the supplemental benefits cov-
19 ered, and

20 “(iii) the premium price for the sup-
21 plemental benefits.

22 “(G) PRIOR AUTHORIZATION RULES.—
23 Rules regarding prior authorization or other re-
24 view requirements that could result in nonpay-
25 ment.

1 “(H) PLAN GRIEVANCE AND APPEALS PRO-
2 CEDURES.—All plan appeal or grievance rights
3 and procedures.

4 “(I) QUALITY ASSURANCE PROGRAM.—A
5 description of the organization’s quality assur-
6 ance program under subsection (e).

7 “(J) OUT-OF-NETWORK COVERAGE.—The
8 out-of-network coverage (if any) provided by the
9 plan.

10 “(2) DISCLOSURE UPON REQUEST.—Upon re-
11 quest of a Medicare Choice eligible individual, a
12 Medicare Choice organization must provide the fol-
13 lowing information to such individual:

14 “(A) The information described in para-
15 graphs (3) and (4) of section 1851(d).

16 “(B) Information on utilization review pro-
17 cedures.

18 “(d) ACCESS TO SERVICES.—

19 “(1) IN GENERAL.—A Medicare Choice organi-
20 zation offering a Medicare Choice plan, other than
21 an unrestricted fee-for-service plan, may select the
22 providers from whom the benefits under the plan are
23 provided so long as—

24 “(A) the organization makes such benefits
25 available and accessible to each individual elect-

1 ing the plan within the plan service area with
2 reasonable promptness and in a manner which
3 assures continuity in the provision of benefits;

4 “ (B) when medically necessary the organi-
5 zation makes such benefits available and acces-
6 sible 24 hours a day and 7 days a week;

7 “ (C) the plan provides for reimbursement
8 with respect to services which are covered under
9 subparagraphs (A) and (B) and which are pro-
10 vided to such an individual other than through
11 the organization, if—

12 “ (i) the services were medically nec-
13 essary and immediately required because of
14 an unforeseen illness, injury, or condition,
15 and it was not reasonable given the cir-
16 cumstances to obtain the services through
17 the organization, or

18 “ (ii) the services were renal dialysis
19 services and were provided other than
20 through the organization because the indi-
21 vidual was temporarily out of the plan’s
22 service area;

23 “ (D) the organization provides access to
24 appropriate providers, including credentialed

1 specialists, for medically necessary treatment
2 and services;

3 “(E) coverage is provided for emergency
4 services (as defined in paragraph (3)) without
5 regard to prior authorization or the emergency
6 care provider’s contractual relationship with the
7 organization; and

8 “(F) except as provided by the Secretary
9 on a case-by-case basis, the organization pro-
10 vides primary care services within 30 minutes
11 or 30 miles from an enrollee’s place of residence
12 if the enrollee resides in a rural area.

13 “(2) GUIDELINES RESPECTING COORDINATION
14 OF POST-STABILIZATION CARE.—

15 “(A) IN GENERAL.—A Medicare Choice
16 plan shall comply with such guidelines as the
17 Secretary shall prescribe relating to promoting
18 efficient and timely coordination of appropriate
19 maintenance and post-stabilization care of an
20 enrollee after the enrollee has been determined
21 to be stable under section 1867.

22 “(B) CONTENT OF GUIDELINES.—The
23 guidelines prescribed under subparagraph (A)
24 shall provide that—

1 “(i) a provider of emergency services
2 shall make a documented good faith effort
3 to contact the plan in a timely fashion
4 from the point at which the individual is
5 stabilized to request approval for medically
6 necessary post-stabilization care,

7 “(ii) the plan shall respond in a timely
8 fashion to the initial contact with the plan
9 with a decision as to whether the services
10 for which approval is requested will be au-
11 thorized, and

12 “(iii) if a denial of a request is com-
13 municated, the plan shall, upon request
14 from the treating physician, arrange for a
15 physician who is authorized by the plan to
16 review the denial to communicate directly
17 with the treating physician in a timely
18 fashion.

19 “(3) DEFINITION OF EMERGENCY SERVICES.—

20 In this subsection—

21 “(A) IN GENERAL.—The term ‘emergency
22 services’ means, with respect to an individual
23 enrolled with an organization, covered inpatient
24 and outpatient services that—

1 “(i) are furnished by a provider that
2 is qualified to furnish such services under
3 this title, and

4 “(ii) are needed to evaluate or sta-
5 bilize an emergency medical condition (as
6 defined in subparagraph (B)).

7 “(B) EMERGENCY MEDICAL CONDITION
8 BASED ON PRUDENT LAYPERSON.—The term
9 ‘emergency medical condition’ means a medical
10 condition manifesting itself by acute symptoms
11 of sufficient severity (including severe pain)
12 such that a prudent layperson, who possesses
13 an average knowledge of health and medicine,
14 could reasonably expect the absence of imme-
15 diate medical attention to result in—

16 “(i) placing the health of the individ-
17 ual (or, with respect to a pregnant woman,
18 the health of the woman or her unborn
19 child) in serious jeopardy,

20 “(ii) serious impairment to bodily
21 functions, or

22 “(iii) serious dysfunction of any bodily
23 organ or part.

24 “(e) QUALITY ASSURANCE PROGRAM.—

1 “(1) IN GENERAL.—Each Medicare Choice or-
2 ganization must have arrangements, consistent with
3 any regulation, for an ongoing quality assurance
4 program for health care services it provides to indi-
5 viduals enrolled with Medicare Choice plans of the
6 organization.

7 “(2) ELEMENTS OF PROGRAM.—The quality as-
8 surance program shall—

9 “(A) stress health outcomes and provide
10 for the collection, analysis, and reporting of
11 data (in accordance with a quality measurement
12 system that the Secretary recognizes) that will
13 permit measurement of outcomes and other in-
14 dices of the quality of Medicare Choice plans
15 and organizations;

16 “(B) provide for the establishment of writ-
17 ten protocols for utilization review, based on
18 current standards of medical practice;

19 “(C) provide review by physicians and
20 other health care professionals of the process
21 followed in the provision of such health care
22 services;

23 “(D) monitor and evaluate high volume
24 and high risk services and the care of acute and
25 chronic conditions;

1 “(E) evaluate the continuity and coordina-
2 tion of care that enrollees receive;

3 “(F) have mechanisms to detect both un-
4 derutilization and overutilization of services;

5 “(G) after identifying areas for improve-
6 ment, establish or alter practice parameters;

7 “(H) take action to improve quality and
8 assesses the effectiveness of such action
9 through systematic followup;

10 “(I) make available information on quality
11 and outcomes measures to facilitate beneficiary
12 comparison and choice of health coverage op-
13 tions (in such form and on such quality and
14 outcomes measures as the Secretary determines
15 to be appropriate);

16 “(J) be evaluated on an ongoing basis as
17 to its effectiveness;

18 “(K) include measures of consumer satis-
19 faction; and

20 “(L) provide the Secretary with such ac-
21 cess to information collected as may be appro-
22 priate to monitor and ensure the quality of care
23 provided under this part.

24 “(3) EXTERNAL REVIEW.—Each Medicare
25 Choice organization shall, for each Medicare Choice

1 plan it operates, have an agreement with an inde-
2 pendent quality review and improvement organiza-
3 tion approved by the Secretary to perform functions
4 of the type described in sections 1154(a)(4)(B) and
5 1154(a)(14) with respect to services furnished by
6 Medicare Choice plans for which payment is made
7 under this title.

8 “(4) EXCEPTION FOR MEDICARE CHOICE UNRE-
9 STRICTED FEE-FOR-SERVICE PLANS.—Paragraphs
10 (1) through (3) of this subsection and subsection
11 (h)(2) (relating to maintaining medical records)
12 shall not apply in the case of a Medicare Choice or-
13 ganization in relation to a Medicare Choice unre-
14 stricted fee-for-service plan.

15 “(5) TREATMENT OF ACCREDITATION.—The
16 Secretary shall provide that a Medicare Choice orga-
17 nization is deemed to meet requirements of para-
18 graphs (1) and (2) of this subsection and subsection
19 (h) (relating to confidentiality and accuracy of en-
20 rollee records) if the organization is accredited (and
21 periodically reaccredited) by a private organization
22 under a process that the Secretary has determined
23 assures that the organization, as a condition of ac-
24 creditation, applies and enforces standards with re-
25 spect to the requirements involved that are no less

1 stringent than the standards established under sec-
2 tion 1856 to carry out the respective requirements.

3 “(f) COVERAGE DETERMINATIONS.—

4 “(1) DECISIONS ON NONEMERGENCY CARE.—A
5 Medicare Choice organization shall make determina-
6 tions regarding authorization requests for non-
7 emergency care on a timely basis, depending on the
8 urgency of the situation.

9 “(2) RECONSIDERATIONS.—

10 “(A) IN GENERAL.—Subject to subsection
11 (g)(4), a reconsideration of a determination of
12 an organization denying coverage shall be made
13 within 30 days of the date of receipt of medical
14 information, but not later than 60 days after
15 the date of the determination.

16 “(B) PHYSICIAN DECISION ON CERTAIN
17 RECONSIDERATIONS.—A reconsideration relat-
18 ing to a determination to deny coverage based
19 on a lack of medical necessity shall be made
20 only by a physician other than a physician in-
21 volved in the initial determination.

22 “(g) GRIEVANCES AND APPEALS.—

23 “(1) GRIEVANCE MECHANISM.—Each Medicare
24 Choice organization must provide meaningful proce-
25 dures for hearing and resolving grievances between

1 the organization (including any entity or individual
2 through which the organization provides health care
3 services) and enrollees with Medicare Choice plans of
4 the organization under this part.

5 “(2) APPEALS.—An enrollee with a Medicare
6 Choice plan of a Medicare Choice organization under
7 this part who is dissatisfied by reason of the enroll-
8 ee’s failure to receive any health service to which the
9 enrollee believes the enrollee is entitled and at no
10 greater charge than the enrollee believes the enrollee
11 is required to pay is entitled, if the amount in con-
12 troversy is \$100 or more, to a hearing before the
13 Secretary to the same extent as is provided in sec-
14 tion 205(b), and in any such hearing the Secretary
15 shall make the organization a party. If the amount
16 in controversy is \$1,000 or more, the individual or
17 organization shall, upon notifying the other party, be
18 entitled to judicial review of the Secretary’s final de-
19 cision as provided in section 205(g), and both the in-
20 dividual and the organization shall be entitled to be
21 parties to that judicial review. In applying sub-
22 sections (b) and (g) of section 205 as provided in
23 this paragraph, and in applying section 205(l) there-
24 to, any reference therein to the Commissioner of So-
25 cial Security or the Social Security Administration

1 shall be considered a reference to the Secretary or
2 the Department of Health and Human Services, re-
3 spectively.

4 “(3) INDEPENDENT REVIEW OF CERTAIN COV-
5 ERAGE DENIALS.—The Secretary shall contract with
6 an independent, outside entity to review and resolve
7 reconsiderations that affirm denial of coverage.

8 “(4) EXPEDITED DETERMINATIONS AND RE-
9 CONSIDERATIONS.—

10 “(A) RECEIPT OF REQUESTS.—An enrollee
11 in a Medicare Choice plan may request, either
12 in writing or orally, an expedited determination
13 or reconsideration by the Medicare Choice orga-
14 nization regarding a matter described in para-
15 graph (2). The organization shall also permit
16 the acceptance of such requests by physicians.

17 “(B) ORGANIZATION PROCEDURES.—

18 “(i) IN GENERAL.—The Medicare
19 Choice organization shall maintain proce-
20 dures for expediting organization deter-
21 minations and reconsiderations when, upon
22 request of an enrollee, the organization de-
23 termines that the application of normal
24 time frames for making a determination
25 (or a reconsideration involving a deter-

1 mination) could seriously jeopardize the
2 life or health of the enrollee or the enroll-
3 ee’s ability to regain maximum function.

4 “(ii) **TIMELY RESPONSE.**—In an ur-
5 gent case described in clause (i), the orga-
6 nization shall notify the enrollee (and the
7 physician involved, as appropriate) of the
8 determination (or determination on the re-
9 consideration) as expeditiously as the en-
10 rollee’s health condition requires, but not
11 later than 72 hours (or 24 hours in the
12 case of a reconsideration) of the time of re-
13 ceipt of the request for the determination
14 or reconsideration (or receipt of the infor-
15 mation necessary to make the determina-
16 tion or reconsideration), or such longer pe-
17 riod as the Secretary may permit in speci-
18 fied cases.

19 “(h) **CONFIDENTIALITY AND ACCURACY OF EN-**
20 **ROLLEE RECORDS.**—Each Medicare Choice organization
21 shall establish procedures—

22 “(1) to safeguard the privacy of individually
23 identifiable enrollee information,

1 “(2) to maintain accurate and timely medical
2 records and other health information for enrollees,
3 and

4 “(3) to assure timely access of enrollees to their
5 medical information.

6 “(i) INFORMATION ON ADVANCE DIRECTIVES.—Each
7 Medicare Choice organization shall meet the requirement
8 of section 1866(f) (relating to maintaining written policies
9 and procedures respecting advance directives).

10 “(j) RULES REGARDING PHYSICIAN PARTICIPA-
11 TION.—

12 “(1) PROCEDURES.—Each Medicare Choice or-
13 ganization shall establish reasonable procedures re-
14 lating to the participation (under an agreement be-
15 tween a physician and the organization) of physi-
16 cians under Medicare Choice plans offered by the or-
17 ganization under this part. Such procedures shall in-
18 clude—

19 “(A) providing notice of the rules regard-
20 ing participation,

21 “(B) providing written notice of participa-
22 tion decisions that are adverse to physicians,
23 and

24 “(C) providing a process within the organi-
25 zation for appealing such adverse decisions, in-

1 including the presentation of information and
2 views of the physician regarding such decision.

3 “(2) CONSULTATION IN MEDICAL POLICIES.—A
4 Medicare Choice organization shall consult with phy-
5 sicians who have entered into participation agree-
6 ments with the organization regarding the organiza-
7 tion’s medical policy, quality, and medical manage-
8 ment procedures.

9 “(3) LIMITATIONS ON PHYSICIAN INCENTIVE
10 PLANS.—

11 “(A) IN GENERAL.—No Medicare Choice
12 organization may operate any physician incen-
13 tive plan (as defined in subparagraph (B)) un-
14 less the following requirements are met:

15 “(i) No specific payment is made di-
16 rectly or indirectly under the plan to a
17 physician or physician group as an induce-
18 ment to reduce or limit medically necessary
19 services provided with respect to a specific
20 individual enrolled with the organization.

21 “(ii) If the plan places a physician or
22 physician group at substantial financial
23 risk (as determined by the Secretary) for
24 services not provided by the physician or
25 physician group, the organization—

1 “(I) provides stop-loss protection
2 for the physician or group that is ade-
3 quate and appropriate, based on
4 standards developed by the Secretary
5 that take into account the number of
6 physicians placed at such substantial
7 financial risk in the group or under
8 the plan and the number of individ-
9 uals enrolled with the organization
10 who receive services from the physi-
11 cian or group, and

12 “(II) conducts periodic surveys of
13 both individuals enrolled and individ-
14 uals previously enrolled with the orga-
15 nization to determine the degree of
16 access of such individuals to services
17 provided by the organization and sat-
18 isfaction with the quality of such serv-
19 ices.

20 “(iii) The organization provides the
21 Secretary with descriptive information re-
22 garding the plan, sufficient to permit the
23 Secretary to determine whether the plan is
24 in compliance with the requirements of this
25 subparagraph.

1 “(B) PHYSICIAN INCENTIVE PLAN DE-
 2 FINED.—In this paragraph, the term ‘physician
 3 incentive plan’ means any compensation ar-
 4 rangement between a Medicare Choice organiza-
 5 tion and a physician or physician group that
 6 may directly or indirectly have the effect of re-
 7 ducing or limiting services provided with respect
 8 to individuals enrolled with the organization
 9 under this part.

10 “(4) LIMITATION ON PROVIDER INDEMNIFICA-
 11 TION.—A Medicare Choice organization may not
 12 provide (directly or indirectly) for a provider (or
 13 group of providers) to indemnify the organization
 14 against any liability resulting from a civil action
 15 brought for any damage caused to an enrollee with
 16 a Medicare Choice plan of the organization under
 17 this part by the organization’s denial of medically
 18 necessary care.

19 “PAYMENTS TO MEDICARE CHOICE ORGANIZATIONS

20 “SEC. 1853. (a) PAYMENTS TO ORGANIZATIONS.—

21 “(1) MONTHLY PAYMENTS.—

22 “(A) IN GENERAL.—Under a contract
 23 under section 1857 and subject to subsections
 24 (e) and (f), the Secretary shall make monthly
 25 payments under this section in advance to each
 26 Medicare Choice organization, with respect to

1 coverage of an individual under this part in a
2 Medicare Choice payment area for a month, in
3 an amount equal to $\frac{1}{12}$ of the annual Medicare
4 Choice capitation rate (as calculated under sub-
5 section (c)) with respect to that individual for
6 that area, adjusted for such risk factors as age,
7 disability status, gender, institutional status,
8 and such other factors as the Secretary deter-
9 mines to be appropriate, so as to ensure actuarial
10 equivalence. The Secretary may add to, mod-
11 ify, or substitute for such factors, if such
12 changes will improve the determination of actu-
13 arial equivalence.

14 “(B) SPECIAL RULE FOR END-STAGE
15 RENAL DISEASE.—The Secretary shall establish
16 separate rates of payment to a Medicare Choice
17 organization with respect to classes of individ-
18 uals determined to have end-stage renal disease
19 and enrolled in a Medicare Choice plan of the
20 organization. Such rates of payment shall be
21 actuarially equivalent to rates paid to other en-
22 rollees in the Medicare Choice payment area (or
23 such other area as specified by the Secretary).
24 In accordance with regulations, the Secretary
25 shall provide for the application of the seventh

1 sentence of section 1881(b)(7) to payments
2 under this section covering the provision of
3 renal dialysis treatment in the same manner as
4 such sentence applies to composite rate pay-
5 ments described in such sentence.

6 “(2) ADJUSTMENT TO REFLECT NUMBER OF
7 ENROLLEES.—

8 “(A) IN GENERAL.—The amount of pay-
9 ment under this subsection may be retroactively
10 adjusted to take into account any difference be-
11 tween the actual number of individuals enrolled
12 with an organization under this part and the
13 number of such individuals estimated to be so
14 enrolled in determining the amount of the ad-
15 vance payment.

16 “(B) SPECIAL RULE FOR CERTAIN EN-
17 ROLLEES.—

18 “(i) IN GENERAL.—Subject to clause
19 (ii), the Secretary may make retroactive
20 adjustments under subparagraph (A) to
21 take into account individuals enrolled dur-
22 ing the period beginning on the date on
23 which the individual enrolls with a Medi-
24 care Choice organization under a plan op-
25 erated, sponsored, or contributed to by the

1 individual's employer or former employer
2 (or the employer or former employer of the
3 individual's spouse) and ending on the date
4 on which the individual is enrolled in the
5 organization under this part, except that
6 for purposes of making such retroactive
7 adjustments under this subparagraph, such
8 period may not exceed 90 days.

9 “(ii) EXCEPTION.—No adjustment
10 may be made under clause (i) with respect
11 to any individual who does not certify that
12 the organization provided the individual
13 with the disclosure statement described in
14 section 1852(e) at the time the individual
15 enrolled with the organization.

16 “(3) ESTABLISHMENT OF RISK ADJUSTMENT
17 FACTORS.—

18 “(A) IN GENERAL.—The Secretary shall
19 develop and implement a method of risk adjust-
20 ment of payment rates under this section that
21 accounts for variations in per capita costs based
22 on health status. Such method shall not be im-
23 plemented before the Secretary receives an eval-
24 uation by an outside, independent actuary of
25 the actuarial soundness of such method.

1 “(B) DATA COLLECTION.—In order to
2 carry out this paragraph, the Secretary shall re-
3 quire Medicare Choice organizations (and eligi-
4 ble organizations with risk-sharing contracts
5 under section 1876) to submit, for periods be-
6 ginning on or after January 1, 1998, data re-
7 garding inpatient hospital services and other
8 services and other information the Secretary
9 deems necessary.

10 “(4) INTERIM RISK ADJUSTMENT.—

11 “(A) IN GENERAL.—In the case of an ap-
12 plicable enrollee in a Medicare Choice plan, the
13 payment to the Medicare Choice organization
14 under this section shall be reduced by an
15 amount equal to the applicable percentage of
16 the amount of such payment (determined with-
17 out regard to this paragraph).

18 “(B) APPLICABLE ENROLLEE.—For pur-
19 poses of this paragraph—

20 “(i) IN GENERAL.—The term ‘applica-
21 ble enrollee’ means, with respect to any
22 month, a medicare eligible individual
23 who—

24 “(I) is enrolled in a Medicare
25 Choice plan, and

1 “(II) has not been enrolled in
2 Medicare Choice plans and plans oper-
3 ated by eligible organizations with
4 risk-sharing contracts under section
5 1876 for an aggregate number of
6 months greater than 60 (including the
7 month for which the determination is
8 being made).

9 “(ii) EXCEPTION FOR BENEFICIARIES
10 MAINTAINING ENROLLMENT IN CERTAIN
11 PLANS.—The term ‘applicable enrollee’
12 shall not include any individual enrolled in
13 a Medicare Choice plan offered by a Medi-
14 care Choice organization if such individual
15 was enrolled in a health plan (other than
16 a Medicare Choice plan) offered by such
17 organization at the time of the individual’s
18 initial election period under section
19 1851(e)(1) and has been continuously en-
20 rolled in such Medicare Choice plan (or an-
21 other Medicare Choice plan offered by such
22 organization) since such election period.

23 “(C) APPLICABLE PERCENTAGE.—For
24 purposes of this paragraph, the applicable per-

1 centage shall be determined in accordance with
 2 the following table:

“Months enrolled in HMOs:	Applicable percentage:
1–12	5
13–24	4
25–36	3
37–48	2
49–60	1.

3 “(D) EXCEPTION FOR NEW PLANS.—This
 4 paragraph shall not apply to applicable enroll-
 5 ees in a Medicare Choice plan for any month
 6 if—

7 “(i) such month occurs during the
 8 first 12 months during which the plan en-
 9 rolls Medicare Choice eligible individuals in
 10 the Medicare Choice payment area, and

11 “(ii) the annual Medicare Choice capi-
 12 tation rate for such area for the calendar
 13 year preceding the calendar year in which
 14 such 12-month period begins is less than
 15 the annual national Medicare Choice capi-
 16 tation rate (as determined under sub-
 17 section (c)(4)) for such preceding calendar
 18 year.

19 In the case of 1998, clause (ii) shall be applied
 20 by using the adjusted average per capita cost
 21 under section 1876 for 1997 rather than such
 22 capitation rate.

1 “(E) TERMINATION.—This paragraph
2 shall not apply to any month beginning on or
3 after the first day of the first month to which
4 the method for risk adjustment described in
5 paragraph (3) applies.

6 “(b) ANNUAL ANNOUNCEMENT OF PAYMENT
7 RATES.—

8 “(1) ANNUAL ANNOUNCEMENT.—The Secretary
9 shall annually determine, and shall announce (in a
10 manner intended to provide notice to interested par-
11 ties) not later than August 1 before the calendar
12 year concerned—

13 “(A) the annual Medicare Choice capita-
14 tion rate for each Medicare Choice payment
15 area for the year, and

16 “(B) the risk and other factors to be used
17 in adjusting such rates under subsection
18 (a)(1)(A) for payments for months in that year.

19 “(2) ADVANCE NOTICE OF METHODOLOGICAL
20 CHANGES.—At least 45 days before making the an-
21 nouncement under paragraph (1) for a year, the
22 Secretary shall provide for notice to Medicare Choice
23 organizations of proposed changes to be made in the
24 methodology from the methodology and assumptions
25 used in the previous announcement and shall provide

1 such organizations an opportunity to comment on
2 such proposed changes.

3 “(3) EXPLANATION OF ASSUMPTIONS.—In each
4 announcement made under paragraph (1), the Sec-
5 retary shall include an explanation of the assump-
6 tions and changes in methodology used in the an-
7 nouncement in sufficient detail so that Medicare
8 Choice organizations can compute monthly adjusted
9 Medicare Choice capitation rates for individuals in
10 each Medicare Choice payment area which is in
11 whole or in part within the service area of such an
12 organization.

13 “(c) CALCULATION OF ANNUAL MEDICARE CHOICE
14 CAPITATION RATES.—

15 “(1) IN GENERAL.—For purposes of this part,
16 each annual Medicare Choice capitation rate, for a
17 Medicare Choice payment area for a contract year
18 consisting of a calendar year, is equal to the largest
19 of the amounts specified in the following subpara-
20 graph (A), (B), or (C):

21 “(A) BLENDED CAPITATION RATE.—The
22 sum of—

23 “(i) the area-specific percentage for
24 the year (as specified under paragraph (2)
25 for the year) of the annual area-specific

1 Medicare Choice capitation rate for the
2 year for the Medicare Choice payment
3 area, as determined under paragraph (3),
4 and

5 “(ii) the national percentage (as speci-
6 fied under paragraph (2) for the year) of
7 the annual national Medicare Choice capi-
8 tation rate for the year, as determined
9 under paragraph (4),

10 multiplied by the payment adjustment factors
11 described in subparagraphs (A) and (B) of
12 paragraph (5).

13 “(B) MINIMUM AMOUNT.—Subject to para-
14 graph (8)—

15 “(i) For 1998, \$4,200 (but not to ex-
16 ceed, in the case of an area outside the 50
17 States and the District of Columbia, 150
18 percent of the annual per capita rate of
19 payment for 1997 determined under sec-
20 tion 1876(a)(1)(C) for the area).

21 “(ii) For each subsequent year, 101
22 percent of the amount in effect under this
23 subparagraph for the previous year.

24 “(C) MINIMUM PERCENTAGE INCREASE.—
25 Subject to paragraph (8)—

1 “(i) For 1998, 101 percent of the an-
2 nual per capita rate of payment for 1997
3 determined under section 1876(a)(1)(C)
4 for the Medicare Choice payment area.

5 “(ii) For each subsequent year, 101
6 percent of the annual Medicare Choice
7 capitation rate under this paragraph for
8 the area for the previous year.

9 “(2) AREA-SPECIFIC AND NATIONAL PERCENT-
10 AGES.—For purposes of paragraph (1)(A)—

11 “(A) for 1998, the ‘area-specific percent-
12 age’ is 90 percent and the ‘national percentage’
13 is 10 percent,

14 “(B) for 1999, the ‘area-specific percent-
15 age’ is 80 percent and the ‘national percentage’
16 is 20 percent,

17 “(C) for 2000, the ‘area-specific percent-
18 age’ is 70 percent and the ‘national percentage’
19 is 30 percent,

20 “(D) for 2001, the ‘area-specific percent-
21 age’ is 60 percent and the ‘national percentage’
22 is 40 percent, and

23 “(E) for a year after 2001, the ‘area-spe-
24 cific percentage’ is 50 percent and the ‘national
25 percentage’ is 50 percent.

1 “(3) ANNUAL AREA-SPECIFIC MEDICARE
2 CHOICE CAPITATION RATE.—

3 “(A) IN GENERAL.—For purposes of para-
4 graph (1)(A), the annual area-specific Medicare
5 Choice capitation rate for a Medicare Choice
6 payment area—

7 “(i) for 1998 is the modified annual
8 per capita rate of payment for 1997 deter-
9 mined under section 1876(a)(1)(C) for the
10 area, increased by the national average per
11 capita growth percentage for 1998 (as de-
12 fined in paragraph (6)); or

13 “(ii) for a subsequent year is the an-
14 nual area-specific Medicare Choice capita-
15 tion rate for the previous year determined
16 under this paragraph for the area, in-
17 creased by the national average per capita
18 growth percentage for such subsequent
19 year.

20 “(B) MODIFIED ANNUAL PER CAPITA RATE
21 OF PAYMENT.—For purposes of subparagraph
22 (A), the modified annual per capita rate of pay-
23 ment for a Medicare Choice payment area for
24 1997 shall be equal to the annual per capita
25 rate of payment for such area for such year

1 which would have been determined under sec-
2 tion 1876(a)(1)(C) if 25 percent of any pay-
3 ments attributable to sections 1886(d)(5)(B),
4 1886(h), and 1886(d)(5)(F) (relating to IME,
5 GME, and DSH payments) were not taken into
6 account.

7 “(C) SPECIAL RULES FOR 1999, 2000, AND
8 2001.—In applying subparagraph (A)(ii) for
9 1999, 2000, and 2001, the annual area-specific
10 Medicare Choice capitation rate for the preced-
11 ing calendar year shall be the amount which
12 would have been determined if subparagraph
13 (B) had been applied by substituting the follow-
14 ing percentages for ‘25 percent’:

15 “(i) In 1999, 50 percent.

16 “(ii) In 2000, 75 percent.

17 “(iii) In 2001, 100 percent.

18 “(4) ANNUAL NATIONAL MEDICARE CHOICE
19 CAPITATION RATE.—For purposes of paragraph
20 (1)(A), the annual national Medicare Choice capita-
21 tion rate for a Medicare Choice payment area for a
22 year is equal to—

23 “(A) the sum (for all Medicare Choice pay-
24 ment areas) of the product of—

1 “(i) the annual area-specific Medicare
2 Choice capitation rate for that year for the
3 area under paragraph (3), and

4 “(ii) the average number of medicare
5 beneficiaries residing in that area in the
6 year; divided by

7 “(B) the sum of the amounts described in
8 subparagraph (A)(ii) for all Medicare Choice
9 payment areas for that year.

10 “(5) PAYMENT ADJUSTMENT BUDGET NEU-
11 TRALITY FACTORS.—For purposes of paragraph
12 (1)(A)—

13 “(A) BLENDED RATE PAYMENT ADJUST-
14 MENT FACTOR.—For each year, the Secretary
15 shall compute a blended rate payment adjust-
16 ment factor such that, not taking into account
17 subparagraphs (B) and (C) of paragraph (1)
18 and the application of the payment adjustment
19 factor described in subparagraph (B) but tak-
20 ing into account paragraph (7), the aggregate
21 of the payments that would be made under this
22 part is equal to the aggregate payments that
23 would have been made under this part (not tak-
24 ing into account such subparagraphs and such
25 other adjustment factor) if the area-specific

1 percentage under paragraph (1) for the year
2 had been 100 percent and the national percent-
3 age had been 0 percent.

4 “(B) FLOOR-AND-MINIMUM-UPDATE PAY-
5 MENT ADJUSTMENT FACTOR.—For each year,
6 the Secretary shall compute a floor-and-mini-
7 mum-update payment adjustment factor so
8 that, taking into account the application of the
9 blended rate payment adjustment factor under
10 subparagraph (A) and subparagraphs (B) and
11 (C) of paragraph (1) and the application of the
12 adjustment factor under this subparagraph, the
13 aggregate of the payments under this part shall
14 not exceed the aggregate payments that would
15 have been made under this part if subpara-
16 graphs (B) and (C) of paragraph (1) did not
17 apply and if the floor-and-minimum-update pay-
18 ment adjustment factor under this subpara-
19 graph was 1.

20 “(6) NATIONAL AVERAGE PER CAPITA GROWTH
21 PERCENTAGE DEFINED.—In this part, the ‘national
22 average per capita growth percentage’ for any year
23 (beginning with 1998) is equal to the sum of—

24 “(A) the percentage increase in the gross
25 domestic product per capita for the 12-month

1 period ending on June 30 of the preceding year,
2 plus

3 “(B) 0.5 percentage points.

4 “(7) TREATMENT OF AREAS WITH HIGHLY
5 VARIABLE PAYMENT RATES.—In the case of a Medi-
6 care Choice payment area for which the annual per
7 capita rate of payment determined under section
8 1876(a)(1)(C) for 1997 varies by more than 20 per-
9 cent from such rate for 1996, for purposes of this
10 subsection the Secretary may substitute for such
11 rate for 1997 a rate that is more representative of
12 the costs of the enrollees in the area.

13 “(8) ADJUSTMENTS TO MINIMUM AMOUNTS
14 AND MINIMUM PERCENTAGE INCREASES.—

15 “(A) IN GENERAL.—After computing all
16 amounts under this subsection (without regard
17 to this paragraph) for any year, the Secretary
18 shall—

19 “(i) redetermine the amount under
20 paragraph (1)(C) for such year by sub-
21 stituting ‘100 percent’ for ‘101 percent’
22 each place it appears, and

23 “(ii) subject to subparagraph (B), in-
24 crease the amount determined under para-
25 graph (1)(B) for such year to the amount

1 equal to 85 percent of the annual national
2 Medicare Choice capitation rate.

3 “(B) LIMITATION ON INCREASE IN MINI-
4 MUM AMOUNT.—The Secretary shall not under
5 subparagraph (A)(ii) increase the minimum
6 amount under paragraph (1)(B) to an amount
7 that is greater than the amount the Secretary
8 estimates will result in increased payments
9 under such paragraph equal to the decrease in
10 payments by reason of the redetermination
11 under subparagraph (A)(i).

12 “(9) STUDY OF LOCAL PRICE INDICATORS.—
13 The Secretary and the Medicare Payment Advisory
14 Commission shall each conduct a study with respect
15 to appropriate measures for adjusting the annual
16 Medicare Choice capitation rates determined under
17 this section to reflect local price indicators, including
18 the medicare hospital wage index and the case-mix
19 of a geographic region. The Secretary and the Advi-
20 sory Commission shall report the results of such
21 study to the appropriate committees of Congress, in-
22 cluding recommendations (if any) for legislation.

23 “(d) MEDICARE CHOICE PAYMENT AREA DE-
24 FINED.—

1 “(1) IN GENERAL.—In this part, except as pro-
2 vided in paragraph (3), the term ‘Medicare Choice
3 payment area’ means a county, or equivalent area
4 specified by the Secretary.

5 “(2) RULE FOR ESRD BENEFICIARIES.—In the
6 case of individuals who are determined to have end
7 stage renal disease, the Medicare Choice payment
8 area shall be a State or such other payment area as
9 the Secretary specifies.

10 “(3) GEOGRAPHIC ADJUSTMENT.—

11 “(A) IN GENERAL.—Upon written request
12 of the chief executive officer of a State for a
13 contract year (beginning after 1998) made at
14 least 7 months before the beginning of the year,
15 the Secretary shall make a geographic adjust-
16 ment to a Medicare Choice payment area in the
17 State otherwise determined under paragraph
18 (1)—

19 “(i) to a single statewide Medicare
20 Choice payment area,

21 “(ii) to the metropolitan based system
22 described in subparagraph (C), or

23 “(iii) to consolidating into a single
24 Medicare Choice payment area noncontig-

1 uous counties (or equivalent areas de-
2 scribed in paragraph (1)) within a State.

3 Such adjustment shall be effective for payments
4 for months beginning with January of the year
5 following the year in which the request is re-
6 ceived.

7 “(B) BUDGET NEUTRALITY ADJUST-
8 MENT.—In the case of a State requesting an
9 adjustment under this paragraph, the Secretary
10 shall adjust the payment rates otherwise estab-
11 lished under this section for Medicare Choice
12 payment areas in the State in a manner so that
13 the aggregate of the payments under this sec-
14 tion in the State shall not exceed the aggregate
15 payments that would have been made under
16 this section for Medicare Choice payment areas
17 in the State in the absence of the adjustment
18 under this paragraph.

19 “(C) METROPOLITAN BASED SYSTEM.—
20 The metropolitan based system described in this
21 subparagraph is one in which—

22 “(i) all the portions of each metropoli-
23 tan statistical area in the State or in the
24 case of a consolidated metropolitan statis-
25 tical area, all of the portions of each pri-

1 primary metropolitan statistical area within
2 the consolidated area within the State, are
3 treated as a single Medicare Choice pay-
4 ment area, and

5 “(ii) all areas in the State that do not
6 fall within a metropolitan statistical area
7 are treated as a single Medicare Choice
8 payment area.

9 “(D) AREAS.—In subparagraph (C), the
10 terms ‘metropolitan statistical area’, ‘consoli-
11 dated metropolitan statistical area’, and ‘pri-
12 mary metropolitan statistical area’ mean any
13 area designated as such by the Secretary of
14 Commerce.

15 “(e) SPECIAL RULES FOR INDIVIDUALS ELECTING
16 MSA PLANS.—

17 “(1) IN GENERAL.—If the amount of the
18 monthly premium for an MSA plan for a Medicare
19 Choice payment area for a year is less than $\frac{1}{12}$ of
20 the annual Medicare Choice capitation rate applied
21 under this section for the area and year involved, the
22 Secretary shall deposit an amount equal to 100 per-
23 cent of such difference in a Medicare Choice MSA
24 established (and, if applicable, designated) by the in-
25 dividual under paragraph (2).

1 “(2) ESTABLISHMENT AND DESIGNATION OF
2 MEDICARE CHOICE MEDICAL SAVINGS ACCOUNT AS
3 REQUIREMENT FOR PAYMENT OF CONTRIBUTION.—

4 In the case of an individual who has elected coverage
5 under an MSA plan, no payment shall be made
6 under paragraph (1) on behalf of an individual for
7 a month unless the individual—

8 “(A) has established before the beginning
9 of the month (or by such other deadline as the
10 Secretary may specify) a Medicare Choice MSA
11 (as defined in section 138(b)(2) of the Internal
12 Revenue Code of 1986), and

13 “(B) if the individual has established more
14 than one such Medicare Choice MSA, has des-
15 ignated one of such accounts as the individual’s
16 Medicare Choice MSA for purposes of this part.

17 Under rules under this section, such an individual
18 may change the designation of such account under
19 subparagraph (B) for purposes of this part.

20 “(3) LUMP-SUM DEPOSIT OF MEDICAL SAVINGS
21 ACCOUNT CONTRIBUTION.—In the case of an indi-
22 vidual electing an MSA plan effective beginning with
23 a month in a year, the amount of the contribution
24 to the Medicare Choice MSA on behalf of the indi-
25 vidual for that month and all successive months in

1 the year shall be deposited during that first month.
2 In the case of a termination of such an election as
3 of a month before the end of a year, the Secretary
4 shall provide for a procedure for the recovery of de-
5 posits attributable to the remaining months in the
6 year.

7 “(4) SPECIAL RULE FOR APPLICABLE EN-
8 ROLLEE.—In the case of an enrollee in a MSA plan
9 for any month who is an applicable enrollee for such
10 month under section 1853(a)(4)(B), the amount of
11 the deposit under paragraph (1) for such month
12 shall be reduced by the applicable percentage (as de-
13 fined in section 1853(a)(4)(C)) of the amount of
14 such deposit (determined without regard to this
15 paragraph).

16 “(f) PAYMENTS FROM TRUST FUND.—The payment
17 to a Medicare Choice organization under this section for
18 individuals enrolled under this part with the organization
19 and payments to a Medicare Choice MSA under subsection
20 (e)(1)(B) shall be made from the Federal Hospital Insur-
21 ance Trust Fund and the Federal Supplementary Medical
22 Insurance Trust Fund in such proportion as the Secretary
23 determines reflects the relative weight that benefits under
24 part A and under part B represents of the actuarial value
25 of the total benefits under this title. Monthly payments

1 otherwise payable under this section for October 2001
2 shall be paid on the last business day of September 2001.
3 Monthly payments otherwise payable under this section
4 for October 2006 shall be paid on the first business day
5 of October 2006.

6 “(g) SPECIAL RULE FOR CERTAIN INPATIENT HOS-
7 PITAL STAYS.—In the case of an individual who is receiv-
8 ing inpatient hospital services from a subsection (d) hos-
9 pital (as defined in section 1886(d)(1)(B)) as of the effec-
10 tive date of the individual’s—

11 “(1) election under this part of a Medicare
12 Choice plan offered by a Medicare Choice organiza-
13 tion—

14 “(A) payment for such services until the
15 date of the individual’s discharge shall be made
16 under this title through the Medicare Choice
17 plan or the traditional medicare fee-for-service
18 program option described in section
19 1851(a)(1)(A) (as the case may be) elected be-
20 fore the election with such organization,

21 “(B) the elected organization shall not be
22 financially responsible for payment for such
23 services until the date after the date of the indi-
24 vidual’s discharge, and

1 “(C) the organization shall nonetheless be
2 paid the full amount otherwise payable to the
3 organization under this part; or

4 “(2) termination of election with respect to a
5 Medicare Choice organization under this part—

6 “(A) the organization shall be financially
7 responsible for payment for such services after
8 such date and until the date of the individual’s
9 discharge,

10 “(B) payment for such services during the
11 stay shall not be made under section 1886(d) or
12 by any succeeding Medicare Choice organiza-
13 tion, and

14 “(C) the terminated organization shall not
15 receive any payment with respect to the individ-
16 ual under this part during the period the indi-
17 vidual is not enrolled.

18 “PREMIUMS

19 “SEC. 1854. (a) SUBMISSION AND CHARGING OF
20 PREMIUMS.—

21 “(1) IN GENERAL.—Subject to paragraph (3),
22 each Medicare Choice organization shall file with the
23 Secretary each year, in a form and manner and at
24 a time specified by the Secretary—

25 “(A) the amount of the monthly premium
26 for coverage for services under section 1852(a)

1 under each Medicare Choice plan it offers under
2 this part in each Medicare Choice payment area
3 (as defined in section 1853(d)) in which the
4 plan is being offered; and

5 “(B) the enrollment capacity in relation to
6 the plan in each such area.

7 “(2) TERMINOLOGY.—In this part—

8 “(A) the term ‘monthly premium’ means,
9 with respect to a Medicare Choice plan offered
10 by a Medicare Choice organization, the monthly
11 premium filed under paragraph (1), not taking
12 into account the amount of any payment made
13 toward the premium under section 1853; and

14 “(B) the term ‘net monthly premium’
15 means, with respect to such a plan and an indi-
16 vidual enrolled with the plan, the premium (as
17 defined in subparagraph (A)) for the plan re-
18 duced by the amount of payment made toward
19 such premium under section 1853.

20 “(b) MONTHLY PREMIUM CHARGED.—The monthly
21 amount of the premium charged by a Medicare Choice or-
22 ganization for a Medicare Choice plan offered in a Medi-
23 care Choice payment area to an individual under this part
24 shall be equal to the net monthly premium plus any

1 monthly premium charged in accordance with subsection
2 (e)(2) for supplemental benefits.

3 “(c) UNIFORM PREMIUM.—The monthly premium
4 and monthly amount charged under subsection (b) of a
5 Medicare Choice organization under this part may not
6 vary among individuals who reside in the same Medicare
7 Choice payment area.

8 “(d) TERMS AND CONDITIONS OF IMPOSING PRE-
9 MIUMS.—Each Medicare Choice organization shall permit
10 the payment of net monthly premiums on a monthly basis
11 and may terminate election of individuals for a Medicare
12 Choice plan for failure to make premium payments only
13 in accordance with section 1851(g)(3)(B)(i). A Medicare
14 Choice organization is not authorized to provide for cash
15 or other monetary rebates as an inducement for enroll-
16 ment or otherwise.

17 “(e) LIMITATION ON ENROLLEE COST-SHARING.—

18 “(1) FOR BASIC AND ADDITIONAL BENEFITS.—
19 Except as provided in paragraph (2), in no event
20 may—

21 “(A) the net monthly premium (multiplied
22 by 12) and the actuarial value of the
23 deductibles, coinsurance, and copayments appli-
24 cable on average to individuals enrolled under
25 this part with a Medicare Choice plan of an or-

1 organization with respect to required benefits de-
2 scribed in section 1852(a)(1) and additional
3 benefits (if any) required under subsection
4 (f)(1) for a year, exceed

5 “(B) the actuarial value of the deductibles,
6 coinsurance, and copayments that would be ap-
7 plicable on average to individuals entitled to
8 benefits under part A and enrolled under part
9 B if they were not members of a Medicare
10 Choice organization for the year.

11 “(2) FOR SUPPLEMENTAL BENEFITS.—If the
12 Medicare Choice organization provides to its mem-
13 bers enrolled under this part supplemental benefits
14 described in section 1852(a)(3), the sum of the
15 monthly premium rate (multiplied by 12) charged
16 for such supplemental benefits and the actuarial
17 value of its deductibles, coinsurance, and copay-
18 ments charged with respect to such benefits may not
19 exceed the adjusted community rate for such bene-
20 fits (as defined in subsection (f)(4)).

21 “(3) EXCEPTION FOR MSA PLANS AND UNRE-
22 STRICTED FEE-FOR-SERVICE PLANS.—Paragraphs
23 (1) and (2) do not apply to an MSA plan or an un-
24 restricted fee-for-service plan.

1 “(4) DETERMINATION ON OTHER BASIS.—If the
2 Secretary determines that adequate data are not
3 available to determine the actuarial value under
4 paragraph (1)(A) or (2), the Secretary may deter-
5 mine such amount with respect to all individuals in
6 the Medicare Choice payment area, the State, or in
7 the United States, eligible to enroll in the Medicare
8 Choice plan involved under this part or on the basis
9 of other appropriate data.

10 “(f) REQUIREMENT FOR ADDITIONAL BENEFITS.—

11 “(1) REQUIREMENT.—

12 “(A) IN GENERAL.—Each Medicare Choice
13 organization (in relation to a Medicare Choice
14 plan it offers) shall provide that if there is an
15 excess amount (as defined in subparagraph (B))
16 for the plan for a contract year, subject to the
17 succeeding provisions of this subsection, the or-
18 ganization shall provide to individuals such ad-
19 ditional benefits (as the organization may speci-
20 fy) in a value which is at least equal to the ad-
21 justed excess amount (as defined in subpara-
22 graph (C)).

23 “(B) EXCESS AMOUNT.—For purposes of
24 this paragraph, the ‘excess amount’, for an or-

1 organization for a plan, is the amount (if any) by
2 which—

3 “(i) the average of the capitation pay-
4 ments made to the organization under sec-
5 tion 1853 for the plan at the beginning of
6 contract year, exceeds

7 “(ii) the actuarial value of the re-
8 quired benefits described in section
9 1852(a)(1) under the plan for individuals
10 under this part, as determined based upon
11 an adjusted community rate described in
12 paragraph (4) (as reduced for the actuarial
13 value of the coinsurance and deductibles
14 under parts A and B).

15 “(C) ADJUSTED EXCESS AMOUNT.—For
16 purposes of this paragraph, the ‘adjusted excess
17 amount’, for an organization for a plan, is the
18 excess amount reduced to reflect any amount
19 withheld and reserved for the organization for
20 the year under paragraph (3).

21 “(D) NO APPLICATION TO MSA PLANS.—
22 Subparagraph (A) shall not apply to an MSA
23 plan.

24 “(E) UNIFORM APPLICATION.—This para-
25 graph shall be applied uniformly for all enroll-

1 ees for a plan in a Medicare Choice payment
2 area.

3 “(F) CONSTRUCTION.—Nothing in this
4 subsection shall be construed as preventing a
5 Medicare Choice organization from providing
6 health care benefits that are in addition to the
7 benefits otherwise required to be provided under
8 this paragraph and from imposing a premium
9 for such additional benefits.

10 “(2) STABILIZATION FUND.—A Medicare
11 Choice organization may provide that a part of the
12 value of an excess amount described in paragraph
13 (1) be withheld and reserved in the Federal Hospital
14 Insurance Trust Fund and in the Federal Supple-
15 mentary Medical Insurance Trust Fund (in such
16 proportions as the Secretary determines to be appro-
17 priate) by the Secretary for subsequent annual con-
18 tract periods, to the extent required to stabilize and
19 prevent undue fluctuations in the additional benefits
20 offered in those subsequent periods by the organiza-
21 tion in accordance with such paragraph. Any of such
22 value of the amount reserved which is not provided
23 as additional benefits described in paragraph (1)(A)
24 to individuals electing the Medicare Choice plan of
25 the organization in accordance with such paragraph

1 prior to the end of such periods, shall revert for the
2 use of such trust funds.

3 “(3) DETERMINATION BASED ON INSUFFICIENT
4 DATA.—For purposes of this subsection, if the Sec-
5 retary finds that there is insufficient enrollment ex-
6 perience to determine an average of the capitation
7 payments to be made under this part at the begin-
8 ning of a contract period, the Secretary may deter-
9 mine such an average based on the enrollment expe-
10 rience of other contracts entered into under this
11 part.

12 “(4) ADJUSTED COMMUNITY RATE.—

13 “(A) IN GENERAL.—For purposes of this
14 subsection, subject to subparagraph (B), the
15 term ‘adjusted community rate’ for a service or
16 services means, at the election of a Medicare
17 Choice organization, either—

18 “(i) the rate of payment for that serv-
19 ice or services which the Secretary annu-
20 ally determines would apply to an individ-
21 ual electing a Medicare Choice plan under
22 this part if the rate of payment were deter-
23 mined under a ‘community rating system’
24 (as defined in section 1302(8) of the Pub-

1 lic Health Service Act, other than subpara-
2 graph (C)), or

3 “(ii) such portion of the weighted ag-
4 gregate premium, which the Secretary an-
5 nually estimates would apply to such an in-
6 dividual, as the Secretary annually esti-
7 mates is attributable to that service or
8 services,

9 but adjusted for differences between the utiliza-
10 tion characteristics of the individuals electing
11 coverage under this part and the utilization
12 characteristics of the other enrollees with the
13 plan (or, if the Secretary finds that adequate
14 data are not available to adjust for those dif-
15 ferences, the differences between the utilization
16 characteristics of individuals selecting other
17 Medicare Choice coverage, or Medicare Choice
18 eligible individuals in the area, in the State, or
19 in the United States, eligible to elect Medicare
20 Choice coverage under this part and the utiliza-
21 tion characteristics of the rest of the population
22 in the area, in the State, or in the United
23 States, respectively).

24 “(B) SPECIAL RULE FOR PROVIDER-SPON-
25 SORED ORGANIZATIONS.—In the case of a Med-

1 icare Choice organization that is a provider-
2 sponsored organization, the adjusted community
3 rate under subparagraph (A) for a Medicare
4 Choice plan of the organization may be com-
5 puted (in a manner specified by the Secretary)
6 using data in the general commercial market-
7 place or (during a transition period) based on
8 the costs incurred by the organization in provid-
9 ing such a plan.

10 “(g) PERIODIC AUDITING.—The Secretary shall pro-
11 vide for the annual auditing of the financial records (in-
12 cluding data relating to medicare utilization, costs, and
13 computation of the adjusted community rate) of at least
14 one-third of the Medicare Choice organizations offering
15 Medicare Choice plans under this part. The Comptroller
16 General shall monitor auditing activities conducted under
17 this subsection.

18 “(h) PROHIBITION OF STATE IMPOSITION OF PRE-
19 MIUM TAXES.—No State may impose a premium tax or
20 similar tax with respect to payments on Medicare Choice
21 plans or the offering of such plans.

22 “ORGANIZATIONAL AND FINANCIAL REQUIREMENTS FOR
23 MEDICARE CHOICE ORGANIZATIONS; PROVIDER-
24 SPONSORED ORGANIZATIONS

25 “SEC. 1855. (a) ORGANIZED AND LICENSED UNDER
26 STATE LAW.—

1 “(1) IN GENERAL.—Subject to paragraphs (2)
2 and (3), a Medicare Choice organization shall be or-
3 ganized and licensed under State law as a risk-bear-
4 ing entity eligible to offer health insurance or health
5 benefits coverage in each State in which it offers a
6 Medicare Choice plan.

7 “(2) SPECIAL EXCEPTION BEFORE 2001 FOR
8 PROVIDER-SPONSORED ORGANIZATIONS.—

9 “(A) IN GENERAL.—In the case of a pro-
10 vider-sponsored organization that seeks to offer
11 a Medicare Choice plan in a State, the Sec-
12 retary shall waive the requirement of paragraph
13 (1) that the organization be licensed in that
14 State for any year before 2001 if—

15 “(i) the organization files an applica-
16 tion for such waiver with the Secretary,
17 and

18 “(ii) the contract with the organiza-
19 tion under section 1857 requires the orga-
20 nization to meet all requirements of State
21 law which relate to the licensing of the or-
22 ganization (other than solvency require-
23 ments or a prohibition on licensure for
24 such organization).

25 “(B) TREATMENT OF WAIVER.—

1 “(i) IN GENERAL.—In the case of a
2 waiver granted under this paragraph for a
3 provider-sponsored organization—

4 “(I) the waiver shall be effective
5 for the years specified in the waiver,
6 except it may be renewed based on a
7 subsequent application, and

8 “(II) subject to subparagraph
9 (A)(ii), any provisions of State law
10 which would otherwise prohibit the or-
11 ganization from providing coverage
12 pursuant to a contract under this part
13 shall be superseded.

14 “(ii) TERMINATION.—A waiver grant-
15 ed under this paragraph shall in no event
16 extend beyond the earlier of—

17 “(I) December 31, 2000; or

18 “(II) the date on which the Sec-
19 retary determines that the State has
20 in effect solvency standards described
21 in subsection (d)(1)(B).

22 “(C) PROMPT ACTION ON APPLICATION.—

23 The Secretary shall grant or deny such a waiver
24 application within 60 days after the date the

1 Secretary determines that a substantially com-
2 plete application has been filed.

3 “(D) ENFORCEMENT OF STATE STAND-
4 ARDS.—

5 “(i) IN GENERAL.—The Secretary
6 shall enter into agreements with States
7 subject to a waiver under this paragraph
8 to ensure the adequate enforcement of
9 standards incorporated into the contract
10 under subparagraph (A)(ii). Such agree-
11 ments shall provide methods by which
12 States may notify the Secretary of any
13 failure by an organization to comply with
14 such standards.

15 “(ii) ENFORCEMENT.—If the Sec-
16 retary determines that an organization is
17 not in compliance with the standards de-
18 scribed in clause (i), the Secretary shall
19 take appropriate actions under subsections
20 (g) and (h) with respect to civil penalties
21 and termination of the contract. The Sec-
22 retary shall allow an organization 60 days
23 to comply with the standards after notifi-
24 cation of failure.

1 “(E) REPORT.—The Secretary shall, not
2 later than December 31, 1998, report to Con-
3 gress on the waiver procedure in effect under
4 this paragraph. Such report shall include an
5 analysis of State efforts to adopt regulatory
6 standards that take into account health plan
7 sponsors that provide services directly to enroll-
8 ees through affiliated providers.

9 “(3) EXCEPTION IF REQUIRED TO OFFER MORE
10 THAN MEDICARE CHOICE PLANS.—Paragraph (1)
11 shall not apply to a Medicare Choice organization in
12 a State if the State requires the organization, as a
13 condition of licensure, to offer any product or plan
14 other than a Medicare Choice plan.

15 “(4) LICENSURE DOES NOT SUBSTITUTE FOR
16 OR CONSTITUTE CERTIFICATION.—The fact that an
17 organization is licensed in accordance with para-
18 graph (1) does not deem the organization to meet
19 other requirements imposed under this part.

20 “(b) PREPAID PAYMENT.—A Medicare Choice orga-
21 nization shall be compensated (except for premiums,
22 deductibles, coinsurance, and copayments) for the provi-
23 sion of health care services to enrolled members under the
24 contract under this part by a payment which is paid on
25 a periodic basis without regard to the date the health care

1 services are provided and which is fixed without regard
2 to the frequency, extent, or kind of health care service ac-
3 tually provided to a member.

4 “(c) ASSUMPTION OF FULL FINANCIAL RISK.—The
5 Medicare Choice organization shall assume full financial
6 risk on a prospective basis for the provision of the health
7 care services (except, at the election of the organization,
8 hospice care) for which benefits are required to be pro-
9 vided under section 1852(a)(1), except that the organiza-
10 tion—

11 “(1) may obtain insurance or make other ar-
12 rangements for the cost of providing to any enrolled
13 member such services the aggregate value of which
14 for any year exceeds the applicable amount deter-
15 mined under the last sentence of this subsection for
16 the year,

17 “(2) may obtain insurance or make other ar-
18 rangements for the cost of such services provided to
19 its enrolled members other than through the organi-
20 zation because medical necessity required their pro-
21 vision before they could be secured through the orga-
22 nization,

23 “(3) may obtain insurance or make other ar-
24 rangements for not more than 90 percent of the
25 amount by which its costs for any of its fiscal years

1 exceed 115 percent of its income for such fiscal year,
2 and

3 “(4) may make arrangements with physicians
4 or other health professionals, health care institu-
5 tions, or any combination of such individuals or in-
6 stitutions to assume all or part of the financial risk
7 on a prospective basis for the provision of basic
8 health services by the physicians or other health pro-
9 fessionals or through the institutions.

10 For purposes of paragraph (1), the applicable amount for
11 1998 is the amount established by the Secretary, and for
12 1999 and any succeeding year is the amount in effect for
13 the previous year increased by the percentage change in
14 the Consumer Price Index for all urban consumers (U.S.
15 city average) for the 12-month period ending with June
16 of the previous year.

17 “(d) CERTIFICATION OF PROVISION AGAINST RISK
18 OF INSOLVENCY FOR PSOs.—

19 “(1) IN GENERAL.—Each Medicare Choice or-
20 ganization that is a provider-sponsored organization
21 shall—

22 “(A) meet standards established under sec-
23 tion 1856(a) relating to the financial solvency
24 and capital adequacy of the organization, or

1 “(B) meet solvency standards established
2 by the State that are no less stringent than the
3 standards described in subparagraph (A).

4 “(2) CERTIFICATION PROCESS FOR SOLVENCY
5 STANDARDS FOR PSOS.—The Secretary shall estab-
6 lish a process for the receipt and approval of appli-
7 cations of a provider-sponsored organization for cer-
8 tification (and periodic recertification) of the organi-
9 zation as meeting such solvency standards. Under
10 such process, the Secretary shall act upon such an
11 application not later than 60 days after the date the
12 application has been received.

13 “(e) PROVIDER-SPONSORED ORGANIZATION DE-
14 FINED.—

15 “(1) IN GENERAL.—In this part, the term ‘pro-
16 vider-sponsored organization’ means a public or pri-
17 vate entity—

18 “(A) that is established or organized and
19 operated by a local health care provider, or local
20 group of affiliated health care providers,

21 “(B) that provides a substantial proportion
22 (as defined by the Secretary in accordance with
23 paragraph (2)) of the health care items and
24 services under the contract under this part di-

1 rectly through the provider or affiliated group
2 of providers, and

3 “(C) with respect to which those affiliated
4 providers that share, directly or indirectly, sub-
5 stantial financial risk with respect to the provi-
6 sion of such items and services have at least a
7 majority financial interest in the entity.

8 “(2) SUBSTANTIAL PROPORTION.—In defining
9 what is a ‘substantial proportion’ for purposes of
10 paragraph (1)(B), the Secretary—

11 “(A) shall take into account the need for
12 such an organization to assume responsibility
13 for providing—

14 “(i) significantly more than the ma-
15 jority of the items and services under the
16 contract under this section through its own
17 affiliated providers; and

18 “(ii) most of the remainder of the
19 items and services under the contract
20 through providers with which the organiza-
21 tion has an agreement to provide such
22 items and services,

23 in order to assure financial stability and to ad-
24 dress the practical considerations involved in in-

1 tegrating the delivery of a wide range of service
2 providers;

3 “(B) shall take into account the need for
4 such an organization to provide a limited pro-
5 portion of the items and services under the con-
6 tract through providers that are neither affili-
7 ated with nor have an agreement with the orga-
8 nization; and

9 “(C) may allow for variation in the defini-
10 tion of substantial proportion among such orga-
11 nizations based on relevant differences among
12 the organizations, such as their location in an
13 urban or rural area.

14 “(3) AFFILIATION.—For purposes of this sub-
15 section, a provider is ‘affiliated’ with another pro-
16 vider if, through contract, ownership, or otherwise—

17 “(A) one provider, directly or indirectly,
18 controls, is controlled by, or is under common
19 control with the other,

20 “(B) both providers are part of a con-
21 trolled group of corporations under section
22 1563 of the Internal Revenue Code of 1986,

23 “(C) each provider is a participant in a
24 lawful combination under which each provider

1 shares substantial financial risk in connection
2 with the organization's operations, or

3 “(D) both providers are part of an affili-
4 ated service group under section 414 of such
5 Code.

6 “(4) CONTROL.—For purposes of paragraph
7 (3), control is presumed to exist if one party, di-
8 rectly or indirectly, owns, controls, or holds the
9 power to vote, or proxies for, not less than 51 per-
10 cent of the voting rights or governance rights of an-
11 other.

12 “(5) HEALTH CARE PROVIDER DEFINED.—In
13 this subsection, the term ‘health care provider’
14 means—

15 “(A) any individual who is engaged in the
16 delivery of health care services in a State and
17 who is required by State law or regulation to be
18 licensed or certified by the State to engage in
19 the delivery of such services in the State, and

20 “(B) any entity that is engaged in the de-
21 livery of health care services in a State and
22 that, if it is required by State law or regulation
23 to be licensed or certified by the State to en-
24 gage in the delivery of such services in the
25 State, is so licensed.

1 “(6) REGULATIONS.—The Secretary shall issue
2 regulations to carry out this subsection.

3 “ESTABLISHMENT OF STANDARDS

4 “SEC. 1856. (a) ESTABLISHMENT OF SOLVENCY
5 STANDARDS FOR PROVIDER-SPONSORED ORGANIZA-
6 TIONS.—

7 “(1) ESTABLISHMENT.—

8 “(A) IN GENERAL.—The Secretary shall
9 establish, on an expedited basis and using a ne-
10 gotiated rulemaking process under subchapter
11 III of chapter 5 of title 5, United States Code,
12 standards described in section 1855(d)(1) (re-
13 lating to the financial solvency and capital ade-
14 quacy of the organization) that entities must
15 meet to qualify as provider-sponsored organiza-
16 tions under this part.

17 “(B) FACTORS TO CONSIDER FOR SOL-
18 VENCY STANDARDS.—In establishing solvency
19 standards under subparagraph (A) for provider-
20 sponsored organizations, the Secretary shall
21 consult with interested parties and shall take
22 into account—

23 “(i) the delivery system assets of such
24 an organization and ability of such an or-
25 ganization to provide services directly to
26 enrollees through affiliated providers,

1 “(ii) alternative means of protecting
2 against insolvency, including reinsurance,
3 unrestricted surplus, letters of credit, guar-
4 antees, organizational insurance coverage,
5 partnerships with other licensed entities,
6 and valuation attributable to the ability of
7 such an organization to meet its service
8 obligations through direct delivery of care,
9 and

10 “(iii) any standards developed by the
11 National Association of Insurance Commis-
12 sioners specifically for risk-based health
13 care delivery organizations.

14 “(C) ENROLLEE PROTECTION AGAINST IN-
15 SOLVENCY.—Such standards shall include pro-
16 visions to prevent enrollees from being held lia-
17 ble to any person or entity for the Medicare
18 Choice organization’s debts in the event of the
19 organization’s insolvency.

20 “(2) PUBLICATION OF NOTICE.—In carrying
21 out the rulemaking process under this subsection,
22 the Secretary, after consultation with the National
23 Association of Insurance Commissioners, the Amer-
24 ican Academy of Actuaries, organizations represent-
25 ative of medicare beneficiaries, and other interested

1 parties, shall publish the notice provided for under
2 section 564(a) of title 5, United States Code, by not
3 later than 45 days after the date of the enactment
4 of this section.

5 “(3) TARGET DATE FOR PUBLICATION OF
6 RULE.—As part of the notice under paragraph (2),
7 and for purposes of this subsection, the ‘target date
8 for publication’ (referred to in section 564(a)(5) of
9 such title) shall be April 1, 1998.

10 “(4) ABBREVIATED PERIOD FOR SUBMISSION
11 OF COMMENTS.—In applying section 564(c) of such
12 title under this subsection, ‘15 days’ shall be sub-
13 stituted for ‘30 days’.

14 “(5) APPOINTMENT OF NEGOTIATED RULE-
15 MAKING COMMITTEE AND FACILITATOR.—The Sec-
16 retary shall provide for—

17 “(A) the appointment of a negotiated rule-
18 making committee under section 565(a) of such
19 title by not later than 30 days after the end of
20 the comment period provided for under section
21 564(c) of such title (as shortened under para-
22 graph (4)), and

23 “(B) the nomination of a facilitator under
24 section 566(c) of such title by not later than 10

1 days after the date of appointment of the com-
2 mittee.

3 “(6) PRELIMINARY COMMITTEE REPORT.—The
4 negotiated rulemaking committee appointed under
5 paragraph (5) shall report to the Secretary, by not
6 later than January 1, 1998, regarding the commit-
7 tee’s progress on achieving a consensus with regard
8 to the rulemaking proceeding and whether such con-
9 sensus is likely to occur before 1 month before the
10 target date for publication of the rule. If the com-
11 mittee reports that the committee has failed to make
12 significant progress towards such consensus or is
13 unlikely to reach such consensus by the target date,
14 the Secretary may terminate such process and pro-
15 vide for the publication of a rule under this sub-
16 section through such other methods as the Secretary
17 may provide.

18 “(7) FINAL COMMITTEE REPORT.—If the com-
19 mittee is not terminated under paragraph (6), the
20 rulemaking committee shall submit a report contain-
21 ing a proposed rule by not later than 1 month before
22 the target date of publication.

23 “(8) INTERIM, FINAL EFFECT.—The Secretary
24 shall publish a rule under this subsection in the Fed-
25 eral Register by not later than the target date of

1 publication. Such rule shall be effective and final im-
2 mediately on an interim basis, but is subject to
3 change and revision after public notice and oppor-
4 tunity for a period (of not less than 60 days) for
5 public comment. In connection with such rule, the
6 Secretary shall specify the process for the timely re-
7 view and approval of applications of entities to be
8 certified as provider-sponsored organizations pursu-
9 ant to such rules and consistent with this subsection.

10 “(9) PUBLICATION OF RULE AFTER PUBLIC
11 COMMENT.—The Secretary shall provide for consid-
12 eration of such comments and republication of such
13 rule by not later than 1 year after the target date
14 of publication.

15 “(b) ESTABLISHMENT OF OTHER STANDARDS.—

16 “(1) IN GENERAL.—The Secretary shall estab-
17 lish by regulation other standards (not described in
18 subsection (a)) for Medicare Choice organizations
19 and plans consistent with, and to carry out, this
20 part.

21 “(2) USE OF CURRENT STANDARDS.—Consist-
22 ent with the requirements of this part, standards es-
23 tablished under this subsection shall be based on
24 standards established under section 1876 to carry
25 out analogous provisions of such section.

1 “(3) USE OF INTERIM STANDARDS.—For the
2 period in which this part is in effect and standards
3 are being developed and established under the pre-
4 ceding provisions of this subsection, the Secretary
5 shall provide by not later than June 1, 1998, for the
6 application of such interim standards (without re-
7 gard to any requirements for notice and public com-
8 ment) as may be appropriate to provide for the expe-
9 dited implementation of this part. Such interim
10 standards shall not apply after the date standards
11 are established under the preceding provisions of
12 this subsection.

13 “(4) APPLICATION OF NEW STANDARDS TO EN-
14 TITIES WITH A CONTRACT.—In the case of a Medi-
15 care Choice organization with a contract in effect
16 under this part at the time standards applicable to
17 the organization under this section are changed, the
18 organization may elect not to have such changes
19 apply to the organization until the end of the cur-
20 rent contract year (or, if there is less than 6 months
21 remaining in the contract year, until 1 year after the
22 end of the current contract year).

23 “(5) RELATION TO STATE LAWS.—The stand-
24 ards established under this subsection shall super-
25 sede any State law or regulation with respect to

1 Medicare Choice plans which are offered by Medi-
2 care Choice organizations under this part to the ex-
3 tent such law or regulation is inconsistent with such
4 standards.

5 “CONTRACTS WITH MEDICARE CHOICE ORGANIZATIONS

6 “SEC. 1857. (a) IN GENERAL.—The Secretary shall
7 not permit the election under section 1851 of a Medicare
8 Choice plan offered by a Medicare Choice organization
9 under this part, and no payment shall be made under sec-
10 tion 1853 to an organization, unless the Secretary has en-
11 tered into a contract under this section with the organiza-
12 tion with respect to the offering of such plan. Such a con-
13 tract with an organization may cover more than 1 Medi-
14 care Choice plan. Such contract shall provide that the or-
15 ganization agrees to comply with the applicable require-
16 ments and standards of this part and the terms and condi-
17 tions of payment as provided for in this part.

18 “(b) MINIMUM ENROLLMENT REQUIREMENTS.—

19 “(1) IN GENERAL.—Subject to paragraph (2),
20 the Secretary may not enter into a contract under
21 this section with a Medicare Choice organization un-
22 less the organization has at least 1,500 individuals
23 who are receiving health benefits through the organi-
24 zation (500 such individuals if the organization pri-
25 marily serves individuals residing outside of urban-
26 ized areas).

1 “(2) ALLOWING TRANSITION.—The Secretary
2 may waive the requirement of paragraph (1) during
3 the first 2 contract years with respect to an organi-
4 zation.

5 “(3) SPECIAL RULE FOR PSO.—In the case of
6 a Medicare Choice organization which is a provider-
7 sponsored organization, paragraph (1) shall be ap-
8 plied by taking into account individuals for whom
9 the organization has assumed substantial financial
10 risk.

11 “(c) CONTRACT PERIOD AND EFFECTIVENESS.—

12 “(1) PERIOD.—Each contract under this sec-
13 tion shall be for a term of at least 1 year, as deter-
14 mined by the Secretary, and may be made automati-
15 cally renewable from term to term in the absence of
16 notice by either party of intention to terminate at
17 the end of the current term.

18 “(2) TERMINATION AUTHORITY.—In accord-
19 ance with procedures established under subsection
20 (h), the Secretary may at any time terminate any
21 such contract, or may impose the intermediate sanc-
22 tions described in an applicable paragraph of sub-
23 section (g)(3) on the Medicare Choice organization,
24 if the Secretary determines that the organization—

1 “(A) has failed substantially to carry out
2 the contract;

3 “(B) is carrying out the contract in a man-
4 ner inconsistent with the efficient and effective
5 administration of this part; or

6 “(C) no longer substantially meets the ap-
7 plicable conditions of this part.

8 “(3) EFFECTIVE DATE OF CONTRACTS.—The
9 effective date of any contract executed pursuant to
10 this section shall be specified in the contract, except
11 that in no case shall a contract under this section
12 which provides for coverage under an MSA plan be
13 effective before January 1999 with respect to such
14 coverage.

15 “(4) PREVIOUS TERMINATIONS.—The Secretary
16 may not enter into a contract with a Medicare
17 Choice organization if a previous contract with that
18 organization under this section was terminated at
19 the request of the organization within the preceding
20 5-year period, except in circumstances which war-
21 rant special consideration, as determined by the Sec-
22 retary.

23 “(5) NO CONTRACTING AUTHORITY.—The au-
24 thority vested in the Secretary by this part may be
25 performed without regard to such provisions of law

1 or regulations relating to the making, performance,
2 amendment, or modification of contracts of the
3 United States as the Secretary may determine to be
4 inconsistent with the furtherance of the purpose of
5 this title.

6 “(d) PROTECTIONS AGAINST FRAUD AND BENE-
7 FICIARY PROTECTIONS.—

8 “(1) INSPECTION AND AUDIT.—Each contract
9 under this section shall provide that the Secretary,
10 or any person or organization designated by the Sec-
11 retary—

12 “(A) shall have the right to inspect or oth-
13 erwise evaluate (i) the quality, appropriateness,
14 and timeliness of services performed under the
15 contract and (ii) the facilities of the organiza-
16 tion when there is reasonable evidence of some
17 need for such inspection, and

18 “(B) shall have the right to audit and in-
19 spect any books and records of the Medicare
20 Choice organization that pertain (i) to the abil-
21 ity of the organization to bear the risk of poten-
22 tial financial losses, or (ii) to services performed
23 or determinations of amounts payable under the
24 contract.

1 “(2) ENROLLEE NOTICE AT TIME OF TERMI-
2 NATION.—Each contract under this section shall re-
3 quire the organization to provide (and pay for) writ-
4 ten notice in advance of the contract’s termination,
5 as well as a description of alternatives for obtaining
6 benefits under this title, to each individual enrolled
7 with the organization under this part.

8 “(3) DISCLOSURE.—

9 “(A) IN GENERAL.—Each Medicare Choice
10 organization shall, in accordance with regula-
11 tions of the Secretary, report to the Secretary
12 financial information which shall include the
13 following:

14 “(i) Such information as the Sec-
15 retary may require demonstrating that the
16 organization has a fiscally sound operation.

17 “(ii) A copy of the report, if any, filed
18 with the Health Care Financing Adminis-
19 tration containing the information required
20 to be reported under section 1124 by dis-
21 closing entities.

22 “(iii) A description of transactions, as
23 specified by the Secretary, between the or-
24 ganization and a party in interest. Such
25 transactions shall include—

1 “(I) any sale or exchange, or
2 leasing of any property between the
3 organization and a party in interest;

4 “(II) any furnishing for consider-
5 ation of goods, services (including
6 management services), or facilities be-
7 tween the organization and a party in
8 interest, but not including salaries
9 paid to employees for services pro-
10 vided in the normal course of their
11 employment and health services pro-
12 vided to members by hospitals and
13 other providers and by staff, medical
14 group (or groups), individual practice
15 association (or associations), or any
16 combination thereof; and

17 “(III) any lending of money or
18 other extension of credit between an
19 organization and a party in interest.

20 The Secretary may require that information re-
21 ported respecting an organization which con-
22 trols, is controlled by, or is under common con-
23 trol with, another entity be in the form of a
24 consolidated financial statement for the organi-
25 zation and such entity.

1 “(B) PARTY IN INTEREST DEFINED.—For
2 the purposes of this paragraph, the term ‘party
3 in interest’ means—

4 “(i) any director, officer, partner, or
5 employee responsible for management or
6 administration of a Medicare Choice orga-
7 nization, any person who is directly or in-
8 directly the beneficial owner of more than
9 5 percent of the equity of the organization,
10 any person who is the beneficial owner of
11 a mortgage, deed of trust, note, or other
12 interest secured by, and valuing more than
13 5 percent of the organization, and, in the
14 case of a Medicare Choice organization or-
15 ganized as a nonprofit corporation, an in-
16 corporator or member of such corporation
17 under applicable State corporation law;

18 “(ii) any entity in which a person de-
19 scribed in clause (i)—

20 “(I) is an officer or director;

21 “(II) is a partner (if such entity
22 is organized as a partnership);

23 “(III) has directly or indirectly a
24 beneficial interest of more than 5 per-
25 cent of the equity; or

1 “(IV) has a mortgage, deed of
2 trust, note, or other interest valuing
3 more than 5 percent of the assets of
4 such entity;

5 “(iii) any person directly or indirectly
6 controlling, controlled by, or under com-
7 mon control with an organization; and

8 “(iv) any spouse, child, or parent of
9 an individual described in clause (i).

10 “(C) ACCESS TO INFORMATION.—Each
11 Medicare Choice organization shall make the in-
12 formation reported pursuant to subparagraph
13 (A) available to its enrollees upon reasonable
14 request.

15 “(4) LOAN INFORMATION.—The contract shall
16 require the organization to notify the Secretary of
17 loans and other special financial arrangements which
18 are made between the organization and subcontrac-
19 tors, affiliates, and related parties.

20 “(e) ADDITIONAL CONTRACT TERMS.—

21 “(1) IN GENERAL.—The contract shall contain
22 such other terms and conditions not inconsistent
23 with this part (including requiring the organization
24 to provide the Secretary with such information) as
25 the Secretary may find necessary and appropriate.

1 “(2) COST-SHARING IN ENROLLMENT-RELATED
2 COSTS.—The contract with a Medicare Choice orga-
3 nization shall require the payment to the Secretary
4 for the organization’s pro rata share (as determined
5 by the Secretary) of the estimated costs to be in-
6 curred by the Secretary in carrying out section 1851
7 (relating to enrollment and dissemination of infor-
8 mation). Such payments are appropriated to defray
9 the costs described in the preceding sentence, to re-
10 main available until expended.

11 “(3) NOTICE TO ENROLLEES IN CASE OF DE-
12 CERTIFICATION.—If a contract with a Medicare
13 Choice organization is terminated under this section,
14 the organization shall notify each enrollee with the
15 organization under this part of such termination.

16 “(f) PROMPT PAYMENT BY MEDICARE CHOICE OR-
17 GANIZATION.—

18 “(1) REQUIREMENT.—A contract under this
19 part shall require a Medicare Choice organization to
20 provide prompt payment (consistent with the provi-
21 sions of sections 1816(c)(2) and 1842(c)(2)) of
22 claims submitted for services and supplies furnished
23 to individuals pursuant to the contract, if the serv-
24 ices or supplies are not furnished under a contract

1 between the organization and the provider or sup-
2 plier.

3 “(2) SECRETARY’S OPTION TO BYPASS NON-
4 COMPLYING ORGANIZATION.—In the case of a Medi-
5 care Choice eligible organization which the Secretary
6 determines, after notice and opportunity for a hear-
7 ing, has failed to make payments of amounts in
8 compliance with paragraph (1), the Secretary may
9 provide for direct payment of the amounts owed to
10 providers and suppliers for covered services and sup-
11 plies furnished to individuals enrolled under this
12 part under the contract. If the Secretary provides
13 for the direct payments, the Secretary shall provide
14 for an appropriate reduction in the amount of pay-
15 ments otherwise made to the organization under this
16 part to reflect the amount of the Secretary’s pay-
17 ments (and the Secretary’s costs in making the pay-
18 ments).

19 “(g) INTERMEDIATE SANCTIONS.—

20 “(1) IN GENERAL.—If the Secretary determines
21 that a Medicare Choice organization with a contract
22 under this section—

23 “(A) fails substantially to provide medi-
24 cally necessary items and services that are re-
25 quired (under law or under the contract) to be

1 provided to an individual covered under the con-
2 tract, if the failure has adversely affected (or
3 has substantial likelihood of adversely affecting)
4 the individual;

5 “(B) imposes net monthly premiums on in-
6 dividuals enrolled under this part in excess of
7 the net monthly premiums permitted;

8 “(C) acts to expel or to refuse to re-enroll
9 an individual in violation of the provisions of
10 this part;

11 “(D) engages in any practice that would
12 reasonably be expected to have the effect of de-
13 nying or discouraging enrollment (except as
14 permitted by this part) by eligible individuals
15 with the organization whose medical condition
16 or history indicates a need for substantial fu-
17 ture medical services;

18 “(E) misrepresents or falsifies information
19 that is furnished—

20 “(i) to the Secretary under this part,

21 or

22 “(ii) to an individual or to any other
23 entity under this part;

24 “(F) fails to comply with the requirements
25 of section 1852(j)(3); or

1 “(G) employs or contracts with any indi-
2 vidual or entity that is excluded from participa-
3 tion under this title under section 1128 or
4 1128A for the provision of health care, utiliza-
5 tion review, medical social work, or administra-
6 tive services or employs or contracts with any
7 entity for the provision (directly or indirectly)
8 through such an excluded individual or entity of
9 such services;

10 the Secretary may provide, in addition to any other
11 remedies authorized by law, for any of the remedies
12 described in paragraph (2).

13 “(2) REMEDIES.—The remedies described in
14 this paragraph are—

15 “(A) civil money penalties of not more
16 than \$25,000 for each determination under
17 paragraph (1) or, with respect to a determina-
18 tion under subparagraph (D) or (E)(i) of such
19 paragraph, of not more than \$100,000 for each
20 such determination, plus, with respect to a de-
21 termination under paragraph (1)(B), double the
22 excess amount charged in violation of such
23 paragraph (and the excess amount charged
24 shall be deducted from the penalty and returned
25 to the individual concerned), and plus, with re-

1 spect to a determination under paragraph
2 (1)(D), \$15,000 for each individual not enrolled
3 as a result of the practice involved,

4 “(B) suspension of enrollment of individ-
5 uals under this part after the date the Sec-
6 retary notifies the organization of a determina-
7 tion under paragraph (1) and until the Sec-
8 retary is satisfied that the basis for such deter-
9 mination has been corrected and is not likely to
10 recur, or

11 “(C) suspension of payment to the organi-
12 zation under this part for individuals enrolled
13 after the date the Secretary notifies the organi-
14 zation of a determination under paragraph (1)
15 and until the Secretary is satisfied that the
16 basis for such determination has been corrected
17 and is not likely to recur.

18 “(3) OTHER INTERMEDIATE SANCTIONS.—In
19 the case of a Medicare Choice organization for which
20 the Secretary makes a determination under sub-
21 section (c)(2) the basis of which is not described in
22 paragraph (1), the Secretary may apply the follow-
23 ing intermediate sanctions:

24 “(A) Civil money penalties of not more
25 than \$25,000 for each determination under

1 subsection (e)(2) if the deficiency that is the
2 basis of the determination has directly adversely
3 affected (or has the substantial likelihood of ad-
4 versely affecting) an individual covered under
5 the organization's contract.

6 “(B) Civil money penalties of not more
7 than \$10,000 for each week beginning after the
8 initiation of procedures by the Secretary under
9 subsection (g) during which the deficiency that
10 is the basis of a determination under subsection
11 (e)(2) exists.

12 “(C) Suspension of enrollment of individ-
13 uals under this part after the date the Sec-
14 retary notifies the organization of a determina-
15 tion under subsection (e)(2) and until the Sec-
16 retary is satisfied that the deficiency that is the
17 basis for the determination has been corrected
18 and is not likely to recur.

19 “(4) CIVIL MONEY PENALTIES.—The provisions
20 of section 1128A (other than subsections (a) and
21 (b)) shall apply to a civil money penalty under sub-
22 section (f) or under paragraph (2) or (3) of this sub-
23 section in the same manner as they apply to a civil
24 money penalty or proceeding under section
25 1128A(a).

1 “(h) PROCEDURES FOR TERMINATION.—

2 “(1) IN GENERAL.—The Secretary may termi-
3 nate a contract with a Medicare Choice organization
4 under this section in accordance with formal inves-
5 tigation and compliance procedures established by
6 the Secretary under which—

7 “(A) the Secretary provides the organiza-
8 tion with the reasonable opportunity to develop
9 and implement a corrective action plan to cor-
10 rect the deficiencies that were the basis of the
11 Secretary’s determination under subsection
12 (c)(2);

13 “(B) the Secretary shall impose more se-
14 vere sanctions on an organization that has a
15 history of deficiencies or that has not taken
16 steps to correct deficiencies the Secretary has
17 brought to the organization’s attention;

18 “(C) there are no unreasonable or unneces-
19 sary delays between the finding of a deficiency
20 and the imposition of sanctions; and

21 “(D) the Secretary provides the organiza-
22 tion with reasonable notice and opportunity for
23 hearing (including the right to appeal an initial
24 decision) before terminating the contract.

1 “(2) EXCEPTION FOR IMMINENT AND SERIOUS
2 RISK TO HEALTH.—Paragraph (1) shall not apply if
3 the Secretary determines that a delay in termi-
4 nation, resulting from compliance with the proce-
5 dures specified in such paragraph prior to termi-
6 nation, would pose an imminent and serious risk to
7 the health of individuals enrolled under this part
8 with the organization.

9 “DEFINITIONS; MISCELLANEOUS PROVISIONS

10 “SEC. 1859. (a) DEFINITIONS RELATING TO MEDI-
11 CARE CHOICE ORGANIZATIONS.—In this part—

12 “(1) MEDICARE CHOICE ORGANIZATION.—The
13 term ‘Medicare Choice organization’ means a public
14 or private entity that is certified under section 1856
15 as meeting the requirements and standards of this
16 part for such an organization.

17 “(2) PROVIDER-SPONSORED ORGANIZATION.—
18 The term ‘provider-sponsored organization’ is de-
19 fined in section 1855(e)(1).

20 “(b) DEFINITIONS RELATING TO MEDICARE CHOICE
21 PLANS.—

22 “(1) MEDICARE CHOICE PLAN.—The term
23 ‘Medicare Choice plan’ means health benefits cov-
24 erage offered under a policy, contract, or plan by a
25 Medicare Choice organization pursuant to and in ac-
26 cordance with a contract under section 1857.

1 “(2) MEDICARE CHOICE UNRESTRICTED FEE-
2 FOR-SERVICE PLAN.—The term ‘Medicare Choice
3 unrestricted fee-for-service plan’ means a Medicare
4 Choice plan that provides for coverage of benefits
5 without restrictions relating to utilization and with-
6 out regard to whether the provider has a contract or
7 other arrangement with the organization offering the
8 plan for the provision of such benefits.

9 “(3) MSA PLAN.—

10 “(A) IN GENERAL.—The term ‘MSA plan’
11 means a Medicare Choice plan that—

12 “(i) provides reimbursement for at
13 least the items and services described in
14 section 1852(a)(1) in a year but only after
15 the enrollee incurs countable expenses (as
16 specified under the plan) equal to the
17 amount of an annual deductible (described
18 in subparagraph (B));

19 “(ii) counts as such expenses (for pur-
20 poses of such deductible) at least all
21 amounts that would have been payable
22 under parts A and B, and that would have
23 been payable by the enrollee as deductibles,
24 coinsurance, or copayments, if the enrollee

1 had elected to receive benefits through the
2 provisions of such parts;

3 “(iii) subject to clause (iv), provides,
4 after such deductible is met for a year and
5 for all subsequent expenses for items and
6 services referred to in clause (i) in the
7 year, for a level of reimbursement that is
8 not less than—

9 “(I) 100 percent of such ex-
10 penses, or

11 “(II) 100 percent of the amounts
12 that would have been paid (without
13 regard to any deductibles or coinsur-
14 ance) under parts A and B with re-
15 spect to such expenses,

16 whichever is less; and

17 “(iv) provides that the annual out-of-
18 pocket expenses required to be paid under
19 the plan (other than for premiums) for
20 covered benefits does not exceed the
21 amount in effect under section
22 220(c)(2)(A)(iii)(I) of the Internal Reve-
23 nue Code of 1986 for the year.

24 “(B) DEDUCTIBLE.—The amount of an-
25 nual deductible under an MSA plan shall not be

1 less than or more than the amounts in excess
2 under section 220(c)(2)(A)(i) of the Internal
3 Revenue Code of 1986 for the year.

4 “(c) OTHER REFERENCES TO OTHER TERMS.—

5 “(1) MEDICARE CHOICE ELIGIBLE INDIVID-
6 UAL.—The term ‘Medicare Choice eligible individual’
7 is defined in section 1851(a)(3).

8 “(2) MEDICARE CHOICE PAYMENT AREA.—The
9 term ‘Medicare Choice payment area’ is defined in
10 section 1853(d).

11 “(3) NATIONAL AVERAGE PER CAPITA GROWTH
12 PERCENTAGE.—The ‘national average per capita
13 growth percentage’ is defined in section 1853(c)(6).

14 “(4) MONTHLY PREMIUM; NET MONTHLY PRE-
15 MIUM.—The terms ‘monthly premium’ and ‘net
16 monthly premium’ are defined in section 1854(a)(2).

17 “(d) COORDINATED ACUTE AND LONG-TERM CARE
18 BENEFITS UNDER A MEDICARE CHOICE PLAN.—Nothing
19 in this part shall be construed as preventing a State from
20 coordinating benefits under a medicaid plan under title
21 XIX with those provided under a Medicare Choice plan
22 in a manner that assures continuity of a full-range of
23 acute care and long-term care services to poor elderly or
24 disabled individuals eligible for benefits under this title
25 and under such plan.

1 “(e) RESTRICTION ON ENROLLMENT FOR CERTAIN
2 MEDICARE CHOICE PLANS.—

3 “(1) IN GENERAL.—In the case of a Medicare
4 Choice religious fraternal benefit society plan de-
5 scribed in paragraph (2), notwithstanding any other
6 provision of this part to the contrary and in accord-
7 ance with regulations of the Secretary, the society
8 offering the plan may restrict the enrollment of indi-
9 viduals under this part to individuals who are mem-
10 bers of the church, convention, or group described in
11 paragraph (3)(B) with which the society is affiliated.

12 “(2) MEDICARE CHOICE RELIGIOUS FRATERNAL
13 BENEFIT SOCIETY PLAN DESCRIBED.—For purposes
14 of this subsection, a Medicare Choice religious fra-
15 ternal benefit society plan described in this para-
16 graph is a Medicare Choice plan described in section
17 1851(a)(2)(A) that—

18 “(A) is offered by a religious fraternal ben-
19 efit society described in paragraph (3) only to
20 members of the church, convention, or group
21 described in paragraph (3)(B); and

22 “(B) permits all such members to enroll
23 under the plan without regard to health status-
24 related factors.

1 Nothing in this subsection shall be construed as
2 waiving any plan requirements relating to financial
3 solvency. In developing solvency standards under
4 section 1856, the Secretary shall take into account
5 open contract and assessment features characteristic
6 of fraternal insurance certificates.

7 “(3) RELIGIOUS FRATERNAL BENEFIT SOCIETY
8 DEFINED.—For purposes of paragraph (2)(A), a ‘re-
9 ligious fraternal benefit society’ described in this
10 section is an organization that—

11 “(A) is exempt from Federal income tax-
12 ation under section 501(c)(8) of the Internal
13 Revenue Code of 1986;

14 “(B) is affiliated with, carries out the te-
15 nets of, and shares a religious bond with, a
16 church or convention or association of churches
17 or an affiliated group of churches;

18 “(C) offers, in addition to a Medicare
19 Choice religious fraternal benefit society plan,
20 at least the same level of health coverage to in-
21 dividuals not entitled to benefits under this title
22 who are members of such church, convention, or
23 group; and

1 “(D) does not impose any limitation on
2 membership in the society based on any health
3 status-related factor.

4 “(4) PAYMENT ADJUSTMENT.—Under regula-
5 tions of the Secretary, in the case of individuals en-
6 rolled under this part under a Medicare Choice reli-
7 gious fraternal benefit society plan described in
8 paragraph (2), the Secretary shall provide for such
9 adjustment to the payment amounts otherwise estab-
10 lished under section 1854 as may be appropriate to
11 assure an appropriate payment level, taking into ac-
12 count the actuarial characteristics and experience of
13 such individuals.”.

14 **SEC. 5002. TRANSITIONAL RULES FOR CURRENT MEDICARE**
15 **HMO PROGRAM.**

16 (a) AUTHORIZING TRANSITIONAL WAIVER OF 50:50
17 RULE.—Section 1876(f) (42 U.S.C. 1395mm(f)) is
18 amended—

19 (1) in paragraph (1)—

20 (A) by striking “Each” and inserting “For
21 contract periods beginning before January 1,
22 1999, each”; and

23 (B) by striking “or under a State plan ap-
24 proved under title XIX”;

1 (2) in paragraph (2), by striking “The Sec-
2 retary” and inserting “Subject to paragraph (4), the
3 Secretary”, and

4 (3) by adding at the end the following:

5 “(4) The Secretary may waive the requirement im-
6 posed by paragraph (1) if the Secretary determines that
7 the plan meets all other beneficiary protections and quality
8 standards under this section.”.

9 (b) TRANSITION.—Section 1876 (42 U.S.C.
10 1395mm) is amended by adding at the end the following
11 new subsection:

12 “(k)(1) Except as provided in paragraph (2) or (3),
13 the Secretary shall not enter into, renew, or continue any
14 risk-sharing contract under this section with an eligible
15 organization for any contract year beginning on or after—

16 “(A) the date standards for Medicare Choice
17 organizations and plans are first established under
18 section 1856 with respect to Medicare Choice organi-
19 zations that are insurers or health maintenance or-
20 ganizations, or

21 “(B) in the case of such an organization with
22 such a contract in effect as of the date such stand-
23 ards were first established, 1 year after such date.

24 “(2) The Secretary shall not enter into, renew, or
25 continue any risk-sharing contract under this section with

1 an eligible organization for any contract year beginning
2 on or after January 1, 2000.

3 “(3) An individual who is enrolled in part B only and
4 is enrolled in an eligible organization with a risk-sharing
5 contract under this section on December 31, 1998, may
6 continue enrollment in such organization in accordance
7 with regulations issued by not later than July 1, 1998.

8 “(4) Notwithstanding subsection (a), the Secretary
9 shall provide that payment amounts under risk-sharing
10 contracts under this section for months in a year (begin-
11 ning with January 1998) shall be computed—

12 “(A) with respect to individuals entitled to ben-
13 efits under both parts A and B, by substituting pay-
14 ment rates under section 1853(a) for the payment
15 rates otherwise established under section 1876(a),
16 and

17 “(B) with respect to individuals only entitled to
18 benefits under part B, by substituting an appro-
19 priate proportion of such rates (reflecting the rel-
20 ative proportion of payments under this title attrib-
21 utable to such part) for the payment rates otherwise
22 established under subsection (a).

23 For purposes of carrying out this paragraph for payments
24 for months in 1998, the Secretary shall compute, an-
25 nounce, and apply the payment rates under section

1 1853(a) (notwithstanding any deadlines specified in such
2 section) in as timely a manner as possible and may (to
3 the extent necessary) provide for retroactive adjustment
4 in payments made under this section not in accordance
5 with such rates.”.

6 (c) ENROLLMENT TRANSITION RULE.—An individual
7 who is enrolled on December 31, 1998, with an eligible
8 organization under section 1876 of the Social Security Act
9 (42 U.S.C. 1395mm) shall be considered to be enrolled
10 with that organization on January 1, 1999, under part
11 C of title XVIII of such Act if that organization has a
12 contract under that part for providing services on January
13 1, 1999 (unless the individual has disenrolled effective on
14 that date).

15 (d) ADVANCE DIRECTIVES.—Section 1866(f) (42
16 U.S.C. 1395cc(f)) is amended—

17 (1) in paragraph (1)—

18 (A) by inserting “1855(i),” after
19 “1833(s),” and

20 (B) by inserting “, Medicare Choice orga-
21 nization,” after “provider of services”; and

22 (2) in paragraph (2)(E), by inserting “or a
23 Medicare Choice organization” after “section
24 1833(a)(1)(A)”.

1 (e) EXTENSION OF PROVIDER REQUIREMENT.—Sec-
2 tion 1866(a)(1)(O) (42 U.S.C. 1395cc(a)(1)(O)) is
3 amended—

4 (1) by striking “in the case of hospitals and
5 skilled nursing facilities,”;

6 (2) by striking “inpatient hospital and extended
7 care”;

8 (3) by inserting “with a Medicare Choice orga-
9 nization under part C or” after “any individual en-
10 rolled”; and

11 (4) by striking “(in the case of hospitals) or
12 limits (in the case of skilled nursing facilities)”.

13 (f) ADDITIONAL CONFORMING CHANGES.—

14 (1) CONFORMING REFERENCES TO PREVIOUS
15 PART C.—Any reference in law (in effect before the
16 date of the enactment of this Act) to part C of title
17 XVIII of the Social Security Act is deemed a ref-
18 erence to part D of such title (as in effect after such
19 date).

20 (2) SECRETARIAL SUBMISSION OF LEGISLATIVE
21 PROPOSAL.—Not later than 90 days after the date
22 of the enactment of this Act, the Secretary of
23 Health and Human Services shall submit to the ap-
24 propriate committees of Congress a legislative pro-
25 posal providing for such technical and conforming

1 amendments in the law as are required by the provi-
2 sions of this chapter.

3 (g) IMMEDIATE EFFECTIVE DATE FOR CERTAIN RE-
4 QUIREMENTS FOR DEMONSTRATIONS.—Section
5 1857(e)(2) of the Social Security Act (requiring contribu-
6 tion to certain costs related to the enrollment process com-
7 parative materials) applies to demonstrations with respect
8 to which enrollment is effected or coordinated under sec-
9 tion 1851 of such Act.

10 (h) USE OF INTERIM, FINAL REGULATIONS.—In
11 order to carry out the amendments made by this chapter
12 in a timely manner, the Secretary of Health and Human
13 Services may promulgate regulations that take effect on
14 an interim basis, after notice and pending opportunity for
15 public comment.

16 (i) TRANSITION RULE FOR PSO ENROLLMENT.—In
17 applying subsection (g)(1) of section 1876 of the Social
18 Security Act (42 U.S.C. 1395mm) to a risk-sharing con-
19 tract entered into with an eligible organization that is a
20 provider-sponsored organization (as defined in section
21 1855(e)(1) of such Act, as inserted by section 5001) for
22 a contract year beginning on or after January 1, 1998,
23 there shall be substituted for the minimum number of en-
24 rollees provided under such section the minimum number

1 of enrollees permitted under section 1857(b)(1) of such
2 Act (as so inserted).

3 **SEC. 5003. CONFORMING CHANGES IN MEDIGAP PROGRAM.**

4 (a) CONFORMING AMENDMENTS TO MEDICARE
5 CHOICE CHANGES.—

6 (1) IN GENERAL.—Section 1882(d)(3)(A)(i) (42
7 U.S.C. 1395ss(d)(3)(A)(i)) is amended—

8 (A) in the matter before subclause (I), by
9 inserting “(including an individual electing a
10 Medicare Choice plan under section 1851)”
11 after “of this title”; and

12 (B) in subclause (II)—

13 (i) by inserting “in the case of an in-
14 dividual not electing a Medicare Choice
15 plan” after “(II)”, and

16 (ii) by inserting before the comma at
17 the end the following: “or in the case of an
18 individual electing a Medicare Choice plan,
19 a medicare supplemental policy with knowl-
20 edge that the policy duplicates health bene-
21 fits to which the individual is otherwise en-
22 titled under the Medicare Choice plan or
23 under another medicare supplemental pol-
24 icy”.

1 (2) CONFORMING AMENDMENTS.—Section
2 1882(d)(3)(B)(i)(I) (42 U.S.C.
3 1395ss(d)(3)(B)(i)(I)) is amended by inserting “(in-
4 cluding any Medicare Choice plan)” after “health in-
5 surance policies”.

6 (3) MEDICARE CHOICE PLANS NOT TREATED AS
7 MEDICARE SUPPLEMENTARY POLICIES.—Section
8 1882(g)(1) (42 U.S.C. 1395ss(g)(1)) is amended by
9 inserting “or a Medicare Choice plan or” after “does
10 not include”.

11 (b) ADDITIONAL RULES RELATING TO INDIVIDUALS
12 ENROLLED IN MSA PLANS.—Section 1882 (42 U.S.C.
13 1395ss) is further amended by adding at the end the fol-
14 lowing new subsection:

15 “(u)(1) It is unlawful for a person to sell or issue
16 a policy described in paragraph (2) to an individual with
17 knowledge that the individual has in effect under section
18 1851 an election of an MSA plan.

19 “(2) A policy described in this subparagraph is a
20 health insurance policy that provides for coverage of ex-
21 penses that are otherwise required to be counted toward
22 meeting the annual deductible amount provided under the
23 MSA plan.”.

1 **Subchapter B—Special Rules for Medicare**
2 **Choice Medical Savings Accounts**

3 **SEC. 5006. MEDICARE CHOICE MSA.**

4 (a) IN GENERAL.—Part III of subchapter B of chap-
5 ter 1 of the Internal Revenue Code of 1986 (relating to
6 amounts specifically excluded from gross income) is
7 amended by redesignating section 138 as section 139 and
8 by inserting after section 137 the following new section:

9 **“SEC. 138. MEDICARE CHOICE MSA.**

10 “(a) EXCLUSION.—Gross income shall not include
11 any payment to the Medicare Choice MSA of an individual
12 by the Secretary of Health and Human Services under
13 part C of title XVIII of the Social Security Act.

14 “(b) MEDICARE CHOICE MSA.—For purposes of this
15 section, the term ‘Medicare Choice MSA’ means a medical
16 savings account (as defined in section 220(d))—

17 “(1) which is designated as a Medicare Choice
18 MSA,

19 “(2) with respect to which no contribution may
20 be made other than—

21 “(A) a contribution made by the Secretary
22 of Health and Human Services pursuant to
23 part C of title XVIII of the Social Security Act,
24 or

1 “(B) a trustee-to-trustee transfer described
2 in subsection (c)(4),

3 “(3) the governing instrument of which pro-
4 vides that trustee-to-trustee transfers described in
5 subsection (c)(4) may be made to and from such ac-
6 count, and

7 “(4) which is established in connection with an
8 MSA plan described in section 1859(b)(3) of the So-
9 cial Security Act.

10 “(c) SPECIAL RULES FOR DISTRIBUTIONS.—

11 “(1) DISTRIBUTIONS FOR QUALIFIED MEDICAL
12 EXPENSES.—In applying section 220 to a Medicare
13 Choice MSA—

14 “(A) qualified medical expenses shall not
15 include amounts paid for medical care for any
16 individual other than the account holder, and

17 “(B) section 220(d)(2)(C) shall not apply.

18 “(2) PENALTY FOR DISTRIBUTIONS FROM MED-
19 ICARE CHOICE MSA NOT USED FOR QUALIFIED MEDI-
20 CAL EXPENSES IF MINIMUM BALANCE NOT MAIN-
21 TAINED.—

22 “(A) IN GENERAL.—The tax imposed by
23 this chapter for any taxable year in which there
24 is a payment or distribution from a Medicare
25 Choice MSA which is not used exclusively to

1 pay the qualified medical expenses of the ac-
2 count holder shall be increased by 50 percent of
3 the excess (if any) of—

4 “(i) the amount of such payment or
5 distribution, over

6 “(ii) the excess (if any) of—

7 “(I) the fair market value of the
8 assets in such MSA as of the close of
9 the calendar year preceding the cal-
10 endar year in which the taxable year
11 begins, over

12 “(II) an amount equal to 60 per-
13 cent of the deductible under the Medi-
14 care Choice MSA plan covering the
15 account holder as of January 1 of the
16 calendar year in which the taxable
17 year begins.

18 Section 220(f)(2) shall not apply to any pay-
19 ment or distribution from a Medicare Choice
20 MSA.

21 “(B) EXCEPTIONS.—Subparagraph (A)
22 shall not apply if the payment or distribution is
23 made on or after the date the account holder—

24 “(i) becomes disabled within the
25 meaning of section 72(m)(7), or

1 “(ii) dies.

2 “(C) SPECIAL RULES.—For purposes of
3 subparagraph (A)—

4 “(i) all Medicare Choice MSAs of the
5 account holder shall be treated as 1 ac-
6 count,

7 “(ii) all payments and distributions
8 not used exclusively to pay the qualified
9 medical expenses of the account holder
10 during any taxable year shall be treated as
11 1 distribution, and

12 “(iii) any distribution of property
13 shall be taken into account at its fair mar-
14 ket value on the date of the distribution.

15 “(3) WITHDRAWAL OF ERRONEOUS CONTRIBU-
16 TIONS.—Section 220(f)(2) and paragraph (2) of this
17 subsection shall not apply to any payment or dis-
18 tribution from a Medicare Choice MSA to the Sec-
19 retary of Health and Human Services of an erro-
20 neous contribution to such MSA and of the net in-
21 come attributable to such contribution.

22 “(4) TRUSTEE-TO-TRUSTEE TRANSFERS.—Sec-
23 tion 220(f)(2) and paragraph (2) of this subsection
24 shall not apply to any trustee-to-trustee transfer
25 from a Medicare Choice MSA of an account holder

1 to another Medicare Choice MSA of such account
2 holder.

3 “(d) SPECIAL RULES FOR TREATMENT OF ACCOUNT
4 AFTER DEATH OF ACCOUNT HOLDER.—In applying sec-
5 tion 220(f)(8)(A) to an account which was a Medicare
6 Choice MSA of a decedent, the rules of section 220(f) shall
7 apply in lieu of the rules of subsection (c) of this section
8 with respect to the spouse as the account holder of such
9 Medicare Choice MSA.

10 “(e) REPORTS.—In the case of a Medicare Choice
11 MSA, the report under section 220(h)—

12 “(1) shall include the fair market value of the
13 assets in such Medicare Choice MSA as of the close
14 of each calendar year, and

15 “(2) shall be furnished to the account holder—

16 “(A) not later than January 31 of the cal-
17 endar year following the calendar year to which
18 such reports relate, and

19 “(B) in such manner as the Secretary pre-
20 scribes in such regulations.

21 “(f) COORDINATION WITH LIMITATION ON NUMBER
22 OF TAXPAYERS HAVING MEDICAL SAVINGS ACCOUNTS.—
23 Subsection (i) of section 220 shall not apply to an individ-
24 ual with respect to a Medicare Choice MSA, and Medicare
25 Choice MSA’s shall not be taken into account in determin-

1 ing whether the numerical limitations under section 220(j)
2 are exceeded.”.

3 (b) TECHNICAL AMENDMENTS.—

4 (1) The last sentence of section 4973(d) of such
5 Code is amended by inserting “or section 138(c)(3)”
6 after “section 220(f)(3)”.

7 (2) Subsection (b) of section 220 of such Code
8 is amended by adding at the end the following new
9 paragraph:

10 “(7) MEDICARE ELIGIBLE INDIVIDUALS.—The
11 limitation under this subsection for any month with
12 respect to an individual shall be zero for the first
13 month such individual is entitled to benefits under
14 title XVIII of the Social Security Act and for each
15 month thereafter.”.

16 (3) The table of sections for part III of sub-
17 chapter B of chapter 1 of such Code is amended by
18 striking the last item and inserting the following:

“Sec. 138. Medicare Choice MSA.

“Sec. 139. Cross references to other Acts.”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to taxable years beginning after
21 December 31, 1998.

1 **CHAPTER 2—INTEGRATED LONG-TERM**
2 **CARE PROGRAMS**

3 **Subchapter A—Programs of All-Inclusive**
4 **Care for the Elderly (PACE)**

5 **SEC. 5011. COVERAGE OF PACE UNDER THE MEDICARE**
6 **PROGRAM.**

7 Title XVIII of the Social Security Act (42 U.S.C.
8 1395 et seq.) is amended by adding at the end the follow-
9 ing new section:

10 “PAYMENTS TO, AND COVERAGE OF BENEFITS UNDER,
11 PROGRAMS OF ALL-INCLUSIVE CARE FOR THE EL-
12 DERLY (PACE)

13 “SEC. 1894. (a) RECEIPT OF BENEFITS THROUGH
14 ENROLLMENT IN PACE PROGRAM; DEFINITIONS FOR
15 PACE PROGRAM RELATED TERMS.—

16 “(1) BENEFITS THROUGH ENROLLMENT IN A
17 PACE PROGRAM.—In accordance with this section, in
18 the case of an individual who is entitled to benefits
19 under part A or enrolled under part B and who is
20 a PACE program eligible individual (as defined in
21 paragraph (5)) with respect to a PACE program of-
22 fered by a PACE provider under a PACE program
23 agreement—

24 “(A) the individual may enroll in the pro-
25 gram under this section; and

1 “(B) so long as the individual is so en-
2 rolled and in accordance with regulations—

3 “(i) the individual shall receive bene-
4 fits under this title solely through such
5 program; and

6 “(ii) the PACE provider is entitled to
7 payment under and in accordance with this
8 section and such agreement for provision
9 of such benefits.

10 “(2) PACE PROGRAM DEFINED.—For purposes
11 of this section and section 1932, the term ‘PACE
12 program’ means a program of all-inclusive care for
13 the elderly that meets the following requirements:

14 “(A) OPERATION.—The entity operating
15 the program is a PACE provider (as defined in
16 paragraph (3)).

17 “(B) COMPREHENSIVE BENEFITS.—The
18 program provides comprehensive health care
19 services to PACE program eligible individuals
20 in accordance with the PACE program agree-
21 ment and regulations under this section.

22 “(C) TRANSITION.—In the case of an indi-
23 vidual who is enrolled under the program under
24 this section and whose enrollment ceases for
25 any reason (including that the individual no

1 longer qualifies as a PACE program eligible in-
2 dividual, the termination of a PACE program
3 agreement, or otherwise), the program provides
4 assistance to the individual in obtaining nec-
5 essary transitional care through appropriate re-
6 ferrals and making the individual’s medical
7 records available to new providers.

8 “(3) PACE PROVIDER DEFINED.—

9 “(A) IN GENERAL.—For purposes of this
10 section, the term ‘PACE provider’ means an en-
11 tity that—

12 “(i) subject to subparagraph (B), is
13 (or is a distinct part of) a public entity or
14 a private, nonprofit entity organized for
15 charitable purposes under section
16 501(c)(3) of the Internal Revenue Code of
17 1986; and

18 “(ii) has entered into a PACE pro-
19 gram agreement with respect to its oper-
20 ation of a PACE program.

21 “(B) TREATMENT OF PRIVATE, FOR-PROF-
22 IT PROVIDERS.—Clause (i) of subparagraph (A)
23 shall not apply—

1 “(i) to entities subject to a dem-
2 onstration project waiver under subsection
3 (h); and

4 “(ii) after the date the report under
5 section 5013(b) of the Balanced Budget
6 Act of 1997 is submitted, unless the Sec-
7 retary determines that any of the findings
8 described in subparagraph (A), (B), (C), or
9 (D) of paragraph (2) of such section are
10 true.

11 “(4) PACE PROGRAM AGREEMENT DEFINED.—
12 For purposes of this section, the term ‘PACE pro-
13 gram agreement’ means, with respect to a PACE
14 provider, an agreement, consistent with this section,
15 section 1932 (if applicable), and regulations promul-
16 gated to carry out such sections, between the PACE
17 provider and the Secretary, or an agreement between
18 the PACE provider and a State administering agen-
19 cy for the operation of a PACE program by the pro-
20 vider under such sections.

21 “(5) PACE PROGRAM ELIGIBLE INDIVIDUAL
22 DEFINED.—For purposes of this section, the term
23 ‘PACE program eligible individual’ means, with re-
24 spect to a PACE program, an individual who—

25 “(A) is 55 years of age or older;

1 “(B) subject to subsection (c)(4), is deter-
2 mined under subsection (e) to require the level
3 of care required under the State medicaid plan
4 for coverage of nursing facility services;

5 “(C) resides in the service area of the
6 PACE program; and

7 “(D) meets such other eligibility conditions
8 as may be imposed under the PACE program
9 agreement for the program under subsection
10 (e)(2)(A)(ii).

11 “(6) PACE PROTOCOL.—For purposes of this
12 section, the term ‘PACE protocol’ means the Proto-
13 col for the Program of All-inclusive Care for the El-
14 derly (PACE), as published by On Lok, Inc., as of
15 April 14, 1995, or any successor protocol that may
16 be agreed upon between the Secretary and On Lok,
17 Inc.

18 “(7) PACE DEMONSTRATION WAIVER PROGRAM
19 DEFINED.—For purposes of this section, the term
20 ‘PACE demonstration waiver program’ means a
21 demonstration program under either of the following
22 sections (as in effect before the date of their repeal):

23 “(A) Section 603(c) of the Social Security
24 Amendments of 1983 (Public Law 98–21), as
25 extended by section 9220 of the Consolidated

1 Omnibus Budget Reconciliation Act of 1985
2 (Public Law 99-272).

3 “(B) Section 9412(b) of the Omnibus
4 Budget Reconciliation Act of 1986 (Public Law
5 99-509).

6 “(8) STATE ADMINISTERING AGENCY DE-
7 FINED.—For purposes of this section, the term
8 ‘State administering agency’ means, with respect to
9 the operation of a PACE program in a State, the
10 agency of that State (which may be the single agen-
11 cy responsible for administration of the State plan
12 under title XIX in the State) responsible for admin-
13 istering PACE program agreements under this sec-
14 tion and section 1932 in the State.

15 “(9) TRIAL PERIOD DEFINED.—

16 “(A) IN GENERAL.—For purposes of this
17 section, the term ‘trial period’ means, with re-
18 spect to a PACE program operated by a PACE
19 provider under a PACE program agreement,
20 the first 3 contract years under such agreement
21 with respect to such program.

22 “(B) TREATMENT OF ENTITIES PRE-
23 VIOUSLY OPERATING PACE DEMONSTRATION
24 WAIVER PROGRAMS.—Each contract year (in-
25 cluding a year occurring before the effective

1 date of this section) during which an entity has
2 operated a PACE demonstration waiver pro-
3 gram shall be counted under subparagraph (A)
4 as a contract year during which the entity oper-
5 ated a PACE program as a PACE provider
6 under a PACE program agreement.

7 “(10) REGULATIONS.—For purposes of this
8 section, the term ‘regulations’ refers to interim final
9 or final regulations promulgated under subsection (f)
10 to carry out this section and section 1932.

11 “(b) SCOPE OF BENEFITS; BENEFICIARY SAFE-
12 GUARDS.—

13 “(1) IN GENERAL.—Under a PACE program
14 agreement, a PACE provider shall—

15 “(A) provide to PACE program eligible in-
16 dividuals, regardless of source of payment and
17 directly or under contracts with other entities,
18 at a minimum—

19 “(i) all items and services covered
20 under this title (for individuals enrolled
21 under this section) and all items and serv-
22 ices covered under title XIX, but without
23 any limitation or condition as to amount,
24 duration, or scope and without application
25 of deductibles, copayments, coinsurance, or

1 other cost-sharing that would otherwise
2 apply under this title or such title, respec-
3 tively; and

4 “(ii) all additional items and services
5 specified in regulations, based upon those
6 required under the PACE protocol;

7 “(B) provide such enrollees access to nec-
8 essary covered items and services 24 hours per
9 day, every day of the year;

10 “(C) provide services to such enrollees
11 through a comprehensive, multidisciplinary
12 health and social services delivery system which
13 integrates acute and long-term care services
14 pursuant to regulations; and

15 “(D) specify the covered items and services
16 that will not be provided directly by the entity,
17 and to arrange for delivery of those items and
18 services through contracts meeting the require-
19 ments of regulations.

20 “(2) QUALITY ASSURANCE; PATIENT SAFE-
21 GUARDS.—The PACE program agreement shall re-
22 quire the PACE provider to have in effect at a mini-
23 mum—

1 “(A) a written plan of quality assurance
2 and improvement, and procedures implementing
3 such plan, in accordance with regulations; and

4 “(B) written safeguards of the rights of
5 enrolled participants (including a patient bill of
6 rights and procedures for grievances and ap-
7 peals) in accordance with regulations and with
8 other requirements of this title and Federal and
9 State law that are designed for the protection
10 of patients.

11 “(c) ELIGIBILITY DETERMINATIONS.—

12 “(1) IN GENERAL.—The determination of
13 whether an individual is a PACE program eligible
14 individual—

15 “(A) shall be made under and in accord-
16 ance with the PACE program agreement; and

17 “(B) who is entitled to medical assistance
18 under title XIX, shall be made (or who is not
19 so entitled, may be made) by the State admin-
20 istering agency.

21 “(2) CONDITION.—An individual is not a PACE
22 program eligible individual (with respect to payment
23 under this section) unless the individual’s health sta-
24 tus has been determined by the Secretary or the
25 State administering agency, in accordance with regu-

1 lations, to be comparable to the health status of in-
2 dividuals who have participated in the PACE dem-
3 onstration waiver programs. Such determination
4 shall be based upon information on health status
5 and related indicators (such as medical diagnoses
6 and measures of activities of daily living, instrumen-
7 tal activities of daily living, and cognitive impair-
8 ment) that are part of a uniform minimum data set
9 collected by PACE providers on potential eligible in-
10 dividuals.

11 “(3) ANNUAL ELIGIBILITY RECERTIFI-
12 CATIONS.—

13 “(A) IN GENERAL.—Subject to subpara-
14 graph (B), the determination described in sub-
15 section (a)(5)(B) for an individual shall be re-
16 evaluated at least annually.

17 “(B) EXCEPTION.—The requirement of
18 annual reevaluation under subparagraph (A)
19 may be waived during a period in accordance
20 with regulations in those cases where the State
21 administering agency determines that there is
22 no reasonable expectation of improvement or
23 significant change in an individual’s condition
24 during the period because of the advanced age,
25 severity of the advanced age, severity of chronic

1 condition, or degree of impairment of functional
2 capacity of the individual involved.

3 “(4) CONTINUATION OF ELIGIBILITY.—An indi-
4 vidual who is a PACE program eligible individual
5 may be deemed to continue to be such an individual
6 notwithstanding a determination that the individual
7 no longer meets the requirement of subsection
8 (a)(5)(B) if, in accordance with regulations, in the
9 absence of continued coverage under a PACE pro-
10 gram the individual reasonably would be expected to
11 meet such requirement within the succeeding 6-
12 month period.

13 “(5) ENROLLMENT; DISENROLLMENT.—The en-
14 rollment and disenrollment of PACE program eligi-
15 ble individuals in a PACE program shall be pursu-
16 ant to regulations and the PACE program agree-
17 ment and shall permit enrollees to voluntarily
18 disenroll without cause at any time. Such regula-
19 tions and agreement shall provide that the PACE
20 program may not disenroll a PACE program eligible
21 individual on the ground that the individual has en-
22 gaged in noncompliant behavior if such behavior is
23 related to a mental or physical condition of the indi-
24 vidual. For purposes of the preceding sentence, the
25 term ‘noncompliant behavior’ includes repeated non-

1 compliance with medical advice and repeated failure
2 to appear for appointments.

3 “(d) PAYMENTS TO PACE PROVIDERS ON A
4 CAPITATED BASIS.—

5 “(1) IN GENERAL.—In the case of a PACE pro-
6 vider with a PACE program agreement under this
7 section, except as provided in this subsection or by
8 regulations, the Secretary shall make prospective
9 monthly payments of a capitation amount for each
10 PACE program eligible individual enrolled under the
11 agreement under this section in the same manner
12 and from the same sources as payments are made
13 to an eligible organization under a risk-sharing con-
14 tract under section 1876. Such payments shall be
15 subject to adjustment in the manner described in
16 section 1876(a)(1)(E).

17 “(2) CAPITATION AMOUNT.—The capitation
18 amount to be applied under this subsection for a
19 provider for a contract year shall be an amount
20 specified in the PACE program agreement for the
21 year. Such amount shall be based upon payment
22 rates established under section 1876 for risk-sharing
23 contracts and shall be adjusted to take into account
24 the comparative frailty of PACE enrollees and such
25 other factors as the Secretary determines to be ap-

1 appropriate. Such amount under such an agreement
2 shall be computed in a manner so that the total pay-
3 ment level for all PACE program eligible individuals
4 enrolled under a program is less than the projected
5 payment under this title for a comparable population
6 not enrolled under a PACE program.

7 “(e) PACE PROGRAM AGREEMENT.—

8 “(1) REQUIREMENT.—

9 “(A) IN GENERAL.—The Secretary, in
10 close cooperation with the State administering
11 agency, shall establish procedures for entering
12 into, extending, and terminating PACE pro-
13 gram agreements for the operation of PACE
14 programs by entities that meet the require-
15 ments for a PACE provider under this section,
16 section 1932, and regulations.

17 “(B) NUMERICAL LIMITATION.—

18 “(i) IN GENERAL.—The Secretary
19 shall not permit the number of PACE pro-
20 viders with which agreements are in effect
21 under this section or under section 9412(b)
22 of the Omnibus Budget Reconciliation Act
23 of 1986 to exceed—

24 “(I) 40 as of the date of the en-
25 actment of this section; or

1 “(II) as of each succeeding anni-
 2 versary of such date, the numerical
 3 limitation under this subparagraph for
 4 the preceding year plus 20.

5 Subclause (II) shall apply without regard
 6 to the actual number of agreements in ef-
 7 fect as of a previous anniversary date.

8 “(ii) TREATMENT OF CERTAIN PRI-
 9 VATE, FOR-PROFIT PROVIDERS.—The nu-
 10 merical limitation in clause (i) shall not
 11 apply to a PACE provider that—

12 “(I) is operating under a dem-
 13 onstration project waiver under sub-
 14 section (h); or

15 “(II) was operating under such a
 16 waiver and subsequently qualifies for
 17 PACE provider status pursuant to
 18 subsection (a)(3)(B)(ii).

19 “(2) SERVICE AREA AND ELIGIBILITY.—

20 “(A) IN GENERAL.—A PACE program
 21 agreement for a PACE program—

22 “(i) shall designate the service area of
 23 the program;

24 “(ii) may provide additional require-
 25 ments for individuals to qualify as PACE

1 program eligible individuals with respect to
2 the program;

3 “(iii) shall be effective for a contract
4 year, but may be extended for additional
5 contract years in the absence of a notice by
6 a party to terminate and is subject to ter-
7 mination by the Secretary and the State
8 administering agency at any time for cause
9 (as provided under the agreement);

10 “(iv) shall require a PACE provider to
11 meet all applicable State and local laws
12 and requirements; and

13 “(v) shall have such additional terms
14 and conditions as the parties may agree to,
15 provided that such terms and conditions
16 are consistent with this section and regula-
17 tions.

18 “(B) SERVICE AREA OVERLAP.—In des-
19 ignating a service area under a PACE program
20 agreement under subparagraph (A)(i), the Sec-
21 retary (in consultation with the State admin-
22 istering agency) may exclude from designation
23 an area that is already covered under another
24 PACE program agreement, in order to avoid
25 unnecessary duplication of services and avoid

1 impairing the financial and service viability of
2 an existing program.

3 “(3) DATA COLLECTION; DEVELOPMENT OF
4 OUTCOME MEASURES.—

5 “(A) DATA COLLECTION.—

6 “(i) IN GENERAL.—Under a PACE
7 program agreement, the PACE provider
8 shall—

9 “(I) collect data;

10 “(II) maintain, and afford the
11 Secretary and the State administering
12 agency access to, the records relating
13 to the program, including pertinent fi-
14 nancial, medical, and personnel
15 records; and

16 “(III) make to the Secretary and
17 the State administering agency re-
18 ports that the Secretary finds (in con-
19 sultation with State administering
20 agencies) necessary to monitor the op-
21 eration, cost, and effectiveness of the
22 PACE program under this Act.

23 “(ii) REQUIREMENTS DURING TRIAL
24 PERIOD.—During the first 3 years of oper-
25 ation of a PACE program (either under

1 this section or under a PACE demonstra-
2 tion waiver program), the PACE provider
3 shall provide such additional data as the
4 Secretary specifies in regulations in order
5 to perform the oversight required under
6 paragraph (4)(A).

7 “(B) DEVELOPMENT OF OUTCOME MEAS-
8 URES.—Under a PACE program agreement,
9 the PACE provider, the Secretary, and the
10 State administering agency shall jointly cooper-
11 ate in the development and implementation of
12 health status and quality of life outcome meas-
13 ures with respect to PACE program eligible in-
14 dividuals.

15 “(4) OVERSIGHT.—

16 “(A) ANNUAL, CLOSE OVERSIGHT DURING
17 TRIAL PERIOD.—During the trial period (as de-
18 fined in subsection (a)(9)) with respect to a
19 PACE program operated by a PACE provider,
20 the Secretary (in cooperation with the State ad-
21 ministering agency) shall conduct a comprehen-
22 sive annual review of the operation of the
23 PACE program by the provider in order to as-
24 sure compliance with the requirements of this

1 section and regulations. Such a review shall in-
2 clude—

3 “(i) an on-site visit to the program
4 site;

5 “(ii) comprehensive assessment of a
6 provider’s fiscal soundness;

7 “(iii) comprehensive assessment of the
8 provider’s capacity to provide all PACE
9 services to all enrolled participants;

10 “(iv) detailed analysis of the entity’s
11 substantial compliance with all significant
12 requirements of this section and regula-
13 tions; and

14 “(v) any other elements the Secretary
15 or State agency considers necessary or ap-
16 propriate.

17 “(B) CONTINUING OVERSIGHT.—After the
18 trial period, the Secretary (in cooperation with
19 the State administering agency) shall continue
20 to conduct such review of the operation of
21 PACE providers and PACE programs as may
22 be appropriate, taking into account the per-
23 formance level of a provider and compliance of
24 a provider with all significant requirements of
25 this section and regulations.

1 “(C) DISCLOSURE.—The results of reviews
2 under this paragraph shall be reported prompt-
3 ly to the PACE provider, along with any rec-
4 ommendations for changes to the provider’s
5 program, and shall be made available to the
6 public upon request.

7 “(5) TERMINATION OF PACE PROVIDER AGREE-
8 MENTS.—

9 “(A) IN GENERAL.—Under regulations—

10 “(i) the Secretary or a State admin-
11 istering agency may terminate a PACE
12 program agreement for cause; and

13 “(ii) a PACE provider may terminate
14 an agreement after appropriate notice to
15 the Secretary, the State agency, and en-
16 rollees.

17 “(B) CAUSES FOR TERMINATION.—In ac-
18 cordance with regulations establishing proce-
19 dures for termination of PACE program agree-
20 ments, the Secretary or a State administering
21 agency may terminate a PACE program agree-
22 ment with a PACE provider for, among other
23 reasons, the fact that—

24 “(i) the Secretary or State admin-
25 istering agency determines that—

1 “(I) there are significant defi-
2 ciencies in the quality of care provided
3 to enrolled participants; or

4 “(II) the provider has failed to
5 comply substantially with conditions
6 for a program or provider under this
7 section or section 1932; and

8 “(ii) the entity has failed to develop
9 and successfully initiate, within 30 days of
10 the receipt of written notice of such a de-
11 termination, a plan to correct the defi-
12 ciencies, or has failed to continue imple-
13 mentation of such a plan.

14 “(C) TERMINATION AND TRANSITION PRO-
15 CEDURES.—An entity whose PACE provider
16 agreement is terminated under this paragraph
17 shall implement the transition procedures re-
18 quired under subsection (a)(2)(C).

19 “(6) SECRETARY’S OVERSIGHT; ENFORCEMENT
20 AUTHORITY.—

21 “(A) IN GENERAL.—Under regulations, if
22 the Secretary determines (after consultation
23 with the State administering agency) that a
24 PACE provider is failing substantially to com-
25 ply with the requirements of this section and

1 regulations, the Secretary (and the State ad-
2 ministering agency) may take any or all of the
3 following actions:

4 “(i) Condition the continuation of the
5 PACE program agreement upon timely
6 execution of a corrective action plan.

7 “(ii) Withhold some or all further
8 payments under the PACE program agree-
9 ment under this section or section 1932
10 with respect to PACE program services
11 furnished by such provider until the defi-
12 ciencies have been corrected.

13 “(iii) Terminate such agreement.

14 “(B) APPLICATION OF INTERMEDIATE
15 SANCTIONS.—Under regulations, the Secretary
16 may provide for the application against a
17 PACE provider of remedies described in section
18 1876(i)(6)(B) or 1903(m)(5)(B) in the case of
19 violations by the provider of the type described
20 in section 1876(i)(6)(A) or 1903(m)(5)(A), re-
21 spectively (in relation to agreements, enrollees,
22 and requirements under this section or section
23 1932, respectively).

24 “(7) PROCEDURES FOR TERMINATION OR IMPO-
25 SITION OF SANCTIONS.—Under regulations, the pro-

1 visions of section 1876(i)(9) shall apply to termi-
2 nation and sanctions respecting a PACE program
3 agreement and PACE provider under this subsection
4 in the same manner as they apply to a termination
5 and sanctions with respect to a contract and an eli-
6 gible organization under section 1876.

7 “(8) TIMELY CONSIDERATION OF APPLICATIONS
8 FOR PACE PROGRAM PROVIDER STATUS.—In consid-
9 ering an application for PACE provider program
10 status, the application shall be deemed approved un-
11 less the Secretary, within 90 days after the date of
12 the submission of the application to the Secretary,
13 either denies such request in writing or informs the
14 applicant in writing with respect to any additional
15 information that is needed in order to make a final
16 determination with respect to the application. After
17 the date the Secretary receives such additional infor-
18 mation, the application shall be deemed approved
19 unless the Secretary, within 90 days of such date,
20 denies such request.

21 “(f) REGULATIONS.—

22 “(1) IN GENERAL.—The Secretary shall issue
23 interim final or final regulations to carry out this
24 section and section 1932.

25 “(2) USE OF PACE PROTOCOL.—

1 “(A) IN GENERAL.—In issuing such regu-
2 lations, the Secretary shall, to the extent con-
3 sistent with the provisions of this section, incor-
4 porate the requirements applied to PACE dem-
5 onstration waiver programs under the PACE
6 protocol.

7 “(B) FLEXIBILITY.—In order to provide
8 for reasonable flexibility in adapting the PACE
9 service delivery model to the needs of particular
10 organizations (such as those in rural areas or
11 those that may determine it appropriate to use
12 nonstaff physicians according to State licensing
13 law requirements) under this section and sec-
14 tion 1932, the Secretary (in close consultation
15 with State administering agencies) may modify
16 or waive provisions of the PACE protocol so
17 long as any such modification or waiver is not
18 inconsistent with and would not impair the es-
19 sential elements, objectives, and requirements of
20 this section, but may not modify or waive any
21 of the following provisions:

22 “(i) The focus on frail elderly qualify-
23 ing individuals who require the level of
24 care provided in a nursing facility.

1 “(ii) The delivery of comprehensive,
2 integrated acute and long-term care serv-
3 ices.

4 “(iii) The interdisciplinary team ap-
5 proach to care management and service de-
6 livery.

7 “(iv) Capitated, integrated financing
8 that allows the provider to pool payments
9 received from public and private programs
10 and individuals.

11 “(v) The assumption by the provider
12 of full financial risk.

13 “(3) APPLICATION OF CERTAIN ADDITIONAL
14 BENEFICIARY AND PROGRAM PROTECTIONS.—

15 “(A) IN GENERAL.—In issuing such regu-
16 lations and subject to subparagraph (B), the
17 Secretary may apply with respect to PACE pro-
18 grams, providers, and agreements such require-
19 ments of sections 1876 and 1903(m) relating to
20 protection of beneficiaries and program integ-
21 rity as would apply to eligible organizations
22 under risk-sharing contracts under section 1876
23 and to health maintenance organizations under
24 prepaid capitation agreements under section
25 1903(m).

1 “(B) CONSIDERATIONS.—In issuing such
2 regulations, the Secretary shall—

3 “(i) take into account the differences
4 between populations served and benefits
5 provided under this section and under sec-
6 tions 1876 and 1903(m);

7 “(ii) not include any requirement that
8 conflicts with carrying out PACE pro-
9 grams under this section; and

10 “(iii) not include any requirement re-
11 stricting the proportion of enrollees who
12 are eligible for benefits under this title or
13 title XIX.

14 “(g) WAIVERS OF REQUIREMENTS.—With respect to
15 carrying out a PACE program under this section, the fol-
16 lowing requirements of this title (and regulations relating
17 to such requirements) are waived and shall not apply:

18 “(1) Section 1812, insofar as it limits coverage
19 of institutional services.

20 “(2) Sections 1813, 1814, 1833, and 1886, in-
21 sofar as such sections relate to rules for payment for
22 benefits.

23 “(3) Sections 1814(a)(2)(B), 1814(a)(2)(C),
24 and 1835(a)(2)(A), insofar as they limit coverage of
25 extended care services or home health services.

1 “(4) Section 1861(i), insofar as it imposes a 3-
2 day prior hospitalization requirement for coverage of
3 extended care services.

4 “(5) Paragraphs (1) and (9) of section 1862(a),
5 insofar as they may prevent payment for PACE pro-
6 gram services to individuals enrolled under PACE
7 programs.

8 “(h) DEMONSTRATION PROJECT FOR FOR-PROFIT
9 ENTITIES.—

10 “(1) IN GENERAL.—In order to demonstrate
11 the operation of a PACE program by a private, for-
12 profit entity, the Secretary (in close consultation
13 with State administering agencies) shall grant waiv-
14 ers from the requirement under subsection (a)(3)
15 that a PACE provider may not be a for-profit, pri-
16 vate entity.

17 “(2) SIMILAR TERMS AND CONDITIONS.—

18 “(A) IN GENERAL.—Except as provided
19 under subparagraph (B), and paragraph (1),
20 the terms and conditions for operation of a
21 PACE program by a provider under this sub-
22 section shall be the same as those for PACE
23 providers that are nonprofit, private organiza-
24 tions.

1 “(B) NUMERICAL LIMITATION.—The num-
2 ber of programs for which waivers are granted
3 under this subsection shall not exceed 10. Pro-
4 grams with waivers granted under this sub-
5 section shall not be counted against the numeri-
6 cal limitation specified in subsection (e)(1)(B).

7 “(i) MISCELLANEOUS PROVISIONS.—Nothing in this
8 section or section 1932 shall be construed as preventing
9 a PACE provider from entering into contracts with other
10 governmental or nongovernmental payers for the care of
11 PACE program eligible individuals who are not eligible for
12 benefits under part A, or enrolled under part B, or eligible
13 for medical assistance under title XIX.”.

14 **SEC. 5012. EFFECTIVE DATE; TRANSITION.**

15 (a) TIMELY ISSUANCE OF REGULATIONS; EFFECTIVE
16 DATE.—The Secretary of Health and Human Services
17 shall promulgate regulations to carry out this subtitle in
18 a timely manner. Such regulations shall be designed so
19 that entities may establish and operate PACE programs
20 under sections 1894 and 1932 of the Social Security Act
21 (as added by sections 5011 and 5751 of this Act) for peri-
22 ods beginning not later than 1 year after the date of the
23 enactment of this Act.

24 (b) EXPANSION AND TRANSITION FOR PACE DEM-
25 ONSTRATION PROJECT WAIVERS.—

1 (1) EXPANSION IN CURRENT NUMBER OF DEM-
2 ONSTRATION PROJECTS.—Section 9412(b) of the
3 Omnibus Budget Reconciliation Act of 1986, as
4 amended by section 4118(g) of the Omnibus Budget
5 Reconciliation Act of 1987, is amended—

6 (A) in paragraph (1), by inserting before
7 the period at the end the following: “, except
8 that the Secretary shall grant waivers of such
9 requirements up to the applicable numerical
10 limitation specified in section 1894(e)(1)(B) of
11 the Social Security Act”; and

12 (B) in paragraph (2)—

13 (i) in subparagraph (A), by striking “,
14 including permitting the organization to
15 assume progressively (over the initial 3-
16 year period of the waiver) the full financial
17 risk”; and

18 (ii) in subparagraph (C), by adding at
19 the end the following: “In granting further
20 extensions, an organization shall not be re-
21 quired to provide for reporting of informa-
22 tion which is only required because of the
23 demonstration nature of the project.”.

24 (2) ELIMINATION OF REPLICATION REQUIRE-
25 MENT.—Subparagraph (B) of paragraph (2) of such

1 section shall not apply to waivers granted under
2 such section after the date of the enactment of this
3 Act.

4 (3) TIMELY CONSIDERATION OF APPLICA-
5 TIONS.—In considering an application for waivers
6 under such section before the effective date of re-
7 peals made under subsection (d), subject to the nu-
8 merical limitation under the amendment made by
9 paragraph (1), the application shall be deemed ap-
10 proved unless the Secretary of Health and Human
11 Services, within 90 days after the date of its submis-
12 sion to the Secretary, either denies such request in
13 writing or informs the applicant in writing with re-
14 spect to any additional information which is needed
15 in order to make a final determination with respect
16 to the application. After the date the Secretary re-
17 ceives such additional information, the application
18 shall be deemed approved unless the Secretary, with-
19 in 90 days of such date, denies such request.

20 (c) PRIORITY AND SPECIAL CONSIDERATION IN AP-
21 PPLICATION.—During the 3-year period beginning on the
22 date of enactment of this Act:

23 (1) PROVIDER STATUS.—The Secretary of
24 Health and Human Services shall give priority, in
25 processing applications of entities to qualify as

1 PACE programs under section 1894 or 1932 of the
2 Social Security Act—

3 (A) first, to entities that are operating a
4 PACE demonstration waiver program (as de-
5 fined in section 1894(a)(7) of such Act); and

6 (B) then entities that have applied to oper-
7 ate such a program as of May 1, 1997.

8 (2) NEW WAIVERS.—The Secretary shall give
9 priority, in the awarding of additional waivers under
10 section 9412(b) of the Omnibus Budget Reconcili-
11 ation Act of 1986—

12 (A) to any entities that have applied for
13 such waivers under such section as of May 1,
14 1997; and

15 (B) to any entity that, as of May 1, 1997,
16 has formally contracted with a State to provide
17 services for which payment is made on a
18 capitated basis with an understanding that the
19 entity was seeking to become a PACE provider.

20 (3) SPECIAL CONSIDERATION.—The Secretary
21 shall give special consideration, in the processing of
22 applications described in paragraph (1) and the
23 awarding of waivers described in paragraph (2), to
24 an entity which as of May 1, 1997 through formal
25 activities (such as entering into contracts for fea-

1 sibility studies) has indicated a specific intent to be-
2 come a PACE provider.

3 (d) REPEAL OF CURRENT PACE DEMONSTRATION
4 PROJECT WAIVER AUTHORITY.—

5 (1) IN GENERAL.—Subject to paragraph (2),
6 the following provisions of law are repealed:

7 (A) Section 603(c) of the Social Security
8 Amendments of 1983 (Public Law 98–21).

9 (B) Section 9220 of the Consolidated Om-
10 nibus Budget Reconciliation Act of 1985 (Pub-
11 lic Law 99–272).

12 (C) Section 9412(b) of the Omnibus Budg-
13 et Reconciliation Act of 1986 (Public Law 99–
14 509).

15 (2) DELAY IN APPLICATION.—

16 (A) IN GENERAL.—Subject to subpara-
17 graph (B), the repeals made by paragraph (1)
18 shall not apply to waivers granted before the
19 initial effective date of regulations described in
20 subsection (a).

21 (B) APPLICATION TO APPROVED WAIV-
22 ERS.—Such repeals shall apply to waivers
23 granted before such date only after allowing
24 such organizations a transition period (of up to
25 24 months) in order to permit sufficient time

1 for an orderly transition from demonstration
2 project authority to general authority provided
3 under the amendments made by this subtitle.

4 **SEC. 5013. STUDY AND REPORTS.**

5 (a) STUDY.—

6 (1) IN GENERAL.—The Secretary of Health and
7 Human Services (in close consultation with State
8 administering agencies, as defined in section
9 1894(a)(8) of the Social Security Act) shall conduct
10 a study of the quality and cost of providing PACE
11 program services under the medicare and medicaid
12 programs under the amendments made by this sub-
13 title.

14 (2) STUDY OF PRIVATE, FOR-PROFIT PROVID-
15 ERS.—Such study shall specifically compare the
16 costs, quality, and access to services by entities that
17 are private, for-profit entities operating under dem-
18 onstration projects waivers granted under section
19 1894(h) of the Social Security Act with the costs,
20 quality, and access to services of other PACE pro-
21 viders.

22 (b) REPORT.—

23 (1) IN GENERAL.—Not later than 4 years after
24 the date of enactment of this Act, the Secretary
25 shall provide for a report to Congress on the impact

1 of such amendments on quality and cost of services.
2 The Secretary shall include in such report such rec-
3 ommendations for changes in the operation of such
4 amendments as the Secretary deems appropriate.

5 (2) TREATMENT OF PRIVATE, FOR-PROFIT PRO-
6 VIDERS.—The report shall include specific findings
7 on whether any of the following findings is true:

8 (A) The number of covered lives enrolled
9 with entities operating under demonstration
10 project waivers under section 1894(h) of the
11 Social Security Act is fewer than 800 (or such
12 lesser number as the Secretary may find statis-
13 tically sufficient to make determinations re-
14 specting findings described in the succeeding
15 subparagraphs).

16 (B) The population enrolled with such en-
17 tities is less frail than the population enrolled
18 with other PACE providers.

19 (C) Access to or quality of care for individ-
20 uals enrolled with such entities is lower than
21 such access or quality for individuals enrolled
22 with other PACE providers.

23 (D) The application of such section has re-
24 sulted in an increase in expenditures under the
25 medicare or medicaid programs above the ex-

1 penditures that would have been made if such
2 section did not apply.

3 (c) INFORMATION INCLUDED IN ANNUAL REC-
4 OMMENDATIONS.—The Physician Payment Review Com-
5 mission shall include in its annual recommendations under
6 section 1845(b) of the Social Security Act (42 U.S.C.
7 1395w–1), and the Prospective Payment Review Commis-
8 sion shall include in its annual recommendations reported
9 under section 1886(e)(3)(A) of such Act (42 U.S.C.
10 1395ww(e)(3)(A)), recommendations on the methodology
11 and level of payments made to PACE providers under sec-
12 tion 1894(d) of such Act and on the treatment of private,
13 for-profit entities as PACE providers. References in the
14 preceding sentence to the Physician Payment Review
15 Commission and the Prospective Payment Review Com-
16 mission shall be deemed to be references to the Medicare
17 Payment Advisory Commission (MedPAC) established
18 under section 5022(a) after the termination of the Physi-
19 cian Payment Review Commission and the Prospective
20 Payment Review Commission provided for in section
21 5022(c)(2).

1 **Subchapter B—Social Health Maintenance**
2 **Organizations**

3 **SEC. 5015. SOCIAL HEALTH MAINTENANCE ORGANIZATIONS**
4 **(SHMOS).**

5 (a) EXTENSION OF DEMONSTRATION PROJECT AU-
6 THORITIES.—Section 4018(b) of the Omnibus Budget
7 Reconciliation Act of 1987 is amended—

8 (1) in paragraph (1), by striking “1997” and
9 inserting “2000”, and

10 (2) in paragraph (4), by striking “1998” and
11 inserting “2001”.

12 (b) EXPANSION OF CAP.—Section 13567(c) of the
13 Omnibus Budget Reconciliation Act of 1993 is amended
14 by striking “12,000” and inserting “36,000”.

15 (c) REPORT ON INTEGRATION AND TRANSITION.—

16 (1) IN GENERAL.—The Secretary of Health and
17 Human Services shall submit to Congress, by not
18 later than January 1, 1999, a plan for the integra-
19 tion of health plans offered by social health mainte-
20 nance organizations (including SHMO I and SHMO
21 II sites developed under section 2355 of the Deficit
22 Reduction Act of 1984 and under the amendment
23 made by section 4207(b)(3)(B)(i) of OBRA–1990,
24 respectively) and similar plans as an option under

1 the Medicare Choice program under part C of title
2 XVIII of the Social Security Act.

3 (2) PROVISION FOR TRANSITION.—Such plan
4 shall include a transition for social health mainte-
5 nance organizations operating under demonstration
6 project authority under such section.

7 (3) PAYMENT POLICY.—The report shall also
8 include recommendations on appropriate payment
9 levels for plans offered by such organizations, includ-
10 ing an analysis of the application of risk adjustment
11 factors appropriate to the population served by such
12 organizations.

13 **Subchapter C—Other Programs**

14 **SEC. 5018. EXTENSION OF CERTAIN MEDICARE COMMUNITY** 15 **NURSING ORGANIZATION DEMONSTRATION** 16 **PROJECTS.**

17 Notwithstanding any other provision of law, dem-
18 onstration projects conducted under section 4079 of the
19 Omnibus Budget Reconciliation Act of 1987 may be con-
20 ducted for an additional period of 2 years, and the dead-
21 line for any report required relating to the results of such
22 projects shall be not later than 6 months before the end
23 of such additional period.

CHAPTER 3—COMMISSIONS**SEC. 5021. NATIONAL BIPARTISAN COMMISSION ON THE
FUTURE OF MEDICARE.**

(a) ESTABLISHMENT.—There is established a commission to be known as the National Bipartisan Commission on the Future of Medicare (in this section referred to as the “Commission”).

(b) FINDINGS.—Congress finds that—

(1) the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) provides essential health care coverage to this Nation’s senior citizens and to individuals with disabilities;

(2) the Federal Hospital Insurance Trust Fund established under that Act has been spending more than it receives since 1995, and will be bankrupt in the year 2001;

(3) the Federal Hospital Insurance Trust Fund faces even greater solvency problems in the long run with the aging of the baby boom generation and the continuing decline in the number of workers paying into the medicare program for each medicare beneficiary;

(4) the trustees of the trust funds of the medicare program have reported that growth in spending

1 within the Federal Supplementary Medical Insur-
2 ance Trust Fund established under that Act is
3 unsustainable; and

4 (5) expeditious action is needed in order to re-
5 store the financial integrity of the medicare program
6 and to maintain this Nation's commitment to senior
7 citizens and to individuals with disabilities.

8 (c) DUTIES OF THE COMMISSION.—The Commission
9 shall—

10 (1) review and analyze the long-term financial
11 condition of the medicare program under title XVIII
12 of the Social Security Act (42 U.S.C. 1395 et seq.);

13 (2) identify problems that threaten the financial
14 integrity of the Federal Hospital Insurance Trust
15 Fund and the Federal Supplementary Medical In-
16 surance Trust Fund established under that title (42
17 U.S.C. 1395i, 1395t);

18 (3) analyze potential solutions to the problems
19 identified under paragraph (2) that will ensure both
20 the financial integrity of the medicare program and
21 the provision of appropriate benefits under such pro-
22 gram, including the extent to which current medi-
23 care update indexes do not accurately reflect infla-
24 tion;

1 (4) make recommendations to restore the sol-
2 vency of the Federal Hospital Insurance Trust Fund
3 and the financial integrity of the Federal Supple-
4 mentary Medical Insurance Trust Fund through the
5 year 2030, when the last of the baby boomers
6 reaches age 65;

7 (5) make recommendations for establishing the
8 appropriate financial structure of the medicare pro-
9 gram as a whole;

10 (6) make recommendations for establishing the
11 appropriate balance of benefits covered and bene-
12 ficiary contributions to the medicare program;

13 (7) make recommendations for the time periods
14 during which the recommendations described in
15 paragraphs (4), (5), and (6) should be implemented;

16 (8) make recommendations regarding the fi-
17 nancing of graduate medical education (GME), in-
18 cluding consideration of alternative broad-based
19 sources of funding for such education and funding
20 for institutions not currently eligible for such GME
21 support under the medicare program that conduct
22 approved graduate medical residency programs, such
23 as children's hospitals;

24 (9) make recommendations on the feasibility of
25 allowing individuals between the age of 62 and the

1 medicare eligibility age to buy into the medicare pro-
2 gram;

3 (10) make recommendations on the impact of
4 chronic disease and disability trends on future costs
5 and quality of services under the current benefit, fi-
6 nancing, and delivery system structure of the medi-
7 care program; and

8 (11) review and analyze such other matters as
9 the Commission deems appropriate.

10 (d) MEMBERSHIP.—

11 (1) NUMBER AND APPOINTMENT.—The Com-
12 mission shall be composed of 15 members, of
13 whom—

14 (A) three shall be appointed by the Presi-
15 dent;

16 (B) six shall be appointed by the Majority
17 Leader of the Senate, in consultation with the
18 Minority Leader of the Senate, of whom not
19 more than 4 shall be of the same political party;
20 and

21 (C) six shall be appointed by the Speaker
22 of the House of Representatives, in consultation
23 with the Minority Leader of the House of Rep-
24 resentatives, of whom not more than 4 shall be
25 of the same political party.

1 (2) COMPTROLLER GENERAL.—The Comptrol-
2 ler General of the United States shall advise the
3 Commission on the methodology to be used in identi-
4 fying problems and analyzing potential solutions in
5 accordance with the duties of the Commission de-
6 scribed in subsection (c).

7 (3) TERMS OF APPOINTMENT.—The members
8 shall serve on the Commission for the life of the
9 Commission.

10 (4) MEETINGS.—The Commission shall locate
11 its headquarters in the District of Columbia, and
12 shall meet at the call of the Chairperson.

13 (5) QUORUM.—Ten members of the Commis-
14 sion shall constitute a quorum, but a lesser number
15 may hold hearings.

16 (6) CHAIRPERSON.—The Speaker of the House
17 of Representatives, in consultation with the Majority
18 Leader of the Senate, shall designate 1 of the mem-
19 bers appointed under paragraph (1) as Chairperson
20 of the Commission.

21 (7) VACANCIES.—A vacancy on the Commission
22 shall be filled in the same manner in which the origi-
23 nal appointment was made not later than 30 days
24 after the Commission is given notice of the vacancy.

1 (8) COMPENSATION.—Members of the Commis-
2 sion shall receive no additional pay, allowances, or
3 benefits by reason of their service on the Commis-
4 sion.

5 (9) EXPENSES.—Each member of the Commis-
6 sion shall receive travel expenses and per diem in
7 lieu of subsistence in accordance with sections 5702
8 and 5703 of title 5, United States Code.

9 (e) STAFF AND SUPPORT SERVICES.—

10 (1) EXECUTIVE DIRECTOR.—

11 (A) APPOINTMENT.—The Chairperson
12 shall appoint an executive director of the Com-
13 mission.

14 (B) COMPENSATION.—The executive direc-
15 tor shall be paid the rate of basic pay for level
16 V of the Executive Schedule.

17 (2) STAFF.—With the approval of the Commis-
18 sion, the executive director may appoint such per-
19 sonnel as the executive director considers appro-
20 priate.

21 (3) APPLICABILITY OF CIVIL SERVICE LAWS.—
22 The staff of the Commission shall be appointed with-
23 out regard to the provisions of title 5, United States
24 Code, governing appointments in the competitive
25 service, and shall be paid without regard to the pro-

1 visions of chapter 51 and subchapter III of chapter
2 53 of such title (relating to classification and Gen-
3 eral Schedule pay rates).

4 (4) EXPERTS AND CONSULTANTS.—With the
5 approval of the Commission, the executive director
6 may procure temporary and intermittent services
7 under section 3109(b) of title 5, United States Code.

8 (5) STAFF OF FEDERAL AGENCIES.—Upon the
9 request of the Commission, the head of any Federal
10 agency may detail any of the personnel of such agen-
11 cy to the Commission to assist in carrying out the
12 duties of the Commission.

13 (6) OTHER RESOURCES.—The Commission
14 shall have reasonable access to materials, resources,
15 statistical data, and other information from the Li-
16 brary of Congress and agencies and elected rep-
17 resentatives of the executive and legislative branches
18 of the Federal Government. The Chairperson of the
19 Commission shall make requests for such access in
20 writing when necessary.

21 (7) PHYSICAL FACILITIES.—The Administrator
22 of the General Services Administration shall locate
23 suitable office space for the operation of the Com-
24 mission. The facilities shall serve as the head-
25 quarters of the Commission and shall include all

1 necessary equipment and incidentals required for the
2 proper functioning of the Commission.

3 (f) POWERS OF COMMISSION.—

4 (1) HEARINGS.—The Commission may conduct
5 public hearings or forums at the discretion of the
6 Commission, at any time and place the Commission
7 is able to secure facilities and witnesses, for the pur-
8 pose of carrying out the duties of the Commission.

9 (2) GIFTS.—The Commission may accept, use,
10 and dispose of gifts or donations of services or prop-
11 erty.

12 (3) MAILS.—The Commission may use the
13 United States mails in the same manner and under
14 the same conditions as other Federal agencies.

15 (g) REPORT.—Not later than 1 year after the date
16 of the enactment of this Act, the Commission shall submit
17 a report to the President and Congress which shall contain
18 a detailed statement of the recommendations, findings,
19 and conclusions of the Commission.

20 (h) TERMINATION.—The Commission shall terminate
21 on the date which is 30 days after the date the Commis-
22 sion submits its report to the President and to Congress
23 under subsection (g).

24 (i) FUNDING.—There is authorized to be appro-
25 priated to the Commission such sums as are necessary to

1 carry out the purposes of this section. Sums appropriated
2 under this subsection shall be paid equally from the Fed-
3 eral Hospital Insurance Trust Fund and from the Federal
4 Supplementary Medical Insurance Trust Fund under title
5 XVIII of the Social Security Act (42 U.S.C. 1395i,
6 1395t).

7 **SEC. 5022. MEDICARE PAYMENT ADVISORY COMMISSION.**

8 (a) IN GENERAL.—Title XVIII is amended by insert-
9 ing after section 1804 the following new section:

10 “MEDICARE PAYMENT ADVISORY COMMISSION

11 “SEC. 1805. (a) ESTABLISHMENT.—There is hereby
12 established the Medicare Payment Advisory Commission
13 (in this section referred to as the ‘Commission’).

14 “(b) DUTIES.—

15 “(1) REVIEW OF PAYMENT POLICIES AND AN-
16 NUAL REPORTS.—The Commission shall—

17 “(A) review payment policies under this
18 title, including the topics described in para-
19 graph (2);

20 “(B) make recommendations to Congress
21 concerning such payment policies;

22 “(C) by not later than March 1 of each
23 year (beginning with 1998), submit a report to
24 Congress containing the results of such reviews
25 and its recommendations concerning such poli-
26 cies; and

1 “(D) by not later than June 1 of each year
2 (beginning with 1998), submit a report to Con-
3 gress containing an examination of issues af-
4 fecting the medicare program, including the im-
5 plications of changes in health care delivery in
6 the United States and in the market for health
7 care services on the medicare program.

8 “(2) SPECIFIC TOPICS TO BE REVIEWED.—

9 “(A) MEDICARE CHOICE PROGRAM.—Spe-
10 cifically, the Commission shall review, with re-
11 spect to the Medicare Choice program under
12 part C, the following:

13 “(i) The methodology for making pay-
14 ment to plans under such program, includ-
15 ing the making of differential payments
16 and the distribution of differential updates
17 among different payment areas.

18 “(ii) The mechanisms used to adjust
19 payments for risk and the need to adjust
20 such mechanisms to take into account
21 health status of beneficiaries.

22 “(iii) The implications of risk selec-
23 tion both among Medicare Choice organiza-
24 tions and between the Medicare Choice op-

1 tion and the traditional medicare fee-for-
2 service option.

3 “(iv) The development and implemen-
4 tation of mechanisms to assure the quality
5 of care for those enrolled with Medicare
6 Choice organizations.

7 “(v) The impact of the Medicare
8 Choice program on access to care for medi-
9 care beneficiaries.

10 “(vi) Other major issues in implemen-
11 tation and further development of the Med-
12 icare Choice program.

13 “(B) TRADITIONAL MEDICARE FEE-FOR-
14 SERVICE SYSTEM.—Specifically, the Commis-
15 sion shall review payment policies under parts
16 A and B, including—

17 “(i) the factors affecting expenditures
18 for services in different sectors, including
19 the process for updating hospital, skilled
20 nursing facility, physician, and other fees,

21 “(ii) payment methodologies, and

22 “(iii) their relationship to access and
23 quality of care for medicare beneficiaries.

24 “(C) INTERACTION OF MEDICARE PAY-
25 MENT POLICIES WITH HEALTH CARE DELIVERY

1 GENERALLY.—Specifically, the Commission
2 shall review the effect of payment policies under
3 this title on the delivery of health care services
4 other than under this title and assess the impli-
5 cations of changes in health care delivery in the
6 United States and in the general market for
7 health care services on the medicare program.

8 “(3) COMMENTS ON CERTAIN SECRETARIAL RE-
9 PORTS.—If the Secretary submits to Congress (or a
10 committee of Congress) a report that is required by
11 law and that relates to payment policies under this
12 title, the Secretary shall transmit a copy of the re-
13 port to the Commission. The Commission shall re-
14 view the report and, not later than 6 months after
15 the date of submittal of the Secretary’s report to
16 Congress, shall submit to the appropriate commit-
17 tees of Congress written comments on such report.
18 Such comments may include such recommendations
19 as the Commission deems appropriate.

20 “(4) AGENDA AND ADDITIONAL REVIEWS.—The
21 Commission shall consult periodically with the chair-
22 men and ranking minority members of the appro-
23 priate committees of Congress regarding the Com-
24 mission’s agenda and progress towards achieving the
25 agenda. The Commission may conduct additional re-

1 views, and submit additional reports to the appro-
2 priate committees of Congress, from time to time on
3 such topics relating to the program under this title
4 as may be requested by such chairmen and members
5 and as the Commission deems appropriate.

6 “(5) AVAILABILITY OF REPORTS.—The Com-
7 mission shall transmit to the Secretary a copy of
8 each report submitted under this subsection and
9 shall make such reports available to the public.

10 “(6) APPROPRIATE COMMITTEES OF CON-
11 GRESS.—For purposes of this section, the term ‘ap-
12 propriate committees of Congress’ means the Com-
13 mittees on Ways and Means and Commerce of the
14 House of Representatives and the Committee on Fi-
15 nance of the Senate.

16 “(c) MEMBERSHIP.—

17 “(1) NUMBER AND APPOINTMENT.—The Com-
18 mission shall be composed of 15 members appointed
19 by the Comptroller General.

20 “(2) QUALIFICATIONS.—

21 “(A) IN GENERAL.—The membership of
22 the Commission shall include individuals with
23 national recognition for their expertise in health
24 finance and economics, actuarial science, health
25 facility management, health plans and inte-

1 grated delivery systems, reimbursement of
2 health facilities, allopathic and osteopathic phy-
3 sicians, and other providers of health services,
4 and other related fields, who provide a mix of
5 different professionals, broad geographic rep-
6 resentation, and a balance between urban and
7 rural representatives.

8 “(B) INCLUSION.—The membership of the
9 Commission shall include (but not be limited to)
10 physicians and other health professionals, em-
11 ployers, third-party payers, individuals skilled
12 in the conduct and interpretation of biomedical,
13 health services, and health economics research
14 and expertise in outcomes and effectiveness re-
15 search and technology assessment. Such mem-
16 bership shall also include representatives of con-
17 sumers and the elderly.

18 “(C) MAJORITY NONPROVIDERS.—Individ-
19 uals who are directly involved in the provision,
20 or management of the delivery, of items and
21 services covered under this title shall not con-
22 stitute a majority of the membership of the
23 Commission.

24 “(D) ETHICAL DISCLOSURE.—The Comp-
25 troller General shall establish a system for pub-

1 lic disclosure by members of the Commission of
2 financial and other potential conflicts of interest
3 relating to such members.

4 “(3) TERMS.—

5 “(A) IN GENERAL.—The terms of mem-
6 bers of the Commission shall be for 3 years ex-
7 cept that the Comptroller General shall des-
8 ignate staggered terms for the members first
9 appointed.

10 “(B) VACANCIES.—Any member appointed
11 to fill a vacancy occurring before the expiration
12 of the term for which the member’s predecessor
13 was appointed shall be appointed only for the
14 remainder of that term. A member may serve
15 after the expiration of that member’s term until
16 a successor has taken office. A vacancy in the
17 Commission shall be filled in the manner in
18 which the original appointment was made.

19 “(4) COMPENSATION.—While serving on the
20 business of the Commission (including traveltime), a
21 member of the Commission shall be entitled to com-
22 pensation at the per diem equivalent of the rate pro-
23 vided for level IV of the Executive Schedule under
24 section 5315 of title 5, United States Code; and
25 while so serving away from home and the member’s

1 regular place of business, a member may be allowed
2 travel expenses, as authorized by the Chairman of
3 the Commission. Physicians serving as personnel of
4 the Commission may be provided a physician com-
5 parability allowance by the Commission in the same
6 manner as Government physicians may be provided
7 such an allowance by an agency under section 5948
8 of title 5, United States Code, and for such purpose
9 subsection (i) of such section shall apply to the Com-
10 mission in the same manner as it applies to the Ten-
11 nessee Valley Authority. For purposes of pay (other
12 than pay of members of the Commission) and em-
13 ployment benefits, rights, and privileges, all person-
14 nel of the Commission shall be treated as if they
15 were employees of the United States Senate.

16 “(5) CHAIRMAN; VICE CHAIRMAN.—The Comp-
17 troller General shall designate a member of the
18 Commission, at the time of appointment of the mem-
19 ber, as Chairman and a member as Vice Chairman
20 for that term of appointment.

21 “(6) MEETINGS.—The Commission shall meet
22 at the call of the Chairman.

23 “(d) DIRECTOR AND STAFF; EXPERTS AND CON-
24 SULTANTS.—Subject to such review as the Comptroller

1 General deems necessary to assure the efficient adminis-
2 tration of the Commission, the Commission may—

3 “(1) employ and fix the compensation of an Ex-
4 ecutive Director (subject to the approval of the
5 Comptroller General) and such other personnel as
6 may be necessary to carry out its duties (without re-
7 gard to the provisions of title 5, United States Code,
8 governing appointments in the competitive service);

9 “(2) seek such assistance and support as may
10 be required in the performance of its duties from ap-
11 propriate Federal departments and agencies;

12 “(3) enter into contracts or make other ar-
13 rangements, as may be necessary for the conduct of
14 the work of the Commission (without regard to sec-
15 tion 3709 of the Revised Statutes (41 U.S.C. 5));

16 “(4) make advance, progress, and other pay-
17 ments which relate to the work of the Commission;

18 “(5) provide transportation and subsistence for
19 persons serving without compensation; and

20 “(6) prescribe such rules and regulations as it
21 deems necessary with respect to the internal organi-
22 zation and operation of the Commission.

23 “(e) POWERS.—

24 “(1) OBTAINING OFFICIAL DATA.—The Com-
25 mission may secure directly from any department or

1 agency of the United States information necessary
2 to enable it to carry out this section. Upon request
3 of the Chairman, the head of that department or
4 agency shall furnish that information to the Com-
5 mission on an agreed upon schedule.

6 “(2) DATA COLLECTION.—In order to carry out
7 its functions, the Commission shall—

8 “(A) utilize existing information, both pub-
9 lished and unpublished, where possible, collected
10 and assessed either by its own staff or under
11 other arrangements made in accordance with
12 this section,

13 “(B) carry out, or award grants or con-
14 tracts for, original research and experimen-
15 tation, where existing information is inad-
16 equate, and

17 “(C) adopt procedures allowing any inter-
18 ested party to submit information for the Com-
19 mission’s use in making reports and rec-
20 ommendations.

21 “(3) ACCESS OF GAO TO INFORMATION.—The
22 Comptroller General shall have unrestricted access
23 to all deliberations, records, and nonproprietary data
24 of the Commission, immediately upon request.

1 “(4) PERIODIC AUDIT.—The Commission shall
2 be subject to periodic audit by the Comptroller Gen-
3 eral.

4 “(f) AUTHORIZATION OF APPROPRIATIONS.—

5 “(1) REQUEST FOR APPROPRIATIONS.—The
6 Commission shall submit requests for appropriations
7 in the same manner as the Comptroller General sub-
8 mits requests for appropriations, but amounts ap-
9 propriated for the Commission shall be separate
10 from amounts appropriated for the Comptroller Gen-
11 eral.

12 “(2) AUTHORIZATION.—There are authorized to
13 be appropriated such sums as may be necessary to
14 carry out the provisions of this section. Sixty percent
15 of such appropriation shall be payable from the Fed-
16 eral Hospital Insurance Trust Fund, and 40 percent
17 of such appropriation shall be payable from the Fed-
18 eral Supplementary Medical Insurance Trust
19 Fund.”.

20 (b) ABOLITION OF PROPAC AND PPRC.—

21 (1) PROPAC.—

22 (A) IN GENERAL.—Section 1886(e) (42
23 U.S.C. 1395ww(e)) is amended—

24 (i) by striking paragraphs (2) and (6);

25 and

1 (ii) in paragraph (3), by striking “(A)
2 The Commission” and all that follows
3 through “(B)”.

4 (B) CONFORMING AMENDMENT.—Section
5 1862 (42 U.S.C. 1395y) is amended by striking
6 “Prospective Payment Assessment Commis-
7 sion” each place it appears in subsection
8 (a)(1)(D) and subsection (i) and inserting
9 “Medicare Payment Advisory Commission”.
10 (2) PPRC.—

11 (A) IN GENERAL.—Title XVIII is amended
12 by striking section 1845 (42 U.S.C. 1395w-1).

13 (B) ELIMINATION OF CERTAIN RE-
14 PORTS.—Section 1848 (42 U.S.C. 1395w-4) is
15 amended—

16 (i) by striking subparagraph (F) of
17 subsection (d)(2),

18 (ii) by striking subparagraph (B) of
19 subsection (f)(1), and

20 (iii) in subsection (f)(3), by striking
21 “Physician Payment Review Commission,”.

22 (C) CONFORMING AMENDMENTS.—Section
23 1848 (42 U.S.C. 1395w-4) is amended by
24 striking “Physician Payment Review Commis-
25 sion” and inserting “Medicare Payment Advi-

1 sory Commission” each place it appears in sub-
2 sections (c)(2)(B)(iii), (g)(6)(C), and (g)(7)(C).

3 (c) EFFECTIVE DATE; TRANSITION.—

4 (1) IN GENERAL.—The Comptroller General
5 shall first provide for appointment of members to
6 the Medicare Payment Advisory Commission (in this
7 subsection referred to as “MedPAC”) by not later
8 than September 30, 1997.

9 (2) TRANSITION.—As quickly as possible after
10 the date a majority of members of MedPAC are first
11 appointed, the Comptroller General, in consultation
12 with the Prospective Payment Assessment Commis-
13 sion (in this subsection referred to as “ProPAC”)
14 and the Physician Payment Review Commission (in
15 this subsection referred to as “PPRC”), shall pro-
16 vide for the termination of the ProPAC and the
17 PPRC. As of the date of termination of the respec-
18 tive Commissions, the amendments made by para-
19 graphs (1) and (2), respectively, of subsection (b)
20 become effective. The Comptroller General, to the
21 extent feasible, shall provide for the transfer to the
22 MedPAC of assets and staff of the ProPAC and the
23 PPRC, without any loss of benefits or seniority by
24 virtue of such transfers. Fund balances available to
25 the ProPAC or the PPRC for any period shall be

1 available to the MedPAC for such period for like
2 purposes.

3 (3) CONTINUING RESPONSIBILITY FOR RE-
4 PORTS.—The MedPAC shall be responsible for the
5 preparation and submission of reports required by
6 law to be submitted (and which have not been sub-
7 mitted by the date of establishment of the MedPAC)
8 by the ProPAC and the PPRC, and, for this pur-
9 pose, any reference in law to either such Commission
10 is deemed, after the appointment of the MedPAC, to
11 refer to the MedPAC.

12 **CHAPTER 4—MEDIGAP PROTECTIONS**

13 **SEC. 5031. MEDIGAP PROTECTIONS.**

14 (a) GUARANTEEING ISSUE WITHOUT PREEXISTING
15 CONDITIONS FOR CONTINUOUSLY COVERED INDIVID-
16 UALS.—Section 1882(s) (42 U.S.C. 1395ss(s)) is amend-
17 ed—

18 (1) in paragraph (3), by striking “paragraphs
19 (1) and (2)” and inserting “this subsection”,

20 (2) by redesignating paragraph (3) as para-
21 graph (4), and

22 (3) by inserting after paragraph (2) the follow-
23 ing new paragraph:

24 “(3)(A) The issuer of a medicare supplemental pol-
25 icy—

1 “(i) may not deny or condition the issuance or
2 effectiveness of a medicare supplemental policy de-
3 scribed in subparagraph (C) that is offered and is
4 available for issuance to new enrollees by such is-
5 suer;

6 “(ii) may not discriminate in the pricing of
7 such policy, because of health status, claims experi-
8 ence, receipt of health care, or medical condition;
9 and

10 “(iii) may not impose an exclusion of benefits
11 based on a pre-existing condition under such policy,
12 in the case of an individual described in subparagraph (B)
13 who seeks to enroll under the policy not later than 63 days
14 after the date of the termination of enrollment described
15 in such subparagraph and who submits evidence of the
16 date of termination or disenrollment along with the appli-
17 cation for such medicare supplemental policy.

18 “(B) An individual described in this subparagraph is
19 an individual described in any of the following clauses:

20 “(i) The individual is enrolled under an em-
21 ployee welfare benefit plan that provides health ben-
22 efits that supplement the benefits under this title
23 and the plan terminates or ceases to provide all such
24 supplemental health benefits to the individual.

1 “(ii) The individual is enrolled with a Medicare
2 Choice organization under a Medicare Choice plan
3 under part C, and there are circumstances permit-
4 ting discontinuance of the individual’s election of the
5 plan under section 1851(e)(4).

6 “(iii) The individual is enrolled with an eligible
7 organization under a contract under section 1876, a
8 similar organization operating under demonstration
9 project authority, with an organization under an
10 agreement under section 1833(a)(1)(A), or with an
11 organization under a policy described in subsection
12 (t), and such enrollment ceases under the same cir-
13 cumstances that would permit discontinuance of an
14 individual’s election of coverage under section
15 1851(e)(4) and, in the case of a policy described in
16 subsection (t), there is no provision under applicable
17 State law for the continuation of coverage under
18 such policy.

19 “(iv) The individual is enrolled under a medi-
20 care supplemental policy under this section and such
21 enrollment ceases because—

22 “(I) of the bankruptcy or insolvency of the
23 issuer or because of other involuntary termi-
24 nation of coverage or enrollment under such
25 policy and there is no provision under applica-

1 ble State law for the continuation of such cov-
2 erage;

3 “(II) the issuer of the policy substantially
4 violated a material provision of the policy; or

5 “(III) the issuer (or an agent or other en-
6 tity acting on the issuer’s behalf) materially
7 misrepresented the policy’s provisions in mar-
8 keting the policy to the individual.

9 “(v) The individual—

10 “(I) was enrolled under a medicare supple-
11 mental policy under this section,

12 “(II) subsequently terminates such enroll-
13 ment and enrolls, for the first time, with any
14 Medicare Choice organization under a Medicare
15 Choice plan under part C, any eligible organiza-
16 tion under a contract under section 1876, any
17 similar organization operating under dem-
18 onstration project authority, any organization
19 under an agreement under section
20 1833(a)(1)(A), or any policy described in sub-
21 section (t), and

22 “(III) the subsequent enrollment under
23 subclause (II) is terminated by the enrollee dur-
24 ing the first 12 months of such enrollment.

1 “(vi) The individual, upon first becoming eligi-
2 ble for medicare at age 65, enrolls in a Medicare
3 Choice plan and within 12 months of such enroll-
4 ment, disenrolls from such plan.

5 “(C)(i) Subject to clauses (ii), a medicare supple-
6 mental policy described in this subparagraph is a policy
7 the benefits under which are comparable or lessor in rela-
8 tion to the benefits under the plan, policy, or contract de-
9 scribed in the applicable clause of subparagraph (B).

10 “(ii) Only for purposes of an individual described in
11 subparagraph (B)(vi), a medicare supplemental policy de-
12 scribed in this subparagraph shall include any medicare
13 supplemental policy.

14 “(D) At the time of an event described in subpara-
15 graph (B) because of which an individual ceases enroll-
16 ment or loses coverage or benefits under a contract or
17 agreement, policy, or plan, the organization that offers the
18 contract or agreement, the insurer offering the policy, or
19 the administrator of the plan, respectively, shall notify the
20 individual of the rights of the individual, and obligations
21 of issuers of medicare supplemental policies, under sub-
22 paragraph (A).”.

23 (b) LIMITATION ON IMPOSITION OF PREEXISTING
24 CONDITION EXCLUSION DURING INITIAL OPEN ENROLL-

1 MENT PERIOD.—Section 1882(s)(2) (42 U.S.C.
2 1395ss(s)(2)) is amended—

3 (1) in subparagraph (B), by striking “subpara-
4 graph (C)” and inserting “subparagraphs (C) and
5 (D)”, and

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

8 “(D) In the case of a policy issued during the 6-
9 month period described in subparagraph (A) to an individ-
10 ual who is 65 years of age or older as of the date of issu-
11 ance and who as of the date of the application for enroll-
12 ment has a continuous period of creditable coverage (as
13 defined in section 2701(e) of the Public Health Service
14 Act) of—

15 “(i) at least 6 months, the policy may not ex-
16 clude benefits based on a pre-existing condition; or

17 “(ii) less than 6 months, if the policy excludes
18 benefits based on a preexisting condition, the policy
19 shall reduce the period of any preexisting condition
20 exclusion by the aggregate of the periods of cred-
21 itable coverage (if any, as so defined) applicable to
22 the individual as of the enrollment date.

23 The Secretary shall specify the manner of the reduction
24 under clause (ii), based upon the rules used by the Sec-
25 retary in carrying out section 2701(a)(3) of such Act.”.

1 (c) EXTENDING 6-MONTH INITIAL ENROLLMENT PE-
 2 RIOD TO NON-ELDERLY MEDICARE BENEFICIARIES.—
 3 Section 1882(s)(2)(A)(ii) of (42 U.S.C. 1395ss(s)(2)(A))
 4 is amended by striking “is submitted” and all that follows
 5 and inserting the following: “is submitted—

6 “(I) before the end of the 6-month period be-
 7 ginning with the first month as of the first day on
 8 which the individual is 65 years of age or older and
 9 is enrolled for benefits under part B; and

10 “(II) at the time the individual first becomes el-
 11 igible for benefits under part A pursuant to section
 12 226(b) and is enrolled for benefits under part B, be-
 13 fore the end of the 6-month period beginning with
 14 the first month as of the first day on which the indi-
 15 vidual is so eligible and so enrolled.”.

16 (d) EFFECTIVE DATES.—

17 (1) GUARANTEED ISSUE.—The amendment
 18 made by subsection (a) shall take effect on July 1,
 19 1998.

20 (2) LIMIT ON PREEXISTING CONDITION EXCLU-
 21 SIONS.—The amendment made by subsection (b)
 22 shall apply to policies issued on or after July 1,
 23 1998.

24 (3) NON-ELDERLY MEDICARE BENE-
 25 FICIARIES.—The amendment made by subsection (c)

1 shall apply to policies issued on or after July 1,
2 1998.

3 (e) TRANSITION PROVISIONS.—

4 (1) IN GENERAL.—If the Secretary of Health
5 and Human Services identifies a State as requiring
6 a change to its statutes or regulations to conform its
7 regulatory program to the changes made by this sec-
8 tion, the State regulatory program shall not be con-
9 sidered to be out of compliance with the require-
10 ments of section 1882 of the Social Security Act due
11 solely to failure to make such change until the date
12 specified in paragraph (4).

13 (2) NAIC STANDARDS.—If, within 9 months
14 after the date of the enactment of this Act, the Na-
15 tional Association of Insurance Commissioners (in
16 this subsection referred to as the “NAIC”) modifies
17 its NAIC Model regulation relating to section 1882
18 of the Social Security Act (referred to in such sec-
19 tion as the 1991 NAIC Model Regulation, as modi-
20 fied pursuant to section 171(m)(2) of the Social Se-
21 curity Act Amendments of 1994 (Public Law 103–
22 432) and as modified pursuant to section
23 1882(d)(3)(A)(vi)(IV) of the Social Security Act, as
24 added by section 271(a) of the Health Insurance
25 Portability and Accountability Act of 1996 (Public

1 Law 104–191) to conform to the amendments made
2 by this section, such revised regulation incorporating
3 the modifications shall be considered to be the appli-
4 cable NAIC model regulation (including the revised
5 NAIC model regulation and the 1991 NAIC Model
6 Regulation) for the purposes of such section.

7 (3) SECRETARY STANDARDS.—If the NAIC
8 does not make the modifications described in para-
9 graph (2) within the period specified in such para-
10 graph, the Secretary of Health and Human Services
11 shall make the modifications described in such para-
12 graph and such revised regulation incorporating the
13 modifications shall be considered to be the appro-
14 priate Regulation for the purposes of such section.

15 (4) DATE SPECIFIED.—

16 (A) IN GENERAL.—Subject to subpara-
17 graph (B), the date specified in this paragraph
18 for a State is the earlier of—

19 (i) the date the State changes its stat-
20 utes or regulations to conform its regu-
21 latory program to the changes made by
22 this section, or

23 (ii) 1 year after the date the NAIC or
24 the Secretary first makes the modifications
25 under paragraph (2) or (3), respectively.

1 (B) ADDITIONAL LEGISLATIVE ACTION RE-
2 QUIRED.—In the case of a State which the Sec-
3 retary identifies as—

4 (i) requiring State legislation (other
5 than legislation appropriating funds) to
6 conform its regulatory program to the
7 changes made in this section, but

8 (ii) having a legislature which is not
9 scheduled to meet in 1999 in a legislative
10 session in which such legislation may be
11 considered,

12 the date specified in this paragraph is the first
13 day of the first calendar quarter beginning after
14 the close of the first legislative session of the
15 State legislature that begins on or after July 1,
16 1999. For purposes of the previous sentence, in
17 the case of a State that has a 2-year legislative
18 session, each year of such session shall be
19 deemed to be a separate regular session of the
20 State legislature.

21 **SEC. 5032. ADDITION OF HIGH DEDUCTIBLE MEDIGAP POL-**
22 **ICY.**

23 (a) IN GENERAL.—Section 1882(p) (42 U.S.C.
24 1395ss(p)) is amended by adding at the end the following:

1 “(11)(A) On and after the date specified in
2 subparagraph (C)—

3 “(i) each State with an approved regu-
4 latory program, and

5 “(ii) in the case of a State without an ap-
6 proved regulatory program, the Secretary,
7 shall, in addition to the 10 policies allowed under
8 paragraph (2)(C), allow at least 1 other policy de-
9 scribed in subparagraph (B).

10 “(B)(i) A policy is described in this subpara-
11 graph if it consists of—

12 “(I) one of the 10 benefit packages de-
13 scribed in paragraph (2)(C), and

14 “(II) a high deductible feature.

15 “(ii) For purposes of clause (i), a high deduct-
16 ible feature is one which requires the beneficiary of
17 the policy to pay annual out-of-pocket expenses
18 (other than premiums) of \$1,500 before the policy
19 begins payment of benefits.

20 “(C)(i) Subject to clause (ii), the date described
21 in this subparagraph is one year after the date of
22 the enactment of this paragraph.

23 “(ii) In the case of a State which the Secretary
24 identifies as—

1 “(I) requiring State legislation (other than
2 legislation appropriating funds) in order to
3 meet the requirements of this paragraph, but

4 “(II) having a legislature which is not
5 scheduled to meet in 1997 in a legislative ses-
6 sion in which such legislation may be consid-
7 ered,

8 the date specified in this subparagraph is the first
9 day of the first calendar quarter beginning after the
10 close of the first legislative session of the State legis-
11 lature that begins on or after January 1, 1998. For
12 purposes of the previous sentence, in the case of a
13 State that has a 2-year legislative session, each year
14 of such session shall be deemed to be a separate reg-
15 ular session of the State legislature.”.

16 (b) CONFORMING AMENDMENT.—Section
17 1882(p)(2)(C) (42 U.S.C. 1395ss(p)(2)(C)) is amended by
18 inserting “or (11)” after “paragraph (4)(B)”.

19 **CHAPTER 5—DEMONSTRATIONS**

20 **Subchapter A—Medicare Choice Competitive** 21 **Pricing Demonstration Project**

22 **SEC. 5041. MEDICARE CHOICE COMPETITIVE PRICING DEM-** 23 **ONSTRATION PROJECT.**

24 (a) ESTABLISHMENT.—The Secretary of Health and
25 Human Services (in this subchapter referred to as the

1 “Secretary”) shall, beginning January 1, 1999, conduct
2 demonstration projects in applicable areas (in this section
3 referred to as the “project”) for the purpose of—

4 (1) applying a pricing methodology for pay-
5 ments to Medicare Choice organizations under part
6 C of title XVIII of the Social Security Act (as
7 amended by section 5001 of this Act) that uses the
8 competitive market approach described in section
9 5042;

10 (2) applying a benefit structure and beneficiary
11 premium structure described in section 5043; and

12 (3) evaluating the effects of the methodology
13 and structures described in the preceding para-
14 graphs on medicare fee-for-service spending under
15 parts A and B of the Social Security Act in the
16 project area.

17 (b) APPLICABLE AREA DEFINED.—

18 (1) IN GENERAL.—In subsection (a), the term
19 “applicable area” means, as determined by the Sec-
20 retary—

21 (A) 10 urban areas with respect to which
22 less than 25 percent of medicare beneficiaries
23 are enrolled with an eligible organization under
24 section 1876 of the Social Security Act (42
25 U.S.C. 1395mm); and

1 (B) 3 rural areas not described in para-
2 graph (1).

3 (2) TREATMENT AS MEDICARE CHOICE PAY-
4 MENT AREA.—For purposes of this subchapter and
5 part C of title XVIII of the Social Security Act, any
6 applicable area shall be treated as a Medicare Choice
7 payment area (hereinafter referred to as the “appli-
8 cable Medicare Choice payment area”).

9 (c) TECHNICAL ADVISORY GROUP.—Upon the selec-
10 tion of an area for inclusion in the project, the Secretary
11 shall appoint a technical advisory group, composed of rep-
12 resentatives of Medicare Choice organizations, medicare
13 beneficiaries, employers, and other persons in the area af-
14 fected by the project who have technical expertise relative
15 to the design and implementation of the project to advise
16 the Secretary concerning how the project will be imple-
17 mented in the area.

18 (d) EVALUATION.—

19 (1) IN GENERAL.—Not later than December 31,
20 2001, the Secretary shall submit to the President a
21 report regarding the demonstration projects con-
22 ducted under this section.

23 (2) CONTENTS OF REPORT.—The report de-
24 scribed in paragraph (1) shall include the following:

1 (A) A description of the demonstration
2 projects conducted under this section.

3 (B) An evaluation of the effectiveness of
4 the demonstration projects conducted under
5 this section and any legislative recommenda-
6 tions determined appropriate by the Secretary.

7 (C) Any other information regarding the
8 demonstration projects conducted under this
9 section that the Secretary determines to be ap-
10 propriate.

11 (D) An evaluation as to whether the meth-
12 od of payment under section 5042 which was
13 used in the demonstration projects for payment
14 to Medicare Choice plans should be extended to
15 the entire medicare population and if such eval-
16 uation determines that such method should not
17 be extended, legislative recommendations to
18 modify such method so that it may be applied
19 to the entire medicare population.

20 (3) SUBMISSION TO CONGRESS.—The President
21 shall submit the report under paragraph (2) to the
22 Congress and if the President determines appro-
23 priate, any legislative recommendations for extend-
24 ing the project to the entire medicare population.

1 (e) WAIVER AUTHORITY.—The Secretary shall waive
2 compliance with the requirements of titles XI, XVIII, and
3 XIX of the Social Security Act (42 U.S.C. 1301 et seq.,
4 1395 et seq., 1396 et seq.) to such extent and for such
5 period as the Secretary determines is necessary to conduct
6 demonstration projects.

7 **SEC. 5042. DETERMINATION OF ANNUAL MEDICARE**
8 **CHOICE CAPITATION RATES.**

9 (a) IN GENERAL.—In the case of an applicable Medi-
10 care Choice payment area within which a project is being
11 conducted under section 5041, the annual Medicare
12 Choice capitation rate under part C of title XVIII of the
13 Social Security Act for Medicare Choice plans within such
14 area shall be the standardized payment amount deter-
15 mined under this section rather than the amount deter-
16 mined under section 1853 of such Act.

17 (b) DETERMINATION OF STANDARDIZED PAYMENT
18 AMOUNT.—

19 (1) SUBMISSION AND CHARGING OF PRE-
20 MIUMS.—

21 (A) IN GENERAL.—Not later than June 1
22 of each calendar year, each Medicare Choice or-
23 ganization offering one or more Medicare
24 Choice plans in an applicable Medicare Choice
25 payment area shall file with the Secretary, in a

1 form and manner and at a time specified by the
2 Secretary, a bid which contains the amount of
3 the monthly premium for coverage under each
4 such Medicare Choice plan.

5 (B) UNIFORM PREMIUM.—The premiums
6 charged by a Medicare Choice plan sponsor
7 under this part may not vary among individuals
8 who reside in the same applicable Medicare
9 Choice payment area.

10 (C) TERMS AND CONDITIONS OF IMPOSING
11 PREMIUMS.—Each Medicare Choice organiza-
12 tion shall permit the payment of premiums on
13 a monthly basis.

14 (2) ANNOUNCEMENT OF STANDARDIZED PAY-
15 MENT AMOUNT.—

16 (A) AUTHORITY TO NEGOTIATE.—After
17 bids are submitted under paragraph (1), the
18 Secretary may negotiate with Medicare Choice
19 organizations in order to modify such bids if
20 the Secretary determined that the bids do not
21 provide enough revenues to ensure the plan's
22 actuarial soundness, are too high relative to the
23 applicable Medicare Choice payment area, foster
24 adverse selection, or otherwise require renegoti-
25 ation under this paragraph.

1 (B) IN GENERAL.—Not later than July 31
2 of each calendar year (beginning with 1998),
3 the Secretary shall determine, and announce in
4 a manner intended to provide notice to inter-
5 ested parties, a standardized payment amount
6 determined in accordance with this paragraph
7 for the following calendar year for each applica-
8 ble Medicare Choice payment area.

9 (3) CALCULATION OF PAYMENT AMOUNTS.—

10 (A) IN GENERAL.—The standardized pay-
11 ment amount for a calendar year after 1998 for
12 any applicable Medicare Choice payment area
13 shall be equal to the maximum premium deter-
14 mined for such area under subparagraph (B).

15 (B) MAXIMUM PREMIUM.—The maximum
16 premium for any applicable Medicare Choice
17 payment area shall be equal to the amount de-
18 termined under subparagraph (C) for the pay-
19 ment area, but in no case shall such amount be
20 greater than the sum of—

21 (i) the average per capita amount, as de-
22 termined by the Secretary as appropriate
23 for the population eligible to enroll in Med-
24 icare Choice plans in such payment area,
25 for such calendar year that the Secretary

1 would have expended for an individual in
2 such payment area enrolled under the med-
3 icare fee-for-service program under parts A
4 and B, plus

5 (ii) the amount equal to the actuarial
6 value of deductibles, coinsurance, and co-
7 payments charged an individual for serv-
8 ices provided under the medicare fee-for-
9 service program (as determined by the Sec-
10 retary).

11 (C) DETERMINATION OF AMOUNT.—

12 (i) IN GENERAL.—The Secretary shall
13 determine for each applicable Medicare
14 Choice payment area for each calendar
15 year an amount equal to the average of the
16 bids (weighted based on capacity) submit-
17 ted to the Secretary under paragraph
18 (1)(A) for that payment area.

19 (ii) DISREGARD CERTAIN PLANS.—In
20 determining the amount under clause (i),
21 the Secretary may disregard any plan that
22 the Secretary determines would unreason-
23 ably distort the amount determined under
24 such subparagraph.

1 (4) ADJUSTMENTS FOR PAYMENTS TO PLAN
2 SPONSORS.—

3 (A) IN GENERAL.—For purposes of deter-
4 mining the amount of payment under part C of
5 title XVIII of the Social Security Act to a Med-
6 icare Choice organization with respect to any
7 Medicare Choice eligible individual enrolled in a
8 Medicare Choice plan of the sponsor, the stand-
9 dardized payment amount for the applicable
10 Medicare Choice payment area and the pre-
11 mium charged by the plan sponsor shall be ad-
12 justed with respect to such individual for such
13 risk factors as age, disability status, gender, in-
14 stitutional status, health status, and such other
15 factors as the Secretary determines to be appro-
16 priate, so as to ensure actuarial equivalence.
17 The Secretary may add to, modify, or substitute
18 for such classes, if such changes will improve
19 the determination of actuarial equivalence.

20 (B) RECOMMENDATIONS.—

21 (i) IN GENERAL.—In addition to any
22 other duties required by law, the Physician
23 Payment Review Commission and the Pro-
24 spective Payment Assessment Commission

1 (or their successors) shall each develop rec-
2 ommendations on—

3 (I) the risk factors that the Sec-
4 retary should use in adjusting the
5 standardized payment amount and
6 premium under subparagraph (A),
7 and

8 (II) the methodology that the
9 Secretary should use in determining
10 the risk factors to be used in adjust-
11 ing the standardized payment amount
12 and premium under subparagraph
13 (A).

14 (ii) TIME.—The recommendations de-
15 scribed in clause (i) shall be developed not
16 later than January 1, 1999.

17 (iii) ANNUAL REPORT.—The Physi-
18 cian Payment Review Commission and the
19 Prospective Payment Assessment Commis-
20 sion (or their successors) shall include the
21 recommendations described in clause (i) in
22 their respective annual reports to Con-
23 gress.

24 (c) PAYMENTS TO PLAN SPONSORS.—

25 (1) MONTHLY PAYMENTS.—

1 (A) IN GENERAL.—Subject to paragraph
2 (4), for each individual enrolled with a plan
3 under this subchapter, the Secretary shall make
4 monthly payments in advance to the Medicare
5 Choice organization of the Medicare Choice
6 plan with which the individual is enrolled in an
7 amount equal to $\frac{1}{12}$ of the amount determined
8 under paragraph (2).

9 (B) RETROACTIVE ADJUSTMENTS.—The
10 amount of payment under this paragraph may
11 be retroactively adjusted to take into account
12 any difference between the actual number of in-
13 dividuals enrolled in the plan under this section
14 and the number of such individuals estimated
15 to be so enrolled in determining the amount of
16 the advance payment.

17 (2) AMOUNT OF PAYMENT TO MEDICARE
18 CHOICE PLANS.—The amount determined under this
19 paragraph with respect to any individual shall be
20 equal to the sum of—

21 (A) the lesser of—

22 (i) the standardized payment amount
23 for the applicable Medicare Choice pay-
24 ment area, as adjusted for such individual
25 under subsection (a)(4), or

1 (ii) the premium charged by the plan
2 for such individual, as adjusted for such
3 individual under section (a)(4), minus
4 (B) the amount such individual paid to the
5 plan pursuant to section 5043 (relating to 10
6 percent of the premium).

7 (3) PAYMENTS FROM TRUST FUNDS.—The pay-
8 ment to a Medicare Choice organization or to a
9 Medicare Choice account under this section for a
10 medicare-eligible individual shall be made from the
11 Federal Hospital Insurance Trust Fund and the
12 Federal Supplementary Medical Insurance Trust
13 Fund in such proportion as the Secretary determines
14 reflects the relative weight that benefits under parts
15 A and B are representative of the actuarial value of
16 the total benefits under this part.

17 (4) LIMITATION ON AMOUNTS AN OUT-OF-PLAN
18 PHYSICIAN OR OTHER ENTITY MAY COLLECT.—A
19 physician or other entity (other than a provider of
20 services) that does not have a contract establishing
21 payment amounts for services furnished to an indi-
22 vidual enrolled under this subchapter with a Medi-
23 care Choice organization shall accept as payment in
24 full for services that are furnished to such an indi-
25 vidual the amounts that the physician or other entity

1 could collect if the individual were not so enrolled.
2 Any penalty or other provision of law that applies to
3 such a payment with respect to an individual enti-
4 tled to benefits under this title (but not enrolled
5 with a Medicare Choice organization under this
6 part) also applies with respect to an individual so
7 enrolled.

8 (d) OFFICE OF COMPETITION.—

9 (1) ESTABLISHMENT.—There is established
10 within the Department of Health and Human Serv-
11 ices an office to be known as the ‘Office of Competi-
12 tion’.

13 (2) DIRECTOR.—The Secretary shall appoint
14 the Director of the Office of Competition.

15 (3) DUTIES.—

16 (A) IN GENERAL.—The Director shall ad-
17 minister this subchapter and so much of part C
18 of title XVIII of the Social Security Act as re-
19 lates to this subchapter.

20 (B) TRANSFER AUTHORITY.—The Sec-
21 retary shall transfer such personnel, adminis-
22 trative support systems, assets, records, funds,
23 and other resources in the Health Care Financ-
24 ing Administration to the Office of Competition
25 as are used in the administration of section

1 1876 and as may be required to implement the
2 provisions of this part promptly and efficiently.

3 (4) USE OF NON-FEDERAL ENTITIES.—The
4 Secretary shall, to the maximum extent feasible,
5 enter into contracts with appropriate non-Federal
6 entities to carry out activities under this subchapter.

7 **SEC. 5043. BENEFITS AND BENEFICIARY PREMIUMS.**

8 (a) BENEFITS PROVIDED TO INDIVIDUALS.—

9 (1) BASIC BENEFIT PLAN.—Each Medicare
10 Choice plan in an applicable Medicare Choice pay-
11 ment area shall provide to members enrolled under
12 this subchapter, through providers and other persons
13 that meet the applicable requirements of title XVIII
14 of the Social Security Act and part A of title XI of
15 such Act—

16 (A) those items and services covered under
17 parts A and B of title XVIII of such Act which
18 are available to individuals residing in such
19 area, subject to nominal copayments as deter-
20 mined by the Secretary,

21 (B) prescription drugs, subject to such lim-
22 its as established by the Secretary, and

23 (C) additional health services as the Sec-
24 retary may approve.

25 (2) SUPPLEMENTAL BENEFITS.—

1 (A) IN GENERAL.—Each Medicare Choice
2 plan may offer any of the optional supplemental
3 benefit plans described in subparagraph (B) to
4 an individual enrolled in the basic benefit plan
5 offered by such organization under this sub-
6 chapter for an additional premium amount. If
7 the supplemental benefits are offered only to in-
8 dividuals enrolled in the sponsor’s plan under
9 this subchapter, the additional premium
10 amount shall be the same for all enrolled indi-
11 viduals in the applicable Medicare Choice pay-
12 ment area. Such benefits may be marketed and
13 sold by the Medicare Choice organization out-
14 side of the enrollment process described in part
15 C of title XVIII of the Social Security Act.

16 (B) OPTIONAL SUPPLEMENTAL BENEFIT
17 PLANS DESCRIBED.—The Secretary shall pro-
18 vide for 2 optional supplemental benefit plans.
19 Such plans shall include such standardized
20 items and services that the Secretary deter-
21 mines must be provided to enrollees of such
22 plans described in order to offer the plans to
23 Medicare Choice eligible individuals.

24 (C) LIMITATION.—A Medicare Choice or-
25 ganization may not offer an optional benefit

1 plan to a Medicare Choice eligible individual un-
2 less such individual is enrolled in a basic benefit
3 plan offered by such organization.

4 (D) LIMITATION ON PREMIUM.—If a Medi-
5 care Choice organization provides to individuals
6 enrolled in a Medicare Choice plan supple-
7 mental benefits described in subparagraph (A),
8 the sum of—

9 (i) the annual premiums for such ben-
10 efits, plus

11 (ii) the actuarial value of any
12 deductibles, coinsurance, and copayments
13 charged with respect to such benefits for
14 the year,

15 shall not exceed the amount that would have
16 been charged for a plan in the applicable Medi-
17 care Choice payment area which is not a Medi-
18 care Choice plan (adjusted in such manner as
19 the Secretary may prescribe to reflect that only
20 medicare beneficiaries are enrolled in such
21 plan). The Secretary shall negotiate the limita-
22 tion under this subparagraph with each plan to
23 which this paragraph applies.

24 (3) OTHER RULES.—Rules similar to rules of
25 paragraphs (3) and (4) of section 1852 of the Social

1 Security Act (relating to national coverage deter-
2 minations and secondary payor provisions) shall
3 apply for purposes of this subchapter.

4 (b) PREMIUM REQUIREMENTS FOR BENE-
5 FICIARIES.—

6 (1) PREMIUM DIFFERENTIALS.—If a Medicare
7 Choice eligible individual enrolls in a Medicare
8 Choice plan under this subchapter, the individual
9 shall be required to pay—

10 (A) 10 percent of the plan's premium;

11 (B) if the premium of the plan is higher
12 than the standardized payment amount (as de-
13 termined under section 5042), 100 percent of
14 such difference; and

15 (C) an amount equal to cost-sharing under
16 the medicare fee-for-service program, except
17 that such amount shall not exceed the actuarial
18 value of the deductibles and coinsurance under
19 such program less the actual value of nominal
20 copayments for benefits under such plan for
21 basic benefits described in subsection (a)(1).

22 (2) PART B PREMIUM.—An individual enrolled
23 in a Medicare Choice plan under this subchapter
24 shall not be required to pay the premium amount
25 (determined under section 1839 of the Social Secu-

1 rity Act) under part B of title XVIII of such Act for
2 so long as such individual is so enrolled.

3 **Subchapter B—Other Projects**

4 **SEC. 5045. MEDICARE ENROLLMENT DEMONSTRATION**
5 **PROJECT.**

6 (a) DEMONSTRATION PROJECT.—

7 (1) ESTABLISHMENT.—The Secretary of Health
8 and Human Services (in this section referred to as
9 the “Secretary”) shall implement a demonstration
10 project (in this section referred to as the “project”)
11 for the purpose of evaluating the use of a third-
12 party contractor to conduct the Medicare Choice
13 plan enrollment and disenrollment functions, as de-
14 scribed in part C of the Social Security Act (as
15 added by section 5001 of this Act), in an area.

16 (2) CONSULTATION.—Before implementing the
17 project under this section, the Secretary shall con-
18 sult with affected parties on—

19 (A) the design of the project;

20 (B) the selection criteria for the third-
21 party contractor; and

22 (C) the establishment of performance
23 standards, as described in paragraph (3).

24 (3) PERFORMANCE STANDARDS.—

1 (A) IN GENERAL.—The Secretary shall es-
2 tablish performance standards for the accuracy
3 and timeliness of the Medicare Choice plan en-
4 rollment and disenrollment functions performed
5 by the third-party contractor.

6 (B) NONCOMPLIANCE.—If the Secretary
7 determines that a third-party contractor is out
8 of compliance with the performance standards
9 established under subparagraph (A), such en-
10 rollment and disenrollment functions shall be
11 performed by the Medicare Choice plan until
12 the Secretary appoints a new third-party con-
13 tractor.

14 (C) DISPUTE.—In the event that there is
15 a dispute between the Secretary and a Medicare
16 Choice plan regarding whether or not the third-
17 party contractor is in compliance with the per-
18 formance standards, such enrollment and
19 disenrollment functions shall be performed by
20 the Medicare Choice plan.

21 (b) REPORT TO CONGRESS.—The Secretary shall pe-
22 riodically report to Congress on the progress of the project
23 conducted pursuant to this section.

24 (c) WAIVER AUTHORITY.—The Secretary shall waive
25 compliance with the requirements of part C of the Social

1 Security Act (as amended by section 5001 of this Act)
2 to such extent and for such period as the Secretary deter-
3 mines is necessary to conduct the project.

4 (d) DURATION.—A demonstration project under this
5 section shall be conducted for a 3-year period.

6 (e) SEPARATE FROM OTHER DEMONSTRATION
7 PROJECTS.—A project implemented by the Secretary
8 under this section shall not be conducted in conjunction
9 with any other demonstration project.

10 **SEC. 5046. MEDICARE COORDINATED CARE DEMONSTRATION PROJECT.**
11

12 (a) DEMONSTRATION PROJECTS.—

13 (1) IN GENERAL.—The Secretary of Health and
14 Human Services (in this section referred to as the
15 “Secretary”) shall conduct demonstration projects
16 for the purpose of evaluating methods, such as case
17 management and other models of coordinated care,
18 that—

19 (A) improve the quality of items and serv-
20 ices provided to target individuals; and

21 (B) reduce expenditures under the medi-
22 care program under title XVIII of the Social
23 Security Act (42 U.S.C. 1395 et seq.) for items
24 and services provided to target individuals.

1 (2) TARGET INDIVIDUAL DEFINED.—In this
2 section, the term “target individual” means an indi-
3 vidual that has a chronic illness, as defined and
4 identified by the Secretary, and is enrolled under the
5 fee-for-service program under parts A and B of title
6 XVIII of the Social Security Act (42 U.S.C. 1395c
7 et seq.; 1395j et seq.).

8 (b) PROGRAM DESIGN.—

9 (1) INITIAL DESIGN.—The Secretary shall
10 evaluate best practices in the private sector of meth-
11 ods of coordinated care for a period of 1 year and
12 design the demonstration project based on such eval-
13 uation.

14 (2) NUMBER AND PROJECT AREAS.—Not later
15 than 2 years after the date of enactment of this Act,
16 the Secretary shall implement at least 9 demonstra-
17 tion projects, including—

18 (A) 6 projects in urban areas; and

19 (B) 3 projects in rural areas.

20 (3) EXPANSION OF PROJECTS; IMPLEMENTA-
21 TION OF DEMONSTRATION PROJECT RESULTS.—

22 (A) EXPANSION OF PROJECTS.—If the ini-
23 tial report under subsection (c) contains an
24 evaluation that demonstration projects—

1 (i) reduce expenditures under the
2 medicare program; or

3 (ii) do not increase expenditures
4 under the medicare program and increase
5 the quality of health care services provided
6 to target individuals and satisfaction of
7 beneficiaries and health care providers;

8 the Secretary shall continue the existing dem-
9 onstration projects and may expand the number
10 of demonstration projects.

11 (B) IMPLEMENTATION OF DEMONSTRA-
12 TION PROJECT RESULTS.—If a report under
13 subsection (c) contains an evaluation as de-
14 scribed in subparagraph (A), the Secretary may
15 issue regulations to implement, on a permanent
16 basis, the components of the demonstration
17 project that are beneficial to the medicare pro-
18 gram.

19 (c) REPORT TO CONGRESS.—

20 (1) IN GENERAL.—Not later than 2 years after
21 the Secretary implements the initial demonstration
22 projects under this section, and biannually there-
23 after, the Secretary shall submit to Congress a re-
24 port regarding the demonstration projects conducted
25 under this section.

1 (2) CONTENTS OF REPORT.—The report in
2 paragraph (1) shall include the following:

3 (A) A description of the demonstration
4 projects conducted under this section.

5 (B) An evaluation of—

6 (i) the cost-effectiveness of the dem-
7 onstration projects;

8 (ii) the quality of the health care serv-
9 ices provided to target individuals under
10 the demonstration projects; and

11 (iii) beneficiary and health care pro-
12 vider satisfaction under the demonstration
13 project.

14 (C) Any other information regarding the
15 demonstration projects conducted under this
16 section that the Secretary determines to be ap-
17 propriate.

18 (d) WAIVER AUTHORITY.—The Secretary shall waive
19 compliance with the requirements of titles XI, XVIII, and
20 XIX of the Social Security Act (42 U.S.C. 1301 et seq.,
21 1395 et seq., 1396 et seq.) to such extent and for such
22 period as the Secretary determines is necessary to conduct
23 demonstration projects.

24 (e) FUNDING.—

25 (1) DEMONSTRATION PROJECTS.—

1 (A) IN GENERAL.—The Secretary shall
2 provide for the transfer from the Federal Hos-
3 pital Insurance Trust Fund and the Federal
4 Supplementary Insurance Trust Fund under
5 title XVIII of the Social Security Act (42
6 U.S.C. 1395i, 1395t), in such proportions as
7 the Secretary determines to be appropriate, of
8 such funds as are necessary for the costs of car-
9 rying out the demonstration projects under this
10 section.

11 (B) LIMITATION.—In conducting the dem-
12 onstration project under this section, the Sec-
13 retary shall ensure that the aggregate payments
14 made by the Secretary do not exceed the
15 amount which the Secretary would have paid if
16 the demonstration projects under this section
17 were not implemented.

18 (2) EVALUATION AND REPORT.—There are au-
19 thorized to be appropriated such sums as are nec-
20 essary for the purpose of developing and submitting
21 the report to Congress under subsection (c).

1 **SEC. 5047. ESTABLISHMENT OF MEDICARE REIMBURSE-**
 2 **MENT DEMONSTRATION PROJECTS.**

3 Title XVIII (42 U.S.C. 1395 et seq.) (as amended
 4 by section 5343) is amended by adding at the end the fol-
 5 lowing:

6 “MEDICARE SUBVENTION DEMONSTRATION PROJECT FOR
 7 VETERANS

8 “SEC. 1896. (a) DEFINITIONS.—In this section:

9 “(1) ADMINISTERING SECRETARIES.—The term
 10 ‘administering Secretaries’ means the Secretary and
 11 the Secretary of Veterans Affairs acting jointly.

12 “(2) DEMONSTRATION PROJECT; PROJECT.—
 13 The terms ‘demonstration project’ and ‘project’
 14 mean the demonstration project carried out under
 15 this section.

16 “(3) MILITARY RETIREE.—The term ‘military
 17 retiree’ means a member or former member of the
 18 Armed Forces who is entitled to retired pay.

19 “(4) TARGETED MEDICARE-ELIGIBLE VET-
 20 ERAN.—The term ‘targeted medicare-eligible vet-
 21 eran’ means an individual who—

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

1 “(B) is entitled to benefits under part A of
2 this title and is enrolled under part B of this
3 title.

4 “(5) TRUST FUNDS.—The term ‘trust funds’
5 means the Federal Hospital Insurance Trust Fund
6 established in section 1817 and the Federal Supple-
7 mentary Medical Insurance Trust Fund established
8 in section 1841.

9 “(b) DEMONSTRATION PROJECT.—

10 “(1) IN GENERAL.—

11 “(A) ESTABLISHMENT.—The administer-
12 ing Secretaries are authorized to establish a
13 demonstration project (under an agreement en-
14 tered into by the administering Secretaries)
15 under which the Secretary shall reimburse the
16 Secretary of Veterans Affairs, from the trust
17 funds, for medicare health care services fur-
18 nished to certain targeted medicare-eligible vet-
19 erans.

20 “(B) AGREEMENT.—The agreement en-
21 tered into under subparagraph (A) shall include
22 at a minimum—

23 “(i) a description of the benefits to be
24 provided to the participants of the dem-

1 onstration project established under this
2 section;

3 “(ii) a description of the eligibility
4 rules for participation in the demonstration
5 project, including any criteria established
6 under subsection (c) and any cost sharing
7 under subsection (d);

8 “(iii) a description of how the dem-
9 onstration project will satisfy the require-
10 ments under this title;

11 “(iv) a description of the sites selected
12 under paragraph (2);

13 “(v) a description of how reimburse-
14 ment and maintenance of effort require-
15 ments under subsection (l) will be imple-
16 mented in the demonstration project; and

17 “(vi) a statement that the Secretary
18 shall have access to all data of the Depart-
19 ment of Veterans Affairs that the Sec-
20 retary determines is necessary to conduct
21 independent estimates and audits of the
22 maintenance of effort requirement, the an-
23 nual reconciliation, and related matters re-
24 quired under the demonstration project.

1 “(2) NUMBER OF SITES.—The administering
2 Secretaries shall establish a plan for the selection of
3 up to 12 medical centers under the jurisdiction of
4 the Secretary of Veterans Affairs and located in geo-
5 graphically dispersed locations to participate in the
6 project.

7 “(3) GENERAL CRITERIA.—The selection plan
8 shall favor selection of those medical centers that
9 are suited to serve targeted medicare-eligible individ-
10 uals because—

11 “(A) there is a high potential demand by
12 targeted medicare-eligible veterans for their
13 services;

14 “(B) they have sufficient capability in bill-
15 ing and accounting to participate;

16 “(C) they have favorable indicators of
17 quality of care, including patient satisfaction;

18 “(D) they deliver a range of services re-
19 quired by targeted medicare-eligible veterans;
20 and

21 “(E) they meet other relevant factors iden-
22 tified in the plan.

23 “(4) MEDICAL CENTER NEAR CLOSED BASE.—
24 The administering Secretaries shall endeavor to in-
25 clude at least 1 medical center that is in the same

1 catchment area as a military medical facility which
2 was closed pursuant to either of the following laws:

3 “(A) The Defense Base Closure and Re-
4 alignment Act of 1990.

5 “(B) Title II of the Defense Authorization
6 Amendments and Base Closure and Realign-
7 ment Act.

8 “(5) RESTRICTION.—No new facilities will be
9 built or expanded with funds from the demonstration
10 project.

11 “(6) DURATION.—The administering Secretar-
12 ies shall conduct the demonstration project during
13 the 3-year period beginning on January 1, 1998.

14 “(c) VOLUNTARY PARTICIPATION.—Participation of
15 targeted medicare-eligible veterans in the demonstration
16 project shall be voluntary, subject to the capacity of par-
17 ticipating medical centers and the funding limitations
18 specified in subsection (l), and shall be subject to such
19 terms and conditions as the administering Secretaries may
20 establish. In the case of a demonstration project at a medi-
21 cal center described in subsection (b)(3), targeted medi-
22 care-eligible veterans who are military retirees shall be
23 given preference in participating in the project.

24 “(d) COST SHARING.—The Secretary of Veterans Af-
25 fairs may establish cost-sharing requirements for veterans

1 participating in the demonstration project. If such cost
2 sharing requirements are established, those requirements
3 shall be the same as the requirements that apply to tar-
4 geted medicare-eligible patients at nongovernmental facili-
5 ties.

6 “(e) CREDITING OF PAYMENTS.—A payment received
7 by the Secretary of Veterans Affairs under the demonstra-
8 tion project shall be credited to the applicable Department
9 of Veterans Affairs medical appropriation and (within that
10 appropriation) to funds that have been allotted to the
11 medical center that furnished the services for which the
12 payment is made. Any such payment received during a fis-
13 cal year for services provided during a prior fiscal year
14 may be obligated by the Secretary of Veterans Affairs dur-
15 ing the fiscal year during which the payment is received.

16 “(f) AUTHORITY TO WAIVE CERTAIN MEDICARE RE-
17 QUIREMENTS.—The Secretary may, to the extent nec-
18 essary to carry out the demonstration project, waive any
19 requirement under this title. If the Secretary waives any
20 such requirement, the Secretary shall include a description
21 of such waiver in the agreement described in subsection
22 (b)(1)(B).

23 “(g) INSPECTOR GENERAL.—Nothing in the agree-
24 ment entered into under subsection (b) shall limit the In-
25 spector General of the Department of Health and Human

1 Services from investigating any matters regarding the ex-
2 penditure of funds under this title for the demonstration
3 project, including compliance with the provisions of this
4 title and all other relevant laws.

5 “(h) REPORT.—At least 30 days prior to the com-
6 mencement of the demonstration project, the administer-
7 ing Secretaries shall submit a copy of the agreement en-
8 tered into under subsection (b) to the committees of juris-
9 diction in Congress.

10 “(i) MANAGED HEALTH CARE PLANS.—(1) In carry-
11 ing out the demonstration project, the Secretary of Veter-
12 ans Affairs may establish and operate managed health
13 care plans.

14 “(2) Any such plan shall be operated by or through
15 a Department of Veterans Affairs medical center or group
16 of medical centers and may include the provision of health
17 care services through other facilities under the jurisdiction
18 of the Secretary of Veterans Affairs as well as public and
19 private entities under arrangements made between the De-
20 partment and the other public or private entity concerned.
21 Any such managed health care plan shall be established
22 and operated in conformance with standards prescribed by
23 the administering Secretaries.

24 “(3) The administering Secretaries shall prescribe
25 the minimum health care benefits to be provided under

1 such a plan to veterans enrolled in the plan. Those benefits
2 shall include at least all health care services covered under
3 the medicare program under this title.

4 “(4) The establishment of a managed health care
5 plan under this section shall be counted as the selection
6 of a medical center for purposes of applying the numerical
7 limitation under subsection (b)(1).

8 “(j) MEDICAL CENTER REQUIREMENTS.—The Sec-
9 retary of Veterans Affairs may establish a managed health
10 care plan using 1 or more medical centers and other facili-
11 ties only after the Secretary of Veterans Affairs submits
12 to Congress a report setting forth a plan for the use of
13 such centers and facilities. The plan may not be imple-
14 mented until the Secretary of Veterans Affairs has re-
15 ceived from the Inspector General of the Department of
16 Veterans Affairs, and has forwarded to Congress, certifi-
17 cation of each of the following:

18 “(1) The cost accounting system of the Veter-
19 ans Health Administration (known as the Decision
20 Support System) is operational and is providing reli-
21 able cost information on care delivered on an inpa-
22 tient and outpatient basis at such centers and facili-
23 ties.

24 “(2) The centers and facilities have operated in
25 conformity with the eligibility reform amendments

1 made by title I of the Veterans Health Care Act of
2 1996 for not less than 3 months.

3 “(3) The centers and facilities have developed a
4 credible plan (on the basis of market surveys, data
5 from the Decision Support System, actuarial analy-
6 sis, and other appropriate methods and taking into
7 account the level of payment under subsection (l)
8 and the costs of providing covered services at the
9 centers and facilities) to minimize, to the extent fea-
10 sible, the risk that appropriated funds allocated to
11 the centers and facilities will be required to meet the
12 centers’ and facilities’ obligation to targeted medi-
13 care-eligible veterans under the demonstration
14 project.

15 “(4) The centers and facilities collectively have
16 available capacity to provide the contracted benefits
17 package to a sufficient number of targeted medicare-
18 eligible veterans.

19 “(5) The entity administering the health plan
20 has sufficient systems and safeguards in place to
21 minimize any risk that instituting the managed care
22 model will result in reducing the quality of care de-
23 livered to enrollees in the demonstration project or
24 to other veterans receiving care under paragraphs

1 subsection (1) or (2) of section 1710(a) of title 38,
2 United States Code.

3 “(k) RESERVES.—The Secretary of Veterans Affairs
4 shall maintain such reserves as may be necessary to en-
5 sure against the risk that appropriated funds, allocated
6 to medical centers and facilities participating in the dem-
7 onstration project through a managed health care plan
8 under this section, will be required to meet the obligations
9 of those medical centers and facilities to targeted medi-
10 care-eligible veterans.

11 “(l) PAYMENTS BASED ON REGULAR MEDICARE
12 PAYMENT RATES.—

13 “(1) PAYMENTS.—

14 “(A) IN GENERAL.—Subject to the suc-
15 ceeding provisions of this subsection, the Sec-
16 retary shall reimburse the Secretary of Veter-
17 ans Affairs for services provided under the dem-
18 onstration project at the following rates:

19 “(i) NONCAPITATION.—Except as pro-
20 vided in clause (ii) and subject to subpara-
21 graphs (B)(i) and (D), at a rate equal to
22 95 percent of the amounts that otherwise
23 would be payable under this title on a
24 noncapitated basis for such services if the
25 medical center were not a Federal medical

1 center, were participating in the program,
2 and imposed charges for such services.

3 “(ii) CAPITATION.—Subject to sub-
4 paragraphs (B)(ii) and (D), in the case of
5 services provided to an enrollee under a
6 managed health care plan established
7 under subsection (i), at a rate equal to 95
8 percent of the amount paid to a Medicare
9 Choice organization under part C with re-
10 spect to such an enrollee.

11 In cases in which a payment amount may not
12 otherwise be readily computed, the Secretaries
13 shall establish rules for computing equivalent or
14 comparable payment amounts.

15 “(B) EXCLUSION OF CERTAIN AMOUNTS.—

16 “(i) NONCAPITATION.—In computing
17 the amount of payment under subpara-
18 graph (A)(i), the following shall be ex-
19 cluded:

20 (i) DISPROPORTIONATE SHARE HOS-
21 PITAL ADJUSTMENT.—Any amount attrib-
22 utable to an adjustment under subsection
23 (d)(5)(F) of section 1886 of the Social Se-
24 curity Act (42 U.S.C. 1395ww).

1 (ii) DIRECT GRADUATE MEDICAL EDU-
2 CATION PAYMENTS.—Any amount attrib-
3 utable to a payment under subsection (h)
4 of such section.

5 (iii) PERCENTAGE OF INDIRECT MEDI-
6 CAL EDUCATION ADJUSTMENT.—40 per-
7 cent of any amount attributable to the ad-
8 justment under subsection (d)(5)(B) of
9 such section.

10 (iv) PERCENTAGE OF CAPITAL PAY-
11 MENTS.—67 percent of any amounts at-
12 tributable to payments for capital-related
13 costs under subsection (g) of such section.

14 “(ii) CAPITATION.—In the case of
15 years before 2001, in computing the
16 amount of payment under subparagraph
17 (A)(ii), the payment rate shall be com-
18 puted as though the amounts excluded
19 under clause (i) had been excluded in the
20 determination of the amount paid to a
21 Medicare Choice organization under part C
22 with respect to an enrollee.

23 “(C) PERIODIC PAYMENTS FROM MEDI-
24 CARE TRUST FUNDS.—Payments under this
25 subsection shall be made—

1 “(i) on a periodic basis consistent
2 with the periodicity of payments under this
3 title; and

4 “(ii) in appropriate part, as deter-
5 mined by the Secretary, from the trust
6 funds.

7 “(D) ANNUAL LIMIT ON MEDICARE PAY-
8 MENTS.—The amount paid to the Department
9 of Veterans Affairs under this subsection for
10 any year for the demonstration project may not
11 exceed \$50,000,000.

12 “(2) REDUCTION IN PAYMENT FOR VA FAILURE
13 TO MAINTAIN EFFORT.—

14 “(A) IN GENERAL.—In order to avoid
15 shifting onto the medicare program under this
16 title costs previously assumed by the Depart-
17 ment of Veterans Affairs for the provision of
18 medicare-covered services to targeted medicare-
19 eligible veterans, the payment amount under
20 this subsection for the project for a fiscal year
21 shall be reduced by the amount (if any) by
22 which—

23 “(i) the amount of the VA effort level
24 for targeted veterans (as defined in sub-

1 paragraph (B)) for the fiscal year ending
2 in such year, is less than

3 “(ii) the amount of the VA effort level
4 for targeted veterans for fiscal year 1997.

5 “(B) VA EFFORT LEVEL FOR TARGETED
6 VETERANS DEFINED.—For purposes of sub-
7 paragraph (A), the term ‘VA effort level for
8 targeted veterans’ means, for a fiscal year, the
9 amount, as estimated by the administering Sec-
10 retaries, that would have been expended under
11 the medicare program under this title for VA-
12 provided medicare-covered services for targeted
13 veterans (as defined in subparagraph (C)) for
14 that fiscal year if benefits were available under
15 the medicare program for those services. Such
16 amount does not include expenditures attrib-
17 utable to services for which reimbursement is
18 made under the demonstration project.

19 “(C) VA-PROVIDED MEDICARE-COVERED
20 SERVICES FOR TARGETED VETERANS.—For
21 purposes of subparagraph (B), the term ‘VA-
22 provided medicare-covered services for targeted
23 veterans’ means, for a fiscal year, items and
24 services—

1 “(i) that are provided during the fis-
2 cal year by the Department of Veterans
3 Affairs to targeted medicare-eligible veter-
4 ans;

5 “(ii) that constitute hospital care and
6 medical services under chapter 17 of title
7 38, United States Code; and

8 “(iii) for which benefits would be
9 available under the medicare program
10 under this title if they were provided other
11 than by a Federal provider of services that
12 does not charge for those services.

13 “(3) ASSURING NO INCREASE IN COST TO MEDI-
14 CARE PROGRAM.—

15 “(A) MONITORING EFFECT OF DEM-
16 ONSTRATION PROGRAM ON COSTS TO MEDICARE
17 PROGRAM.—

18 “(i) IN GENERAL.—The Secretaries,
19 in consultation with the Comptroller Gen-
20 eral, shall closely monitor the expenditures
21 made under the medicare program for tar-
22 geted medicare-eligible veterans during the
23 period of the demonstration project com-
24 pared to the expenditures that would have
25 been made for such veterans during that

1 period if the demonstration project had not
2 been conducted.

3 “(ii) ANNUAL REPORT BY THE COMP-
4 TROLLER GENERAL.—Not later than De-
5 cember 31 of each year during which the
6 demonstration project is conducted, the
7 Comptroller General shall submit to the
8 Secretaries and the appropriate committees
9 of Congress a report on the extent, if any,
10 to which the costs of the Secretary under
11 the medicare program under this title in-
12 creased during the preceding fiscal year as
13 a result of the demonstration project.

14 “(B) REQUIRED RESPONSE IN CASE OF IN-
15 CREASE IN COSTS.—

16 “(i) IN GENERAL.—If the administer-
17 ing Secretaries find, based on subpara-
18 graph (A), that the expenditures under the
19 medicare program under this title in-
20 creased (or are expected to increase) dur-
21 ing a fiscal year because of the demonstra-
22 tion project, the administering Secretaries
23 shall take such steps as may be needed—

1 “(I) to recoup for the medicare
2 program the amount of such increase
3 in expenditures; and

4 “(II) to prevent any such in-
5 crease in the future.

6 “(ii) STEPS.—Such steps—

7 “(I) under clause (i)(I) shall in-
8 clude payment of the amount of such
9 increased expenditures by the Sec-
10 retary of Veterans Affairs from the
11 current medical care appropriation of
12 the Department of Veterans Affairs to
13 the trust funds; and

14 “(II) under clause (i)(II) shall in-
15 clude suspending or terminating the
16 demonstration project (in whole or in
17 part) or lowering the amount of pay-
18 ment under paragraph (1)(A).

19 “(m) EVALUATION AND REPORTS.—

20 “(1) INDEPENDENT EVALUATION.—The admin-
21 istering Secretaries shall arrange for an independent
22 entity with expertise in the evaluation of health serv-
23 ices to conduct an evaluation of the demonstration
24 project. The entity shall submit annual reports on
25 the demonstration project to the administering Sec-

1 retaries and to the committees of jurisdiction in the
2 Congress. The first report shall be submitted not
3 later than 12 months after the date on which the
4 demonstration project begins operation, and the final
5 report not later than 3¹/₂ years after that date. The
6 evaluation and reports shall include an assessment,
7 based on the agreement entered into under sub-
8 section (b), of the following:

9 “(A) The cost to the Department of Veter-
10 ans Affairs of providing care to veterans under
11 the project.

12 “(B) Compliance of participating medical
13 centers with applicable measures of quality of
14 care, compared to such compliance for other
15 medicare-participating medical centers.

16 “(C) A comparison of the costs of medical
17 centers’ participation in the program with the
18 reimbursements provided for services of such
19 medical centers.

20 “(D) Any savings or costs to the medicare
21 program under this title from the project.

22 “(E) Any change in access to care or qual-
23 ity of care for targeted medicare-eligible veter-
24 ans participating in the project.

1 “(F) Any effect of the project on the ac-
2 cess to care and quality of care for targeted
3 medicare-eligible veterans not participating in
4 the project and other veterans not participating
5 in the project.

6 “(G) The provision of services under man-
7 aged health care plans under subsection (l), in-
8 cluding the circumstances (if any) under which
9 the Secretary of Veterans Affairs uses reserves
10 described in subsection (k) and the Secretary of
11 Veterans Affairs’ response to such cir-
12 cumstances (including the termination of man-
13 aged health care plans requiring the use of such
14 reserves).

15 “(H) Any effect that the demonstration
16 project has on the enrollment in Medicare
17 Choice organizations under part C of this title
18 in the established site areas.

19 “(2) REPORT ON EXTENSION AND EXPANSION
20 OF DEMONSTRATION PROJECT.—Not later than six
21 months after the date of the submission of the pe-
22 nultimate report under paragraph (1), the admin-
23 istering Secretaries shall submit to Congress a re-
24 port containing their recommendation as to—

1 “(A) whether to extend the demonstration
2 project or make the project permanent;

3 “(B) whether to expand the project to
4 cover additional sites and areas and to increase
5 the maximum amount of reimbursement (or the
6 maximum amount of reimbursement permitted
7 for managed health care plans under this sec-
8 tion) under the project in any year; and

9 “(C) whether the terms and conditions of
10 the project should be continued (or modified) if
11 the project is extended or expanded.

12 “MEDICARE SUBVENTION DEMONSTRATION PROJECT FOR
13 MILITARY RETIREES

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

15 “(1) ADMINISTERING SECRETARIES.—The term
16 ‘administering Secretaries’ means the Secretary and
17 the Secretary of Defense acting jointly.

18 “(2) DEMONSTRATION PROJECT; PROJECT.—
19 The terms ‘demonstration project’ and ‘project’
20 mean the demonstration project carried out under
21 this section.

22 “(3) DESIGNATED PROVIDER.—The term ‘des-
23 ignated provider’ has the meaning given that term in
24 section 721(5) of the National Defense Authoriza-
25 tion Act For Fiscal Year 1997 (Public Law 104-
26 201; 110 Stat. 2593; 10 U.S.C. 1073 note).

1 “(4) MEDICARE-ELIGIBLE MILITARY RETIREE
2 OR DEPENDENT.—The term ‘medicare-eligible mili-
3 tary retiree or dependent’ means an individual de-
4 scribed in section 1074(b) or 1076(b) of title 10,
5 United States Code, who—

6 “(A) would be eligible for health benefits
7 under section 1086 of such title by reason of
8 subsection (c)(1) of such section 1086 but for
9 the operation of subsection (d) of such section
10 1086;

11 “(B)(i) is entitled to benefits under part A
12 of this title; and

13 “(ii) if the individual was entitled to such
14 benefits before July 1, 1996, received health
15 care items or services from a health care facility
16 of the uniformed services before that date, but
17 after becoming entitled to benefits under part A
18 of this title;

19 “(C) is enrolled for benefits under part B
20 of this title; and

21 “(D) has attained age 65.

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

1 “(6) MILITARY TREATMENT FACILITY.—The
2 term ‘military treatment facility’ means a facility re-
3 ferred to in section 1074(a) of title 10, United
4 States Code.

5 “(7) TRICARE.—The term ‘TRICARE’ has
6 the same meaning as the term ‘TRICARE program’
7 under section 711 of the National Defense Author-
8 ization Act for Fiscal Year 1996 (10 U.S.C. 1073
9 note).

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

15 “(b) DEMONSTRATION PROJECT.—

16 “(1) IN GENERAL.—

17 “(A) ESTABLISHMENT.—The administer-
18 ing Secretaries are authorized to establish a
19 demonstration project (under an agreement en-
20 tered into by the administering Secretaries)
21 under which the Secretary shall reimburse the
22 Secretary of Defense, from the trust funds, for
23 medicare health care services furnished to cer-
24 tain medicare-eligible military retirees or de-
25 pendents.

1 “(B) AGREEMENT.—The agreement en-
2 tered into under subparagraph (A) shall include
3 at a minimum—

4 “(i) a description of the benefits to be
5 provided to the participants of the dem-
6 onstration project established under this
7 section;

8 “(ii) a description of the eligibility
9 rules for participation in the demonstration
10 project, including any cost sharing require-
11 ments established under subsection (h);

12 “(iii) a description of how the dem-
13 onstration project will satisfy the require-
14 ments under this title;

15 “(iv) a description of the sites selected
16 under paragraph (2);

17 “(v) a description of how reimburse-
18 ment and maintenance of effort require-
19 ments under subsection (j) will be imple-
20 mented in the demonstration project; and

21 “(vi) a statement that the Secretary
22 shall have access to all data of the Depart-
23 ment of Defense that the Secretary deter-
24 mines is necessary to conduct independent
25 estimates and audits of the maintenance of

1 effort requirement, the annual reconcili-
2 ation, and related matters required under
3 the demonstration project.

4 “(2) IN GENERAL.—The project established
5 under this section shall be conducted in no more
6 than 6 sites, designated jointly by the administering
7 Secretaries after review of all TRICARE regions.

8 “(3) RESTRICTION.—No new military treatment
9 facilities will be built or expanded with funds from
10 the demonstration project.

11 “(4) DURATION.—The administering Secretar-
12 ies shall conduct the demonstration project during
13 the 3-year period beginning on January 1, 1998.

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

22 “(d) AUTHORITY TO WAIVE CERTAIN MEDICARE RE-
23 QUIREMENTS.—The Secretary may, to the extent nec-
24 essary to carry out the demonstration project, waive any
25 requirement under this title. If the Secretary waives any

1 such requirement, the Secretary shall include a description
2 of such waiver in the agreement described in subsection
3 (b).

4 “(e) INSPECTOR GENERAL.—Nothing in the agree-
5 ment entered into under subsection (b) shall limit the In-
6 spector General of the Department of Health and Human
7 Services from investigating any matters regarding the ex-
8 penditure of funds under this title for the demonstration
9 project, including compliance with the provisions of this
10 title and all other relevant laws.

11 “(f) REPORT.—At least 30 days prior to the com-
12 mencement of the demonstration project, the administer-
13 ing Secretaries shall submit a copy of the agreement en-
14 tered into under subsection (b) to the committees of juris-
15 diction in Congress.

16 “(g) VOLUNTARY PARTICIPATION.—Participation of
17 medicare-eligible military retirees or dependents in the
18 demonstration project shall be voluntary, subject to the
19 capacity of participating military treatment facilities and
20 designated providers and the funding limitations specified
21 in subsection (j), and shall be subject to such terms and
22 conditions as the administering Secretaries may establish.

23 “(h) COST-SHARING BY DEMONSTRATION ENROLL-
24 EES.—The Secretary of Defense may establish cost-shar-
25 ing requirements for medicare-eligible military retirees

1 and dependents who enroll in the demonstration project
2 consistent with part C of this title.

3 “(i) TRICARE HEALTH CARE PLANS.—

4 “(1) TRICARE PROGRAM ENROLLMENT FEE
5 WAIVER.—The Secretary of Defense shall waive the
6 enrollment fee applicable to any medicare-eligible
7 military retiree or dependent enrolled in the man-
8 aged care option of the TRICARE program for any
9 period for which reimbursement is made under this
10 section with respect to such retiree or dependent.

11 “(2) MODIFICATION OF TRICARE CONTRACTS.—

12 In carrying out the demonstration project, the Sec-
13 retary of Defense is authorized to amend existing
14 TRICARE contracts in order to provide the medi-
15 care health care services to the medicare-eligible
16 military retirees and dependents enrolled in the dem-
17 onstration project.

18 “(3) HEALTH CARE BENEFITS.—The admin-
19 istering Secretaries shall prescribe the minimum

20 health care benefits to be provided under such a
21 plan to medicare-eligible military retirees or depend-
22 ents enrolled in the plan. Those benefits shall in-
23 clude at least all medicare health care services cov-
24 ered under this title.

1 “(j) PAYMENTS BASED ON REGULAR MEDICARE
2 PAYMENT RATES.—

3 “(1) PAYMENTS.—

4 “(A) IN GENERAL.—Subject to the suc-
5 ceeding provisions of this subsection, the Sec-
6 retary shall reimburse the Secretary of Defense
7 for services provided under the demonstration
8 project at the following rates:

9 “(i) NONCAPITATION.—Except as pro-
10 vided in clause (ii) and subject to subpara-
11 graphs (B)(i) and (D), at a rate equal to
12 95 percent of the amounts that otherwise
13 would be payable under this title on a
14 noncapitated basis for such services if the
15 military treatment facility or designated
16 provider were not a Federal medical cen-
17 ter, were participating in the program, and
18 imposed charges for such services.

19 “(ii) CAPITATION.—Subject to sub-
20 paragraphs (B)(ii) and (D), in the case of
21 services provided to an enrollee under a
22 managed health care plan established
23 under subsection (i), at a rate equal to 95
24 percent of the amount paid to a Medicare

1 Choice organization under part C with re-
2 spect to such an enrollee.

3 In cases in which a payment amount may not
4 otherwise be readily computed, the Secretaries
5 shall establish rules for computing equivalent or
6 comparable payment amounts.

7 “(B) EXCLUSION OF CERTAIN AMOUNTS.—

8 “(i) NONCAPITATION.—In computing
9 the amount of payment under subpara-
10 graph (A)(i), the following shall be ex-
11 cluded:

12 “(I) SPECIAL PAYMENTS.—Any
13 amount attributable to an adjustment
14 under subparagraphs (B) and (F) of
15 section 1886(d)(5) and subsection (h)
16 of such section.

17 “(II) PERCENTAGE OF CAPITAL
18 PAYMENTS.—An amount determined
19 by the administering Secretaries for
20 amounts attributable to payments for
21 capital-related costs under subsection
22 (g) of such section.

23 “(ii) CAPITATION.—In the case of
24 years before 2001, in computing the
25 amount of payment under subparagraph

1 (A)(ii), the payment rate shall be com-
2 puted as though the amounts excluded
3 under clause (i) had been excluded in the
4 determination of the amount paid to a
5 Medicare Choice organization under part C
6 with respect to an enrollee.

7 “(C) PERIODIC PAYMENTS FROM MEDI-
8 CARE TRUST FUNDS.—Payments under this
9 subsection shall be made—

10 “(i) on a periodic basis consistent
11 with the periodicity of payments under this
12 title; and

13 “(ii) in appropriate part, as deter-
14 mined by the Secretary, from the trust
15 funds.

16 “(D) CAP ON AMOUNT.—The aggregate
17 amount to be reimbursed under this paragraph
18 pursuant to the agreement entered into between
19 the administering Secretaries under subsection
20 (b) shall not exceed a total of—

21 “(i) \$55,000,000 for calendar year
22 1998;

23 “(ii) \$65,000,000 for calendar year
24 1999; and

1 “(iii) \$75,000,000 for calendar year
2 2000.

3 “(2) ASSURING NO INCREASE IN COST TO MEDI-
4 CARE PROGRAM.—

5 “(A) MONITORING EFFECT OF DEM-
6 ONSTRATION PROGRAM ON COSTS TO MEDICARE
7 PROGRAM.—

8 “(i) IN GENERAL.—The Secretaries,
9 in consultation with the Comptroller Gen-
10 eral, shall closely monitor the expenditures
11 made under the medicare program for
12 medicare-eligible military retirees or de-
13 pendents during the period of the dem-
14 onstration project compared to the expend-
15 itures that would have been made for such
16 medicare-eligible military retirees or de-
17 pendents during that period if the dem-
18 onstration project had not been conducted.
19 The agreement entered into by the admin-
20 istering Secretaries under subsection (b)
21 shall require any participating military
22 treatment facility to maintain the level of
23 effort for space available care to medicare-
24 eligible military retirees or dependents.

1 “(ii) ANNUAL REPORT BY THE COMP-
2 TROLLER GENERAL.—Not later than De-
3 cember 31 of each year during which the
4 demonstration project is conducted, the
5 Comptroller General shall submit to the
6 Secretaries and the appropriate committees
7 of Congress a report on the extent, if any,
8 to which the costs of the Secretary under
9 the medicare program under this title in-
10 creased during the preceding fiscal year as
11 a result of the demonstration project.

12 “(B) REQUIRED RESPONSE IN CASE OF IN-
13 CREASE IN COSTS.—

14 “(i) IN GENERAL.—If the administer-
15 ing Secretaries find, based on subpara-
16 graph (A), that the expenditures under the
17 medicare program under this title in-
18 creased (or are expected to increase) dur-
19 ing a fiscal year because of the demonstra-
20 tion project, the administering Secretaries
21 shall take such steps as may be needed—

22 “(I) to recoup for the medicare
23 program the amount of such increase
24 in expenditures; and

1 “(II) to prevent any such in-
2 crease in the future.

3 “(ii) STEPS.—Such steps—

4 “(I) under clause (i)(I) shall in-
5 clude payment of the amount of such
6 increased expenditures by the Sec-
7 retary of Defense from the current
8 medical care appropriation of the De-
9 partment of Defense to the trust
10 funds; and

11 “(II) under clause (i)(II) shall in-
12 clude suspending or terminating the
13 demonstration project (in whole or in
14 part) or lowering the amount of pay-
15 ment under paragraph (1)(A).

16 “(k) EVALUATION AND REPORTS.—

17 “(1) INDEPENDENT EVALUATION.—The admin-
18 istering Secretaries shall arrange for an independent
19 entity with expertise in the evaluation of health serv-
20 ices to conduct an evaluation of the demonstration
21 project. The entity shall submit annual reports on
22 the demonstration project to the administering Sec-
23 retaries and to the committees of jurisdiction in the
24 Congress. The first report shall be submitted not
25 later than 12 months after the date on which the

1 demonstration project begins operation, and the final
2 report not later than 3½ years after that date. The
3 evaluation and reports shall include an assessment,
4 based on the agreement entered into under sub-
5 section (b), of the following:

6 “(A) The number of medicare-eligible mili-
7 tary retirees and dependents opting to partici-
8 pate in the demonstration project instead of re-
9 ceiving health benefits through another health
10 insurance plan (including benefits under this
11 title).

12 “(B) Compliance by the Department of
13 Defense with the requirements under this title.

14 “(C) The cost to the Department of De-
15 fense of providing care to medicare-eligible mili-
16 tary retirees and dependents under the dem-
17 onstration project.

18 “(D) Compliance by the Department of
19 Defense with the standards of quality required
20 of entities that furnish medicare health care
21 services.

22 “(E) An analysis of whether, and in what
23 manner, easier access to the uniformed services
24 treatment system affects the number of medi-

1 care-eligible military retirees and dependents re-
2 ceiving medicare health care services.

3 “(F) Any savings or costs to the medicare
4 program under this title resulting from the
5 demonstration project.

6 “(G) An assessment of the access to care
7 and quality of care for medicare-eligible military
8 retirees and dependents under the demonstra-
9 tion project.

10 “(H) Any impact of the demonstration
11 project on the access to care for medicare-eli-
12 gible military retirees and dependents who did
13 not enroll in the demonstration project and for
14 other individuals entitled to benefits under this
15 title.

16 “(I) Any impact of the demonstration
17 project on private health care providers.

18 “(J) Any impact of the demonstration
19 project on access to care for active duty mili-
20 tary personnel and their dependents.

21 “(K) A list of the health insurance plans
22 and programs that were the primary payers for
23 medicare-eligible military retirees and depend-
24 ents during the year prior to their participation
25 in the demonstration project and the distribu-

1 tion of their previous enrollment in such plans
2 and programs.

3 “(L) An identification of cost-shifting (if
4 any) between the medicare program under this
5 title and the Defense health program as a re-
6 sult of the demonstration project and a descrip-
7 tion of the nature of any such cost-shifting.

8 “(M) An analysis of how the demonstra-
9 tion project affects the overall accessibility of
10 the uniformed services treatment system and
11 the amount of space available for point-of-serv-
12 ice care, and a description of the unintended ef-
13 fects (if any) upon the normal treatment prior-
14 ity system.

15 “(N) A description of the difficulties (if
16 any) experienced by the Department of Defense
17 in managing the demonstration project.

18 “(O) A description of the effects of the
19 demonstration project on military treatment fa-
20 cility readiness and training and the probable
21 effects of the project on overall Department of
22 Defense medical readiness and training.

23 “(P) A description of the effects that the
24 demonstration project, if permanent, would be
25 expected to have on the overall budget of the

1 Defense health program, the budgets of individ-
2 ual military treatment facilities and designated
3 providers, and on the budget of the medicare
4 program under this title.

5 “(Q) An analysis of whether the dem-
6 onstration project affects the cost to the De-
7 partment of Defense of prescription drugs or
8 the accessibility, availability, and cost of such
9 drugs to demonstration program beneficiaries.

10 “(R) Any additional elements specified in
11 the agreement entered into under subsection
12 (b).

13 “(2) REPORT ON EXTENSION AND EXPANSION
14 OF DEMONSTRATION PROJECT.—Not later than six
15 months after the date of the submission of the pe-
16 nultimate report under paragraph (1), the admin-
17 istering Secretaries shall submit to Congress a re-
18 port containing their recommendation as to—

19 “(A) whether to extend the demonstration
20 project or make the project permanent;

21 “(B) whether to expand the project to
22 cover additional sites and areas and to increase
23 the maximum amount of reimbursement (or the
24 maximum amount of reimbursement permitted

1 for managed health care plans under this sec-
 2 tion) under the project in any year; and

3 “(C) whether the terms and conditions of
 4 the project should be continued (or modified) if
 5 the project is extended or expanded.”.

6 **CHAPTER 6—TAX TREATMENT OF HOS-**
 7 **PITALS PARTICIPATING IN PROVIDER-**
 8 **SPONSORED ORGANIZATIONS**

9 **SEC. 5049. TAX TREATMENT OF HOSPITALS WHICH PAR-**
 10 **TICIPATE IN PROVIDER-SPONSORED ORGANI-**
 11 **ZATIONS.**

12 (a) IN GENERAL.—Section 501 of the Internal Reve-
 13 nue Code of 1986 (relating to exemption from tax on cor-
 14 porations, certain trusts, etc.) is amended by redesignat-
 15 ing subsection (o) as subsection (p) and by inserting after
 16 subsection (n) the following new subsection:

17 “(o) TREATMENT OF HOSPITALS PARTICIPATING IN
 18 PROVIDER-SPONSORED ORGANIZATIONS.—An organiza-
 19 tion shall not fail to be treated as organized and operated
 20 exclusively for a charitable purpose for purposes of sub-
 21 section (c)(3) solely because a hospital which is owned and
 22 operated by such organization participates in a provider-
 23 sponsored organization (as defined in section 1853(e) of
 24 the Social Security Act), whether or not the provider-spon-
 25 sored organization is exempt from tax. For purposes of

1 subsection (c)(3), any person with a material financial in-
2 terest in such a provider-sponsored organization shall be
3 treated as a private shareholder or individual with respect
4 to the hospital.”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 subsection (a) shall take effect on the date of enactment
7 of this Act.

8 **Subtitle B—Prevention Initiatives**

9 **SEC. 5101. ANNUAL SCREENING MAMMOGRAPHY FOR** 10 **WOMEN OVER AGE 39.**

11 (a) IN GENERAL.—Section 1834(c)(2)(A) (42 U.S.C.
12 1395m(c)(2)(A)) is amended by striking clauses (iii), (iv),
13 and (v) and inserting the following:

14 “(iii) in the case of a woman over 39
15 years of age, payment may not be made
16 under this part for screening mammog-
17 raphy performed within 11 months follow-
18 ing the month in which a previous screen-
19 ing mammography was performed.”

20 (b) WAIVER OF COINSURANCE.—

21 (1) IN GENERAL.—Section 1834(c)(1)(C) (42
22 U.S.C. 1395m(c)(1)(C)) is amended by striking “80
23 percent of”.

24 (2) WAIVER OF COINSURANCE IN OUTPATIENT
25 HOSPITAL SETTINGS.—The third sentence of section

1 1866(a)(2)(A) (42 U.S.C. 1395cc(a)(2)(A)) is
2 amended by inserting after “1861(s)(10)(A)” the
3 following: “, with respect to screening mammog-
4 raphy (as defined in section 1861(jj),”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 subsection (a) apply to items and services furnished on
7 or after January 1, 1998.

8 **SEC. 5102. COVERAGE OF COLORECTAL SCREENING.**

9 (a) IN GENERAL.—Section 1861 (42 U.S.C. 1395x)
10 is amended—

11 (1) in subsection (s)(2)—

12 (A) by striking “and” at the end of sub-
13 paragraphs (N) and (O); and

14 (B) by inserting after subparagraph (O)
15 the following:

16 “(P) colorectal cancer screening tests (as de-
17 fined in subsection (oo)); and”; and

18 (2) by adding at the end the following:

19 “Colorectal Cancer Screening Test

20 “(oo)(1)(A) The term ‘colorectal cancer screening
21 test’ means a procedure furnished to an individual that
22 the Secretary prescribes in regulations as appropriate for
23 the purpose of early detection of colorectal cancer, taking
24 into account availability, effectiveness, costs, changes in

1 technology and standards of medical practice, and such
2 other factors as the Secretary considers appropriate.

3 “(B) The Secretary shall consult with appropriate or-
4 ganizations in prescribing regulations under subparagraph
5 (A).”.

6 (b) FREQUENCY AND PAYMENT LIMITS.—Section
7 1834 (42 U.S.C. 1395m) is amended by inserting after
8 subsection (c) the following new subsection:

9 “(d) FREQUENCY AND PAYMENT LIMITS FOR
10 COLORECTAL CANCER SCREENING TESTS.—

11 “(1) IN GENERAL.—The Secretary shall pre-
12 scribe regulations that—

13 “(A) establish frequency limits for
14 colorectal cancer screening tests that take into
15 account the risk status of an individual and
16 that are consistent with frequency limits for
17 similar or related services; and

18 “(B) establish payment limits (including
19 limits on charges of nonparticipating physi-
20 cians) for colorectal cancer screening tests that
21 are consistent with payment limits for similar
22 or related services.

23 “(2) REVISIONS.—The Secretary shall periodi-
24 cally review and, to the extent the Secretary consid-

1 ers appropriate, revise the frequency and payment
2 limits established under paragraph (1).

3 “(3) FACTORS TO DETERMINE INDIVIDUALS AT
4 RISK.—In establishing criteria for determining
5 whether an individual is at risk for purposes of this
6 subsection, the Secretary shall take into consider-
7 ation family history, prior experience of cancer, a
8 history of chronic digestive disease condition, and
9 the presence of any appropriate recognized gene
10 markers for colorectal cancer.

11 “(4) CONSULTATION.—In establishing and re-
12 vising frequency and payment limits under this sub-
13 section, the Secretary shall consult with appropriate
14 organizations.”

15 (c) CONFORMING AMENDMENTS.—(1) Paragraphs
16 (1)(D) and (2)(D) of section 1833(a) (42 U.S.C. 1395l(a))
17 are each amended by inserting “or section 1834(d)” after
18 “subsection (h)(1)”.

19 (2) Section 1833(h)(1)(A) (42 U.S.C.
20 1395l(h)(1)(A)) is amended by striking “The Secretary”
21 and inserting “Subject to section 1834(d), the Secretary”.

22 (3) Section 1862(a) (42 U.S.C. 1395y(a)) is amend-
23 ed—

24 (A) in paragraph (1)—

1 (i) in subparagraph (E), by striking “and”
2 at the end,

3 (ii) in subparagraph (F), by striking the
4 semicolon at the end and inserting “, and”, and

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

7 “(G) in the case of colorectal cancer screening
8 tests, which are performed more frequently than is
9 covered under section 1834(d);” and

10 (B) in paragraph (7), by striking “paragraph
11 (1)(B) or under paragraph (1)(F)” and inserting
12 “subparagraph (B), (F), or (G) of paragraph (1)”.

13 (d) EFFECTIVE DATE.—

14 (1) IN GENERAL.—The amendments made by
15 this section shall apply to items and services fur-
16 nished on or after January 1, 1998.

17 (2) REGULATIONS.—The Secretary of Health
18 and Human Services shall issue final regulations de-
19 scribed in sections 1861(oo) and 1834(d) of the So-
20 cial Security Act (as added by this section) within
21 3 months after the date of enactment of this Act.

22 **SEC. 5103. DIABETES SCREENING TESTS.**

23 (a) DIABETES OUTPATIENT SELF-MANAGEMENT
24 TRAINING SERVICES.—

1 (1) IN GENERAL.—Section 1861(s) (42 U.S.C.
2 1395x(s)), as amended by section 5102, is amend-
3 ed—

4 (A) in subsection (s)(2)—

5 (i) by striking “and” at the end of
6 subparagraph (P);

7 (ii) by inserting “and” at the end of
8 subparagraph (Q); and

9 (iii) by adding at the end the follow-
10 ing:

11 “(R) diabetes outpatient self-management
12 training services (as defined in subsection (pp));”,
13 and

14 (B) by adding at the end the following:

15 “Diabetes Outpatient Self-Management Training Services

16 “(pp)(1) The term ‘diabetes outpatient self-manage-
17 ment training services’ means educational and training
18 services furnished to an individual with diabetes by a cer-
19 tified provider (as described in paragraph (2)(A)) in an
20 outpatient setting by an individual or entity that meets
21 the quality standards described in paragraph (2)(B), but
22 only if the physician who is managing the individual’s dia-
23 betic condition certifies that the services are needed under
24 a comprehensive plan of care related to the individual’s
25 diabetic condition to provide the individual with necessary

1 skills and knowledge (including skills related to the self-
2 administration of injectable drugs) to participate in the
3 management of the individual's condition.

4 “(2) In paragraph (1)—

5 “(A) a ‘certified provider’ is a physician, or
6 other individual or entity designated by the Sec-
7 retary, that, in addition to providing diabetes out-
8 patient self-management training services, provides
9 other items or services for which payment may be
10 made under this title; and

11 “(B) a physician, or other such individual or
12 entity, meets the quality standards described in this
13 subparagraph if the physician, or individual or en-
14 tity, meets quality standards established by the Sec-
15 retary, except that the physician, or other individual
16 or entity, shall be deemed to have met such stand-
17 ards if the physician or other individual or entity—

18 “(i) meets applicable standards originally
19 established by the National Diabetes Advisory
20 Board and subsequently revised by organiza-
21 tions who participated in the establishment of
22 standards by such Board, or

23 “(ii) is recognized by an organization that
24 represents individuals (including individuals

1 under this title) with diabetes as meeting stand-
2 ards for furnishing the services.”

3 (2) CONSULTATION WITH ORGANIZATIONS IN
4 ESTABLISHING PAYMENT AMOUNTS FOR SERVICES
5 PROVIDED BY PHYSICIANS.—In establishing payment
6 amounts under section 1848 of the Social Security
7 Act for physicians’ services consisting of diabetes
8 outpatient self-management training services, the
9 Secretary of Health and Human Services shall con-
10 sult with appropriate organizations, including such
11 organizations representing individuals or medicare
12 beneficiaries with diabetes, in determining the rel-
13 ative value for such services under section
14 1848(e)(2) of such Act.

15 (b) BLOOD-TESTING STRIPS FOR INDIVIDUALS WITH
16 DIABETES.—

17 (1) INCLUDING STRIPS AND MONITORS AS DU-
18 RABLE MEDICAL EQUIPMENT.—The first sentence of
19 section 1861(n) (42 U.S.C. 1395x(n)) is amended by
20 inserting before the semicolon the following: “, and
21 includes blood-testing strips and blood glucose mon-
22 itors for individuals with diabetes without regard to
23 whether the individual has Type I or Type II diabe-
24 tes or to the individual’s use of insulin (as deter-

1 mined under standards established by the Secretary
2 in consultation with the appropriate organizations”.

3 (2) 10 PERCENT REDUCTION IN PAYMENTS FOR
4 TESTING STRIPS.—Section 1834(a)(2)(B)(iv) (42
5 U.S.C. 1395m(a)(2)(B)(iv)) is amended by adding
6 before the period the following: “(reduced by 10 per-
7 cent, in the case of a blood glucose testing strip fur-
8 nished after 1997 for an individual with diabetes)”.

9 (c) ESTABLISHMENT OF OUTCOME MEASURES FOR
10 BENEFICIARIES WITH DIABETES.—

11 (1) IN GENERAL.—The Secretary of Health and
12 Human Services, in consultation with appropriate
13 organizations, shall establish outcome measures, in-
14 cluding glycosylated hemoglobin (past 90-day average
15 blood sugar levels), for purposes of evaluating the
16 improvement of the health status of medicare bene-
17 ficiaries with diabetes mellitus.

18 (2) RECOMMENDATIONS FOR MODIFICATIONS
19 TO SCREENING BENEFITS.—Taking into account in-
20 formation on the health status of medicare bene-
21 ficiaries with diabetes mellitus as measured under
22 the outcome measures established under subpara-
23 graph (A), the Secretary shall from time to time
24 submit recommendations to Congress regarding

1 modifications to the coverage of services for such
2 beneficiaries under the medicare program.

3 (d) EFFECTIVE DATE.—The amendments made by
4 this section apply to items and services furnished on or
5 after January 1, 1998.

6 **SEC. 5104. COVERAGE OF BONE MASS MEASUREMENTS.**

7 (a) IN GENERAL.—Section 1861 (42 U.S.C. 1395x)
8 is amended—

9 (1) in subsection (s)—

10 (A) in paragraph (12)(C), by striking
11 “and” at the end;

12 (B) by striking the period at the end of
13 paragraph (14) and inserting “; and”;

14 (C) by redesignating paragraphs (15) and
15 (16) as paragraphs (16) and (17), respectively;
16 and

17 (D) by inserting after paragraph (14) the
18 following:

19 “(15) bone mass measurement (as defined in
20 subsection (oo)).”; and

21 (2) by inserting after subsection (pp), as added
22 by section 5103, the following:

23 “Bone Mass Measurement

24 “(gg)(1) The term ‘bone mass measurement’ means
25 a radiologic or radioscopy procedure or other Food and

1 Drug Administration approved technology performed on a
2 qualified individual (as defined in paragraph (2)) for the
3 purpose of identifying bone mass, detecting bone loss, or
4 determining bone quality, and includes a physician’s inter-
5 pretation of the results of the procedure.

6 “(2) For purposes of paragraph (1), the term ‘quali-
7 fied individual’ means an individual who is (in accordance
8 with regulations prescribed by the Secretary)—

9 “(A) an estrogen-deficient woman at clinical
10 risk for osteoporosis and who is considering treat-
11 ment;

12 “(B) an individual with vertebral abnormalities;

13 “(C) an individual receiving long-term
14 glucocorticoid steroid therapy;

15 “(D) an individual with primary
16 hyperparathyroidism; or

17 “(E) an individual being monitored to assess
18 the response to or efficacy of an approved
19 osteoporosis drug therapy.”.

20 (b) CONFORMING AMENDMENTS.—Sections 1864(a),
21 1865(a), 1902(a)(9)(C), and 1915(a)(1)(B)(ii)(I) (42
22 U.S.C. 1395aa(a), 1395bb(a), 1396a(a)(9)(C), and
23 1396n(a)(1)(B)(ii)(I)) are amended by striking “para-
24 graphs (15) and (16)” each place such term appears and
25 inserting “paragraphs (16) and (17)”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to bone mass measurements per-
3 formed on or after January 1, 1998.

4 **Subtitle C—Rural Initiatives**

5 **SEC. 5151. SOLE COMMUNITY HOSPITALS.**

6 Section 1886(b)(3)(C) (42 U.S.C. 1395ww(b)(3)(C))
7 is amended—

8 (1) in clause (i), by redesignating subclauses (I)
9 and (II) as items (aa) and (bb), respectively;

10 (2) by redesignating clauses (i), (ii), (iii), and
11 (iv) as subclauses (I), (II), (III), and (IV), respec-
12 tively;

13 (3) by striking “(C) In” and inserting “(C)(i)
14 Subject to clause (ii), in”; and

15 (4) by striking the last sentence and inserting
16 the following:

17 “(ii)(I) There shall be substituted for the base cost
18 reporting period described in clause (i)(I) a hospital’s cost
19 reporting period (if any) beginning during fiscal year 1987
20 if such substitution results in an increase in the target
21 amount for the hospital.

22 “(II) Beginning with discharges occurring in fiscal
23 year 1998, there shall be substituted for the base cost re-
24 porting period described in clause (i)(I) either—

1 “(aa) the allowable operating costs of inpatient
2 hospital services (as defined in subsection (a)(4))
3 recognized under this title for the hospital’s cost re-
4 porting period (if any) beginning during fiscal year
5 1994 increased (in a compounded manner) by the
6 applicable percentage increases applied to the hos-
7 pital under this paragraph for discharges occurring
8 in fiscal years 1995, 1996, 1997, and 1998, or

9 “(bb) the allowable operating costs of inpatient
10 hospital services (as defined in subsection (a)(4))
11 recognized under this title for the hospital’s cost re-
12 porting period (if any) beginning during fiscal year
13 1995 increased (in a compounded manner) by the
14 applicable percentage increase applied to the hospital
15 under this paragraph for discharges occurring in fis-
16 cal years 1995, 1996, 1997, and 1998,
17 if such substitution results in an increase in the target
18 amount for the hospital.”.

19 **SEC. 5152. MEDICARE-DEPENDENT, SMALL RURAL HOS-**
20 **PITAL PAYMENT EXTENSION.**

21 (a) SPECIAL TREATMENT EXTENDED.—

22 (1) PAYMENT METHODOLOGY.—Section
23 1886(d)(5)(G) (42 U.S.C. 1395ww(d)(5)(G)) is
24 amended—

1 (A) in clause (i), by striking “October 1,
2 1994,” and inserting “October 1, 1994, or be-
3 ginning on or after October 1, 1997, and before
4 October 1, 2001,”; and

5 (B) in clause (ii)(II), by striking “October
6 1, 1994,” and inserting “October 1, 1994, or
7 beginning on or after October 1, 1997, and be-
8 fore October 1, 2001,”.

9 (2) EXTENSION OF TARGET AMOUNT.—Section
10 1886(b)(3)(D) (42 U.S.C. 1395ww(b)(3)(D)) is
11 amended—

12 (A) in the matter preceding clause (i), by
13 striking “September 30, 1994,” and inserting
14 “September 30, 1994, and for cost reporting
15 periods beginning on or after October 1, 1997,
16 and before October 1, 2001,”;

17 (B) in clause (ii), by striking “and” at the
18 end;

19 (C) in clause (iii), by striking the period at
20 the end and inserting “, and”;

21 (D) by adding after clause (iii) the follow-
22 ing new clause:

23 “(iv) with respect to discharges occurring dur-
24 ing fiscal year 1998 through fiscal year 2000, the
25 target amount for the preceding year increased by

1 the applicable percentage increase under subpara-
 2 graph (B)(iv).”.

3 (3) PERMITTING HOSPITALS TO DECLINE RE-
 4 CLASSIFICATION.—Section 13501(e)(2) of OBRA–93
 5 (42 U.S.C. 1395ww note) is amended by striking
 6 “or fiscal year 1994” and inserting “, fiscal year
 7 1994, fiscal year 1998, fiscal year 1999, or fiscal
 8 year 2000”.

9 (b) EFFECTIVE DATE.—The amendments made by
 10 subsection (a) shall apply with respect to discharges occur-
 11 ring on or after October 1, 1997.

12 **SEC. 5153. MEDICARE RURAL HOSPITAL FLEXIBILITY PRO-**
 13 **GRAM.**

14 (a) MEDICARE RURAL HOSPITAL FLEXIBILITY PRO-
 15 GRAM.—Section 1820 (42 U.S.C. 1395i–4) is amended to
 16 read as follows:

17 “MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM

18 “SEC. 1820. (a) ESTABLISHMENT.—Any State that
 19 submits an application in accordance with subsection (b)
 20 may establish a medicare rural hospital flexibility program
 21 described in subsection (c).

22 “(b) APPLICATION.—A State may establish a medi-
 23 care rural hospital flexibility program described in sub-
 24 section (c) if the State submits to the Secretary at such
 25 time and in such form as the Secretary may require an
 26 application containing—

1 “(1) assurances that the State—

2 “(A) has developed, or is in the process of
3 developing, a State rural health care plan
4 that—

5 “(i) provides for the creation of 1 or
6 more rural health networks (as defined in
7 subsection (d)) in the State;

8 “(ii) promotes regionalization of rural
9 health services in the State; and

10 “(iii) improves access to hospital and
11 other health services for rural residents of
12 the State; and

13 “(B) has developed the rural health care
14 plan described in subparagraph (A) in consulta-
15 tion with the hospital association of the State,
16 rural hospitals located in the State, and the
17 State Office of Rural Health (or, in the case of
18 a State in the process of developing such plan,
19 that assures the Secretary that the State will
20 consult with its State hospital association, rural
21 hospitals located in the State, and the State Of-
22 fice of Rural Health in developing such plan);

23 “(2) assurances that the State has designated
24 (consistent with the rural health care plan described
25 in paragraph (1)(A)), or is in the process of so des-

1 ignating, rural nonprofit or public hospitals or facili-
2 ties located in the State as critical access hospitals;
3 and

4 “(3) such other information and assurances as
5 the Secretary may require.

6 “(c) MEDICARE RURAL HOSPITAL FLEXIBILITY
7 PROGRAM DESCRIBED.—

8 “(1) IN GENERAL.—A State that has submitted
9 an application in accordance with subsection (b),
10 may establish a medicare rural hospital flexibility
11 program that provides that—

12 “(A) the State shall develop at least 1
13 rural health network (as defined in subsection
14 (d)) in the State; and

15 “(B) at least 1 facility in the State shall
16 be designated as a critical access hospital in ac-
17 cordance with paragraph (2).

18 “(2) STATE DESIGNATION OF FACILITIES.—

19 “(A) IN GENERAL.—A State may des-
20 ignate 1 or more facilities as a critical access
21 hospital in accordance with subparagraph (B).

22 “(B) CRITERIA FOR DESIGNATION AS CRIT-
23 ICAL ACCESS HOSPITAL.—A State may des-
24 ignate a facility as a critical access hospital if
25 the facility—

1 “(i) is a nonprofit or public hospital
2 and is located in a county (or equivalent
3 unit of local government) in a rural area
4 (as defined in section 1886(d)(2)(D))
5 that—

6 “(I) is located more than a 35-
7 mile drive from a hospital, or another
8 facility described in this subsection; or

9 “(II) is certified by the State as
10 being a necessary provider of health
11 care services to residents in the area;

12 “(ii) makes available 24-hour emer-
13 gency care services that a State determines
14 are necessary for ensuring access to emer-
15 gency care services in each area served by
16 a critical access hospital;

17 “(iii) provides not more than 15 acute
18 care inpatient beds (meeting such stand-
19 ards as the Secretary may establish) for
20 providing inpatient care for a period not to
21 exceed 96 hours (unless a longer period is
22 required because transfer to a hospital is
23 precluded because of inclement weather or
24 other emergency conditions), except that a
25 peer review organization or equivalent en-

1 tity may, on request, waive the 96-hour re-
2 striction on a case-by-case basis;

3 “(iv) meets such staffing requirements
4 as would apply under section 1861(e) to a
5 hospital located in a rural area, except
6 that—

7 “(I) the facility need not meet
8 hospital standards relating to the
9 number of hours during a day, or
10 days during a week, in which the fa-
11 cility must be open and fully staffed,
12 except insofar as the facility is re-
13 quired to make available emergency
14 care services as determined under
15 clause (ii) and must have nursing
16 services available on a 24-hour basis,
17 but need not otherwise staff the facil-
18 ity except when an inpatient is
19 present;

20 “(II) the facility may provide any
21 services otherwise required to be pro-
22 vided by a full-time, on site dietitian,
23 pharmacist, laboratory technician,
24 medical technologist, and radiological
25 technologist on a part-time, off site

1 basis under arrangements as defined
2 in section 1861(w)(1); and

3 “(III) the inpatient care de-
4 scribed in clause (iii) may be provided
5 by a physician’s assistant, nurse prac-
6 titioner, or clinical nurse specialist
7 subject to the oversight of a physician
8 who need not be present in the facil-
9 ity; and

10 “(v) meets the requirements of section
11 1861(aa)(2)(I).

12 “(d) DEFINITION OF RURAL HEALTH NETWORK.—

13 “(1) IN GENERAL.—In this section, the term
14 ‘rural health network’ means, with respect to a
15 State, an organization consisting of—

16 “(A) at least 1 facility that the State has
17 designated or plans to designate as a critical
18 access hospital; and

19 “(B) at least 1 hospital that furnishes
20 acute care services.

21 “(2) AGREEMENTS.—

22 “(A) IN GENERAL.—Each critical access
23 hospital that is a member of a rural health net-
24 work shall have an agreement with respect to
25 each item described in subparagraph (B) with

1 at least 1 hospital that is a member of the net-
2 work.

3 “(B) ITEMS DESCRIBED.—The items de-
4 scribed in this subparagraph are the following:

5 “(i) Patient referral and transfer.

6 “(ii) The development and use of com-
7 munications systems including (where fea-
8 sible)—

9 “(I) telemetry systems; and

10 “(II) systems for electronic shar-
11 ing of patient data.

12 “(iii) The provision of emergency and
13 non-emergency transportation among the
14 facility and the hospital.

15 “(C) CREDENTIALING AND QUALITY AS-
16 SURANCE.—Each critical access hospital that is
17 a member of a rural health network shall have
18 an agreement with respect to credentialing and
19 quality assurance with at least—

20 “(i) 1 hospital that is a member of
21 the network;

22 “(ii) 1 peer review organization or
23 equivalent entity; or

1 “(iii) 1 other appropriate and quali-
2 fied entity identified in the State rural
3 health care plan.

4 “(e) CERTIFICATION BY THE SECRETARY.—The Sec-
5 retary shall certify a facility as a critical access hospital
6 if the facility—

7 “(1) is located in a State that has established
8 a medicare rural hospital flexibility program in ac-
9 cordance with subsection (c);

10 “(2) is designated as a critical access hospital
11 by the State in which it is located; and

12 “(3) meets such other criteria as the Secretary
13 may require.

14 “(f) PERMITTING MAINTENANCE OF SWING BEDS.—
15 Nothing in this section shall be construed to prohibit a
16 critical access hospital from entering into an agreement
17 with the Secretary under section 1883 under which the
18 facility’s inpatient hospital facilities are used for the fur-
19 nishing of extended care services.

20 “(g) GRANTS.—

21 “(1) MEDICARE RURAL HOSPITAL FLEXIBILITY
22 PROGRAM.—The Secretary may award grants to
23 States that have submitted applications in accord-
24 ance with subsection (b) for—

1 “(A) engaging in activities relating to plan-
2 ning and implementing a rural health care plan;

3 “(B) engaging in activities relating to
4 planning and implementing rural health net-
5 works; and

6 “(C) designating facilities as critical access
7 hospitals.

8 “(2) RURAL EMERGENCY MEDICAL SERVICES.—

9 “(A) IN GENERAL.—The Secretary may
10 award grants to States that have submitted ap-
11 plications in accordance with subparagraph (B)
12 for the establishment or expansion of a pro-
13 gram for the provision of rural emergency medi-
14 cal services.

15 “(B) APPLICATION.—An application is in
16 accordance with this subparagraph if the State
17 submits to the Secretary at such time and in
18 such form as the Secretary may require an ap-
19 plication containing the assurances described in
20 subparagraphs (A)(ii), (A)(iii), and (B) of sub-
21 section (b)(1) and paragraph (3) of that sub-
22 section.

23 “(h) GRANDFATHERING OF CERTAIN FACILITIES.—

24 “(1) IN GENERAL.—Any medical assistance fa-
25 cility operating in Montana and any rural primary

1 care hospital designated by the Secretary under this
2 section prior to the date of the enactment of the
3 Balanced Budget Act of 1997 shall be deemed to
4 have been certified by the Secretary under sub-
5 section (e) as a critical access hospital if such facil-
6 ity or hospital is otherwise eligible to be designated
7 by the State as a critical access hospital under sub-
8 section (c).

9 “(2) CONTINUATION OF MEDICAL ASSISTANCE
10 FACILITY AND RURAL PRIMARY CARE HOSPITAL
11 TERMS.—Notwithstanding any other provision of
12 this title, with respect to any medical assistance fa-
13 cility or rural primary care hospital described in
14 paragraph (1), any reference in this title to a ‘criti-
15 cal access hospital’ shall be deemed to be a reference
16 to a ‘medical assistance facility’ or ‘rural primary
17 care hospital’.

18 “(i) WAIVER OF CONFLICTING PART A PROVI-
19 SIONS.—The Secretary is authorized to waive such provi-
20 sions of this part and part D as are necessary to conduct
21 the program established under this section.

22 “(j) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated from the Federal Hos-
24 pital Insurance Trust Fund for making grants to all

1 States under subsection (g), \$25,000,000 in each of the
2 fiscal years 1998 through 2002.”.

3 (b) REPORT ON ALTERNATIVE TO 96-HOUR RULE.—

4 Not later than January 1, 1998, the Administrator of the
5 Health Care Financing Administration shall submit to
6 Congress a report on the feasibility of, and administrative
7 requirements necessary to establish an alternative for cer-
8 tain medical diagnoses (as determined by the Adminis-
9 trator) to the 96-hour limitation for inpatient care in criti-
10 cal access hospitals required by section 1820(c)(2)(B)(iii)
11 of the Social Security Act (42 U.S.C. 1395i-4), as added
12 by subsection (a) of this section.

13 (c) CONFORMING AMENDMENTS RELATING TO
14 RURAL PRIMARY CARE HOSPITALS AND CRITICAL AC-
15 CESS HOSPITALS.—

16 (1) IN GENERAL.—Title XI of the Social Secu-
17 rity Act (42 U.S.C. 1301 et seq.) and title XVIII of
18 that Act (42 U.S.C. 1395 et seq.) are each amended
19 by striking “rural primary care” each place it ap-
20 pears and inserting “critical access”.

21 (2) DEFINITIONS.—Section 1861(mm) of the
22 Social Security Act (42 U.S.C. 1395x(mm)) is
23 amended to read as follows:

1 (4) PAYMENT CONTINUED TO DESIGNATED
2 EACHS.—Section 1886(d)(5)(D) of the Social Secu-
3 rity Act (42 U.S.C. 1395ww(d)(5)(D)) is amended—

4 (A) in clause (iii)(III), by inserting “as in
5 effect on September 30, 1997” before the pe-
6 riod at the end; and

7 (B) in clause (v)—

8 (i) by inserting “as in effect on Sep-
9 tember 30, 1997” after “1820(i)(1)”; and

10 (ii) by striking “1820(g)” and insert-
11 ing “1820(d)”.

12 (5) PART B PAYMENT.—Section 1834(g) of the
13 Social Security Act (42 U.S.C. 1395m(g)) is amend-
14 ed to read as follows:

15 “(g) PAYMENT FOR OUTPATIENT CRITICAL ACCESS
16 HOSPITAL SERVICES.—The amount of payment under
17 this part for outpatient critical access hospital services is
18 the reasonable costs of the critical access hospital in pro-
19 viding such services.”.

20 (d) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to services furnished on or after
22 October 1, 1997.

1 **SEC. 5154. PROHIBITING DENIAL OF REQUEST BY RURAL**
2 **REFERRAL CENTERS FOR RECLASSIFICA-**
3 **TION ON BASIS OF COMPARABILITY OF**
4 **WAGES.**

5 (a) IN GENERAL.—Section 1886(d)(10)(D) (42
6 U.S.C. 1395ww(d)(10)(D)) is amended—

7 (1) by redesignating clause (iii) as clause (iv);

8 and

9 (2) by inserting after clause (ii) the following
10 new clause:

11 “(iii) Under the guidelines published by the Secretary
12 under clause (i), in the case of a hospital which has ever
13 been classified by the Secretary as a rural referral center
14 under paragraph (5)(C), the Board may not reject the ap-
15 plication of the hospital under this paragraph on the basis
16 of any comparison between the average hourly wage of the
17 hospital and the average hourly wage of hospitals in the
18 area in which it is located.”.

19 (b) CONTINUING TREATMENT OF PREVIOUSLY DES-
20 IGNATED CENTERS.—

21 (1) IN GENERAL.—Any hospital classified as a
22 rural referral center by the Secretary of Health and
23 Human Services under section 1886(d)(5)(C) of the
24 Social Security Act for fiscal year 1991 shall be clas-
25 sified as such a rural referral center for fiscal year
26 1998 and each subsequent fiscal year.

1 (2) BUDGET NEUTRALITY.—The provisions of
2 section 1886(d)(8)(D) of the Social Security Act
3 shall apply to reclassifications made pursuant to
4 paragraph (1) in the same manner as such provi-
5 sions apply to a reclassification under section
6 1886(d)(10) of such Act.

7 **SEC. 5155. RURAL HEALTH CLINIC SERVICES.**

8 (a) PER-VISIT PAYMENT LIMITS FOR PROVIDER-
9 BASED CLINICS.—

10 (1) EXTENSION OF LIMIT.—

11 (A) IN GENERAL.—The matter in section
12 1833(f) (42 U.S.C. 1395l(f)) preceding para-
13 graph (1) is amended by striking “independent
14 rural health clinics” and inserting “rural health
15 clinics (other than such clinics in rural hospitals
16 with less than 50 beds)”.

17 (B) EFFECTIVE DATE.—The amendment
18 made by subparagraph (A) applies to services
19 furnished after 1997.

20 (2) TECHNICAL CLARIFICATION.—Section
21 1833(f)(1) (42 U.S.C. 1395l(f)(1)) is amended by
22 inserting “per visit” after “\$46”.

23 (b) ASSURANCE OF QUALITY SERVICES.—

1 (1) IN GENERAL.—Subparagraph (I) of the
2 first sentence of section 1861(aa)(2) (42 U.S.C.
3 1395x(aa)(2)) is amended to read as follows:

4 “(I) has a quality assessment and perform-
5 ance improvement program, and appropriate
6 procedures for review of utilization of clinic
7 services, as the Secretary may specify.”.

8 (2) EFFECTIVE DATE.—The amendment made
9 by paragraph (1) shall take effect on January 1,
10 1998.

11 (c) WAIVER OF CERTAIN STAFFING REQUIREMENTS
12 LIMITED TO CLINICS IN PROGRAM.—

13 (1) IN GENERAL.—Section 1861(aa)(7)(B)) (42
14 U.S.C. 1395x(aa)(7)(B)) is amended by inserting
15 before the period “, or if the facility has not yet
16 been determined to meet the requirements (including
17 subparagraph (J) of the first sentence of paragraph
18 (2)) of a rural health clinic.”.

19 (2) EFFECTIVE DATE.—The amendment made
20 by paragraph (1) applies to waiver requests made
21 after 1997.

22 (d) REFINEMENT OF SHORTAGE AREA REQUIRE-
23 MENTS.—

24 (1) DESIGNATION REVIEWED TRIENNIALLY.—
25 Section 1861(aa)(2) (42 U.S.C. 1395x(aa)(2)) is

1 amended in the second sentence, in the matter in
2 clause (i) preceding subclause (I)—

3 (A) by striking “and that is designated”
4 and inserting “and that, within the previous 3-
5 year period, has been designated”; and

6 (B) by striking “or that is designated” and
7 inserting “or designated”.

8 (2) AREA MUST HAVE SHORTAGE OF HEALTH
9 CARE PRACTITIONERS.—Section 1861(aa)(2) (42
10 U.S.C. 1395x(aa)(2)), as amended by paragraph (1),
11 is further amended in the second sentence, in the
12 matter in clause (i) preceding subclause (I)—

13 (A) by striking the comma after “personal
14 health services”; and

15 (B) by inserting “and in which there are
16 insufficient numbers of needed health care prac-
17 titioners (as determined by the Secretary),”
18 after “Bureau of the Census)”.

19 (3) PREVIOUSLY QUALIFYING CLINICS GRAND-
20 FATHERED ONLY TO PREVENT SHORTAGE.—

21 (A) IN GENERAL.—Section 1861(aa)(2)
22 (42 U.S.C. 1395x(aa)(2)) is amended in the
23 third sentence by inserting before the period “if
24 it is determined, in accordance with criteria es-
25 tablished by the Secretary in regulations, to be

1 essential to the delivery of primary care services
2 that would otherwise be unavailable in the geo-
3 graphic area served by the clinic”.

4 (B) PAYMENT FOR CERTAIN PHYSICIAN
5 ASSISTANT SERVICES.—

6 (i) IN GENERAL.—With respect to any
7 regulations issued to implement section
8 1861(aa)(2) (42 U.S.C. 1395x(aa)(2)) (as
9 amended by subparagraph (A)), the Sec-
10 retary of Health and Human Services shall
11 include in such regulations provisions pro-
12 viding for the direct payment to the physi-
13 cian assistant for any physician assistant
14 services as described in clause (ii).

15 (ii) SERVICES DESCRIBED.—Services
16 described in this clause are physician as-
17 sistant services provided at a rural health
18 clinic that is principally owned, as deter-
19 mined by the Secretary, by a physician as-
20 sistant—

21 (I) as of the date of enactment of
22 this Act; and

23 (II) continuously from such date
24 through the date on which such serv-
25 ices are provided.

1 (iii) SUNSET.—The provisions of this
2 subparagraph shall not apply after Janu-
3 ary 1, 2003.

4 (4) EFFECTIVE DATES; IMPLEMENTING REGU-
5 LATIONS.—

6 (A) IN GENERAL.—Except as otherwise
7 provided, the amendments made by the preced-
8 ing paragraphs take effect on January 1 of the
9 first calendar year beginning at least 1 month
10 after enactment of this Act.

11 (B) CURRENT RURAL HEALTH CLINICS.—
12 The amendments made by the preceding para-
13 graphs take effect, with respect to entities that
14 are rural health clinics under title XVIII of the
15 Social Security Act (42 U.S.C. 1395 et seq.) on
16 the date of enactment of this Act, on January
17 1 of the second calendar year following the cal-
18 endar year specified in subparagraph (A).

19 (C) GRANDFATHERED CLINICS.—

20 (i) IN GENERAL.—The amendment
21 made by paragraph (3) shall take effect on
22 the effective date of regulations issued by
23 the Secretary under clause (ii).

24 (ii) REGULATIONS.—The Secretary
25 shall issue final regulations implementing

1 paragraph (3) that shall take effect no
2 later than January 1 of the third calendar
3 year beginning at least 1 month after the
4 date of enactment of this Act.

5 **SEC. 5156. MEDICARE REIMBURSEMENT FOR TELEHEALTH**
6 **SERVICES.**

7 (a) IN GENERAL.—Not later than July 1, 1998, the
8 Secretary of Health and Human Services (in this section
9 referred to as the “Secretary”) shall make payments from
10 the Federal Supplementary Medical Insurance Trust
11 Fund under part B of title XVIII of the Social Security
12 Act (42 U.S.C. 1395j et seq.) in accordance with the
13 methodology described in subsection (b) for professional
14 consultation via telecommunications systems with a health
15 care provider furnishing a service for which payment may
16 be made under such part to a beneficiary under the medi-
17 care program residing in a rural area (as defined in sec-
18 tion 1886(d)(2)(D) of such Act (42 U.S.C.
19 1395ww(d)(2)(D))) that is designated as a health profes-
20 sional shortage area under section 332(a)(1)(A) of the
21 Public Health Service Act (42 U.S.C. 254e(a)(1)(A)), not-
22 withstanding that the individual health care provider pro-
23 viding the professional consultation is not at the same lo-
24 cation as the health care provider furnishing the service
25 to that beneficiary.

1 (b) **METHODOLOGY FOR DETERMINING AMOUNT OF**
2 **PAYMENTS.**—Taking into account the findings of the re-
3 port required under section 192 of the Health Insurance
4 Portability and Accountability Act of 1996 (Public Law
5 104–191; 110 Stat. 1988), the findings of the report re-
6 quired under paragraph (c), and any other findings related
7 to the clinical efficacy and cost-effectiveness of telehealth
8 applications, the Secretary shall establish a methodology
9 for determining the amount of payments made under sub-
10 section (a) within the following parameters:

11 (1) The payment shall include a bundled pay-
12 ment to be shared between the referring health care
13 provider and the consulting health care provider.
14 The amount of such bundled payment shall not be
15 greater than the current fee schedule of the consult-
16 ing health care provider for the health care services
17 provided.

18 (2) The payment shall not include any reim-
19 bursement for any line charges or any facility fees.

20 (c) **SUPPLEMENTAL REPORT.**—Not later than Janu-
21 ary 1, 1998, the Secretary shall submit a report to Con-
22 gress which shall contain a detailed analysis of—

23 (1) how telemedicine and telehealth systems are
24 expanding access to health care services;

1 (2) the clinical efficacy and cost-effectiveness of
2 telemedicine and telehealth applications;

3 (3) the quality of telemedicine and telehealth
4 services delivered; and

5 (4) the reasonable cost of telecommunications
6 charges incurred in practicing telemedicine and tele-
7 health in rural, frontier, and underserved areas.

8 (d) EXPANSION OF TELEHEALTH SERVICES FOR
9 CERTAIN MEDICARE BENEFICIARIES.—

10 (1) IN GENERAL.—Not later than January 1,
11 1999, the Secretary shall submit a report to Con-
12 gress that examines the possibility of making pay-
13 ments from the Federal Supplementary Medical In-
14 surance Trust Fund under part B of title XVIII of
15 the Social Security Act (42 U.S.C. 1395j et seq.) for
16 professional consultation via telecommunications sys-
17 tems with a health care provider furnishing a service
18 for which payment may be made under such part to
19 a beneficiary described in paragraph (2), notwith-
20 standing that the individual health care provider
21 providing the professional consultation is not at the
22 same location as the health care provider furnishing
23 the service to that beneficiary.

24 (2) BENEFICIARY DESCRIBED.—A beneficiary
25 described in this paragraph is a beneficiary under

1 the medicare program under title XVIII of the So-
2 cial Security Act (42 U.S.C. 1395 et seq.) who does
3 not reside in a rural area (as so defined) that is
4 designated as a health professional shortage area
5 under section 332(a)(1)(A) of the Public Health
6 Service Act (42 U.S.C. 254e(a)(1)(A)), who is home-
7 bound or nursing homebound, and for whom being
8 transferred for health care services imposes a serious
9 hardship.

10 (3) REPORT.—The report described in para-
11 graph (1) shall contain a detailed statement of the
12 potential costs to the medicare program of making
13 the payments described in that paragraph using var-
14 ious reimbursement schemes.

15 **SEC. 5157. TELEMEDICINE, INFORMATICS, AND EDUCATION**

16 **DEMONSTRATION PROJECT.**

17 (a) PURPOSE AND AUTHORIZATION.—

18 (1) IN GENERAL.—Not later than 9 months
19 after the date of enactment of this section, the Sec-
20 retary of Health and Human Services (in this sec-
21 tion referred to as the “Secretary”) shall conduct a
22 demonstration project described in paragraph (2).

23 (2) DESCRIPTION OF PROJECT.—The dem-
24 onstration project described in this paragraph is a
25 single demonstration project to study the use of eli-

1 gible health care provider telemedicine networks to
2 implement high-capacity computing and advanced
3 networks to improve primary care (and prevent
4 health care complications), improve access to spe-
5 cialty care, and provide educational and training
6 support to rural practitioners.

7 (3) WAIVER AUTHORITY.—The Secretary shall
8 waive compliance with the requirements of titles XI,
9 XVIII, and XIX of the Social Security Act (42
10 U.S.C. 1301 et seq., 1395 et seq., 1396 et seq.) to
11 such extent and for such period as the Secretary de-
12 termines is necessary to conduct the demonstration
13 project.

14 (4) DURATION OF PROJECT.—The project shall
15 be conducted for a 5-year period.

16 (b) OBJECTIVES OF PROJECT.—The objectives of the
17 demonstration project conducted under this section shall
18 include the following:

19 (1) The improvement of patient access to pri-
20 mary and specialty care and the reduction of inap-
21 propriate hospital visits in order to improve patient
22 quality-of-life and reduce overall health care costs.

23 (2) The development of a curriculum to train
24 and development of standards for required creden-
25 tials and licensure of health professionals (particu-

1 larly primary care health professionals) in the use of
2 medical informatics and telecommunications.

3 (3) The demonstration of the application of ad-
4 vanced technologies such as video-conferencing from
5 a patient's home and remote monitoring of a pa-
6 tient's medical condition.

7 (4) The development of standards in the appli-
8 cation of telemedicine and medical informatics.

9 (5) The development of a model for cost-effec-
10 tive delivery of primary and related care in both a
11 managed care environment and in a fee-for-service
12 environment.

13 (c) ELIGIBLE HEALTH CARE PROVIDER TELEMEDI-
14 CINE NETWORK DEFINED.—In this section, the term “eli-
15 gible health care provider telemedicine network” means a
16 consortium that—

17 (1) includes—

18 (A) at least 1 tertiary care hospital with
19 an existing telemedicine network with an exist-
20 ing relationship with a medical school; and

21 (B) not more than 6 facilities, including at
22 least 3 rural referral centers, in rural areas;
23 and

24 (2) meets the following requirements:

1 (A) The consortium is located in a region
2 that is predominantly rural.

3 (B) The consortium submits to the Sec-
4 retary an application at such time, in such
5 manner, and containing such information as the
6 Secretary may require, including a description
7 of the use the consortium would make of any
8 amounts received under the demonstration
9 project and the source and amount of non-Fed-
10 eral funds used in the project.

11 (C) The consortium guarantees that it will
12 be responsible for payment for all costs of the
13 project that are not paid under this section and
14 that the maximum amount of payment that
15 may be made to the consortium under this sec-
16 tion shall not exceed the amount specified in
17 subsection (d)(3).

18 (d) COVERAGE AS MEDICARE PART B SERVICES.—

19 (1) IN GENERAL.—Subject to the succeeding
20 provisions of this section, services for medicare bene-
21 ficiaries furnished under the demonstration project
22 shall be considered to be services covered under part
23 B of title XVIII of the Social Security Act (42
24 U.S.C. 1395j).

25 (2) PAYMENTS.—

1 (A) IN GENERAL.—Subject to paragraph
2 (3), payment for services provided under this
3 section shall be made at a rate of 50 percent
4 of the costs that are reasonable and related to
5 the provision of such services. In computing
6 such costs, the Secretary shall include costs de-
7 scribed in subparagraph (B), but may not in-
8 clude costs described in subparagraph (C).

9 (B) COSTS THAT MAY BE INCLUDED.—The
10 costs described in this subparagraph are the
11 permissible costs (as recognized by the Sec-
12 retary) for the following:

13 (i) The acquisition of telemedicine
14 equipment for use in patients' homes (but
15 only in the case of patients located in
16 medically underserved areas).

17 (ii) Curriculum development and
18 training of health professionals in medical
19 informatics and telemedicine.

20 (iii) Payment of telecommunications
21 costs including salaries, maintenance of
22 equipment, and costs of telecommuni-
23 cations between patients' homes and the el-
24 igible network and between the network

1 and other entities under the arrangements
2 described in subsection (c).

3 (iv) Payments to practitioners and
4 providers under the medicare programs.

5 (C) OTHER COSTS.—The costs described in
6 this subparagraph include the following:

7 (i) The purchase or installation of
8 transmission equipment (other than such
9 equipment used by health professionals to
10 deliver medical informatics services under
11 the project).

12 (ii) The establishment or operation of
13 a telecommunications common carrier net-
14 work.

15 (iii) Construction that is limited to
16 minor renovations related to the installa-
17 tion of equipment.

18 (3) LIMITATION AND FUNDS.—The Secretary
19 shall make the payments under the demonstration
20 project conducted under this section from the Fed-
21 eral Supplementary Medical Insurance Trust Fund,
22 established under section 1841 of the Social Security
23 Act (42 U.S.C. 1395t), except that the total amount
24 of the payments that may be made by the Secretary
25 under this section shall not exceed \$27,000,000.

1 **Subtitle D—Anti-Fraud and Abuse**
2 **Provisions and Improvements in**
3 **Protecting Program Integrity**

4 **CHAPTER 1—REVISIONS TO SANCTIONS**
5 **FOR FRAUD AND ABUSE**

6 **SEC. 5201. AUTHORITY TO REFUSE TO ENTER INTO MEDI-**
7 **CARE AGREEMENTS WITH INDIVIDUALS OR**
8 **ENTITIES CONVICTED OF FELONIES.**

9 (a) MEDICARE PART A.—Section 1866(b)(2) (42
10 U.S.C. 1395cc(b)(2)) is amended—

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

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

15 (3) by adding at the end the following:

16 “(D) has ascertained that the provider has
17 been convicted of a felony under Federal or
18 State law for an offense that the Secretary de-
19 termines is inconsistent with the best interests
20 of program beneficiaries.”.

21 (b) MEDICARE PART B.—Section 1842 (42 U.S.C.
22 1395u) is amended by adding at the end the following:

23 “(s) The Secretary may refuse to enter into an agree-
24 ment with a physician or supplier under subsection (h),
25 or may terminate or refuse to renew such agreement, in

1 the event that such physician or supplier has been con-
2 victed of a felony under Federal or State law for an of-
3 fense which the Secretary determines is inconsistent with
4 the best interests of program beneficiaries.”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall take effect on the date of the enactment
7 of this Act and apply to the entry and renewal of contracts
8 on or after such date.

9 **SEC. 5202. EXCLUSION OF ENTITY CONTROLLED BY FAMILY**
10 **MEMBER OF A SANCTIONED INDIVIDUAL.**

11 (a) IN GENERAL.—Section 1128 (42 U.S.C. 1320a-
12 7) is amended—

13 (1) in subsection (b)(8)(A)—

14 (A) in clause (i), by striking “or” at the
15 end;

16 (B) in clause (ii), by striking the dash at
17 the end and inserting “; or”; and

18 (C) by inserting after clause (ii) the follow-
19 ing:

20 “(iii) who was described in clause (i) but
21 is no longer so described because of a transfer
22 of ownership or control interest, in anticipation
23 of (or following) a conviction, assessment, or ex-
24 clusion described in subparagraph (B) against
25 the person, to an immediate family member (as

1 defined in subsection (j)(1)) or a member of the
2 household of the person (as defined in sub-
3 section (j)(2)) who continues to maintain an in-
4 terest described in such clause—”; and

5 (2) by adding at the end the following:

6 “(j) DEFINITION OF IMMEDIATE FAMILY MEMBER
7 AND MEMBER OF HOUSEHOLD.—For purposes of sub-
8 section (b)(8)(A)(iii):

9 “(1) The term ‘immediate family member’
10 means, with respect to a person—

11 “(A) the husband or wife of the person;

12 “(B) the natural or adoptive parent, child,
13 or sibling of the person;

14 “(C) the stepparent, stepchild, stepbrother,
15 or stepsister of the person;

16 “(D) the father-, mother-, daughter-, son-
17 , brother-, or sister-in-law of the person;

18 “(E) the grandparent or grandchild of the
19 person; and

20 “(F) the spouse of a grandparent or
21 grandchild of the person.

22 “(2) The term ‘member of the household’
23 means, with respect to any person, any individual
24 sharing a common abode as part of a single family
25 unit with the person, including domestic employees

1 and others who live together as a family unit, but
2 not including a roomer or boarder.”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 subsection (a) shall take effect on the date that is 45 days
5 after the date of the enactment of this Act.

6 **SEC. 5203. IMPOSITION OF CIVIL MONEY PENALTIES.**

7 (a) CIVIL MONEY PENALTIES FOR PERSONS THAT
8 CONTRACT WITH EXCLUDED INDIVIDUALS.—Section
9 1128A(a) (42 U.S.C. 1320a–7a(a)) is amended—

10 (1) in paragraph (4), by striking “or” at the
11 end;

12 (2) in paragraph (5), by adding “or” at the
13 end; and

14 (3) by inserting after paragraph (5) the follow-
15 ing:

16 “(6) arranges or contracts (by employment or
17 otherwise) with an individual or entity that the per-
18 son knows or should know is excluded from partici-
19 pation in a Federal health care program (as defined
20 in section 1128B(f)), for the provision of items or
21 services for which payment may be made under such
22 a program;”.

23 (b) CIVIL MONEY PENALTIES FOR SERVICES OR-
24 DERED OR PRESCRIBED BY AN EXCLUDED INDIVIDUAL

1 OR ENTITY.—Section 1128A(a)(1) (42 U.S.C. 1320a–
2 7a(a)(1)) is amended—

3 (1) in subparagraph (D)—

4 (A) by inserting “, ordered, or prescribed
5 by such person” after “other item or service
6 furnished”;

7 (B) by inserting “(pursuant to this title or
8 title XVIII)” after “period in which the person
9 was excluded”;

10 (C) by striking “pursuant to a determina-
11 tion by the Secretary” and all that follows
12 through “the provisions of section 1842(j)(2)”;
13 and

14 (D) by striking “or” at the end;

15 (2) by redesignating subparagraph (E) as sub-
16 paragraph (F); and

17 (3) by inserting after subparagraph (D) the fol-
18 lowing:

19 “(E) is for a medical or other item or serv-
20 ice ordered or prescribed by a person excluded
21 pursuant to this title or title XVIII from the
22 program under which the claim was made, and
23 the person furnishing such item or service
24 knows or should know of such exclusion, or”.

25 (c) CIVIL MONEY PENALTIES FOR KICKBACKS.—

1 (1) PERMITTING SECRETARY TO IMPOSE CIVIL
2 MONEY PENALTY.—Section 1128A(a) (42 U.S.C.
3 1320a–7a(a)), as amended by subsection (a), is
4 amended—

5 (A) in paragraph (5), by striking “or” at
6 the end;

7 (B) in paragraph (6), by adding “or” at
8 the end; and

9 (C) by adding after paragraph (6) the fol-
10 lowing:

11 “(7) commits an act described in paragraph (1)
12 or (2) of section 1128B(b);”.

13 (2) DESCRIPTION OF CIVIL MONEY PENALTY
14 APPLICABLE.—Section 1128A(a) (42 U.S.C. 1320a–
15 7a(a)), as amended by paragraph (1), is amended in
16 the matter following paragraph (7)—

17 (A) by striking “occurs).” and inserting
18 “occurs; or in cases under paragraph (7),
19 \$50,000 for each such act.”; and

20 (B) by inserting after “of such claim” the
21 following: “(or, in cases under paragraph (7),
22 damages of not more than 3 times the total
23 amount of remuneration offered, paid, solicited,
24 or received, without regard to whether a portion

1 of such remuneration was offered, paid, solie-
 2 ited, or received for a lawful purpose)”.
 3

3 (d) EFFECTIVE DATES.—

4 (1) CONTRACTS WITH EXCLUDED PERSONS.—

5 The amendments made by subsection (a) shall apply
 6 to arrangements and contracts entered into after the
 7 date of the enactment of this Act.

8 (2) SERVICES ORDERED OR PRESCRIBED.—The

9 amendments made by subsection (b) shall apply to
 10 items and services furnished, ordered, or prescribed
 11 after the date of the enactment of this Act.

12 (3) KICKBACKS.—The amendments made by

13 subsection (c) shall apply to acts taken after the
 14 date of the enactment of this Act.

15 **CHAPTER 2—IMPROVEMENTS IN**
 16 **PROTECTING PROGRAM INTEGRITY**

17 **SEC. 5211. DISCLOSURE OF INFORMATION, SURETY BONDS,**
 18 **AND ACCREDITATION.**

19 (a) DISCLOSURE OF INFORMATION, SURETY BOND,

20 AND ACCREDITATION REQUIREMENT FOR SUPPLIERS OF

21 DURABLE MEDICAL EQUIPMENT.—Section 1834(a) (42

22 U.S.C. 1395m(a)) is amended by inserting after para-

23 graph (15) the following:

24 “(16) DISCLOSURE OF INFORMATION, SURETY

25 BOND, AND ACCREDITATION.—The Secretary shall

1 not provide for the issuance (or renewal) of a pro-
2 vider number for a supplier of durable medical
3 equipment, for purposes of payment under this part
4 for durable medical equipment furnished by the sup-
5 plier, unless the supplier provides the Secretary on
6 a continuing basis—

7 “(A) with—

8 “(i) full and complete information as
9 to the identity of each person with an own-
10 ership or control interest (as defined in
11 section 1124(a)(3)) in the supplier or in
12 any subcontractor (as defined by the Sec-
13 retary in regulations) in which the supplier
14 directly or indirectly has a 5 percent or
15 more ownership interest; and

16 “(ii) to the extent determined to be
17 feasible under regulations of the Secretary,
18 the name of any disclosing entity (as de-
19 fined in section 1124(a)(2)) with respect to
20 which a person with such an ownership or
21 control interest in the supplier is a person
22 with such an ownership or control interest
23 in the disclosing entity;

1 “(B) with a surety bond in a form speci-
2 fied by the Secretary and in an amount that is
3 not less than \$50,000; and

4 “(C) at the discretion of the Secretary,
5 with evidence of compliance with the applicable
6 conditions or requirements of this title through
7 an accreditation survey conducted by a national
8 accreditation body under section 1865(b).

9 The Secretary may waive the requirement of a bond under
10 subparagraph (B) in the case of a supplier that provides
11 a comparable surety bond under State law.”.

12 (b) SURETY BOND REQUIREMENT FOR HOME
13 HEALTH AGENCIES.—

14 (1) IN GENERAL.—Section 1861(o) (42 U.S.C.
15 1395x(o)) is amended—

16 (A) in paragraph (7), by inserting “and in-
17 cluding providing the Secretary on a continuing
18 basis with a surety bond in a form specified by
19 the Secretary and in an amount that is not less
20 than \$50,000” after “financial security of the
21 program”; and

22 (B) by adding at the end the following:
23 “The Secretary may waive the requirement of a
24 surety bond under paragraph (7) in the case of

1 an agency or organization that provides a com-
2 parable surety bond under State law.”

3 (2) CONFORMING AMENDMENTS.—Section
4 1861(v)(1)(H) (42 U.S.C. 1395x(v)(1)(H)) is
5 amended—

6 (A) in clause (i), by striking “the financial
7 security requirement” and inserting “the finan-
8 cial security and surety bond requirements”;
9 and

10 (B) in clause (ii), by striking “the financial
11 security requirement described in subsection
12 (o)(7) applies” and inserting “the financial se-
13 curity and surety bond requirements described
14 in subsection (o)(7) apply”.

15 (3) REFERENCE TO CURRENT DISCLOSURE RE-
16 QUIREMENT.—For additional provisions requiring
17 home health agencies to disclose information on
18 ownership and control interests, see section 1124 of
19 the Social Security Act (42 U.S.C. 1320a–3).

20 (c) AUTHORIZING APPLICATION OF DISCLOSURE AND
21 SURETY BOND REQUIREMENTS TO AMBULANCE SERV-
22 ICES AND CERTAIN CLINICS.—Section 1834(a)(16) (42
23 U.S.C. 1395m(a)(16)), as added by subsection (a), is
24 amended by adding at the end the following flush sen-
25 tence:

1 The Secretary, in the Secretary’s discretion, may im-
2 pose the requirements of the previous sentence with
3 respect to some or all classes of suppliers of ambu-
4 lance services described in section 1861(s)(7) and
5 clinics that furnish medical and other health services
6 (other than physicians’ services) under this part.”.

7 (d) APPLICATION TO COMPREHENSIVE OUTPATIENT
8 REHABILITATION FACILITIES (CORFs).—Section
9 1861(cc)(2) (42 U.S.C. 1395x(cc)(2)) is amended—

10 (1) in subparagraph (I), by inserting before the
11 period at the end the following: “and providing the
12 Secretary on a continuing basis with a surety bond
13 in a form specified by the Secretary and in an
14 amount that is not less than \$50,000”; and

15 (2) by adding at the end the following flush
16 sentence:

17 “The Secretary may waive the requirement of a bond
18 under subparagraph (I) in the case of a facility that pro-
19 vides a comparable surety bond under State law.”.

20 (e) APPLICATION TO REHABILITATION AGENCIES.—
21 Section 1861(p) (42 U.S.C. 1395x(p)) is amended—

22 (1) in paragraph (4)(A)(v), by inserting after
23 “as the Secretary may find necessary,” the follow-
24 ing: “and provides the Secretary, to the extent re-
25 quired by the Secretary, on a continuing basis with

1 a surety bond in a form specified by the Secretary
2 and in an amount that is not less than \$50,000,”
3 and

4 (2) by adding at the end the following: “The
5 Secretary may waive the requirement of a bond
6 under paragraph (4)(A)(v) in the case of a clinic or
7 agency that provides a comparable surety bond
8 under State law.”.

9 (f) EFFECTIVE DATES.—

10 (1) SUPPLIERS OF DURABLE MEDICAL EQUIP-
11 MENT.—The amendment made by subsection (a)
12 shall apply to suppliers of durable medical equip-
13 ment with respect to such equipment furnished on or
14 after January 1, 1998.

15 (2) HOME HEALTH AGENCIES.—The amend-
16 ments made by subsection (b) shall apply to home
17 health agencies with respect to services furnished on
18 or after January 1, 1998. The Secretary of Health
19 and Human Services shall modify participation
20 agreements under section 1866(a)(1) of the Social
21 Security Act (42 U.S.C. 1395cc(a)(1)) with respect
22 to home health agencies to provide for implementa-
23 tion of such amendments on a timely basis.

24 (3) OTHER AMENDMENTS.—The amendments
25 made by subsections (c) through (e) shall take effect

1 on the date of the enactment of this Act and may
2 be applied with respect to items and services fur-
3 nished on or after the date specified in paragraph
4 (1).

5 **SEC. 5212. PROVISION OF CERTAIN IDENTIFICATION NUM-**
6 **BERS.**

7 (a) **REQUIREMENTS TO DISCLOSE EMPLOYER IDEN-**
8 **TIFICATION NUMBERS (EINS) AND SOCIAL SECURITY AC-**
9 **COUNT NUMBERS (SSNs).**—Section 1124(a)(1) (42
10 U.S.C. 1320a–3(a)(1)) is amended by inserting before the
11 period at the end the following: “and supply the Secretary
12 with the both the employer identification number (as-
13 signed pursuant to section 6109 of the Internal Revenue
14 Code of 1986) and social security account number (as-
15 signed under section 205(c)(2)(B)) of the disclosing en-
16 tity, each person with an ownership or control interest (as
17 defined in subsection (a)(3)), and any subcontractor in
18 which the entity directly or indirectly has a 5 percent or
19 more ownership interest”.

20 (b) **OTHER MEDICARE PROVIDERS.**—Section 1124A
21 (42 U.S.C. 1320a–3a) is amended—

22 (1) in subsection (a)—

23 (A) in paragraph (1), by striking “and” at
24 the end;

1 (B) in paragraph (2), by striking the pe-
2 riod at the end and inserting “; and”; and

3 (C) by adding at the end the following:

4 “(3) including the employer identification num-
5 ber (assigned pursuant to section 6109 of the Inter-
6 nal Revenue Code of 1986) and social security ac-
7 count number (assigned under section 205(c)(2)(B))
8 of the disclosing part B provider and any person,
9 managing employee, or other entity identified or de-
10 scribed under paragraph (1) or (2).”; and

11 (2) in subsection (c)(1), by inserting “(or, for
12 purposes of subsection (a)(3), any entity receiving
13 payment)” after “on an assignment-related basis”.

14 (c) VERIFICATION BY SOCIAL SECURITY ADMINIS-
15 TRATION (SSA).—Section 1124A (42 U.S.C. 1320a–3a),
16 as amended by subsection (b), is amended—

17 (1) by redesignating subsection (c) as sub-
18 section (d); and

19 (2) by inserting after subsection (b) the follow-
20 ing:

21 “(c) VERIFICATION.—

22 “(1) TRANSMITTAL BY HHS.—The Secretary
23 shall transmit—

24 “(A) to the Commissioner of Social Secu-
25 rity information concerning each social security

1 account number (assigned under section
2 205(c)(2)(B)), and

3 “(B) to the Secretary of the Treasury in-
4 formation concerning each employer identifica-
5 tion number (assigned pursuant to section 6109
6 of the Internal Revenue Code of 1986),
7 supplied to the Secretary pursuant to subsection
8 (a)(3) or section 1124(c) to the extent necessary for
9 verification of such information in accordance with
10 paragraph (2).

11 “(2) VERIFICATION.—The Commissioner of So-
12 cial Security and the Secretary of the Treasury shall
13 verify the accuracy of, or correct, the information
14 supplied by the Secretary to such official pursuant
15 to paragraph (1), and shall report such verifications
16 or corrections to the Secretary.

17 “(3) FEES FOR VERIFICATION.—The Secretary
18 shall reimburse the Commissioner and Secretary of
19 the Treasury, at a rate negotiated between the Sec-
20 retary and such official, for the costs incurred by
21 such official in performing the verification and cor-
22 rection services described in this subsection.”.

23 (d) REPORT.—The Secretary of Health and Human
24 Services shall submit to Congress a report on steps the
25 Secretary has taken to assure the confidentiality of social

1 security account numbers that will be provided to the Sec-
 2 retary under the amendments made by this section.

3 (e) EFFECTIVE DATES.—

4 (1) DISCLOSURE REQUIREMENTS.—The amend-
 5 ment made by subsection (a) shall apply to the ap-
 6 plication of conditions of participation, and entering
 7 into and renewal of contracts and agreements, oc-
 8 ccurring more than 90 days after the date of submis-
 9 sion of the report under subsection (d).

10 (2) OTHER PROVIDERS.—The amendments
 11 made by subsection (b) shall apply to payment for
 12 items and services furnished more than 90 days
 13 after the date of submission of such report.

14 **SEC. 5213. APPLICATION OF CERTAIN PROVISIONS OF THE**
 15 **BANKRUPTCY CODE.**

16 (a) RESTRICTED APPLICABILITY OF BANKRUPTCY
 17 STAY, DISCHARGE, AND PREFERENTIAL TRANSFER PRO-
 18 VISIONS TO MEDICARE AND MEDICAID DEBTS.—Part A
 19 of title XI (42 U.S.C. 1301 et seq.) is amended by insert-
 20 ing after section 1143 the following:

21 “APPLICATION OF CERTAIN PROVISIONS OF THE
 22 BANKRUPTCY CODE

23 “SEC. 1144. (a) MEDICARE AND MEDICAID-RELAT-
 24 ED ACTIONS NOT STAYED BY BANKRUPTCY PROCEED-
 25 INGS.—The commencement or continuation of any action
 26 against a debtor under this title or title XVIII or XIX

1 (other than an action with respect to health care services
2 for the debtor under title XVIII), including any action or
3 proceeding to exclude or suspend the debtor from program
4 participation, assess civil money penalties, recoup or set
5 off overpayments, or deny or suspend payment of claims
6 shall not be subject to the provisions of section 362(a) of
7 title 11, United States Code.

8 “(b) CERTAIN MEDICARE- AND MEDICAID-RELATED
9 DEBT NOT DISCHARGEABLE IN BANKRUPTCY.—A debt
10 owed to the United States or to a State for an overpay-
11 ment under title XVIII or XIX (other than an overpay-
12 ment for health care services for the debtor under title
13 XVIII) resulting from the fraudulent actions of the debtor,
14 or for a penalty, fine, or assessment under this title or
15 title XVIII or XIX, shall not be dischargeable under any
16 provision of title 11, United States Code.

17 “(c) REPAYMENT OF CERTAIN DEBTS CONSIDERED
18 FINAL.—Payments made to repay a debt to the United
19 States or to a State with respect to items or services pro-
20 vided, or claims for payment made, under title XVIII or
21 XIX (including repayment of an overpayment (other than
22 an overpayment for health care services for the debtor
23 under title XVIII) resulting from the fraudulent actions
24 of the debtor), or to pay a penalty, fine, or assessment
25 under this title or title XVIII or XIX, shall be considered

1 final and not preferential transfers under section 547 of
2 title 11, United States Code.”.

3 (b) MEDICARE RULES APPLICABLE TO BANKRUPTCY
4 PROCEEDINGS.—Title XVIII (42 U.S.C. 1395 et seq.) is
5 amended by adding at the end the following:

6 “APPLICATION OF PROVISIONS OF THE BANKRUPTCY
7 CODE

8 “SEC. 1894. (a) USE OF MEDICARE STANDARDS AND
9 PROCEDURES.—Notwithstanding any provision of title 11,
10 United States Code, or any other provision of law, in the
11 case of claims by a debtor in bankruptcy for payment
12 under this title, the determination of whether the claim
13 is allowable and of the amount payable, shall be made in
14 accordance with the provisions of this title and title XI
15 and implementing regulations.

16 “(b) NOTICE TO CREDITOR OF BANKRUPTCY PETI-
17 TIONER.—In the case of a debt owed to the United States
18 with respect to items or services provided, or claims for
19 payment made, under this title (including a debt arising
20 from an overpayment or a penalty, fine, or assessment
21 under title XI or this title), the notices to the creditor of
22 bankruptcy petitions, proceedings, and relief required
23 under title 11, United States Code (including under sec-
24 tion 342 of that title and section 2002(j) of the Federal
25 Rules of Bankruptcy Procedure), shall be given to the Sec-
26 retary. Provision of such notice to a fiscal agent of the

1 Secretary shall not be considered to satisfy this require-
2 ment.

3 “(c) **TURNOVER OF PROPERTY TO THE BANKRUPTCY**
4 **ESTATE.**—For purposes of section 542(b) of title 11,
5 United States Code, a claim for payment under this title
6 shall not be considered to be a matured debt payable to
7 the estate of a debtor until such claim has been allowed
8 by the Secretary in accordance with procedures under this
9 title.”.

10 (c) **EFFECTIVE DATE.**—The amendments made by
11 this section shall apply to bankruptcy petitions filed after
12 the date of the enactment of this Act.

13 **SEC. 5214. REPLACEMENT OF REASONABLE CHARGE METH-**
14 **ODOLOGY BY FEE SCHEDULES.**

15 (a) **IN GENERAL.**—Section 1833(a)(1) (42 U.S.C.
16 1395l(a)(1)) is amended in the matter preceding subpara-
17 graph (A) by striking “the reasonable charges for the serv-
18 ices” and inserting “the lesser of the actual charges for
19 the services and the amounts determined by the applicable
20 fee schedules developed by the Secretary for the particular
21 services”.

22 (b) **CONFORMING AMENDMENTS.**—

23 (1) Section 1833(a)(1) (42 U.S.C. 1395l(a)(1))
24 is amended—

1 (A) in subparagraph (A), by striking “rea-
2 sonable charges for” and inserting “payment
3 bases otherwise applicable to”;

4 (B) in subparagraph (B), by striking “rea-
5 sonable charges” and inserting “fee schedule
6 amounts”; and

7 (C) by inserting after subparagraph (F)
8 the following: “(G) with respect to services de-
9 scribed in clause (i) or (ii) of section
10 1861(s)(2)(K) (relating to physician assistants
11 and nurse practitioners), the amounts paid shall
12 be 80 percent of the lesser of the actual charge
13 for the services and the applicable amount de-
14 termined under subclause (I) or (II) of section
15 1842(b)(12)(A)(ii),”.

16 (2) Section 1833(a)(2) (42 U.S.C. 1395l(a)(2))
17 is amended—

18 (A) in subparagraph (B), in the matter
19 preceding clause (i), by striking “(C), (D),” and
20 inserting “(D)”; and

21 (B) by striking subparagraph (C).

22 (3) Section 1833(l) (42 U.S.C. 1395l(l)) is
23 amended—

24 (A) in paragraph (3)—

25 (i) by striking subparagraph (B); and

1 (ii) by striking “(3)(A)” and inserting
2 “(3)”; and
3 (B) by striking paragraph (6).

4 (4) Section 1834(a)(10)(B) (42 U.S.C.
5 1395m(a)(10)(B)) is amended by striking “para-
6 graphs (8) and (9)” and all that follows through
7 “section 1848(i)(3).” and inserting “section
8 1842(b)(8) to covered items and suppliers of such
9 items and payments under this subsection as such
10 provisions would otherwise apply to physicians’ serv-
11 ices and physicians.”.

12 (5) Section 1834(g)(1)(A)(ii) (42 U.S.C.
13 1395m(g)(1)(A)(ii)) is amended in the heading by
14 striking “REASONABLE CHARGES FOR PROFES-
15 SIONAL” and inserting “PROFESSIONAL”.

16 (6) Section 1842(a) (42 U.S.C. 1395u(a)) is
17 amended—

18 (A) in the matter preceding paragraph (1),
19 by striking “reasonable charge” and inserting
20 “fee schedule”; and

21 (B) in paragraph (1)(A), by striking “rea-
22 sonable charge” and inserting “other”.

23 (7) Section 1842(b)(3) (42 U.S.C. 1395u(b)(3))
24 is amended—

25 (A) in subparagraph (B)—

1 (i) in the matter preceding clause (i),
2 by striking “where payment” and all that
3 follows through “made—” and inserting
4 “where payment under this part for a serv-
5 ice is on a basis other than a cost basis,
6 such payment will (except as otherwise
7 provided in section 1870(f)) be made—”;
8 and

9 (ii) by striking clause (ii)(I) and in-
10 sserting the following: “(I) the amount de-
11 termined by the applicable payment basis
12 under this part is the full charge for the
13 service,”; and

14 (B) by striking the second, third, fourth,
15 fifth, sixth, eighth, and ninth sentences.

16 (8) Section 1842(b)(4) (42 U.S.C. 1395u(b)(4))
17 is amended to read as follows:

18 “(4) In the case of an enteral or parenteral pump
19 that is furnished on a rental basis during a period of medi-
20 cal need—

21 “(A) monthly rental payments shall not be
22 made under this part for more than 15 months dur-
23 ing that period, and

24 “(B) after monthly rental payments have been
25 made for 15 months during that period, payment

1 under this part shall be made for maintenance and
2 servicing of the pump in amounts that the Secretary
3 determines to be reasonable and necessary to ensure
4 the proper operation of the pump.”.

5 (9) Section 6112(b) (42 U.S.C. 1395m note;
6 Public Law 101–239) of OBRA—1989 is repealed.

7 (10) Section 1842(b)(7) (42 U.S.C.
8 1395u(b)(7)) is amended—

9 (A) in subparagraph (D)(i), in the matter
10 preceding subclause (I), by striking “, to the ex-
11 tent that such payment is otherwise allowed
12 under this paragraph,”;

13 (B) in subparagraph (D)(ii), by striking
14 “subparagraph” and inserting “paragraph”;

15 (C) by striking “(7)(A) In the case of” and
16 all that follows through subparagraph (C);

17 (D) by striking “(D)(i)” and inserting
18 “(7)(A)”;

19 (E) by redesignating clauses (ii) and (iii)
20 as subparagraphs (B) and (C), respectively; and

21 (F) by redesignating subclauses (I), (II),
22 and (III) of subparagraph (A) (as redesignated
23 by subparagraph (D) of this paragraph) as
24 clauses (i), (ii), and (iii), respectively.

1 (11) Section 1842(b)(9) (42 U.S.C.
2 1395u(b)(9)) is repealed.

3 (12) Section 1842(b)(10) (42 U.S.C.
4 1395u(b)(10)) is repealed.

5 (13) Section 1842(b)(11) (42 U.S.C.
6 1395u(b)(11)) is amended—

7 (A) by striking subparagraphs (B) through
8 (D);

9 (B) by striking “(11)(A)” and inserting
10 “(11)”; and

11 (C) by redesignating clauses (i) and (ii) as
12 subparagraphs (A) and (B), respectively.

13 (14) Section 1842(b)(12)(A)(ii) (42 U.S.C.
14 1395u(b)(12)(A)(ii)) is amended—

15 (A) in the matter preceding subclause (I),
16 by striking “prevailing charges determined
17 under paragraph (3)” and inserting “the
18 amounts determined under section
19 1833(a)(1)(G)”; and

20 (B) in subclause (II), by striking “prevail-
21 ing charge rate” and all that follows up to the
22 period and inserting “fee schedule amount spec-
23 ified in section 1848 for such services per-
24 formed by physicians”.

1 (15) Paragraphs (14) through (17) of section
2 1842(b) (42 U.S.C. 1395u(b)) are repealed.

3 (16) Section 1842(b) (42 U.S.C. 1395u(b)) is
4 amended—

5 (A) in paragraph (18)(A), by striking
6 “reasonable charge or”; and

7 (B) by redesignating paragraph (18) as
8 paragraph (14).

9 (17) Section 1842(j)(1) (42 U.S.C. 1395u(j)) is
10 amended to read as follows:

11 “(j)(1) See subsections (k), (l), (m), (n), and (p) as
12 to the cases in which sanctions may be applied under para-
13 graph (2).”.

14 (18) Section 1842(j)(4) (42 U.S.C.
15 1395u(j)(4)) is amended by striking “under para-
16 graph (1)”.

17 (19) Section 1842(n)(1)(A) (42 U.S.C.
18 1395u(n)(1)(A)) is amended by striking “reasonable
19 charge (or other applicable limit)” and inserting
20 “other applicable limit”.

21 (20) Section 1842(q) (42 U.S.C. 1395u(q)) is
22 amended—

23 (A) by striking paragraph (1)(B); and

24 (B) by striking “(q)(1)(A)” and inserting
25 “(q)(1)”.

1 (21) Section 1845(b)(1) (42 U.S.C. 1395w–
2 1(b)(1)) is amended by striking “adjustments to the
3 reasonable charge levels for physicians’ services rec-
4 ognized under section 1842(b) and”.

5 (22) Section 1848(i)(3) (42 U.S.C. 1395w–
6 4(i)(3)) is repealed.

7 (23) Section 1866(a)(2)(A)(ii) (42 U.S.C.
8 1395cc(a)(2)(A)(ii)) is amended by striking “reason-
9 able charges” and all that follows through “pro-
10 vider)” and inserting “amount customarily charged
11 for the items and services by the provider”.

12 (24) Section 1881(b)(3)(A) (42 U.S.C.
13 1395rr(b)(3)(A)) is amended by striking “a reason-
14 able charge” and all that follows through “section
15 1848)” and inserting “the basis described in section
16 1848”.

17 (25) Section 9340 of OBRA—1986 (42 U.S.C.
18 1395u note; Public Law 99-509) is repealed.

19 (c) EFFECTIVE DATES.—The amendments made by
20 this section to the extent such amendments substitute fee
21 schedules for reasonable charges, shall apply to particular
22 services as of the date specified by the Secretary of Health
23 and Human Services.

24 (d) INITIAL BUDGET NEUTRALITY.—The Secretary,
25 in developing a fee schedule for particular services (under

1 the amendments made by this section), shall set amounts
2 for the first year period to which the fee schedule applies
3 at a level so that the total payments under title XVIII
4 of the Social Security Act (42 U.S.C. 1395 et seq.) for
5 those services for that year period shall be approximately
6 equal to the estimated total payments if those amend-
7 ments had not been made.

8 **SEC. 5215. APPLICATION OF INHERENT REASONABLENESS**
9 **TO ALL PART B SERVICES OTHER THAN PHY-**
10 **SICIANS' SERVICES.**

11 (a) IN GENERAL.—Section 1842(b)(8) (42 U.S.C.
12 1395u(b)(8)) is amended to read as follows:

13 “(8) The Secretary shall describe by regulation the
14 factors to be used in determining the cases (of particular
15 items or services) in which the application of this part
16 (other than to physicians’ services paid under section
17 1848) results in the determination of an amount that, be-
18 cause of its being grossly excessive or grossly deficient,
19 is not inherently reasonable, and provide in those cases
20 for the factors to be considered in establishing an amount
21 that is realistic and equitable.”.

22 (b) CONFORMING AMENDMENT.—Section
23 1834(a)(10) (42 U.S.C. 1395m(a)(10)(B)) is amended—
24 (1) by striking subparagraph (B); and

1 (2) by redesignating subparagraph (C) as sub-
2 paragraph (B).

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect on the date of the enactment
5 of this Act.

6 **SEC. 5216. REQUIREMENT TO FURNISH DIAGNOSTIC INFOR-**
7 **MATION.**

8 (a) INCLUSION OF NON-PHYSICIAN PRACTITIONERS
9 IN REQUIREMENT TO PROVIDE DIAGNOSTIC CODES FOR
10 PHYSICIAN SERVICES.—Paragraphs (1) and (2) of section
11 1842(p) (42 U.S.C. 1395u(p)) are each amended by in-
12 serting “or practitioner specified in subsection (b)(18)(C)”
13 after “by a physician”.

14 (b) REQUIREMENT TO PROVIDE DIAGNOSTIC INFOR-
15 MATION WHEN ORDERING CERTAIN ITEMS OR SERVICES
16 FURNISHED BY ANOTHER ENTITY.—Section 1842(p) (42
17 U.S.C. 1395u(p)), is amended by adding at the end the
18 following:

19 “(4) In the case of an item or service defined in para-
20 graph (3), (6), (8), or (9) of subsection 1861(s) ordered
21 by a physician or a practitioner specified in subsection
22 (b)(18)(C), but furnished by another entity, if the Sec-
23 retary (or fiscal agent of the Secretary) requires the entity
24 furnishing the item or service to provide diagnostic or
25 other medical information for payment to be made to the

1 entity, the physician or practitioner shall provide that in-
2 formation to the entity at the time that the item or service
3 is ordered by the physician or practitioner.”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to items and services furnished on
6 or after January 1, 1998.

7 **SEC. 5217. REPORT BY GAO ON OPERATION OF FRAUD AND**
8 **ABUSE CONTROL PROGRAM.**

9 Section 1817(k)(6) (42 U.S.C. 1395i(k)(6)) is
10 amended by inserting “June 1, 1998, and” after “Not
11 later than”.

12 **SEC. 5218. COMPETITIVE BIDDING.**

13 (a) GENERAL RULE.—Part B of title XVIII (42
14 U.S.C. 1395j et seq.) is amended by inserting after section
15 1846 the following:

16 **“SEC. 1847. COMPETITIVE ACQUISITION OF ITEMS AND**
17 **SERVICES.**

18 “(a) ESTABLISHMENT OF BIDDING AREAS.—

19 “(1) IN GENERAL.—The Secretary shall estab-
20 lish competitive acquisition areas for contract award
21 purposes for the furnishing under this part after
22 1997 of the items and services described in sub-
23 section (c). The Secretary may establish different
24 competitive acquisition areas under this subsection
25 for different classes of items and services.

1 “(2) CRITERIA FOR ESTABLISHMENT.—The
2 competitive acquisition areas established under para-
3 graph (1) shall be chosen based on the availability
4 and accessibility of entities able to furnish items and
5 services, and the probable savings to be realized by
6 the use of competitive bidding in the furnishing of
7 items and services in the area.

8 “(b) AWARDING OF CONTRACTS IN AREAS.—

9 “(1) IN GENERAL.—The Secretary shall con-
10 duct a competition among individuals and entities
11 supplying items and services described in subsection
12 (c) for each competitive acquisition area established
13 under subsection (a) for each class of items and
14 services.

15 “(2) CONDITIONS FOR AWARDING CONTRACT.—
16 The Secretary may not award a contract to any en-
17 tity under the competition conducted pursuant to
18 paragraph (1) to furnish an item or service unless
19 the Secretary finds that the entity meets quality
20 standards specified by the Secretary, and subject to
21 paragraph (3), that the total amounts to be paid
22 under the contract are expected to be less than the
23 total amounts that would otherwise be paid.

24 “(3) LIMIT ON AMOUNT OF PAYMENT.—The
25 Secretary may not under a contract awarded under

1 this section provide for payment for an item or serv-
2 ice in an amount in excess of the applicable fee
3 schedule under this part for similar or related items
4 or services. The preceding sentence shall not apply
5 if the Secretary determines that an amount in excess
6 of such amount is warranted by reason of techno-
7 logical innovation, quality improvement, or similar
8 reasons, except that the total amount paid under the
9 contract shall not exceed the limit under paragraph
10 (2).

11 “(4) CONTENTS OF CONTRACT.—A contract en-
12 tered into with an entity under the competition con-
13 ducted pursuant to paragraph (1) is subject to terms
14 and conditions that the Secretary may specify.

15 “(5) LIMIT ON NUMBER OF CONTRACTORS.—
16 The Secretary may limit the number of contractors
17 in a competitive acquisition area to the number
18 needed to meet projected demand for items and serv-
19 ices covered under the contracts.

20 “(c) SERVICES DESCRIBED.—The items and services
21 to which this section applies are all items and services cov-
22 ered under this part (except for physician services as de-
23 fined by 1861(r)) that the Secretary may specify.”

1 (b) ITEMS AND SERVICES TO BE FURNISHED ONLY
2 THROUGH COMPETITIVE ACQUISITION.—Section 1862(a)
3 (42 U.S.C. 1395y(a)) is amended—

4 (1) by striking “or” at the end of paragraph
5 (14),

6 (2) by striking the period at the end of para-
7 graph (15) and inserting “; or”, and

8 (3) by inserting after paragraph (15) the fol-
9 lowing:

10 “(16) where the expenses are for an item or
11 service furnished in a competitive acquisition area
12 (as established by the Secretary under section
13 1847(a)) by an entity other than an entity with
14 which the Secretary has entered into a contract
15 under section 1847(b) for the furnishing of such an
16 item or service in that area, unless the Secretary
17 finds that the expenses were incurred in a case of
18 urgent need, or in other circumstances specified by
19 the Secretary.”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 subsections (a) and (b) apply to items and services fur-
22 nished after December 31, 1997.

1 **CHAPTER 3—CLARIFICATIONS AND**
2 **TECHNICAL CHANGES**

3 **SEC. 5221. OTHER FRAUD AND ABUSE RELATED PROVI-**
4 **SIONS.**

5 (a) REFERENCE CORRECTION.—(1) Section
6 1128D(b)(2)(D) (42 U.S.C. 1320a–7d(b)(2)(D)), as
7 added by section 205 of the Health Insurance Portability
8 and Accountability Act of 1996, is amended by striking
9 “1128B(b)” and inserting “1128A(b)”.

10 (2) Section 1128E(g)(3)(C) (42 U.S.C. 1320a–
11 7e(g)(3)(C)) is amended by striking “Veterans’ Adminis-
12 tration” and inserting “Department of Veterans Affairs”.

13 (b) LANGUAGE IN DEFINITION OF CONVICTION.—
14 Section 1128E(g)(5) (42 U.S.C. 1320a–7e(g)(5)), as in-
15 serted by section 221(a) of the Health Insurance Port-
16 ability and Accountability Act of 1996, is amended by
17 striking “paragraph (4)” and inserting “paragraphs (1)
18 through (4)”.

19 (c) IMPLEMENTATION OF EXCLUSIONS.—Section
20 1128 (42 U.S.C. 1320a–7) is amended—

21 (1) in subsection (a), by striking “any program
22 under title XVIII and shall direct that the following
23 individuals and entities be excluded from participa-
24 tion in any State health care program (as defined in

1 subsection (h))” and inserting “any Federal health
2 care program (as defined in section 1128B(f))”; and

3 (2) in subsection (b), by striking “any program
4 under title XVIII and may direct that the following
5 individuals and entities be excluded from participa-
6 tion in any State health care program” and inserting
7 “any Federal health care program (as defined in
8 section 1128B(f))”.

9 (d) SANCTIONS FOR FAILURE TO REPORT.—Section
10 1128E(b) (42 U.S.C. 1320a–7e(b)), as inserted by section
11 221(a) of the Health Insurance Portability and Account-
12 ability Act of 1996, is amended by adding at the end the
13 following:

14 “(6) SANCTIONS FOR FAILURE TO REPORT.—

15 “(A) HEALTH PLANS.—Any health plan
16 that fails to report information on an adverse
17 action required to be reported under this sub-
18 section shall be subject to a civil money penalty
19 of not more than \$25,000 for each such adverse
20 action not reported. Such penalty shall be im-
21 posed and collected in the same manner as civil
22 money penalties under subsection (a) of section
23 1128A are imposed and collected under that
24 section.

1 “(B) GOVERNMENTAL AGENCIES.—The
2 Secretary shall provide for a publication of a
3 public report that identifies those Government
4 agencies that have failed to report information
5 on adverse actions as required to be reported
6 under this subsection.”.

7 (e) CLARIFICATION OF TREATMENT OF CERTAIN
8 WAIVERS AND PAYMENTS OF PREMIUMS.—

9 (1) Section 1128A(i)(6) (42 U.S.C. 1320a–
10 7a(i)(6)) is amended—

11 (A) in subparagraph (A)(iii)—

12 (i) in subclause (I), by adding “or” at
13 the end;

14 (ii) in subclause (II), by striking “or”
15 at the end; and

16 (iii) by striking subclause (III);

17 (B) by redesignating subparagraphs (B)
18 and (C) as subparagraphs (C) and (D); and

19 (C) by inserting after subparagraph (A)
20 the following:

21 “(B) any permissible waiver as specified in
22 section 1128B(b)(3) or in regulations issued by
23 the Secretary;”.

24 (2) Section 1128A(i)(6) (42 U.S.C. 1320a–
25 7a(i)(6)), is amended—

1 (A) in subparagraph (C), as redesignated
2 by paragraph (1), by striking “or” at the end;

3 (B) in subparagraph (D), as so redesign-
4 nated, by striking the period at the end and in-
5 serting “; or”; and

6 (C) by adding at the end the following:

7 “(D) the waiver of deductible and coinsur-
8 ance amounts pursuant to medicare supple-
9 mental policies under section 1882(t).”.

10 (f) EFFECTIVE DATES.—

11 (1) IN GENERAL.—Except as provided in this
12 subsection, the amendments made by this section
13 shall be effective as if included in the enactment of
14 the Health Insurance Portability and Accountability
15 Act of 1996.

16 (2) FEDERAL HEALTH PROGRAM.—The amend-
17 ments made by subsection (c) shall take effect on
18 the date of the enactment of this Act.

19 (3) SANCTION FOR FAILURE TO REPORT.—The
20 amendment made by subsection (d) shall apply to
21 failures occurring on or after the date of the enact-
22 ment of this Act.

23 (4) CLARIFICATION.—The amendments made
24 by subsection (e)(2) shall take effect on the date of
25 the enactment of this Act.

1 **Subtitle E—Prospective Payment**
2 **Systems**

3 **CHAPTER 1—PROVISIONS RELATING TO**
4 **PART A**

5 **SEC. 5301. PROSPECTIVE PAYMENT FOR INPATIENT REHA-**
6 **BILITATION HOSPITAL SERVICES.**

7 (a) IN GENERAL.—Section 1886 (42 U.S.C.
8 1395ww) is amended by adding at the end the following
9 new subsection:

10 “(j) PROSPECTIVE PAYMENT FOR INPATIENT REHA-
11 BILITATION SERVICES.—

12 “(1) PAYMENT DURING TRANSITION PERIOD.—

13 “(A) IN GENERAL.—Notwithstanding sec-
14 tion 1814(b), but subject to the provisions of
15 section 1813, the amount of the payment with
16 respect to the operating and capital costs of in-
17 patient hospital services of a rehabilitation hos-
18 pital or a rehabilitation unit (in this subsection
19 referred to as a ‘rehabilitation facility’), in a
20 cost reporting period beginning on or after Oc-
21 tober 1, 2000, and before October 1, 2003, is
22 equal to the sum of—

23 “(i) the TEFRA percentage (as de-
24 fined in subparagraph (C)) of the amount
25 that would have been paid under part A of

1 this title with respect to such costs if this
2 subsection did not apply, and

3 “(ii) the prospective payment percent-
4 age (as defined in subparagraph (C)) of
5 the product of (I) the per unit payment
6 rate established under this subsection for
7 the fiscal year in which the payment unit
8 of service occurs, and (II) the number of
9 such payment units occurring in the cost
10 reporting period.

11 “(B) FULLY IMPLEMENTED SYSTEM.—

12 Notwithstanding section 1814(b), but subject to
13 the provisions of section 1813, the amount of
14 the payment with respect to the operating and
15 capital costs of inpatient hospital services of a
16 rehabilitation facility for a payment unit in a
17 cost reporting period beginning on or after Oc-
18 tober 1, 2003, is equal to the per unit payment
19 rate established under this subsection for the
20 fiscal year in which the payment unit of service
21 occurs.

22 “(C) TEFRA AND PROSPECTIVE PAYMENT
23 PERCENTAGES SPECIFIED.—For purposes of
24 subparagraph (A), for a cost reporting period
25 beginning—

1 “(i) on or after October 1, 2000, and
2 before October 1, 2001, the ‘TEFRA per-
3 centage’ is 75 percent and the ‘prospective
4 payment percentage’ is 25 percent;

5 “(ii) on or after October 1, 2001, and
6 before October 1, 2002, the ‘TEFRA per-
7 centage’ is 50 percent and the ‘prospective
8 payment percentage’ is 50 percent; and

9 “(iii) on or after October 1, 2002, and
10 before October 1, 2003, the ‘TEFRA per-
11 centage’ is 25 percent and the ‘prospective
12 payment percentage’ is 75 percent.

13 “(D) PAYMENT UNIT.—For purposes of
14 this subsection, the term ‘payment unit’ means
15 a discharge, day of inpatient hospital services,
16 or other unit of payment defined by the Sec-
17 retary.

18 “(2) PATIENT CASE MIX GROUPS.—

19 “(A) ESTABLISHMENT.—The Secretary
20 shall establish—

21 “(i) classes of patients of rehabilita-
22 tion facilities (each in this subsection re-
23 ferred to as a ‘case mix group’), based on
24 such factors as the Secretary deems appro-
25 priate, which may include impairment, age,

1 related prior hospitalization, comorbidities,
2 and functional capability of the patient;
3 and

4 “(ii) a method of classifying specific
5 patients in rehabilitation facilities within
6 these groups.

7 “(B) WEIGHTING FACTORS.—For each
8 case mix group the Secretary shall assign an
9 appropriate weighting which reflects the relative
10 facility resources used with respect to patients
11 classified within that group compared to pa-
12 tients classified within other groups.

13 “(C) ADJUSTMENTS FOR CASE MIX.—

14 “(i) IN GENERAL.—The Secretary
15 shall from time to time adjust the classi-
16 fications and weighting factors established
17 under this paragraph as appropriate to re-
18 flect changes in treatment patterns, tech-
19 nology, case mix, number of payment units
20 for which payment is made under this title,
21 and other factors which may affect the re-
22 lative use of resources. Such adjustments
23 shall be made in a manner so that changes
24 in aggregate payments under the classifica-
25 tion system are a result of real changes

1 and are not a result of changes in coding
2 that are unrelated to real changes in case
3 mix.

4 “(ii) ADJUSTMENT.—Insofar as the
5 Secretary determines that such adjust-
6 ments for a previous fiscal year (or esti-
7 mates that such adjustments for a future
8 fiscal year) did (or are likely to) result in
9 a change in aggregate payments under the
10 classification system during the fiscal year
11 that are a result of changes in the coding
12 or classification of patients that do not re-
13 flect real changes in case mix, the Sec-
14 retary shall adjust the per payment unit
15 payment rate for subsequent years so as to
16 discount the effect of such coding or classi-
17 fication changes.

18 “(D) DATA COLLECTION.—The Secretary
19 is authorized to require rehabilitation facilities
20 that provide inpatient hospital services to sub-
21 mit such data as the Secretary deems necessary
22 to establish and administer the prospective pay-
23 ment system under this subsection.

24 “(3) PAYMENT RATE.—

1 “(A) IN GENERAL.—The Secretary shall
2 determine a prospective payment rate for each
3 payment unit for which such rehabilitation fa-
4 cility is entitled to receive payment under this
5 title. Subject to subparagraph (B), such rate
6 for payment units occurring during a fiscal year
7 shall be based on the average payment per pay-
8 ment unit under this title for inpatient operat-
9 ing and capital costs of rehabilitation facilities
10 using the most recent data available (as esti-
11 mated by the Secretary as of the date of estab-
12 lishment of the system) adjusted—

13 “(i) by updating such per-payment-
14 unit amount to the fiscal year involved by
15 the weighted average of the applicable per-
16 centage increases provided under sub-
17 section (b)(3)(B)(ii) (for cost reporting pe-
18 riods beginning during the fiscal year) cov-
19 ering the period from the midpoint of the
20 period for such data through the midpoint
21 of fiscal year 2000 and by an increase fac-
22 tor (described in subparagraph (C)) speci-
23 fied by the Secretary for subsequent fiscal
24 years up to the fiscal year involved;

1 “(ii) by reducing such rates by a fac-
2 tor equal to the proportion of payments
3 under this subsection (as estimated by the
4 Secretary) based on prospective payment
5 amounts which are additional payments de-
6 scribed in paragraph (4) (relating to
7 outlier and related payments) or paragraph
8 (7);

9 “(iii) for variations among rehabilita-
10 tion facilities by area under paragraph (6);

11 “(iv) by the weighting factors estab-
12 lished under paragraph (2)(B); and

13 “(v) by such other factors as the Sec-
14 retary determines are necessary to properly
15 reflect variations in necessary costs of
16 treatment among rehabilitation facilities.

17 “(B) BUDGET NEUTRAL RATES.—The Sec-
18 retary shall establish the prospective payment
19 amounts under this subsection for payment
20 units during fiscal years 2001 through 2004 at
21 levels such that, in the Secretary’s estimation,
22 the amount of total payments under this sub-
23 section for such fiscal years (including any pay-
24 ment adjustments pursuant to paragraph (7))
25 shall be equal to 99 percent of the amount of

1 payments that would have been made under
2 this title during the fiscal years for operating
3 and capital costs of rehabilitation facilities had
4 this subsection not been enacted. In establish-
5 ing such payment amounts, the Secretary shall
6 consider the effects of the prospective payment
7 system established under this subsection on the
8 total number of payment units from rehabilita-
9 tion facilities and other factors described in
10 subparagraph (A).

11 “(C) INCREASE FACTOR.—For purposes of
12 this subsection for payment units in each fiscal
13 year (beginning with fiscal year 2001), the Sec-
14 retary shall establish an increase factor. Such
15 factor shall be based on an appropriate percent-
16 age increase in a market basket of goods and
17 services comprising services for which payment
18 is made under this subsection, which may be
19 the market basket percentage increase described
20 in subsection (b)(3)(B)(iii).

21 “(4) OUTLIER AND SPECIAL PAYMENTS.—

22 “(A) OUTLIERS.—

23 “(i) IN GENERAL.—The Secretary
24 may provide for an additional payment to
25 a rehabilitation facility for patients in a

1 case mix group, based upon the patient
2 being classified as an outlier based on an
3 unusual length of stay, costs, or other fac-
4 tors specified by the Secretary.

5 “(ii) PAYMENT BASED ON MARGINAL
6 COST OF CARE.—The amount of such addi-
7 tional payment under clause (i) shall be
8 determined by the Secretary and shall ap-
9 proximate the marginal cost of care beyond
10 the cutoff point applicable under clause (i).

11 “(iii) TOTAL PAYMENTS.—The total
12 amount of the additional payments made
13 under this subparagraph for payment units
14 in a fiscal year may not exceed 5 percent
15 of the total payments projected or esti-
16 mated to be made based on prospective
17 payment rates for payment units in that
18 year.

19 “(B) ADJUSTMENT.—The Secretary may
20 provide for such adjustments to the payment
21 amounts under this subsection as the Secretary
22 deems appropriate to take into account the
23 unique circumstances of rehabilitation facilities
24 located in Alaska and Hawaii.

1 “(5) PUBLICATION.—The Secretary shall pro-
2 vide for publication in the Federal Register, on or
3 before September 1 before each fiscal year (begin-
4 ning with fiscal year 2001, of the classification and
5 weighting factors for case mix groups under para-
6 graph (2) for such fiscal year and a description of
7 the methodology and data used in computing the
8 prospective payment rates under this subsection for
9 that fiscal year.

10 “(6) AREA WAGE ADJUSTMENT.—The Secretary
11 shall adjust the proportion (as estimated by the Sec-
12 retary from time to time) of rehabilitation facilities’
13 costs which are attributable to wages and wage-re-
14 lated costs, of the prospective payment rates com-
15 puted under paragraph (3) for area differences in
16 wage levels by a factor (established by the Sec-
17 retary) reflecting the relative hospital wage level in
18 the geographic area of the rehabilitation facility
19 compared to the national average wage level for such
20 facilities. Not later than October 1, 2001 (and at
21 least every 36 months thereafter), the Secretary
22 shall update the factor under the preceding sentence
23 on the basis of a survey conducted by the Secretary
24 (and updated as appropriate) of the wages and
25 wage-related costs incurred in furnishing rehabilita-

1 tion services. Any adjustments or updates made
2 under this paragraph for a fiscal year shall be made
3 in a manner that assures that the aggregated pay-
4 ments under this subsection in the fiscal year are
5 not greater or less than those that would have been
6 made in the year without such adjustment.

7 “(7) ADDITIONAL ADJUSTMENTS.—The Sec-
8 retary may provide by regulation for—

9 “(A) an additional payment to take into
10 account indirect costs of medical education and
11 the special circumstances of hospitals that serve
12 a significantly disproportionate number of low-
13 income patients in a manner similar to that
14 provided under subparagraphs (B) and (F), re-
15 spectively, of subsection (d)(5); and

16 “(B) such other exceptions and adjust-
17 ments to payment amounts under this sub-
18 section in a manner similar to that provided
19 under subsection (d)(5)(I) in relation to pay-
20 ments under subsection (d).

21 “(8) LIMITATION ON REVIEW.—There shall be
22 no administrative or judicial review under section
23 1869, 1878, or otherwise of the establishment of—

24 “(A) case mix groups, of the methodology
25 for the classification of patients within such

1 groups, and of the appropriate weighting fac-
2 tors thereof under paragraph (2),

3 “(B) the prospective payment rates under
4 paragraph (3),

5 “(C) outlier and special payments under
6 paragraph (4),

7 “(D) area wage adjustments under para-
8 graph (6), and

9 “(E) additional adjustments under para-
10 graph (7).”.

11 (b) CONFORMING AMENDMENTS.—Section 1886(b)
12 (42 U.S.C. 1395ww(b)) is amended—

13 (1) in paragraph (1), by inserting “and other
14 than a rehabilitation facility described in subsection
15 (j)(1)” after “subsection (d)(1)(B)”, and

16 (2) in paragraph (3)(B)(i), by inserting “and
17 subsection (j)” after “For purposes of subsection
18 (d)”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to cost reporting periods beginning
21 on or after October 1, 2000, except that the Secretary of
22 Health and Human Services may require the submission
23 of data under section 1886(j)(2)(D) of the Social Security
24 Act (as added by subsection (a)) on and after the date
25 of the enactment of this section.

1 **SEC. 5302. STUDY AND REPORT ON PAYMENTS FOR LONG-**
2 **TERM CARE HOSPITALS.**

3 (a) **STUDY.**—The Secretary of Health and Human
4 Services shall—

5 (1) collect data to develop, establish, administer
6 and evaluate a case-mix adjusted prospective pay-
7 ment system for hospitals described in section
8 1886(d)(1)(B)(iv) (42 U.S.C. 1395ww(d)(1)(B)(iv));
9 and

10 (2) develop a legislative proposal for establish-
11 ing and administering such a payment system that
12 includes an adequate patient classification system
13 that reflects the differences in patient resource use
14 and costs among such hospitals.

15 (b) **REPORT.**—Not later than October 1, 1999, the
16 Secretary of Health and Human Services shall submit the
17 proposal described in subsection (a)(2) to the appropriate
18 committees of Congress.

1 **CHAPTER 2—PROVISIONS RELATING TO**
2 **PART B**

3 **Subchapter A—Payment for Hospital**
4 **Outpatient Department Services**

5 **SEC. 5311. ELIMINATION OF FORMULA-DRIVEN OVERPAY-**
6 **MENTS (FDO) FOR CERTAIN OUTPATIENT**
7 **HOSPITAL SERVICES.**

8 (a) **ELIMINATION OF FDO FOR AMBULATORY SUR-**
9 **GICAL CENTER PROCEDURES.**—Section
10 1833(i)(3)(B)(i)(II) (42 U.S.C. 1395l(i)(3)(B)(i)(II)) is
11 amended—

12 (1) by striking “of 80 percent”; and

13 (2) by striking the period at the end and insert-
14 ing the following: “, less the amount a provider may
15 charge as described in clause (ii) of section
16 1866(a)(2)(A).”.

17 (b) **ELIMINATION OF FDO FOR RADIOLOGY SERV-**
18 **ICES AND DIAGNOSTIC PROCEDURES.**—Section
19 1833(n)(1)(B)(i) (42 U.S.C. 1395l(n)(1)(B)(i)) is amend-
20 ed—

21 (1) by striking “of 80 percent”, and

22 (2) by inserting before the period at the end the
23 following: “, less the amount a provider may charge
24 as described in clause (ii) of section 1866(a)(2)(A)”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to services furnished during por-
3 tions of cost reporting periods occurring on or after Octo-
4 ber 1, 1997.

5 **SEC. 5312. EXTENSION OF REDUCTIONS IN PAYMENTS FOR**
6 **COSTS OF HOSPITAL OUTPATIENT SERVICES.**

7 (a) REDUCTION IN PAYMENTS FOR CAPITAL-RELAT-
8 ED COSTS.—Section 1861(v)(1)(S)(ii)(I) (42 U.S.C.
9 1395x(v)(1)(S)(ii)(I)) is amended by striking “through
10 1998” and inserting “through 1999 and during fiscal year
11 2000 before January 1, 2000”.

12 (b) REDUCTION IN PAYMENTS FOR OTHER COSTS.—
13 Section 1861(v)(1)(S)(ii)(II) (42 U.S.C.
14 1395x(v)(1)(S)(ii)(II)) is amended by striking “through
15 1998” and inserting “through 1999 and during fiscal year
16 2000 before January 1, 2000”.

17 **SEC. 5313. PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL**
18 **OUTPATIENT DEPARTMENT SERVICES.**

19 (a) IN GENERAL.—Section 1833 (42 U.S.C. 1395l)
20 is amended by adding at the end the following:

21 “(t) PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL
22 OUTPATIENT DEPARTMENT SERVICES.—

23 “(1) IN GENERAL.—With respect to hospital
24 outpatient services designated by the Secretary (in
25 this section referred to as ‘covered OPD services’)

1 and furnished during a year beginning with 1999,
2 the amount of payment under this part shall be de-
3 termined under a prospective payment system estab-
4 lished by the Secretary in accordance with this sub-
5 section.

6 “(2) SYSTEM REQUIREMENTS.—Under the pay-
7 ment system—

8 “(A) the Secretary shall develop a classi-
9 fication system for covered OPD services;

10 “(B) the Secretary may establish groups of
11 covered OPD services, within the classification
12 system described in subparagraph (A), so that
13 services classified within each group are com-
14 parable clinically and with respect to the use of
15 resources;

16 “(C) the Secretary shall, using data on
17 claims from 1997 and using data from the most
18 recent available cost reports, establish relative
19 payment weights for covered OPD services (and
20 any groups of such services described in sub-
21 paragraph (B)) based on median hospital costs
22 and shall determine projections of the frequency
23 of utilization of each such service (or group of
24 services) in 1999;

1 “(D) the Secretary shall determine a wage
2 adjustment factor to adjust the portion of pay-
3 ment and coinsurance attributable to labor-re-
4 lated costs for relative differences in labor and
5 labor-related costs across geographic regions in
6 a budget neutral manner;

7 “(E) the Secretary shall establish other ad-
8 justments as determined to be necessary to en-
9 sure equitable payments, such as outlier adjust-
10 ments or adjustments for certain classes of hos-
11 pitals; and

12 “(F) the Secretary shall develop a method
13 for controlling unnecessary increases in the vol-
14 ume of covered OPD services.

15 “(3) CALCULATION OF BASE AMOUNTS.—

16 “(A) AGGREGATE AMOUNTS THAT WOULD
17 BE PAYABLE IF DEDUCTIBLES WERE DIS-
18 REGARDED.—The Secretary shall estimate the
19 total amounts that would be payable from the
20 Trust Fund under this part for covered OPD
21 services in 1999, determined without regard to
22 this subsection, as though the deductible under
23 section 1833(b) did not apply, and as though
24 the coinsurance described in section
25 1866(a)(2)(A)(ii) (as in effect before the date

1 of the enactment of this subsection) continued
2 to apply.

3 “(B) UNADJUSTED COPAYMENT
4 AMOUNT.—

5 “(i) IN GENERAL.—For purposes of
6 this subsection, subject to clause (ii), the
7 ‘unadjusted copayment amount’ applicable
8 to a covered OPD service (or group of such
9 services) is 20 percent of the national me-
10 dian of the charges for the service (or serv-
11 ices within the group) furnished during
12 1997, updated to 1999 using the Sec-
13 retary’s estimate of charge growth during
14 the period.

15 “(ii) ADJUSTMENTS WHEN FULLY
16 PHASED IN.—If the pre-deductible pay-
17 ment percentage for a covered OPD service
18 (or group of such services) furnished in a
19 year would be equal to or exceed 80 per-
20 cent, then the unadjusted copayment
21 amount shall be 25 percent of amount de-
22 termined under subparagraph (D)(i).

23 “(iii) RULES FOR NEW SERVICES.—
24 The Secretary shall establish rules for es-
25 tablishment of an unadjusted copayment

1 amount for a covered OPD service not fur-
2 nished during 1997, based upon its classi-
3 fication within a group of such services.

4 “(C) CALCULATION OF CONVERSION FAC-
5 TORS.—

6 “(i) FOR 1999.—

7 “(I) IN GENERAL.—The Sec-
8 retary shall establish a 1999 conver-
9 sion factor for determining the medi-
10 care pre-deductible OPD fee payment
11 amounts for each covered OPD serv-
12 ice (or group of such services) fur-
13 nished in 1999. Such conversion fac-
14 tor shall be established—

15 “(aa) on the basis of the
16 weights and frequencies described
17 in paragraph (2)(C), and

18 “(bb) in such manner that
19 the sum of the products deter-
20 mined under subclause (II) for
21 each service or group equals the
22 total project amount described in
23 subparagraph (A).

24 “(II) PRODUCT.—The Secretary
25 shall determine for each service or

1 group the product of the medicare
2 pre-deductible OPD fee payment
3 amount (taking into account appro-
4 priate adjustments described in para-
5 graphs (2)(D) and (2)(E)) and the
6 frequencies for such service or group.

7 “(ii) SUBSEQUENT YEARS.—Subject
8 to paragraph (8)(B), the Secretary shall
9 establish a conversion factor for covered
10 OPD services furnished in subsequent
11 years in an amount equal to the conversion
12 factor established under this subparagraph
13 and applicable to such services furnished in
14 the previous year increased by the OPD
15 payment increase factor specified under
16 clause (iii) for the year involved.

17 “(iii) OPD PAYMENT INCREASE FAC-
18 TOR.—For purposes of this subparagraph,
19 the ‘OPD payment increase factor’ for
20 services furnished in a year is equal to the
21 sum of—

22 “(I) the market basket percent-
23 age increase applicable under section
24 1886(b)(3)(B)(iii) to hospital dis-

1 charges occurring during the fiscal
2 year ending in such year, plus

3 “(II) in the case of a covered
4 OPD service (or group of such serv-
5 ices) furnished in a year in which the
6 pre-deductible payment percentage
7 would not exceed 80 percent, 3.5 per-
8 centage points.

9 In applying the previous sentence for years
10 beginning with 2000, the Secretary may
11 substitute for the market basket percent-
12 age increase under subclause (I) an annual
13 percentage increase that is computed and
14 applied with respect to covered OPD serv-
15 ices furnished in a year in the same man-
16 ner as the market basket percentage in-
17 crease is determined and applied to inpa-
18 tient hospital services for discharges occur-
19 ring in a fiscal year.

20 “(D) PRE-DEDUCTIBLE PAYMENT PER-
21 CENTAGE.—The pre-deductible payment per-
22 centage for a covered OPD service (or group of
23 such services) furnished in a year is equal to
24 the ratio of—

1 “(i) the conversion factor established
2 under subparagraph (C) for the year, mul-
3 tiplied by the weighting factor established
4 under paragraph (2)(C) for the service (or
5 group), to

6 “(ii) the sum of the amount deter-
7 mined under clause (i) and the unadjusted
8 copayment amount determined under sub-
9 paragraph (B) for such service or group.

10 “(E) CALCULATION OF MEDICARE OPD
11 FEE SCHEDULE AMOUNTS.—The Secretary
12 shall compute a medicare OPD fee schedule
13 amount for each covered OPD service (or group
14 of such services) furnished in a year, in an
15 amount equal to the product of—

16 “(i) the conversion factor computed
17 under subparagraph (C) for the year, and

18 “(ii) the relative payment weight (de-
19 termined under paragraph (2)(C)) for the
20 service or group.

21 “(4) MEDICARE PAYMENT AMOUNT.—The
22 amount of payment made from the Trust Fund
23 under this part for a covered OPD service (and such
24 services classified within a group) furnished in a
25 year is determined as follows:

1 “(A) FEE SCHEDULE AND COPAYMENT
2 AMOUNT.—Add (i) the medicare OPD fee
3 schedule amount (computed under paragraph
4 (3)(E)) for the service or group and year, and
5 (ii) the unadjusted copayment amount (deter-
6 mined under paragraph (3)(B)) for the service
7 or group.

8 “(B) SUBTRACT APPLICABLE DEDUCT-
9 IBLE.—Reduce the sum under subparagraph
10 (A) by the amount of the deductible under sec-
11 tion 1833(b), to the extent applicable.

12 “(C) APPLY PAYMENT PROPORTION TO RE-
13 MAINDER.—Multiply the amount determined
14 under subparagraph (B) by the pre-deductible
15 payment percentage (as determined under para-
16 graph (3)(D)) for the service or group and year
17 involved.

18 “(D) LABOR-RELATED ADJUSTMENT.—
19 The amount of payment is the product deter-
20 mined under subparagraph (C) with the labor-
21 related portion of such product adjusted for rel-
22 ative differences in the cost of labor and other
23 factors determined by the Secretary, as com-
24 puted under paragraph (2)(D).

25 “(5) COPAYMENT AMOUNT.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), the copayment amount
3 under this subsection is determined as follows:

4 “(i) UNADJUSTED COPAYMENT.—
5 Compute the amount by which the amount
6 described in paragraph (4)(B) exceeds the
7 amount of payment determined under
8 paragraph (4)(C).

9 “(ii) LABOR ADJUSTMENT.—The co-
10 payment amount is the difference deter-
11 mined under clause (i) with the labor-relat-
12 ed portion of such difference adjusted for
13 relative differences in the cost of labor and
14 other factors determined by the Secretary,
15 as computed under paragraphs (2)(D).
16 The adjustment under this clause shall be
17 made in a manner that does not result in
18 any change in the aggregate copayments
19 made in any year if the adjustment had
20 not been made.

21 “(B) ELECTION TO OFFER REDUCED CO-
22 PAYMENT AMOUNT.—The Secretary shall estab-
23 lish a procedure under which a hospital, before
24 the beginning of a year (beginning with 1999),
25 may elect to reduce the copayment amount oth-

1 erwise established under subparagraph (A) for
2 some or all covered OPD services to an amount
3 that is not less than 25 percent of the medicare
4 OPD fee schedule amount (computed under
5 paragraph (3)(E)) for the service involved, ad-
6 justed for relative differences in the cost of
7 labor and other factors determined by the Sec-
8 retary, as computed under subparagraphs (D)
9 and (E) of paragraph (2). Under such proce-
10 dures, such reduced copayment amount may
11 not be further reduced or increased during the
12 year involved and the hospital may disseminate
13 information on the reduction of copayment
14 amount effected under this subparagraph.

15 “(C) NO IMPACT ON DEDUCTIBLES.—
16 Nothing in this paragraph shall be construed as
17 affecting a hospital’s authority to waive the
18 charging of a deductible under section 1833(b).

19 “(6) PERIODIC REVIEW AND ADJUSTMENTS
20 COMPONENTS OF PROSPECTIVE PAYMENT SYSTEM.—

21 “(A) PERIODIC REVIEW.—The Secretary
22 may periodically review and revise the groups,
23 the relative payment weights, and the wage and
24 other adjustments described in paragraph (2) to
25 take into account changes in medical practice,

1 changes in technology, the addition of new serv-
2 ices, new cost data, and other relevant informa-
3 tion and factors.

4 “(B) BUDGET NEUTRALITY ADJUST-
5 MENT.—If the Secretary makes adjustments
6 under subparagraph (A), then the adjustments
7 for a year may not cause the estimated amount
8 of expenditures under this part for the year to
9 increase or decrease from the estimated amount
10 of expenditures under this part that would have
11 been made if the adjustments had not been
12 made.

13 “(C) UPDATE FACTOR.—If the Secretary
14 determines under methodologies described in
15 subparagraph (2)(F) that the volume of services
16 paid for under this subsection increased beyond
17 amounts established through those methodolo-
18 gies, the Secretary may appropriately adjust the
19 update to the conversion factor otherwise appli-
20 cable in a subsequent year.

21 “(7) SPECIAL RULE FOR AMBULANCE SERV-
22 ICES.—The Secretary shall pay for hospital out-
23 patient services that are ambulance services on the
24 basis described in the matter in subsection (a)(1)
25 preceding subparagraph (A).

1 “(8) SPECIAL RULES FOR CERTAIN HOS-
2 PITALS.—In the case of hospitals described in sec-
3 tion 1886(d)(1)(B)(v)—

4 “(A) the system under this subsection shall
5 not apply to covered OPD services furnished be-
6 fore January 1, 2000; and

7 “(B) the Secretary may establish a sepa-
8 rate conversion factor for such services in a
9 manner that specifically takes into account the
10 unique costs incurred by such hospitals by vir-
11 tue of their patient population and service in-
12 tensity.

13 “(9) LIMITATION ON REVIEW.—There shall be
14 no administrative or judicial review under section
15 1869, 1878, or otherwise of—

16 “(A) the development of the classification
17 system under paragraph (2), including the es-
18 tablishment of groups and relative payment
19 weights for covered OPD services, of wage ad-
20 justment factors, other adjustments, and meth-
21 ods described in paragraph (2)(F);

22 “(B) the calculation of base amounts
23 under paragraph (3);

24 “(C) periodic adjustments made under
25 paragraph (6); and

1 “(D) the establishment of a separate con-
2 version factor under paragraph (8)(B).”.

3 (b) COINSURANCE.—Section 1866(a)(2)(A)(ii) (42
4 U.S.C. 1395cc(a)(2)(A)(ii)) is amended by adding at the
5 end the following: “In the case of items and services for
6 which payment is made under part B under the prospec-
7 tive payment system established under section 1833(t),
8 clause (ii) of the first sentence shall be applied by sub-
9 stituting for 20 percent of the reasonable charge, the ap-
10 plicable copayment amount established under section
11 1833(t)(5).”.

12 (c) TREATMENT OF REDUCTION IN COPAYMENT
13 AMOUNT.—Section 1128A(i)(6) (42 U.S.C. 1320a-
14 7a(i)(6)) is amended—

15 (1) by striking “or” at the end of subparagraph
16 (B),

17 (2) by striking the period at the end of sub-
18 paragraph (C) and inserting “; or”, and

19 (3) by adding at the end the following new
20 subparagraph:

21 “(D) a reduction in the copayment amount for
22 covered OPD services under section 1833(t)(5)(B).”.

23 (d) CONFORMING AMENDMENTS.—

24 (1) APPROVED ASC PROCEDURES PERFORMED
25 IN HOSPITAL OUTPATIENT DEPARTMENTS.—

1 (A)(i) Section 1833(i)(3)(A) (42 U.S.C.
2 13951(i)(3)(A)) is amended—

3 (I) by inserting “before January 1,
4 1999” after “furnished”, and

5 (II) by striking “in a cost reporting
6 period”.

7 (ii) The amendment made by clause (i)
8 shall apply to services furnished on or after
9 January 1, 1999.

10 (B) Section 1833(a)(4) (42 U.S.C.
11 13951(a)(4)) is amended by inserting “or sub-
12 section (t)” before the semicolon.

13 (2) RADIOLOGY AND OTHER DIAGNOSTIC PRO-
14 CEDURES.—

15 (A) Section 1833(n)(1)(A) (42 U.S.C.
16 13951(n)(1)(A)) is amended by inserting “and
17 before January 1, 1999” after “October 1,
18 1988,” and after “October 1, 1989,”.

19 (B) Section 1833(a)(2)(E) (42 U.S.C.
20 13951(a)(2)(E)) is amended by inserting “or ,
21 for services or procedures performed on or after
22 January 1, 1999, subsection (t)” before the
23 semicolon.

1 (3) OTHER HOSPITAL OUTPATIENT SERV-
 2 ICES.—Section 1833(a)(2)(B) (42 U.S.C.
 3 1395l(a)(2)(B)) is amended—

4 (A) in clause (i), by inserting “furnished
 5 before January 1, 1999,” after “(i),”

6 (B) in clause (ii), by inserting “before Jan-
 7 uary 1, 1999,” after “furnished”,

8 (C) by redesignating clause (iii) as clause
 9 (iv), and

10 (D) by inserting after clause (ii), the fol-
 11 lowing new clause:

12 “(iii) if such services are furnished on
 13 or after January 1, 1999, the amount de-
 14 termined under subsection (t), or”.

15 **Subchapter B—Ambulance Services**

16 **SEC. 5321. PAYMENTS FOR AMBULANCE SERVICES.**

17 (a) INTERIM REDUCTIONS.—

18 (1) PAYMENTS DETERMINED ON REASONABLE
 19 COST BASIS.—Section 1861(v)(1) (42 U.S.C.
 20 1395x(v)(1)) is amended by adding at the end the
 21 following new subparagraph:

22 “(V) In determining the reasonable cost of
 23 ambulance services (as described in subsection
 24 (s)(7)) provided during a fiscal year (beginning
 25 with fiscal year 1998 and ending with fiscal

1 year 2002), the Secretary shall not recognize
2 any costs in excess of costs recognized as rea-
3 sonable for ambulance services provided during
4 the previous fiscal year (after application of this
5 subparagraph), increased by the percentage in-
6 crease in the consumer price index for all urban
7 consumers (U.S. city average) as estimated by
8 the Secretary for the 12-month period ending
9 with the midpoint of the fiscal year involved re-
10 duced in the case of fiscal year 1998 by 1.0
11 percentage point.”

12 (2) PAYMENTS DETERMINED ON REASONABLE
13 CHARGE BASIS.—Section 1842(b) (42 U.S.C.
14 1395u(b)) is amended by adding at the end the fol-
15 lowing new paragraph:

16 “(19) For purposes of section 1833(a)(1), the reason-
17 able charge for ambulance services (as described in section
18 1861(s)(7)) provided during a fiscal year (beginning with
19 fiscal year 1998 and ending with fiscal year 2002) may
20 not exceed the reasonable charge for such services pro-
21 vided during the previous fiscal year (after application of
22 this paragraph), increased by the percentage increase in
23 the consumer price index for all urban consumers (U.S.
24 city average) as estimated by the Secretary for the 12-
25 month period ending with the midpoint of the year in-

1 volved reduced in the case of fiscal year 1998 by 1.0 per-
2 centage point.”

3 (b) ESTABLISHMENT OF PROSPECTIVE FEE SCHED-
4 ULE.—

5 (1) PAYMENT IN ACCORDANCE WITH FEE
6 SCHEDULE.—Section 1833(a)(1) (42 U.S.C.
7 1395l(a)(1)) is amended—

8 (A) by striking “and (P)” and inserting
9 “(P)”; and

10 (B) by striking the semicolon at the end
11 and inserting the following: “, and (Q) with re-
12 spect to ambulance service, the amounts paid
13 shall be 80 percent of the lesser of the actual
14 charge for the services or the amount deter-
15 mined by a fee schedule established by the Sec-
16 retary under section 1834(k);”.

17 (2) ESTABLISHMENT OF SCHEDULE.—Section
18 1834 (42 U.S.C. 1395m) is amended by adding at
19 the end the following new subsection:

20 “(k) ESTABLISHMENT OF FEE SCHEDULE FOR AM-
21 BULANCE SERVICES.—

22 “(1) IN GENERAL.—The Secretary shall estab-
23 lish a fee schedule for payment for ambulance serv-
24 ices under this part through a negotiated rulemaking
25 process described in title 5, United States Code, and

1 in accordance with the requirements of this sub-
2 section.

3 “(2) CONSIDERATIONS.—In establishing such
4 fee schedule, the Secretary shall—

5 “(A) establish mechanisms to control in-
6 creases in expenditures for ambulance services
7 under this part;

8 “(B) establish definitions for ambulance
9 services which link payments to the type of
10 services provided;

11 “(C) consider appropriate regional and
12 operational differences;

13 “(D) consider adjustments to payment
14 rates to account for inflation and other relevant
15 factors; and

16 “(E) phase in the application of the pay-
17 ment rates under the fee schedule in an effi-
18 cient and fair manner.

19 “(3) SAVINGS.—In establishing such fee sched-
20 ule, the Secretary shall—

21 “(A) ensure that the aggregate amount of
22 payments made for ambulance services under
23 this part during 1999 does not exceed the ag-
24 gregate amount of payments which would have
25 been made for such services under this part

1 during such year if the amendments made by
2 section 5321 of the Balanced Budget Act of
3 1997 had not been made; and

4 “(B) set the payment amounts provided
5 under the fee schedule for services furnished in
6 2000 and each subsequent year at amounts
7 equal to the payment amounts under the fee
8 schedule for service furnished during the pre-
9 vious year, increased by the percentage increase
10 in the consumer price index for all urban con-
11 sumers (U.S. city average) for the 12-month
12 period ending with June of the previous year
13 reduced (but not below zero) by 1.0 percentage
14 points.

15 “(4) CONSULTATION.—In establishing the fee
16 schedule for ambulance services under this sub-
17 section, the Secretary shall consult with various na-
18 tional organizations representing individuals and en-
19 tities who furnish and regulate ambulance services
20 and share with such organizations relevant data in
21 establishing such schedule.

22 “(5) LIMITATION ON REVIEW.—There shall be
23 no administrative or judicial review under section
24 1869 or otherwise of the amounts established under
25 the fee schedule for ambulance services under this

1 subsection, including matters described in paragraph
2 (2).

3 “(6) RESTRAINT ON BILLING.—The provisions
4 of subparagraphs (A) and (B) of section
5 1842(b)(18) shall apply to ambulance services for
6 which payment is made under this subsection in the
7 same manner as they apply to services provided by
8 a practitioner described in section 1842(b)(18)(C).”.

9 (3) EFFECTIVE DATE.—The amendments made
10 by this section apply to ambulance services furnished
11 on or after January 1, 1999.

12 (c) AUTHORIZING PAYMENT FOR PARAMEDIC INTER-
13 CEPT SERVICE PROVIDERS IN RURAL COMMUNITIES.—In
14 promulgating regulations to carry out section 1861(s)(7)
15 of the Social Security Act (42 U.S.C. 1395x(s)(7)) with
16 respect to the coverage of ambulance service, the Secretary
17 of Health and Human Services may include coverage of
18 advanced life support services (in this subsection referred
19 to as “ALS intercept services”) provided by a paramedic
20 intercept service provider in a rural area if the following
21 conditions are met:

22 (1) The ALS intercept services are provided
23 under a contract with one or more volunteer ambu-
24 lance services and are medically necessary based on

1 the health condition of the individual being trans-
2 ported.

3 (2) The volunteer ambulance service involved—

4 (A) is certified as qualified to provide am-
5 bulance service for purposes of such section,

6 (B) provides only basic life support serv-
7 ices at the time of the intercept, and

8 (C) is prohibited by State law from billing
9 for any services.

10 (3) The entity supplying the ALS intercept
11 services—

12 (A) is certified as qualified to provide such
13 services under the medicare program under title
14 XVIII of the Social Security Act, and

15 (B) bills all recipients who receive ALS
16 intercept services from the entity, regardless of
17 whether or not such recipients are medicare
18 beneficiaries.

1 **CHAPTER 3—PROVISIONS RELATING TO**
2 **PARTS A AND B**
3 **Subchapter A—Payments to Skilled Nursing**
4 **Facilities**

5 **SEC. 5331. BASING UPDATES TO PER DIEM LIMITS EFFEC-**
6 **TIVE FOR FISCAL YEAR 1998 ON COST LIMITS**
7 **EFFECTIVE FOR FISCAL YEAR 1997.**

8 The last sentence of section 1888(a) (42 U.S.C.
9 1395yy(a)) is amended by striking “subsection” the last
10 place it appears and all that follows and inserting “sub-
11 section, except that the limits effective for cost reporting
12 periods beginning on or after October 1, 1997, shall be
13 based on the limits effective for cost reporting periods be-
14 ginning on or after October 1, 1996, increased by the
15 skilled nursing facility market basket index to account for
16 inflation and adjusted to account for the most recent
17 changes in metropolitan statistical areas and wage index
18 data.”.

19 **SEC. 5332. PROSPECTIVE PAYMENT FOR SKILLED NURSING**
20 **FACILITY SERVICES.**

21 (a) IN GENERAL.—Section 1888 (42 U.S.C. 1395yy)
22 is amended by adding at the end the following new sub-
23 section:

24 “(e) PROSPECTIVE PAYMENT.—

1 “(1) PAYMENT PROVISION.—Notwithstanding
2 any other provision of this title, subject to para-
3 graph (7), the amount of the payment for all costs
4 (as defined in paragraph (2)(B)) of covered skilled
5 nursing facility services (as defined in paragraph
6 (2)(A)) for each day of such services furnished—

7 “(A) in a cost reporting period during the
8 transition period (as defined in paragraph
9 (2)(E)), is equal to the sum of—

10 “(i) the non-Federal percentage of the
11 facility-specific per diem rate (computed
12 under paragraph (3)), and

13 “(ii) the Federal percentage of the ad-
14 justed Federal per diem rate (determined
15 under paragraph (4)) applicable to the fa-
16 cility; and

17 “(B) after the transition period is equal to
18 the adjusted Federal per diem rate applicable to
19 the facility.

20 “(2) DEFINITIONS.—For purposes of this sub-
21 section:

22 “(A) COVERED SKILLED NURSING FACIL-
23 ITY SERVICES.—

24 “(i) IN GENERAL.—The term ‘covered
25 skilled nursing facility services’—

1 “(I) means post-hospital ex-
2 tended care services as defined in sec-
3 tion 1861(i) for which benefits are
4 provided under part A; and

5 “(II) includes all items and serv-
6 ices (other than services described in
7 clause (ii)) for which payment may be
8 made under part B and which are fur-
9 nished to an individual who is a resi-
10 dent of a skilled nursing facility dur-
11 ing the period in which the individual
12 is provided covered post-hospital ex-
13 tended care services.

14 “(ii) SERVICES EXCLUDED.—Services
15 described in this clause are physicians’
16 services, services described by clauses (i)
17 through (iii) of section 1861(s)(2)(K), cer-
18 tified nurse-midwife services, qualified psy-
19 chologist services, services of a certified
20 registered nurse anesthetist, items and
21 services described in subparagraphs in (F)
22 and (O) of section 1861(s)(2), and, only
23 with respect to services furnished during
24 1998, the transportation costs of electro-
25 cardiogram equipment for electrocardio-

1 gram tests services (HCPCS Code R0076).

2 Services described in this clause do not in-
3 clude any physical, occupational, or speech-
4 language therapy services regardless of
5 whether or not the services are furnished
6 by, or under the supervision of, a physician
7 or other health care professional.

8 “(B) ALL COSTS.—The term ‘all costs’
9 means routine service costs, ancillary costs, and
10 capital-related costs of covered skilled nursing
11 facility services, but does not include costs asso-
12 ciated with approved educational activities.

13 “(C) NON-FEDERAL PERCENTAGE; FED-
14 ERAL PERCENTAGE.—For—

15 “(i) the first cost reporting period (as
16 defined in subparagraph (D)) of a facility,
17 the ‘non-Federal percentage’ is 75 percent
18 and the ‘Federal percentage’ is 25 percent;

19 “(ii) the next cost reporting period of
20 such facility, the ‘non-Federal percentage’
21 is 50 percent and the ‘Federal percentage’
22 is 50 percent; and

23 “(iii) the subsequent cost reporting
24 period of such facility, the ‘non-Federal

1 percentage' is 25 percent and the 'Federal
2 percentage' is 75 percent.

3 “(D) FIRST COST REPORTING PERIOD.—

4 The term 'first cost reporting period' means,
5 with respect to a skilled nursing facility, the
6 first cost reporting period of the facility begin-
7 ning on or after October 1, 1998.

8 “(E) TRANSITION PERIOD.—

9 “(i) IN GENERAL.—The term 'transi-
10 tion period' means, with respect to a
11 skilled nursing facility, the 3 cost reporting
12 periods of the facility beginning with the
13 first cost reporting period.

14 “(ii) TREATMENT OF NEW SKILLED
15 NURSING FACILITIES.—In the case of a
16 skilled nursing facility that does not have
17 a settled cost report for a cost reporting
18 period before July 1, 1998, payment for
19 such services shall be made under this sub-
20 section as if all services were furnished
21 after the transition period.

22 “(3) DETERMINATION OF FACILITY SPECIFIC
23 PER DIEM RATES.—The Secretary shall determine a
24 facility-specific per diem rate for each skilled nurs-
25 ing facility for a cost reporting period as follows:

1 “(A) DETERMINING BASE PAYMENTS.—
2 The Secretary shall determine, on a per diem
3 basis, the total of—

4 “(i) the allowable costs of extended
5 care services for the facility for cost report-
6 ing periods beginning in 1995 with appro-
7 priate adjustments (as determined by the
8 Secretary) to non-settled cost reports, and

9 “(ii) an estimate of the amounts that
10 would be payable under part B (disregard-
11 ing any applicable deductibles, coinsurance
12 and copayments) for covered skilled nurs-
13 ing facility services described in paragraph
14 (2)(A)(i)(II) furnished during such period
15 to an individual who is a resident of the fa-
16 cility, regardless of whether or not the pay-
17 ment was made to the facility or to an-
18 other entity.

19 “(B) UPDATE TO COST REPORTING PERI-
20 ODS THROUGH 1998.—The Secretary shall up-
21 date the amount determined under subpara-
22 graph (A), for each cost reporting period after
23 the cost reporting period described in subpara-
24 graph (A)(i) and up to the first cost reporting

1 period by a factor equal to the skilled nursing
2 facility market basket percentage increase.

3 “(C) UPDATING TO APPLICABLE COST RE-
4 PORTING PERIOD.—The Secretary shall further
5 update such amount for each cost reporting pe-
6 riod beginning with the first cost reporting pe-
7 riod and up to and including the cost reporting
8 period involved by a factor equal to the skilled
9 nursing facility market basket percentage in-
10 crease.

11 “(D) CERTAIN DEMONSTRATION
12 PROJECTS.—In the case of a facility participat-
13 ing in the Nursing Home Case-Mix and Quality
14 Demonstration (RUGS–III), the Secretary shall
15 determine the facility specific per diem rate for
16 any year after 1997 by computing the base pe-
17 riod payments by using the RUGS–III rate re-
18 ceived by the facility for 1997, increased by a
19 factor equal to the skilled nursing facility mar-
20 ket basket percentage increase.

21 “(4) FEDERAL PER DIEM RATE.—

22 “(A) DETERMINATION OF HISTORICAL PER
23 DIEM FOR FACILITIES.—For each skilled nurs-
24 ing facility that received payments for post-hos-
25 pital extended care services during a cost re-

1 porting period beginning in fiscal year 1995
2 and that was subject to (and not exempted
3 from) the per diem limits referred to in para-
4 graph (1) or (2) of subsection (a) (and facilities
5 described in subsection (d)), the Secretary shall
6 estimate, on a per diem basis for such cost re-
7 porting period, the total of—

8 “(i) subject to subparagraph (I), the
9 allowable costs of extended care services
10 for the facility for cost reporting periods
11 beginning in 1995 with appropriate adjust-
12 ments (as determined by the Secretary) to
13 non-settled cost reports, and

14 “(ii) an estimate of the amounts that
15 would be payable under part B (disregard-
16 ing any applicable deductibles, coinsurance
17 and copayments) for covered skilled nurs-
18 ing facility services described in paragraph
19 (2)(A)(i)(II) furnished during such period
20 to an individual who is a resident of the fa-
21 cility, regardless of whether or not the pay-
22 ment was made to the facility or to an-
23 other entity.

24 “(B) UPDATE TO COST REPORTING PERI-
25 ODS THROUGH 1998.—The Secretary shall up-

1 date the amount determined under subpara-
2 graph (A), for each cost reporting period after
3 the cost reporting period described in subpara-
4 graph (A)(i) and up to the first cost reporting
5 period by a factor equal to the skilled nursing
6 facility market basket percentage increase re-
7 duced (on an annualized basis) by 1 percentage
8 point.

9 “(C) COMPUTATION OF STANDARDIZED
10 PER DIEM RATE.—The Secretary shall stand-
11 ardize the amount updated under subparagraph
12 (B) for each facility by—

13 “(i) adjusting for variations among
14 facility by area in the average facility wage
15 level per diem, and

16 “(ii) adjusting for variations in case
17 mix per diem among facilities.

18 “(D) COMPUTATION OF WEIGHTED AVER-
19 AGE PER DIEM RATE.—The Secretary shall
20 compute a weighted average per diem rate by
21 computing an average of the standardized
22 amounts computed under subparagraph (C),
23 weighted for each facility by the number of days
24 of extended care services furnished during the
25 cost reporting period referred to in subpara-

1 graph (A). The Secretary may compute and
2 apply such average separately for facilities lo-
3 cated in urban and rural areas (as defined in
4 section 1886(d)(2)(D)).

5 “(E) UPDATING.—

6 “(i) FISCAL YEAR 1999.—For fiscal
7 year 1999, the Secretary shall compute for
8 each skilled nursing facility an unadjusted
9 Federal per diem rate equal to the weight-
10 ed average per diem rate computed under
11 subparagraph (D) and applicable to the fa-
12 cility increased by skilled nursing facility
13 market basket percentage change for the
14 fiscal year involved.

15 “(ii) SUBSEQUENT FISCAL YEARS.—

16 For each subsequent fiscal year the Sec-
17 retary shall compute for each skilled nurs-
18 ing facility an unadjusted Federal per diem
19 rate equal to the Federal per diem rate
20 computed under this subparagraph for the
21 previous fiscal year and applicable to the
22 facility increased by the skilled nursing fa-
23 cility market basket percentage change for
24 the fiscal year involved.

1 “(F) ADJUSTMENT FOR CASE MIX
2 CREEP.—Insofar as the Secretary determines
3 that such adjustments under subparagraph
4 (G)(i) for a previous fiscal year (or estimates
5 that such adjustments for a future fiscal year)
6 did (or are likely to) result in a change in ag-
7 gregate payments under this subsection during
8 the fiscal year that are a result of changes in
9 the coding or classification of residents that do
10 not reflect real changes in case mix, the Sec-
11 retary may adjust unadjusted Federal per diem
12 rates for subsequent years so as to discount the
13 effect of such coding or classification changes.

14 “(G) APPLICATION TO SPECIFIC FACILI-
15 TIES.—The Secretary shall compute for each
16 skilled nursing facility for each fiscal year (be-
17 ginning with fiscal year 1998) an adjusted Fed-
18 eral per diem rate equal to the unadjusted Fed-
19 eral per diem rate determined under subpara-
20 graph (E), as adjusted under subparagraph
21 (F), and as further adjusted as follows:

22 “(i) ADJUSTMENT FOR CASE MIX.—
23 The Secretary shall provide for an appro-
24 priate adjustment to account for case mix.
25 Such adjustment shall be based on a resi-

1 dent classification system, established by
2 the Secretary, that accounts for the rel-
3 ative resource utilization of different pa-
4 tient types. The case mix adjustment shall
5 be based on resident assessment data and
6 other data that the Secretary considers ap-
7 propriate.

8 “(ii) ADJUSTMENT FOR GEOGRAPHIC
9 VARIATIONS IN LABOR COSTS.—The Sec-
10 retary shall adjust the portion of such per
11 diem rate attributable to wages and wage-
12 related costs for the area in which the fa-
13 cility is located compared to the national
14 average of such costs using an appropriate
15 wage index as determined by the Sec-
16 retary. Such adjustment shall be done in a
17 manner that does not result in aggregate
18 payments under this subsection that are
19 greater or less than those that would oth-
20 erwise be made if such adjustment had not
21 been made.

22 “(H) PUBLICATION OF INFORMATION ON
23 PER DIEM RATES.—The Secretary shall provide
24 for publication in the Federal Register, before

1 the July 1 preceding each fiscal year (beginning
2 with fiscal year 1999), of—

3 “(i) the unadjusted Federal per diem
4 rates to be applied to days of covered
5 skilled nursing facility services furnished
6 during the fiscal year,

7 “(ii) the case mix classification system
8 to be applied under subparagraph (G)(i)
9 with respect to such services during the
10 fiscal year, and

11 “(iii) the factors to be applied in mak-
12 ing the area wage adjustment under sub-
13 paragraph (G)(ii) with respect to such
14 services.

15 “(I) EXCLUSION OF EXCEPTION PAYMENTS
16 FROM DETERMINATION OF HISTORICAL PER
17 DIEM.—In determining allowable costs under
18 subparagraph (A)(i), the Secretary shall not
19 take into account any payments described in
20 subsection (c).

21 “(5) SKILLED NURSING FACILITY MARKET BAS-
22 KET INDEX, PERCENTAGE, AND HISTORICAL TREND
23 FACTOR.—For purposes of this subsection:

24 “(A) SKILLED NURSING FACILITY MARKET
25 BASKET INDEX.—The Secretary shall establish

1 a skilled nursing facility market basket index
2 that reflects changes over time in the prices of
3 an appropriate mix of goods and services in-
4 cluded in covered skilled nursing facility serv-
5 ices.

6 “(B) SKILLED NURSING FACILITY MARKET
7 BASKET PERCENTAGE.—The term ‘skilled nurs-
8 ing facility market basket percentage’ means,
9 for a fiscal year or other annual period and as
10 calculated by the Secretary, the percentage
11 change in the skilled nursing facility market
12 basket index (established under subparagraph
13 (A)) from the midpoint of the prior fiscal year
14 (or period) to the midpoint of the fiscal year (or
15 other period) involved.

16 “(6) SUBMISSION OF RESIDENT ASSESSMENT
17 DATA.—A skilled nursing facility shall provide the
18 Secretary, in a manner and within the timeframes
19 prescribed by the Secretary, the resident assessment
20 data necessary to develop and implement the rates
21 under this subsection. For purposes of meeting such
22 requirement, a skilled nursing facility may submit
23 the resident assessment data required under section
24 1819(b)(3), using the standard instrument des-
25 igned by the State under section 1819(e)(5).

1 “(7) TRANSITION FOR MEDICARE SWING BED
2 HOSPITALS.—

3 “(A) IN GENERAL.—The Secretary shall
4 determine an appropriate manner in which to
5 apply this subsection to the facilities described
6 in subparagraph (B), taking into account the
7 purposes of this subsection, and shall provide
8 that at the end of the transition period (as de-
9 fined in paragraph (2)(E)) such facilities shall
10 be paid only under this subsection. Payment
11 shall not be made under this subsection to such
12 facilities for cost reporting periods beginning
13 before such date (not earlier than July 1, 1999)
14 as the Secretary specifies.

15 “(B) FACILITIES DESCRIBED.—The facili-
16 ties described in this subparagraph are facilities
17 that have in effect an agreement described in
18 section 1883, for which payment is made for
19 the furnishing of extended care services on a
20 reasonable cost basis under section 1814(l) (as
21 in effect on and after such date).

22 “(8) LIMITATION ON REVIEW.—There shall be
23 no administrative or judicial review under section
24 1869, 1878, or otherwise of—

1 “(A) the establishment of Federal per diem
2 rates under paragraph (4), including the com-
3 putation of the standardized per diem rates
4 under paragraph (4)(C), adjustments and cor-
5 rections for case mix under paragraphs (4)(F)
6 and (4)(G)(i), and adjustments for variations in
7 labor-related costs under paragraph (4)(G)(ii);
8 and

9 “(B) the establishment of transitional
10 amounts under paragraph (7).”.

11 (b) CONSOLIDATED BILLING.—

12 (1) FOR SNF SERVICES.—Section 1862(a) (42
13 U.S.C. 1395y(a)) is amended—

14 (A) by striking “or” at the end of para-
15 graph (15),

16 (B) by striking the period at the end of
17 paragraph (16) and inserting “; or”, and

18 (C) by inserting after paragraph (16) the
19 following new paragraph:

20 “(17) which are covered skilled nursing facility
21 services described in section 1888(e)(2)(A)(i)(II) and
22 which are furnished to an individual who is a resi-
23 dent of a skilled nursing facility by an entity other
24 than the skilled nursing facility, unless the services
25 are furnished under arrangements (as defined in sec-

1 tion 1861(w)(1)) with the entity made by the skilled
2 nursing facility, or such services are furnished by a
3 physician described in section 1861(r)(1).”.

4 (2) REQUIRING PAYMENT FOR ALL PART B
5 ITEMS AND SERVICES TO BE MADE TO FACILITY.—

6 The first sentence of section 1842(b)(6) (42 U.S.C.
7 1395u(b)(6)) is amended—

8 (A) by striking “and (D)” and inserting
9 “(D)”; and

10 (B) by striking the period at the end and
11 inserting the following: “, and (E) in the case
12 of an item or service (other than services de-
13 scribed in section 1888(e)(2)(A)(ii)) furnished
14 to an individual who (at the time the item or
15 service is furnished) is a resident of a skilled
16 nursing facility, payment shall be made to the
17 facility (without regard to whether or not the
18 item or service was furnished by the facility, by
19 others under arrangement with them made by
20 the facility, under any other contracting or con-
21 sulting arrangement, or otherwise).”.

22 (3) PAYMENT RULES.—Section 1888(e) (42
23 U.S.C. 1395yy(e)), as added by subsection (a), is
24 amended by adding at the end the following:

25 “(9) PAYMENT FOR CERTAIN SERVICES.—

1 “(A) IN GENERAL.—In the case of an item
2 or service furnished by a skilled nursing facility
3 (or by others under arrangement with them
4 made by a skilled nursing facility or under any
5 other contracting or consulting arrangement or
6 otherwise) for which payment would otherwise
7 (but for this paragraph) be made under part B
8 in an amount determined in accordance with
9 section 1833(a)(2)(B), the amount of the pay-
10 ment under such part shall be based on the
11 part B methodology applicable to the item or
12 service, except that for items and services that
13 would be included in a facility’s cost report if
14 not for this section, the facility may continue to
15 use a cost report for reimbursement purposes
16 until the prospective payment system estab-
17 lished under this section is implemented.

18 “(B) THERAPY AND PATHOLOGY SERV-
19 ICES.—Payment for physical therapy, occupa-
20 tional therapy, respiratory therapy, and speech
21 language pathology services shall reflect new
22 salary equivalency guidelines calculated pursu-
23 ant to section 1861(v)(5) when finalized
24 through the regulatory process.

1 “(10) REQUIRED CODING.—No payment may
2 be made under part B for items and services (other
3 than services described in paragraph (2)(A)(ii)) fur-
4 nished to an individual who is a resident of a skilled
5 nursing facility unless the claim for such payment
6 includes a code (or codes) under a uniform coding
7 system specified by the Secretary that identifies the
8 items or services delivered.”.

9 (4) CONFORMING AMENDMENTS.—

10 (A) Section 1819(b)(3)(C)(i) (42 U.S.C.
11 1395i-3(b)(3)(C)(i)) is amended by striking
12 “Such” and inserting “Subject to the time-
13 frames prescribed by the Secretary under sec-
14 tion 1888(t)(6), such”.

15 (B) Section 1832(a)(1) (42 U.S.C.
16 1395k(a)(1)) is amended by striking “(2);” and
17 inserting “(2) and section 1842(b)(6)(E);”.

18 (C) Section 1833(a)(2)(B) (42 U.S.C.
19 1395l(a)(2)(B)) is amended by inserting “or
20 section 1888(e)(9)” after “section 1886”.

21 (D) Section 1861(h) (42 U.S.C. 1395x(h))
22 is amended—

23 (i) in the opening paragraph, by strik-
24 ing “paragraphs (3) and (6)” and insert-
25 ing “paragraphs (3), (6), and (7)”, and

1 (ii) in paragraph (7), after “skilled
2 nursing facilities”, by inserting “, or by
3 others under arrangements with them
4 made by the facility”.

5 (E) Section 1866(a)(1)(H) (42 U.S.C.
6 1395cc(a)(1)(H)) is amended—

7 (i) by redesignating clauses (i) and
8 (ii) as subclauses (I) and (II) respectively,
9 (ii) by inserting “(i)” after “(H)”,
10 and

11 (iii) by adding after clause (i), as so
12 redesignated, the following new clause:

13 “(ii) in the case of skilled nursing facilities
14 which provide covered skilled nursing facility serv-
15 ices—

16 “(I) that are furnished to an individual
17 who is a resident of the skilled nursing facility,
18 and

19 “(II) for which the individual is entitled to
20 have payment made under this title,

21 to have items and services (other than services de-
22 scribed in section 1888(e)(2)(A)(ii)) furnished by the
23 skilled nursing facility or otherwise under arrange-
24 ments (as defined in section 1861(w)(1)) made by
25 the skilled nursing facility.”.

1 (c) MEDICAL REVIEW PROCESS.—In order to ensure
2 that medicare beneficiaries are furnished appropriate serv-
3 ices in skilled nursing facilities, the Secretary of Health
4 and Human Services shall establish and implement a thor-
5 ough medical review process to examine the effects of the
6 amendments made by this section on the quality of covered
7 skilled nursing facility services furnished to medicare
8 beneficiaries. In developing such a medical review process,
9 the Secretary shall place a particular emphasis on the
10 quality of non-routine covered services and physicians'
11 services for which payment is made under title XVIII of
12 the Social Security Act for which payment is made under
13 section 1848 of such Act.

14 (d) EFFECTIVE DATE.—The amendments made by
15 this section are effective for cost reporting periods begin-
16 ning on or after July 1, 1998; except that the amendments
17 made by subsection (b) shall apply to items and services
18 furnished on or after July 1, 1998.

1 **Subchapter B—Home Health Services and**
2 **Benefits**

3 **PART I—PAYMENTS FOR HOME HEALTH**
4 **SERVICES**

5 **SEC. 5341. RECAPTURING SAVINGS RESULTING FROM TEM-**
6 **PORARY FREEZE ON PAYMENT INCREASES**
7 **FOR HOME HEALTH SERVICES.**

8 (a) **BASING UPDATES TO PER VISIT COST LIMITS ON**
9 **LIMITS FOR FISCAL YEAR 1993.**—Section 1861(v)(1)(L)
10 (42 U.S.C. 1395x(v)(1)(L)) is amended by adding at the
11 end the following:

12 “(iv) In establishing limits under this subparagraph
13 for cost reporting periods beginning after September 30,
14 1997, the Secretary shall not take into account any
15 changes in the home health market basket, as determined
16 by the Secretary, with respect to cost reporting periods
17 which began on or after July 1, 1994, and before July
18 1, 1996.”.

19 (b) **NO EXCEPTIONS PERMITTED BASED ON AMEND-**
20 **MENT.**—The Secretary of Health and Human Services
21 shall not consider the amendment made by subsection (a)
22 in making any exemptions and exceptions pursuant to sec-
23 tion 1861(v)(1)(L)(ii) of the Social Security Act (42
24 U.S.C. 1395x(v)(1)(L)(ii)).

1 **SEC. 5342. INTERIM PAYMENTS FOR HOME HEALTH SERV-**
2 **ICES.**

3 (a) **REDUCTIONS IN COST LIMITS.**—Section
4 1861(v)(1)(L)(i) (42 U.S.C. 1395x(v)(1)(L)(i)) is amend-
5 ed—

6 (1) by moving the indentation of subclauses (I)
7 through (III) 2-ems to the left;

8 (2) in subclause (I), by inserting “of the mean
9 of the labor-related and nonlabor per visit costs for
10 freestanding home health agencies” before the
11 comma at the end;

12 (3) in subclause (II), by striking “, or” and in-
13 serting “of such mean,”;

14 (4) in subclause (III)—

15 (A) by inserting “and before October 1,
16 1997,” after “July 1, 1987”, and

17 (B) by striking the period at the end and
18 inserting “of such mean, or”; and

19 (5) by striking the matter following subclause
20 (III) and inserting the following:

21 “(IV) October 1, 1997, 105 percent of the me-
22 dian of the labor-related and nonlabor per visit costs
23 for freestanding home health agencies.”.

24 (b) **DELAY IN UPDATES.**—Section 1861(v)(1)(L)(iii)
25 (42 U.S.C. 1395x(v)(1)(L)(iii)) is amended by inserting

1 “, or on or after July 1, 1997, and before October 1,
2 1997” after “July 1, 1996”.

3 (c) ADDITIONS TO COST LIMITS.—Section
4 1861(v)(1)(L) (42 U.S.C. 1395x(v)(1)(L)), as amended by
5 section 5341(a), is amended by adding at the end the fol-
6 lowing:

7 “(v) For services furnished by home health agencies
8 for cost reporting periods beginning on or after October
9 1, 1997, the Secretary shall provide for an interim system
10 of limits. Payment shall be the lower of—

11 “(I) costs determined under the preceding pro-
12 visions of this subparagraph, or

13 “(II) an agency-specific per beneficiary annual
14 limitation calculated from the agency’s 12-month
15 cost reporting period ending on or after January 1,
16 1994, and on or before December 31, 1994, based
17 on reasonable costs (including nonroutine medical
18 supplies), updated by the home health market basket
19 index.

20 The per beneficiary limitation in subclause (II) shall be
21 multiplied by the agency’s unduplicated census count of
22 patients (entitled to benefits under this title) for the cost
23 reporting period subject to the limitation to determine the
24 aggregate agency-specific per beneficiary limitation.

1 “(vi) For services furnished by home health agencies
2 for cost reporting periods beginning on or after October
3 1, 1997, the following rules apply:

4 “(I) For new providers and those providers
5 without a 12-month cost reporting period ending in
6 calendar year 1994, the per beneficiary limitation
7 shall be equal to the median of these limits (or the
8 Secretary’s best estimates thereof) applied to other
9 home health agencies as determined by the Sec-
10 retary. A home health agency that has altered its
11 corporate structure or name shall not be considered
12 a new provider for this purpose.

13 “(II) For beneficiaries who use services fur-
14 nished by more than one home health agency, the
15 per beneficiary limitations shall be prorated among
16 the agencies.”.

17 (d) DEVELOPMENT OF CASE MIX SYSTEM.—The
18 Secretary of Health and Human Services shall expand re-
19 search on a prospective payment system for home health
20 agencies under the medicare program under title XVIII
21 of the Social Security Act (42 U.S.C. 1395 et seq.) that
22 ties prospective payments to a unit of service, including
23 an intensive effort to develop a reliable case mix adjuster
24 that explains a significant amount of the variances in
25 costs.

1 (e) SUBMISSION OF DATA FOR CASE MIX SYSTEM.—
2 Effective for cost reporting periods beginning on or after
3 October 1, 1997, the Secretary of Health and Human
4 Services may require all home health agencies to submit
5 additional information that the Secretary considers nec-
6 essary for the development of a reliable case mix system.

7 **SEC. 5343. PROSPECTIVE PAYMENT FOR HOME HEALTH**
8 **SERVICES.**

9 (a) IN GENERAL.—Title XVIII (42 U.S.C. 1395 et
10 seq.), as amended by section 5011, is amended by adding
11 at the end the following new section:

12 “PROSPECTIVE PAYMENT FOR HOME HEALTH SERVICES

13 “SEC. 1895. (a) IN GENERAL.—Notwithstanding sec-
14 tion 1861(v), the Secretary shall provide, for cost report-
15 ing periods beginning on or after October 1, 1999, for pay-
16 ments for home health services in accordance with a pro-
17 spective payment system established by the Secretary
18 under this section.

19 “(b) SYSTEM OF PROSPECTIVE PAYMENT FOR HOME
20 HEALTH SERVICES.—

21 “(1) IN GENERAL.—The Secretary shall estab-
22 lish under this subsection a prospective payment sys-
23 tem for payment for all costs of home health serv-
24 ices. Under the system under this subsection all
25 services covered and paid on a reasonable cost basis
26 under the medicare home health benefit as of the

1 date of the enactment of the this section, including
2 medical supplies, shall be paid for on the basis of a
3 prospective payment amount determined under this
4 subsection and applicable to the services involved. In
5 implementing the system, the Secretary may provide
6 for a transition (of not longer than 4 years) during
7 which a portion of such payment is based on agency-
8 specific costs, but only if such transition does not re-
9 sult in aggregate payments under this title that ex-
10 ceed the aggregate payments that would be made if
11 such a transition did not occur.

12 “(2) UNIT OF PAYMENT.—In defining a pro-
13 spective payment amount under the system under
14 this subsection, the Secretary shall consider an ap-
15 propriate unit of service and the number, type, and
16 duration of visits provided within that unit, potential
17 changes in the mix of services provided within that
18 unit and their cost, and a general system design that
19 provides for continued access to quality services.

20 “(3) PAYMENT BASIS.—

21 “(A) INITIAL BASIS.—

22 “(i) IN GENERAL.—Under such sys-
23 tem the Secretary shall provide for com-
24 putation of a standard prospective pay-
25 ment amount (or amounts). Such amount

1 (or amounts) shall initially be based on the
2 most current audited cost report data
3 available to the Secretary and shall be
4 computed in a manner so that the total
5 amounts payable under the system for fis-
6 cal year 2000 shall be equal to the total
7 amount that would have been made if the
8 system had not been in effect but if the re-
9 duction in limits described in clause (ii)
10 had been in effect. Such amount shall be
11 standardized in a manner that eliminates
12 the effect of variations in relative case mix
13 and wage levels among different home
14 health agencies in a budget neutral manner
15 consistent with the case mix and wage level
16 adjustments provided under paragraph
17 (4)(A). Under the system, the Secretary
18 may recognize regional differences or dif-
19 ferences based upon whether or not the
20 services or agency are in an urbanized
21 area.

22 “(ii) REDUCTION.—The reduction de-
23 scribed in this clause is a reduction by 15
24 percent in the cost limits and per bene-
25 ficiary limits described in section

1 1861(v)(1)(L), as those limits are in effect
2 on September 30, 1999.

3 “(B) ANNUAL UPDATE.—

4 “(i) IN GENERAL.—The standard pro-
5 spective payment amount (or amounts)
6 shall be adjusted for each fiscal year (be-
7 ginning with fiscal year 2001) in a pro-
8 spective manner specified by the Secretary
9 by the home health market basket percent-
10 age increase applicable to the fiscal year
11 involved.

12 “(ii) HOME HEALTH MARKET BASKET
13 PERCENTAGE INCREASE.—For purposes of
14 this subsection, the term ‘home health
15 market basket percentage increase’ means,
16 with respect to a fiscal year, a percentage
17 (estimated by the Secretary before the be-
18 ginning of the fiscal year) determined and
19 applied with respect to the mix of goods
20 and services included in home health serv-
21 ices in the same manner as the market
22 basket percentage increase under section
23 1886(b)(3)(B)(iii) is determined and ap-
24 plied to the mix of goods and services com-

1 prising inpatient hospital services for the
2 fiscal year.

3 “(C) ADJUSTMENT FOR OUTLIERS.—The
4 Secretary shall reduce the standard prospective
5 payment amount (or amounts) under this para-
6 graph applicable to home health services fur-
7 nished during a period by such proportion as
8 will result in an aggregate reduction in pay-
9 ments for the period equal to the aggregate in-
10 crease in payments resulting from the applica-
11 tion of paragraph (5) (relating to outliers).

12 “(4) PAYMENT COMPUTATION.—

13 “(A) IN GENERAL.—The payment amount
14 for a unit of home health services shall be the
15 applicable standard prospective payment
16 amount adjusted as follows:

17 “(i) CASE MIX ADJUSTMENT.—The
18 amount shall be adjusted by an appro-
19 priate case mix adjustment factor (estab-
20 lished under subparagraph (B)).

21 “(ii) AREA WAGE ADJUSTMENT.—The
22 portion of such amount that the Secretary
23 estimates to be attributable to wages and
24 wage-related costs shall be adjusted for ge-
25 ographic differences in such costs by an

1 area wage adjustment factor (established
2 under subparagraph (C)) for the area in
3 which the services are furnished or such
4 other area as the Secretary may specify.

5 “(B) ESTABLISHMENT OF CASE MIX AD-
6 JUSTMENT FACTORS.—The Secretary shall es-
7 tablish appropriate case mix adjustment factors
8 for home health services in a manner that ex-
9 plains a significant amount of the variation in
10 cost among different units of services.

11 “(C) ESTABLISHMENT OF AREA WAGE AD-
12 JUSTMENT FACTORS.—The Secretary shall es-
13 tablish area wage adjustment factors that re-
14 flect the relative level of wages and wage-related
15 costs applicable to the furnishing of home
16 health services in a geographic area compared
17 to the national average applicable level. Such
18 factors may be the factors used by the Sec-
19 retary for purposes of section 1886(d)(3)(E).

20 “(5) OUTLIERS.—The Secretary may provide
21 for an addition or adjustment to the payment
22 amount otherwise made in the case of outliers be-
23 cause of unusual variations in the type or amount of
24 medically necessary care. The total amount of the
25 additional payments or payment adjustments made

1 under this paragraph with respect to a fiscal year
2 may not exceed 5 percent of the total payments pro-
3 jected or estimated to be made based on the prospec-
4 tive payment system under this subsection in that
5 year.

6 “(6) PRORATION OF PROSPECTIVE PAYMENT
7 AMOUNTS.—If a beneficiary elects to transfer to, or
8 receive services from, another home health agency
9 within the period covered by the prospective payment
10 amount, the payment shall be prorated between the
11 home health agencies involved.

12 “(c) REQUIREMENTS FOR PAYMENT INFORMA-
13 TION.—With respect to home health services furnished on
14 or after October 1, 1998, no claim for such a service may
15 be paid under this title unless—

16 “(1) the claim has the unique identifier for the
17 physician who prescribed the services or made the
18 certification described in section 1814(a)(2) or
19 1835(a)(2)(A); and

20 “(2) in the case of a service visit described in
21 paragraph (1), (2), (3), or (4) of section 1861(m),
22 the claim has information (coded in an appropriate
23 manner) on the length of time of the service visit,
24 as measured in 15 minute increments.

1 “(d) LIMITATION ON REVIEW.—There shall be no ad-
2 ministrative or judicial review under section 1869, 1878,
3 or otherwise of—

4 “(1) the establishment of a transition period
5 under subsection (b)(1);

6 “(2) the definition and application of payment
7 units under subsection (b)(2);

8 “(3) the computation of initial standard pro-
9 spective payment amounts under subsection
10 (b)(3)(A) (including the reduction described in
11 clause (ii) of such subsection);

12 “(4) the adjustment for outliers under sub-
13 section (b)(3)(C);

14 “(5) case mix and area wage adjustments under
15 subsection (b)(4);

16 “(6) any adjustments for outliers under sub-
17 section (b)(5); and

18 “(7) the amounts or types of exceptions or ad-
19 justments under subsection (b)(7).”.

20 (b) ELIMINATION OF PERIODIC INTERIM PAYMENTS
21 FOR HOME HEALTH AGENCIES.—Section 1815(e)(2) (42
22 U.S.C. 1395g(e)(2)) is amended—

23 (1) by inserting “and” at the end of subpara-
24 graph (C),

25 (2) by striking subparagraph (D), and

1 (3) by redesignating subparagraph (E) as sub-
2 paragraph (D).

3 (c) CONFORMING AMENDMENTS.—

4 (1) PAYMENTS UNDER PART A.—Section
5 1814(b) (42 U.S.C. 1395f(b)) is amended in the
6 matter preceding paragraph (1) by striking “and
7 1886” and inserting “1886, and 1895”.

8 (2) TREATMENT OF ITEMS AND SERVICES PAID
9 UNDER PART B.—

10 (A) PAYMENTS UNDER PART B.—Section
11 1833(a)(2) (42 U.S.C. 1395l(a)(2)) is amend-
12 ed—

13 (i) by amending subparagraph (A) to
14 read as follows:

15 “(A) with respect to home health services
16 (other than a covered osteoporosis drug) (as de-
17 fined in section 1861(kk)), the amount deter-
18 mined under the prospective payment system
19 under section 1895;”;

20 (ii) by striking “and” at the end of
21 subparagraph (E);

22 (iii) by adding “and” at the end of
23 subparagraph (F); and

24 (iv) by adding at the end the following
25 new subparagraph:

1 “(G) with respect to items and services de-
2 scribed in section 1861(s)(10)(A), the lesser
3 of—

4 “(i) the reasonable cost of such serv-
5 ices, as determined under section 1861(v),
6 or

7 “(ii) the customary charges with re-
8 spect to such services,

9 or, if such services are furnished by a public
10 provider of services, or by another provider
11 which demonstrates to the satisfaction of the
12 Secretary that a significant portion of its pa-
13 tients are low-income (and requests that pay-
14 ment be made under this provision), free of
15 charge or at nominal charges to the public, the
16 amount determined in accordance with section
17 1814(b)(2);”.

18 (B) REQUIRING PAYMENT FOR ALL ITEMS
19 AND SERVICES TO BE MADE TO AGENCY.—

20 (i) IN GENERAL.—The first sentence
21 of section 1842(b)(6) (42 U.S.C.
22 1395u(b)(6)) (as amended by section
23 5332(b)(2)) is amended—

24 (I) by striking “and (E)” and in-
25 serting “(E)”; and

1 (II) by striking the period at the
2 end and inserting the following: “,
3 and (F) in the case of home health
4 services furnished to an individual
5 who (at the time the item or service is
6 furnished) is under a plan of care of
7 a home health agency, payment shall
8 be made to the agency (without re-
9 gard to whether or not the item or
10 service was furnished by the agency,
11 by others under arrangement with
12 them made by the agency, or when
13 any other contracting or consulting
14 arrangement, or otherwise).”.

15 (ii) CONFORMING AMENDMENT.—Sec-
16 tion 1832(a)(1) (42 U.S.C. 1395k(a)(1))
17 (as amended by section 5332(b)(4)(B)) is
18 amended by striking “section
19 1842(b)(6)(E);” and inserting “subpara-
20 graphs (E) and (F) of section
21 1842(b)(6);”.

22 (C) EXCLUSIONS FROM COVERAGE.—Sec-
23 tion 1862(a) (42 U.S.C. 1395y(a)), as amended
24 by section 5332(b)(1), is amended—

1 (i) by striking “or” at the end of
2 paragraph (16);

3 (ii) by striking the period at the end
4 of paragraph (17) and inserting “or”; and

5 (iii) by inserting after paragraph (17)
6 the following:

7 “(18) where such expenses are for home health
8 services furnished to an individual who is under a
9 plan of care of the home health agency if the claim
10 for payment for such services is not submitted by
11 the agency.”.

12 (d) EFFECTIVE DATE.—Except as otherwise pro-
13 vided, the amendments made by this section shall apply
14 to cost reporting periods beginning on or after October
15 1, 1999.

16 (e) CONTINGENCY.—If the Secretary of Health and
17 Human Services for any reason does not establish and im-
18 plement the prospective payment system for home health
19 services described in section 1895(b) of the Social Security
20 Act (as added by subsection (a)) for cost reporting periods
21 described in subsection (d), for such cost reporting periods
22 the Secretary shall provide for a reduction by 15 percent
23 in the cost limits and per beneficiary limits described in
24 section 1861(v)(1)(L) of such Act, as those limits would
25 otherwise be in effect on September 30, 1999.

1 **SEC. 5344. PAYMENT BASED ON LOCATION WHERE HOME**
2 **HEALTH SERVICE IS FURNISHED.**

3 (a) **CONDITIONS OF PARTICIPATION.**—Section 1891
4 (42 U.S.C. 1395bbb) is amended by adding at the end
5 the following:

6 “(g) **PAYMENT ON BASIS OF LOCATION OF SERV-**
7 **ICE.**—A home health agency shall submit claims for pay-
8 ment for home health services under this title only on the
9 basis of the geographic location at which the service is fur-
10 nished, as determined by the Secretary.”.

11 (b) **WAGE ADJUSTMENT.**—Section 1861(v)(1)(L)(iii)
12 (42 U.S.C. 1395x(v)(1)(L)(iii)) is amended by striking
13 “agency is located” and inserting “service is furnished”.

14 (c) **EFFECTIVE DATE.**—The amendments made by
15 this section apply to cost reporting periods beginning on
16 or after October 1, 1997.

17 **PART II—HOME HEALTH BENEFITS**

18 **SEC. 5361. MODIFICATION OF PART A HOME HEALTH BENE-**
19 **FIT FOR INDIVIDUALS ENROLLED UNDER**
20 **PART B.**

21 (a) **IN GENERAL.**—Section 1812 (42 U.S.C. 1395d)
22 is amended—

23 (1) in subsection (a)(3), by striking “home
24 health services” and inserting “for individuals not
25 enrolled in part B, home health services, and for in-

1 individuals so enrolled, part A home health services
2 (as defined in subsection (g))”;

3 (2) by redesignating subsection (g) as sub-
4 section (h); and

5 (3) by inserting after subsection (f) the follow-
6 ing new subsection:

7 “(g)(1) For purposes of this section, the term ‘part
8 A home health services’ means—

9 “(A) for services furnished during each year be-
10 ginning with 1998 and ending with 2003, home
11 health services subject to the transition reduction
12 applied under paragraph (2)(C) for services fur-
13 nished during the year, and

14 “(B) for services furnished on or after January
15 1, 2004, post-institutional home health services for
16 up to 100 visits during a home health spell of ill-
17 ness.

18 “(2) For purposes of paragraph (1)(A), the Secretary
19 shall specify, before the beginning of each year beginning
20 with 1998 and ending with 2003, a transition reduction
21 in the home health services benefit under this part as fol-
22 lows:

23 “(A) The Secretary first shall estimate the
24 amount of payments that would have been made

1 under this part for home health services furnished
2 during the year if—

3 “(i) part A home health services were all
4 home health services, and

5 “(ii) part A home health services were lim-
6 ited to services described in paragraph (1)(B).

7 “(B)(i) The Secretary next shall compute a
8 transfer reduction amount equal to the appropriate
9 proportion (specified under clause (ii)) of the
10 amount by which the amount estimated under sub-
11 paragraph (A)(i) for the year exceeds the amount es-
12 timated under subparagraph (A)(ii) for the year.

13 “(ii) For purposes of clause (i), the ‘appropriate
14 proportion’ is equal to—

15 “(I) $\frac{1}{7}$ for 1998,

16 “(II) $\frac{2}{7}$ for 1999,

17 “(III) $\frac{3}{7}$ for 2000,

18 “(IV) $\frac{4}{7}$ for 2001,

19 “(V) $\frac{5}{7}$ for 2002, and

20 “(V) $\frac{6}{7}$ for 2003.

21 “(C) The Secretary shall establish a transition
22 reduction by specifying such a visit limit (during a
23 home health spell of illness) or such a post-institu-
24 tional limitation on home health services furnished
25 under this part during the year as the Secretary es-

1 estimates will result in a reduction in the amount of
2 payments that would otherwise be made under this
3 part for home health services furnished during the
4 year equal to the transfer amount computed under
5 subparagraph (B)(i) for the year.

6 “(3) Payment under this part for home health serv-
7 ices furnished an individual enrolled under part B—

8 “(A) during a year beginning with 1998 and
9 ending with 2003, may not be made for services that
10 are not within the visit limit or other limitation spec-
11 ified by the Secretary under the transition reduction
12 under paragraph (3)(C) for services furnished dur-
13 ing the year; or

14 “(B) on or after January 1, 2004, may not be
15 made for home health services that are not post-in-
16 stitutional home health services or for post-institu-
17 tional furnished to the individual after such services
18 have been furnished to the individual for a total of
19 100 visits during a home health spell of illness.”.

20 (b) POST-INSTITUTIONAL HOME HEALTH SERVICES
21 DEFINED.—Section 1861 (42 U.S.C. 1395x), as amended
22 by sections 5102(a) and 5103(a), is amended by adding
23 at the end the following:

1 “Post-Institutional Home Health Services; Home Health
2 Spell of Illness

3 “(qq)(1) The term ‘post-institutional home health
4 services’ means home health services furnished to an indi-
5 vidual—

6 “(A) after discharge from a hospital or rural
7 primary care hospital in which the individual was an
8 inpatient for not less than 3 consecutive days before
9 such discharge if such home health services were ini-
10 tiated within 14 days after the date of such dis-
11 charge; or

12 “(B) after discharge from a skilled nursing fa-
13 cility in which the individual was provided post-hos-
14 pital extended care services if such home health serv-
15 ices were initiated within 14 days after the date of
16 such discharge.

17 “(2) The term ‘home health spell of illness’ with re-
18 spect to any individual means a period of consecutive
19 days—

20 “(A) beginning with the first day (not included
21 in a previous home health spell of illness) (i) on
22 which such individual is furnished post-institutional
23 home health services, and (ii) which occurs in a
24 month for which the individual is entitled to benefits
25 under part A, and

1 “(B) ending with the close of the first period of
2 60 consecutive days thereafter on each of which the
3 individual is neither an inpatient of a hospital or
4 rural primary care hospital nor an inpatient of a fa-
5 cility described in section 1819(a)(1) or subsection
6 (y)(1) nor provided home health services.”.

7 (c) MAINTAINING APPEAL RIGHTS FOR HOME
8 HEALTH SERVICES.—Section 1869(b)(2)(B) (42 U.S.C.
9 1395ff(b)(2)(B)) is amended by inserting “(or \$100 in the
10 case of home health services)” after “\$500”.

11 (d) MAINTAINING SEAMLESS ADMINISTRATION
12 THROUGH FISCAL INTERMEDIARIES.—Section 1842(b)(2)
13 (42 U.S.C. 1395u(b)(2)) is amended by adding at the end
14 the following:

15 “(E) With respect to the payment of claims for home
16 health services under this part that, but for the amend-
17 ments made by section 5361, would be payable under part
18 A instead of under this part, the Secretary shall continue
19 administration of such claims through fiscal
20 intermediaries under section 1816.”.

21 (e) EFFECTIVE DATE.—The amendments made by
22 this section apply to services furnished on or after Janu-
23 ary 1, 1998. For the purpose of applying such amend-
24 ments, any home health spell of illness that began, but

1 did not end, before such date shall be considered to have
2 begun as of such date.

3 **SEC. 5362. IMPOSITION OF \$5 COPAYMENT FOR PART B**
4 **HOME HEALTH SERVICES.**

5 (a) IN GENERAL.—Section 1833(a)(2)(A) (42 U.S.C.
6 1395l(a)(2)(A)) (as amended by section 5343(c)(2)) is
7 amended by striking “1895” and inserting “1895, less a
8 copayment amount equal to \$5 per visit, not to exceed a
9 total annual copayment amount equal to the inpatient hos-
10 pital deductible determined under section 1813 for the cal-
11 endar year in which such service is furnished”.

12 (b) PROVIDER CHARGES.—Section 1866(a)(2)(A)(i)
13 (42 U.S.C. 1395cc(a)(2)(A)(i)) is amended—

14 (1) by striking “deduction or coinsurance” and
15 inserting “deduction, coinsurance, or copayment”;
16 and

17 (2) by striking “section 1833(b)” and inserting
18 “subsection (a)(2)(A) or (b) of section 1833”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to services furnished on or after
21 October 1, 1997.

22 **SEC. 5363. CLARIFICATION OF PART-TIME OR INTERMIT-**
23 **TENT NURSING CARE.**

24 (a) IN GENERAL.—Section 1861(m) (42 U.S.C.
25 1395x(m)) is amended by adding at the end the following:

1 “For purposes of paragraphs (1) and (4), the term ‘part-
2 time or intermittent services’ means skilled nursing and
3 home health aide services furnished any number of days
4 per week as long as they are furnished (combined) less
5 than 8 hours each day and 28 or fewer hours each week
6 (or, subject to review on a case-by-case basis as to the
7 need for care, less than 8 hours each day and 35 or fewer
8 hours per week). For purposes of sections 1814(a)(2)(C)
9 and 1835(a)(2)(A), ‘intermittent’ means skilled nursing
10 care that is either provided or needed on fewer than 7
11 days each week, or less than 8 hours of each day for peri-
12 ods of 21 days or less (with extensions in exceptional cir-
13 cumstances when the need for additional care is finite and
14 predictable).”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 subsection (a) applies to services furnished on or after Oc-
17 tober 1, 1997.

18 **SEC. 5364. STUDY ON DEFINITION OF HOMEBOUND.**

19 (a) STUDY.—The Secretary of Health and Human
20 Services shall conduct a study of the criteria that should
21 be applied, and the method of applying such criteria, in
22 the determination of whether an individual is homebound
23 for purposes of qualifying for receipt of benefits for home
24 health services under the medicare program. Such criteria
25 shall include the extent and circumstances under which

1 a person may be absent from the home but nonetheless
2 qualify.

3 (b) REPORT.—Not later than October 1, 1998, the
4 Secretary shall submit a report to the Congress on the
5 study conducted under subsection (a). The report shall in-
6 clude specific recommendations on such criteria and meth-
7 ods.

8 **SEC. 5365. NORMATIVE STANDARDS FOR HOME HEALTH**
9 **CLAIMS DENIALS.**

10 (a) IN GENERAL.—Section 1862(a)(1) (42 U.S.C.
11 1395y(a)(1)), as amended by section 5102(c), is amend-
12 ed—

13 (1) by striking “and” at the end of subpara-
14 graph (F),

15 (2) by striking the semicolon at the end of sub-
16 paragraph (G) and inserting “, and”, and

17 (3) by inserting after subparagraph (G) the fol-
18 lowing new subparagraph:

19 “(H) the frequency and duration of home
20 health services which are in excess of normative
21 guidelines that the Secretary shall establish by regu-
22 lation;”.

23 (b) NOTIFICATION.—The Secretary of Health and
24 Human Services may establish a process for notifying a
25 physician in cases in which the number of home health

1 service visits furnished under the medicare program under
2 title XVIII of the Social Security Act (42 U.S.C. 1395
3 et seq.) pursuant to a prescription or certification of the
4 physician significantly exceeds such threshold (or thresh-
5 olds) as the Secretary specifies. The Secretary may adjust
6 such threshold to reflect demonstrated differences in the
7 need for home health services among different bene-
8 ficiaries.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section apply to services furnished on or after October
11 1, 1997.

12 **SEC. 5366. INCLUSION OF COST OF SERVICE IN EXPLA-**
13 **NATION OF MEDICARE BENEFITS.**

14 (a) IN GENERAL.—Section 1842(h)(7) of the Social
15 Security Act (42 U.S.C. 1395u(h)(7)) is amended—

16 (1) in subparagraph (C), by striking “and” at
17 the end;

18 (2) in subparagraph (D), by striking the period
19 at the end and inserting “, and”; and

20 (3) by adding at the end the following:

21 “(E) in the case of home health services fur-
22 nished to an individual enrolled under this part, the
23 total amount that the home health agency or other
24 provider of such services billed for such services.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) apply to explanation of benefits provided
3 on and after October 1, 1997.

4 **Subtitle F—Provisions Relating to**
5 **Part A**

6 **CHAPTER 1—PAYMENT OF PPS**

7 **HOSPITALS**

8 **SEC. 5401. PPS HOSPITAL PAYMENT UPDATE.**

9 (a) IN GENERAL.—Section 1886(b)(3)(B)(i) (42
10 U.S.C. 1395ww(b)(3)(B)(i)) is amended—

11 (1) in subclause (XII)—

12 (A) by inserting “and the period beginning
13 on October 1, 1997, and ending on December
14 31, 1997,” after “fiscal year 1997,”; and

15 (B) by striking “and” at the end; and

16 (2) by striking subclause (XIII) and inserting
17 the following:

18 “(XIII) for calendar year 1998 for hospitals in
19 all areas, the market basket percentage increase
20 minus 2.5 percentage points,

21 “(XIV) for calendar years 1999 through 2002
22 for hospitals in all areas, the market basket percent-
23 age increase minus 1.0 percentage points, and

1 “(XV) for calendar year 2003 and each subse-
2 quent calendar year for hospitals in all areas, the
3 market basket percentage increase.”.

4 (b) RULE OF CONSTRUCTION.—Section 1886 (42
5 U.S.C. 1395ww) is amended by adding at the end the fol-
6 lowing new subsection:

7 “(j) PPS CALENDAR YEAR PAYMENTS.—Notwith-
8 standing any other provision of this title, any updates or
9 payment amounts determined under this section shall on
10 and after December 31, 1998, take effect and be applied
11 on a calendar year basis. With respect to any cost report-
12 ing periods that relate to any such updates or payment
13 amounts, the Secretary shall revise such cost reporting pe-
14 riods to ensure that on and after December 31, 1998, such
15 cost reporting periods relate to updates and payment
16 amounts made under this section on a calendar year basis
17 in the same manner as such cost reporting periods applied
18 to updates and payment amounts under this section on
19 the day before the date of enactment of this subsection.”.

20 **SEC. 5402. CAPITAL PAYMENTS FOR PPS HOSPITALS.**

21 (a) MAINTAINING SAVINGS FROM TEMPORARY RE-
22 DUCTION IN PPS CAPITAL RATES.—Section
23 1886(g)(1)(A) (42 U.S.C. 1395ww(g)(1)(A)) is amended
24 by adding at the end the following: “In addition to the
25 reduction described in the preceding sentence, for dis-

1 charges occurring on or after October 1, 1997, the Sec-
2 retary shall apply the budget neutrality adjustment factor
3 used to determine the Federal capital payment rate in ef-
4 fect on September 30, 1995 (as described in section
5 412.352 of title 42 of the Code of Federal Regulations),
6 to (i) the unadjusted standard Federal capital payment
7 rate (as described in section 412.308(c) of that title, as
8 in effect on September 30, 1997), and (ii) the unadjusted
9 hospital-specific rate (as described in section
10 412.328(e)(1) of that title, as in effect on September 30,
11 1997).”.

12 (b) SYSTEM EXCEPTION PAYMENTS FOR TRANSI-
13 TIONAL CAPITAL.—

14 (1) IN GENERAL.—Section 1886(g)(1) (42
15 U.S.C. 1395ww(g)(1)) is amended—

16 (A) by redesignating subparagraph (C) as
17 subparagraph (F), and

18 (B) by inserting after subparagraph (B)
19 the following:

20 “(C) The exceptions under the system pro-
21 vided by the Secretary under subparagraph
22 (B)(iii) shall include the provision of exception
23 payments under the special exceptions process
24 provided under section 412.348(g) of title 42,
25 Code of Federal Regulations (as in effect on

1 September 1, 1995), except that the Secretary
2 shall revise such process, effective for dis-
3 charges occurring after September 30, 1997, as
4 follows:

5 “(i) Eligible hospital requirements, as
6 described in section 412.348(g)(1) of title
7 42, Code of Federal Regulations, shall
8 apply except that subparagraph (ii) shall
9 be revised to require that hospitals located
10 in an urban area with at least 300 beds
11 shall be eligible under such process and
12 that such a hospital shall be eligible with-
13 out regard to its disproportionate patient
14 percentage under subsection (d)(5)(F) or
15 whether it qualifies for additional payment
16 amounts under such subsection.

17 “(ii) Project size requirements, as de-
18 scribed in section 412.348(g)(5) of title 42,
19 Code of Federal Regulations, shall apply
20 except that subparagraph (ii) shall be re-
21 vised to require that the project costs of a
22 hospital are at least 150 percent of its op-
23 erating cost during the first 12 month cost
24 reporting period beginning on or after
25 October 1, 1991.

1 “(iii) The minimum payment level for
2 qualifying hospitals shall be 85 percent.

3 “(iv) A hospital shall be considered to
4 meet the requirement that it complete the
5 project involved no later than the end of
6 the last cost reporting period of the hos-
7 pital beginning before October 1, 2001, if—

8 “(I) the hospital has obtained a
9 certificate of need for the project ap-
10 proved by the State or a local plan-
11 ning authority by September 1, 1995;
12 and

13 “(II) by September 1, 1995, the
14 hospital has expended on the project
15 at least \$750,000 or 10 percent of the
16 estimated cost of the project.

17 “(v) Offsetting amounts, as described
18 in section 412.348(g)(8)(ii) of title 42,
19 Code of Federal Regulations, shall apply
20 except that subparagraph (B) of such sec-
21 tion shall be revised to require that the ad-
22 ditional payment that would otherwise be
23 payable for the cost reporting period shall
24 be reduced by the amount (if any) by
25 which the hospital’s current year medicare

1 capital payments (excluding, if applicable,
2 75 percent of the hospital's capital-related
3 disproportionate share payments) exceeds
4 its medicare capital costs for such year.

5 “(D)(i) The Secretary shall reduce the
6 Federal capital and hospital rates up to
7 \$50,000,000 for a calendar year to ensure that
8 the application of subparagraph (C) does not
9 result in an increase in the total amount that
10 would have been paid under this subsection in
11 the fiscal year if such subparagraph did not
12 apply.

13 “(ii) Payments made pursuant to the ap-
14 plication of subparagraph (C) shall not be con-
15 sidered for purposes of calculating total esti-
16 mated payments under section 412.348(h),
17 Title 42, Code of Federal Regulations.

18 “(E) The Secretary shall provide for publi-
19 cation in the Federal Register each year (begin-
20 ning with 1999) of a description of the distribu-
21 tional impact of the application of subpara-
22 graph (C) on hospitals which receive, and do
23 not receive, an exception payment under such
24 subparagraph.”.

1 pital services recognized under this title for the most re-
2 cent cost reporting period for which information is avail-
3 able—

4 “(I) is equal to, or exceeds, 110 percent of the
5 hospital’s target amount (as determined under sub-
6 paragraph (A)) for such cost reporting period, the
7 applicable update factor specified under this clause
8 is the market basket percentage;

9 “(II) exceeds 100 percent, but is less than 110
10 percent, of such target amount for the hospital, the
11 applicable update factor specified under this clause
12 is 0 percent or, if greater, the market basket per-
13 centage minus 0.25 percentage points for each per-
14 centage point by which such allowable operating
15 costs (expressed as a percentage of such target
16 amount) is less than 110 percent of such target
17 amount;

18 “(III) is equal to, or less than 100 percent, but
19 exceeds $\frac{2}{3}$ of such target amount for the hospital,
20 the applicable update factor specified under this
21 clause is 0 percent or, if greater, the market basket
22 percentage minus 1.5 percentage points; or

23 “(IV) does not exceed $\frac{2}{3}$ of such target amount
24 for the hospital, the applicable update factor speci-
25 fied under this clause is 0 percent.”.

1 (b) NO EFFECT OF PAYMENT REDUCTION ON EX-
2 CEPTIONS AND ADJUSTMENTS.—Section
3 1886(b)(4)(A)(ii) (42 U.S.C. 1395ww(b)(4)(A)(ii)) is
4 amended by adding at the end the following new sentence:
5 “In making such reductions, the Secretary shall treat the
6 applicable update factor described in paragraph (3)(B)(vi)
7 for a fiscal year as being equal to the market basket per-
8 centage for that year.”.

9 **SEC. 5422. REDUCTIONS TO CAPITAL PAYMENTS FOR CER-**
10 **TAIN PPS-EXEMPT HOSPITALS AND UNITS.**

11 Section 1886(g) (42 U.S.C. 1395ww(g)) is amended
12 by adding at the end the following new paragraph:

13 “(4) In determining the amount of the payments that
14 are attributable to portions of cost reporting periods oc-
15 ccurring during fiscal years 1998 through 2002 and that
16 may be made under this title with respect to capital-relat-
17 ed costs of inpatient hospital services of a hospital which
18 is described in clause (i), (ii), or (iv) of subsection
19 (d)(1)(B) or a unit described in the matter after clause
20 (v) of such subsection, the Secretary shall reduce the
21 amounts of such payments otherwise determined under
22 this title by 15 percent.”.

23 **SEC. 5423. CAP ON TEFRA LIMITS.**

24 Section 1886(b)(3) (42 U.S.C. 1395ww(b)(3)) is
25 amended—

1 (1) in subparagraph (A) by striking “subpara-
2 graphs (C), (D), and (E)” and inserting “subpara-
3 graph (C) and succeeding subparagraphs”, and

4 (2) by adding at the end the following:

5 “(F)(i) In the case of a hospital or unit that is within
6 a class of hospital described in clause (ii), for cost report-
7 ing periods beginning on or after October 1, 1997, and
8 before October 1, 2002, such target amount may not be
9 greater than the 90th percentile of the target amounts for
10 such hospitals within such class for cost reporting periods
11 beginning during that fiscal year.

12 “(ii) For purposes of this subparagraph, each of the
13 following shall be treated as a separate class of hospital:

14 “(I) Hospitals described in clause (i) of sub-
15 section (d)(1)(B) and psychiatric units described in
16 the matter following clause (v) of such subsection.

17 “(II) Hospitals described in clause (ii) of such
18 subsection and rehabilitation units described in the
19 matter following clause (v) of such subsection.

20 “(III) Hospitals described in clause (iv) of such
21 subsection.”.

22 **SEC. 5424. CHANGE IN BONUS AND RELIEF PAYMENTS.**

23 (a) CHANGE IN BONUS PAYMENT.—Section
24 1886(b)(1)(A) (42 U.S.C. 1395ww(b)(1)(A)) is amended

1 by striking all that follows “plus—” and inserting the fol-
2 lowing:

3 “(i) 10 percent of the amount by which the
4 target amount exceeds the amount of the oper-
5 ating costs, or

6 “(ii) 1 percent of the operating costs,
7 whichever is less;”.

8 (b) CHANGE IN RELIEF PAYMENTS.—Section
9 1886(b)(1) (42 U.S.C. 1395ww(b)(1)) is amended—

10 (1) in subparagraph (B)—

11 (A) by striking “greater than the target
12 amount” and inserting “greater than 110 per-
13 cent of the target amount”,

14 (B) by striking “exceed the target
15 amount” and inserting “exceed 110 percent of
16 the target amount”,

17 (C) by striking “10 percent” and inserting
18 “20 percent”, and

19 (D) by redesignating such subparagraph as
20 subparagraph (C); and

21 (2) by inserting after subparagraph (A) the fol-
22 lowing new subparagraph:

23 “(B) are greater than the target amount but do
24 not exceed 110 percent of the target amount, the
25 amount of the payment with respect to those operat-

1 ing costs payable under part A on a per discharge
2 basis shall equal the target amount; or”.

3 **SEC. 5425. TARGET AMOUNTS FOR REHABILITATION HOS-**
4 **PITALS, LONG-TERM CARE HOSPITALS, AND**
5 **PSYCHIATRIC HOSPITALS.**

6 Section 1886(b)(3) (42 U.S.C. 1395ww(b)(3)) is
7 amended—

8 (1) in subparagraph (A), in the matter preced-
9 ing clause (i), by striking “and (E)” and inserting
10 “(E), (F), and (G)”; and

11 (2) by adding at the end the following new sub-
12 paragraphs:

13 “(F) In the case of a rehabilitation hospital (or unit
14 thereof) (as described in clause (ii) of subsection
15 (d)(1)(B)), for cost reporting periods beginning on or after
16 October 1, 1997—

17 “(i) in the case of a hospital which first receives
18 payments under this section before October 1, 1997,
19 the target amount determined under subparagraph
20 (A) for such hospital or unit for a cost reporting pe-
21 riod beginning during a fiscal year shall not be less
22 than 50 percent of the national mean of the target
23 amounts determined under such subparagraph for
24 all such hospitals for cost reporting periods begin-

1 ning during such fiscal year (determined without re-
2 gard to this subparagraph); and

3 “(ii) in the case of a hospital which first re-
4 ceives payments under this section on or after Octo-
5 ber 1, 1997, such target amount may not be greater
6 than 130 percent of the national mean of the target
7 amounts for such hospitals (and units thereof) for
8 cost reporting periods beginning during fiscal year
9 1991.

10 “(G) In the case of a hospital which has an average
11 inpatient length of stay of greater than 25 days (as de-
12 scribed in clause (iv) of subsection (d)(1)(B)), for cost re-
13 porting periods beginning on or after October 1, 1997—

14 “(i) in the case of a hospital which first receives
15 payments under this section as a hospital that is not
16 a subsection (d) hospital or a subsection (d) Puerto
17 Rico hospital before October 1, 1997, the target
18 amount determined under subparagraph (A) for
19 such hospital for a cost reporting period beginning
20 during a fiscal year shall not be less than 50 percent
21 of the national mean of the target amounts deter-
22 mined under such subparagraph for all such hos-
23 pitals for cost reporting periods beginning during
24 such fiscal year (determined without regard to this
25 subparagraph); and

1 “(ii) in the case of any other hospital which
2 first receives payment under this section on or after
3 October 1, 1997, such target amount may not be
4 greater than 130 percent of such national mean of
5 the target amounts for such hospitals for cost re-
6 porting periods beginning during fiscal year 1991.

7 “(H) In the case of a psychiatric hospital (as defined
8 in section 1861(f)), for cost reporting periods beginning
9 on or after October 1, 1997—

10 “(i) in the case of a hospital which first receives
11 payments under this section before October 1, 1997,
12 the target amount determined under subparagraph
13 (A) for such hospital for a cost reporting period be-
14 ginning during a fiscal year shall not be less than
15 50 percent of the national mean of the target
16 amounts determined under such subparagraph for
17 all such hospitals for cost reporting periods begin-
18 ning during such fiscal year (determined without re-
19 gard to this subparagraph); and

20 “(ii) in the case of any other hospital which
21 first receives payment under this section on or after
22 October 1, 1997, such target amount may not be
23 greater than 130 percent of such national mean of
24 the target amounts for such hospitals for cost re-
25 porting periods beginning during fiscal year 1991.”.

1 **SEC. 5426. TREATMENT OF CERTAIN LONG-TERM CARE**
2 **HOSPITALS LOCATED WITHIN OTHER HOS-**
3 **PITALS.**

4 (a) IN GENERAL.—Section 1886(d)(1)(B) (42 U.S.C.
5 1395ww(d)(1)(B)) is amended by adding at the end the
6 following new sentence: “A hospital that was classified by
7 the Secretary on or before September 30, 1995, as a hos-
8 pital described in clause (iv) shall continue to be so classi-
9 fied notwithstanding that it is located in the same building
10 as, or on the same campus as, another hospital.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 subsection (a) shall apply to discharges occurring on or
13 after October 1, 1995.

14 **SEC. 5427. ELIMINATION OF EXEMPTIONS; REPORT ON EX-**
15 **CEPTIONS AND ADJUSTMENTS.**

16 (a) ELIMINATION OF EXEMPTIONS.—

17 (1) IN GENERAL.—Section 1886(b)(4)(A)(i) (42
18 U.S.C. 1395ww(b)(4)(A)(i)) is amended by striking
19 “exemption from, or an exception and adjustment
20 to,” and inserting “an exception and adjustment to”
21 each place it appears.

22 (2) EFFECTIVE DATE.—The amendments made
23 by paragraph (1) shall apply to hospitals that first
24 qualify as a hospital described in clause (i), (ii), or
25 (iv) of section 1886(d)(1)(B) (42 U.S.C.
26 1395ww(d)(1)(B)) on or after October 1, 1997.

1 (b) REPORT.—The Secretary of Health and Human
2 Services shall publish annually in the Federal Register a
3 report describing the total amount of payments made to
4 hospitals by reason of section 1886(b)(4) of the Social Se-
5 curity Act (42 U.S.C. 1395ww(b)(4)), as amended by sub-
6 section (a), for cost reporting periods ending during the
7 previous fiscal year.

8 **SEC. 5428. TECHNICAL CORRECTION RELATING TO SUB-**
9 **SECTION (d) HOSPITALS.**

10 (a) IN GENERAL.—Section 1886(d)(1) (42 U.S.C.
11 1395ww(d)(1)) is amended—

12 (1) in subparagraph (B)(v)—

13 (A) by inserting “(I)” after “(v)”; and

14 (B) by striking the semicolon at the end
15 and inserting “, or”; and

16 (C) by adding at the end the following:

17 “(II) a hospital that—

18 “(aa) was recognized as a comprehensive
19 cancer center or clinical cancer research center
20 by the National Cancer Institute of the Na-
21 tional Institutes of Health as of April 20, 1983,
22 or is able to demonstrate, for any six-month pe-
23 riod, that at least 50 percent of its total dis-
24 charges have a principal diagnosis that reflects

1 a finding of neoplastic disease, as defined in
2 subparagraph (E);

3 “(bb) applied on or before December 31,
4 1990, for classification as a hospital involved
5 extensively in treatment for or research on can-
6 cer under this clause (as in effect on the day
7 before the date of the enactment of this sub-
8 clause), but was not approved for such classi-
9 fication; and

10 “(cc) is located in a State which, as of De-
11 cember 19, 1989, was not operating a dem-
12 onstration project under section 1814(b);”; and
13 (2) by adding at the end the following:

14 “(E) For purposes of subparagraph (B)(v)(II)(aa),
15 the term ‘principal diagnosis that reflects a finding of neo-
16 plastic disease’ means the condition established after
17 study to be chiefly responsible for occasioning the admis-
18 sion of a patient to a hospital, except that only discharges
19 with ICD–9–CM principal diagnosis codes of 140 through
20 239, V58.0, V58.1, V66.1, or 990 will be considered to
21 reflect such a principal diagnosis.”.

22 (b) PAYMENTS.—Any classification by reason of sec-
23 tion 1886(d)(1)(B)(v)(II) of the Social Security Act (42
24 U.S.C. 1395ww(d)(1)(B)(v)(II)) (as added by subsection
25 (a)) shall apply to all cost reporting periods beginning on

1 or after January 1, 1991. Any payments owed to a hos-
2 pital as a result of such section (as so amended) shall be
3 made expeditiously, but in no event later than 1 year after
4 the date of enactment of this Act.

5 **SEC. 5429. CERTAIN CANCER HOSPITALS.**

6 (a) IN GENERAL.—Section 1886(d)(1) (42 U.S.C.
7 1395ww(d)(1)), as amended by section 5428, is amend-
8 ed—

9 (1) in subparagraph (B)(v), by striking the
10 semicolon at the end of subclause (II)(cc) and in-
11 serting the following: “, or”, and by adding at the
12 end the following:

13 “(III) a hospital—

14 “(aa) that was classified under subsection
15 (iv) beginning on or before December 31, 1990,
16 and through December 31, 1995; and

17 “(bb) throughout the period described in
18 item (aa) and currently has greater than 49
19 percent of its total patient discharges with a
20 principal diagnosis that reflects a finding of
21 neoplastic disease;”; and

22 (2) by adding at the end the following:

23 “(F) In the case of a hospital that is classified under
24 subparagraph (B)(v)(III), no rebasing is permitted by
25 such hospital and such hospital shall use the base period

1 in effect at the time of such hospital's December 31, 1995,
2 cost report.”.

3 **CHAPTER 3—GRADUATE MEDICAL**

4 **EDUCATION PAYMENTS**

5 **Subchapter A—Direct Medical Education**

6 **SEC. 5441. LIMITATION ON NUMBER OF RESIDENTS AND** 7 **ROLLING AVERAGE FTE COUNT.**

8 Section 1886(h)(4) (42 U.S.C. 1395ww(h)(4)) is
9 amended by adding after subparagraph (E) the following:

10 “(F) LIMITATION ON NUMBER OF RESI-
11 DENTS IN ALLOPATHIC AND OSTEOPATHIC
12 MEDICINE.—Except as provided in subpara-
13 graph (H), such rules shall provide that for
14 purposes of a cost reporting period beginning
15 on or after October 1, 1997, the total number
16 of full-time equivalent residents before applica-
17 tion of weighting factors (as determined under
18 this paragraph) with respect to a hospital's ap-
19 proved medical residency training program in
20 the fields of allopathic medicine and osteopathic
21 medicine may not exceed the number of full-
22 time equivalent residents with respect to such
23 programs for the hospital's most recent cost re-
24 porting period ending on or before December
25 31, 1996.

1 “(G) COUNTING INTERNS AND RESIDENTS
2 FOR 1998 AND SUBSEQUENT YEARS.—

3 “(i) IN GENERAL.—For cost reporting
4 periods beginning on or after October 1,
5 1997, subject to the limit described in sub-
6 paragraph (F) and except as provided in
7 subparagraph (H), the total number of
8 full-time equivalent residents for determin-
9 ing a hospital’s graduate medical education
10 payment shall equal the average of the full-
11 time equivalent resident counts for the cost
12 reporting period and the preceding two
13 cost reporting periods.

14 “(ii) ADJUSTMENT FOR SHORT PERI-
15 ODS.—If any cost reporting period begin-
16 ning on or after October 1, 1997, is not
17 equal to twelve months, the Secretary shall
18 make appropriate modifications to ensure
19 that the average full-time equivalent resi-
20 dent counts pursuant to clause (ii) are
21 based on the equivalent of full twelve-
22 month cost reporting periods.

23 “(iii) TRANSITION RULE FOR 1998.—
24 In the case of a hospital’s first cost report-
25 ing period beginning on or after October 1,

1 1997, clause (i) shall be applied by using
2 the average for such period and the pre-
3 ceding cost reporting period.

4 “(H) SPECIAL RULES FOR NEW FACILI-
5 TIES.—

6 “(i) IN GENERAL.—If a hospital is an
7 applicable facility under clause (iii) for any
8 year with respect to any approved medical
9 residency training program described in
10 subsection (h)—

11 “(I) subject to the applicable an-
12 nual limit under clause (ii), the Sec-
13 retary may provide an additional
14 amount of full-time equivalent resi-
15 dents which may be taken into ac-
16 count with respect to such program
17 under subparagraph (F) for cost re-
18 porting periods beginning during such
19 year, and

20 “(II) the averaging rules under
21 subparagraph (G) shall not apply for
22 such year.

23 “(ii) APPLICABLE ANNUAL LIMIT.—
24 The total of additional full-time equivalent
25 residents which the Secretary may author-

1 ize under clause (i) for all applicable facili-
2 ties for any year shall not exceed the
3 amount which would result in the number
4 of full-time equivalent residents with re-
5 spect to approved medical residency train-
6 ing programs in the fields of allopathic and
7 osteopathic medicine for all hospitals ex-
8 ceeding such number for the preceding
9 year. In allocating such additional resi-
10 dents, the Secretary shall give special con-
11 sideration to facilities that meet the needs
12 of underserved rural areas.

13 “(iii) APPLICABLE FACILITY.—For
14 purposes of this subparagraph, a hospital
15 shall be treated as an applicable facility
16 with respect to an approved medical resi-
17 dency training program only during the
18 first 5 years during which such program is
19 in existence. A hospital shall not be treated
20 as such a facility if the 5-year period de-
21 scribed in the preceding sentence ended on
22 or before December 31, 1996.

23 “(iv) COORDINATION WITH LIMIT.—
24 For purposes of applying subparagraph
25 (F), the number of full-time equivalent

1 residents of an applicable facility with re-
2 spect to any approved medical residency
3 training program in the fields of allopathic
4 and osteopathic medicine for the facility's
5 most recent cost reporting period ending
6 on or before December 31, 1996, shall be
7 increased by the number of such residents
8 allocated to such facility under clause (i)."

9 **SEC. 5442. PERMITTING PAYMENT TO NONHOSPITAL PRO-**
10 **VIDERS.**

11 (a) IN GENERAL.—Section 1886 (42 U.S.C.
12 1395ww) is amended by adding at the end the following:

13 “(j) PAYMENT TO NONHOSPITAL PROVIDERS.—

14 “(1) IN GENERAL.—For cost reporting periods
15 beginning on or after October 1, 1997, the Secretary
16 may establish rules for payment to qualified nonhos-
17 pital providers for their direct costs of medical edu-
18 cation, if those costs are incurred in the operation
19 of an approved medical residency training program
20 described in subsection (h). Such rules shall specify
21 the amounts, form, and manner in which payments
22 will be made and the portion of such payments that
23 will be made from each of the trust funds under this
24 title.

1 “(2) QUALIFIED NONHOSPITAL PROVIDERS.—

2 For purposes of this subsection, the term ‘qualified
3 nonhospital providers’ means—

4 “(A) a federally qualified health center, as
5 defined in section 1861(aa)(4);

6 “(B) a rural health clinic, as defined in
7 section 1861(aa)(2); and

8 “(C) such other providers (other than hos-
9 pitals) as the Secretary determines to be appro-
10 priate.”

11 (b) PROHIBITION ON DOUBLE PAYMENTS.—Section
12 1886(h)(3)(B) (42 U.S.C. 1395ww(h)(3)(B)) is amended
13 by adding at the end the following:

14 “The Secretary shall reduce the aggregate approved
15 amount to the extent payment is made under sub-
16 section (j) for residents included in the hospital’s
17 count of full-time equivalent residents.”

18 **Subchapter B—Indirect Medical Education**

19 **SEC. 5446. INDIRECT GRADUATE MEDICAL EDUCATION**
20 **PAYMENTS.**

21 (a) MULTIYEAR TRANSITION REGARDING PERCENT-
22 AGES.—

23 (1) IN GENERAL.—Section 1886(d)(5)(B)(ii)
24 (42 U.S.C. 1395ww(d)(5)(B)(ii)) is amended to read
25 as follows:

1 “(ii) For purposes of clause (i)(II), the in-
2 direct teaching adjustment factor is equal to
3 $c \times (((1+r) \text{ to the } n\text{th power}) - 1)$, where ‘r’
4 is the ratio of the hospital’s full-time equivalent
5 interns and residents to beds and ‘n’ equals
6 .405. For discharges occurring—

7 “(I) on or after May 1, 1986, and be-
8 fore October 1, 1997, ‘c’ is equal to 1.89;

9 “(II) during fiscal year 1998, ‘c’ is
10 equal to 1.72;

11 “(III) during fiscal year 1999, ‘c’ is
12 equal to 1.6;

13 “(IV) during fiscal year 2000, ‘c’ is
14 equal to 1.47; and

15 “(V) on or after October 1, 2000, ‘c’
16 is equal to 1.35.”

17 (2) NO RESTANDARDIZATION OF PAYMENT
18 AMOUNTS REQUIRED.—Section 1886(d)(2)(C)(i) (42
19 U.S.C. 1395ww(d)(2)(C)(i)) is amended by adding
20 at the end the following: “except that the Secretary
21 shall not take into account any reduction in the
22 amount of additional payments under paragraph
23 (5)(B)(ii) resulting from the amendment made by
24 section 5446(a)(1) of the Balanced Budget Act of
25 1997.”.

1 (b) LIMITATION.—

2 (1) IN GENERAL.—Section 1886(d)(5)(B) (42
3 U.S.C. 1395ww(d)(5)(B)) is amended by adding
4 after clause (iv) the following:

5 “(v) In determining the adjustment with
6 respect to a hospital for discharges occurring on
7 or after October 1, 1997, the total number of
8 full-time equivalent interns and residents in ei-
9 ther a hospital or nonhospital setting may not
10 exceed the number of such full-time equivalent
11 interns and residents in the hospital with re-
12 spect to the hospital’s most recent cost report-
13 ing period ending on or before December 31,
14 1996.

15 “(vi) For purposes of clause (ii)—

16 “(I) ‘r’ may not exceed the ratio of
17 the number of interns and residents as de-
18 termined under clause (v) with respect to
19 the hospital for its most recent cost report-
20 ing period ending on or before December
21 31, 1996, to the hospital’s available beds
22 (as defined by the Secretary) during that
23 cost reporting period, and

24 “(II) for the hospital’s cost reporting
25 periods beginning on or after October 1,

1 1997, subject to the limits described in
2 clauses (iv) and (v), the total number of
3 full-time equivalent residents for payment
4 purposes shall equal the average of the ac-
5 tual full-time equivalent resident count for
6 the cost reporting period and the preceding
7 two cost reporting periods.

8 In the case of the first cost reporting period be-
9 ginning on or after October 1, 1997, subclause
10 (II) shall be applied by using the average for
11 such period and the preceding cost reporting
12 period.

13 “(vii)(I) If a hospital is an applicable facil-
14 ity under subclause (III) for any year with re-
15 spect to any approved medical residency train-
16 ing program described in subsection (h)—

17 “(aa) subject to the applicable annual
18 limit under subclause (II), the Secretary
19 may provide an additional amount of full-
20 time equivalent interns and residents which
21 may be taken into account with respect to
22 such program under clauses (v) and (vi)
23 for cost reporting periods beginning during
24 such year, and

1 “(bb) the averaging rules under clause
2 (vi)(II) shall not apply for such year.

3 “(II) The total of additional full-time
4 equivalent interns and residents which the Sec-
5 retary may authorize under subclause (I) for all
6 applicable facilities for any year shall not ex-
7 ceed the amount which would result in the
8 number of full-time equivalent interns or resi-
9 dents for all hospitals exceeding such number
10 for the preceding year. In allocating such addi-
11 tional residents, the Secretary shall give special
12 consideration to facilities that meet the needs of
13 underserved rural areas.

14 “(III) For purposes of this clause, a hos-
15 pital shall be treated as an applicable facility
16 with respect to an approved medical residency
17 training program only during the first 5 years
18 during which such program is in existence. A
19 hospital shall not be treated as such a facility
20 if the 5-year period described in the preceding
21 sentence ended on or before December 31,
22 1996.

23 “(IV) For purposes of applying clause (v),
24 the number of full-time equivalent residents of
25 an applicable facility with respect to any ap-

1 proved medical residency training program for
2 the facility's most recent cost reporting period
3 ending on or before December 31, 1996, shall
4 be increased by the number of such residents
5 allocated to such facility under subclause (I).

6 “(viii) If any cost reporting period beginning on
7 or after October 1, 1997, is not equal to twelve
8 months, the Secretary shall make appropriate modi-
9 fications to ensure that the average full-time equiva-
10 lent residency count pursuant to subclause (II) of
11 clause (vi) is based on the equivalent of full twelve-
12 month cost reporting periods.”

13 (2) PAYMENT FOR INTERNS AND RESIDENTS
14 PROVIDING OFF-SITE SERVICES.—Section
15 1886(d)(5)(B)(iv) (42 U.S.C. 1395ww(d)(5)(B)(iv))
16 is amended to read as follows:

17 “(iv) Effective for discharges occurring on or
18 after October 1, 1997, all the time spent by an in-
19 tern or resident in patient care activities under an
20 approved medical residency training program at an
21 entity in a nonhospital setting shall be counted to-
22 wards the determination of full-time equivalency if
23 the hospital incurs all, or substantially all, of the
24 costs for the training program in that setting.”

1 **Subchapter C—Graduate Medical Education**

2 **Payments for Managed Care Enrollees**

3 **SEC. 5451. DIRECT AND INDIRECT MEDICAL EDUCATION**

4 **PAYMENTS TO HOSPITALS FOR MANAGED**

5 **CARE ENROLLEES.**

6 (a) PAYMENTS TO HOSPITALS FOR DIRECT COSTS OF
7 GRADUATE MEDICAL EDUCATION.—Section 1886(h)(3)
8 (42 U.S.C. 1395ww(h)(3)) is amended by adding after
9 subparagraph (C) the following:

10 “(D) PAYMENT FOR MEDICARE CHOICE
11 ENROLLEES.—

12 “(i) IN GENERAL.—For portions of
13 cost reporting periods occurring on or after
14 January 1, 1998, the Secretary shall pro-
15 vide for an additional payment amount
16 under this subsection for services furnished
17 to individuals who are enrolled under a
18 risk-sharing contract with an eligible orga-
19 nization under section 1876 and who are
20 entitled to part A or with a Medicare
21 Choice organization under part C. The
22 amount of such a payment shall equal the
23 applicable percentage of the product of—

1 “(I) the aggregate approved
2 amount (as defined in subparagraph
3 (B)) for that period; and

4 “(II) the fraction of the total
5 number of inpatient-bed days (as es-
6 tablished by the Secretary) during the
7 period which are attributable to such
8 enrolled individuals.

9 “(ii) APPLICABLE PERCENTAGE.—For
10 purposes of clause (i), the applicable per-
11 centage is—

12 “(I) 25 percent in 1998,

13 “(II) 50 percent in 1999,

14 “(III) 75 percent in 2000, and

15 “(IV) 100 percent in 2001 and
16 subsequent years.

17 “(iii) SPECIAL RULE FOR HOSPITALS
18 UNDER REIMBURSEMENT SYSTEM.—The
19 Secretary shall establish rules for the ap-
20 plication of this subparagraph to a hospital
21 reimbursed under a reimbursement system
22 authorized under section 1814(b)(3) in the
23 same manner as it would apply to the hos-
24 pital if it were not reimbursed under such
25 section.”

1 (b) PAYMENT TO HOSPITALS OF INDIRECT MEDICAL
2 EDUCATION COSTS.—Section 1886(d) (42 U.S.C.
3 1395ww(d)) is amended by adding at the end the follow-
4 ing:

5 “(11) ADDITIONAL PAYMENTS FOR MANAGED
6 CARE SAVINGS.—

7 “(A) IN GENERAL.—For portions of cost
8 reporting periods occurring on or after January
9 1, 1998, the Secretary shall provide for an ad-
10 ditional payment amount for each applicable
11 discharge of any subsection (d) hospital (or any
12 hospital reimbursed under a reimbursement sys-
13 tem authorized under section 1814(b)(3)) that
14 has an approved medical residency training pro-
15 gram.

16 “(B) APPLICABLE DISCHARGE.—For pur-
17 poses of this paragraph, the term ‘applicable
18 discharge’ means the discharge of any individ-
19 ual who is enrolled under a risk-sharing con-
20 tract with an eligible organization under section
21 1876 and who is entitled to benefits under part
22 A or any individual who is enrolled with a Med-
23 icare Choice organization under part C.

24 “(C) DETERMINATION OF AMOUNT.—The
25 amount of the payment under this paragraph

1 with respect to any applicable discharge shall be
2 equal to the applicable percentage (as defined
3 in subsection (h)(3)(D)(ii)) of the estimated av-
4 erage per discharge amount that would other-
5 wise have been paid under paragraph (1)(A) if
6 the individuals had not been enrolled as de-
7 scribed in subparagraph (B).”

8 **SEC. 5452. DEMONSTRATION PROJECT ON USE OF CONSOR-**
9 **TIA.**

10 (a) IN GENERAL.—The Secretary of Health and
11 Human Services (in this section referred to as the “Sec-
12 retary”) shall establish a demonstration project under
13 which, instead of making payments to teaching hospitals
14 pursuant to section 1886(h) of the Social Security Act,
15 the Secretary shall make payments under this section to
16 each consortium that meets the requirements of subsection
17 (b).

18 (b) QUALIFYING CONSORTIA.—For purposes of sub-
19 section (a), a consortium meets the requirements of this
20 subsection if the consortium is in compliance with the fol-
21 lowing:

22 (1) The consortium consists of an approved
23 medical residency training program in a teaching
24 hospital and one or more of the following entities:

1 (A) A school of allopathic medicine or os-
2 teopathic medicine.

3 (B) Another teaching hospital, which may
4 be a children's hospital.

5 (C) Another approved medical residency
6 training program.

7 (D) A federally qualified health center.

8 (E) A medical group practice.

9 (F) A managed care entity.

10 (G) An entity furnishing outpatient serv-
11 ices.

12 (I) Such other entity as the Secretary de-
13 termines to be appropriate.

14 (2) The members of the consortium have agreed
15 to participate in the programs of graduate medical
16 education that are operated by the entities in the
17 consortium.

18 (3) With respect to the receipt by the consor-
19 tium of payments made pursuant to this section, the
20 members of the consortium have agreed on a method
21 for allocating the payments among the members.

22 (4) The consortium meets such additional re-
23 quirements as the Secretary may establish.

24 (c) AMOUNT AND SOURCE OF PAYMENT.—The total
25 of payments to a qualifying consortium for a fiscal year

1 pursuant to subsection (a) shall not exceed the amount
 2 that would have been paid under section 1886(h) of the
 3 Social Security Act for the teaching hospital (or hospitals)
 4 in the consortium. Such payments shall be made in such
 5 proportion from each of the trust funds established under
 6 title XVIII of such Act as the Secretary specifies.

7 **CHAPTER 4—OTHER HOSPITAL PAYMENTS**

8 **SEC. 5461. DISPROPORTIONATE SHARE PAYMENTS TO HOS-**
 9 **PITALS FOR MANAGED CARE AND MEDICARE**
 10 **CHOICE ENROLLEES.**

11 Section 1886(d) (42 U.S.C. 1395ww(d)) (as amended
 12 by section 5451) is amended by adding at the end the fol-
 13 lowing:

14 “(12) ADDITIONAL PAYMENTS FOR MANAGED
 15 CARE AND MEDICARE CHOICE SAVINGS.—

16 “(A) IN GENERAL.—For portions of cost
 17 reporting periods occurring on or after January
 18 1, 1998, the Secretary shall provide for an ad-
 19 ditional payment amount for each applicable
 20 discharge of—

21 (i) any subsection (d) hospital that is
 22 a disproportionate share hospital (as de-
 23 scribed in paragraph (5)(F)(i)); or

24 (ii) any hospital reimbursed under a
 25 reimbursement system authorized under

1 section 1814(b)(3)) if such hospital would
2 qualify as a disproportionate share hospital
3 were it not so reimbursed.

4 “(B) APPLICABLE DISCHARGE.—For pur-
5 poses of this paragraph, the term ‘applicable
6 discharge’ means the discharge of any individ-
7 ual who is enrolled under a risk-sharing con-
8 tract with an eligible organization under section
9 1876 and who is entitled to benefits under part
10 A or any individual who is enrolled with a Med-
11 icare Choice organization under part C.

12 “(C) DETERMINATION OF AMOUNT.—The
13 amount of the payment under this paragraph
14 with respect to any applicable discharge shall be
15 equal to the applicable percentage (as defined
16 in subsection (h)(3)(D)(ii)) of the estimated av-
17 erage per discharge amount that would other-
18 wise have been paid under paragraph (1)(A) if
19 the individuals had not been enrolled as de-
20 scribed in subparagraph (B).”

1 **SEC. 5462. REFORM OF DISPROPORTIONATE SHARE PAY-**
2 **MENTS TO HOSPITALS SERVING VULNER-**
3 **ABLE POPULATIONS.**

4 (a) IN GENERAL.—Section 1886(d)(5)(F) of the So-
5 cial Security Act (42 U.S.C. 1395ww(d)(5)(F)) is amend-
6 ed—

7 (1) in clause (i), by inserting “and before De-
8 cember 31, 1998,” after “May, 1, 1986,”;

9 (2) in clause (ii), by striking “The amount”
10 and inserting “Subject to clauses (ix) and (x), the
11 amount”; and

12 (3) by adding at the end the following:

13 “(ix) In the case of discharges occurring on or
14 after October 1, 1997, and before December 31,
15 1998, the additional payment amount otherwise de-
16 termined under clause (ii) shall be reduced by 4 per-
17 cent.

18 “(x)(I) In the case of discharges occurring dur-
19 ing calendar years 1999 and succeeding calendar
20 years, the additional payment amount shall be deter-
21 mined in accordance with the formula established
22 under subclause (II).

23 “(II) Not later than January 1, 1999, the Sec-
24 retary shall establish a formula for determining ad-
25 ditional payment amounts under this subparagraph.
26 In determining such formula the Secretary shall—

1 “(aa) establish a single threshold for costs
2 incurred by hospitals in serving low-income pa-
3 tients,

4 “(bb) consider the costs described in sub-
5 clause (III), and

6 “(cc) ensure that such formula complies
7 with the requirement described in subclause
8 (IV).

9 “(III) The costs described in this subclause are
10 as follows:

11 “(aa) The costs incurred by the hospital
12 during a period (as determined by the Sec-
13 retary) of furnishing inpatient and outpatient
14 hospital services to individuals who are entitled
15 to benefits under part A of this title and are
16 entitled to supplemental security income bene-
17 fits under title XVI (excluding any
18 supplementation of those benefits by a State
19 under section 1616).

20 “(bb) The costs incurred by the hospital
21 during a period (as so determined) of furnish-
22 ing inpatient and outpatient hospital services to
23 individuals who are eligible for medical assist-
24 ance under the State plan under title XIX and
25 are not entitled to benefits under part A of this

1 title (including individuals enrolled in a health
2 maintenance organization (as defined in section
3 1903(m)(1)(A)) or any other managed care
4 plan under such title, individuals who are eligi-
5 ble for medical assistance under such title pur-
6 suant to a waiver approved by the Secretary
7 under section 1115, and individuals who are eli-
8 gible for medical assistance under the State
9 plan under title XIX (regardless of whether the
10 State has provided reimbursement for any such
11 assistance provided under such title)).

12 “(cc) The costs incurred by the hospital
13 during a period (as so determined) of furnish-
14 ing inpatient and outpatient hospital services to
15 individuals who are not described in item (aa)
16 or (bb) and who do not have health insurance
17 coverage (or any other source of third party
18 payment for such services) and for which the
19 hospital did not receive compensation.

20 “(IV)(aa) The requirement described in this
21 subclause is that for each calendar year for which
22 the formula established under this clause applies,
23 the additional payment amount determined for such
24 calendar year under such formula shall not exceed
25 an amount equal to the additional payment amount

1 that, in the absence of such formula, would have
2 been determined under this subparagraph, reduced
3 by the applicable percentage for such calendar year.

4 “(bb) For purposes of subclause (aa), the appli-
5 cable percentage for—

6 “(AA) calendar year 1999 is 8 percent;

7 “(BB) calendar year 2000 is 12 percent;

8 “(CC) calendar year 2001 is 16 percent;

9 “(DD) calendar year 2002 is 20 percent;

10 “(EE) calendar year 2003 and subsequent
11 calendar years, is 0 percent”.

12 (b) DATA COLLECTION.—

13 (1) IN GENERAL.—In developing the formula
14 under section 1886(g)(5)(F)(x) of the Social Secu-
15 rity Act (42 U.S.C. 1395ww(g)(5)(F)(x)), as added
16 by subsection (a), and in implementing the provi-
17 sions of and amendments made by this section, the
18 Secretary of Health and Human Services may re-
19 quire any subsection (d) hospital (as defined in sec-
20 tion 1886(d)(1)(B) of the Social Security Act (42
21 U.S.C. 1395ww(d)(1)(B))) receiving additional pay-
22 ments by reason of section 1886(d)(5)(F) of that
23 Act (42 U.S.C. 1395ww(d)(5)(F)) (as amended by
24 subsection (a) of this section) to submit to the Sec-
25 retary any information that the Secretary deter-

1 mines is necessary to implement the provisions of
2 and amendments made by this section.

3 (2) FAILURE TO COMPLY.—Any subsection (d)
4 hospital (as so defined) that fails to submit to the
5 Secretary of Health and Human Services any infor-
6 mation requested under paragraph (1), shall be
7 deemed ineligible for an additional payment amount
8 under section 1886(d)(5)(F) of the Social Security
9 Act (42 U.S.C. 1395ww(d)(5)(F)) (as amended by
10 subsection (a) of this section).

11 (c) EFFECTIVE DATE.—The amendments made by
12 subsection (a) shall apply to discharges occurring on and
13 after October 1, 1997.

14 **SEC. 5463. MEDICARE CAPITAL ASSET SALES PRICE EQUAL**
15 **TO BOOK VALUE.**

16 (a) IN GENERAL.—Section 1861(v)(1)(O) (42 U.S.C.
17 1395x(v)(1)(O)) is amended—

18 (1) in clause (i)—

19 (A) by striking “and (if applicable) a re-
20 turn on equity capital”;

21 (B) by striking “hospital or skilled nursing
22 facility” and inserting “provider of services”;

23 (C) by striking “clause (iv)” and inserting
24 “clause (iii)”; and

1 (D) by striking “the lesser of the allowable
 2 acquisition cost” and all that follows and insert-
 3 ing “the historical cost of the asset, as recog-
 4 nized under this title, less depreciation allowed,
 5 to the owner of record as of the date of enact-
 6 ment of the Balanced Budget Act of 1997 (or,
 7 in the case of an asset not in existence as of
 8 that date, the first owner of record of the asset
 9 after that date).”;

10 (2) by striking clause (ii); and

11 (3) by redesignating clauses (iii) and (iv) as
 12 clauses (ii) and (iii), respectively.

13 (b) EFFECTIVE DATE.—The amendments made by
 14 subsection (a) apply to changes of ownership that occur
 15 after the third month beginning after the date of enact-
 16 ment of this section.

17 **SEC. 5464. ELIMINATION OF IME AND DSH PAYMENTS AT-**
 18 **TRIBUTABLE TO OUTLIER PAYMENTS.**

19 (a) INDIRECT MEDICAL EDUCATION.—Section
 20 1886(d)(5)(B)(i)(I) (42 U.S.C. 1395ww(d)(5)(B)(i)(I)) is
 21 amended by inserting “, for cases qualifying for additional
 22 payment under subparagraph (A)(i),” before “the amount
 23 paid to the hospital under subparagraph (A)”.

24 (b) DISPROPORTIONATE SHARE ADJUSTMENTS.—
 25 Section 1886(d)(5)(F)(ii)(I) (42 U.S.C.

1 1395ww(d)(5)(F)(ii)(I) is amended by inserting “, for
2 cases qualifying for additional payment under subpara-
3 graph (A)(i),” before “the amount paid to the hospital
4 under subparagraph (A)”.

5 (c) COST OUTLIER PAYMENTS.—Section
6 1886(d)(5)(A)(ii) (42 U.S.C. 1395ww(d)(5)(A)(ii)) is
7 amended by striking “exceed the applicable DRG prospec-
8 tive payment rate” and inserting “exceed the sum of the
9 applicable DRG prospective payment rate plus any
10 amounts payable under subparagraphs (B) and (F) of
11 subsection (d)(5)”.

12 (d) EFFECTIVE DATE.—The amendments made by
13 this section apply to discharges occurring after September
14 30, 1997.

15 **SEC. 5465. TREATMENT OF TRANSFER CASES.**

16 (a) TRANSFERS TO PPS EXEMPT HOSPITALS AND
17 SKILLED NURSING FACILITIES.—Section 1886(d)(5)(I)
18 (42 U.S.C. 1395ww(d)(5)(I)) is amended by adding at the
19 end the following new clause:

20 “(iii) In carrying out this subparagraph, the Sec-
21 retary shall treat the term ‘transfer case’ as including the
22 case of an individual who, upon discharge from a sub-
23 section (d) hospital—

1 “(I) is admitted as an inpatient to a hospital or
2 hospital unit that is not a subsection (d) hospital for
3 the receipt of inpatient hospital services; or

4 “(II) is admitted to a skilled nursing facility or
5 facility described in section 1861(y)(1) for the re-
6 ceipt of extended care services.”.

7 (b) TRANSFERS FOR PURPOSES OF HOME HEALTH
8 SERVICES.—Section 1886(d)(5)(I) (42 U.S.C.
9 1395ww(d)(5)(I)), as amended by subsection (a), is
10 amended—

11 (1) in clause (iii), by striking the period at the
12 end and inserting “; or” and

13 (2) by adding at the end the following new sub-
14 clause:

15 “(III) receives home health services from a
16 home health agency, if such services directly relate
17 to the condition or diagnosis for which such individ-
18 ual received inpatient hospital services from the sub-
19 section (d) hospital, and if such services are provided
20 within an appropriate period as determined by the
21 Secretary in regulations promulgated not later than
22 April 1, 1998.”.

23 (c) EFFECTIVE DATES.—

1 (1) The amendment made by subsection (a)
2 shall apply with respect to discharges occurring on
3 or after October 1, 1997.

4 (2) The amendment made by subsection (b)
5 shall apply with respect to discharges occurring on
6 or after April 1, 1998.

7 **SEC. 5466. REDUCTIONS IN PAYMENTS FOR ENROLLEE BAD**
8 **DEBT.**

9 Section 1861(v)(1) (42 U.S.C. 1395x(v)(1)) is
10 amended by adding at the end the following new subpara-
11 graph:

12 “(T) In determining such reasonable costs for hos-
13 pitals, the amount of bad debts otherwise treated as allow-
14 able costs which are attributable to the deductibles and
15 coinsurance amounts under this title shall be reduced—

16 “(i) for cost reporting periods beginning on or
17 after October 1, 1997 and on or before December
18 31, 1998, by 25 percent of such amount otherwise
19 allowable,

20 “(ii) for cost reporting periods beginning during
21 calendar year 1999, by 40 percent of such amount
22 otherwise allowable, and

23 “(iii) for cost reporting periods beginning dur-
24 ing a subsequent calendar year, by 50 percent of
25 such amount otherwise allowable.”.

1 **SEC. 5467. FLOOR ON AREA WAGE INDEX.**

2 (a) IN GENERAL.—For purposes of section
3 1886(d)(3)(E) of the Social Security Act (42 U.S.C.
4 1395ww(d)(3)(E)) for discharges occurring on or after
5 October 1, 1997, the area wage index applicable under
6 such section to any hospital which is not located in a rural
7 area (as defined in section 1886(d)(2)(D) of such Act (42
8 U.S.C. 1395ww(d)(2)(D)) may not be less than the aver-
9 age of the area wage indices applicable under such section
10 to hospitals located in rural areas in the State in which
11 the hospital is located.

12 (b) IMPLEMENTATION.—The Secretary of Health and
13 Human Services shall adjust the area wage indices re-
14 ferred to in subsection (a) for hospitals not described in
15 such subsection in a manner which assures that the aggre-
16 gate payments made under section 1886(d) of the Social
17 Security Act (42 U.S.C. 1395ww(d)) in a fiscal year for
18 the operating costs of inpatient hospital services are not
19 greater or less than those which would have been made
20 in the year if this section did not apply.

21 **SEC. 4568. INCREASE BASE PAYMENT RATE TO PUERTO**
22 **RICO HOSPITALS.**

23 Section 1886(d)(9)(A) (42 U.S.C. 1395ww(d)(9)(A))
24 is amended—

1 (1) IN GENERAL.—Section 1861 of the Social
2 Security Act (42 U.S.C. 1395x) (as amended by sec-
3 tion 5361) is amended—

4 (1) in the sixth sentence of subsection (e)—

5 (A) by striking “includes” and all that fol-
6 lows up to “but only” and inserting “includes
7 a religious nonmedical health care institution
8 (as defined in subsection (rr)(1)),”, and

9 (B) by inserting “consistent with section
10 1821” before the period;

11 (2) in subsection (y)—

12 (A) by amending the heading to read as
13 follows:

14 “Extended Care in Religious Nonmedical Health Care
15 Institutions”,

16 (B) in paragraph (1), by striking “in-
17 cludes” and all that follows up to “but only”
18 and inserting “includes a religious nonmedical
19 health care institution (as defined in subsection
20 (rr)(1)),”, and

21 (C) by inserting “consistent with section
22 1821” before the period; and

23 (3) by adding at the end the following:

1 “Religious Nonmedical Health Care Institution

2 “(rr)(1) The term ‘religious nonmedical health care
3 institution’ means an institution that—

4 “(A) is described in subsection (c)(3) of
5 section 501 of the Internal Revenue Code of
6 1986 and is exempt from taxes under sub-
7 section (a) of such section;

8 “(B) is lawfully operated under all applica-
9 ble Federal, State, and local laws and regula-
10 tions;

11 “(C) provides only nonmedical nursing
12 items and services exclusively to patients who
13 choose to rely solely upon a religious method of
14 healing and for whom the acceptance of medical
15 health services would be inconsistent with their
16 religious beliefs;

17 “(D) provides such nonmedical items and
18 services exclusively through nonmedical nursing
19 personnel who are experienced in caring for the
20 physical needs of such patients;

21 “(E) provides such nonmedical items and
22 services to inpatients on a 24-hour basis;

23 “(F) on the basis of its religious beliefs,
24 does not provide through its personnel or other-
25 wise medical items and services (including any

1 medical screening, examination, diagnosis, prog-
2 nosis, treatment, or the administration of
3 drugs) for its patients;

4 “(G) is not a part of, or owned by, or
5 under common ownership with, or affiliated
6 through ownership with, a health care facility
7 that provides medical services;

8 “(H) has in effect a utilization review plan
9 which—

10 “(i) provides for the review of admis-
11 sions to the institution, of the duration of
12 stays therein, of cases of continuous ex-
13 tended duration, and of the items and
14 services furnished by the institution,

15 “(ii) requires that such reviews be
16 made by an appropriate committee of the
17 institution that includes the individuals re-
18 sponsible for overall administration and for
19 supervision of nursing personnel at the in-
20 stitution,

21 “(iii) provides that records be main-
22 tained of the meetings, decisions, and ac-
23 tions of such committee, and

1 “(iv) meets such other requirements
2 as the Secretary finds necessary to estab-
3 lish an effective utilization review plan;

4 “(I) provides the Secretary with such in-
5 formation as the Secretary may require to im-
6 plement section 1821, to monitor quality of
7 care, and to provide for coverage determina-
8 tions; and

9 “(J) meets such other requirements as the
10 Secretary finds necessary in the interest of the
11 health and safety of individuals who are fur-
12 nished services in the institution.

13 “(2) If the Secretary finds that the accreditation of
14 an institution by a State, regional, or national agency or
15 association provides reasonable assurances that any or all
16 of the requirements of paragraph (1) are met or exceeded,
17 the Secretary shall, to the extent the Secretary deems it
18 appropriate, treat such institution as meeting the condi-
19 tion or conditions with respect to which the Secretary
20 made such finding.

21 “(3)(A)(i) In administering this subsection and sec-
22 tion 1821, the Secretary shall not require any patient of
23 a religious nonmedical health care institution to undergo
24 any medical screening, examination, diagnosis, prognosis,
25 or treatment or to accept any other medical health care

1 service, if such patient (or legal representative of the pa-
 2 tient) objects thereto on religious grounds.

3 “(ii) Clause (i) shall not be construed as preventing
 4 the Secretary from requiring under section 1821(a)(2) the
 5 provision of sufficient information regarding an individ-
 6 ual’s condition as a condition for receipt of benefits under
 7 part A for services provided in such an institution.

8 “(B)(i) In administering this subsection and section
 9 1821, the Secretary shall not subject a religious nonmedi-
 10 cal health care institution to any medical supervision, reg-
 11 ulation, or control, insofar as such supervision, regulation,
 12 or control would be contrary to the religious beliefs ob-
 13 served by the institution.

14 “(ii) Clause (i) shall not be construed as preventing
 15 the Secretary from reviewing items and services billed by
 16 the institution to the extent the Secretary determines such
 17 review to be necessary to determine whether such items
 18 and services were not covered under part A, are excessive,
 19 or are fraudulent.”.

20 (2) CONDITIONS OF COVERAGE.—Part A of title
 21 XVIII of the Social Security Act is amended by add-
 22 ing at the end the following new section:

23 “CONDITIONS FOR COVERAGE OF RELIGIOUS
 24 NONMEDICAL HEALTH CARE INSTITUTIONAL SERVICES

25 “SEC. 1821. (a) IN GENERAL.—Subject to sub-
 26 sections (c) and (d), payment under this part may be made

1 for inpatient hospital services or post-hospital extended
2 care services furnished an individual in a religious non-
3 medical health care institution only if—

4 “(1) the individual has an election in effect for
5 such benefits under subsection (b); and

6 “(2) the individual has a condition such that
7 the individual would qualify for benefits under this
8 part for inpatient hospital services or extended care
9 services, respectively, if the individual were an inpa-
10 tient or resident in a hospital or skilled nursing fa-
11 cility that was not such an institution.

12 “(b) ELECTION.—

13 “(1) IN GENERAL.—An individual may make an
14 election under this subsection in a form and manner
15 specified by the Secretary consistent with this sub-
16 section. Unless otherwise provided, such an election
17 shall take effect immediately upon its execution.
18 Such an election, once made, shall continue in effect
19 until revoked.

20 “(2) FORM.—The election form under this sub-
21 section shall include the following:

22 “(A) A statement, signed by the individual
23 (or such individual’s legal representative),
24 that—

1 “(i) the individual is conscientiously
2 opposed to acceptance of nonexcepted med-
3 ical treatment; and

4 “(ii) the individual’s acceptance of
5 nonexcepted medical treatment would be
6 inconsistent with the individual’s sincere
7 religious beliefs.

8 “(B) A statement that the receipt of non-
9 excepted medical services shall constitute a rev-
10 ocation of the election and may limit further re-
11 ceipt of services described in subsection (a).

12 “(3) REVOCATION.—An election under this sub-
13 section by an individual may be revoked in a form
14 and manner specified by the Secretary and shall be
15 deemed to be revoked if the individual receives medi-
16 care reimbursable non-excepted medical treatment,
17 regardless of whether or not benefits for such treat-
18 ment are provided under this title.

19 “(4) LIMITATION ON SUBSEQUENT ELEC-
20 TIONS.—Once an individual’s election under this
21 subsection has been made and revoked twice—

22 “(A) the next election may not become ef-
23 fective until the date that is 1 year after the
24 date of most recent previous revocation, and

1 “(B) any succeeding election may not be-
2 come effective until the date that is 5 years
3 after the date of the most recent previous rev-
4 ocation.

5 “(5) EXCEPTED MEDICAL TREATMENT.—For
6 purposes of this subsection:

7 “(A) EXCEPTED MEDICAL TREATMENT.—
8 The term ‘excepted medical treatment’ means
9 medical care or treatment (including medical
10 and other health services)—

11 “(i) for the setting of fractured bones,

12 “(ii) received involuntarily, or

13 “(iii) required under Federal or State
14 law or law of a political subdivision of a
15 State.

16 “(B) NON-EXCEPTED MEDICAL TREAT-
17 MENT.—The term ‘nonexcepted medical treat-
18 ment’ means medical care or treatment (includ-
19 ing medical and other health services) other
20 than excepted medical treatment.

21 “(c) MONITORING AND SAFEGUARD AGAINST EXCES-
22 SIVE EXPENDITURES.—

23 “(1) ESTIMATE OF EXPENDITURES.—Before
24 the beginning of each fiscal year (beginning with fis-
25 cal year 2000), the Secretary shall estimate the level

1 of expenditures under this part for services described
2 in subsection (a) for that fiscal year.

3 “(2) ADJUSTMENT IN PAYMENTS.—

4 “(A) PROPORTIONAL ADJUSTMENT.—If
5 the Secretary determines that the level esti-
6 mated under paragraph (1) for a fiscal year will
7 exceed the trigger level (as defined in subpara-
8 graph (C)) for that fiscal year, the Secretary
9 shall, subject to subparagraph (B), provide for
10 such a proportional reduction in payment
11 amounts under this part for services described
12 in subsection (a) for the fiscal year involved as
13 will assure that such level (taking into account
14 any adjustment under subparagraph (B)) does
15 not exceed the trigger level for that fiscal year.

16 “(B) ALTERNATIVE ADJUSTMENTS.—The
17 Secretary may, instead of making some or all of
18 the reduction described in subparagraph (A),
19 impose such other conditions or limitations with
20 respect to the coverage of covered services (in-
21 cluding limitations on new elections of coverage
22 and new facilities) as may be appropriate to re-
23 duce the level of expenditures described in para-
24 graph (1) to the trigger level.

1 “(C) TRIGGER LEVEL.—For purposes of
2 this subsection, subject to adjustment under
3 paragraph (3)(B), the ‘trigger level’ for—

4 “(i) fiscal year 1998, is \$20,000,000,

5 or

6 “(ii) a succeeding fiscal year is the
7 amount specified under this subparagraph
8 for the previous fiscal year increased by
9 the percentage increase in the consumer
10 price index for all urban consumers (all
11 items; United States city average) for the
12 12-month period ending with July preced-
13 ing the beginning of the fiscal year.

14 “(D) PROHIBITION OF ADMINISTRATIVE
15 AND JUDICIAL REVIEW.—There shall be no ad-
16 ministrative or judicial review under section
17 1869, 1878, or otherwise of the estimation of
18 expenditures under subparagraph (A) or the ap-
19 plication of reduction amounts under subpara-
20 graph (B).

21 “(E) EFFECT ON BILLING.—Notwithstand-
22 ing any other provision of this title, in the case
23 of a reduction in payment provided under this
24 subsection for services of a religious nonmedical
25 health care institution provided to an individ-

1 ual, the amount that the institution is otherwise
2 permitted to charge the individual for such
3 services is increased by the amount of such re-
4 duction.

5 “(3) MONITORING EXPENDITURE LEVEL.—

6 “(A) IN GENERAL.—The Secretary shall
7 monitor the expenditure level described in para-
8 graph (2)(A) for each fiscal year (beginning
9 with fiscal year 1999).

10 “(B) ADJUSTMENT IN TRIGGER LEVEL.—

11 If the Secretary determines that such level for
12 a fiscal year exceeded, or was less than, the
13 trigger level for that fiscal year, then the trig-
14 ger level for the succeeding fiscal year shall be
15 reduced, or increased, respectively, by the
16 amount of such excess or deficit.

17 “(d) SUNSET.—If the Secretary determines that the
18 level of expenditures described in subsection (c)(1) for 3
19 consecutive fiscal years (with the first such year being not
20 earlier than fiscal year 2002) exceeds the trigger level for
21 such expenditures for such years (as determined under
22 subsection (c)(2)), benefits shall be paid under this part
23 for services described in subsection (a) and furnished on
24 or after the first January 1 that occurs after such 3 con-
25 secutive years only with respect to an individual who has

1 an election in effect under subsection (b) as of such Janu-
2 ary 1 and only during the duration of such election.

3 “(e) ANNUAL REPORT.—At the beginning of each fis-
4 cal year (beginning with fiscal year 1999), the Secretary
5 shall submit to the Committees on Ways and Means of
6 the House of Representatives and the Committee on Fi-
7 nance of the Senate an annual report on coverage and ex-
8 penditures for services described in subsection (a) under
9 this part and under State plans under title XIX. Such re-
10 port shall include—

11 “(1) level of expenditures described in sub-
12 section (c)(1) for the previous fiscal year and esti-
13 mated for the fiscal year involved;

14 “(2) trends in such level; and

15 “(3) facts and circumstances of any significant
16 change in such level from the level in previous fiscal
17 years.”.

18 (b) MEDICAID.—

19 (1) The third sentence of section 1902(a) of
20 such Act (42 U.S.C. 1396a(a)) is amended by strik-
21 ing all that follows “shall not apply” and inserting
22 “to a religious nonmedical health care institution (as
23 defined in section 1861(rr)(1)).”.

24 (2) Section 1908(e)(1) of such Act (42 U.S.C.
25 1396g–1(e)(1)) is amended by striking all that fol-

1 lows “does not include” and inserting “a religious
2 nonmedical health care institution (as defined in sec-
3 tion 1861(rr)(1)).”.

4 (c) CONFORMING AMENDMENTS.—

5 (1) Section 1122(h) of such Act (42 U.S.C.
6 1320a–1(h)) is amended by striking all that follows
7 “shall not apply to” and inserting “a religious non-
8 medical health care institution (as defined in section
9 1861(rr)(1)).”.

10 (2) Section 1162 of such Act (42 U.S.C.
11 1320c–11) is amended—

12 (A) by amending the heading to read as
13 follows:

14 “EXEMPTIONS FOR RELIGIOUS NONMEDICAL HEALTH
15 CARE INSTITUTIONS”; and

16 (B) by striking all that follows “shall not
17 apply with respect to a” and inserting “reli-
18 gious nonmedical health care institution (as de-
19 fined in section 1861(rr)(1)).”.

20 (d) EFFECTIVE DATE.—The amendments made by
21 this section shall take effect on the date of the enactment
22 of this Act and shall apply to items and services furnished
23 on or after such date. By not later than July 1, 1998,
24 the Secretary of Health and Human Services shall first
25 issue regulations to carry out such amendments. Such reg-

1 ulations may be issued so they are effective on an interim
2 basis pending notice and opportunity for public comment.
3 For periods before the effective date of such regulations,
4 such regulations shall recognize elections entered into in
5 good faith in order to comply with the requirements of
6 section 1821(b) of the Social Security Act.

7 **CHAPTER 5—PAYMENTS FOR HOSPICE** 8 **SERVICES**

9 **SEC. 5481. PAYMENT FOR HOME HOSPICE CARE BASED ON** 10 **LOCATION WHERE CARE IS FURNISHED.**

11 (a) IN GENERAL.—Section 1814(i)(2) (42 U.S.C.
12 1395f(i)(2)) is amended by adding at the end the follow-
13 ing:

14 “(D) A hospice program shall submit claims for pay-
15 ment for hospice care furnished in an individual’s home
16 under this title only on the basis of the geographic location
17 at which the service is furnished, as determined by the
18 Secretary.”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 subsection (a) applies to cost reporting periods beginning
21 on or after October 1, 1997.

22 **SEC. 5482. HOSPICE CARE BENEFITS PERIODS.**

23 (a) RESTRUCTURING OF BENEFIT PERIOD.—Section
24 1812 (42 U.S.C. 1395d) is amended in subsections (a)(4)
25 and (d)(1), by striking “, a subsequent period of 30 days,

1 and a subsequent extension period” and inserting “and
2 an unlimited number of subsequent periods of 60 days
3 each”.

4 (b) CONFORMING AMENDMENTS.—(1) Section 1812
5 (42 U.S.C. 1395d) is amended in subsection (d)(2)(B) by
6 striking “90- or 30-day period or a subsequent extension
7 period” and inserting “90-day period or a subsequent 60-
8 day period”.

9 (2) Section 1814(a)(7)(A) (42 U.S.C.
10 1395f(a)(7)(A)) is amended—

11 (A) in clause (i), by inserting “and” at the end;

12 (B) in clause (ii)—

13 (i) by striking “30-day” and inserting “60-
14 day”; and

15 (ii) by striking “, and” at the end and in-
16 serting a period; and

17 (C) by striking clause (iii).

18 **SEC. 5483. OTHER ITEMS AND SERVICES INCLUDED IN HOS-**

19 **PICE CARE.**

20 Section 1861(dd)(1) (42 U.S.C. 1395x(dd)(1)) is
21 amended—

22 (1) in subparagraph (G), by striking “and” at
23 the end;

24 (2) in subparagraph (H), by striking the period
25 at the end and inserting “, and”; and

1 (3) by inserting after subparagraph (H) the fol-
2 lowing:

3 “(I) any other item or service which is specified
4 in the plan and for which payment may otherwise be
5 made under this title.”.

6 **SEC. 5484. CONTRACTING WITH INDEPENDENT PHYSICIANS**
7 **OR PHYSICIAN GROUPS FOR HOSPICE CARE**
8 **SERVICES PERMITTED.**

9 Section 1861(dd)(2) (42 U.S.C. 1395x(dd)(2)) is
10 amended—

11 (1) in subparagraph (A)(ii)(I), by striking
12 “(F),”; and

13 (2) in subparagraph (B)(i), by inserting “or, in
14 the case of a physician described in subclause (I),
15 under contract with” after “employed by”.

16 **SEC. 5485. WAIVER OF CERTAIN STAFFING REQUIREMENTS**
17 **FOR HOSPICE CARE PROGRAMS IN NON-UR-**
18 **BANIZED AREAS.**

19 Section 1861(dd)(5) (42 U.S.C. 1395x(dd)(5)) is
20 amended—

21 (1) in subparagraph (B), by inserting “or (C)”
22 after “subparagraph (A)” each place it appears; and

23 (2) by adding at the end the following:

24 “(C) The Secretary may waive the requirements of
25 paragraph clauses (i) and (ii) of paragraph (2)(A) for an

1 agency or organization with respect to the services de-
2 scribed in paragraph (1)(B) and, with respect to dietary
3 counseling, paragraph (1)(H), if such agency or organiza-
4 tion—

5 “(i) is located in an area which is not an urban-
6 ized area (as defined by the Bureau of the Census),
7 and

8 “(ii) demonstrates to the satisfaction of the
9 Secretary that the agency or organization has been
10 unable, despite diligent efforts, to recruit appro-
11 priate personnel.”.

12 **SEC. 5486. LIMITATION ON LIABILITY OF BENEFICIARIES**
13 **FOR CERTAIN HOSPICE COVERAGE DENIALS.**

14 Section 1879 (42 U.S.C. 1395pp) is amended—

15 (1) in subsection (a), in the matter following
16 paragraph (2), by inserting “and except as provided
17 in subsection (i),” after “to the extent permitted by
18 this title,”;

19 (2) in subsection (g)—

20 (A) by redesignating paragraphs (1) and
21 (2) as subparagraphs (A) and (B), respectively,
22 and indenting such subparagraphs appro-
23 priately;

24 (B) by striking “is,” and inserting “is—”;

1 (C) by making the remaining text of sub-
 2 section (g) (as amended) that follows “is—” a
 3 new paragraph (1) and indenting that para-
 4 graph appropriately;

5 (D) by striking the period at the end and
 6 inserting “; and”; and

7 (E) by adding at the end the following:

8 “(2) with respect to the provision of hospice
 9 care to an individual, a determination that the indi-
 10 vidual is not terminally ill.”; and

11 (3) by adding at the end the following:

12 “(i) In any case involving a coverage denial with re-
 13 spect to hospice care described in subsection (g)(2), only
 14 the individual that received such care shall, notwithstand-
 15 ing such determination, be indemnified for any payments
 16 that the individual made to a provider or other person for
 17 such care that would, but for such denial, otherwise be
 18 paid to the individual under part A or B of this title.”.

19 **SEC. 5487. EXTENDING THE PERIOD FOR PHYSICIAN CER-**
 20 **TIFICATION OF AN INDIVIDUAL’S TERMINAL**
 21 **ILLNESS.**

22 Section 1814(a)(7)(A)(i) (42 U.S.C.
 23 1395f(a)(7)(A)(i)) is amended, in the matter following
 24 subclause (II), by striking “, not later than 2 days after
 25 hospice care is initiated (or, if each certify verbally not

1 later than 2 days after hospice care is initiated, not later
 2 than 8 days after such care is initiated)” and inserting
 3 “at the beginning of the period”.

4 **SEC. 5488. EFFECTIVE DATE.**

5 Except as otherwise provided in this chapter, the
 6 amendments made by this chapter apply to benefits pro-
 7 vided on or after the date of the enactment of this chapter,
 8 regardless of whether or not an individual has made an
 9 election under section 1812(d) of the Social Security Act
 10 (42 U.S.C. 1395d(d)) before such date.

11 **Subtitle G—Provisions Relating to**
 12 **Part B Only**

13 **CHAPTER 1—PAYMENTS FOR PHYSICIANS**
 14 **AND OTHER HEALTH CARE PROVIDERS**

15 **SEC. 5501. ESTABLISHMENT OF SINGLE CONVERSION FAC-**
 16 **TOR FOR 1998.**

17 (a) **IN GENERAL.**—Section 1848(d)(1) (42 U.S.C.
 18 1395w-4(d)(1)) is amended to read as follows:

19 “(1) **ESTABLISHMENT.**—

20 “(A) **IN GENERAL.**—The conversion factor
 21 for each year shall be the conversion factor es-
 22 tablished under this subsection for the previous
 23 year, adjusted by the update established under
 24 paragraph (3) for the year involved.

1 “(B) SPECIAL RULE FOR 1998.—The single
2 conversion factor for 1998 shall be the conver-
3 sion factor for primary care services for 1997,
4 increased by the Secretary’s estimate of the
5 weighted average of the 3 separate updates that
6 would otherwise occur but for the enactment of
7 chapter 1 of subtitle G of title V of the Bal-
8 anced Budget Act of 1997.

9 “(C) PUBLICATION.—The Secretary shall,
10 during the last 15 days of October of each year,
11 publish the conversion factor which will apply to
12 physicians’ services for the following year and
13 the update determined under paragraph (3) for
14 such year.”

15 (b) CONFORMING AMENDMENT.—Section
16 1848(i)(1)(C) (42 U.S.C. 1395w–4(i)(1)(C)) is amended
17 by striking “conversion factors” and inserting “the con-
18 version factor”.

19 **SEC. 5502. ESTABLISHING UPDATE TO CONVERSION FAC-**
20 **TOR TO MATCH SPENDING UNDER SUSTAIN-**
21 **ABLE GROWTH RATE.**

22 (a) UPDATE.—

23 (1) IN GENERAL.—Section 1848(d)(3) (42
24 U.S.C. 1395w–4(d)(3)) is amended to read as fol-
25 lows:

1 “(3) UPDATE.—

2 “(A) IN GENERAL.—Unless otherwise pro-
3 vided by law, subject to subparagraph (D) and
4 the budget-neutrality factor determined by the
5 Secretary under subsection (c)(2)(B)(ii), the
6 update to the single conversion factor estab-
7 lished in paragraph (1)(B) for a year beginning
8 with 1999 is equal to the product of—

9 “(i) 1 plus the Secretary’s estimate of
10 the percentage increase in the MEI (as de-
11 fined in section 1842(i)(3)) for the year
12 (divided by 100), and

13 “(ii) 1 plus the Secretary’s estimate of
14 the update adjustment factor for the year
15 (divided by 100),

16 minus 1 and multiplied by 100.

17 “(B) UPDATE ADJUSTMENT FACTOR.—For
18 purposes of subparagraph (A)(ii), the ‘update
19 adjustment factor’ for a year is equal to the
20 quotient (as estimated by the Secretary) of—

21 “(i) the difference between (I) the
22 sum of the allowed expenditures for physi-
23 cians’ services (as determined under sub-
24 paragraph (C)) for the period beginning
25 July 1, 1997, and ending on June 30 of

1 the year involved, and (II) the amount of
2 actual expenditures for physicians' services
3 furnished during the period beginning July
4 1, 1997, and ending on June 30 of the
5 preceding year; divided by

6 “(ii) the actual expenditures for physi-
7 cians' services for the 12-month period
8 ending on June 30 of the preceding year,
9 increased by the sustainable growth rate
10 under subsection (f) for the fiscal year
11 which begins during such 12-month period.

12 “(C) DETERMINATION OF ALLOWED EX-
13 PENDITURES.—For purposes of this paragraph,
14 the allowed expenditures for physicians' services
15 for the 12-month period ending with June 30
16 of—

17 “(i) 1997 is equal to the actual ex-
18 penditures for physicians' services fur-
19 nished during such 12-month period, as es-
20 timated by the Secretary; or

21 “(ii) a subsequent year is equal to the
22 allowed expenditures for physicians' serv-
23 ices for the previous year, increased by the
24 sustainable growth rate under subsection

1 (f) for the fiscal year which begins during
2 such 12-month period.

3 “(D) RESTRICTION ON VARIATION FROM
4 MEDICARE ECONOMIC INDEX.—Notwithstanding
5 the amount of the update adjustment factor de-
6 termined under subparagraph (B) for a year,
7 the update in the conversion factor under this
8 paragraph for the year may not be—

9 “(i) greater than 100 times the fol-
10 lowing amount: $(1.03 + (\text{MEI percentage}/$
11 $100)) - 1$; or

12 “(ii) less than 100 times the following
13 amount: $(0.93 + (\text{MEI percentage}/100))$
14 $- 1$,

15 where ‘MEI percentage’ means the Secretary’s
16 estimate of the percentage increase in the MEI
17 (as defined in section 1842(i)(3)) for the year
18 involved.”.

19 (b) ELIMINATION OF REPORT.—Section 1848(d) (42
20 U.S.C. 1395w-4(d)) is amended by striking paragraph
21 (2).

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to the update for years beginning
24 with 1999.

1 **SEC. 5503. REPLACEMENT OF VOLUME PERFORMANCE**
2 **STANDARD WITH SUSTAINABLE GROWTH**
3 **RATE.**

4 (a) IN GENERAL.—Section 1848(f) (42 U.S.C.
5 1395w-4(f)) is amended by striking paragraphs (2)
6 through (5) and inserting the following:

7 “(2) SPECIFICATION OF GROWTH RATE.—The
8 sustainable growth rate for all physicians’ services
9 for a fiscal year (beginning with fiscal year 1998)
10 shall be equal to the product of—

11 “(A) 1 plus the Secretary’s estimate of the
12 weighted average percentage increase (divided
13 by 100) in the fees for all physicians’ services
14 in the fiscal year involved,

15 “(B) 1 plus the Secretary’s estimate of the
16 percentage change (divided by 100) in the aver-
17 age number of individuals enrolled under this
18 part (other than Medicare Choice plan enroll-
19 ees) from the previous fiscal year to the fiscal
20 year involved,

21 “(C) 1 plus the Secretary’s estimate of the
22 projected percentage growth in real gross do-
23 mestic product per capita (divided by 100) from
24 the previous fiscal year to the fiscal year in-
25 volved, and

1 “(D) 1 plus the Secretary’s estimate of the
2 percentage change (divided by 100) in expendi-
3 tures for all physicians’ services in the fiscal
4 year (compared with the previous fiscal year)
5 which will result from changes in law and regu-
6 lations, determined without taking into account
7 estimated changes in expenditures due to
8 changes in the volume and intensity of physi-
9 cians’ services resulting from changes in the up-
10 date to the conversion factor under subsection
11 (d)(3),

12 minus 1 and multiplied by 100.

13 “(3) DEFINITIONS.—In this subsection:

14 “(A) SERVICES INCLUDED IN PHYSICIANS’
15 SERVICES.—The term ‘physicians’ services’ in-
16 cludes other items and services (such as clinical
17 diagnostic laboratory tests and radiology serv-
18 ices), specified by the Secretary, that are com-
19 monly performed or furnished by a physician or
20 in a physician’s office, but does not include
21 services furnished to a Medicare Choice plan
22 enrollee.

23 “(B) MEDICARE CHOICE PLAN EN-
24 ROLLEE.—The term ‘Medicare Choice plan en-
25 rollee’ means, with respect to a fiscal year, an

1 individual enrolled under this part who has
2 elected to receive benefits under this title for
3 the fiscal year through a Medicare Choice plan
4 offered under part C, and also includes an indi-
5 vidual who is receiving benefits under this part
6 through enrollment with an eligible organization
7 with a risk-sharing contract under section
8 1876.”.

9 (b) CONFORMING AMENDMENTS.—So much of sec-
10 tion 1848(f) (42 U.S.C. 1395w-4(f)) as precedes para-
11 graph (2) is amended to read as follows:

12 “(f) SUSTAINABLE GROWTH RATE.—

13 “(1) PUBLICATION.—The Secretary shall cause
14 to have published in the Federal Register the sus-
15 tainable growth rate for each fiscal year beginning
16 with fiscal year 1998. Such publication shall occur
17 in the last 15 days of October of the year in which
18 the fiscal year begins, except that such rate for fiscal
19 year 1998 shall be published not later than January
20 1, 1998.”

21 **SEC. 5504. PAYMENT RULES FOR ANESTHESIA SERVICES.**

22 (a) IN GENERAL.—Section 1848(d)(1) (42 U.S.C.
23 1395w-4(d)(1)), as amended by section 5501, is amend-
24 ed—

1 (A) in subparagraph (B), striking “The
2 single” and inserting “Except as provided in
3 subparagraph (C), the single”;

4 (B) by redesignating subparagraph (C) as
5 subparagraph (D); and

6 (C) by inserting after subparagraph (B)
7 the following new subparagraph:

8 “(C) SPECIAL RULES FOR ANESTHESIA
9 SERVICES.—The separate conversion factor for
10 anesthesia services for a year shall be equal to
11 46 percent of the single conversion factor estab-
12 lished for other physicians’ services, except as
13 adjusted for changes in work, practice expense,
14 or malpractice relative value units.”.

15 (b) CLASSIFICATION OF ANESTHESIA SERVICES.—
16 The first sentence of section 1848(j)(1) (42 U.S.C.
17 1395w-4(j)(1)) is amended—

18 (1) by striking “and including anesthesia serv-
19 ices”; and

20 (2) by inserting before the period the following:
21 “(including anesthesia services)”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to services furnished on or after
24 January 1, 1998.

1 **SEC. 5505. IMPLEMENTATION OF RESOURCE-BASED PHYSI-**
2 **CIAN PRACTICE EXPENSE.**

3 (a) ADJUSTMENTS TO RELATIVE VALUE UNITS FOR
4 1998.—Section 1848(c)(2) (42 U.S.C. 1395w-4(c)(2)) is
5 amended by adding at the end the following new subpara-
6 graph:

7 “(G) ADJUSTMENTS IN RELATIVE VALUE
8 UNITS FOR 1998.—

9 “(i) IN GENERAL.—The Secretary
10 shall—

11 “(I) reduce the practice expense
12 relative value units applied to any
13 services described in clause (ii) fur-
14 nished in 1998 to a number equal to
15 110 percent of the number of work
16 relative value units, and

17 “(II) increase the practice ex-
18 pense relative value units for primary
19 care services provided in an office set-
20 ting during 1998 by a uniform per-
21 centage which the Secretary estimates
22 will result in an aggregate increase in
23 payments for such services equal to
24 the aggregate decrease in payments
25 by reason of subclause (I).

1 “(ii) SERVICES COVERED.—For pur-
2 poses of clause (i), the services described in
3 this clause are physicians’ services that are
4 not described in clause (iii) and for
5 which—

6 “(I) there are work relative value
7 units, and

8 “(II) the number of practice ex-
9 pense relative value units (determined
10 for 1998) exceeds 110 percent of the
11 number of work relative value units
12 (determined for such year).

13 “(iii) EXCLUDED SERVICES.—For
14 purposes of clause (ii), the services de-
15 scribed in this clause are services which
16 the Secretary determines at least 75 per-
17 cent of which are provided under this title
18 in an office setting.”

19 (b) PHASED-IN IMPLEMENTATION.—Section
20 1848(c)(2) (42 U.S.C. 1395w-4(e)(2)), as amended by
21 subsection (a), is amended—

22 (1) in subparagraph (C)(ii), in the matter fol-
23 lowing subclause (II), by inserting “, to the extent
24 provided under subparagraph (H),” after “based”,
25 and

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

3 “(H) TRANSITIONAL RULE FOR RE-
4 SOURCE-BASED PRACTICE EXPENSE UNITS.—In
5 applying subparagraph (C)(ii) for 1998, 1999,
6 2000, and any subsequent year, the number of
7 units under such subparagraph shall be based
8 75 percent, 50 percent, 25 percent, and 0 per-
9 cent, respectively, on the practice expense rel-
10 ative value units in effect in 1997 (or the Sec-
11 retary’s imputation of such units for new or re-
12 vised codes) and the remainder on the relative
13 value expense resources involved in furnishing
14 the service.”

15 (c) REVIEW BY COMPTROLLER GENERAL.—The
16 Comptroller General of the United States shall review and
17 evaluate the proposed rule on resource-based methodology
18 for practice expenses issued by the Health Care Financing
19 Administration. The Comptroller General shall, within 6
20 months of the date of the enactment of this Act, report
21 to the Committee on Ways and Means of the House of
22 Representatives and the Committee on Finance of the
23 Senate the results of its evaluation, including an analysis
24 of—

- 1 (1) the adequacy of the data used in preparing
- 2 the rule,
- 3 (2) categories of allowable costs,
- 4 (3) methods for allocating direct and indirect
- 5 expenses,
- 6 (4) the potential impact of the rule on bene-
- 7 ficiary access to services, and
- 8 (5) any other matters related to the appro-
- 9 priateness of resource-based methodology for prac-
- 10 tice expenses.

11 The Comptroller General shall consult with representa-
12 tives of physicians' organizations with respect to matters
13 of both data and methodology.

14 (d) CONSULTATION.—

15 (1) IN GENERAL.—The Secretary of Health and
16 Human Services shall assemble a group of physi-
17 cians with expertise in both surgical and nonsurgical
18 areas (including primary care physicians and aca-
19 demics), accounting experts, and the chair of the
20 Prospective Payment Review Commission (or its suc-
21 cessor) to solicit their individual views on whether
22 sufficient data exist to allow the Health Care Fi-
23 nancing Administration to proceed with implementa-
24 tion of the rule described in subsection (c). After
25 hearing the views of individual members of the

1 group, the Secretary shall determine whether suffi-
2 cient data exists to proceed with practice expense
3 relative value determination and shall report on such
4 views of the individual members to the committees
5 described in subsection (c), including any rec-
6 ommendations for modifying such rule.

7 (2) ACTION.—If the Secretary determines
8 under paragraph (1) that insufficient data exists or
9 that the rule described in subsection (c) needs to be
10 revised, the Secretary shall provide for additional
11 data collection and such other actions to correct any
12 deficiencies.

13 (e) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to years beginning on and after
15 January 1, 1998.

16 **SEC. 5506. INCREASED MEDICARE REIMBURSEMENT FOR**
17 **NURSE PRACTITIONERS AND CLINICAL**
18 **NURSE SPECIALISTS.**

19 (a) REMOVAL OF RESTRICTIONS ON SETTINGS.—

20 (1) IN GENERAL.—Clause (ii) of section
21 1861(s)(2)(K) (42 U.S.C. 1395x(s)(2)(K)) is
22 amended to read as follows:

23 “(ii) services which would be physicians’ serv-
24 ices if furnished by a physician (as defined in sub-
25 section (r)(1)) and which are performed by a nurse

1 practitioner or clinical nurse specialist (as defined in
2 subsection (aa)(5)) working in collaboration (as de-
3 fined in subsection (aa)(6)) with a physician (as de-
4 fined in subsection (r)(1)) which the nurse practi-
5 tioner or clinical nurse specialist is legally authorized
6 to perform by the State in which the services are
7 performed, and such services and supplies furnished
8 as an incident to such services as would be covered
9 under subparagraph (A) if furnished incident to a
10 physician’s professional service, but only if no facil-
11 ity or other provider charges or is paid any amounts
12 with respect to the furnishing of such services;”.

13 (2) CONFORMING AMENDMENTS.—(A) Section
14 1861(s)(2)(K) of such Act (42 U.S.C.
15 1395x(s)(2)(K)) is further amended—

16 (i) in clause (i), by inserting “and such
17 services and supplies furnished as incident to
18 such services as would be covered under sub-
19 paragraph (A) if furnished incident to a physi-
20 cian’s professional service; and” after “are per-
21 formed,”; and

22 (ii) by striking clauses (iii) and (iv).

23 (B) Section 1861(b)(4) (42 U.S.C.
24 1395x(b)(4)) is amended by striking “clauses (i) or

1 (iii) of subsection (s)(2)(K)” and inserting “sub-
2 section (s)(2)(K)”.

3 (C) Section 1862(a)(14) (42 U.S.C.
4 1395y(a)(14)) is amended by striking “section
5 1861(s)(2)(K)(i) or 1861(s)(2)(K)(iii)” and insert-
6 ing “section 1861(s)(2)(K)”.

7 (D) Section 1866(a)(1)(H) (42 U.S.C.
8 1395cc(a)(1)(H)) is amended by striking “section
9 1861(s)(2)(K)(i) or 1861(s)(2)(K)(iii)” and insert-
10 ing “section 1861(s)(2)(K)”.

11 (E) Section 1888(e)(2)(A)(ii) (42 U.S.C.
12 1395yy(e)(2)(A)(ii)), as added by section 5301(a), is
13 amended by striking “through (iii)” and inserting
14 “and (ii)”.

15 (b) INCREASED PAYMENT.—

16 (1) FEE SCHEDULE AMOUNT.—Clause (O) of
17 section 1833(a)(1) (42 U.S.C. 1395l(a)(1)) is
18 amended to read as follows: “(O) with respect to
19 services described in section 1861(s)(2)(K)(ii) (relat-
20 ing to nurse practitioner or clinical nurse specialist
21 services), the amounts paid shall be equal to 80 per-
22 cent of (i) the lesser of the actual charge or 85 per-
23 cent of the fee schedule amount provided under sec-
24 tion 1848, or (ii) in the case of services as an assist-
25 ant at surgery, the lesser of the actual charge or 85

1 percent of the amount that would otherwise be rec-
2 ognized if performed by a physician who is serving
3 as an assistant at surgery; and”.

4 (2) CONFORMING AMENDMENTS.—(A) Section
5 1833(r) (42 U.S.C. 1395l(r)) is amended—

6 (i) in paragraph (1), by striking “section
7 1861(s)(2)(K)(iii) (relating to nurse practi-
8 tioner or clinical nurse specialist services pro-
9 vided in a rural area)” and inserting “section
10 1861(s)(2)(K)(ii) (relating to nurse practitioner
11 or clinical nurse specialist services)”;

12 (ii) by striking paragraph (2);

13 (iii) in paragraph (3), by striking “section
14 1861(s)(2)(K)(iii)” and inserting “section
15 1861(s)(2)(K)(ii)”;

16 (iv) by redesignating paragraph (3) as
17 paragraph (2).

18 (B) Section 1842(b)(12)(A) (42 U.S.C.
19 1395u(b)(12)(A)) is amended, in the matter preced-
20 ing clause (i), by striking “clauses (i), (ii), or (iv) of
21 section 1861(s)(2)(K) (relating to a physician assist-
22 ants and nurse practitioners)” and inserting “sec-
23 tion 1861(s)(2)(K)(i) (relating to physician assist-
24 ants)”.

1 (c) DIRECT PAYMENT FOR NURSE PRACTITIONERS
2 AND CLINICAL NURSE SPECIALISTS.—

3 (1) IN GENERAL.—Section 1832(a)(2)(B)(iv)
4 (42 U.S.C. 1395k(a)(2)(B)(iv)) is amended by strik-
5 ing “provided in a rural area (as defined in section
6 1886(d)(2)(D))” and inserting “but only if no facil-
7 ity or other provider charges or is paid any amounts
8 with respect to the furnishing of such services”.

9 (2) CONFORMING AMENDMENT.—Section
10 1842(b)(6)(C) (42 U.S.C. 1395u(b)(6)(C)) is
11 amended—

12 (A) by striking “clauses (i), (ii), or (iv)”
13 and inserting “clause (i)”; and

14 (B) by striking “or nurse practitioner”.

15 (d) DEFINITION OF CLINICAL NURSE SPECIALIST
16 CLARIFIED.—Section 1861(aa)(5) (42 U.S.C.
17 1395x(aa)(5)) is amended—

18 (1) by inserting “(A)” after “(5)”;

19 (2) by striking “The term ‘physician assist-
20 ant’” and all that follows through “who performs”
21 and inserting “The term ‘physician assistant’ and
22 the term ‘nurse practitioner’ mean, for purposes of
23 this title, a physician assistant or nurse practitioner
24 who performs”; and

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

3 “(B) The term ‘clinical nurse specialist’ means, for
4 purposes of this title, an individual who—

5 “(i) is a registered nurse and is licensed to
6 practice nursing in the State in which the clinical
7 nurse specialist services are performed; and

8 “(ii) holds a master’s degree in a defined clini-
9 cal area of nursing from an accredited educational
10 institution.”.

11 (e) EFFECTIVE DATE.—The amendments made by
12 this section shall apply with respect to services furnished
13 and supplies provided on and after January 1, 1998.

14 **SEC. 5507. INCREASED MEDICARE REIMBURSEMENT FOR**
15 **PHYSICIAN ASSISTANTS.**

16 (a) REMOVAL OF RESTRICTION ON SETTINGS.—Sec-
17 tion 1861(s)(2)(K)(i) (42 U.S.C. 1395x(s)(2)(K)(i)), as
18 amended by the section 5506, is amended—

19 (1) by striking “(I) in a hospital” and all that
20 follows through “shortage area,” and

21 (2) by adding at the end the following: “but
22 only if no facility or other provider charges or is
23 paid any amounts with respect to the furnishing of
24 such services,”.

1 (b) INCREASED PAYMENT.—Paragraph (12) of sec-
2 tion 1842(b) (42 U.S.C. 1395u(b)), as amended by section
3 5506(b)(2)(B), is amended to read as follows:

4 “(12) With respect to services described in section
5 1861(s)(2)(K)(i)—

6 “(A) payment under this part may only be
7 made on an assignment-related basis; and

8 “(B) the amounts paid under this part shall be
9 equal to 80 percent of (i) the lesser of the actual
10 charge or 85 percent of the fee schedule amount
11 provided under section 1848 for the same service
12 provided by a physician who is not a specialist; or
13 (ii) in the case of services as an assistant at surgery,
14 the lesser of the actual charge or 85 percent of the
15 amount that would otherwise be recognized if per-
16 formed by a physician who is serving as an assistant
17 at surgery.”.

18 (c) REMOVAL OF RESTRICTION ON EMPLOYMENT
19 RELATIONSHIP.—Section 1842(b)(6) (42 U.S.C.
20 1395u(b)(6)) is amended by adding at the end the follow-
21 ing new sentence: “For purposes of clause (C) of the first
22 sentence of this paragraph, an employment relationship
23 may include any independent contractor arrangement, and
24 employer status shall be determined in accordance with

1 the law of the State in which the services described in such
2 clause are performed.”.

3 (d) EFFECTIVE DATE.—The amendments made by
4 this section shall apply with respect to services furnished
5 and supplies provided on and after January 1, 1998.

6 **SEC. 5508. CHIROPRACTIC SERVICES COVERAGE DEM-**
7 **ONSTRATION PROJECT.**

8 (a) DEMONSTRATION.—The Secretary of Health and
9 Human Services (in this section referred to as the “Sec-
10 retary”) shall conduct demonstration projects, for a period
11 of 2 years, to begin not later than 1 year after the date
12 of enactment of this Act, for the purpose of evaluating
13 methods under which access to chiropractic services by in-
14 dividuals entitled to benefits under part A of title XVIII
15 of the Social Security Act (42 U.S.C. 1395e et seq.) and
16 enrolled under part B of such title (42 U.S.C. 1395j et
17 seq.) (in this section referred to as “medicare bene-
18 ficiaries”) would be provided, on a cost effective basis, as
19 a benefit to medicare beneficiaries.

20 (b) ELEMENTS OF THE DEMONSTRATION
21 PROJECT.—A demonstration project conducted under this
22 section shall include the evaluation of the following ele-
23 ments:

24 (1) The effect on the medicare program of al-
25 lowing chiropractors to order x-rays and to receive

1 payment under the medicare program for providing
2 such x-rays.

3 (2) The effect on the medicare program of
4 eliminating the requirement for an x-ray under sec-
5 tion 1861(r)(5) of such Act (42 U.S.C. 1395x(r)(5)).

6 (3) The effect on the medicare program of al-
7 lowing chiropractors, within the scope of their licen-
8 sure, to provide physicians' services (as defined in
9 section 1861(q) of the Social Security Act (42
10 U.S.C. 1395x(q))) to medicare beneficiaries.

11 (4) The cost effectiveness of allowing a medi-
12 care beneficiary who is enrolled with an eligible or-
13 ganization under section 1876 of the Social Security
14 Act (42 U.S.C. 1395mm) or with a Medicare Choice
15 organization under part C of such Act to have direct
16 access to chiropractors.

17 In this section, the term "direct access" means allowing
18 a medicare beneficiary to go directly to a chiropractor af-
19 filiated with the organizations referred to in paragraph (4)
20 without prior approval from a physician (other than an-
21 other chiropractor) or other entity.

22 (c) CONDUCT OF THE DEMONSTRATION PROJECT.—

23 (1) PROJECT LOCATIONS.—A demonstration
24 project (that includes each element under subsection

25 (b)) shall be conducted in—

1 (A) 3 or more rural areas (as defined in
2 section 1886(d)(2)(D) of the Social Security
3 Act (42 U.S.C. 1395ww(d)(2)(D)));

4 (B) 3 or more urban areas (as defined in
5 such section); and

6 (C) 3 or more areas having a shortage of
7 primary medical care professionals (as designed
8 under section 332 of the Public Health Service
9 Act (42 U.S.C. 254e)).

10 (2) CONSULTATION.—For the design and con-
11 duct of the demonstration project, the Secretary
12 shall consult, on a ongoing basis, with chiropractors,
13 organizations representing chiropractors, and rep-
14 resentatives of medicare beneficiary consumer
15 groups.

16 (3) DIRECT ACCESS ELEMENT.—

17 (A) IN GENERAL.—The Secretary shall
18 study the element to be evaluated under sub-
19 section (b)(4) by involving at least 10 eligible or-
20 ganizations under section 1876 of the Social
21 Security Act (42 U.S.C. 1395mm) or Medicare
22 Choice organizations under part C of such title
23 that have voluntarily elected to participate in
24 the demonstration project.

1 (B) PAYMENT.—The Secretary shall pro-
2 vide a small incentive payment to each such or-
3 ganization participating in the demonstration
4 project.

5 (C) FULL SCOPE OF SERVICES.—Any such
6 organization may allow chiropractors to practice
7 the full scope of services for which they are li-
8 censed by the State in which those services are
9 furnished, as if those services were both a cov-
10 ered benefit under the medicare program and
11 included in such organization's contract under
12 title XVIII of the Social Security Act (42
13 U.S.C. 1395 et seq.). The Secretary shall agree
14 to as many of such proposals as possible, giving
15 due regard for the overall design of the dem-
16 onstration project.

17 (d) EVALUATION.—The Secretary shall evaluate the
18 demonstration projects, taking into account the dif-
19 ferences in demonstration project locations, in order to de-
20 termine—

21 (1) whether medicare beneficiaries who receive
22 chiropractic services use a lesser overall amount of
23 items and services under the medicare program than
24 medicare beneficiaries who do not receive
25 chiropractic services;

1 (2) the overall cost effects on medicare program
2 spending of the increased access of medicare bene-
3 ficiaries to chiropractors;

4 (3) beneficiary satisfaction with chiropractic
5 services, including quality of care; and

6 (4) such other matters as the Secretary deems
7 appropriate.

8 (e) REPORT TO CONGRESS.—

9 (1) PRELIMINARY REPORT.—Not later than 2
10 years after the date of enactment of this Act, the
11 Secretary shall submit a preliminary report to the
12 Committee on Ways and Means and the Committee
13 on Commerce of the House of Representatives and
14 to the Committee on Finance of the Senate on the
15 progress made in the demonstration programs, in-
16 cluding—

17 (A) a description of the locations in which
18 the demonstration projects under this section
19 are being conducted; and

20 (B) the chiropractic services being fur-
21 nished in each location.

22 (2) FINAL REPORT.—

23 (A) IN GENERAL.—Not later than January
24 1, 2001, the Secretary shall submit a final re-

1 port on the demonstration project to the com-
2 mittees described in paragraph (1).

3 (B) CONTENTS.—The report submitted
4 under subparagraph (A) shall include a sum-
5 mary of the evaluation prepared under sub-
6 section (d) and recommendations for appro-
7 priate legislative changes.

8 (C) RECOMMENDED LEGISLATION.—The
9 legislative recommendations described in sub-
10 paragraph (B) shall include a legislative draft
11 of specific amendments to the Social Security
12 Act that authorize payment under the medicare
13 program for elements described in subsection
14 (b) that the Secretary determines to be cost ef-
15 fective, based on the results of the demonstra-
16 tion projects.

17 (f) FUNDING.—

18 (1) IN GENERAL.—The Secretary shall provide
19 for the transfer from the Federal Supplementary In-
20 surance Trust Fund under title XVIII of the Social
21 Security Act (42 U.S.C. 1395t) such funds as the
22 Secretary determines to be necessary for the costs of
23 carrying out the demonstration projects under this
24 section.

1 (2) PAYMENTS OF AMOUNTS.—Grants and pay-
2 ments under contracts for purposes of the dem-
3 onstration project may be made either in advance or
4 by reimbursement, as determined by the Secretary,
5 and shall be made in such installments and on such
6 conditions as the Secretary finds necessary to carry
7 out the purpose of this section.

8 (g) WAIVER AUTHORITY.—The Secretary shall waive
9 compliance with the requirements of titles XI, XVIII, and
10 XIX of the Social Security Act (42 U.S.C. 1301 et seq.,
11 1395 et seq., 1396 et seq.) to such extent and for such
12 period as the Secretary determines is necessary to conduct
13 demonstration projects under this section.

14 (h) IMPLEMENTING EXPANDED COVERAGE OF
15 CHIROPRACTIC SERVICES.—As soon as possible after the
16 submission of a final report under subsection (e), the Sec-
17 retary shall issue regulations to implement, on a perma-
18 nent basis, the elements of the demonstration project that
19 are cost effective for the medicare program.

1 **CHAPTER 2—OTHER PAYMENT**
2 **PROVISIONS**

3 **SEC. 5521. REDUCTION IN UPDATES TO PAYMENT AMOUNTS**
4 **FOR CLINICAL DIAGNOSTIC LABORATORY**
5 **TESTS; STUDY ON LABORATORY SERVICES.**

6 (a) CHANGE IN UPDATE.—Section 1833(h)(2)(A)(ii)
7 (42 U.S.C. 1395l(h)(2)(A)(ii)) is amended by striking
8 “and” at the end of subclause (III), by striking the period
9 at the end of subclause (IV) and inserting “, and”, and
10 by adding at the end the following:

11 “(V) the annual adjustment in
12 the fee schedules determined under
13 clause (i) for each of the years 1998
14 through 2002 shall be reduced (but
15 not below zero) by 2.0 percentage
16 points.”

17 (b) LOWERING CAP ON PAYMENT AMOUNTS.—Sec-
18 tion 1833(h)(4)(B) (42 U.S.C. 1395l(h)(4)(B)) is amend-
19 ed—

20 (1) in clause (vi), by striking “and” at the end;

21 (2) in clause (vii)—

22 (A) by inserting “and before January 1,
23 1998,” after “1995,” and

24 (B) by striking the period at the end and
25 inserting “, and”; and

1 (3) by adding at the end the following new
2 clause:

3 “(viii) after December 31, 1997, is equal to 74
4 percent of such median.”.

5 (c) STUDY AND REPORT ON CLINICAL LABORATORY
6 SERVICES.—

7 (1) IN GENERAL.—The Secretary shall request
8 the Institute of Medicine of the National Academy
9 of Sciences to conduct a study of payments under
10 part B of title XVIII of the Social Security Act for
11 clinical laboratory services. The study shall include
12 a review of the adequacy of the current methodology
13 and recommendations regarding alternative payment
14 systems. The study shall also analyze and discuss
15 the relationship between such payment systems and
16 access to high quality laboratory services for medi-
17 care beneficiaries, including availability and access
18 to new testing methodologies.

19 (2) REPORT TO CONGRESS.—The Secretary
20 shall, not later than 2 years after the date of enact-
21 ment of this section, report to the appropriate com-
22 mittees of Congress the results of the study de-
23 scribed in paragraph (1), including any rec-
24 ommendations for legislation.

1 **SEC. 5522. IMPROVEMENTS IN ADMINISTRATION OF LAB-**
2 **ORATORY SERVICES BENEFIT.**

3 (a) SELECTION OF REGIONAL CARRIERS.—

4 (1) IN GENERAL.—The Secretary of Health and
5 Human Services (in this section referred to as the
6 “Secretary”) shall—

7 (A) divide the United States into no more
8 than 5 regions, and

9 (B) designate a single carrier for each such
10 region,

11 for the purpose of payment of claims under part B
12 of title XVIII of the Social Security Act with respect
13 to clinical diagnostic laboratory services furnished on
14 or after such date (not later than January 1, 1999)
15 as the Secretary specifies.

16 (2) DESIGNATION.—In designating such car-
17 riers, the Secretary shall consider, among other cri-
18 teria—

19 (A) a carrier’s timeliness, quality, and ex-
20 perience in claims processing, and

21 (B) a carrier’s capacity to conduct elec-
22 tronic data interchange with laboratories and
23 data matches with other carriers.

24 (3) SINGLE DATA RESOURCE.—The Secretary
25 shall select one of the designated carriers to serve as
26 a central statistical resource for all claims informa-

1 tion relating to such clinical diagnostic laboratory
2 services handled by all the designated carriers under
3 such part.

4 (4) ALLOCATION OF CLAIMS.—The allocation of
5 claims for clinical diagnostic laboratory services to
6 particular designated carriers shall be based on
7 whether a carrier serves the geographic area where
8 the laboratory specimen was collected or other meth-
9 od specified by the Secretary.

10 (5) TEMPORARY EXCEPTION.—Paragraph (1)
11 shall not apply with respect to clinical diagnostic
12 laboratory services furnished by independent physi-
13 cian offices until such time as the Secretary deter-
14 mines that such offices would not be unduly bur-
15 dened by the application of billing responsibilities
16 with respect to more than one carrier.

17 (b) ADOPTION OF UNIFORM POLICIES FOR CLINICAL
18 LABORATORY BENEFITS.—

19 (1) IN GENERAL.—Not later than July 1, 1998,
20 the Secretary shall first adopt, consistent with para-
21 graph (2), uniform coverage, administration, and
22 payment policies for clinical diagnostic laboratory
23 tests under part B of title XVIII of the Social Secu-
24 rity Act, using a negotiated rulemaking process

1 under subchapter III of chapter 5 of title 5, United
2 States Code.

3 (2) CONSIDERATIONS IN DESIGN OF UNIFORM
4 POLICIES.—The policies under paragraph (1) shall
5 be designed to promote program integrity and uni-
6 formity and simplify administrative requirements
7 with respect to clinical diagnostic laboratory tests
8 payable under such part in connection with the fol-
9 lowing:

10 (A) Beneficiary information required to be
11 submitted with each claim or order for labora-
12 tory services.

13 (B) Physicians' obligations regarding docu-
14 mentation requirements and recordkeeping.

15 (C) Procedures for filing claims and for
16 providing remittances by electronic media.

17 (D) The documentation of medical neces-
18 sity.

19 (E) Limitation on frequency of coverage
20 for the same tests performed on the same indi-
21 vidual.

22 (3) CHANGES IN LABORATORY POLICIES PEND-
23 ING ADOPTION OF UNIFORM POLICY.—During the
24 period that begins on the date of the enactment of
25 this Act and ends on the date the Secretary first im-

1 plements uniform policies pursuant to regulations
2 promulgated under this subsection, a carrier under
3 such part may implement changes relating to re-
4 quirements for the submission of a claim for clinical
5 diagnostic laboratory tests.

6 (4) USE OF INTERIM POLICIES.—After the date
7 the Secretary first implements such uniform policies,
8 the Secretary shall permit any carrier to develop and
9 implement interim policies of the type described in
10 paragraph (1), in accordance with guidelines estab-
11 lished by the Secretary, in cases in which a uniform
12 national policy has not been established under this
13 subsection and there is a demonstrated need for a
14 policy to respond to aberrant utilization or provision
15 of unnecessary services. Except as the Secretary spe-
16 cifically permits, no policy shall be implemented
17 under this paragraph for a period of longer than 2
18 years.

19 (5) INTERIM NATIONAL GUIDELINES.—After
20 the date the Secretary first designates regional car-
21 riers under subsection (a), the Secretary shall estab-
22 lish a process under which designated carriers can
23 collectively develop and implement interim national
24 guidelines of the type described in paragraph (1).

1 No such policy shall be implemented under this
2 paragraph for a period of longer than 2 years.

3 (6) BIENNIAL REVIEW PROCESS.—Not less
4 often than once every 2 years, the Secretary shall
5 solicit and review comments regarding changes in
6 the uniform policies established under this sub-
7 section. As part of such biennial review process, the
8 Secretary shall specifically review and consider
9 whether to incorporate or supersede interim, re-
10 gional, or national policies developed under para-
11 graph (4) or (5). Based upon such review, the Sec-
12 retary may provide for appropriate changes in the
13 uniform policies previously adopted under this sub-
14 section.

15 (7) REQUIREMENT AND NOTICE.—The Sec-
16 retary shall ensure that any guidelines adopted
17 under paragraph (3), (4), or (5) shall apply to all
18 laboratory claims payable under part B of title
19 XVIII of the Social Security Act, and shall provide
20 for advance notice to interested parties and a 45-day
21 period in which such parties may submit comments
22 on the proposed change.

23 (c) INCLUSION OF LABORATORY REPRESENTATIVE
24 ON CARRIER ADVISORY COMMITTEES.—The Secretary
25 shall direct that any advisory committee established by

1 such a carrier, to advise with respect to coverage, adminis-
 2 tration or payment policies under part B of title XVIII
 3 of the Social Security Act, shall include an individual to
 4 represent the interest and views of independent clinical
 5 laboratories and such other laboratories as the Secretary
 6 deems appropriate. Such individual shall be selected by
 7 such committee from among nominations submitted by na-
 8 tional and local organizations that represent independent
 9 clinical laboratories.

10 **SEC. 5523. PAYMENTS FOR DURABLE MEDICAL EQUIPMENT.**

11 (a) REDUCTION IN PAYMENT AMOUNTS FOR ITEMS
 12 OF DURABLE MEDICAL EQUIPMENT.—

13 (1) FREEZE IN UPDATE FOR COVERED
 14 ITEMS.—Section 1834(a)(14) (42 U.S.C.
 15 1395m(a)(14)) is amended to read as follows:

16 “(14) COVERED ITEM UPDATE.—In this sub-
 17 section—

18 “(A) IN GENERAL.—The term ‘covered
 19 item update’ means, with respect to any year,
 20 the percentage increase in the consumer price
 21 index for all urban consumers (U.S. city aver-
 22 age) for the 12-month period ending with June
 23 of the previous year.

24 “(B) REDUCTION FOR CERTAIN YEARS.—

25 In the case of each of the years 1998 through

1 2002, the covered item update under subpara-
2 graph (A) shall be reduced (but not below zero)
3 by 2.0 percentage points.”

4 (2) UPDATE FOR ORTHOTICS AND PROSTHET-
5 ICS.—Section 1834(h)(4)(A) (42 U.S.C.
6 1395m(h)(4)(A)) is amended to read as follows:

7 “(A) the term ‘applicable percentage in-
8 crease’ means, with respect to any year, the
9 percentage increase in the consumer price index
10 for all urban consumers (U.S. city average) for
11 the 12-month period ending with June of the
12 previous year, except that in each of the years
13 1998 through 2000, such increase shall be re-
14 duced (but not below zero) by 2.0 percentage
15 points;”.

16 (3) EFFECTIVE DATE.—The amendments made
17 by this subsection applies to items furnished on and
18 after January 1, 1998.

19 (b) REDUCTION IN INCREASE FOR PARENTERAL AND
20 ENTERAL NUTRIENTS, SUPPLIES, AND EQUIPMENT.—
21 The reasonable charge under part B of title XVIII of the
22 Social Security Act for parenteral and enteral nutrients,
23 supplies, and equipment furnished during each of the
24 years 1998 through 2002, shall not exceed the reasonable
25 charge for such items furnished during the previous year

1 (after application of this subsection), increased by the per-
2 centage increase in the consumer price index for all urban
3 consumers (United States city average) for the 12-month
4 period ending with June of the previous year reduced (but
5 not below zero) by 2.0 percentage points.

6 **SEC. 5524. OXYGEN AND OXYGEN EQUIPMENT.**

7 (a) IN GENERAL.—Section 1834(a)(9)(B) (42 U.S.C.
8 1395m(a)(9)(B)) is amended—

9 (1) by striking “and” at the end of clause (iii);

10 (2) in clause (iv)—

11 (A) by striking “a subsequent year” and
12 inserting “1995, 1996, and 1997”, and

13 (B) by striking the period at the end and
14 inserting a semicolon; and

15 (3) by adding at the end the following new
16 clauses:

17 “(v) in 1998, 75 percent of the
18 amount determined under this subpara-
19 graph for 1997;

20 “(vi) in 1999, 62.5 percent of the
21 amount determined under this subpara-
22 graph for 1997; and

23 “(vii) for each subsequent year, the
24 amount determined under this subpara-
25 graph for the preceding year increased by

1 the covered item update for such subse-
2 quent year.”

3 (b) UPGRADED DURABLE MEDICAL EQUIPMENT.—
4 Section 1834(a) (42 U.S.C. 1395m(a)) is amended by in-
5 serring after paragraph (15) the following new paragraph:

6 “(16) CERTAIN UPGRADED ITEMS.—

7 “(A) INDIVIDUAL’S RIGHT TO CHOOSE UP-
8 GRADED ITEM.—Notwithstanding any other
9 provision of law, effective on the date on which
10 the Secretary issues regulations under subpara-
11 graph (C), an individual may purchase or rent
12 from a supplier an item of upgraded durable
13 medical equipment for which payment would be
14 made under this subsection if the item were a
15 standard item.

16 “(B) PAYMENTS TO SUPPLIER.—In the
17 case of the purchase or rental of an upgraded
18 item under subparagraph (A)—

19 “(i) the supplier shall receive payment
20 under this subsection with respect to such
21 item as if such item were a standard item;
22 and

23 “(ii) the individual purchasing or
24 renting the item shall pay the supplier an
25 amount equal to the difference between the

1 supplier's charge and the amount under
2 clause (i).

3 In no event may the supplier's charge for an
4 upgraded item exceed the applicable fee sched-
5 ule amount (if any) for such item.

6 “(C) CONSUMER PROTECTION SAFE-
7 GUARDS.—The Secretary shall issue regulations
8 providing for consumer protection standards
9 with respect to the furnishing of upgraded
10 equipment under subparagraph (A). Such regu-
11 lations shall provide for—

12 “(i) determination of fair market
13 prices with respect to an upgraded item;

14 “(ii) full disclosure of the availability
15 and price of standard items and proof of
16 receipt of such disclosure information by
17 the beneficiary before the furnishing of the
18 upgraded item;

19 “(iii) conditions of participation for
20 suppliers in the simplified billing arrange-
21 ment;

22 “(iv) sanctions of suppliers who are
23 determined to engage in coercive or abu-
24 sive practices, including exclusion; and

1 “(v) such other safeguards as the Sec-
2 retary determines are necessary.”

3 (c) ESTABLISHMENT OF CLASSES FOR PAYMENT.—
4 Section 1848(a)(9) (42 U.S.C. 1395m(a)(9)) is amended
5 by adding at the end the following:

6 “(D) AUTHORITY TO CREATE CLASSES.—

7 “(i) IN GENERAL.—Subject to clause
8 (ii), the Secretary may establish separate
9 classes for any item of oxygen and oxygen
10 equipment and separate national limited
11 monthly payment rates for each of such
12 classes.

13 “(ii) BUDGET NEUTRALITY.—The
14 Secretary may take actions under clause
15 (i) only to the extent such actions do not
16 result in expenditures for any year to be
17 more or less than the expenditures which
18 would have been made if such actions had
19 not been taken.”

20 (d) STANDARDS AND ACCREDITATION.—The Sec-
21 retary shall as soon as practicable establish service stand-
22 ards and accreditation requirements for persons seeking
23 payment under part B of title XVIII of the Social Security
24 Act for the providing of oxygen and oxygen equipment to
25 beneficiaries within their homes.

1 (e) ACCESS TO HOME OXYGEN EQUIPMENT.—

2 (1) STUDY.—The Comptroller General of the
3 United States shall study issues relating to access to
4 home oxygen equipment and shall, within 6 months
5 after the date of the enactment of this Act, report
6 to the Committee on Ways and Means of the House
7 of Representatives and the Committee on Finance of
8 the Senate the results of the study, including rec-
9 ommendations (if any) for legislation.

10 (2) PEER REVIEW EVALUATION.—The Sec-
11 retary of Health and Human Services shall arrange
12 for peer review organizations established under sec-
13 tion 1154 of the Social Security Act to evaluate ac-
14 cess to, and quality of, home oxygen equipment.

15 (f) DEMONSTRATION PROJECT.—Not later than 6
16 months after the date of enactment of this Act, the Sec-
17 retary shall, in consultation with appropriate organiza-
18 tions, initiate a demonstration project in which the Sec-
19 retary utilizes a competitive bidding process for the fur-
20 nishing of home oxygen equipment to medicare bene-
21 ficiaries under title XVIII of the Social Security Act.

22 (g) EFFECTIVE DATE.—

23 (1) OXYGEN.—The amendments made by sub-
24 section (a) shall apply to items furnished on and
25 after January 1, 1998.

1 (2) OTHER PROVISIONS.—The amendments
2 made by this section other than subsection (a) shall
3 take effect on the date of the enactment of this Act.

4 **SEC. 5525. UPDATES FOR AMBULATORY SURGICAL SERV-**
5 **ICES.**

6 Section 1833(i)(2)(C) (42 U.S.C. 1395l(i)(2)(C)) is
7 amended by inserting at the end the following: “In each
8 of the fiscal years 1998 through 2002, the increase under
9 this subparagraph shall be reduced (but not below zero)
10 by 2.0 percentage points.”

11 **SEC. 5526. REIMBURSEMENT FOR DRUGS AND**
12 **BIOLOGICALS.**

13 (a) IN GENERAL.—Section 1842 (42 U.S.C. 1395u)
14 is amended by inserting after subsection (n) the following
15 new subsection:

16 “(o)(1) If a physician’s, supplier’s, or any other per-
17 son’s bill or request for payment for services includes a
18 charge for a drug or biological for which payment may
19 be made under this part and the drug or biological is not
20 paid on a cost or prospective payment basis as otherwise
21 provided in this part, the amount payable for the drug
22 or biological is equal to 95 percent of the average whole-
23 sale price, as specified by the Secretary.

24 “(2) In the case of any drug or biological for which
25 payment was made under this part on May 1, 1997, the

1 amount determined under paragraph (1) shall not exceed
2 the amount payable under this part for such drug or bio-
3 logical on such date.

4 “(3) If payment for a drug or biological is made to
5 a licensed pharmacy approved to dispense drugs or
6 biologicals under this part, the Secretary shall pay a dis-
7 pensing fee (less the applicable deductible and insurance
8 amounts) to the pharmacy, as the Secretary determines
9 appropriate.”

10 (b) EFFECTIVE DATE.—The amendments made by
11 subsection (a) apply to drugs and biologicals furnished on
12 or after January 1, 1999.

13 **CHAPTER 3—PART B PREMIUM AND**
14 **RELATED PROVISIONS**

15 **SEC. 5541. PART B PREMIUM.**

16 (a) IN GENERAL.—Section 1839(a)(3) (42 U.S.C.
17 1395r(a)(3)) is amended by striking the first 3 sentences
18 and inserting the following: “The Secretary, during Sep-
19 tember of each year, shall determine and promulgate a
20 monthly premium rate for the succeeding calendar year
21 that is equal to 50 percent of the monthly actuarial rate
22 for enrollees age 65 and over, determined according to
23 paragraph (1), for that succeeding calendar year.”

24 (b) CONFORMING AND TECHNICAL AMENDMENTS.—

1 (1) SECTION 1839.—Section 1839 (42 U.S.C.
2 1395r) is amended—

3 (A) in subsection (a)(2), by striking “(b)
4 and (e)” and inserting “(b), (c), and (f)”,

5 (B) in the last sentence of subsection
6 (a)(3)—

7 (i) by inserting “rate” after “pre-
8 mium”, and

9 (ii) by striking “and the derivation of
10 the dollar amounts specified in this para-
11 graph”,

12 (C) by striking subsection (e), and

13 (D) by redesignating subsection (g) as sub-
14 section (e) and inserting that subsection after
15 subsection (d).

16 (2) SECTION 1844.—Subparagraphs (A)(i) and
17 (B)(i) of section 1844(a)(1) (42 U.S.C.
18 1395w(a)(1)) are each amended by striking “or
19 1839(e), as the case may be”.

20 **SEC. 5542. INCOME-RELATED REDUCTION IN MEDICARE**
21 **PART B DEDUCTIBLE TO REFLECT RECAP-**
22 **TURE OF PART B SUBSIDY.**

23 (a) IN GENERAL.—Section 1833 (42 U.S.C. 1395l)
24 is amended by adding at the end the following new sub-
25 section:

1 “(t) INCOME-RELATED INCREASE IN DEDUCT-
2 IBLE.—

3 “(1) INCREASE IN DEDUCTION.—

4 “(A) IN GENERAL.—In the case of an indi-
5 vidual to whom this subsection applies for any
6 calendar year, the \$100 deductible under sub-
7 section (b) shall be increased by an amount
8 equal to the product of—

9 “(i) the applicable percentage, and

10 “(ii) 300 percent of an amount equal
11 to the product of 12 times the monthly
12 premium in effect under section 1839 for
13 such calendar year.

14 “(B) APPLICABLE PERCENTAGE.—For
15 purposes of this paragraph, the applicable per-
16 centage for any individual for any calendar year
17 is the percentage (not greater than 100 per-
18 cent) determined by dividing—

19 “(i) the amount of the individual’s
20 modified adjusted gross income for the tax-
21 able year of the individual ending with or
22 within the calendar year in excess of the
23 threshold amount, by

24 “(ii) \$50,000.

1 “(2) INDIVIDUALS TO WHOM SUBSECTION AP-
2 PLIES.—This subsection shall apply to any individ-
3 ual whose modified adjusted gross income for a tax-
4 able year ending with or within a calendar year (as
5 initially determined under paragraph (4)) exceeds
6 the threshold amount.

7 “(3) ADMINISTRATION OF INCREASE.—

8 “(A) TRADITIONAL FEE-FOR-SERVICE
9 MEDICARE.—Notwithstanding any other provi-
10 sion of this part, the Secretary shall provide for
11 such adjustments in the payment for items and
12 services furnished under this part to any indi-
13 vidual to whom this subsection applies so that
14 the increase in the deductible under paragraph
15 (1) is reflected in such payments. The Secretary
16 shall also provide that such adjustments may be
17 reflected in the amount of any payment the in-
18 dividual is required to make to the provider or
19 supplier of such items and services.

20 “(B) MEDICARE CHOICE.—Notwithstand-
21 ing any other provision of part C, the Secretary
22 shall reduce any payment under section 1853 to
23 a Medicare Choice organization with respect to
24 an individual to whom this subsection applies
25 and who is enrolled in a Medicare Choice plan

1 offered by such organization by an amount the
2 Secretary determines (on the basis of actuarial
3 value) to be equivalent to the amount of the in-
4 crease in the deductible under paragraph (1).
5 The Secretary shall prescribe regulations which
6 allow such Medicare Choice organization to re-
7 coup the amount of the reduction under this
8 subparagraph.

9 “(4) DETERMINATION OF AMOUNT OF IN-
10 COME.—For purposes of this subsection, the Sec-
11 retary shall make an initial determination of the
12 amount of an individual’s modified adjusted gross
13 income for a taxable year ending with or within a
14 calendar year as follows:

15 “(A) Not later than September 1 of the
16 year preceding the year, the Secretary shall
17 provide notice to each individual whom the Sec-
18 retary finds (on the basis of the individual’s ac-
19 tual modified adjusted gross income for the
20 most recent taxable year for which such infor-
21 mation is available or other information pro-
22 vided to the Secretary by the Secretary of the
23 Treasury) will be subject to an increase under
24 this subsection, and shall include in such notice

1 the Secretary's estimate of the individual's
2 modified adjusted gross income for the year.

3 “(B) If, during the 30-day period begin-
4 ning on the date notice is provided to an indi-
5 vidual under subparagraph (A), the individual
6 provides the Secretary with information on the
7 individual's anticipated modified adjusted gross
8 income for the year, the amount initially deter-
9 mined by the Secretary under this paragraph
10 with respect to the individual shall be based on
11 the information provided by the individual.

12 “(C) If an individual does not provide the
13 Secretary with information under subparagraph
14 (B), the amount initially determined by the Sec-
15 retary under this paragraph with respect to the
16 individual shall be the amount included in the
17 notice provided to the individual under subpara-
18 graph (A).

19 “(5) CORRECTION OF INCORRECT ESTIMATED
20 AMOUNTS.—

21 “(A) IN GENERAL.—If the Secretary deter-
22 mines (on the basis of final information pro-
23 vided by the Secretary of the Treasury) that
24 the amount of an individual's actual modified
25 adjusted gross income for a taxable year ending

1 with or within a calendar year is less than or
2 greater than the amount initially determined by
3 the Secretary under paragraph (4), the Sec-
4 retary shall properly adjust the amount of the
5 adjustments under paragraph (3) to reflect the
6 change in the amount of the increase in the de-
7 ductible under paragraph (1).

8 “(B) REPAYMENTS.—In the case of an in-
9 dividual who has paid in excess of the required
10 deductible under this part for any calendar year
11 by reason of an incorrect estimate of the indi-
12 vidual’s modified adjusted gross income, the
13 Secretary shall pay to such individual the
14 amount of such excess.

15 “(C) RECOVERY.—In the case of an indi-
16 vidual who has paid less in deductibles than re-
17 quired under this part for any calendar year by
18 reason of an incorrect estimate of the individ-
19 ual’s modified adjusted gross income, the Sec-
20 retary shall take such steps as the Secretary
21 considers appropriate to recover from the indi-
22 vidual the amount by which the individual has
23 underpaid.

24 “(6) DEFINITIONS.—In this subsection, the fol-
25 lowing definitions apply:

1 “(A) MODIFIED ADJUSTED GROSS IN-
2 COME.—The term ‘modified adjusted gross in-
3 come’ means adjusted gross income (as defined
4 in section 62 of the Internal Revenue Code of
5 1986)—

6 “(i) determined without regard to sec-
7 tions 135, 911, 931, and 933 of such
8 Code, and

9 “(ii) increased by the amount of inter-
10 est received or accrued by the taxpayer
11 during the taxable year which is exempt
12 from tax under such Code.

13 “(B) THRESHOLD AMOUNT.—The term
14 ‘threshold amount’ means—

15 “(i) except as otherwise provided in
16 this paragraph, \$50,000,

17 “(ii) \$75,000, in the case of a joint
18 return (as defined in section 7701(a)(38)
19 of such Code), and

20 “(iii) zero in the case of a taxpayer
21 who—

22 “(I) is married at the close of the
23 taxable year but does not file a joint
24 return (as so defined) for such year,
25 and

1 “(II) does not live apart from his
2 spouse at all times during the taxable
3 year.

4 “(7) TRANSFER OF PAYMENTS TO PART A
5 TRUST FUND.—The Secretary shall transfer
6 amounts equal to the reduction in payments under
7 parts B and C by reason of the application of this
8 subsection to the Federal Hospital Insurance Trust
9 Fund.”

10 (b) CONFORMING AMENDMENT.—Section 1833(b)
11 (42 U.S.C. 1395l(b)) is amended by inserting “except as
12 provided in subsection (t),” before “\$100”.

13 (c) REPORTING REQUIREMENTS FOR SECRETARY OF
14 THE TREASURY.—

15 (1) IN GENERAL.—Subsection (l) of section
16 6103 of the Internal Revenue Code of 1986 (relating
17 to confidentiality and disclosure of returns and re-
18 turn information) is amended by adding at the end
19 the following new paragraph:

20 “(16) DISCLOSURE OF RETURN INFORMATION
21 TO CARRY OUT INCOME-RELATED REDUCTION IN
22 MEDICARE PART B PREMIUM.—

23 “(A) IN GENERAL.—The Secretary may,
24 upon written request from the Secretary of
25 Health and Human Services, disclose to officers

1 and employees of the Health Care Financing
2 Administration return information with respect
3 to a taxpayer who is required to pay a monthly
4 premium under section 1839 of the Social Secu-
5 rity Act. Such return information shall be lim-
6 ited to—

7 “(i) taxpayer identity information
8 with respect to such taxpayer,

9 “(ii) the filing status of such tax-
10 payer,

11 “(iii) the adjusted gross income of
12 such taxpayer,

13 “(iv) the amounts excluded from such
14 taxpayer’s gross income under sections 135
15 and 911,

16 “(v) the interest received or accrued
17 during the taxable year which is exempt
18 from the tax imposed by chapter 1 to the
19 extent such information is available, and

20 “(vi) the amounts excluded from such
21 taxpayer’s gross income by sections 931
22 and 933 to the extent such information is
23 available.

24 “(B) RESTRICTION ON USE OF DISCLOSED
25 INFORMATION.—Return information disclosed

1 under subparagraph (A) may be used by offi-
2 cers and employees of the Health Care Financ-
3 ing Administration only for the purposes of,
4 and to the extent necessary in, carrying out
5 their responsibilities under section 1833(t) of
6 the Social Security Act.”

7 (2) CONFORMING AMENDMENT.—Paragraphs
8 (3)(A) and (4) of section 6103(p) of such Code are
9 each amended by striking “or (15)” each place it ap-
10 pears and inserting “(15), or (16)”.

11 (d) EFFECTIVE DATE.—

12 (1) IN GENERAL.—The amendments made by
13 subsections (a) and (b) shall apply to deductibles
14 under section 1833 of the Social Security Act for
15 months beginning with January 1998.

16 (2) INFORMATION FOR PRIOR YEARS.—The
17 Secretary of Health and Human Services may re-
18 quest information under section 6013(l)(16) of the
19 Social Security Act (as added by subsection (c)) for
20 taxable years beginning after December 31, 1994.

1 **Subtitle H—Provisions Relating to**
2 **Parts A and B**

3 **CHAPTER 1—SECONDARY PAYOR**
4 **PROVISIONS**

5 **SEC. 5601. EXTENSION AND EXPANSION OF EXISTING RE-**
6 **QUIREMENTS.**

7 (a) DATA MATCH.—

8 (1) ELIMINATION OF MEDICARE SUNSET.—Sec-
9 tion 1862(b)(5)(C) (42 U.S.C. 1395y(b)(5)(C)) is
10 amended by striking clause (iii).

11 (2) ELIMINATION OF INTERNAL REVENUE CODE
12 SUNSET.—Section 6103(l)(12) of the Internal Reve-
13 nue Code of 1986 is amended by striking subpara-
14 graph (F).

15 (b) APPLICATION TO DISABLED INDIVIDUALS IN
16 LARGE GROUP HEALTH PLANS.—

17 (1) IN GENERAL.—Section 1862(b)(1)(B) (42
18 U.S.C. 1395y(b)(1)(B)) is amended—

19 (A) in clause (i), by striking “clause (iv)”
20 and inserting “clause (iii)”;

21 (B) by striking clause (iii); and

22 (C) by redesignating clause (iv) as clause
23 (iii).

24 (2) CONFORMING AMENDMENTS.—Paragraphs
25 (1) through (3) of section 1837(i) (42 U.S.C.

1 1395p(i)) and the second sentence of section
2 1839(b) (42 U.S.C. 1395r(b)) are each amended by
3 striking “1862(b)(1)(B)(iv)” each place it appears
4 and inserting “1862(b)(1)(B)(iii)”.

5 (c) INDIVIDUALS WITH END STAGE RENAL DIS-
6 EASE.—Section 1862(b)(1)(C) (42 U.S.C.
7 1395y(b)(1)(C)) is amended—

8 (1) in the last sentence by striking “October 1,
9 1998” and inserting “the date of enactment of the
10 Balanced Budget Act of 1997”; and

11 (2) by adding at the end the following: “Effec-
12 tive for items and services furnished on or after the
13 date of enactment of the Balanced Budget Act of
14 1997, (with respect to periods beginning on or after
15 the date that is 18 months prior to such date),
16 clauses (i) and (ii) shall be applied by substituting
17 ‘30-month’ for ‘12-month’ each place it appears.”.

18 **SEC. 5602. IMPROVEMENTS IN RECOVERY OF PAYMENTS.**

19 (a) PERMITTING RECOVERY AGAINST THIRD PARTY
20 ADMINISTRATORS OF PRIMARY PLANS.—Section
21 1862(b)(2)(B)(ii) (42 U.S.C. 1395y(b)(2)(B)(ii)) is
22 amended—

23 (1) by striking “under this subsection to pay”
24 and inserting “(directly, as a third-party adminis-
25 trator, or otherwise) to make payment”; and

1 (2) by adding at the end the following: “The
2 United States may not recover from a third-party
3 administrator under this clause in cases where the
4 third-party administrator would not be able to re-
5 cover the amount at issue from the employer or
6 group health plan for whom it provides administra-
7 tive services due to the insolvency or bankruptcy of
8 the employer or plan.”.

9 (b) EXTENSION OF CLAIMS FILING PERIOD.—Sec-
10 tion 1862(b)(2)(B) (42 U.S.C. 1395y(b)(2)(B)) is amend-
11 ed by adding at the end the following:

12 “(v) CLAIMS-FILING PERIOD.—Not-
13 withstanding any other time limits that
14 may exist for filing a claim under an em-
15 ployer group health plan, the United
16 States may seek to recover conditional pay-
17 ments in accordance with this subpara-
18 graph where the request for payment is
19 submitted to the entity required or respon-
20 sible under this subsection to pay with re-
21 spect to the item or service (or any portion
22 thereof) under a primary plan within the
23 3-year period beginning on the date on
24 which the item or service was furnished.”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section apply to items and services furnished on or
 3 after the date of enactment of this Act.

4 **CHAPTER 2—OTHER PROVISIONS**

5 **SEC. 5611. CONFORMING AGE FOR ELIGIBILITY UNDER** 6 **MEDICARE TO RETIREMENT AGE FOR SOCIAL** 7 **SECURITY BENEFITS.**

8 (a) ENTITLEMENT TO HOSPITAL INSURANCE BENE-
 9 FITS.—Section 226 (42 U.S.C. 426) is amended by strik-
 10 ing “age 65” each place such term appears and inserting
 11 “retirement age”.

12 (b) HOSPITAL INSURANCE BENEFITS FOR THE
 13 AGED.—Section 1811 (42 U.S.C. 1395c) is amended by
 14 striking “age 65” each place such term appears and in-
 15 serting “retirement age (as such term is defined in section
 16 216(l)(1))”.

17 (c) HOSPITAL INSURANCE BENEFITS FOR UNIN-
 18 SURED ELDERLY INDIVIDUALS NOT OTHERWISE ELIGI-
 19 BLE.—Section 1818 (42 U.S.C. 1395i–2) is amended—

20 (1) in subsection (a)(1), by striking “age of 65”
 21 and inserting “retirement age (as such term is de-
 22 fined in section 216(l)(1))”;

23 (2) in subsection (d)(1), by striking “age 65”
 24 and inserting “retirement age (as such term is de-
 25 fined in section 216(l)(1))”; and

1 (3) in subsection (d)(3), by striking “65” and
2 inserting “retirement age (as such term is defined in
3 section 216(l)(1))”.

4 (d) HOSPITAL INSURANCE BENEFITS FOR DISABLED
5 INDIVIDUALS WHO HAVE EXHAUSTED OTHER ENTITLED-
6 MENT.—Section 1818A(a)(1) (42 U.S.C. 1395i–2a(a)(1))
7 is amended by striking “the age of 65” and inserting “re-
8 tirement age (as such term is defined in section
9 216(l)(1))”.

10 (e) ELIGIBILITY FOR PART B BENEFITS.—

11 (1) IN GENERAL.—Section 1836 (42 U.S.C.
12 1395o) is amended by striking “age 65” each place
13 such term appears and inserting “retirement age (as
14 such term is defined in section 216(l)(1))”.

15 (2) ENROLLMENT PERIODS.—Section 1837 (42
16 U.S.C. 1395p) is amended by striking “age 65” and
17 “the age of 65” each place such terms appear and
18 inserting “retirement age (as such term is defined in
19 section 216(l)(1))”.

20 (3) COVERAGE PERIOD.—Section 1838(c) (42
21 U.S.C. 1395q(c)) is amended by striking “the age of
22 65” and inserting “retirement age (as such term is
23 defined in section 216(l)(1))”.

24 (4) AMOUNTS OF PREMIUMS.—Section 1839
25 (42 U.S.C. 1395r) is amended by striking “age 65”

1 and “the age of 65” each place such terms appear
2 and inserting “retirement age (as such term is de-
3 fined in section 216(l)(1))”.

4 (f) APPROPRIATIONS TO COVER GOVERNMENT CON-
5 TRIBUTIONS AND CONTINGENCY RESERVE.—Section
6 1844(a)(1) (42 U.S.C. 1395w) is amended by striking
7 “age 65” each place such term appears and inserting “re-
8 tirement age”.

9 (g) MEDICARE SECONDARY PAYER.—Section
10 1862(b) (42 U.S.C. 1395y(b)) is amended by striking
11 “age 65” each place such term appears and inserting “re-
12 tirement age (as such term is defined in section
13 216(l)(1))”.

14 (h) MEDICARE SUPPLEMENTAL POLICIES.—Section
15 1882(s)(2)(A) (42 U.S.C. 1395ss(s)(2)(A)) is amended by
16 striking “65 years of age” and inserting “retirement age
17 (as such term is defined in section 216(l)(1))”.

18 **SEC. 5612. INCREASED CERTIFICATION PERIOD FOR CER-**
19 **TAIN ORGAN PROCUREMENT ORGANIZA-**
20 **TIONS.**

21 Section 1138(b)(1)(A)(ii) (42 U.S.C. 1320b-
22 8(b)(1)(A)(ii)) is amended by striking “two years” and in-
23 serting “2 years (3 years if the Secretary determines ap-
24 propriate for an organization on the basis of its past prac-
25 tices)”.

1 **DIVISION 2—MEDICAID AND**
2 **CHILDREN’S HEALTH INSUR-**
3 **ANCE INITIATIVES**

4 **Subtitle I—Medicaid**

5 **CHAPTER 1—MEDICAID SAVINGS**

6 **Subchapter A—Managed Care Reforms**

7 **SEC. 5701. STATE OPTION FOR MANDATORY MANAGED**
8 **CARE.**

9 (a) IN GENERAL.—Title XIX is amended—

10 (1) by inserting after the title heading the fol-
11 lowing:

12 “PART A—GENERAL PROVISIONS”; and

13 (2) by adding at the end the following new part:

14 “PART B—PROVISIONS RELATING TO MANAGED CARE
15 **“SEC. 1941. BENEFICIARY CHOICE; ENROLLMENT.**

16 “(a) STATE OPTIONS FOR ENROLLMENT OF BENE-
17 FICIARIES IN MANAGED CARE ARRANGEMENTS.—

18 “(1) IN GENERAL.—Subject to the succeeding
19 provisions of this part and notwithstanding para-
20 graphs (1), (10)(B), and (23)(A) of section 1902(a),
21 a State may require an individual who is eligible for
22 medical assistance under the State plan under this
23 title and who is not a special needs individual (as de-
24 fined in subsection (e)) to enroll with a managed
25 care entity (as defined in section 1950(a)(1)) as a

1 condition of receiving such assistance (and, with re-
2 spect to assistance furnished by or under arrange-
3 ments with such entity, to receive such assistance
4 through the entity), if the following provisions are
5 met:

6 “(A) ENTITY MEETS REQUIREMENTS.—

7 The entity meets the applicable requirements of
8 this part.

9 “(B) CONTRACT WITH STATE.—The entity
10 enters into a contract with the State to provide
11 services for the benefit of individuals eligible for
12 benefits under this title under which prepaid
13 payments to such entity are made on an actu-
14 arially sound basis. Such contract shall specify
15 benefits the provision (or arrangement) for
16 which the entity is responsible.

17 “(C) CHOICE OF COVERAGE.—

18 “(i) IN GENERAL.—The State permits
19 an individual to choose a managed care en-
20 tity from managed care organizations and
21 primary care case managers who meet the
22 requirements of this part but not less than
23 from—

24 “(I) 2 medicaid managed care or-
25 ganizations,

1 “(II) a medicaid managed care
2 organization and a primary care case
3 manager, or

4 “(III) a primary care case man-
5 ager as long as an individual may
6 choose between 2 primary care case
7 managers.

8 “(ii) STATE OPTION.—At the option
9 of the State, a State shall be considered to
10 meet the requirements of clause (i) in the
11 case of an individual residing in a rural
12 area, if the State—

13 “(I) requires the individual to en-
14 roll with a medicaid managed care or-
15 ganization or a primary care case
16 manager if such organization or entity
17 permits the individual to receive such
18 assistance through not less than 2
19 physicians or case managers (to the
20 extent that at least 2 physicians or
21 case managers are available to provide
22 such assistance in the area), and

23 “(II) permits the individual to
24 obtain such assistance from any other
25 provider in appropriate circumstances

1 (as established by the State under
2 regulations of the Secretary).

3 “(D) CHANGES IN ENROLLMENT.—The
4 State—

5 “(i) provides the individual with the
6 opportunity to change enrollment among
7 managed care entities once annually and
8 notifies the individual of such opportunity
9 not later than 60 days prior to the first
10 date on which the individual may change
11 enrollment, and

12 “(ii) permits individuals to terminate
13 their enrollment as provided under para-
14 graph (2).

15 “(E) ENROLLMENT PRIORITIES.—The
16 State establishes a method for establishing en-
17 rollment priorities in the case of a managed
18 care entity that does not have sufficient capac-
19 ity to enroll all such individuals seeking enroll-
20 ment under which individuals already enrolled
21 with the entity are given priority in continuing
22 enrollment with the entity.

23 “(F) DEFAULT ENROLLMENT PROCESS.—
24 The State establishes a default enrollment proc-
25 ess which meets the requirements described in

1 paragraph (3) and under which any such indi-
2 vidual who does not enroll with a managed care
3 entity during the enrollment period specified by
4 the State shall be enrolled by the State with
5 such an entity in accordance with such process.

6 “(G) SANCTIONS.—The State establishes
7 the sanctions provided for in section 1949.

8 “(H) INDIAN ENROLLMENT.—No individ-
9 ual who is an Indian (as defined in section 4 of
10 the Indian Health Care Improvement Act of
11 1976) is required to enroll in any entity that is
12 not one of the following (and only if such entity
13 is participating under the plan):

14 “(i) The Indian Health Service.

15 “(ii) An Indian health program oper-
16 ated by an Indian tribe or tribal organiza-
17 tion pursuant to a contract, grant, cooper-
18 ative agreement, or compact with the In-
19 dian Health Service pursuant to the Indian
20 Self-Determination Act (25 U.S.C. 450 et
21 seq.).

22 “(iii) An urban Indian health program
23 operated by an urban Indian organization
24 pursuant to a grant or contract with the
25 Indian Health Service pursuant to title V

1 of the Indian Health Care Improvement
2 Act (25 U.S.C. 1601 et seq.).

3 “(2) TERMINATION OF ENROLLMENT.—

4 “(A) IN GENERAL.—The State, enrollment
5 broker, and managed care entity (if any) shall
6 permit an individual eligible for medical assist-
7 ance under the State plan under this title who
8 is enrolled with the entity to terminate such en-
9 rollment for cause at any time, and without
10 cause during the 90-day period beginning on
11 the date the individual receives notice of enroll-
12 ment and at least every 12 months thereafter,
13 and shall notify each such individual of the op-
14 portunity to terminate enrollment under these
15 conditions.

16 “(B) FRAUDULENT INDUCEMENT OR CO-
17 ERCION AS GROUNDS FOR CAUSE.—For pur-
18 poses of subparagraph (A), an individual termi-
19 nating enrollment with a managed care entity
20 on the grounds that the enrollment was based
21 on fraudulent inducement or was obtained
22 through coercion or pursuant to the imposition
23 against the managed care entity of the sanction
24 described in section 1949(b)(3) shall be consid-
25 ered to terminate such enrollment for cause.

1 “(C) NOTICE OF TERMINATION.—

2 “(i) NOTICE TO STATE.—

3 “(I) BY INDIVIDUALS.—Each in-
4 dividual terminating enrollment with a
5 managed care entity under subpara-
6 graph (A) shall do so by providing no-
7 tice of the termination to an office of
8 the State agency administering the
9 State plan under this title, the State
10 or local welfare agency, or an office of
11 a managed care entity.

12 “(II) BY ORGANIZATIONS.—Any
13 managed care entity which receives
14 notice of an individual’s termination
15 of enrollment with such entity through
16 receipt of such notice at an office of
17 a managed care entity shall provide
18 timely notice of the termination to the
19 State agency administering the State
20 plan under this title.

21 “(ii) NOTICE TO PLAN.—The State
22 agency administering the State plan under
23 this title or the State or local welfare agen-
24 cy which receives notice of an individual’s
25 termination of enrollment with a managed

1 care entity under clause (i) shall provide
2 timely notice of the termination to such en-
3 tity.

4 “(3) DEFAULT ENROLLMENT PROCESS RE-
5 QUIREMENTS.—The requirements of a default enroll-
6 ment process established by a State under para-
7 graph (1)(F) are as follows:

8 “(A) The process shall provide that the
9 State may not enroll individuals with a man-
10 aged care entity which is not in compliance with
11 the applicable requirements of this part.

12 “(B) The process shall provide (consistent
13 with subparagraph (A)) for enrollment of such
14 an individual with a medicaid managed care or-
15 ganization—

16 “(i) that maintains existing provider-
17 individual relationships or that has entered
18 into contracts with providers (such as Fed-
19 erally qualified health centers, rural health
20 clinics, hospitals that qualify for dispropor-
21 tionate share hospital payments under sec-
22 tion 1886(d)(5)(F), and hospitals de-
23 scribed in section 1886(d)(1)(B)(iii)) that
24 have traditionally served beneficiaries
25 under this title, and

1 “(ii) if there is no provider described
2 in clause (i), in a manner that provides for
3 an equitable distribution of individuals
4 among all qualified managed care entities
5 available to enroll individuals through such
6 default enrollment process, consistent with
7 the enrollment capacities of such entities.

8 “(C) The process shall permit and assist
9 an individual enrolled with an entity under such
10 process to change such enrollment to another
11 managed care entity during a period (of at least
12 90 days) after the effective date of the enroll-
13 ment.

14 “(D) The process may provide for consid-
15 eration of factors such as quality, geographic
16 proximity, continuity of providers, and capacity
17 of the plan when conducting such process.

18 “(b) REENROLLMENT OF INDIVIDUALS WHO REGAIN
19 ELIGIBILITY.—

20 “(1) IN GENERAL.—If an individual eligible for
21 medical assistance under a State plan under this
22 title and enrolled with a managed care entity with
23 a contract under subsection (a)(1)(B) ceases to be
24 eligible for such assistance for a period of not great-
25 er than 2 months, the State may provide for the

1 automatic reenrollment of the individual with the en-
2 tity as of the first day of the month in which the
3 individual is again eligible for such assistance, and
4 may consider factors such as quality, geographic
5 proximity, continuity of providers, and capacity of
6 the plan when conducting such reenrollment.

7 “(2) CONDITIONS.—Paragraph (1) shall only
8 apply if—

9 “(A) the month for which the individual is
10 to be reenrolled occurs during the enrollment
11 period covered by the individual’s original en-
12 rollment with the managed care entity,

13 “(B) the managed care entity continues to
14 have a contract with the State agency under
15 subsection (a)(1)(B) as of the first day of such
16 month, and

17 “(C) the managed care entity complies
18 with the applicable requirements of this part.

19 “(3) NOTICE OF REENROLLMENT.—The State
20 shall provide timely notice to a managed care entity
21 of any reenrollment of an individual under this sub-
22 section.

23 “(c) STATE OPTION OF MINIMUM ENROLLMENT PE-
24 RIOD.—

1 “(1) IN GENERAL.—In the case of an individual
2 who is enrolled with a managed care entity under
3 this part and who would (but for this subsection)
4 lose eligibility for benefits under this title before the
5 end of the minimum enrollment period (defined in
6 paragraph (2)), the State plan under this title may
7 provide, notwithstanding any other provision of this
8 title, that the individual shall be deemed to continue
9 to be eligible for such benefits until the end of such
10 minimum period, but, except for benefits furnished
11 under section 1902(a)(23)(B), only with respect to
12 such benefits provided to the individual as an en-
13 rollee of such entity.

14 “(2) MINIMUM ENROLLMENT PERIOD DE-
15 FINED.—For purposes of paragraph (1), the term
16 ‘minimum enrollment period’ means, with respect to
17 an individual’s enrollment with an entity under a
18 State plan, a period, established by the State, of not
19 more than 6 months beginning on the date the indi-
20 vidual’s enrollment with the entity becomes effective,
21 except that a State may extend such period for up
22 to a total of 12 months in the case of an individual’s
23 enrollment with a managed care entity (as defined in
24 section 1950(a)(1)) so long as such extension is done

1 uniformly for all individuals enrolled with all such
2 entities.

3 “(d) OTHER ENROLLMENT-RELATED PROVISIONS.—

4 “(1) NONDISCRIMINATION.—A managed care
5 entity may not discriminate on the basis of health
6 status or anticipated need for services in the enroll-
7 ment, reenrollment, or disenrollment of individuals
8 eligible to receive medical assistance under a State
9 plan under this title or by discouraging enrollment
10 (except as permitted by this section) by eligible indi-
11 viduals.

12 “(2) PROVISION OF INFORMATION.—

13 “(A) IN GENERAL.—Each State, enroll-
14 ment broker, or managed care organization
15 shall provide all enrollment notices and infor-
16 mational and instructional materials in a man-
17 ner and form which may be easily understood
18 by enrollees of the entity who are eligible for
19 medical assistance under the State plan under
20 this title, including enrollees and potential en-
21 rollees who are blind, deaf, disabled, or cannot
22 read or understand the English language.

23 “(B) INFORMATION TO HEALTH CARE PRO-
24 VIDERS, ENROLLEES, AND POTENTIAL ENROLL-

1 EES.—Each medicaid managed care organiza-
2 tion shall—

3 “(i) upon request, make the informa-
4 tion described in section 1945(c)(1) avail-
5 able to enrollees and potential enrollees in
6 the organization’s service area, and

7 “(ii) provide to enrollees and potential
8 enrollees information regarding all items
9 and services that are available to enrollees
10 under the contract between the State and
11 the organization that are covered either di-
12 rectly or through a method of referral and
13 prior authorization.

14 “(e) SPECIAL NEEDS INDIVIDUALS DESCRIBED.—In
15 this part, the term ‘special needs individual’ means any
16 of the following individuals:

17 “(1) SPECIAL NEEDS CHILD.—An individual
18 who is under 19 years of age who—

19 “(A) is eligible for supplemental security
20 income under title XVI;

21 “(B) is described under section
22 501(a)(1)(D);

23 “(C) is a child described in section
24 1902(e)(3); or

1 services by meeting standards, established by the
2 Secretary, relating to the maximum ratio of enrollees
3 under this title to full-time-equivalent primary care
4 providers available to serve such enrollees and to
5 maximum travel time for such enrollees to access
6 such providers. The Secretary may permit such a
7 maximum ratio to vary depending on the area and
8 population served. Such standards shall be based on
9 standards commonly applied in the commercial mar-
10 ket, commonly used in accreditation of managed
11 care organizations, and standards used in the ap-
12 proval of waiver applications under section 1115,
13 and shall be consistent with the requirements of sec-
14 tion 1876(c)(4)(A) and part C of title XVIII.

15 “(b) REFERRAL TO SPECIALTY CARE FOR ENROLL-
16 EES REQUIRING TREATMENT BY SPECIALISTS.—

17 “(1) IN GENERAL.—In the case of an enrollee
18 under a managed care entity and who has a condi-
19 tion or disease of sufficient seriousness and complex-
20 ity to require treatment by a specialist, the entity
21 shall make or provide for a referral to a specialist
22 who is available and accessible to provide the treat-
23 ment for such condition or disease.

24 “(2) SPECIALIST DEFINED.—For purposes of
25 this subsection, the term ‘specialist’ means, with re-

1 spect to a condition, a health care practitioner, facil-
2 ity, or center (such as a center of excellence) that
3 has adequate expertise through appropriate training
4 and experience (including, in the case of a child, an
5 appropriate pediatric specialist) to provide high
6 quality care in treating the condition.

7 “(3) CARE UNDER REFERRAL.—Care provided
8 pursuant to such referral under paragraph (1) shall
9 be—

10 “(A) pursuant to a treatment plan (if any)
11 developed by the specialist and approved by the
12 entity, in consultation with the designated pri-
13 mary care provider or specialist and the enrollee
14 (or the enrollee’s designee), and

15 “(B) in accordance with applicable quality
16 assurance and utilization review standards of
17 the entity.

18 Nothing in this subsection shall be construed as pre-
19 venting such a treatment plan for an enrollee from
20 requiring a specialist to provide the primary care
21 provider with regular updates on the specialty care
22 provided, as well as all necessary medical informa-
23 tion.

1 “(4) REFERRALS TO PARTICIPATING PROVIDERS.—An entity is not required under paragraph (1)
2 to provide for a referral to a specialist that—
3

4 “(A) is not a participating provider, unless
5 the entity does not have an appropriate specialist
6 that is available and accessible to treat the
7 enrollee’s condition, and

8 “(B) is a participating provider with respect to such treatment.
9

10 “(5) TREATMENT OF NONPARTICIPATING PROVIDERS.—If an entity refers an enrollee to a non-
11 participating specialist, services provided pursuant
12 to the approved treatment plan shall be provided at
13 no additional cost to the enrollee beyond what the
14 enrollee would otherwise pay for services received by
15 such a specialist that is a participating provider.
16

17 “(c) TIMELY DELIVERY OF SERVICES.—Each managed care entity shall respond to requests from enrollees
18 aged care entity shall respond to requests from enrollees
19 for the delivery of medical assistance in a manner which—

20 “(1) makes such assistance—

21 “(A) available and accessible to each such
22 individual, within the area served by the entity,
23 with reasonable promptness and in a manner
24 which assures continuity; and

1 “(B) when medically necessary, available
2 and accessible 24 hours a day and 7 days a
3 week, and

4 “(2) with respect to assistance provided to such
5 an individual other than through the entity, or with-
6 out prior authorization, in the case of a primary
7 care case manager, provides for reimbursement to
8 the individual (if applicable under the contract be-
9 tween the State and the entity) if—

10 “(A) the services were medically necessary
11 and immediately required because of an unfore-
12 seen illness, injury, or condition and meet the
13 requirements for access to emergency care
14 under section 1943; and

15 “(B) it was not reasonable given the cir-
16 cumstances to obtain the services through the
17 entity, or, in the case of a primary care case
18 manager, with prior authorization.

19 “(d) INTERNAL GRIEVANCE PROCEDURE.—Each
20 medicaid managed care organization shall establish an in-
21 ternal grievance procedure under which an enrollee who
22 is eligible for medical assistance under the State plan
23 under this title, or a provider on behalf of such an enrollee,
24 may challenge the denial of coverage of or payment for
25 such assistance.

1 “(e) INFORMATION ON BENEFIT CARVE OUTS.—
2 Each managed care entity shall inform each enrollee, in
3 a written and prominent manner, of any benefits to which
4 the enrollee may be entitled to medical assistance under
5 this title but which are not made available to the enrollee
6 through the entity. Such information shall include infor-
7 mation on where and how such enrollees may access bene-
8 fits not made available to the enrollee through the entity.

9 “(f) DEMONSTRATION OF ADEQUATE CAPACITY AND
10 SERVICES.—Each medicaid managed care organization
11 shall provide the State and the Secretary with adequate
12 assurances (as determined by the Secretary) that the orga-
13 nization, with respect to a service area—

14 “(1) has the capacity to serve the expected en-
15 rollment in such service area,

16 “(2) offers an appropriate range of services for
17 the population expected to be enrolled in such serv-
18 ice area, including transportation services and trans-
19 lation services consisting of the principal languages
20 spoken in the service area,

21 “(3) maintains a sufficient number, mix, and
22 geographic distribution of providers of services in-
23 cluded in the contract with the State to ensure that
24 services are available to individuals receiving medical
25 assistance and enrolled in the organization to the

1 same extent that such services are available to indi-
2 viduals enrolled in the organization who are not re-
3 cipients of medical assistance under the State plan
4 under this title,

5 “(4) maintains extended hours of operation
6 with respect to primary care services that are be-
7 yond those maintained during a normal business
8 day,

9 “(5) provides preventive and primary care serv-
10 ices in locations that are readily accessible to mem-
11 bers of the community,

12 “(6) provides information concerning edu-
13 cational, social, health, and nutritional services of-
14 fered by other programs for which enrollees may be
15 eligible, and

16 “(7) complies with such other requirements re-
17 lating to access to care as the Secretary or the State
18 may impose.

19 “(g) COMPLIANCE WITH CERTAIN MATERNITY AND
20 MENTAL HEALTH REQUIREMENTS.—Each medicaid man-
21 aged care organization shall comply with the requirements
22 of subpart 2 of part A of title XXVII of the Public Health
23 Service Act insofar as such requirements apply with re-
24 spect to a health insurance issuer that offers group health
25 insurance coverage.

1 “(h) TREATMENT OF CHILDREN WITH SPECIAL
2 HEALTH CARE NEEDS.—

3 “(1) IN GENERAL.—In the case of an enrollee
4 of a managed care entity who is a child described in
5 section 1941(e)(1)—

6 “(A) if any medical assistance specified in
7 the contract with the State is identified in a
8 treatment plan prepared for the enrollee, the
9 managed care entity shall provide (or arrange
10 to be provided) such assistance in accordance
11 with the treatment plan either—

12 “(i) by referring the enrollee to a pe-
13 diatric health care provider who is trained
14 and experienced in the provision of such
15 assistance and who has a contract with the
16 managed care entity to provide such assist-
17 ance; or

18 “(ii) if appropriate services are not
19 available through the managed care entity,
20 permitting such enrollee to seek appro-
21 priate specialty services from pediatric
22 health care providers outside of or apart
23 from the managed care entity, and

24 “(B) the managed care entity shall require
25 each health care provider with whom the man-

1 aged care entity has entered into an agreement
2 to provide medical assistance to enrollees to fur-
3 nish the medical assistance specified in such en-
4 rollee's treatment plan to the extent the health
5 care provider is able to carry out such treat-
6 ment plan.

7 “(2) PRIOR AUTHORIZATION.—An enrollee re-
8 ferred for treatment under paragraph (1)(A)(i), or
9 permitted to seek treatment outside of or apart from
10 the managed care entity under paragraph (1)(A)(ii)
11 shall be deemed to have obtained any prior author-
12 ization required by the entity.

13 **“SEC. 1943. REQUIREMENTS FOR ACCESS TO EMERGENCY**
14 **CARE.**

15 “(a) IN GENERAL.—A managed care entity shall—

16 “(1) provide coverage for emergency services
17 (as defined in subsection (c)) without regard to prior
18 authorization or the emergency care provider's con-
19 tractual relationship with the organization; and

20 “(2) comply with such guidelines as the Sec-
21 retary shall prescribe relating to promoting efficient
22 and timely coordination of appropriate maintenance
23 and post-stabilization care of an enrollee after the
24 enrollee has been determined to be stable in accord-
25 ance with section 1867.

1 “(b) CONTENT OF GUIDELINES.—The guidelines pre-
2 scribed under subsection (a) shall provide that—

3 “(1) a provider of emergency services shall
4 make a documented good faith effort to contact the
5 managed care entity in a timely fashion from the
6 point at which the individual is stabilized to request
7 approval for medically necessary post-stabilization
8 care,

9 “(2) the entity shall respond in a timely fashion
10 to the initial contact with the entity with a decision
11 as to whether the services for which approval is re-
12 quested will be authorized, and

13 “(3) if a denial of a request is communicated,
14 the entity shall, upon request from the treating phy-
15 sician, arrange for a physician who is authorized by
16 the entity to review the denial to communicate di-
17 rectly with the treating physician in a timely fash-
18 ion.

19 “(c) DEFINITION OF EMERGENCY SERVICES.—In this
20 section—

21 “(1) IN GENERAL.—The term ‘emergency serv-
22 ices’ means, with respect to an individual enrolled
23 with a managed care entity, covered inpatient and
24 outpatient services that—

1 “(A) are furnished by a provider that is
2 qualified to furnish such services under this
3 title, and

4 “(B) are needed to evaluate or stabilize an
5 emergency medical condition (as defined in sub-
6 paragraph (B)).

7 “(2) EMERGENCY MEDICAL CONDITION BASED
8 ON PRUDENT LAYPERSON.—The term ‘emergency
9 medical condition’ means a medical condition mani-
10 festing itself by acute symptoms of sufficient sever-
11 ity (including severe pain) such that a prudent
12 layperson, who possesses an average knowledge of
13 health and medicine, could reasonably expect the ab-
14 sence of immediate medical attention to result in—

15 “(A) placing the health of the individual
16 (or, with respect to a pregnant woman, the
17 health of the woman or her unborn child) in se-
18 rious jeopardy,

19 “(B) serious impairment to bodily func-
20 tions, or

21 “(C) serious dysfunction of any bodily
22 organ or part.

23 **“SEC. 1944. OTHER BENEFICIARY PROTECTIONS.**

24 “(a) PROTECTING ENROLLEES AGAINST THE INSOL-
25 VENCY OF MANAGED CARE ENTITIES AND AGAINST THE

1 FAILURE OF THE STATE TO PAY SUCH ENTITIES.—Each
 2 managed care entity shall provide that an individual eligi-
 3 ble for medical assistance under the State plan under this
 4 title who is enrolled with the entity may not be held lia-
 5 ble—

6 “(1) for the debts of the managed care entity,
 7 in the event of the entity’s insolvency,

8 “(2) for services provided to the individual—

9 “(A) in the event of the entity failing to
 10 receive payment from the State for such serv-
 11 ices; or

12 “(B) in the event of a health care provider
 13 with a contractual or other arrangement with
 14 the entity failing to receive payment from the
 15 State or the managed care entity for such serv-
 16 ices, or

17 “(3) for the debts of any health care provider
 18 with a contractual or other arrangement with the
 19 entity to provide services to the individual, in the
 20 event of the insolvency of the health care provider.

21 “(b) PROTECTION OF BENEFICIARIES AGAINST BAL-
 22 ANCE BILLING THROUGH SUBCONTRACTORS.—

23 “(1) IN GENERAL.—Any contract between a
 24 managed care entity that has an agreement with a
 25 State under this title and another entity under

1 which the other entity (or any other entity pursuant
2 to the contract) provides directly or indirectly for the
3 provision of services to beneficiaries under the agree-
4 ment with the State shall include such provisions as
5 the Secretary may require in order to assure that
6 the other entity complies with balance billing limita-
7 tions and other requirements of this title (such as
8 limitation on withholding of services) as they would
9 apply to the managed care entity if such entity pro-
10 vided such services directly and not through a con-
11 tract with another entity.

12 “(2) APPLICATION OF SANCTIONS FOR VIOLA-
13 TIONS.—The provisions of section 1128A(b)(2)(B)
14 and 1128B(d)(1) shall apply with respect to entities
15 contracting directly or indirectly with a managed
16 care entity (with a contract with a State under this
17 title) for the provision of services to beneficiaries
18 under such a contract in the same manner as such
19 provisions would apply to the managed care entity if
20 it provided such services directly and not through a
21 contract with another entity.

22 **“SEC. 1945. ASSURING QUALITY CARE.**

23 “(a) EXTERNAL INDEPENDENT REVIEW OF MAN-
24 AGED CARE ENTITY ACTIVITIES.—

1 “(1) REVIEW OF MEDICAID MANAGED CARE OR-
2 GANIZATION CONTRACT.—

3 “(A) IN GENERAL.—Except as provided in
4 paragraph (2), each medicaid managed care or-
5 ganization shall be subject to an annual exter-
6 nal independent review of the quality outcomes
7 and timeliness of, and access to, the items and
8 services specified in such organization’s con-
9 tract with the State under section
10 1941(a)(1)(B). Such review shall specifically
11 evaluate the extent to which the medicaid man-
12 aged care organization provides such services in
13 a timely manner.

14 “(B) CONTENTS OF REVIEW.—An external
15 independent review conducted under this sub-
16 section shall include—

17 “(i) a review of the entity’s medical
18 care, through sampling of medical records
19 or other appropriate methods, for indica-
20 tions of quality of care and inappropriate
21 utilization (including overutilization) and
22 treatment,

23 “(ii) a review of enrollee inpatient and
24 ambulatory data, through sampling of
25 medical records or other appropriate meth-

1 ods, to determine trends in quality and ap-
2 propriateness of care,

3 “(iii) notification of the entity and the
4 State when the review under this para-
5 graph indicates inappropriate care, treat-
6 ment, or utilization of services (including
7 overutilization), and

8 “(iv) other activities as prescribed by
9 the Secretary or the State.

10 “(C) USE OF PROTOCOLS.—An external
11 independent review conducted under this sub-
12 section on and after January 1, 1999, shall use
13 protocols that have been developed, tested, and
14 validated by the Secretary and that are at least
15 as rigorous as those used by the National Com-
16 mittee on Quality Assurance as of the date of
17 the enactment of this section.

18 “(D) AVAILABILITY OF RESULTS.—The re-
19 sults of each external independent review con-
20 ducted under this paragraph shall be available
21 to participating health care providers, enrollees,
22 and potential enrollees of the medicaid managed
23 care organization, except that the results may
24 not be made available in a manner that dis-
25 closes the identity of any individual patient.

1 “(2) DEEMED COMPLIANCE.—

2 “(A) MEDICARE ORGANIZATIONS.—The re-
3 quirements of paragraph (1) shall not apply
4 with respect to a medicaid managed care orga-
5 nization if the organization is an eligible organi-
6 zation with a contract in effect under section
7 1876 or under part C of title XVIII.

8 “(B) PRIVATE ACCREDITATION.—

9 “(i) IN GENERAL.—The requirements
10 of paragraph (1) shall not apply with re-
11 spect to a medicaid managed care organi-
12 zation if—

13 “(I) the organization is accred-
14 ited by an organization meeting the
15 requirements described in subpara-
16 graph (C)), and

17 “(II) the standards and process
18 under which the organization is ac-
19 credited meet such requirements as
20 are established under clause (ii), with-
21 out regard to whether or not the time
22 requirement of such clause is satis-
23 fied.

24 “(ii) STANDARDS AND PROCESS.—Not
25 later than 180 days after the date of the

1 enactment of this section, the Secretary
2 shall specify requirements for the stand-
3 ards and process under which a medicaid
4 managed care organization is accredited by
5 an organization meeting the requirements
6 of subparagraph (B).

7 “(C) ACCREDITING ORGANIZATION.—An
8 accrediting organization meets the requirements
9 of this subparagraph if the organization—

10 “(i) is a private, nonprofit organiza-
11 tion,

12 “(ii) exists for the primary purpose of
13 accrediting managed care organizations or
14 health care providers, and

15 “(iii) is independent of health care
16 providers or associations of health care
17 providers.

18 “(3) REVIEW OF PRIMARY CARE CASE MANAGER
19 CONTRACT.—Each primary care case manager shall
20 be subject to an annual external independent review
21 of the quality and timeliness of, and access to, the
22 items and services specified in the contract entered
23 into between the State and the primary care case
24 manager under section 1941(a)(1)(B).

1 “(4) USE OF VALIDATION SURVEYS.—The Sec-
2 retary shall conduct surveys each year to validate ex-
3 ternal reviews of the number of managed care enti-
4 ties in the year. In conducting such surveys the Sec-
5 retary shall use the same protocols as were used in
6 preparing the external reviews. If an external review
7 finds that an individual managed care entity meets
8 applicable requirements, but the Secretary deter-
9 mines that the entity does not meet such require-
10 ments, the Secretary’s determination as to the enti-
11 ty’s noncompliance with such requirements is bind-
12 ing and supersedes that of the previous survey.

13 “(b) FEDERAL MONITORING RESPONSIBILITIES.—
14 The Secretary shall review the external independent re-
15 views conducted pursuant to subsection (a) and shall mon-
16 itor the effectiveness of the State’s monitoring of managed
17 care entities and any followup activities required under
18 this part. If the Secretary determines that a State’s mon-
19 itoring and followup activities are not adequate to ensure
20 that the requirements of such section are met, the Sec-
21 retary shall undertake appropriate followup activities to
22 ensure that the State improves its monitoring and follow-
23 up activities.

24 “(c) PROVIDING INFORMATION ON SERVICES.—

1 “(1) REQUIREMENTS FOR MEDICAID MANAGED
2 CARE ORGANIZATIONS.—Each medicaid managed
3 care organization shall provide to the State complete
4 and timely information concerning the following:

5 “(A) The services that the organization
6 provides to (or arranges to be provided to) indi-
7 viduals eligible for medical assistance under the
8 State plan under this title.

9 “(B) The identity, locations, qualifications,
10 and availability of participating health care pro-
11 viders.

12 “(C) The rights and responsibilities of en-
13 rollees.

14 “(D) The services provided by the organi-
15 zation which are subject to prior authorization
16 by the organization as a condition of coverage
17 (in accordance with subsection (d)).

18 “(E) The procedures available to an en-
19 rollee and a health care provider to appeal the
20 failure of the organization to cover a service.

21 “(F) The performance of the organization
22 in serving individuals eligible for medical assist-
23 ance under the State plan under this title.

24 Such information shall be provided in a form con-
25 sistent with the reporting of similar information by

1 eligible organizations under section 1876 or under
2 part C of title XVIII.

3 “(2) REQUIREMENTS FOR PRIMARY CARE CASE
4 MANAGERS.—Each primary care case manager
5 shall—

6 “(A) provide to the State (at least at such
7 frequency as the Secretary may require), com-
8 plete and timely information concerning the
9 services that the primary care case manager
10 provides to (or arranges to be provided to) indi-
11 viduals eligible for medical assistance under the
12 State plan under this title,

13 “(B) make available to enrollees and po-
14 tential enrollees information concerning services
15 available to the enrollee for which prior author-
16 ization by the primary care case manager is re-
17 quired,

18 “(C) provide enrollees and potential enroll-
19 ees information regarding all items and services
20 that are available to enrollees under the con-
21 tract between the State and the primary care
22 case manager that are covered either directly or
23 through a method of referral and prior author-
24 ization, and

1 “(D) provide assurances that such entities
2 and their professional personnel are licensed as
3 required by State law and qualified to provide
4 case management services, through methods
5 such as ongoing monitoring of compliance with
6 applicable requirements and providing informa-
7 tion and technical assistance.

8 “(3) REQUIREMENTS FOR BOTH MEDICAID
9 MANAGED CARE ORGANIZATIONS AND PRIMARY CARE
10 CASE MANAGERS.—Each managed care entity shall
11 provide the State with aggregate encounter data for
12 all items and services, including early and periodic
13 screening, diagnostic, and treatment services under
14 section 1905(r) furnished to individuals under 21
15 years of age. Any such data provided may be audited
16 by the State.

17 “(d) CONDITIONS FOR PRIOR AUTHORIZATION.—
18 Subject to section 1943, a managed care entity may re-
19 quire the approval of medical assistance for nonemergency
20 services before the assistance is furnished to an enrollee
21 only if the system providing for such approval provides
22 that such decisions are made in a timely manner, depend-
23 ing upon the urgency of the situation.

24 “(e) PATIENT ENCOUNTER DATA.—Each medicaid
25 managed care organization shall maintain sufficient pa-

1 tient encounter data to identify the health care provider
2 who delivers services to patients and to otherwise enable
3 the State plan to meet the requirements of section
4 1902(a)(27) and shall submit such data to the State or
5 the Secretary upon request. The medicaid managed care
6 organization shall incorporate such information in the
7 maintenance of patient encounter data with respect to
8 such health care provider.

9 “(f) INCENTIVES FOR HIGH QUALITY MANAGED
10 CARE ENTITIES.—The Secretary and the State may es-
11 tablish a program to reward, through public recognition,
12 incentive payments, or enrollment of additional individuals
13 (or combinations of such rewards), managed care entities
14 that provide the highest quality care to individuals eligible
15 for medical assistance under the State plan under this title
16 who are enrolled with such entities. For purposes of sec-
17 tion 1903(a)(7), proper expenses incurred by a State in
18 carrying out such a program shall be considered to be ex-
19 penses necessary for the proper and efficient administra-
20 tion of the State plan under this title.

21 “(g) QUALITY ASSURANCE STANDARDS.—Any con-
22 tract between a State and a managed care entity shall pro-
23 vide—

24 “(1) that the State agency will develop and im-
25 plement a State specific quality assessment and im-

1 provement strategy, consistent with standards that
2 the Secretary, in consultation with the States, shall
3 establish and monitor (but that shall not preempt
4 any State standards that are more stringent than
5 the standards established under this paragraph),
6 and that includes—

7 “(A) standards for access to care so that
8 covered services are available within reasonable
9 timeframes and in a manner that ensures con-
10 tinuity of care and adequate primary care and
11 specialized services capacity; and

12 “(B) procedures for monitoring and evalu-
13 ating the quality and appropriateness of care
14 and services to beneficiaries that reflect the full
15 spectrum of populations enrolled in the plan
16 and that include—

17 “(i) requirements for provision of
18 quality assurance data to the State using
19 the data and information set that the Sec-
20 retary, in consultation with the States,
21 shall specify with respect to entities con-
22 tracting under section 1876 or under part
23 C of title XVIII or alternative data re-
24 quirements approved by the Secretary;

1 “(ii) if necessary, an annual examina-
2 tion of the scope and content of the quality
3 improvement strategy; and

4 “(iii) other aspects of care and service
5 directly related to the improvement of
6 quality of care (including grievance proce-
7 dures and marketing and information
8 standards),

9 “(2) that entities entering into such agreements
10 under which payment is made on a prepaid capitated
11 or other risk basis shall be required—

12 “(A) to submit to the State agency infor-
13 mation that demonstrates significant improve-
14 ment in the care delivered to members;

15 “(B) to maintain an internal quality assur-
16 ance program consistent with paragraph (1),
17 and meeting standards that the Secretary, in
18 consultation with the States, shall establish in
19 regulations; and

20 “(C) to provide effective procedures for
21 hearing and resolving grievances between the
22 entity and members enrolled with the entity
23 under this section, and

24 “(3) that provision is made, consistent with
25 State law or with regulations under State law, with

1 respect to the solvency of those entities, financial re-
2 porting by those entities, and avoidance of waste,
3 fraud, and abuse.

4 **“SEC. 1946. PROTECTIONS FOR PROVIDERS.**

5 “(a) TIMELINESS OF PAYMENT.—A medicaid man-
6 aged care organization shall make payment to health care
7 providers for items and services which are subject to the
8 contract under section 1941(a)(1)(B) and which are fur-
9 nished to individuals eligible for medical assistance under
10 the State plan under this title who are enrolled with the
11 entity on a timely basis consistent with section 1943 and
12 under the claims payment procedures described in section
13 1902(a)(37)(A), unless the health care provider and the
14 managed care entity agree to an alternate payment sched-
15 ule.

16 “(b) PHYSICIAN INCENTIVE PLANS.—Each medicaid
17 managed care organization shall require that any physi-
18 cian incentive plan covering physicians who are participat-
19 ing in the medicaid managed care organization shall meet
20 the requirements of section 1876(i)(8) and comparable re-
21 quirements under part C of title XVIII.

22 “(c) WRITTEN PROVIDER PARTICIPATION AGREE-
23 MENTS FOR CERTAIN PROVIDERS.—

24 “(1) IN GENERAL.—Each medicaid managed
25 care organization that enters into a written provider

1 participation agreement with a provider described in
2 paragraph (2) shall—

3 “(A) include terms and conditions that are
4 no more restrictive than the terms and condi-
5 tions that the medicaid managed care organiza-
6 tion includes in its agreements with other par-
7 ticipating providers with respect to—

8 “(i) the scope of covered services for
9 which payment is made to the provider;

10 “(ii) the assignment of enrollees by
11 the organization to the provider;

12 “(iii) the limitation on financial risk
13 or availability of financial incentives to the
14 provider;

15 “(iv) accessibility of care;

16 “(v) professional credentialing and
17 recredentialing;

18 “(vi) licensure;

19 “(vii) quality and utilization manage-
20 ment;

21 “(viii) confidentiality of patient
22 records;

23 “(ix) grievance procedures; and

24 “(x) indemnification arrangements be-
25 tween the organizations and providers; and

1 “(B) provide for payment to the provider
2 on a basis that is comparable to the basis on
3 which other providers are paid.

4 “(2) PROVIDERS DESCRIBED.—The providers
5 described in this paragraph are the following:

6 “(A) Rural health clinics, as defined in
7 section 1905(l)(1).

8 “(B) Federally-qualified health centers, as
9 defined in section 1905(l)(2)(B).

10 “(C) Clinics which are eligible to receive
11 payment for services provided under title X of
12 the Public Health Service Act.

13 “(d) PAYMENTS TO RURAL HEALTH CLINICS AND
14 FEDERALLY-QUALIFIED HEALTH CENTERS.—Each med-
15 icaid managed care organization that has a contract under
16 this title with respect to the provision of services of a rural
17 health clinic or a Federally-qualified health center shall
18 provide, at the election of such clinic or center, that the
19 organization shall provide payments to such a clinic or
20 center for services described in 1905(a)(2)(C) at the rates
21 of payment specified in section 1902(a)(13)(E).

22 “(e) ANTIDISCRIMINATION.—A managed care entity
23 shall not discriminate with respect to participation, reim-
24 bursement, or indemnification as to any provider who is
25 acting within the scope of the provider’s license or certifi-

1 cation under applicable State law, solely on the basis of
 2 such license or certification. This subsection shall not be
 3 construed to prohibit a managed care entity from includ-
 4 ing providers only to the extent necessary to meet the
 5 needs of the entity's enrollees or from establishing any
 6 measure designed to maintain quality and control costs
 7 consistent with the responsibilities of the entity.

8 **“SEC. 1947. ASSURING ADEQUACY OF PAYMENTS TO MEDIC-**
 9 **AID MANAGED CARE ORGANIZATIONS AND**
 10 **ENTITIES.**

11 A State shall find, determine, and make assurances
 12 satisfactory to the Secretary that the rates it pays a man-
 13 aged care entity for individuals eligible under the State
 14 plan have been determined by an independent actuary that
 15 meets the standards for qualification and practice estab-
 16 lished by the Actuarial Standards Board, to be sufficient
 17 and not excessive with respect to the estimated costs of
 18 the services provided.

19 **“SEC. 1948. FRAUD AND ABUSE.**

20 **“(a) PROVISIONS APPLICABLE TO MANAGED CARE**
 21 **ENTITIES.—**

22 **“(1) PROHIBITING AFFILIATIONS WITH INDI-**
 23 **VIDUALS DEBARRED BY FEDERAL AGENCIES.—**

24 **“(A) IN GENERAL.—**A managed care en-
 25 **tity may not knowingly—**

1 “(i) have a person described in sub-
2 paragraph (C) as a director, officer, part-
3 ner, or person with beneficial ownership of
4 more than 5 percent of the entity’s equity,
5 or

6 “(ii) have an employment, consulting,
7 or other agreement with a person described
8 in such subparagraph for the provision of
9 items and services that are significant and
10 material to the entity’s obligations under
11 its contract with the State.

12 “(B) EFFECT OF NONCOMPLIANCE.—If a
13 State finds that a managed care entity is not
14 in compliance with clause (i) or (ii) of subpara-
15 graph (A), the State—

16 “(i) shall notify the Secretary of such
17 noncompliance,

18 “(ii) may continue an existing agree-
19 ment with the entity unless the Secretary
20 (in consultation with the Inspector General
21 of the Department of Health and Human
22 Services) directs otherwise, and

23 “(iii) may not renew or otherwise ex-
24 tend the duration of an existing agreement
25 with the entity unless the Secretary (in

1 consultation with the Inspector General of
2 the Department of Health and Human
3 Services) provides to the State and to the
4 Congress a written statement describing
5 compelling reasons that exist for renewing
6 or extending the agreement.

7 “(C) PERSONS DESCRIBED.—A person is
8 described in this subparagraph if such person—

9 “(i) is debarred, suspended, or other-
10 wise excluded from participating in pro-
11 curement activities under any Federal pro-
12 curement or nonprocurement program or
13 activity, as provided for in the Federal Ac-
14 quisition Streamlining Act of 1994 (Public
15 Law 103–355; 108 Stat. 3243), or

16 “(ii) is an affiliate (as defined in such
17 Act) of a person described in clause (i).

18 “(2) RESTRICTIONS ON MARKETING.—

19 “(A) DISTRIBUTION OF MATERIALS.—

20 “(i) IN GENERAL.—A managed care
21 entity may not distribute directly or
22 through any agent or independent contrac-
23 tor marketing materials within any
24 State—

1 “(I) without the prior approval of
2 the State, and

3 “(II) that contain false or mate-
4 rially misleading information.

5 “(ii) CONSULTATION IN REVIEW OF
6 MARKET MATERIALS.—In the process of
7 reviewing and approving such materials,
8 the State shall provide for consultation
9 with a medical care advisory committee.

10 “(iii) PROHIBITION.—The State may
11 not enter into or renew a contract with a
12 managed care entity for the provision of
13 services to individuals enrolled under the
14 State plan under this title if the State de-
15 termines that the entity distributed directly
16 or through any agent or independent con-
17 tractor marketing materials in violation of
18 clause (i).

19 “(B) SERVICE MARKET.—A managed care
20 entity shall distribute marketing materials to
21 the entire service area of such entity.

22 “(C) PROHIBITION OF TIE-INS.—A man-
23 aged care entity, or any agency of such entity,
24 may not seek to influence an individual’s enroll-

1 ment with the entity in conjunction with the
2 sale of any other insurance.

3 “(D) PROHIBITING MARKETING FRAUD.—
4 Each managed care entity shall comply with
5 such procedures and conditions as the Secretary
6 prescribes in order to ensure that, before an in-
7 dividual is enrolled with the entity, the individ-
8 ual is provided accurate oral and written and
9 sufficient information to make an informed de-
10 cision whether or not to enroll.

11 “(E) PROHIBITION OF COLD CALL MAR-
12 KETING.—Each managed care entity shall not,
13 directly or indirectly, conduct door-to-door, tele-
14 phonic, or other ‘cold call’ marketing of enroll-
15 ment under this title.

16 “(b) PROVISIONS APPLICABLE ONLY TO MEDICAID
17 MANAGED CARE ORGANIZATIONS.—

18 “(1) STATE CONFLICT-OF-INTEREST SAFE-
19 GUARDS IN MEDICAID RISK CONTRACTING.—A med-
20 icaid managed care organization may not enter into
21 a contract with any State under section
22 1941(a)(1)(B) unless the State has in effect conflict-
23 of-interest safeguards with respect to officers and
24 employees of the State with responsibilities relating
25 to contracts with such organizations or to the de-

1 fault enrollment process described in section
2 1941(a)(1)(F) that are at least as effective as the
3 Federal safeguards provided under section 27 of the
4 Office of Federal Procurement Policy Act (41 U.S.C.
5 423), against conflicts of interest that apply with re-
6 spect to Federal procurement officials with com-
7 parable responsibilities with respect to such con-
8 tracts.

9 “(2) REQUIRING DISCLOSURE OF FINANCIAL
10 INFORMATION.—In addition to any requirements ap-
11 plicable under paragraph (27) or (35) of section
12 1902(a), a medicaid managed care organization
13 shall—

14 “(A) report to the State such financial in-
15 formation as the State may require to dem-
16 onstrate that—

17 “(i) the organization has the ability to
18 bear the risk of potential financial losses
19 and otherwise has a fiscally sound oper-
20 ation;

21 “(ii) the organization uses the funds
22 paid to it by the State for activities con-
23 sistent with the requirements of this title
24 and the contract between the State and or-
25 ganization; and

1 “(iii) the organization does not place
2 an individual physician, physician group,
3 or other health care provider at substantial
4 risk for services not provided by such phy-
5 sician, group, or health care provider, by
6 providing adequate protection to limit the
7 liability of such physician, group, or health
8 care provider, through measures such as
9 stop loss insurance or appropriate risk cor-
10 ridors,

11 “(B) agree that the Secretary and the
12 State (or any person or organization designated
13 by either) shall have the right to audit and in-
14 spect any books and records of the organization
15 (and of any subcontractor) relating to the infor-
16 mation reported pursuant to subparagraph (A)
17 and any information required to be furnished
18 under section paragraphs (27) or (35) of sec-
19 tion 1902(a),

20 “(C) make available to the Secretary and
21 the State a description of each transaction de-
22 scribed in subparagraphs (A) through (C) of
23 section 1318(a)(3) of the Public Health Service
24 Act between the organization and a party in in-

1 terest (as defined in section 1318(b) of such
2 Act),

3 “(D) agree to make available to its enroll-
4 ees upon reasonable request—

5 “(i) the information reported pursu-
6 ant to subparagraph (A); and

7 “(ii) the information required to be
8 disclosed under sections 1124 and 1126,

9 “(E) comply with subsections (a) and (c)
10 of section 1318 of the Public Health Service
11 Act (relating to disclosure of certain financial
12 information) and with the requirement of sec-
13 tion 1301(c)(8) of such Act (relating to liability
14 arrangements to protect members), and

15 “(F) notify the State of loans and other
16 special financial arrangements which are made
17 between the organization and subcontractors,
18 affiliates, and related parties.

19 Each State is required to conduct audits on the
20 books and records of at least 1 percent of the num-
21 ber of medicaid managed care organizations operat-
22 ing in the State.

23 “(3) ADEQUATE PROVISION AGAINST RISK OF
24 INSOLVENCY.—

1 “(A) ESTABLISHMENT OF STANDARDS.—
2 The Secretary shall establish standards, includ-
3 ing appropriate equity standards, under which
4 each medicaid managed care organization shall
5 make adequate provision against the risk of in-
6 solvency.

7 “(B) CONSIDERATION OF OTHER STAND-
8 ARDS.—In establishing the standards described
9 in subparagraph (A), the Secretary shall con-
10 sider solvency standards applicable to eligible
11 organizations with a risk-sharing contract
12 under section 1876 or under part C of title
13 XVIII.

14 “(C) MODEL CONTRACT ON SOLVENCY.—
15 At the earliest practicable time after the date of
16 the enactment of this section, the Secretary
17 shall issue guidelines concerning solvency stand-
18 ards for risk contracting entities and sub-
19 contractors of such risk contracting entities.
20 Such guidelines shall take into account charac-
21 teristics that may differ among risk contracting
22 entities, including whether such an entity is at
23 risk for inpatient hospital services.

24 “(4) REQUIRING REPORT ON NET EARNINGS
25 AND ADDITIONAL BENEFITS.—Each medicaid man-

1 aged care organization shall submit a report to the
2 State not later than 12 months after the close of a
3 contract year containing the most recent audited fi-
4 nancial statement of the organization's net earnings
5 and consistent with generally accepted accounting
6 principles.

7 “(c) DISCLOSURE OF OWNERSHIP AND RELATED IN-
8 FORMATION.—Each medicaid managed care organization
9 shall provide for disclosure of information in accordance
10 with section 1124.

11 “(d) DISCLOSURE OF TRANSACTION INFORMA-
12 TION.—

13 “(1) IN GENERAL.—Each medicaid managed
14 care organization which is not a qualified health
15 maintenance organization (as defined in section
16 1310(d) of the Public Health Service Act) shall re-
17 port to the State and, upon request, to the Sec-
18 retary, the Inspector General of the Department of
19 Health and Human Services, and the Comptroller
20 General, a description of transactions between the
21 organization and a party in interest (as defined in
22 section 1318(b) of such Act), including the following
23 transactions:

1 “(A) Any sale or exchange, or leasing of
2 any property between the organization and such
3 a party.

4 “(B) Any furnishing for consideration of
5 goods, services (including management serv-
6 ices), or facilities between the organization and
7 such a party, but not including salaries paid to
8 employees for services provided in the normal
9 course of their employment.

10 “(C) Any lending of money or other exten-
11 sion of credit between the organization and
12 such a party.

13 The State or Secretary may require that information
14 reported respecting an organization which controls,
15 or is controlled by, or is under common control with,
16 another entity be in the form of a consolidated fi-
17 nancial statement for the organization and such en-
18 tity.

19 “(2) DISCLOSURE TO ENROLLEES.—Each such
20 organization shall make the information reported
21 pursuant to paragraph (1) available to its enrollees
22 upon reasonable request.

23 “(e) CONTRACT OVERSIGHT.—

24 “(1) IN GENERAL.—The Secretary must pro-
25 vide prior review and approval for contracts under

1 this part with a medicaid managed care organization
2 providing for expenditures under this title in excess
3 of \$1,000,000.

4 “(2) INSPECTOR GENERAL REVIEW.—As part of
5 such approval process, the Inspector General in the
6 Department of Health and Human Services, effec-
7 tive October 1, 1997, shall make a determination (to
8 the extent practicable) as to whether persons with
9 an ownership interest (as defined in section
10 1124(a)(3)) or an officer, director, agent, or manag-
11 ing employee (as defined in section 1126(b)) of the
12 organization are or have been described in sub-
13 section (a)(1)(C) based on a ground relating to
14 fraud, theft, embezzlement, breach of fiduciary re-
15 sponsibility, or other financial misconduct or ob-
16 struction of an investigation.

17 “(f) LIMITATION ON AVAILABILITY OF FFP FOR USE
18 OF ENROLLMENT BROKERS.—Amounts expended by a
19 State for the use of an enrollment broker in marketing
20 managed care entities to eligible individuals under this
21 title shall be considered, for purposes of section
22 1903(a)(7), to be necessary for the proper and efficient
23 administration of the State plan but only if the following
24 conditions are met with respect to the broker:

1 “(1) The broker is independent of any such en-
2 tity and of any health care providers (whether or not
3 any such provider participates in the State plan
4 under this title) that provide coverage of services in
5 the same State in which the broker is conducting en-
6 rollment activities.

7 “(2) No person who is an owner, employee, con-
8 sultant, or has a contract with the broker either has
9 any direct or indirect financial interest with such an
10 entity or health care provider or has been excluded
11 from participation in the program under this title or
12 title XVIII or debarred by any Federal agency, or
13 subject to a civil money penalty under this Act.

14 “(g) USE OF UNIQUE PHYSICIAN IDENTIFIER FOR
15 PARTICIPATING PHYSICIANS.—Each medicaid managed
16 care organization shall require each physician providing
17 services to enrollees eligible for medical assistance under
18 the State plan under this title to have a unique identifier
19 in accordance with the system established under section
20 1173(b).

21 “(h) SECRETARIAL RECOVERY OF FFP FOR CAPITA-
22 TION PAYMENTS FOR INSOLVENT MANAGED CARE ENTI-
23 TIES.—The Secretary shall provide for the recovery and
24 offset against any amount owed a State under section
25 1903(a)(1) in an amount equal to the amounts paid to

1 the State for medical assistance provided under such sec-
 2 tion, for expenditures for capitation payments to a man-
 3 aged care entity that becomes insolvent or for services con-
 4 tracted for with, but not provided by, such organization.

5 **“SEC. 1949. SANCTIONS FOR NONCOMPLIANCE BY MAN-**
 6 **AGED CARE ENTITIES.**

7 “(a) USE OF INTERMEDIATE SANCTIONS BY THE
 8 STATE TO ENFORCE REQUIREMENTS.—

9 “(1) IN GENERAL.—Each State shall establish
 10 intermediate sanctions, which may include any of the
 11 types described in subsection (b) other than the ter-
 12 mination of a contract with a managed care entity,
 13 which the State may impose against a managed care
 14 entity with a contract under section 1941(a)(1)(B)
 15 if the entity—

16 “(A) fails substantially to provide medi-
 17 cally necessary items and services that are re-
 18 quired (under law or under such entity’s con-
 19 tract with the State) to be provided to an en-
 20 rollee covered under the contract,

21 “(B) imposes premiums or charges on en-
 22 rollees in excess of the premiums or charges
 23 permitted under this title,

24 “(C) acts to discriminate among enrollees
 25 on the basis of their health status or require-

1 ments for health care services, including expul-
2 sion or refusal to reenroll an individual, except
3 as permitted by this part, or engaging in any
4 practice that would reasonably be expected to
5 have the effect of denying or discouraging en-
6 rollment with the entity by eligible individuals
7 whose medical condition or history indicates a
8 need for substantial future medical services,

9 “(D) misrepresents or falsifies information
10 that is furnished—

11 “(i) to the Secretary or the State
12 under this part; or

13 “(ii) to an enrollee, potential enrollee,
14 or a health care provider under such sec-
15 tions, or

16 “(E) fails to comply with the requirements
17 of section 1876(i)(8) (or comparable require-
18 ments under part C of title XVIII) or this part.

19 “(2) RULE OF CONSTRUCTION.—For purposes
20 of paragraph (1)(A), the term ‘medically necessary’
21 shall not be construed as requiring an abortion be
22 performed for any individual, except if necessary to
23 save the life of the mother or if a pregnancy is the
24 result of an act of rape or incest.

1 “(b) INTERMEDIATE SANCTIONS.—The sanctions de-
2 scribed in this subsection are as follows:

3 “(1) Civil money penalties as follows:

4 “(A) Except as provided in subparagraph
5 (B), (C), or (D), not more than \$25,000 for
6 each determination under subsection (a).

7 “(B) With respect to a determination
8 under paragraph (3) or (4)(A) of subsection
9 (a), not more than \$100,000 for each such de-
10 termination.

11 “(C) With respect to a determination
12 under subsection (a)(2), double the excess
13 amount charged in violation of such subsection
14 (and the excess amount charged shall be de-
15 ducted from the penalty and returned to the in-
16 dividual concerned).

17 “(D) Subject to subparagraph (B), with
18 respect to a determination under subsection
19 (a)(3), \$15,000 for each individual not enrolled
20 as a result of a practice described in such sub-
21 section.

22 “(2) The appointment of temporary manage-
23 ment—

24 “(A) to oversee the operation of the medic-
25 aid-only managed care entity upon a finding by

1 the State that there is continued egregious be-
2 havior by the plan, or

3 “(B) to assure the health of the entity’s
4 enrollees, if there is a need for temporary man-
5 agement while—

6 “(i) there is an orderly termination or
7 reorganization of the managed care entity;

8 or

9 “(ii) improvements are made to rem-
10 edy the violations found under subsection

11 (a),

12 except that temporary management under this para-
13 graph may not be terminated until the State has de-
14 termined that the managed care entity has the capa-
15 bility to ensure that the violations shall not recur.

16 “(3) Permitting individuals enrolled with the
17 managed care entity to terminate enrollment without
18 cause, and notifying such individuals of such right to
19 terminate enrollment.

20 “(4) Suspension or default of all enrollment of
21 individuals under this title after the date the Sec-
22 retary or the State notifies the entity of a deter-
23 mination of a violation of any requirement of this
24 part.

1 “(5) Suspension of payment to the entity under
2 this title for individuals enrolled after the date the
3 Secretary or State notifies the entity of such a de-
4 termination and until the Secretary or State is satis-
5 fied that the basis for such determination has been
6 corrected and is not likely to recur.

7 “(c) TREATMENT OF CHRONIC SUBSTANDARD ENTI-
8 TIES.—In the case of a managed care entity which has
9 repeatedly failed to meet the requirements of sections
10 1942 through 1946, the State shall (regardless of what
11 other sanctions are provided) impose the sanctions de-
12 scribed in paragraphs (2) and (3) of subsection (b).

13 “(d) AUTHORITY TO TERMINATE CONTRACT.—In
14 the case of a managed care entity which has failed to meet
15 the requirements of this part, the State shall have the au-
16 thority to terminate its contract with such entity under
17 section 1941(a)(1)(B) and to enroll such entity’s enrollees
18 with other managed care entities (or to permit such enroll-
19 ees to receive medical assistance under the State plan
20 under this title other than through a managed care en-
21 tity).

22 “(e) AVAILABILITY OF SANCTIONS TO THE SEC-
23 RETARY.—

24 “(1) INTERMEDIATE SANCTIONS.—In addition
25 to the sanctions described in paragraph (2) and any

1 other sanctions available under law, the Secretary
2 may provide for any of the sanctions described in
3 subsection (b) if the Secretary determines that a
4 managed care entity with a contract under section
5 1941(a)(1)(B) fails to meet any of the requirements
6 of this part.

7 “(2) DENIAL OF PAYMENTS TO THE STATE.—
8 The Secretary may deny payments to the State for
9 medical assistance furnished under the contract
10 under section 1941(a)(1)(B) for individuals enrolled
11 after the date the Secretary notifies a managed care
12 entity of a determination under subsection (a) and
13 until the Secretary is satisfied that the basis for
14 such determination has been corrected and is not
15 likely to recur.

16 “(f) DUE PROCESS FOR MANAGED CARE ENTI-
17 TIES.—

18 “(1) AVAILABILITY OF HEARING PRIOR TO TER-
19 MINATION OF CONTRACT.—A State may not termi-
20 nate a contract with a managed care entity under
21 section 1941(a)(1)(B) unless the entity is provided
22 with a hearing prior to the termination.

23 “(2) NOTICE TO ENROLLEES OF TERMINATION
24 HEARING.—A State shall notify all individuals en-
25 rolled with a managed care entity which is the sub-

1 ject of a hearing to terminate the entity’s contract
2 with the State of the hearing and that the enrollees
3 may immediately disenroll with the entity without
4 cause.

5 “(3) OTHER PROTECTIONS FOR MANAGED CARE
6 ENTITIES AGAINST SANCTIONS IMPOSED BY
7 STATE.—Before imposing any sanction against a
8 managed care entity other than termination of the
9 entity’s contract, the State shall provide the entity
10 with notice and such other due process protections
11 as the State may provide, except that a State may
12 not provide a managed care entity with a pre-termi-
13 nation hearing before imposing the sanction de-
14 scribed in subsection (b)(2).

15 “(4) IMPOSITION OF CIVIL MONETARY PEN-
16 ALTIES BY SECRETARY.—The provisions of section
17 1128A (other than subsections (a) and (b)) shall
18 apply with respect to a civil money penalty imposed
19 by the Secretary under subsection (b)(1) in the same
20 manner as such provisions apply to a penalty or pro-
21 ceeding under section 1128A.

22 **“SEC. 1950. DEFINITIONS; MISCELLANEOUS PROVISIONS.**

23 “(a) DEFINITIONS.—For purposes of this title:

24 “(1) MANAGED CARE ENTITY.—The term ‘man-
25 aged care entity’ means—

1 “(A) a medicaid managed care organiza-
2 tion; or

3 “(B) a primary care case manager.

4 “(2) MEDICAID MANAGED CARE ORGANIZA-
5 TION.—The term ‘medicaid managed care organiza-
6 tion’ means a health maintenance organization, an
7 eligible organization with a contract under section
8 1876 or under part C of title XVIII, a provider
9 sponsored network, or any other organization which
10 is organized under the laws of a State, has made
11 adequate provision (as determined under standards
12 established for purposes of eligible organizations
13 under section 1876 or under part C of title XVIII,
14 and through its capitalization or otherwise) against
15 the risk of insolvency, and provides or arranges for
16 the provision of one or more items and services to
17 individuals eligible for medical assistance under the
18 State plan under this title in accordance with a con-
19 tract with the State under section 1941(a)(1)(B).

20 “(3) PRIMARY CARE CASE MANAGER.—

21 “(A) IN GENERAL.—The term ‘primary
22 care case manager’ has the meaning given such
23 term in section 1905(t)(2).”.

24 (b) STUDIES AND REPORTS.—

25 (1) REPORT ON PUBLIC HEALTH SERVICES.—

1 (A) IN GENERAL.—Not later than January
2 1, 1998, the Secretary of Health and Human
3 Services (in this subsection referred to as the
4 “Secretary”) shall report to the Committee on
5 Finance of the Senate and the Committee on
6 Commerce of the House of Representatives on
7 the effect of managed care entities (as defined
8 in section 1950(a)(1) of the Social Security
9 Act) on the delivery of and payment for the
10 services traditionally provided through providers
11 described in section 1941(a)(2)(B)(i) of such
12 Act.

13 (B) CONTENTS OF REPORT.—The report
14 referred to in subparagraph (A) shall include—

15 (i) information on the extent to which
16 enrollees with eligible managed care enti-
17 ties seek services at local health depart-
18 ments, public hospitals, and other facilities
19 that provide care without regard to a pa-
20 tient’s ability to pay;

21 (ii) information on the extent to which
22 the facilities described in clause (i) provide
23 services to enrollees with eligible managed
24 care entities without receiving payment;

1 (iii) information on the effectiveness
2 of systems implemented by facilities de-
3 scribed in clause (i) for educating such en-
4 rollees on services that are available
5 through eligible managed care entities with
6 which such enrollees are enrolled;

7 (iv) to the extent possible, identifica-
8 tion of the types of services most fre-
9 quently sought by such enrollees at such
10 facilities; and

11 (v) recommendations about how to en-
12 sure the timely delivery of the services tra-
13 ditionally provided through providers de-
14 scribed in section 1941(a)(2)(B)(i) of the
15 Social Security Act to enrollees of man-
16 aged care entities and how to ensure that
17 local health departments, public hospitals,
18 and other facilities are adequately com-
19 pensated for the provision of such services
20 to such enrollees.

21 (2) REPORT ON PAYMENTS TO HOSPITALS.—

22 (A) IN GENERAL.—Not later than October
23 1 of each year, beginning with October 1, 1998,
24 the Secretary and the Comptroller General shall
25 analyze and submit a report to the Committee

1 on Finance of the Senate and the Committee on
2 Commerce of the House of Representatives on
3 rates paid for hospital services under managed
4 care entities under contracts under section
5 1941(a)(1)(B) of the Social Security Act.

6 (B) CONTENTS OF REPORT.—The informa-
7 tion in the report described in subparagraph
8 (A) shall—

9 (i) be organized by State, type of hos-
10 pital, type of service; and

11 (ii) include a comparison of rates paid
12 for hospital services under managed care
13 entities with rates paid for hospital serv-
14 ices furnished to individuals who are enti-
15 tled to benefits under a State plan under
16 title XIX of the Social Security Act and
17 are not enrolled with such entities.

18 (3) REPORTS BY STATES.—Each State shall
19 transmit to the Secretary, at such time and in such
20 manner as the Secretary determines appropriate, the
21 information on hospital rates submitted to such
22 State under section 1947(b)(2) of the Social Secu-
23 rity Act.

24 (4) INDEPENDENT STUDY AND REPORT ON
25 QUALITY ASSURANCE AND ACCREDITATION STAND-

1 ARDS.—The Institute of Medicine of the National
2 Academy of Sciences shall conduct a study and anal-
3 ysis of the quality assurance programs and accredi-
4 tation standards applicable to managed care entities
5 operating in the private sector or to such entities
6 that operate under contracts under the medicare
7 program under title XVIII of the Social Security Act
8 to determine if such programs and standards include
9 consideration of the accessibility and quality of the
10 health care items and services delivered under such
11 contracts to low-income individuals.

12 (c) CONFORMING AMENDMENTS.—

13 (1) REPEAL OF CURRENT REQUIREMENTS.—

14 (A) IN GENERAL.—Except as provided in
15 subparagraph (B), section 1903(m) (42 U.S.C.
16 1396b(m)) is repealed on the date of the enact-
17 ment of this Act.

18 (B) EXISTING CONTRACTS.—In the case of
19 any contract under section 1903(m) of such Act
20 which is in effect on the day before the date of
21 the enactment of this Act, the provisions of
22 such section shall apply to such contract until
23 the earlier of—

24 (i) the day after the date of the expi-
25 ration of the contract; or

1 (ii) the date which is 1 year after the
2 date of the enactment of this Act.

3 (2) FEDERAL FINANCIAL PARTICIPATION.—

4 (A) CLARIFICATION OF APPLICATION OF
5 FFP DENIAL RULES TO PAYMENTS MADE PUR-
6 SUANT TO MANAGED CARE ENTITIES.—Section
7 1903(i) (42 U.S.C. 1396b(i)) is amended by
8 adding at the end the following new sentence:
9 “Paragraphs (1)(A), (1)(B), (2), (5), and (12)
10 shall apply with respect to items or services fur-
11 nished and amounts expended by or through a
12 managed care entity (as defined in section
13 1950(a)(1)) in the same manner as such para-
14 graphs apply to items or services furnished and
15 amounts expended directly by the State.”.

16 (B) FFP FOR EXTERNAL QUALITY REVIEW
17 ORGANIZATIONS.—Section 1903(a)(3)(C) (42
18 U.S.C. 1396b(a)(3)(C)) is amended—

19 (i) by inserting “(i)” after “(C)”, and

20 (ii) by adding at the end the following
21 new clause:

22 “(ii) 75 percent of the sums expended with
23 respect to costs incurred during such quarter
24 (as found necessary by the Secretary for the
25 proper and efficient administration of the State

1 plan) as are attributable to the performance of
2 independent external reviews of managed care
3 entities (as defined in section 1950(a)(1)) by
4 external quality review organizations, but only
5 if such organizations conduct such reviews
6 under protocols approved by the Secretary and
7 only in the case of such organizations that meet
8 standards established by the Secretary relating
9 to the independence of such organizations from
10 agencies responsible for the administration of
11 this title or eligible managed care entities;
12 and”.

13 (3) EXCLUSION OF CERTAIN INDIVIDUALS AND
14 ENTITIES FROM PARTICIPATION IN PROGRAM.—Sec-
15 tion 1128(b)(6)(C) (42 U.S.C. 1320a–7(b)(6)(C)) is
16 amended—

17 (A) in clause (i), by striking “a health
18 maintenance organization (as defined in section
19 1903(m))” and inserting “a managed care en-
20 tity, as defined in section 1950(a)(1),”; and

21 (B) in clause (ii), by inserting “section
22 1115 or” after “approved under”.

23 (4) STATE PLAN REQUIREMENTS.—Section
24 1902 (42 U.S.C. 1396a) is amended—

1 (A) in subsection (a)(30)(C), by striking
2 “section 1903(m)” and inserting “section
3 1941(a)(1)(B)”; and

4 (B) in subsection (a)(57), by striking
5 “health maintenance organization (as defined in
6 section 1903(m)(1)(A))” and inserting “man-
7 aged care entity, as defined in section
8 1950(a)(1)”;

9 (C) in subsection (e)(2)(A), by striking “or
10 with an entity described in paragraph
11 (2)(B)(iii), (2)(E), (2)(G), or (6) of section
12 1903(m) under a contract described in section
13 1903(m)(2)(A)” and inserting “or with a man-
14 aged care entity, as defined in section
15 1950(a)(1);

16 (D) in subsection (p)(2)—

17 (i) by striking “a health maintenance
18 organization (as defined in section
19 1903(m))” and inserting “a managed care
20 entity, as defined in section 1950(a)(1),”;

21 (ii) by striking “an organization” and
22 inserting “an entity”; and

23 (iii) by striking “any organization”
24 and inserting “any entity”; and

1 (E) in subsection (w)(1), by striking “sec-
2 tions 1903(m)(1)(A) and” and inserting “sec-
3 tion”.

4 (5) PAYMENT TO STATES.—Section
5 1903(w)(7)(A)(viii) (42 U.S.C. 1396b(w)(7)(A)(viii))
6 is amended to read as follows:

7 “(viii) Services of a managed care en-
8 tity with a contract under section
9 1941(a)(1)(B).”.

10 (6) USE OF ENROLLMENT FEES AND OTHER
11 CHARGES.—Section 1916 (42 U.S.C. 1396o) is
12 amended in subsections (a)(2)(D) and (b)(2)(D) by
13 striking “a health maintenance organization (as de-
14 fined in section 1903(m))” and inserting “a man-
15 aged care entity, as defined in section 1950(a)(1),”
16 each place it appears.

17 (7) EXTENSION OF ELIGIBILITY FOR MEDICAL
18 ASSISTANCE.—Section 1925(b)(4)(D)(iv) (42 U.S.C.
19 1396r-6(b)(4)(D)(iv)) is amended to read as follows:

20 “(iv) ENROLLMENT WITH MANAGED
21 CARE ENTITY.—Enrollment of the care-
22 taker relative and dependent children with
23 a managed care entity, as defined in sec-
24 tion 1950(a)(1), less than 50 percent of
25 the membership (enrolled on a prepaid

1 basis) of which consists of individuals who
2 are eligible to receive benefits under this
3 title (other than because of the option of-
4 fered under this clause). The option of en-
5 rollment under this clause is in addition to,
6 and not in lieu of, any enrollment option
7 that the State might offer under subpara-
8 graph (A)(i) with respect to receiving serv-
9 ices through a managed care entity in ac-
10 cordance with part B.”.

11 (8) PAYMENT FOR COVERED OUTPATIENT
12 DRUGS.—Section 1927(j)(1) (42 U.S.C. 1396r-
13 8(j)(1)) is amended by striking “***Health Mainte-
14 nance Organizations, including those organizations
15 that contract under section 1903(m),” and inserting
16 “health maintenance organizations and medicaid
17 managed care organizations, as defined in section
18 1950(a)(2),”.

19 (9) APPLICATION OF SANCTIONS FOR BAL-
20 ANCED BILLING THROUGH SUBCONTRACTORS.—(A)
21 Section 1128A(b)(2)(B) (42 U.S.C. 1320a-7a(b)) is
22 amended by inserting “, including section 1944(b)”
23 after “title XIX”.

24 (B) Section 1128B(d)(1) (42 U.S.C. 1320a-
25 7b(d)(1)) is amended by inserting “or, in the case

1 of an individual enrolled with a managed care entity
2 under part B of title XIX, the applicable rates es-
3 tablished by the entity under the agreement with the
4 State agency under such part” after “established by
5 the State”.

6 (10) REPEAL OF CERTAIN RESTRICTIONS ON
7 OBSTETRICAL AND PEDIATRIC PROVIDERS.—Section
8 1903(i) (42 U.S.C. 1396b(i)) is amended by striking
9 paragraph (12).

10 (11) DEMONSTRATION PROJECTS TO STUDY EF-
11 FECT OF ALLOWING STATES TO EXTEND MEDICAID
12 COVERAGE FOR CERTAIN FAMILIES.—Section
13 4745(a)(5)(A) of the Omnibus Budget Reconciliation
14 Act of 1990 (42 U.S.C. 1396a note) is amended by
15 striking “(except section 1903(m))” and inserting
16 “(except part B)”.

17 (12) CONFORMING AMENDMENT FOR DISCLO-
18 SURE REQUIREMENTS FOR MANAGED CARE ENTI-
19 TIES.—Section 1124(a)(2)(A) (42 U.S.C. 1320a-
20 3(a)(2)(A)) is amended by inserting “managed care
21 entity under title XIX,” after “renal dialysis facil-
22 ity,”.

23 (13) ELIMINATION OF REGULATORY PAYMENT
24 CAP.—The Secretary of Health and Human Services
25 may not, under the authority of section

1 1902(a)(30)(A) of the Social Security Act or any
2 other provision of title XIX of such Act, impose a
3 limit by regulation on the amount of the capitation
4 payments that a State may make to qualified enti-
5 ties under such title, and section 447.361 of title 42,
6 Code of Federal Regulations (relating to upper lim-
7 its of payment: risk contracts), is hereby nullified.

8 (14) CONTINUATION OF ELIGIBILITY.—Section
9 1902(e)(2) (42 U.S.C. 1396a(e)(2)) is amended to
10 read as follows:

11 “(2) For provision providing for extended liability in
12 the case of certain beneficiaries enrolled with managed
13 care entities, see section 1941(c).”.

14 (15) CONFORMING AMENDMENTS TO FREEDOM-
15 OF-CHOICE PROVISIONS.—Section 1902(a)(23) (42
16 U.S.C. 1396a(a)(23)) is amended—

17 (A) in the matter preceding subparagraph
18 (A), by striking “subsection (g) and in section
19 1915” and inserting “subsection (g), section
20 1915, and section 1941,”; and

21 (B) in subparagraph (B), by striking “a
22 health maintenance organization, or a” and in-
23 serting “or with a managed care entity, as de-
24 fined in section 1950(a)(1), or”.

25 (d) EFFECTIVE DATE; STATUS OF WAIVERS.—

1 (1) EFFECTIVE DATE.—Except as provided in
2 paragraph (2), the amendments made by this section
3 shall apply to medical assistance furnished—

4 (A) during quarters beginning on or after
5 October 1, 1997; or

6 (B) in the case of assistance furnished
7 under a contract described in subsection
8 (c)(1)(B), during quarters beginning after the
9 earlier of—

10 (i) the date of the expiration of the
11 contract; or

12 (ii) the expiration of the 1-year period
13 which begins on the date of the enactment
14 of this Act.

15 (2) APPLICATION TO WAIVERS.—If any waiver
16 granted to a State under section 1115 or 1915 of
17 the Social Security Act (42 U.S.C. 1315, 1396n), or
18 otherwise, which relates to the provision of medical
19 assistance under a State plan under title XIX of the
20 such Act (42 U.S.C. 1396 et seq.), is in effect or ap-
21 proved by the Secretary of Health and Human Serv-
22 ices as of the applicable effective date described in
23 paragraph (1), the amendments made by this section
24 shall not apply with respect to the State before the
25 expiration (determined without regard to any exten-

1 sions) of the waiver to the extent such amendments
2 are inconsistent with the terms of the waiver.

3 **SEC. 5702. PRIMARY CARE CASE MANAGEMENT SERVICES**
4 **AS STATE OPTION WITHOUT NEED FOR WAIV-**
5 **ER.**

6 (a) **OPTIONAL COVERAGE AS PART OF MEDICAL AS-**
7 **SISTANCE.—**

8 (1) **IN GENERAL.—**Section 1905(a) (42 U.S.C.
9 1396d(a)) is amended—

10 (A) by striking “and” at the end of para-
11 graph (24);

12 (B) by redesignating paragraph (25) as
13 paragraph (26); and

14 (C) by inserting after paragraph (24) the
15 following new paragraph:

16 “(25) primary care case management services
17 (as defined in subsection (t)); and”.

18 (2) **CONFORMING AMENDMENTS.—**

19 (A) Section 1902(a)(10)(C)(iv) (42 U.S.C.
20 1396a(a)(10)(C)(iv)) is amended by striking
21 “through (24)” and inserting “through (25)”.

22 (B) Section 1902(j) (42 U.S.C. 1396a(j))
23 is amended by striking “through (25)” and in-
24 serting “through (26)”.

1 (b) PRIMARY CARE CASE MANAGEMENT SERVICES DE-
2 FINED.—Section 1905 (42 U.S.C. 1396d) is amended by
3 adding at the end the following new subsection:

4 “(t)(1) The term ‘primary care case management
5 services’ means case-management related services (includ-
6 ing coordination and monitoring of health care services)
7 provided by a primary care case manager under a primary
8 care case management contract.

9 “(2)(A) The term ‘primary care case manager’
10 means, with respect to a primary care case management
11 contract, a provider described in subparagraph (B).

12 “(B) A provider described in this subparagraph is—

13 “(i) a physician, a physician group practice, or
14 an entity employing or having other arrangements
15 with physicians who provide case management serv-
16 ices; or

17 “(ii) at State option—

18 “(I) a nurse practitioner (as described in
19 section 1905(a)(21));

20 “(II) a certified nurse-midwife (as defined
21 in section 1861(gg)(2)); or

22 “(III) a physician assistant (as defined in
23 section 1861(aa)(5)).

24 “(3) The term ‘primary care case management con-
25 tract’ means a contract with a State agency under which

1 a primary care case manager undertakes to locate, coordi-
2 nate, and monitor covered primary care, covered primary
3 care (and such other covered services as may be specified
4 under the contract) to all individuals enrolled with the pri-
5 mary care case manager, and that provides for—

6 “(A) reasonable and adequate hours of oper-
7 ation, including 24-hour availability of information,
8 referral, and treatment with respect to medical
9 emergencies;

10 “(B) restriction of enrollment to individuals re-
11 siding sufficiently near a service delivery site of the
12 entity to be able to reach that site within a reason-
13 able time using available and affordable modes of
14 transportation;

15 “(C) employment of, or contracts or other ar-
16 rangements with, sufficient numbers of physicians
17 and other appropriate health care professionals to
18 ensure that services under the contract can be fur-
19 nished to enrollees promptly and without com-
20 promise to quality of care;

21 “(D) a prohibition on discrimination on the
22 basis of health status or requirements for health
23 services in the enrollment or disenrollment of indi-
24 viduals eligible for medical assistance under this
25 title; and

1 (A) IN GENERAL.—Section 1903(m)(2)(A)
2 (42 U.S.C. 1396b(m)(2)(A)) is amended by
3 striking clause (ii).

4 (B) CONFORMING AMENDMENTS.—

5 (i) Section 1903(m)(2) (42 U.S.C.
6 1396b(m)(2)) is amended—

7 (I) by striking subparagraphs
8 (C), (D), and (E); and

9 (II) in subparagraph (G), by
10 striking “clauses (i) and (ii)” and in-
11 serting “clause (i)”.

12 (ii) Section 1902(e)(2)(A) (42 U.S.C.
13 1396a(e)(2)(A)) is amended by striking
14 “(2)(E),”.

15 (2) EFFECTIVE DATE.—The amendments made
16 by paragraph (1) shall apply on and after June 20,
17 1997.

18 (b) ELIMINATION OF PROHIBITION ON COPAYMENTS
19 FOR SERVICES FURNISHED BY HEALTH MAINTENANCE
20 ORGANIZATIONS.—Section 1916 (42 U.S.C. 1396o) is
21 amended—

22 (1) in subsection (a)(2)(D), by striking “or
23 services furnished” and all that follows through “en-
24 rolled,”; and

1 (2) in subsection (b)(2)(D), by striking “or (at
2 the option” and all that follows through “enrolled,”.

3 **Subchapter B—Management Flexibility**

4 **Reforms**

5 **SEC. 5711. ELIMINATION OF BOREN AMENDMENT REQUIRE-** 6 **MENTS FOR PROVIDER PAYMENT RATES.**

7 (a) PLAN AMENDMENTS.—Section 1902(a)(13) is
8 amended—

9 (1) by striking all that precedes subparagraph
10 (D) and inserting the following:

11 “(13) provide—

12 “(A) for a public process for determination
13 of rates of payment under the plan for hospital
14 services (and which, in the case of hospitals,
15 take into account the situation of hospitals
16 which serve a disproportionate number of low
17 income patients with special needs), nursing fa-
18 cility services, services provided in intermediate
19 care facilities for the mentally retarded, and
20 home and community-based services, under
21 which—

22 “(i) proposed rates, the methodologies underly-
23 ing the establishment of such rates, and a descrip-
24 tion of how such methodologies will affect access to
25 services, quality of services, and safety of bene-

1 ficiaries are published, and providers, beneficiaries
2 and their representatives, and other concerned State
3 residents are given a reasonable opportunity for re-
4 view and comment on such proposed rates, meth-
5 odologies, and description; and

6 “(ii) final rates, the methodologies underlying
7 the establishment of such rates, and justifications
8 for such rates (that may take into account public
9 comments received by the State (if any) are pub-
10 lished in 1 or more daily newspapers of general cir-
11 culation in the State or in any publication used by
12 the State to publish State statutes or rules); and”;

13 (2) by redesignating subparagraphs (D) and
14 (E) as subparagraphs (B) and (C), respectively;

15 (3) in subparagraph (B), as so redesignated, by
16 adding “and” at the end; and

17 (4) by striking subparagraph (F).

18 (b) STUDY AND REPORT.—

19 (1) STUDY.—The Secretary of Health and
20 Human Services shall study the effect on access to
21 services, the quality of services, and the safety of
22 services provided to beneficiaries of the rate-setting
23 methods used by States pursuant to section
24 1902(a)(13) of the Social Security Act (42 U.S.C.
25 1396a(a)(13), as amended by subsection (a).

1 (2) REPORT.—Not later than 4 years after the
2 date of enactment of this Act, the Secretary of
3 Health and Human Services shall submit a report to
4 the appropriate committees of Congress on the con-
5 clusions of the study conducted under paragraph
6 (1), together with any recommendations for legisla-
7 tion as a result of such conclusions.

8 (c) CONFORMING AMENDMENTS.—

9 (1) Section 1903(m)(2)(A)(ix) (42 U.S.C.
10 1396b(m)(2)(A)(ix)) is amended by striking
11 “1902(a)(13)(E)” each place it appears and insert-
12 ing “1902(a)(13)(C)”.

13 (2) Section 1905(o)(3) (42 U.S.C. 1396d(o)(3))
14 is amended by striking “amount described in section
15 1902(a)(13)(D)” and inserting “amount determined
16 in section 1902(a)(13)(B)”.

17 (3) Section 1913(b)(3) (42 U.S.C. 1396l(b)(3))
18 is amended by striking “1902(a)(13)(A)” and insert-
19 ing “1902(a)(13)”.

20 (4) Section 1923 (42 U.S.C. 1396r-4) is
21 amended in subsections (a)(1) and (e)(1), by strik-
22 ing “1902(a)(13)(A)” each place it appears and in-
23 serting “1902(a)(13)”.

1 **SEC. 5712. MEDICAID PAYMENT RATES FOR QUALIFIED**
2 **MEDICARE BENEFICIARIES.**

3 (a) IN GENERAL.—Section 1902(n) (42 U.S.C.
4 1396a(n)) is amended—

5 (1) by inserting “(1)” after “(n)”, and

6 (2) by adding at the end the following:

7 “(2) In carrying out paragraph (1), a State is not
8 required to provide any payment for any expenses incurred
9 relating to payment for a coinsurance or copayment for
10 medicare cost-sharing if the amount of the payment under
11 title XVIII for the service exceeds the payment amount
12 that otherwise would be made under the State plan under
13 this title for such service.

14 “(3) In the case in which a State’s payment for medi-
15 care cost-sharing for a qualified medicare beneficiary with
16 respect to an item or service is reduced or eliminated
17 through the application of paragraph (1) or (2) of this
18 subsection—

19 “(A) for purposes of applying any limitation
20 under title XVIII on the amount that the beneficiary
21 may be billed or charged for the service, the amount
22 of payment made under title XVIII plus the amount
23 of payment (if any) under the State plan shall be
24 considered to be payment in full for the service,

1 “(B) the beneficiary shall not have any legal li-
2 ability to make payment to the provider for the serv-
3 ice, and

4 “(C) any lawful sanction that may be imposed
5 upon a provider for excess charges under this title
6 or title XVIII shall apply to the imposition of any
7 charge on the individual in such case.

8 This paragraph shall not be construed as preventing pay-
9 ment of any medicare cost-sharing by a medicare supple-
10 mental policy or an employer retiree health plan on behalf
11 of an individual.”.

12 (b) LIMITATION IN MEDICARE PROVIDER AGREE-
13 MENTS.—Section 1866(a)(1)(A) (42 U.S.C.
14 1395cc(a)(1)(A)) is amended—

15 (1) by inserting “(i)” after “(A)”, and

16 (2) by inserting before the comma at the end
17 the following: “, and (ii) not to impose any charge
18 that may not be charged under section 1902(n)(3)”.

19 (c) LIMITATION ON NONPARTICIPATING PROVID-
20 ERS.—Section 1848(g)(3)(A) (42 U.S.C. 1395w-
21 4(g)(3)(A)) is amended by inserting before the period at
22 the end the following: “and the provisions of section
23 1902(n)(3)(A) apply to further limit permissible charges
24 under this section”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to payment for items and services
3 furnished on or after the later of—

4 (1) October 1, 1997; or

5 (2) the termination date of a provider agree-
6 ment under the medicare program under title XVIII
7 or under a State plan under title XIX that is in ef-
8 fect on the date of the enactment of this Act.

9 **SEC. 5713. NO WAIVER REQUIRED FOR PROVIDER SELEC-**
10 **TIVITY.**

11 Section 1915(a) (42 U.S.C. 1396n(a)) is amended—

12 (1) in paragraph (1), by striking “or” at the
13 end;

14 (2) in paragraph (2), by striking the period and
15 inserting “; or”; and

16 (3) by adding at the end the following:

17 “(3) contracts, on a capitated or other nego-
18 tiated basis, with selected health care plans, individ-
19 ual health care providers, managed care entities, as
20 defined in section 1950(a)(1), or other entities for
21 the provision or arrangement of medical assistance,
22 for case management services, or for coordination of
23 medical assistance provided under the State plan
24 this title.”.

1 **Subchapter C—Reduction of Disproportion-**
2 **ate Share Hospital (DSH) Payments**

3 **SEC. 5721. DISPROPORTIONATE SHARE HOSPITAL (DSH)**
4 **PAYMENTS.**

5 (a) REDUCTION OF PAYMENTS.—Section 1923(f) (42
6 U.S.C. 1396r-4(f)) is amended to read as follows:

7 “(f) LIMITATION ON FEDERAL FINANCIAL PARTICI-
8 PATION.—

9 “(1) IN GENERAL.—Beginning with fiscal year
10 1998, payment under section 1903(a) shall not be
11 made to a State with respect to any payment adjust-
12 ment made under this section for hospitals in a
13 State for quarters in a fiscal year in excess of the
14 disproportionate share hospital (in this subsection
15 referred to as ‘DSH’) allotment for the State for the
16 fiscal year, as specified in paragraphs (2), (3), (4),
17 and (5).

18 “(2) DETERMINATION OF STATE DSH ALLOT-
19 MENTS FOR FISCAL YEAR 1998.—

20 “(A) IN GENERAL.—Except as provided in
21 subparagraph (B) and paragraph (4), the DSH
22 allotment for a State for fiscal year 1998 is
23 equal to the State 1995 DSH spending amount.

24 “(B) HIGH DSH STATES.—In the case of
25 any State that is a high DSH State, the DSH

1 allotment for that State for fiscal year 1998 is
2 equal to the sum of—

3 “(i) the Federal share of payment ad-
4 justments made to hospitals in the State
5 under subsection (c) that are attributable
6 to the 1995 DSH allotment for inpatient
7 hospital services provided (based on report-
8 ing data specified by the State on HCFA
9 Form 64 as inpatient DSH); and

10 “(ii) 70 percent of the Federal share
11 of payment adjustments made to hospitals
12 in the State under subsection (c) that are
13 attributable to the 1995 DSH allotment
14 for services provided by institutions for
15 mental diseases and other mental health
16 facilities (based on reporting data specified
17 by the State on HCFA Form 64 as mental
18 health DSH).

19 “(3) DETERMINATION OF STATE DSH ALLOT-
20 MENTS FOR FISCAL YEARS 1999 THROUGH 2002.—

21 “(A) NON HIGH DSH STATES.—

22 “(i) IN GENERAL.—Except as pro-
23 vided in subparagraph (B) and paragraph
24 (4), the DSH allotment for a State for
25 each of fiscal years 1999 through 2002 is

1 equal to the applicable percentage of the
2 State 1995 DSH spending amount.

3 “(ii) APPLICABLE PERCENTAGE.—For
4 purposes of clause (i), the applicable per-
5 centage with respect to a State described
6 in that clause is—

7 “(A) for fiscal year 1999, 98 percent;

8 “(B) for fiscal year 2000, 95 percent;

9 “(C) for fiscal year 2001, 90 percent; and

10 “(D) for fiscal year 2002, 85 percent.

11 “(B) HIGH DSH STATES.—

12 “(i) IN GENERAL.—In the case of any
13 State that is a high DSH State, the DSH
14 allotment for that State for each of fiscal
15 years 1999 through 2002 is equal to the
16 applicable reduction percentage of the high
17 DSH State modified 1995 spending
18 amount for that fiscal year.

19 “(ii) HIGH DSH STATE MODIFIED 1995
20 SPENDING AMOUNT.—

21 “(I) IN GENERAL.—For purposes
22 of clause (i), the high DSH State
23 modified 1995 spending amount
24 means, with respect to a State and a
25 fiscal year, the sum of—

1 “(aa) the Federal share of
2 payment adjustments made to
3 hospitals in the State under sub-
4 section (c) that are attributable
5 to the 1995 DSH allotment for
6 inpatient hospital services pro-
7 vided (based on reporting data
8 specified by the State on HCFA
9 Form 64 as inpatient DSH); and

10 “(bb) the applicable mental
11 health percentage for such fiscal
12 year of the Federal share of pay-
13 ment adjustments made to hos-
14 pitals in the State under sub-
15 section (c) that are attributable
16 to the 1995 DSH allotment for
17 services provided by institutions
18 for mental diseases and other
19 mental health facilities (based on
20 reporting data specified by the
21 State on HCFA Form 64 as
22 mental health DSH).

23 “(II) APPLICABLE MENTAL
24 HEALTH PERCENTAGE.—For purposes
25 of subclause (I)(bb), the applicable

1 mental health percentage for such fis-
2 cal year is—

3 “(aa) for fiscal year 1999,
4 50 percent;

5 “(bb) for fiscal year 2000,
6 20 percent; and

7 “(cc) for fiscal years 2001
8 and 2002, 0 percent.

9 “(iii) APPLICABLE REDUCTION PER-
10 CENTAGE.—For purposes of clause (i), the
11 applicable reduction percentage described
12 in that clause is—

13 “(A) for fiscal year 1999, 86 percent; and

14 “(B) for fiscal years 2000 through 2002,
15 80 percent.

16 “(4) EXCEPTIONS.—

17 “(A) CERTAIN STATES WITHOUT 1995 MEN-
18 TAL HEALTH DSH SPENDING.—In the case of
19 any State with a State 1995 DSH spending
20 amount that exceeds 12 percent of the Federal
21 medical assistance percentage of expenditures
22 made under the State plan under this title for
23 medical assistance during fiscal year 1995 and
24 that, during such fiscal year, did not make any
25 payment adjustments to hospitals in the State

1 under subsection (c) that are attributable to the
2 1995 DSH allotment for services provided by
3 institutions for mental diseases and other men-
4 tal health facilities (based on reporting data
5 specified by the State on HCFA Form 64 as
6 mental health DSH), the DSH allotment for
7 that State for each of fiscal years 1998 through
8 2002 is equal to the average of the State 1995
9 DSH spending amount and the State 1996
10 DSH spending amount.

11 “(B) STATES WITH LOW STATE 1995 DSH
12 SPENDING AMOUNTS.—In the case of any State
13 with a State 1995 DSH spending amount that
14 is less than 3 percent of the Federal medical as-
15 sistance percentage of expenditures made under
16 the State plan under this title for medical as-
17 sistance during fiscal year 1995, the DSH allot-
18 ment for that State for each of fiscal years
19 1998 through 2002 is equal to the State 1995
20 DSH spending amount.

21 “(C) STATES WITH STATE 1995 DSH
22 SPENDING AMOUNTS BELOW 12 PERCENT.—In
23 the case of any State with a State 1995 DSH
24 spending amount that is less than 12 percent
25 but more than 3 percent of the Federal medical

1 assistance percentage of expenditures made
 2 under the State plan under this title for medi-
 3 cal assistance during fiscal year 1995, the DSH
 4 allotment for that State for each of fiscal years
 5 1999 through 2002 is equal to the greater of—

6 “(i) the amount otherwise determined
 7 for such State under paragraph (3); or

8 “(ii) 50 percent of the State 1995
 9 DSH spending amount.

10 “(5) DETERMINATION OF STATE DSH ALLOT-
 11 MENTS FOR FISCAL YEAR 2003 AND THEREAFTER.—

12 The DSH allotment for any State for fiscal year
 13 2003 and each fiscal year thereafter is equal to the
 14 DSH allotment for the State for the preceding fiscal
 15 year, increased by the estimated percentage change
 16 in the consumer price index for medical services (as
 17 determined by the Bureau of Labor Statistics).

18 “(6) DEFINITIONS.—

19 “(A) HIGH DSH STATE.—The term ‘high
 20 DSH State’ means a State that, with respect to
 21 fiscal year 1997, had a State base allotment
 22 under this section that exceeded 12 percent of
 23 the Federal medical assistance percentage of ex-
 24 penditures made under the State plan under
 25 this title for medical assistance during such fis-

1 cal year, as determined using the preliminary
2 State DSH allotment for the State for fiscal
3 year 1997, as published in the Federal Register
4 on January 31, 1997.

5 “(B) STATE.—In this subsection, the term
6 ‘State’ means the 50 States and the District of
7 Columbia.”.

8 “(C) STATE 1995 DSH SPENDING
9 AMOUNT.—The term ‘State 1995 DSH spend-
10 ing amount’ means, with respect to a State, the
11 Federal medical assistance percentage of pay-
12 ment adjustments made under subsection (c)
13 under the State plan during fiscal year 1995 as
14 reported by the State not later than January 1,
15 1997, on HCFA Form 64, and as approved by
16 the Secretary.

17 “(D) STATE 1996 DSH SPENDING
18 AMOUNT.—The term ‘State 1996 DSH spend-
19 ing amount’ means, with respect to a State, the
20 Federal share of payment adjustments made
21 under subsection (c) under the State plan dur-
22 ing fiscal year 1996 as reported by the State
23 not later than December 31, 1997, on HCFA
24 Form 64, and as approved by the Secretary.”.

1 (b) LIMITATION ON PAYMENTS TO INSTITUTIONS
2 FOR MENTAL DISEASES.—Section 1923 of the Social Se-
3 curity Act (42 U.S.C. 1396r-4) is amended by adding at
4 the end the following:

5 “(h) LIMITATION ON CERTAIN STATE DSH EXPEND-
6 ITURES.—

7 “(1) IN GENERAL.—Notwithstanding any other
8 provision of this section, payment under section
9 1903(a) shall not be made to a State with respect
10 to any payment adjustments made under this section
11 for quarters in a fiscal year to institutions for men-
12 tal diseases or other mental health facilities, in ex-
13 cess of—

14 “(A) the total State expenditures incurred
15 for fiscal year 1995 for providing services under
16 the State plan under this title to individuals
17 who were patients in institutions for mental dis-
18 eases; or

19 “(B) the amount of such payment adjust-
20 ment which is equal to the applicable percent-
21 age of the Federal share of payment adjust-
22 ments made to hospitals in the State under
23 subsection (c) that are attributable to the 1995
24 DSH allotment for services provided by institu-
25 tions for mental diseases and other mental

1 health facilities (based on reporting data speci-
2 fied by the State on HCFA Form 64 as mental
3 health DSH).

4 “(2) APPLICABLE PERCENTAGE.—

5 “(A) IN GENERAL.—For purposes of para-
6 graph (1), the applicable percentage with re-
7 spect to a fiscal year is the lesser of the per-
8 centage determined under subparagraph (B)
9 or—

10 “(i) for fiscal year 2000, 50 percent;

11 “(ii) for fiscal year 2001, 40 percent;

12 and

13 “(iii) for fiscal year 2002, 33 percent.

14 “(B) 1995 PERCENTAGE.—The percentage
15 determined under this subparagraph is the ratio
16 (determined as a percentage) of the Federal
17 share of payment adjustments made to hos-
18 pitals in the State under subsection (c) that are
19 attributable to the 1995 DSH allotment for
20 services provided by institutions for mental dis-
21 eases and other mental health facilities, to the
22 State 1995 DSH spending amount, as defined
23 under subsection (f)(6)(C).”.

1 (c) TARGETING PAYMENTS.—Section 1923(a)(2) (42
2 U.S.C. 1396r-4(a)(2)) is amended by adding at the end
3 the following:

4 “(D) A State plan under this title shall not be
5 considered to meet the requirements of section
6 1902(a)(13)(A) (insofar as it requires payments to
7 hospitals to take into account the situation of hos-
8 pitals that serve a disproportionate number of low-
9 income patients with special needs), as of October 1,
10 1998, unless the State has provided assurances to
11 the Secretary that the State has developed a meth-
12 odology for prioritizing payments to disproportionate
13 share hospitals, including children’s hospitals, on the
14 basis of the proportion of low-income and medicaid
15 patients served by such hospitals. In making such
16 assurances, the State plan shall provide a definition
17 of high-volume disproportionate share hospitals and
18 a detailed description of the specific methodology to
19 be used to provide disproportionate share payments
20 to such hospitals. The State shall provide an annual
21 report to the Secretary describing the disproportion-
22 ate share payments to such high-volume dispropor-
23 tionate share hospitals.”.

24 (d) EFFECTIVE DATE.—The amendments made by
25 this section apply on and after October 1, 1997.

1 **CHAPTER 2—EXPANSION OF MEDICAID**
2 **ELIGIBILITY**

3 **SEC. 5731. STATE OPTION TO PERMIT WORKERS WITH DIS-**
4 **ABILITIES TO BUY INTO MEDICAID.**

5 Section 1902(a)(10)(A)(ii) (42 U.S.C.
6 1396a(a)(10)(A)(ii)) is amended—

7 (1) in subclause (XI), by striking “or” at the
8 end;

9 (2) in subclause (XII), by adding “or” at the
10 end; and

11 (3) by adding at the end the following:

12 “(XIII) who are in families
13 whose income is less than 250 percent
14 of the income official poverty line (as
15 defined by the Office of Management
16 and Budget, and revised annually in
17 accordance with section 673(2) of the
18 Omnibus Budget Reconciliation Act of
19 1981) applicable to a family of the
20 size involved, and who but for earn-
21 ings in excess of the limit established
22 under section 1619(b), would be con-
23 sidered to be receiving supplemental
24 security income (subject, notwith-
25 standing section 1916, to payment of

1 premiums or other charges (set on a
2 sliding scale based on income) that
3 the State may determine);”.

4 **SEC. 5732. 12-MONTH CONTINUOUS ELIGIBILITY FOR CHIL-**
5 **DREN.**

6 (a) IN GENERAL.—Section 1902(e) (42 U.S.C.
7 1396a(e)) is amended by adding at the end the following:

8 “(12) At the option of the State, the State plan may
9 provide that an individual who is under an age specified
10 by the State (not to exceed 19 years of age) and who is
11 determined to be eligible for benefits under a State plan
12 approved under this title under subsection (a)(10)(A) shall
13 remain eligible for those benefits until the earlier of—

14 “(A) the end of the 12-month period following
15 the determination; or

16 “(B) the date that the individual exceeds that
17 age.”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 subsection (a) shall apply to medical assistance for items
20 and services furnished on or after October 1, 1997.

21 **CHAPTER 3—PROGRAMS OF ALL-INCLU-**
22 **SIVE CARE FOR THE ELDERLY (PACE)**

23 **SEC. 5741. ESTABLISHMENT OF PACE PROGRAM AS MEDIC-**
24 **AID STATE OPTION.**

25 (a) IN GENERAL.—Title XIX is amended—

1 (1) in section 1905(a) (42 U.S.C. 1396d(a)), as
2 amended by section 5702(a)(1)—

3 (A) by striking “and” at the end of para-
4 graph (25);

5 (B) by redesignating paragraph (26) as
6 paragraph (27); and

7 (C) by inserting after paragraph (25) the
8 following new paragraph:

9 “(26) services furnished under a PACE pro-
10 gram under section 1932 to PACE program eligible
11 individuals enrolled under the program under such
12 section; and”;

13 (2) by redesignating section 1932 as section
14 1933; and

15 (3) by inserting after section 1931 the following
16 new section:

17 “PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY
18 (PACE)

19 “SEC. 1932. (a) STATE OPTION.—

20 “(1) IN GENERAL.—A State may elect to pro-
21 vide medical assistance under this section with re-
22 spect to PACE program services to PACE program
23 eligible individuals who are eligible for medical as-
24 sistance under the State plan and who are enrolled
25 in a PACE program under a PACE program agree-
26 ment. Such individuals need not be eligible for bene-

1 fits under part A, or enrolled under part B, of title
2 XVIII to be eligible to enroll under this section. In
3 the case of an individual enrolled with a PACE pro-
4 gram pursuant to such an election—

5 “(A) the individual shall receive benefits
6 under the plan solely through such program,
7 and

8 “(B) the PACE provider shall receive pay-
9 ment in accordance with the PACE program
10 agreement for provision of such benefits.

11 “(2) PACE PROGRAM DEFINED.—For purposes
12 of this section and section 1894, the term ‘PACE
13 program’ means a program of all-inclusive care for
14 the elderly that meets the following requirements:

15 “(A) OPERATION.—The entity operating
16 the program is a PACE provider (as defined in
17 paragraph (3)).

18 “(B) COMPREHENSIVE BENEFITS.—The
19 program provides comprehensive health care
20 services to PACE program eligible individuals
21 in accordance with the PACE program agree-
22 ment and regulations under this section.

23 “(C) TRANSITION.—In the case of an indi-
24 vidual who is enrolled under the program under
25 this section and whose enrollment ceases for

1 any reason (including that the individual no
2 longer qualifies as a PACE program eligible in-
3 dividual, the termination of a PACE program
4 agreement, or otherwise), the program provides
5 assistance to the individual in obtaining nec-
6 essary transitional care through appropriate re-
7 ferrals and making the individual's medical
8 records available to new providers.

9 “(3) PACE PROVIDER DEFINED.—

10 “(A) IN GENERAL.—For purposes of this
11 section, the term ‘PACE provider’ means an en-
12 tity that—

13 “(i) subject to subparagraph (B), is
14 (or is a distinct part of) a public entity or
15 a private, nonprofit entity organized for
16 charitable purposes under section
17 501(c)(3) of the Internal Revenue Code of
18 1986, and

19 “(ii) has entered into a PACE pro-
20 gram agreement with respect to its oper-
21 ation of a PACE program.

22 “(B) TREATMENT OF PRIVATE, FOR-PROF-
23 IT PROVIDERS.—Clause (i) of subparagraph (A)
24 shall not apply—

1 “(i) to entities subject to a dem-
2 onstration project waiver under subsection
3 (h); and

4 “(ii) after the date the report under
5 section 5743(b) of the Balanced Budget
6 Act of 1997 is submitted, unless the Sec-
7 retary determines that any of the findings
8 described in subparagraph (A), (B), (C), or
9 (D) of paragraph (2) of such section are
10 true.

11 “(4) PACE PROGRAM AGREEMENT DEFINED.—
12 For purposes of this section, the term ‘PACE pro-
13 gram agreement’ means, with respect to a PACE
14 provider, an agreement, consistent with this section,
15 section 1894 (if applicable), and regulations promul-
16 gated to carry out such sections, among the PACE
17 provider, the Secretary, and a State administering
18 agency for the operation of a PACE program by the
19 provider under such sections.

20 “(5) PACE PROGRAM ELIGIBLE INDIVIDUAL
21 DEFINED.—For purposes of this section, the term
22 ‘PACE program eligible individual’ means, with re-
23 spect to a PACE program, an individual who—

24 “(A) is 55 years of age or older;

1 “(B) subject to subsection (c)(4), is deter-
2 mined under subsection (e) to require the level
3 of care required under the State medicaid plan
4 for coverage of nursing facility services;

5 “(C) resides in the service area of the
6 PACE program; and

7 “(D) meets such other eligibility conditions
8 as may be imposed under the PACE program
9 agreement for the program under subsection
10 (e)(2)(A)(ii).

11 “(6) PACE PROTOCOL.—For purposes of this
12 section, the term ‘PACE protocol’ means the Proto-
13 col for the Program of All-inclusive Care for the El-
14 derly (PACE), as published by On Lok, Inc., as of
15 April 14, 1995, or any successor protocol that may
16 be agreed upon between the Secretary and On Lok,
17 Inc.

18 “(7) PACE DEMONSTRATION WAIVER PROGRAM
19 DEFINED.—For purposes of this section, the term
20 ‘PACE demonstration waiver program’ means a
21 demonstration program under either of the following
22 sections (as in effect before the date of their repeal):

23 “(A) Section 603(c) of the Social Security
24 Amendments of 1983 (Public Law 98–21), as
25 extended by section 9220 of the Consolidated

1 Omnibus Budget Reconciliation Act of 1985
2 (Public Law 99-272).

3 “(B) Section 9412(b) of the Omnibus
4 Budget Reconciliation Act of 1986 (Public Law
5 99-509).

6 “(8) STATE ADMINISTERING AGENCY DE-
7 FINED.—For purposes of this section, the term
8 ‘State administering agency’ means, with respect to
9 the operation of a PACE program in a State, the
10 agency of that State (which may be the single agen-
11 cy responsible for administration of the State plan
12 under this title in the State) responsible for admin-
13 istering PACE program agreements under this sec-
14 tion and section 1894 in the State.

15 “(9) TRIAL PERIOD DEFINED.—

16 “(A) IN GENERAL.—For purposes of this
17 section, the term ‘trial period’ means, with re-
18 spect to a PACE program operated by a PACE
19 provider under a PACE program agreement,
20 the first 3 contract years under such agreement
21 with respect to such program.

22 “(B) TREATMENT OF ENTITIES PRE-
23 VIOUSLY OPERATING PACE DEMONSTRATION
24 WAIVER PROGRAMS.—Each contract year (in-
25 cluding a year occurring before the effective

1 date of this section) during which an entity has
2 operated a PACE demonstration waiver pro-
3 gram shall be counted under subparagraph (A)
4 as a contract year during which the entity oper-
5 ated a PACE program as a PACE provider
6 under a PACE program agreement.

7 “(10) REGULATIONS.—For purposes of this
8 section, the term ‘regulations’ refers to interim final
9 or final regulations promulgated under subsection (f)
10 to carry out this section and section 1894.

11 “(b) SCOPE OF BENEFITS; BENEFICIARY SAFE-
12 GUARDS.—

13 “(1) IN GENERAL.—Under a PACE program
14 agreement, a PACE provider shall—

15 “(A) provide to PACE program eligible in-
16 dividuals, regardless of source of payment and
17 directly or under contracts with other entities,
18 at a minimum—

19 “(i) all items and services covered
20 under title XVIII (for individuals enrolled
21 under section 1894) and all items and
22 services covered under this title, but with-
23 out any limitation or condition as to
24 amount, duration, or scope and without
25 application of deductibles, copayments, co-

1 insurance, or other cost-sharing that would
2 otherwise apply under such title or this
3 title, respectively; and

4 “(ii) all additional items and services
5 specified in regulations, based upon those
6 required under the PACE protocol;

7 “(B) provide such enrollees access to nec-
8 essary covered items and services 24 hours per
9 day, every day of the year;

10 “(C) provide services to such enrollees
11 through a comprehensive, multidisciplinary
12 health and social services delivery system which
13 integrates acute and long-term care services
14 pursuant to regulations; and

15 “(D) specify the covered items and services
16 that will not be provided directly by the entity,
17 and to arrange for delivery of those items and
18 services through contracts meeting the require-
19 ments of regulations.

20 “(2) QUALITY ASSURANCE; PATIENT SAFE-
21 GUARDS.—The PACE program agreement shall re-
22 quire the PACE provider to have in effect at a mini-
23 mum—

1 “(A) a written plan of quality assurance
2 and improvement, and procedures implementing
3 such plan, in accordance with regulations, and

4 “(B) written safeguards of the rights of
5 enrolled participants (including a patient bill of
6 rights and procedures for grievances and ap-
7 peals) in accordance with regulations and with
8 other requirements of this title and Federal and
9 State law designed for the protection of pa-
10 tients.

11 “(c) ELIGIBILITY DETERMINATIONS.—

12 “(1) IN GENERAL.—The determination of—

13 “(A) whether an individual is a PACE pro-
14 gram eligible individual shall be made under
15 and in accordance with the PACE program
16 agreement, and

17 “(B) who is entitled to medical assistance
18 under this title shall be made (or who is not so
19 entitled, may be made) by the State administer-
20 ing agency.

21 “(2) CONDITION.—An individual is not a PACE
22 program eligible individual (with respect to payment
23 under this section) unless the individual’s health sta-
24 tus has been determined by the Secretary or the
25 State administering agency, in accordance with regu-

1 lations, to be comparable to the health status of in-
2 dividuals who have participated in the PACE dem-
3 onstration waiver programs. Such determination
4 shall be based upon information on health status
5 and related indicators (such as medical diagnoses
6 and measures of activities of daily living, instrumen-
7 tal activities of daily living, and cognitive impair-
8 ment) that are part of a uniform minimum data set
9 collected by PACE providers on potential eligible in-
10 dividuals.

11 “(3) ANNUAL ELIGIBILITY RECERTIFI-
12 CATIONS.—

13 “(A) IN GENERAL.—Subject to subpara-
14 graph (B), the determination described in sub-
15 section (a)(5)(B) for an individual shall be re-
16 evaluated at least annually.

17 “(B) EXCEPTION.—The requirement of
18 annual reevaluation under subparagraph (A)
19 may be waived during a period in accordance
20 with regulations in those cases in which the
21 State administering agency determines that
22 there is no reasonable expectation of improve-
23 ment or significant change in an individual’s
24 condition during the period because of the ad-
25 vanced age, severity of the advanced age, sever-

1 ity of chronic condition, or degree of impair-
2 ment of functional capacity of the individual in-
3 volved.

4 “(4) CONTINUATION OF ELIGIBILITY.—An indi-
5 vidual who is a PACE program eligible individual
6 may be deemed to continue to be such an individual
7 notwithstanding a determination that the individual
8 no longer meets the requirement of subsection
9 (a)(5)(B) if, in accordance with regulations, in the
10 absence of continued coverage under a PACE pro-
11 gram the individual reasonably would be expected to
12 meet such requirement within the succeeding 6-
13 month period.

14 “(5) ENROLLMENT; DISENROLLMENT.—The en-
15 rollment and disenrollment of PACE program eligi-
16 ble individuals in a PACE program shall be pursu-
17 ant to regulations and the PACE program agree-
18 ment and shall permit enrollees to voluntarily
19 disenroll without cause at any time. Such regula-
20 tions and agreement shall provide that the PACE
21 program may not disenroll a PACE program eligible
22 individual on the ground that the individual has en-
23 gaged in noncompliant behavior if such behavior is
24 related to a mental or physical condition of the indi-
25 vidual. For purposes of the preceding sentence, the

1 term ‘noncompliant behavior’ includes repeated non-
2 compliance with medical advice and repeated failure
3 to appear for appointments.

4 “(d) PAYMENTS TO PACE PROVIDERS ON A
5 CAPITATED BASIS.—

6 “(1) IN GENERAL.—In the case of a PACE pro-
7 vider with a PACE program agreement under this
8 section, except as provided in this subsection or by
9 regulations, the State shall make prospective month-
10 ly payments of a capitation amount for each PACE
11 program eligible individual enrolled under the agree-
12 ment under this section.

13 “(2) CAPITATION AMOUNT.—The capitation
14 amount to be applied under this subsection for a
15 provider for a contract year shall be an amount
16 specified in the PACE program agreement for the
17 year. Such amount shall be an amount, specified
18 under the PACE agreement, which is less than the
19 amount that would otherwise have been made under
20 the State plan if the individuals were not so enrolled
21 and shall be adjusted to take into account the com-
22 parative frailty of PACE enrollees and such other
23 factors as the Secretary determines to be appro-
24 priate. The payment under this section shall be in
25 addition to any payment made under section 1894

1 for individuals who are enrolled in a PACE program
2 under such section.

3 “(e) PACE PROGRAM AGREEMENT.—

4 “(1) REQUIREMENT.—

5 “(A) IN GENERAL.—The Secretary, in
6 close cooperation with the State administering
7 agency, shall establish procedures for entering
8 into, extending, and terminating PACE pro-
9 gram agreements for the operation of PACE
10 programs by entities that meet the require-
11 ments for a PACE provider under this section,
12 section 1894, and regulations.

13 “(B) NUMERICAL LIMITATION.—

14 “(i) IN GENERAL.—The Secretary
15 shall not permit the number of PACE pro-
16 viders with which agreements are in effect
17 under this section or under section 9412(b)
18 of the Omnibus Budget Reconciliation Act
19 of 1986 to exceed—

20 “(I) 40 as of the date of the en-
21 actment of this section, or

22 “(II) as of each succeeding anni-
23 versary of such date, the numerical
24 limitation under this subparagraph for
25 the preceding year plus 20.

1 Subclause (II) shall apply without regard
2 to the actual number of agreements in ef-
3 fect as of a previous anniversary date.

4 “(ii) TREATMENT OF CERTAIN PRI-
5 VATE, FOR-PROFIT PROVIDERS.—The nu-
6 merical limitation in clause (i) shall not
7 apply to a PACE provider that—

8 “(I) is operating under a dem-
9 onstration project waiver under sub-
10 section (h), or

11 “(II) was operating under such a
12 waiver and subsequently qualifies for
13 PACE provider status pursuant to
14 subsection (a)(3)(B)(ii).

15 “(2) SERVICE AREA AND ELIGIBILITY.—

16 “(A) IN GENERAL.—A PACE program
17 agreement for a PACE program—

18 “(i) shall designate the service area of
19 the program;

20 “(ii) may provide additional require-
21 ments for individuals to qualify as PACE
22 program eligible individuals with respect to
23 the program;

24 “(iii) shall be effective for a contract
25 year, but may be extended for additional

1 contract years in the absence of a notice by
2 a party to terminate, and is subject to ter-
3 mination by the Secretary and the State
4 administering agency at any time for cause
5 (as provided under the agreement);

6 “(iv) shall require a PACE provider to
7 meet all applicable State and local laws
8 and requirements; and

9 “(v) shall have such additional terms
10 and conditions as the parties may agree to,
11 provided that such terms and conditions
12 are consistent with this section and regula-
13 tions.

14 “(B) SERVICE AREA OVERLAP.—In des-
15 ignating a service area under a PACE program
16 agreement under subparagraph (A)(i), the Sec-
17 retary (in consultation with the State admin-
18 istering agency) may exclude from designation
19 an area that is already covered under another
20 PACE program agreement, in order to avoid
21 unnecessary duplication of services and avoid
22 impairing the financial and service viability of
23 an existing program.

24 “(3) DATA COLLECTION; DEVELOPMENT OF
25 OUTCOME MEASURES.—

1 “(A) DATA COLLECTION.—

2 “(i) IN GENERAL.—Under a PACE
3 program agreement, the PACE provider
4 shall—

5 “(I) collect data;

6 “(II) maintain, and afford the
7 Secretary and the State administering
8 agency access to, the records relating
9 to the program, including pertinent fi-
10 nancial, medical, and personnel
11 records; and

12 “(III) submit to the Secretary
13 and the State administering agency
14 such reports as the Secretary finds (in
15 consultation with State administering
16 agencies) necessary to monitor the op-
17 eration, cost, and effectiveness of the
18 PACE program.

19 “(ii) REQUIREMENTS DURING TRIAL
20 PERIOD.—During the first 3 years of oper-
21 ation of a PACE program (either under
22 this section or under a PACE demonstra-
23 tion waiver program), the PACE provider
24 shall provide such additional data as the
25 Secretary specifies in regulations in order

1 to perform the oversight required under
2 paragraph (4)(A).

3 “(B) DEVELOPMENT OF OUTCOME MEAS-
4 URES.—Under a PACE program agreement,
5 the PACE provider, the Secretary, and the
6 State administering agency shall jointly cooper-
7 ate in the development and implementation of
8 health status and quality of life outcome meas-
9 ures with respect to PACE program eligible in-
10 dividuals.

11 “(4) OVERSIGHT.—

12 “(A) ANNUAL, CLOSE OVERSIGHT DURING
13 TRIAL PERIOD.—During the trial period (as de-
14 fined in subsection (a)(9)) with respect to a
15 PACE program operated by a PACE provider,
16 the Secretary (in cooperation with the State ad-
17 ministering agency) shall conduct a comprehen-
18 sive annual review of the operation of the
19 PACE program by the provider in order to as-
20 sure compliance with the requirements of this
21 section and regulations. Such a review shall in-
22 clude—

23 “(i) an onsite visit to the program
24 site;

1 “(ii) comprehensive assessment of a
2 provider’s fiscal soundness;

3 “(iii) comprehensive assessment of the
4 provider’s capacity to provide all PACE
5 services to all enrolled participants;

6 “(iv) detailed analysis of the entity’s
7 substantial compliance with all significant
8 requirements of this section and regula-
9 tions; and

10 “(v) any other elements the Secretary
11 or the State administering agency consid-
12 ers necessary or appropriate.

13 “(B) CONTINUING OVERSIGHT.—After the
14 trial period, the Secretary (in cooperation with
15 the State administering agency) shall continue
16 to conduct such review of the operation of
17 PACE providers and PACE programs as may
18 be appropriate, taking into account the per-
19 formance level of a provider and compliance of
20 a provider with all significant requirements of
21 this section and regulations.

22 “(C) DISCLOSURE.—The results of reviews
23 under this paragraph shall be reported prompt-
24 ly to the PACE provider, along with any rec-
25 ommendations for changes to the provider’s

1 program, and shall be made available to the
2 public upon request.

3 “(5) TERMINATION OF PACE PROVIDER AGREE-
4 MENTS.—

5 “(A) IN GENERAL.—Under regulations—

6 “(i) the Secretary or a State admin-
7 istering agency may terminate a PACE
8 program agreement for cause, and

9 “(ii) a PACE provider may terminate
10 such an agreement after appropriate notice
11 to the Secretary, the State administering
12 agency, and enrollees.

13 “(B) CAUSES FOR TERMINATION.—In ac-
14 cordance with regulations establishing proce-
15 dures for termination of PACE program agree-
16 ments, the Secretary or a State administering
17 agency may terminate a PACE program agree-
18 ment with a PACE provider for, among other
19 reasons, the fact that—

20 “(i) the Secretary or State admin-
21 istering agency determines that—

22 “(I) there are significant defi-
23 ciencies in the quality of care provided
24 to enrolled participants; or

1 “(II) the provider has failed to
2 comply substantially with conditions
3 for a program or provider under this
4 section or section 1894; and

5 “(ii) the entity has failed to develop
6 and successfully initiate, within 30 days of
7 the date of the receipt of written notice of
8 such a determination, a plan to correct the
9 deficiencies, or has failed to continue im-
10 plementation of such a plan.

11 “(C) TERMINATION AND TRANSITION PRO-
12 CEDURES.—An entity whose PACE provider
13 agreement is terminated under this paragraph
14 shall implement the transition procedures re-
15 quired under subsection (a)(2)(C).

16 “(6) SECRETARY’S OVERSIGHT; ENFORCEMENT
17 AUTHORITY.—

18 “(A) IN GENERAL.—Under regulations, if
19 the Secretary determines (after consultation
20 with the State administering agency) that a
21 PACE provider is failing substantially to com-
22 ply with the requirements of this section and
23 regulations, the Secretary (and the State ad-
24 ministering agency) may take any or all of the
25 following actions:

1 “(i) Condition the continuation of the
2 PACE program agreement upon timely
3 execution of a corrective action plan.

4 “(ii) Withhold some or all further
5 payments under the PACE program agree-
6 ment under this section or section 1894
7 with respect to PACE program services
8 furnished by such provider until the defi-
9 ciencies have been corrected.

10 “(iii) Terminate such agreement.

11 “(B) APPLICATION OF INTERMEDIATE
12 SANCTIONS.—Under regulations, the Secretary
13 may provide for the application against a
14 PACE provider of remedies described in section
15 1857(f)(2) (or, for periods before January 1,
16 1999, section 1876(i)(6)(B)) or 1903(m)(5)(B)
17 in the case of violations by the provider of the
18 type described in section 1857(f)(1) (or
19 1876(i)(6)(A) for such periods) or
20 1903(m)(5)(A), respectively (in relation to
21 agreements, enrollees, and requirements under
22 section 1894 or this section, respectively).

23 “(7) PROCEDURES FOR TERMINATION OR IMPO-
24 SITION OF SANCTIONS.—Under regulations, the pro-
25 visions of section 1857(g) (or for periods before Jan-

1 uary 1, 1999, section 1876(i)(9)) shall apply to ter-
2 mination and sanctions respecting a PACE program
3 agreement and PACE provider under this subsection
4 in the same manner as they apply to a termination
5 and sanctions with respect to a contract and a Medi-
6 care Choice organization under part C of title XVIII
7 (or for such periods an eligible organization under
8 section 1876).

9 “(8) TIMELY CONSIDERATION OF APPLICATIONS
10 FOR PACE PROGRAM PROVIDER STATUS.—In consid-
11 ering an application for PACE provider program
12 status, the application shall be deemed approved un-
13 less the Secretary, within 90 days after the date of
14 the submission of the application to the Secretary,
15 either denies such request in writing or informs the
16 applicant in writing with respect to any additional
17 information that is needed in order to make a final
18 determination with respect to the application. After
19 the date the Secretary receives such additional infor-
20 mation, the application shall be deemed approved
21 unless the Secretary, within 90 days of such date,
22 denies such request.

23 “(f) REGULATIONS.—

1 “(1) IN GENERAL.—The Secretary shall issue
2 interim final or final regulations to carry out this
3 section and section 1894.

4 “(2) USE OF PACE PROTOCOL.—

5 “(A) IN GENERAL.—In issuing such regu-
6 lations, the Secretary shall, to the extent con-
7 sistent with the provisions of this section, incor-
8 porate the requirements applied to PACE dem-
9 onstration waiver programs under the PACE
10 protocol.

11 “(B) FLEXIBILITY.—In order to provide
12 for reasonable flexibility in adapting the PACE
13 service delivery model to the needs of particular
14 organizations (such as those in rural areas or
15 those that may determine it appropriate to use
16 nonstaff physicians according to State licensing
17 law requirements) under this section and sec-
18 tion 1894, the Secretary (in close consultation
19 with State administering agencies) may modify
20 or waive provisions of the PACE protocol so
21 long as any such modification or waiver is not
22 inconsistent with and would not impair the es-
23 sential elements, objectives, and requirements of
24 this section, but may not modify or waive any
25 of the following provisions:

1 “(i) The focus on frail elderly qualify-
2 ing individuals who require the level of
3 care provided in a nursing facility.

4 “(ii) The delivery of comprehensive,
5 integrated acute and long-term care serv-
6 ices.

7 “(iii) The interdisciplinary team ap-
8 proach to care management and service de-
9 livery.

10 “(iv) Capitated, integrated financing
11 that allows the provider to pool payments
12 received from public and private programs
13 and individuals.

14 “(v) The assumption by the provider
15 of full financial risk.

16 “(3) APPLICATION OF CERTAIN ADDITIONAL
17 BENEFICIARY AND PROGRAM PROTECTIONS.—

18 “(A) IN GENERAL.—In issuing such regu-
19 lations and subject to subparagraph (B), the
20 Secretary may apply with respect to PACE pro-
21 grams, providers, and agreements such require-
22 ments of part C of title XVIII (or, for periods
23 before January 1, 1999, section 1876) and sec-
24 tion 1903(m) relating to protection of bene-
25 ficiaries and program integrity as would apply

1 to Medicare Choice organizations under such
2 part C (or for such periods eligible organiza-
3 tions under risk-sharing contracts under section
4 1876) and to health maintenance organizations
5 under prepaid capitation agreements under sec-
6 tion 1903(m).

7 “(B) CONSIDERATIONS.—In issuing such
8 regulations, the Secretary shall—

9 “(i) take into account the differences
10 between populations served and benefits
11 provided under this section and under part
12 C of title XVIII (or, for periods before
13 January 1, 1999, section 1876) and sec-
14 tion 1903(m);

15 “(ii) not include any requirement that
16 conflicts with carrying out PACE pro-
17 grams under this section; and

18 “(iii) not include any requirement re-
19 stricting the proportion of enrollees who
20 are eligible for benefits under this title or
21 title XVIII.

22 “(g) WAIVERS OF REQUIREMENTS.—With respect to
23 carrying out a PACE program under this section, the fol-
24 lowing requirements of this title (and regulations relating
25 to such requirements) shall not apply:

1 “(1) Section 1902(a)(1), relating to any re-
2 quirement that PACE programs or PACE program
3 services be provided in all areas of a State.

4 “(2) Section 1902(a)(10), insofar as such sec-
5 tion relates to comparability of services among dif-
6 ferent population groups.

7 “(3) Sections 1902(a)(23) and 1915(b)(4), re-
8 lating to freedom of choice of providers under a
9 PACE program.

10 “(4) Section 1903(m)(2)(A), insofar as it re-
11 stricts a PACE provider from receiving prepaid capi-
12 tation payments.

13 “(h) DEMONSTRATION PROJECT FOR FOR-PROFIT
14 ENTITIES.—

15 “(1) IN GENERAL.—In order to demonstrate
16 the operation of a PACE program by a private, for-
17 profit entity, the Secretary (in close consultation
18 with State administering agencies) shall grant waiv-
19 ers from the requirement under subsection (a)(3)
20 that a PACE provider may not be a for-profit, pri-
21 vate entity.

22 “(2) SIMILAR TERMS AND CONDITIONS.—

23 “(A) IN GENERAL.—Except as provided
24 under subparagraph (B), and paragraph (1),
25 the terms and conditions for operation of a

1 PACE program by a provider under this sub-
2 section shall be the same as those for PACE
3 providers that are nonprofit, private organiza-
4 tions.

5 “(B) NUMERICAL LIMITATION.—The num-
6 ber of programs for which waivers are granted
7 under this subsection shall not exceed 10. Pro-
8 grams with waivers granted under this sub-
9 section shall not be counted against the numeri-
10 cal limitation specified in subsection (e)(1)(B).

11 “(i) POST-ELIGIBILITY TREATMENT OF INCOME.—A
12 State may provide for post-eligibility treatment of income
13 for individuals enrolled in PACE programs under this sec-
14 tion in the same manner as a State treats post-eligibility
15 income for individuals receiving services under a waiver
16 under section 1915(c).

17 “(j) MISCELLANEOUS PROVISIONS.—Nothing in this
18 section or 1894 shall be construed as preventing a PACE
19 provider from entering into contracts with other govern-
20 mental or nongovernmental payers for the care of PACE
21 program eligible individuals who are not eligible for bene-
22 fits under part A, or enrolled under part B, of title XVIII
23 or eligible for medical assistance under this title.”.

24 (b) CONFORMING AMENDMENTS.—

1 (1) Section 1902(j) (42 U.S.C. 1396a(j)), as
2 amended by section 5702(a)(2)(B), is amended by
3 striking “(26)” and inserting “(27)”.

4 (2) Section 1924(a)(5) (42 U.S.C. 1396r-
5 5(a)(5)) is amended—

6 (A) in the heading, by striking “FROM OR-
7 GANIZATIONS RECEIVING CERTAIN WAIVERS”
8 and inserting “UNDER PACE PROGRAMS”; and

9 (B) by striking “from any organization”
10 and all that follows and inserting “under a
11 PACE demonstration waiver program (as de-
12 fined in section 1932(a)(7)) or under a PACE
13 program under section 1932 or 1894.”.

14 (3) Section 1903(f)(4)(C) (42 U.S.C.
15 1396b(f)(4)(C)) is amended by inserting “or who is
16 a PACE program eligible individual enrolled in a
17 PACE program under section 1932,” after “section
18 1902(a)(10)(A),”.

19 **SEC. 5742. EFFECTIVE DATE; TRANSITION.**

20 (a) **TIMELY ISSUANCE OF REGULATIONS; EFFECTIVE**
21 **DATE.**—The Secretary of Health and Human Services
22 shall promulgate regulations to carry out this chapter in
23 a timely manner. Such regulations shall be designed so
24 that entities may establish and operate PACE programs
25 under sections 1894 and 1932 of the Social Security Act

1 (as added by sections 5011 and 5741 of this Act) for peri-
2 ods beginning not later than 1 year after the date of the
3 enactment of this Act.

4 (b) EXPANSION AND TRANSITION FOR PACE DEM-
5 ONSTRATION PROJECT WAIVERS.—

6 (1) EXPANSION IN CURRENT NUMBER AND EX-
7 TENSION OF DEMONSTRATION PROJECTS.—Section
8 9412(b) of the Omnibus Budget Reconciliation Act
9 of 1986, as amended by section 4118(g) of the Om-
10 nibus Budget Reconciliation Act of 1987, is amend-
11 ed—

12 (A) in paragraph (1), by inserting before
13 the period at the end the following: “, except
14 that the Secretary shall grant waivers of such
15 requirements to up to the applicable numerical
16 limitation specified in section 1933(e)(1)(B) of
17 the Social Security Act”; and

18 (B) in paragraph (2)—

19 (i) in subparagraph (A), by striking “,
20 including permitting the organization to
21 assume progressively (over the initial 3-
22 year period of the waiver) the full financial
23 risk”; and

24 (ii) in subparagraph (C), by adding at
25 the end the following: “In granting further

1 extensions, an organization shall not be re-
2 quired to provide for reporting of informa-
3 tion which is only required because of the
4 demonstration nature of the project.”.

5 (2) ELIMINATION OF REPLICATION REQUIRE-
6 MENT.—Section 9412(b)(2)(B) of such Act, as so
7 amended, shall not apply to waivers granted under
8 such section after the date of the enactment of this
9 Act.

10 (3) TIMELY CONSIDERATION OF APPLICA-
11 TIONS.—In considering an application for waivers
12 under such section before the effective date of the
13 repeals under subsection (d), subject to the numeri-
14 cal limitation under the amendment made by para-
15 graph (1), the application shall be deemed approved
16 unless the Secretary of Health and Human Services,
17 within 90 days after the date of its submission to
18 the Secretary, either denies such request in writing
19 or informs the applicant in writing with respect to
20 any additional information which is needed in order
21 to make a final determination with respect to the
22 application. After the date the Secretary receives
23 such additional information, the application shall be
24 deemed approved unless the Secretary, within 90
25 days of such date, denies such request.

1 (c) PRIORITY AND SPECIAL CONSIDERATION IN AP-
2 PPLICATION.—During the 3-year period beginning on the
3 date of the enactment of this Act:

4 (1) PROVIDER STATUS.—The Secretary of
5 Health and Human Services shall give priority in
6 processing applications of entities to qualify as
7 PACE programs under section 1894 or 1932 of the
8 Social Security Act—

9 (A) first, to entities that are operating a
10 PACE demonstration waiver program (as de-
11 fined in section 1932(a)(7) of such Act), and

12 (B) then to entities that have applied to
13 operate such a program as of May 1, 1997.

14 (2) NEW WAIVERS.—The Secretary shall give
15 priority, in the awarding of additional waivers under
16 section 9412(b) of the Omnibus Budget Reconcili-
17 ation Act of 1986—

18 (A) to any entities that have applied for
19 such waivers under such section as of May 1,
20 1997; and

21 (B) to any entity that, as of May 1, 1997,
22 has formally contracted with a State to provide
23 services for which payment is made on a
24 capitated basis with an understanding that the
25 entity was seeking to become a PACE provider.

1 (3) SPECIAL CONSIDERATION.—The Secretary
2 shall give special consideration, in the processing of
3 applications described in paragraph (1) and the
4 awarding of waivers described in paragraph (2), to
5 an entity which as of May 1, 1997, through formal
6 activities (such as entering into contracts for fea-
7 sibility studies) has indicated a specific intent to be-
8 come a PACE provider.

9 (d) REPEAL OF CURRENT PACE DEMONSTRATION
10 PROJECT WAIVER AUTHORITY.—

11 (1) IN GENERAL.—Subject to paragraph (2),
12 the following provisions of law are repealed:

13 (A) Section 603(c) of the Social Security
14 Amendments of 1983 (Public Law 98–21).

15 (B) Section 9220 of the Consolidated Om-
16 nibus Budget Reconciliation Act of 1985 (Pub-
17 lic Law 99–272).

18 (C) Section 9412(b) of the Omnibus Budg-
19 et Reconciliation Act of 1986 (Public Law 99–
20 509).

21 (2) DELAY IN APPLICATION.—

22 (A) IN GENERAL.—Subject to subpara-
23 graph (B), the repeals made by paragraph (1)
24 shall not apply to waivers granted before the

1 initial effective date of regulations described in
2 subsection (a).

3 (B) APPLICATION TO APPROVED WAIV-
4 ERS.—Such repeals shall apply to waivers
5 granted before such date only after allowing
6 such organizations a transition period (of up to
7 24 months) in order to permit sufficient time
8 for an orderly transition from demonstration
9 project authority to general authority provided
10 under the amendments made by this chapter.

11 **SEC. 5743. STUDY AND REPORTS.**

12 (a) STUDY.—

13 (1) IN GENERAL.—The Secretary of Health and
14 Human Services (in close consultation with State
15 administering agencies, as defined in section
16 1932(a)(8) of the Social Security Act) shall conduct
17 a study of the quality and cost of providing PACE
18 program services under the medicare and medicaid
19 programs under the amendments made by this chap-
20 ter.

21 (2) STUDY OF PRIVATE, FOR-PROFIT PROVID-
22 ERS.—Such study shall specifically compare the
23 costs, quality, and access to services by entities that
24 are private, for-profit entities operating under dem-
25 onstration projects waivers granted under section

1 1932(h) of the Social Security Act with the costs,
2 quality, and access to services of other PACE pro-
3 viders.

4 (b) REPORT.—

5 (1) IN GENERAL.—Not later than 4 years after
6 the date of the enactment of this Act, the Secretary
7 shall provide for a report to Congress on the impact
8 of such amendments on quality and cost of services.
9 The Secretary shall include in such report such rec-
10 ommendations for changes in the operation of such
11 amendments as the Secretary deems appropriate.

12 (2) TREATMENT OF PRIVATE, FOR-PROFIT PRO-
13 VIDERS.—The report shall include specific findings
14 on whether any of the following findings is true:

15 (A) The number of covered lives enrolled
16 with entities operating under demonstration
17 project waivers under section 1932(h) of the
18 Social Security Act is fewer than 800 (or such
19 lesser number as the Secretary may find statis-
20 tically sufficient to make determinations re-
21 specting findings described in the succeeding
22 subparagraphs).

23 (B) The population enrolled with such en-
24 tities is less frail than the population enrolled
25 with other PACE providers.

1 (C) Access to or quality of care for individ-
2 uals enrolled with such entities is lower than
3 such access or quality for individuals enrolled
4 with other PACE providers.

5 (D) The application of such section has re-
6 sulted in an increase in expenditures under the
7 medicare or medicaid programs above the ex-
8 penditures that would have been made if such
9 section did not apply.

10 (c) INFORMATION INCLUDED IN ANNUAL REC-
11 COMMENDATIONS.—The Physician Payment Review Com-
12 mission shall include in its annual recommendations under
13 section 1845(b) of the Social Security Act (42 U.S.C.
14 1395w–1), and the Prospective Payment Review Commis-
15 sion shall include in its annual recommendations reported
16 under section 1886(e)(3)(A) of such Act (42 U.S.C.
17 1395ww(e)(3)(A)), recommendations on the methodology
18 and level of payments made to PACE providers under sec-
19 tion 1894(d) of such Act and on the treatment of private,
20 for-profit entities as PACE providers. References in the
21 preceding sentence to the Physician Payment Review
22 Commission and the Prospective Payment Review Com-
23 mission shall be deemed to be references to the Medicare
24 Payment Advisory Commission (MedPAC) established
25 under section 5022(a) after the termination of the Physi-

1 cian Payment Review Commission and the Prospective
 2 Payment Review Commission provided for in section
 3 5022(c)(2).

4 **CHAPTER 4—MEDICAID MANAGEMENT**
 5 **AND PROGRAM REFORMS**

6 **SEC. 5751. ELIMINATION OF REQUIREMENT TO PAY FOR**
 7 **PRIVATE INSURANCE.**

8 (a) REPEAL OF STATE PLAN PROVISION.—Section
 9 1902(a)(25) (42 U.S.C. 1396a(a)(25)) is amended—

10 (1) by striking subparagraph (G); and

11 (2) by redesignating subparagraphs (H) and (I)
 12 as subparagraphs (G) and (H), respectively.

13 (b) REPEAL OF ENROLLMENT REQUIREMENTS.—
 14 Section 1906 (42 U.S.C. 1396e) is repealed.

15 (c) REINSTATEMENT OF STATE OPTION.—Section
 16 1905(a) (42 U.S.C. 1396a(a)) is amended, in the matter
 17 preceding clause (i), by inserting “(including, at State op-
 18 tion, through purchase or payment of enrollee costs of
 19 health insurance)” after “The term ‘medical assistance’
 20 means payment”.

21 **SEC. 5752. ELIMINATION OF OBSTETRICAL AND PEDIATRIC**
 22 **PAYMENT RATE REQUIREMENTS.**

23 (a) IN GENERAL.—Section 1926 (42 U.S.C. 1396r-
 24 7) is repealed.

1 (b) EFFECTIVE DATE.—The repeal made by sub-
2 section (a) shall apply to services furnished on or after
3 October 1, 1997.

4 **SEC. 5753. PHYSICIAN QUALIFICATION REQUIREMENTS.**

5 (a) IN GENERAL.—Section 1903(i) (42 U.S.C.
6 1396b(i)) is amended by striking paragraph (12).

7 (b) EFFECTIVE DATE.—The amendment made by
8 subsection (a) shall apply to services furnished on or after
9 the date of the enactment of this Act.

10 **SEC. 5754. EXPANDED COST-SHARING REQUIREMENTS.**

11 Section 1916 (42 U.S.C. 1396o) is amended by add-
12 ing at the end the following:

13 “(g)(1) Notwithstanding any other provision of this
14 title, the State plan may impose cost-sharing with respect
15 to any medical assistance provided to an individual who
16 is not described in section 1902(a)(10)(A)(i) in accordance
17 with the provisions of this subsection.

18 “(2) Any cost-sharing imposed under this subsection
19 shall be pursuant to a public schedule and shall reflect
20 such economic factors, employment status, and family size
21 with respect to each such individual as the State deter-
22 mines appropriate.

23 “(3) In the case of any family whose income is less
24 than 150 percent of the income official poverty line (as
25 defined by the Office of Management and Budget, and re-

1 vided annually in accordance with section 673(2) of the
2 Omnibus Budget Reconciliation Act of 1981) applicable
3 to a family of the size involved, the total annual amount
4 of cost-sharing that may be imposed for such family shall
5 not exceed 3 percent of the family's average gross monthly
6 earnings (less the average monthly costs for such child
7 care as is necessary for the employment of the caretaker
8 relative) for such period.

9 “(4) In the case of any family whose income exceeds
10 150 percent, but does not exceed 200 percent of, such pov-
11 erty line, paragraph (3) shall be applied by substituting
12 ‘5 percent’ for ‘3 percent’.

13 “(5) Nothing in this subsection shall be construed as
14 preventing a State from imposing cost-sharing with re-
15 spect to individuals eligible for medical assistance under
16 the State plan, or with respect to items or services pro-
17 vided as medical assistance under such plan, if the provi-
18 sions of this title otherwise allow the State to do so or
19 if the State has received a waiver that authorizes such
20 cost-sharing.

21 “(6) In this subsection, the term ‘cost-sharing’ in-
22 cludes copayments, deductibles, coinsurance, enrollment
23 fees, premiums, and other charges for the provision of
24 health care services.”.

1 **SEC. 5755. PENALTY FOR FRAUDULENT ELIGIBILITY.**

2 Section 1128B(a) (42 U.S.C. 1320a–7b(a)), as
3 amended by section 217 of the Health Insurance Port-
4 ability and Accountability Act of 1996, is amended—

5 (1) by amending paragraph (6) to read as fol-
6 lows:

7 “(6) for a fee knowingly and willfully counsels
8 or assists an individual to dispose of assets (includ-
9 ing by any transfer in trust) in order for the individ-
10 ual to become eligible for medical assistance under
11 a State plan under title XIX, if disposing of the as-
12 sets results in the imposition of a period of ineligibil-
13 ity for such assistance under section 1917(c),”; and

14 (2) in clause (ii) of the matter following such
15 paragraph, by striking “failure, or conversion by any
16 other person” and inserting “failure, conversion, or
17 provision of counsel or assistance by any other per-
18 son”.

19 **SEC. 5756. ELIMINATION OF WASTE, FRAUD, AND ABUSE.**

20 (a) BAN ON SPENDING FOR NONHEALTH RELATED
21 ITEMS.—Section 1903(i) (42 U.S.C. 1396b(i)) is amend-
22 ed—

23 (1) in paragraphs (2) and (15), by striking the
24 period at the end and inserting “; or”;

25 (2) in paragraphs (10)(B), (11), and (13), by
26 adding “or” at the end; and

1 (3) by inserting after paragraph (15), the fol-
2 lowing:

3 “(16) with respect to any amount expended for
4 roads, bridges, stadiums, or any other item or serv-
5 ice not covered under a State plan under this title.”.

6 (b) DISCLOSURE OF INFORMATION AND SURETY
7 BOND REQUIREMENT FOR SUPPLIERS OF DURABLE MED-
8 ICAL EQUIPMENT.—

9 (1) REQUIREMENT.—Section 1902(a) (42
10 U.S.C. 1396a(a)), is amended—

11 (A) by striking “and” at the end of para-
12 graph (62);

13 (B) by striking the period at the end of
14 paragraph (63) and inserting “; and”; and

15 (C) by inserting after paragraph (63) the
16 following:

17 “(64) provide that the State shall not issue or
18 renew a provider number for a supplier of medical
19 assistance consisting of durable medical equipment,
20 as defined in section 1861(n), for purposes of pay-
21 ment under this part for such assistance that is fur-
22 nished by the supplier, unless the supplier provides
23 the State agency on a continuing basis with—

24 “(A)(i) full and complete information as to
25 the identity of each person with an ownership

1 or control interest (as defined in section
2 1124(a)(3)) in the supplier or in any sub-
3 contractor (as defined by the Secretary in regu-
4 lations) in which the supplier directly or indi-
5 rectly has a 5 percent or more ownership inter-
6 est; and

7 (ii) to the extent determined to be feasible
8 under regulations of the Secretary, the name of
9 any disclosing entity (as defined in section
10 1124(a)(2)) with respect to which a person with
11 such an ownership or control interest in the
12 supplier is a person with such an ownership or
13 control interest in the disclosing entity; and

14 “(B) a surety bond in a form specified by
15 the State and in an amount that is not less
16 than \$50,000.”.

17 (2) EFFECTIVE DATE.—The amendment made
18 by paragraph (1) shall apply to suppliers of medical
19 assistance consisting of durable medical equipment
20 furnished on or after January 1, 1998.

21 (c) SURETY BOND REQUIREMENT FOR HOME
22 HEALTH AGENCIES.—

23 (1) IN GENERAL.—Section 1905(a)(7) (42
24 U.S.C. 1396d(a)(7) is amended by inserting “, pro-
25 vided that the agency or organization providing such

1 services provides the State agency on a continuing
2 basis with a surety bond in a form specified by the
3 State and in an amount that is not less than
4 \$50,000” after “services”.

5 (2) EFFECTIVE DATE.—The amendment made
6 by paragraph (1) shall apply to home health agen-
7 cies with respect to services furnished on or after
8 January 1, 1998.

9 (d) CONFLICT OF INTEREST SAFEGUARDS.—Section
10 1902(a)(4) (42 U.S.C. 1396a(a)(4)) is amended to read
11 as follows:

12 “(4) provide—

13 “(A) such methods of administration (in-
14 cluding methods relating to the establishment
15 and maintenance of personnel standards on a
16 merit basis, except that the Secretary shall ex-
17 ercise no authority with respect to the selection,
18 tenure of office, and compensation of any indi-
19 vidual employed in accordance with such meth-
20 ods, and including provision for utilization of
21 professional medical personnel in the adminis-
22 tration and, where administered locally, super-
23 vision of administration of the plan) as are
24 found by the Secretary to be necessary for the
25 proper and efficient operation of the plan;

1 “(B) for the training and effective use of
2 paid subprofessional staff, with particular em-
3 phasis on the full-time or part-time employment
4 of recipients and other persons of low income,
5 as community service aides, in the administra-
6 tion of the plan and for the use of nonpaid or
7 partially paid volunteers in a social service vol-
8 unteer program in providing services to appli-
9 cants and recipients and in assisting any advi-
10 sory committees established by the State agen-
11 cy; and

12 “(C) that each State or local officer or em-
13 ployee, or independent contractor—

14 “(i) who is responsible for the expend-
15 iture of substantial amounts of funds
16 under the State plan, or who is responsible
17 for administering the State plan under this
18 title, each individual who formerly was
19 such an officer, employee, or independent
20 contractor, and each partner of such an of-
21 ficer, employee, or independent contractor
22 shall be prohibited from committing any
23 act, in relation to any activity under the
24 plan, the commission of which, in connec-
25 tion with any activity concerning the Unit-

1 ed States Government, by an officer or em-
2 ployee of the United States Government,
3 an individual who was such an officer or
4 employee, or a partner of such an officer
5 or employee is prohibited by section 207 or
6 208 of title 18, United States Code; and

7 “(ii) who is responsible for selecting,
8 awarding, or otherwise obtaining items and
9 services under the State plan shall be sub-
10 ject to safeguards against conflicts of in-
11 terest that are at least as stringent as the
12 safeguards that apply under section 27 of
13 the Office of Federal Procurement Policy
14 Act (41 U.S.C. 423) to persons described
15 in subsection (a)(2) of such section of that
16 Act;”.

17 (e) AUTHORITY TO REFUSE TO ENTER INTO MEDIC-
18 AID AGREEMENTS WITH INDIVIDUALS OR ENTITIES CON-
19 VICTED OF FELONIES.—Section 1902(a)(23) (42 U.S.C.
20 1396a(a)(23)) is amended to read as follows:

21 “(23) provide that—

22 “(A) any individual eligible for medical as-
23 sistance (including drugs) may obtain such as-
24 sistance from any institution, agency, commu-
25 nity pharmacy, or person, qualified to perform

1 the service or services required (including an or-
2 ganization which provides such services, or ar-
3 ranges for their availability, on a prepayment
4 basis), who undertakes to provide him such
5 services; and

6 “(B) an enrollment of an individual eligible
7 for medical assistance in a primary care case-
8 management system (described in section
9 1915(b)(1)), a health maintenance organization,
10 or a similar entity shall not restrict the choice
11 of the qualified person from whom the individ-
12 ual may receive services under section
13 1905(a)(4)(C),

14 except as provided in subsection (g) and in section
15 1915, except in the case of Puerto Rico, the Virgin
16 Islands, and Guam, and except that nothing in this
17 paragraph shall be construed as requiring a State to
18 provide medical assistance for items or services fur-
19 nished by a person or entity convicted of a felony
20 under Federal or State law for an offense which the
21 State agency determines is inconsistent with the best
22 interest of beneficiaries under the State plan;”.

23 (f) MONITORING PAYMENTS FOR DUAL ELIGI-
24 BLES.—The Administrator of the Health Care Financing
25 Administration shall—

1 (1) develop mechanisms to better monitor and
2 prevent inappropriate payments under the medicaid
3 program under title XIX of the Social Security Act
4 (42 U.S.C. 1396 et seq.) in the case of individuals
5 who are dually eligible for benefits under such pro-
6 gram and under the medicare program under title
7 XVIII of such Act (42 U.S.C. 1395 et seq.);

8 (2) study the use of case management or care
9 coordination in order to improve the appropriateness
10 of care, quality of care, and cost effectiveness of care
11 for individuals who are dually eligible for benefits
12 under such programs; and

13 (3) work with the States to ensure better care
14 coordination for dual eligibles and make rec-
15 ommendations to Congress as to any statutory
16 changes that would not compromise beneficiary pro-
17 tections and that would improve or facilitate such
18 care.

19 (g) BENEFICIARY AND PROGRAM PROTECTION
20 AGAINST WASTE, FRAUD, AND ABUSE.—Section 1902(a)
21 (42 U.S.C. 1396a(a)), as amended by subsection (b)(1),
22 is amended—

23 (1) by striking “and” at the end of paragraph
24 (63);

1 (2) by striking the period at the end of para-
2 graph (64) and inserting “; and”; and

3 (3) by inserting after paragraph (64) the fol-
4 lowing:

5 “(65) provide programs—

6 “(A) to ensure program integrity, protect
7 and advocate on behalf of individuals, and to
8 report to the State data concerning beneficiary
9 concerns and complaints and instances of bene-
10 ficiary abuse or program waste or fraud by
11 managed care plans operating in the State
12 under contact with the State agency;

13 “(B) to provide assistance to beneficiaries,
14 with particular emphasis on the families of spe-
15 cial needs children and persons with disabilities
16 to—

17 “(i) explain the differences between
18 managed care and fee-for-service plans;

19 “(ii) clarify the coverage for such
20 beneficiaries under any managed care plan
21 offered under the State plan under this
22 title;

23 “(iii) explain the implications of the
24 choices between competing plans;

1 “(iv) assist such beneficiaries in un-
 2 derstanding their rights under any man-
 3 aged care plan offered under the State
 4 plan, including their right to—

5 “(I) access and benefits;

6 “(II) nondiscrimination;

7 “(III) grievance and appeal
 8 mechanisms; and

9 “(IV) change plans, as des-
 10 ignated in the State plan; and

11 “(v) exercise the rights described in
 12 clause (iv); and

13 “(C) to collect and report to the State data
 14 on the number of complaints or instances iden-
 15 tified under subparagraph (A) and to report to
 16 the State annually on any systematic problems
 17 in the implementation of managed care entities
 18 contracting with the State under the State plan
 19 under this title.”.

20 **SEC. 5757. STUDY ON EPSDT BENEFITS.**

21 (a) **STUDY.**—The Secretary of Health and Human
 22 Services, in consultation with Governors, directors of State
 23 medicaid and State maternal and child programs, the In-
 24 stitute of Medicine, the American Academy of Pediatrics,
 25 and representatives of beneficiaries under the medicaid

1 program under title XIX of the Social Security Act (42
2 U.S.C. 1396 et seq.) shall conduct a study of the early
3 and periodic screening, diagnostic, and treatment services
4 provided under State plans under title XIX of the Social
5 Security Act in accordance with section 1905(r) of such
6 Act (42 U.S.C. 1396d(r)).

7 (b) REPORT.—Not later than 12 months after the
8 date of enactment of this Act, the Secretary of Health and
9 Human Services shall submit a report to Congress on the
10 results of the conducted study under subsection (a).

11 **SEC. 5758. STUDY ON EFFECTIVENESS OF MANAGED CARE**
12 **ENTITIES IN MEETING THE NEEDS OF EN-**
13 **ROLLEES WITH SPECIAL HEALTH CARE**
14 **NEEDS.**

15 (a) STUDY.—The Secretary of Health and Human
16 Services, in consultation with States, managed care enti-
17 ties, as defined in section 1950(a)(1) of the Social Security
18 Act (as added by section 5701(a)(2) of this Act), the Na-
19 tional Academy of State Health Policy, representatives of
20 beneficiaries under the medicaid program under title XIX
21 of the Social Security Act (42 U.S.C. 1396 et seq.) with
22 special health care needs (as determined by the Secretary),
23 and experts in the provision of specialized care, shall con-
24 duct a study of the health care items and services provided
25 to such beneficiaries with special health care needs by

1 managed care entities under part B of title XIX of the
2 Social Security Act (as added by section 5701(a)(2) of this
3 Act) or under a waiver. Such study shall consider the
4 unique health care requirements of such beneficiaries, in-
5 cluding any problems that are identified with respect to
6 access to care that may be experienced by people with
7 chronic conditions, and shall evaluate the extent to which
8 the special health care needs of such beneficiaries are
9 being satisfied by such entities.

10 (b) REPORT.—Not later than 2 years after the date
11 of enactment of this Act, the Secretary of Health and
12 Human Services shall submit a report to Congress on the
13 results of the study conducted under subsection (a).

14 **CHAPTER 5—MISCELLANEOUS**

15 **SEC. 5761. INCREASED FMAPS.**

16 Section 1905(b) (42 U.S.C. 1396d(b)(1)) is amend-
17 ed—

18 (1) by striking “and (2)” and inserting “(2)”;

19 and

20 (2) by striking the period and inserting “, and

21 (3) during the period beginning on October 1, 1997,

22 and ending on September 30, 2000, the Federal

23 medical assistance percentage for the District of Co-

24 lumbia shall be 60 per centum, and the Federal

25 medical assistance percentage for Alaska shall be

1 59.8 per centum (but only, in the case of such
2 States, with respect to expenditures under a State
3 plan under this title).”.

4 **SEC. 5762. INCREASE IN PAYMENT CAPS FOR TERRITORIES.**

5 Section 1108 (42 U.S.C. 1308) is amended—

6 (1) in subsection (f), by striking “The” and in-
7 serting “Subject to subsection (g), the”; and

8 (2) by adding at the end the following:

9 “(g) MEDICAID PAYMENTS TO TERRITORIES FOR
10 FISCAL YEAR 1998 AND THEREAFTER.—

11 “(1) FISCAL YEAR 1998.—With respect to fiscal
12 year 1998, the amounts otherwise determined for
13 Puerto Rico, the Virgin Islands, Guam, the North-
14 ern Mariana Islands, and American Samoa under
15 subsection (f) for such fiscal year shall be increased
16 in the following manner:

17 “(A) For Puerto Rico, \$30,000,000.

18 “(B) For the Virgin Islands, \$750,000.

19 “(C) For Guam, \$750,000.

20 “(D) For the Northern Mariana Islands,
21 \$500,000.

22 “(E) For American Samoa, \$500,000.

23 “(2) FISCAL YEAR 1999 AND THEREAFTER.—

24 Notwithstanding subsection (f), with respect to fiscal
25 year 1999 and any fiscal year thereafter, the total

1 amount certified by the Secretary under title XIX
2 for payment to—

3 “(A) Puerto Rico shall not exceed the sum
4 of—

5 “(i) the amount provided in this sub-
6 section for the preceding fiscal year; and

7 “(ii) \$30,000,000,
8 increased by the percentage increase in the
9 medical care component of the consumer price
10 index for all urban consumers (as published by
11 the Bureau of Labor Statistics) for the twelve-
12 month period ending in March preceding the
13 beginning of the fiscal year, rounded to the
14 nearest \$100,000;

15 “(B) the Virgin Islands shall not exceed
16 the sum of—

17 “(i) the amount provided in this sub-
18 section for the preceding fiscal year; and

19 “(ii) \$750,000,
20 increased by the percentage increase referred to
21 in subparagraph (A), rounded to the nearest
22 \$10,000;

23 “(C) Guam shall not exceed the sum of—

24 “(i) the amount provided in this sub-
25 section for the preceding fiscal year; and

1 “(ii) \$750,000,
2 increased by the percentage increase referred to
3 in subparagraph (A), rounded to the nearest
4 \$10,000;

5 “(D) Northern Mariana Islands shall not
6 exceed the sum of—

7 “(i) the amount provided in this sub-
8 section for the preceding fiscal year; and

9 “(ii) \$500,000,
10 increased by the percentage increase referred to
11 in subparagraph (A), rounded to the nearest
12 \$10,000; and

13 “(E) American Samoa shall not exceed the
14 sum of—

15 “(i) the amount provided in this sub-
16 section for the preceding fiscal year; and

17 “(ii) \$500,000,
18 increased by the percentage increase referred to
19 in subparagraph (A), rounded to the nearest
20 \$10,000.”.

21 **SEC. 5763. COMMUNITY-BASED MENTAL HEALTH SERVICES.**

22 (a) IN GENERAL.—Section 1905(a) (42 U.S.C.
23 1396d(a)), as amended by section 5741(a)(1), is amend-
24 ed—

1 (1) by striking “and” at the end of paragraph
2 (26);

3 (2) by redesignating paragraph (27) as para-
4 graph (28); and

5 (3) by inserting after paragraph (26) the fol-
6 lowing new paragraph:

7 “(27) outpatient and intensive community-
8 based mental health services, including psychiatric
9 rehabilitation, day treatment, intensive in-home serv-
10 ices for children, assertive community treatment,
11 therapeutic out-of-home placements (excluding room
12 and board), clinic services, partial hospitalization,
13 and targeted case management; and”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) Section 1902(a)(10)(C)(iv) (42 U.S.C.
16 1396a(a)(10)(C)(iv)), as amended by section
17 5702(a)(2)(A), is amended by inserting “or (27)”
18 after “(25)”.

19 (2) Section 1902(j) (42 U.S.C. 1396a(j)), as
20 amended by section 5741(b)(1), is amended by strik-
21 ing “(27)” and inserting “(28)”.

1 **SEC. 5764. OPTIONAL MEDICAID COVERAGE OF CERTAIN**
2 **CDC-SCREENED BREAST CANCER PATIENTS.**

3 (a) COVERAGE AS OPTIONAL CATEGORICALLY
4 NEEDY GROUP.—Section 1902(a)(10)(A)(ii) (42 U.S.C.
5 1396a(a)(10)(A)(ii)) is amended—

6 (1) in subclause (XI), by striking “or” at the
7 end;

8 (2) in subclause (XII), by adding “or” at the
9 end; and

10 (3) by adding at the end the following:

11 “(XIII) who are described in sub-
12 section (aa)(1)(relating to certain
13 CDC-screened breast cancer pa-
14 tients);”.

15 (b) GROUP AND BENEFIT DESCRIBED.—Section
16 1902 (42 U.S.C. 1396a) is amended by adding at the end
17 the following:

18 “(aa)(1) Individuals described in this paragraph are
19 individuals not described in subsection (a)(10)(A)(i)
20 who—

21 “(A) have not attained age 65;

22 “(B) have been diagnosed with breast cancer
23 through participation in the program to screen
24 women for breast and cervical cancer conducted by
25 the Director of the Centers for Disease Control and

1 Prevention under title 15 of the Public Health Serv-
2 ice Act (42 U.S.C. 300k et seq.);

3 “(C) satisfy the income and resource eligibility
4 criteria established by such Director for participa-
5 tion in such program; and

6 “(D) are not otherwise eligible for medical as-
7 sistance under the State plan under this title.

8 “(2) For purposes of subsection (a)(10), the term
9 “breast cancer-related services” means each of the follow-
10 ing services relating to treatment of breast cancer:

11 “(A) Prescribed drugs.

12 “(B) Physicians’ services and services described
13 in section 1905(a)(2).

14 “(C) Laboratory and X-ray services (including
15 services to confirm the presence of breast cancer).

16 “(D) Rural health clinic services and Federally-
17 qualified health center services.

18 “(E) Case management services (as defined in
19 section 1915(g)(2)).

20 “(F) Services (other than room and board) de-
21 signed to encourage completion of regimens of pre-
22 scribed drugs by outpatients, including services to
23 observe directly the intake of prescribed drugs.”.

1 (c) LIMITATION ON BENEFITS.—Section 1902(a)(10)
2 (42 U.S.C. 1396a(a)(10)) is amended in the matter follow-
3 ing subparagraph (F)—

4 (1) by striking “, and (XIII)”;

5 (2) by inserting before the semicolon at the end
6 the following: “, and (XIV) the medical assistance
7 made available to an individual described in sub-
8 section (aa)(1) who is eligible for medical assistance
9 only because of subparagraph (A)(ii)(XIII) shall be
10 limited to medical assistance for breast cancer-relat-
11 ed services (described in subsection (aa)(2))”.

12 (d) CONFORMING AMENDMENTS.—

13 (1) Section 1905(a) (42 U.S.C. 1396d(a)) is
14 amended—

15 (A) in clause (x), by striking “or” at the
16 end;

17 (B) in clause (xi), by adding “or” at the
18 end;

19 (C) by inserting after clause (xi) the fol-
20 lowing:

21 “(xii) individuals described in section
22 1902(aa)(1),”; and

23 (D) by striking paragraph (19) and insert-
24 ing the following:

1 “(19) case management services (as defined in
2 section 1915(g)(2)), TB-related services described in
3 section 1902(z)(2)(F), and breast cancer-related
4 services described in section 1902)(2)(F);”.

5 (2) Section 1915(g)(1) (42 U.S.C. 1396n(g)(1))
6 is amended by inserting “or section 1902(aa)(1)”
7 after “section 1902(z)(1)(A)”.

8 (e) EFFECTIVE DATE.—The amendments made by
9 this section apply to medical assistance furnished on or
10 after October 1, 1997, without regard to whether or not
11 final regulations to carry out such amendments have been
12 promulgated by such date.

13 **SEC. 5765. TREATMENT OF STATE TAXES IMPOSED ON CER-**
14 **TAIN HOSPITALS THAT PROVIDE FREE CARE.**

15 (a) EXCEPTION FROM TAX DOES NOT DISQUALIFY
16 AS BROAD-BASED TAX.—Section 1903(w)(3) (42 U.S.C.
17 1396b(w)(3)) is amended—

18 (1) in subparagraph (B), by striking “and (E)”
19 and inserting “(E), and (F)”; and

20 (2) by adding at the end the following:

21 “(F) In no case shall a tax not qualify as a broad-
22 based health care related tax under this paragraph be-
23 cause it does not apply to a hospital that is described in
24 section 501(c)(3) of the Internal Revenue Code of 1986
25 and exempt from taxation under section 501(a) of such

1 Code and that does not accept payment under the State
2 plan under this title or under title XVIII.”.

3 (b) REDUCTION IN FEDERAL FINANCIAL PARTICIPA-
4 TION IN CASE OF IMPOSITION OF TAX.—Section 1903(b)
5 (42 U.S.C. 1396b(b)) is amended by adding at the end
6 the following:

7 “(4) Notwithstanding the preceding provisions of this
8 section, the amount determined under subsection (a)(1)
9 for any State shall be decreased in a quarter by the
10 amount of any health care related taxes (described in sec-
11 tion 1902(w)(3)(A)) that are imposed on a hospital de-
12 scribed in subsection (w)(3)(F) in that quarter.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 subsection (a) shall apply to taxes imposed before, on, or
15 after the date of the enactment of this Act and the amend-
16 ment made by subsection (b) shall apply to taxes imposed
17 on or after such date.

18 **SEC. 5766. TREATMENT OF VETERANS PENSIONS UNDER**
19 **MEDICAID.**

20 (a) POST-ELIGIBILITY.—Section 1902(r)(1) of the
21 Social Security Act (42 U.S.C. 1396a(r)(1)) is amended
22 to read as follows:

23 “(r)(1) For purposes of sections 1902(a)(17) and
24 1924(d)(1)(D) and for purposes of a waiver under section
25 1915, with respect to the post-eligibility treatment of in-

1 come of individuals who are institutionalized or receiving
2 home or community-based services under such a waiver—

3 “(A) there shall be disregarded reparation pay-
4 ments made by the Federal Republic of Germany;

5 “(B) there shall be taken into account amounts
6 for incurred expenses for medical or remedial care
7 that are not subject to payment by a third party, in-
8 cluding—

9 “(i) medicare and other health insurance
10 premiums, deductibles, or coinsurance, and

11 “(ii) necessary medical or remedial care
12 recognized under State law but not covered
13 under the State plan under this title, subject to
14 reasonable limits the State may establish on the
15 amount of these expenses; and

16 “(C) in the case of a resident in a State veter-
17 ans home, there shall be taken into account, as in-
18 come, any and all payments received under a De-
19 partment of Veterans Affairs pension or compensa-
20 tion program, including payments attributable to the
21 recipient’s medical expenses or to the recipient’s
22 need for aid and attendance, but excluding that part
23 of any augmented benefit attributable to a depend-
24 ent.

1 For purposes of subparagraph (C), any Department of
2 Veterans Affairs pension benefit that has been limited to
3 \$90 per month pursuant to section 5503(f) of title 38,
4 United States Code, may be applied to meet the monthly
5 personal needs allowance provided by the State plan under
6 this title, but shall not otherwise be used to reduce the
7 amount paid to a facility under the State plan.”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 subsection (a) shall be effective with respect to periods be-
10 ginning on and after July 1, 1994.

11 **SEC. 5767. EFFECTIVE DATE.**

12 (a) IN GENERAL.—Except as otherwise specifically
13 provided, the provisions of and amendments made by this
14 subtitle shall apply with respect to State programs under
15 title XIX of the Social Security Act (42 U.S.C. 1396 et
16 seq.) on and after October 1, 1997.

17 (b) EXTENSION FOR STATE LAW AMENDMENT.—In
18 the case of a State plan under title XIX of the Social Se-
19 curity Act which the Secretary of Health and Human
20 Services determines requires State legislation in order for
21 the plan to meet the additional requirements imposed by
22 the amendments made by this subtitle, the State plan shall
23 not be regarded as failing to comply with the requirements
24 of this subtitle solely on the basis of its failure to meet
25 these additional requirements before the first day of the

1 first calendar quarter beginning after the close of the first
 2 regular session of the State legislature that begins after
 3 the date of the enactment of this Act. For purposes of
 4 the previous sentence, in the case of a State that has a
 5 2-year legislative session, each year of the session is con-
 6 sidered to be a separate regular session of the State
 7 legislature.

8 **Subtitle J—Children’s Health**
 9 **Insurance Initiatives**

10 **SEC. 5801. ESTABLISHMENT OF CHILDREN’S HEALTH IN-**
 11 **SURANCE INITIATIVES.**

12 (a) IN GENERAL.—The Social Security Act is amend-
 13 ed by adding at the end the following:

14 “TITLE XXI—CHILD HEALTH INSURANCE
 15 INITIATIVES

16 “**SEC. 2101. PURPOSE.**

17 The purpose of this title is to provide funds to States
 18 to enable such States to expand the provision of health
 19 insurance coverage for low-income children. Funds pro-
 20 vided under this title shall be used to achieve this purpose
 21 through outreach activities described in section 2106(a)
 22 and, at the option of the State through—

23 “(1) a grant program conducted in accordance
 24 with section 2107 and the other requirements of this
 25 title; or

1 “(2) expansion of coverage of such children
2 under the State medicaid program who are not re-
3 quired to be provided medical assistance under sec-
4 tion 1902(l) (taking into account the process of indi-
5 viduals aging into eligibility under subsection
6 (l)(1)(D)).

7 **“SEC. 2102. DEFINITIONS.**

8 In this title:

9 “(1) **BASE-YEAR COVERED LOW-INCOME CHILD**
10 **POPULATION.**—The term ‘base-year covered low-in-
11 come child population’ means the total number of
12 low-income children with respect to whom, as of fis-
13 cal year 1996, an eligible State provides or pays the
14 cost of health benefits either through a State funded
15 program or through eligibility under the State plan
16 under title XIX (including under a waiver of such
17 plan), as determined by the Secretary.

18 “(2) **CHILD.**—The term ‘child’ means an indi-
19 vidual under 19 years of age.

20 “(3) **ELIGIBLE STATE.**—The term ‘eligible
21 State’ means, with respect to a fiscal year, a State
22 that—

23 “(A) provides, under section 1902(l)(1)(D)
24 or under a waiver, for eligibility for medical as-
25 sistance under a State plan under title XIX of

1 individuals under 19 years of age, regardless of
2 date of birth; and

3 “(B) has submitted to the Secretary under
4 section 2104 a program outline that—

5 “(i) sets forth how the State intends
6 to use the funds provided under this title
7 to provide health insurance coverage for
8 low-income children consistent with the
9 provisions of this title; and

10 “(ii) is approved under section 2104;
11 and

12 “(iii) otherwise satisfies the require-
13 ments of this title.

14 “(4) FEDERAL MEDICAL ASSISTANCE PERCENT-
15 AGE.—The term ‘Federal medical assistance per-
16 centage’ means, with respect to a State, the meaning
17 given that term under section 1905(b).

18 “(5) FEHBP-EQUIVALENT CHILDREN’S
19 HEALTH INSURANCE COVERAGE.—The term
20 ‘FEHBP-equivalent children’s health insurance cov-
21 erage’ means, with respect to a State, any plan or
22 arrangement that provides, or pays the cost of,
23 health benefits that the Secretary has certified are
24 actuarially equivalent to the benefits required to be
25 offered for a child under chapter 89 of title 5, Unit-

1 ed States Code, and that otherwise satisfies State
2 insurance standards and requirements.

3 “(6) INDIANS.—The term ‘Indians’ has the
4 meaning given that term in section 4(c) of the In-
5 dian Health Care Improvement Act (25 U.S.C. 1601
6 et seq.).

7 “(7) LOW-INCOME CHILD.—The term ‘low-in-
8 come child’ means a child in a family whose income
9 is below 200 percent of the poverty line for a family
10 of the size involved.

11 “(8) POVERTY LINE.—The term ‘poverty line’
12 has the meaning given that term in section 673(2)
13 of the Community Services Block Grant Act (42
14 U.S.C. 9902(2)), including any revision required by
15 such section.

16 “(9) SECRETARY.—The term ‘Secretary’ means
17 the Secretary of Health and Human Services.

18 “(10) STATE.—The term ‘State’ means each of
19 the 50 States, the District of Columbia, Puerto Rico,
20 Guam, the Virgin Islands, American Samoa, and the
21 Northern Mariana Islands.

22 “(11) STATE CHILDREN’S HEALTH EXPENDI-
23 TURES.—The term ‘State children’s health expendi-
24 tures’ means the State share of expenditures by the

1 State for providing children with health care items
2 and services under—

3 “(A) the State plan for medical assistance
4 under title XIX;

5 “(B) the maternal and child health services
6 block grant program under title V;

7 “(C) the preventive health services block
8 grant program under part A of title XIX of the
9 Public Health Services Act (42 U.S.C. 300w et
10 seq.);

11 “(D) State-funded programs that are de-
12 signed to provide health care items and services
13 to children;

14 “(E) school-based health services pro-
15 grams;

16 “(F) State programs that provide uncom-
17 pensated or indigent health care;

18 “(G) county-indigent care programs for
19 which the State requires a matching share by a
20 county government or for which there are inter-
21 governmental transfers from a county to State
22 government; and

23 “(H) any other program under which the
24 Secretary determines the State incurs uncom-

1 pensated expenditures for providing children
2 with health care items and services.

3 “(12) STATE MEDICAID PROGRAM.—The term
4 ‘State medicaid program’ means the program of
5 medical assistance provided under title XIX.

6 **“SEC. 2103. APPROPRIATION.**

7 “(a) APPROPRIATION.—

8 “(1) IN GENERAL.—Subject to subsection (b),
9 out of any money in the Treasury of the United
10 States not otherwise appropriated, there is appro-
11 priated for the purpose of carrying out this title—

12 “(A) for fiscal year 1998, \$2,500,000,000;

13 “(B) for each of fiscal years 1999 through
14 2001, \$3,200,000,000;

15 “(C) for fiscal year 2002, \$3,900,000,000;

16 and

17 “(D) for each of fiscal years 2003 through
18 2007, \$4,580,000,000.

19 “(2) AVAILABILITY.—Funds appropriated
20 under this section shall remain available without fis-
21 cal year limitation, as provided under section
22 2105(b)(4).

23 “(b) REDUCTION FOR INCREASED MEDICAID EX-
24 PENDITURES.—With respect to each of the fiscal years de-
25 scribed in subsection (a)(1), the amount appropriated

1 under subsection (a)(1) for each such fiscal year shall be
2 reduced by an amount equal to the amount of the total
3 Federal outlays under the medicaid program under title
4 XIX resulting from—

5 “(1) the amendment made by section 5732 of
6 the Balanced Budget Act of 1997 (regarding the
7 State option to provide 12-month continuous eligi-
8 bility for children);

9 “(2) increased enrollment under State plans ap-
10 proved under such program as a result of outreach
11 activities under section 2106(a); and

12 “(3) the requirement under section 2102(3)(A)
13 to provide eligibility for medical assistance under the
14 State plan under title XIX for all children under 19
15 years of age who have families with income that is
16 at or below the poverty line.

17 “(c) STATE ENTITLEMENT.—This title constitutes
18 budget authority in advance of appropriations Acts and
19 represents the obligation of the Federal Government to
20 provide for the payment to States of amounts provided
21 in accordance with the provisions of this title.

22 “(d) EFFECTIVE DATE.—No State is eligible for pay-
23 ments under section 2105 for any calendar quarter begin-
24 ning before October 1, 1997.

1 **“SEC. 2104. PROGRAM OUTLINE.**

2 “(a) GENERAL DESCRIPTION.—A State shall submit
3 to the Secretary a program outline, consistent with the
4 requirements of this title, that—

5 “(1) identifies which of the 2 options described
6 in section 2101 the State intends to use to provide
7 low-income children in the State with health insur-
8 ance coverage;

9 “(2) describes the manner in which such cov-
10 erage shall be provided; and

11 “(3) provides such other information as the
12 Secretary may require.

13 “(b) OTHER REQUIREMENTS.—The program outline
14 submitted under this section shall include the following:

15 “(1) ELIGIBILITY STANDARDS AND METH-
16 ODOLOGIES.—A summary of the standards and
17 methodologies used to determine the eligibility of
18 low-income children for health insurance coverage
19 under a State program funded under this title.

20 “(2) ELIGIBILITY SCREENING; COORDINATION
21 WITH OTHER HEALTH COVERAGE.—A description of
22 the procedures to be used to ensure—

23 “(A) through both intake and followup
24 screening, that only low-income children are
25 furnished health insurance coverage through
26 funds provided under this title; and

1 “(B) that any health insurance coverage
2 provided for children through funds under this
3 title does not reduce the number of children
4 who are provided such coverage through any
5 other publicly or privately funded health plan.

6 “(3) INDIANS.—A description of how the State
7 will ensure that Indians are served through a State
8 program funded under this title.

9 “(c) DEADLINE FOR SUBMISSION.—A State program
10 outline shall be submitted to the Secretary by not later
11 than March 31 of any fiscal year (October 1, 1997, in
12 the case of fiscal year 1998).

13 **“SEC. 2105. DISTRIBUTION OF FUNDS.**

14 “(a) ESTABLISHMENT OF FUNDING POOLS.—

15 “(1) IN GENERAL.—From the amount appro-
16 priated under section 2103(a)(1) for each fiscal
17 year, determined after the reduction required under
18 section 2103(b), the Secretary shall, for purposes of
19 fiscal year 1998, reserve 85 percent of such amount
20 for distribution to eligible States through the basic
21 allotment pool under subsection (b) and 15 percent
22 of such amount for distribution through the new
23 coverage incentive pool under subsection
24 (c)(2)(B)(ii).

1 “(2) ANNUAL ADJUSTMENT OF RESERVE PER-
2 CENTAGES.—The Secretary shall annually adjust the
3 amount of the percentages described in paragraph
4 (1) in order to provide sufficient basic allotments
5 and sufficient new coverage incentives to achieve the
6 purpose of this title.

7 “(b) DISTRIBUTION OF FUNDS UNDER THE BASIC
8 ALLOTMENT POOL.—

9 “(1) STATES.—

10 “(A) IN GENERAL.—From the total
11 amount reserved under subsection (a) for a fis-
12 cal year for distribution through the basic allot-
13 ment pool, the Secretary shall first set aside
14 0.25 percent for distribution under paragraph
15 (2) and shall allot from the amount remaining
16 to each eligible State not described in such
17 paragraph the State’s allotment percentage for
18 such fiscal year.

19 “(B) STATE’S ALLOTMENT PERCENT-
20 AGE.—

21 “(i) IN GENERAL.—For purposes of
22 subparagraph (A), the allotment percent-
23 age for a fiscal year for each State is the
24 percentage equal to the ratio of the num-
25 ber of low-income children in the base pe-

1 riod in the State to the total number of
2 low-income children in the base period in
3 all States not described in paragraph (2).

4 “(ii) NUMBER OF LOW-INCOME CHIL-
5 DREN IN THE BASE PERIOD.—In clause
6 (i), the number of low-income children in
7 the base period for a fiscal year in a State
8 is equal to the average of the number of
9 low-income children in the State for the
10 period beginning on October 1, 1992, and
11 ending on September 30, 1995, as reported
12 in the March 1994, March 1995, and
13 March 1996 supplements to the Current
14 Population Survey of the Bureau of the
15 Census.

16 “(2) OTHER STATES.—

17 “(A) IN GENERAL.—From the amount set
18 aside under paragraph (1)(A) for each fiscal
19 year, the Secretary shall make allotments for
20 such fiscal year in accordance with the percent-
21 ages specified in subparagraph (B) to Puerto
22 Rico, Guam, the Virgin Islands, American
23 Samoa, and the Northern Mariana Islands, if
24 such States are eligible States for such fiscal
25 year.

1 “(B) PERCENTAGES SPECIFIED.—The per-
2 centages specified in this subparagraph are in
3 the case of—

4 “(i) Puerto Rico, 91.6 percent;

5 “(ii) Guam, 3.5 percent;

6 “(iii) the Virgin Islands, 2.6 percent;

7 “(iv) American Samoa, 1.2 percent;

8 and

9 “(v) the Northern Mariana Islands,
10 1.1 percent.

11 “(3) THREE-YEAR AVAILABILITY OF AMOUNTS
12 ALLOTTED.—Amounts allotted to a State pursuant
13 to this subsection for a fiscal year shall remain
14 available for expenditure by the State through the
15 end of the second succeeding fiscal year.

16 “(4) PROCEDURE FOR DISTRIBUTION OF UN-
17 USED FUNDS.—The Secretary shall determine an
18 appropriate procedure for distribution of funds to el-
19 igible States that remain unused under this sub-
20 section after the expiration of the availability of
21 funds required under paragraph (3). Such procedure
22 shall be developed and administered in a manner
23 that is consistent with the purpose of this title.

24 “(c) PAYMENTS.—

25 “(1) IN GENERAL.—The Secretary shall—

1 “(A) before October 1 of any fiscal year,
2 pay an eligible State an amount equal to 1 per-
3 cent of the amount allotted to the State under
4 subsection (b) for conducting the outreach ac-
5 tivities required under section 2106(a); and

6 “(B) make quarterly fiscal year payments
7 to an eligible State from the amount remaining
8 of such allotment for such fiscal year in an
9 amount equal to the Federal medical assistance
10 percentage for the State, as determined under
11 section 1905(b)(1), of the cost of providing
12 health insurance coverage for a low-income
13 child in the State plus the applicable bonus
14 amount.

15 “(2) APPLICABLE BONUS.—

16 “(A) IN GENERAL.—For purposes of para-
17 graph (1), the applicable bonus amount is—

18 “(i) 5 percent of the cost, with respect
19 to a period, of providing health insurance
20 coverage for the base-year covered low-in-
21 come child population (measured in full
22 year equivalency); and

23 “(ii) 10 percent of the cost, with re-
24 spect to a period, of providing health in-
25 surance coverage for the number (as so

1 measured) of low-income children that are
2 in excess of such population.

3 “(B) SOURCE OF BONUSES.—

4 “(i) BASE-YEAR COVERED LOW-IN-
5 COME CHILD POPULATION.—A bonus de-
6 scribed in subparagraph (A)(i) shall be
7 paid out of an eligible State’s allotment for
8 a fiscal year.

9 “(ii) FOR OTHER LOW-INCOME CHILD
10 POPULATIONS.—A bonus described in sub-
11 subparagraph (A)(ii) shall be paid out of the
12 new coverage incentive pool reserved under
13 subsection (a)(1).

14 “(3) DEFINITION OF COST OF PROVIDING
15 HEALTH INSURANCE COVERAGE.—For purposes of
16 this subsection the cost of providing health insur-
17 ance coverage for a low-income child in the State
18 means—

19 “(A) in the case of an eligible State that
20 opts to use funds provided under this title
21 through the medicaid program, the cost of pro-
22 viding such child with medical assistance under
23 the State plan under title XIX; and

24 “(B) in the case of an eligible State that
25 opts to use funds provided under this title

1 under section 2107, the cost of providing such
2 child with health insurance coverage under such
3 section.

4 “(4) LIMITATION ON TOTAL PAYMENTS.—With
5 respect to a fiscal year, the total amount paid to an
6 eligible State under this title (including any bonus
7 payments) shall not exceed 85 percent of the total
8 cost of a State program conducted under this title
9 for such fiscal year.

10 “(5) MAINTENANCE OF EFFORT.—No funds
11 shall be paid to a State under this title if—

12 “(A) in the case of fiscal year 1998, the
13 State children’s health expenditures are less
14 than the amount of such expenditures for fiscal
15 year 1996; and

16 “(B) in the case of any succeeding fiscal
17 year, the State children’s health expenditures
18 described in section 2102(11)(A) are less than
19 the amount of such expenditures for fiscal year
20 1996, increased by a medicaid child population
21 growth factor determined by the Secretary.

22 “(6) ADVANCE PAYMENT; RETROSPECTIVE AD-
23 JUSTMENT.—The Secretary may make payments
24 under this subsection for each quarter on the basis
25 of advance estimates of expenditures submitted by

1 the State and such other investigation as the Sec-
2 retary may find necessary, and shall reduce or in-
3 crease the payments as necessary to adjust for any
4 overpayment or underpayment for prior quarters.

5 **“SEC. 2106. USE OF FUNDS.**

6 “(a) SET-ASIDE FOR OUTREACH ACTIVITIES.—

7 “(1) IN GENERAL.—From the amount allotted
8 to a State under section 2105(b) for a fiscal year,
9 each State shall conduct outreach activities de-
10 scribed in paragraph (2).

11 “(2) OUTREACH ACTIVITIES DESCRIBED.—The
12 outreach activities described in this paragraph in-
13 clude activities to—

14 “(A) identify and enroll children who are
15 eligible for medical assistance under the State
16 plan under title XIX; and

17 “(B) conduct public awareness campaigns
18 to encourage employers to provide health insur-
19 ance coverage for children.

20 “(b) STATE OPTIONS FOR REMAINDER.—A State
21 may use the amount remaining of the allotment to a State
22 under section 2105(b) for a fiscal year, determined after
23 the payment required under section 2105(c)(1)(A), in ac-
24 cordance with section 2107 or the State medicaid program
25 (but not both).

1 “(c) PROHIBITION ON USE FOR ABORTIONS.—

2 “(1) IN GENERAL.—Except as provided in para-
3 graph (2), no funds provided under this title may be
4 used to pay for any abortion or to assist in the pur-
5 chase, in whole or in part, of health benefit coverage
6 that includes coverage of abortion.

7 “(2) EXCEPTION.—Paragraph (1) shall not
8 apply to an abortion if necessary to save the life of
9 the mother or if the pregnancy is the result of an
10 act of rape or incest.

11 “(d) USE LIMITED TO STATE PROGRAM EXPENDI-
12 TURES.—Funds provided to an eligible State under this
13 title shall only be used to carry out the purpose of this
14 title.

15 “(e) ADMINISTRATIVE EXPENDITURES.—Not more
16 than 10 percent of the amount allotted to a State under
17 section 2105(b), determined after the payment required
18 under section 2105(c)(1)(A), shall be used for administra-
19 tive expenditures for the program funded under this title.

20 “(f) NONAPPLICATION OF FIVE-YEAR LIMITED ELI-
21 GIBILITY FOR MEANS-TESTED PUBLIC BENEFITS.—The
22 provisions of section 403 of the Personal Responsibility
23 and Work Opportunity Reconciliation Act of 1996 (8
24 U.S.C. 1613) shall not apply with respect to a State pro-
25 gram funded under this title.

1 **“SEC. 2107. STATE OPTION FOR THE PURCHASE OR PROVI-**
2 **SION OF CHILDREN’S HEALTH INSURANCE.**

3 “(a) STATE OPTION.—

4 “(1) IN GENERAL.—An eligible State that opts
5 to use funds provided under this title under this sec-
6 tion shall use such funds to—

7 “(A) subsidize payment of employee con-
8 tributions for health insurance coverage for a
9 dependent low-income child that is available
10 through group health insurance coverage of-
11 fered by an employer in the State; or

12 “(B) to provide FEHBP-equivalent chil-
13 dren’s health insurance coverage for low-income
14 children who reside in the State.

15 “(2) PRIORITY FOR LOW-INCOME CHILDREN.—
16 A State that uses funds provided under this title
17 under this section shall not cover low-income chil-
18 dren with higher family income without covering
19 such children with a lower family income.

20 “(3) DETERMINATION OF ELIGIBILITY AND
21 FORM OF ASSISTANCE.—An eligible State may estab-
22 lish any additional eligibility criteria for the provi-
23 sion of health insurance coverage for a low-income
24 child through funds provided under this title, so long
25 as such criteria and assistance are consistent with
26 the purpose and provisions of this title.

1 “(b) NONENTITLEMENT.—Nothing in this section
2 shall be construed as providing an entitlement for an indi-
3 vidual or person to any health insurance coverage, assist-
4 ance, or service provided through a State program funded
5 under this title. If, with respect to a fiscal year, an eligible
6 State determines that the funds provided under this title
7 are not sufficient to provide health insurance coverage for
8 all the low-income children that the State proposes to
9 cover in the State program outline submitted under sec-
10 tion 2104 for such fiscal year, the State may adjust the
11 applicable eligibility criteria for such children appro-
12 priately or adjust the State program in another manner
13 specified by the Secretary, so long as any such adjust-
14 ments are consistent with the purpose of this title.

15 **“SEC. 2108. PROGRAM INTEGRITY.**

16 “The following provisions of the Social Security Act
17 shall apply to eligible States under this title in the same
18 manner as such provisions apply to a State under title
19 XIX:

20 “(1) Section 1116 (relating to administrative
21 and judicial review).

22 “(2) Section 1124 (relating to disclosure of
23 ownership and related information).

24 “(3) Section 1126 (relating to disclosure of in-
25 formation about certain convicted individuals).

1 “(4) Section 1128A (relating to exclusion from
2 individuals and entities from participation in State
3 health care plans).

4 “(5) Section 1128B(d) (relating to criminal
5 penalties for certain additional charges).

6 “(6) Section 1132 (relating to periods within
7 which claims must be filed).

8 “(7) Section 1902(a)(4)(C) (relating to conflict
9 of interest standards).

10 “(8) Section 1903(i) (relating to limitations on
11 payment).

12 “(9) Section 1903(w) (relating to limitations on
13 provider taxes and donations).

14 “(10) Section 1905(a)(B) (relating to the exclu-
15 sion of care or services for any individual who has
16 not attained 65 years of age and who is a patient
17 in an institution for mental diseases from the defini-
18 tion of medical assistance).

19 “(11) Section 1921 (relating to state licensure
20 authorities).

21 “(12) Sections 1902(a)(25), 1912(a)(1)(A), and
22 1903(o) (insofar as such sections relate to third
23 party liability).

1 **“SEC. 2109. ANNUAL REPORTS.**

2 “(a) ANNUAL STATE ASSESSMENT OF PROGRESS.—

3 An eligible State shall—

4 “(1) assess the operation of the State program
5 funded under this title in each fiscal year, including
6 the progress made in providing health insurance cov-
7 erage for low-income children; and

8 “(2) report to the Secretary, by January 1 fol-
9 lowing the end of the fiscal year, on the result of the
10 assessment.

11 “(b) REPORT OF THE SECRETARY.—The Secretary
12 shall submit to the appropriate committees of Congress
13 an annual report and evaluation of the State programs
14 funded under this title based on the State assessments and
15 reports submitted under subsection (a). Such report shall
16 include any conclusions and recommendations that the
17 Secretary considers appropriate.”.

18 (b) CONFORMING AMENDMENT.—Section 1128(h)
19 (42 U.S.C. 1320a–7(h)) is amended by—

20 (1) in paragraph (2), by striking “or” at the
21 end;

22 (2) in paragraph (3), by striking the period and
23 inserting “, or”; and

24 (3) by adding at the end the following:

25 “(4) a program funded under title XXI.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section apply on and after October 1, 1997.

3 **DIVISION 3—INCOME SECURITY**
4 **AND OTHER PROVISIONS**
5 **Subtitle K—Income Security, Wel-**
6 **fare-to-Work Grant Program,**
7 **and Other Provisions**

8 **CHAPTER 1—INCOME SECURITY**

9 **SEC. 5811. SSI ELIGIBILITY FOR ALIENS RECEIVING SSI ON**
10 **AUGUST 22, 1996.**

11 (a) IN GENERAL.—Section 402(a)(2) of the Personal
12 Responsibility and Work Opportunity Reconciliation Act
13 of 1996 (8 U.S.C. 1612(a)(2)) is amended by adding after
14 subparagraph (D) the following new subparagraph:

15 “(E) ALIENS RECEIVING SSI ON AUGUST
16 22, 1996.—With respect to eligibility for benefits
17 for the program defined in paragraph (3)(A)
18 (relating to the supplemental security income
19 program), paragraph (1) shall not apply to an
20 alien who is lawfully residing in any State and
21 who was receiving such benefits on August 22,
22 1996.”.

23 (b) STATUS OF CUBAN AND HAITIAN ENTRANTS.—
24 For purposes of section 402(a)(2)(E) of the Personal Re-
25 sponsibility and Work Opportunity Reconciliation Act of

1 1996 (8 U.S.C. 1612(a)(2)(E)), an alien who is a Cuban
 2 and Haitian entrant, as defined in section 501(e) of the
 3 Refugee Education Assistance Act of 1980, shall be con-
 4 sidered a qualified alien.

5 (c) CONFORMING AMENDMENTS.—Section
 6 402(a)(2)(D) of the Personal Responsibility and Work Op-
 7 portunity Reconciliation Act of 1996 (8 U.S.C.
 8 1612(a)(D)) is amended—

- 9 (1) by striking clause (i);
 10 (2) in the subparagraph heading by striking
 11 “BENEFITS” and inserting “FOOD STAMPS”;
 12 (3) by striking “(ii) FOOD STAMPS”; and
 13 (4) by redesignating subclauses (I), (II), and
 14 (III) as clauses (i), (ii), and (iii).

15 **SEC. 5812. EXTENSION OF ELIGIBILITY PERIOD FOR REFU-**
 16 **GEES AND CERTAIN OTHER QUALIFIED**
 17 **ALIENS FROM 5 TO 7 YEARS FOR SSI AND**
 18 **MEDICAID.**

19 (a) SSI.—Section 402(a)(2)(A) of the Personal Re-
 20 sponsibility and Work Opportunity Reconciliation Act of
 21 1996 (8 U.S.C. 1612(a)(2)(A)) is amended to read as fol-
 22 lows:

23 “(A) TIME-LIMITED EXCEPTION FOR REF-
 24 UGEES AND ASYLEES.—

1 “(i) SSI.—With respect to the speci-
2 fied Federal program described in para-
3 graph (3)(A) paragraph 1 shall not apply
4 to an alien until 7 years after the date—

5 “(I) an alien is admitted to the
6 United States as a refugee under sec-
7 tion 207 of the Immigration and Na-
8 tionality Act;

9 “(II) an alien is granted asylum
10 under section 208 of such Act; or

11 “(III) an alien’s deportation is
12 withheld under section 243(h) of such
13 Act.

14 “(ii) FOOD STAMPS.—With respect to
15 the specified Federal program described in
16 paragraph (3)(B), paragraph 1 shall not
17 apply to an alien until 5 years after the
18 date—

19 “(I) an alien is admitted to the
20 United States as a refugee under sec-
21 tion 207 of the Immigration and Na-
22 tionality Act;

23 “(II) an alien is granted asylum
24 under section 208 of such Act; or

1 “(III) an alien’s deportation is
2 withheld under section 243(h) of such
3 Act.”.

4 (b) MEDICAID.—Section 402(b)(2)(A) of the Per-
5 sonal Responsibility and Work Opportunity Reconciliation
6 Act of 1996 (8 U.S.C. 1612(b)(2)(A)) is amended to read
7 as follows:

8 “(A) TIME-LIMITED EXCEPTION FOR REF-
9 UGEEES AND ASYLEES.—

10 “(i) MEDICAID.—With respect to the
11 designated Federal program described in
12 paragraph (3)(C), paragraph 1 shall not
13 apply to an alien until 7 years after the
14 date—

15 “(I) an alien is admitted to the
16 United States as a refugee under sec-
17 tion 207 of the Immigration and Na-
18 tionality Act;

19 “(II) an alien is granted asylum
20 under section 208 of such Act; or

21 “(III) an alien’s deportation is
22 withheld under section 243(h) of such
23 Act.

24 “(ii) OTHER DESIGNATED FEDERAL
25 PROGRAMS.—With respect to the des-

1 ignated Federal programs under paragraph
 2 (3) (other than subparagraph (C)), para-
 3 graph 1 shall not apply to an alien until 5
 4 years after the date—

5 “(I) an alien is admitted to the
 6 United States as a refugee under sec-
 7 tion 207 of the Immigration and Na-
 8 tionality Act;

9 “(II) an alien is granted asylum
 10 under section 208 of such Act; or

11 “(III) an alien’s deportation is
 12 withheld under section 243(h) of such
 13 Act.”.

14 (c) STATUS OF CUBAN AND HAITIAN ENTRANTS.—
 15 For purposes of sections 402(a)(2)(A) and 402(b)(2)(A)
 16 of the Personal Responsibility and Work Opportunity Rec-
 17 onciliation Act of 1996 (8 U.S.C. 1612(a)(2)(A),
 18 (b)(2)(A)), an alien who is a Cuban and Haitian entrant,
 19 as defined in section 501(e) of the Refugee Education As-
 20 sistance Act of 1980, shall be considered a refugee.

21 **SEC. 5813. SSI ELIGIBILITY FOR PERMANENT RESIDENT**
 22 **ALIENS WHO ARE MEMBERS OF AN INDIAN**
 23 **TRIBE.**

24 Section 402(a)(2) of the Personal Responsibility and
 25 Work Opportunity Reconciliation Act of 1996 (8 U.S.C.

1 1612(a)(2)) (as amended by section 5811) is amended by
 2 adding at the end the following:

3 “(F) PERMANENT RESIDENT ALIENS WHO
 4 ARE MEMBERS OF AN INDIAN TRIBE.—With re-
 5 spect to eligibility for benefits for the program
 6 defined in paragraph (3)(A) (relating to the
 7 supplemental security income program), para-
 8 graph (1) shall not apply to an alien who—

9 “(i) is lawfully admitted for perma-
 10 nent residence under the Immigration and
 11 Nationality Act; and

12 “(ii) is a member of an Indian tribe
 13 (as defined in section 4(e) of the Indian
 14 Self-Determination and Education Assist-
 15 ance Act).”.

16 **SEC. 5814. SSI ELIGIBILITY FOR DISABLED LEGAL ALIENS**
 17 **IN THE UNITED STATES ON AUGUST 22, 1996.**

18 Section 402(a)(2) of the Personal Responsibility and
 19 Work Opportunity Reconciliation Act of 1996 (8 U.S.C.
 20 1612(a)(2)) (as amended by section 5813) is amended by
 21 adding at the end the following:

22 “(G) DISABLED ALIENS LAWFULLY RESID-
 23 ING IN THE UNITED STATES ON AUGUST 22,
 24 1996.—With respect to eligibility for benefits for
 25 the program defined in paragraph (3)(A) (relat-

1 ing to the supplemental security income pro-
 2 gram), paragraph (1) shall not apply to an
 3 alien who—

4 “(i) is lawfully residing in any State
 5 on August 22, 1996; and

6 “(ii) is disabled, as defined in section
 7 1614(a)(3) of the Social Security Act (42
 8 U.S.C. 1382c(a)(3)),

9 but only if the alien applies for benefits under
 10 such program on or before September 30,
 11 1997.”.

12 **SEC. 5815. EXEMPTION FROM RESTRICTION ON SUPPLE-**
 13 **MENTAL SECURITY INCOME PROGRAM PAR-**
 14 **TICIPATION BY CERTAIN RECIPIENTS ELIGI-**
 15 **BLE ON THE BASIS OF VERY OLD APPLICA-**
 16 **TIONS.**

17 Section 402(a)(2) of the Personal Responsibility and
 18 Work Opportunity Reconciliation Act of 1996 (8 U.S.C.
 19 1612(a)(2)) (as amended by section 5814) is amended by
 20 adding at the end the following:

21 “(H) SSI EXCEPTION FOR CERTAIN RE-
 22 CIPIENTS ON THE BASIS OF VERY OLD APPLICA-
 23 TIONS.—With respect to eligibility for benefits
 24 for the program defined in paragraph (3)(A)
 25 (relating to the supplemental security income

1 program), paragraph (1) shall not apply to any
2 individual—

3 “(i) who is receiving benefits under
4 such program for months after July 1996
5 on the basis of an application filed before
6 January 1, 1979; and

7 “(ii) with respect to whom the Com-
8 missioner of Social Security lacks clear and
9 convincing evidence that such individual is
10 an alien ineligible for such benefits as a re-
11 sult of the application of this section.”.

12 **SEC. 5816. REINSTATEMENT OF ELIGIBILITY FOR BENE-**
13 **FITS.**

14 (a) **FOOD STAMPS.**—The Personal Responsibility and
15 Work Opportunity Reconciliation Act of 1996 is amended
16 by adding after section 435 the following new section:

17 **“SEC. 436. DERIVATIVE ELIGIBILITY FOR BENEFITS.**

18 Notwithstanding any other provision of law, an alien
19 who under the provisions of this title is ineligible for bene-
20 fits under the food stamp program (as defined in section
21 402(a)(3)(A)) shall not be eligible for such benefits be-
22 cause the alien receives benefits under the supplemental
23 security income program (as defined in section
24 402(a)(3)(B)).”.

1 (b) MEDICAID.—Section 402(b)(2) of the Personal
 2 Responsibility and Work Opportunity Reconciliation Act
 3 of 1996 (8 U.S.C. 1612(b)(2)) is amended by adding at
 4 the end the following:

5 “(E) MEDICAID EXCEPTION FOR ALIENS
 6 RECEIVING SSL.—An alien who is receiving ben-
 7 efits under the program defined in subsection
 8 (a)(3)(A) (relating to the supplemental security
 9 income program) shall be eligible for medical
 10 assistance under a State plan under title XIX
 11 of the Social Security Act (42 U.S.C. 1396 et
 12 seq.) under the same terms and conditions that
 13 apply to other recipients of benefits under the
 14 program defined in such subsection.”.

15 (c) CLERICAL AMENDMENT.—Section 2 of the Per-
 16 sonal Responsibility and Work Opportunity Reconciliation
 17 Act of 1996 is amended by adding after the item related
 18 to section 435 the following:

“Sec. 436. Derivative eligibility for benefits.”.

19 **SEC. 5817. EXEMPTION FOR CHILDREN WHO ARE LEGAL**
 20 **ALIENS FROM 5-YEAR BAN ON MEDICAID ELI-**
 21 **GIBILITY.**

22 Section 403 of the Personal Responsibility and Work
 23 Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613))
 24 is amended by adding at the end the following:

1 “(e) MEDICAID ELIGIBILITY EXEMPTION FOR CHIL-
 2 DREN.—The limitation under subsection (a) shall not
 3 apply to any alien who has not attained age 19 and is
 4 lawfully residing in any State, but only with respect to
 5 such alien’s eligibility for medical assistance under a State
 6 plan under title XIX of the Social Security Act (42 U.S.C.
 7 1396 et seq.).”.

8 **SEC. 5818. EFFECTIVE DATE.**

9 The amendments made by this chapter shall take ef-
 10 fect as if they were included in the enactment of title IV
 11 of the Personal Responsibility and Work Opportunity Rec-
 12 onciliation Act of 1996 (Public Law 104–193; 110 Stat.
 13 2260).

14 **CHAPTER 2—WELFARE-TO-WORK GRANT**
 15 **PROGRAM**

16 **SEC. 5821. WELFARE-TO-WORK GRANTS.**

17 (a) GRANTS TO STATES.—

18 (1) IN GENERAL.—Section 403(a) (42 U.S.C.
 19 603(a)) is amended by adding at the end the follow-
 20 ing:

21 “(5) WELFARE-TO-WORK GRANTS.—

22 “(A) NONCOMPETITIVE GRANTS.—

23 “(i) ENTITLEMENT.—A State shall be
 24 entitled to receive from the Secretary a
 25 grant for each fiscal year specified in sub-

1 paragraph (H) of this paragraph for which
2 the State is a welfare-to-work State, in an
3 amount that does not exceed the greater
4 of—

5 “(I) the allotment of the State
6 under clause (iii) of this subparagraph
7 for the fiscal year; or

8 “(II) 0.5 percent of the amount
9 specified in subparagraph (H) for
10 each fiscal year minus the total of the
11 amounts reserved pursuant to sub-
12 paragraphs (F) and (G) for the fiscal
13 year.

14 “(ii) WELFARE-TO-WORK STATE.—A
15 State shall be considered a welfare-to-work
16 State for a fiscal year for purposes of this
17 subparagraph if the Secretary determines
18 that the State meets the following require-
19 ments:

20 “(I) The State has submitted to
21 the Secretary (in the form of an ad-
22 dendum to the State plan submitted
23 under section 402) a plan which—

24 “(aa) describes how, consist-
25 ent with this subparagraph, the

1 State will use any funds provided
2 under this subparagraph during
3 the fiscal year;

4 “(bb) specifies the formula
5 to be used pursuant to clause (vi)
6 to distribute funds in the State,
7 and describes the process by
8 which the formula was developed;

9 “(cc) contains evidence that
10 the plan was developed in con-
11 sultation and coordination with
12 sub-State areas; and

13 “(dd) is approved by the
14 agency administering the State
15 program funded under this part.

16 “(II) The State certifies to the
17 Secretary that the State intends to ex-
18 pend during the fiscal year (excluding
19 expenditures described in section
20 409(a)(7)(B)(iv)) for activities de-
21 scribed in subparagraph (C)(i) of this
22 paragraph an amount equal to not
23 less than 33 percent of the Federal
24 funds provided under this paragraph.

1 “(III) The State has agreed to
2 negotiate in good faith with the Sec-
3 retary with respect to the substance of
4 any evaluation under section 413(j),
5 and to cooperate with the conduct of
6 any such evaluation.

7 “(IV) The State is an eligible
8 State for the fiscal year.

9 “(V) Qualified State expenditures
10 (within the meaning of section
11 409(a)(7)) are at least 75 percent of
12 historic State expenditures (within the
13 meaning of such section), with respect
14 to the fiscal year or the immediately
15 preceding fiscal year.

16 “(iii) ALLOTMENTS TO WELFARE-TO-
17 WORK STATES.—The allotment of a wel-
18 fare-to-work State for a fiscal year shall be
19 the available amount for the fiscal year
20 multiplied by the State percentage for the
21 fiscal year.

22 “(iv) AVAILABLE AMOUNT.—As used
23 in this subparagraph, the term ‘available
24 amount’ means, for a fiscal year, the sum
25 of—

1 “(I) 75 percent of the sum of—

2 “(aa) the amount specified
3 in subparagraph (H) for the fis-
4 cal year, minus the total of the
5 amounts reserved pursuant to
6 subparagraphs (F) and (G) for
7 the fiscal year; and

8 “(bb) any amount reserved
9 pursuant to subparagraph (F)
10 for the immediately preceding fis-
11 cal year that has not been obli-
12 gated; and

13 “(II) any available amount for
14 the immediately preceding fiscal year
15 that has not been obligated by a State
16 or sub-State entity.

17 “(v) STATE PERCENTAGE.—As used
18 in clause (iii), the term ‘State percentage’
19 means, with respect to a fiscal year, $\frac{1}{3}$ of
20 the sum of—

21 “(I) the percentage represented
22 by the number of individuals in the
23 State whose income is less than the
24 poverty line divided by the number of
25 such individuals in the United States;

1 “(II) the percentage represented
2 by the number of unemployed individ-
3 uals in the State divided by the num-
4 ber of such individuals in the United
5 States; and

6 “(III) the percentage represented
7 by the number of individuals who are
8 adult recipients of assistance under
9 the State program funded under this
10 part divided by the number of individ-
11 uals in the United States who are
12 adult recipients of assistance under
13 any State program funded under this
14 part.

15 “(vi) DISTRIBUTION OF FUNDS WITH-
16 IN STATES.—

17 “(I) IN GENERAL.—A State to
18 which a grant is made under this sub-
19 paragraph shall distribute not less
20 than 85 percent of the grant funds
21 among the political subdivisions in the
22 State in which the percentage rep-
23 resented by the number of individuals
24 in the State whose income is less than
25 the poverty line divided by the number

1 of such individuals in the State, and
2 the percentage represented by the
3 number of unemployed individuals in
4 the State divided by the number of
5 such individuals in the State are both
6 above the average such percentages
7 for the State, in accordance with a
8 formula which—

9 “(aa) determines the
10 amount to be distributed for the
11 benefit of a political subdivision
12 in proportion to the number (if
13 any) of individuals residing in the
14 political subdivision with an in-
15 come that is less than the pov-
16 erty line, relative to such number
17 of individuals for the other politi-
18 cal subdivisions in the State, and
19 accords a weight of not less than
20 50 percent to this factor;

21 “(bb) may determine the
22 amount to be distributed for the
23 benefit of a political subdivision
24 in proportion to the number of
25 adults residing in the political

1 subdivision who are recipients of
2 assistance under the State pro-
3 gram funded under this part
4 (whether in effect before or after
5 the amendments made by section
6 103(a) of the Personal Respon-
7 sibility and Work Opportunity
8 Reconciliation Act first applied to
9 the State) for at least 30 months
10 (whether or not consecutive) rel-
11 ative to the number of such
12 adults residing in the other politi-
13 cal subdivisions in the State; and

14 “(cc) may determine the
15 amount to be distributed for the
16 benefit of a political subdivision
17 in proportion to the number of
18 unemployed individuals residing
19 in the political subdivision rel-
20 ative to the number of such indi-
21 viduals residing in the other po-
22 litical subdivisions in the State.

23 “(II) SPECIAL RULE.—Notwith-
24 standing subclause (I), if the formula
25 used pursuant to subclause (I) would

1 result in the distribution of less than
2 \$100,000 during a fiscal year for the
3 benefit of a political subdivision, then
4 in lieu of distributing such sum in ac-
5 cordance with the formula, such sum
6 shall be available for distribution
7 under subclause (III) during the fiscal
8 year.

9 “(III) PROJECTS TO HELP LONG-
10 TERM RECIPIENTS OF ASSISTANCE
11 INTO THE WORK FORCE.—The Gov-
12 ernor of a State to which a grant is
13 made under this subparagraph may
14 distribute not more than 15 percent of
15 the grant funds (plus any amount re-
16 quired to be distributed under this
17 subclause by reason of subclause (II))
18 to projects that appear likely to help
19 long-term recipients of assistance
20 under the State program funded
21 under this part (whether in effect be-
22 fore or after the amendments made by
23 section 103(a) of the Personal Re-
24 sponsibility and Work Opportunity

1 Reconciliation Act first applied to the
2 State) enter the work force.

3 “(vii) ADMINISTRATION.—

4 “(I) IN GENERAL.—A grant
5 made under this subparagraph to a
6 State shall be administered by the
7 State agency that is administering, or
8 supervising the administration of, the
9 State program funded under this part.

10 “(B) COMPETITIVE GRANTS.—

11 “(i) IN GENERAL.—The Secretary
12 shall award grants in accordance with this
13 subparagraph, in fiscal years 1998 and
14 2000, for projects proposed by eligible ap-
15 plicants, based on the following:

16 “(I) The effectiveness of the pro-
17 posal in—

18 “(aa) expanding the base of
19 knowledge about programs aimed
20 at moving recipients of assistance
21 under State programs funded
22 under this part who are least job
23 ready into the work force.

24 “(bb) moving recipients of
25 assistance under State programs

1 funded under this part who are
2 least job ready into the work
3 force; and

4 “(cc) moving recipients of
5 assistance under State programs
6 funded under this part who are
7 least job ready into the work
8 force, even in labor markets that
9 have a shortage of low-skill jobs.

10 “(II) At the discretion of the
11 Secretary, any of the following:

12 “(aa) The history of success
13 of the applicant in moving indi-
14 viduals with multiple barriers
15 into work.

16 “(bb) Evidence of the appli-
17 cant’s ability to leverage private,
18 State, and local resources.

19 “(cc) Use by the applicant
20 of State and local resources be-
21 yond those required by subpara-
22 graph (A).

23 “(dd) Plans of the applicant
24 to coordinate with other organi-

1 zations at the local and State
2 level.

3 “(ee) Use by the applicant
4 of current or former recipients of
5 assistance under a State program
6 funded under this part as men-
7 tors, case managers, or service
8 providers.

9 “(III) Evidence that the proposal
10 has the approval of the State agency
11 administering the program under this
12 part.

13 “(ii) ELIGIBLE APPLICANTS.—As used
14 in clause (i), the term ‘eligible applicant’
15 means a political subdivision of a State
16 that submits a proposal that is approved
17 by the agency administering the State pro-
18 gram funded under this part.

19 “(iii) DETERMINATION OF GRANT
20 AMOUNT.—In determining the amount of a
21 grant to be made under this subparagraph
22 for a project proposed by an applicant, the
23 Secretary shall provide the applicant with
24 an amount sufficient to ensure that the
25 project has a reasonable opportunity to be

1 successful, taking into account the number
2 of long-term recipients of assistance under
3 a State program funded under this part,
4 the level of unemployment, the job oppor-
5 tunities and job growth, the poverty rate,
6 and such other factors as the Secretary
7 deems appropriate, in the area to be served
8 by the project.

9 “(iv) TARGETING OF FUNDS TO
10 RURAL AREAS.—

11 “(I) IN GENERAL.—The Sec-
12 retary shall use not less than 30 per-
13 cent of the funds available for grants
14 under this subparagraph for a fiscal
15 year to award grants for expenditures
16 in rural areas.

17 “(II) RURAL AREA DEFINED.—
18 As used in subclause (I), the term
19 ‘rural area’ means a city, town, or un-
20 incorporated area that has a popu-
21 lation of 50,000 or fewer inhabitants
22 and that is not an urbanized area im-
23 mediately adjacent to a city, town, or
24 unincorporated area that has a popu-

1 lation of more than 50,000 inhab-
2 itants.

3 “(v) FUNDING.—For grants under
4 this subparagraph for each fiscal year
5 specified in subparagraph (H), there shall
6 be available to the Secretary an amount
7 equal to the sum of—

8 “(I) 25 percent of the sum of—

9 “(aa) the amount specified
10 in subparagraph (H) for the fis-
11 cal year, minus the total of the
12 amounts reserved pursuant to
13 subparagraphs (F) and (G) for
14 the fiscal year; and

15 “(bb) any amount reserved
16 pursuant to subparagraph (F)
17 for the immediately preceding fis-
18 cal year that has not been obli-
19 gated; and

20 “(II) any amount available for
21 grants under this subparagraph for
22 the immediately preceding fiscal year
23 that has not been obligated.

24 “(C) LIMITATIONS ON USE OF FUNDS.—

1 “(i) ALLOWABLE ACTIVITIES.—An en-
2 tity to which funds are provided under this
3 paragraph may use the funds to move into
4 the work force recipients of assistance
5 under the program funded under this part
6 of the State in which the entity is located
7 and the noncustodial parent of any minor
8 who is such a recipient, by means of any
9 of the following:

10 “(I) Job creation through public
11 or private sector employment wage
12 subsidies.

13 “(II) On-the-job training.

14 “(III) Contracts with public or
15 private providers of readiness, place-
16 ment, and post-employment services.

17 “(IV) Job vouchers for place-
18 ment, readiness, and post-employment
19 services.

20 “(V) Job support services (ex-
21 cluding child care services) if such
22 services are not otherwise available.

23 “(ii) REQUIRED BENEFICIARIES.—An
24 entity that operates a project with funds
25 provided under this paragraph shall expend

1 at least 90 percent of all funds provided to
2 the project for the benefit of recipients of
3 assistance under the program funded
4 under this part of the State in which the
5 entity is located who meet the require-
6 ments of either of the following subclauses:

7 “(I) At least 2 of the following
8 apply to the recipient:

9 “(aa) The individual has not
10 completed secondary school or
11 obtained a certificate of general
12 equivalency, and has low skills in
13 reading and mathematics.

14 “(bb) The individual re-
15 quires substance abuse treatment
16 for employment.

17 “(cc) The individual has a
18 poor work history.

19 The Secretary shall prescribe such
20 regulations as may be necessary to in-
21 terpret this subclause.

22 “(II) The individual—

23 “(aa) has received assistance
24 under the State program funded
25 under this part (whether in effect

1 before or after the amendments
2 made by section 103 of the Per-
3 sonal Responsibility and Work
4 Opportunity Reconciliation Act of
5 1996 first apply to the State) for
6 at least 30 months (whether or
7 not consecutive); or

8 “(bb) within 12 months, will
9 become ineligible for assistance
10 under the State program funded
11 under this part by reason of a
12 durational limit on such assist-
13 ance, without regard to any ex-
14 emption provided pursuant to
15 section 408(a)(7)(C) that may
16 apply to the individual.

17 “(iii) LIMITATION ON APPLICABILITY
18 OF SECTION 404.—The rules of section
19 404, other than subsections (b), (f), and
20 (h) of section 404, shall not apply to a
21 grant made under this paragraph.

22 “(iv) COOPERATION WITH TANF
23 AGENCY.—On a determination by the Sec-
24 retary an entity that operates a project
25 with funds provided under this paragraph

1 and the agency administering the State
2 program funded under this part are not
3 adhering to the agreement to implement
4 any plan or project for which the funds are
5 provided, the recipient of the funds shall
6 remit the funds to the Secretary.

7 “(v) PROHIBITION AGAINST USE OF
8 GRANT FUNDS FOR ANY OTHER FUND
9 MATCHING REQUIREMENT.—An entity to
10 which funds are provided under this para-
11 graph shall not use any part of the funds
12 to fulfill any obligation of any State, or po-
13 litical subdivision to contribute funds
14 under other Federal law.

15 “(vi) DEADLINE FOR EXPENDI-
16 TURE.—An entity to which funds are pro-
17 vided under this paragraph shall remit to
18 the Secretary any part of the funds that
19 are not expended within 3 years after the
20 date the funds are so provided.

21 “(D) INDIVIDUALS WITH INCOME LESS
22 THAN THE POVERTY LINE.—For purposes of
23 this paragraph, the number of individuals with
24 an income that is less than the poverty line
25 shall be determined based on the methodology

1 used by the Bureau of the Census to produce
2 and publish intercensal poverty data for 1993
3 for States and counties.

4 “(E) SET-ASIDE FOR HIGH PERFORMANCE
5 BONUS.—\$100,000,000 of the amount specified
6 in subparagraph (H) for fiscal year 1999 shall
7 be reserved for use by the Secretary to make
8 bonus grants (in the same manner as such
9 grants are determined under paragraph (4)) for
10 fiscal year 2003 to those States that receive
11 funds under this paragraph and that are most
12 successful in increasing the earnings of individ-
13 uals described in subparagraph (C)(ii)(II).

14 “(F) SET-ASIDE FOR INDIAN TRIBES.—1
15 percent of the amount specified in subpara-
16 graph (H) for each fiscal year shall be reserved
17 for grants to Indian tribes under section
18 412(a)(3).

19 “(G) SET-ASIDE FOR EVALUATIONS.—0.5
20 percent of the amount specified in subpara-
21 graph (H) for each fiscal year shall be reserved
22 for use by the Secretary to carry out section
23 413(j).

24 “(H) FUNDING.—The amount specified in
25 this subparagraph is—

1 “(i) \$750,000,000 for fiscal year
2 1998;

3 “(ii) \$1,250,000,000 for fiscal year
4 1999; and

5 “(iii) \$1,000,000,000 for fiscal year
6 2000.

7 “(I) AVAILABILITY OF FUNDS.—Amounts
8 appropriated pursuant to this paragraph shall
9 remain available through fiscal year 2002.

10 “(J) BUDGET SCORING.—Notwithstanding
11 section 457(b)(2) of the Balanced Budget and
12 Emergency Deficit Control Act of 1985, the
13 baseline shall assume that no grant shall be
14 awarded under this paragraph or under section
15 412(a)(3) after fiscal year 2000.

16 “(K) NONDISPLACEMENT IN WORK AC-
17 TIVITIES.—

18 “(i) PROHIBITIONS.—

19 “(I) GENERAL PROHIBITION.—A
20 participant in a work activity pursu-
21 ant to this paragraph shall not dis-
22 place (including a partial displace-
23 ment, such as a reduction in the
24 hours of nonovertime work, wages, or
25 employment benefits) any individual

1 who, as of the date of the participa-
2 tion, is an employee.

3 “(II) PROHIBITION ON IMPAIR-
4 MENT OF CONTRACTS.—A work activ-
5 ity pursuant to this paragraph shall
6 not impair an existing contract for
7 services or collective bargaining agree-
8 ment, and a work activity that would
9 be inconsistent with the terms of a
10 collective bargaining agreement shall
11 not be undertaken without the written
12 concurrence of the labor organization
13 and employer concerned.

14 “(III) OTHER PROHIBITIONS.—A
15 participant in a work activity shall not
16 be employed in a job—

17 “(aa) when any other indi-
18 vidual is on layoff from the same
19 or any substantially equivalent
20 job;

21 “(bb) when the employer has
22 terminated the employment of
23 any regular employee or other-
24 wise reduced the workforce of the
25 employer with the intention of

1 filling the vacancy so created
2 with the participant; or

3 “(cc) which is created in a
4 promotional line that will infringe
5 in any way upon the promotional
6 opportunities of employed indi-
7 viduals.

8 “(ii) HEALTH AND SAFETY.—Health
9 and safety standards established under
10 Federal and State law otherwise applicable
11 to working conditions of employees shall be
12 equally applicable to working conditions of
13 participants engaged in a work activity
14 pursuant to this paragraph. To the extent
15 that a State workers’ compensation law ap-
16 plies, workers’ compensation shall be pro-
17 vided to participants on the same basis as
18 the compensation is provided to other indi-
19 viduals in the State in similar employment.

20 “(iii) GRIEVANCE PROCEDURE.—

21 “(I) IN GENERAL.—Each State
22 to which a grant is made under this
23 paragraph shall establish and main-
24 tain a procedure for grievances or
25 complaints alleging violations of

1 clauses (i) or (ii) from participants
2 and other interested or affected par-
3 ties. The procedure shall include an
4 opportunity for a hearing and be com-
5 pleted within 60 days after the griev-
6 ance or complaint is filed.

7 “(II) INVESTIGATION.—

8 “(aa) IN GENERAL.—The
9 Secretary of Labor shall inves-
10 tigate an allegation of a violation
11 of clause (i) or (ii) if a decision
12 relating to the violation is not
13 reached within 60 days after the
14 date of the filing of the grievance
15 or complaint, and either party
16 appeals to the Secretary of
17 Labor, or a decision relating to
18 the violation is reached within
19 the 60-day period, and the party
20 to which the decision is adverse
21 appeals the decision to the Sec-
22 retary of Labor.

23 “(bb) ADDITIONAL RE-
24 QUIREMENT.—The Secretary of
25 Labor shall make a final deter-

1 mination relating to an appeal
2 made under item (aa) not later
3 than 120 days after receiving the
4 appeal.

5 “(III) REMEDIES.—Remedies for
6 violation of clause (i) or (ii) shall be
7 limited to—

8 “(aa) suspension or termi-
9 nation of payments under this
10 paragraph;

11 “(bb) prohibition of place-
12 ment of a participant with an
13 employer that has violated clause
14 (i) or (ii);

15 “(cc) where applicable, rein-
16 statement of an employee, pay-
17 ment of lost wages and benefits,
18 and reestablishment of other rel-
19 evant terms, conditions and privi-
20 leges of employment; and

21 “(dd) where appropriate,
22 other equitable relief.”.

23 (2) CONFORMING AMENDMENT.—Section
24 409(a)(7)(B)(iv) of such Act (42 U.S.C.
25 609(a)(7)(B)(iv)) is amended to read as follows:

1 “(iv) EXPENDITURES BY THE
2 STATE.—The term ‘expenditures by the
3 State’ does not include—

4 “(I) any expenditure from
5 amounts made available by the Fed-
6 eral Government;

7 “(II) any State funds expended
8 for the medicaid program under title
9 XIX;

10 “(III) any State funds which are
11 used to match Federal funds provided
12 under section 403(a)(5); or

13 “(IV) any State funds which are
14 expended as a condition of receiving
15 Federal funds other than under this
16 part.

17 Notwithstanding subclause (IV) of the pre-
18 ceding sentence, such term includes ex-
19 penditures by a State for child care in a
20 fiscal year to the extent that the total
21 amount of the expenditures does not ex-
22 ceed the amount of State expenditures in
23 fiscal year 1994 or 1995 (whichever is the
24 greater) that equal the non-Federal share

1 for the programs described in section
2 418(a)(1)(A).”.

3 (b) GRANTS TO OUTLYING AREAS.—Section
4 1108(a)(1) of such Act (42 U.S.C. 1308(a)(1)) is amend-
5 ed by inserting “(except section 403(a)(5))” after “title
6 IV”.

7 (c) GRANTS TO INDIAN TRIBES.—Section 412(a) of
8 such Act (42 U.S.C. 612(a)) is amended by adding at the
9 end the following:

10 “(3) WELFARE-TO-WORK GRANTS.—

11 “(A) IN GENERAL.—The Secretary shall
12 award a grant in accordance with this para-
13 graph to an Indian tribe for each fiscal year
14 specified in section 403(a)(5)(H) for which the
15 Indian tribe is a welfare-to-work tribe, in such
16 amount as the Secretary deems appropriate,
17 subject to subparagraph (B) of this paragraph.

18 “(B) WELFARE-TO-WORK TRIBE.—An In-
19 dian tribe shall be considered a welfare-to-work
20 tribe for a fiscal year for purposes of this para-
21 graph if the Indian tribe meets the following re-
22 quirements:

23 “(i) The Indian tribe has submitted to
24 the Secretary (in the form of an addendum
25 to the tribal family assistance plan, if any,

1 of the Indian tribe) a plan which describes
2 how, consistent with section 403(a)(5), the
3 Indian tribe will use any funds provided
4 under this paragraph during the fiscal
5 year.

6 “(ii) The Indian tribe has provided
7 the Secretary with an estimate of the
8 amount that the Indian tribe intends to ex-
9 pend during the fiscal year (excluding trib-
10 al expenditures described in section
11 409(a)(7)(B)(iv)) for activities described in
12 section 403(a)(5)(C)(i).

13 “(iii) The Indian tribe has agreed to
14 negotiate in good faith with the Secretary
15 of Health and Human Services with re-
16 spect to the substance of any evaluation
17 under section 413(j), and to cooperate with
18 the conduct of any such evaluation.

19 “(C) LIMITATIONS ON USE OF FUNDS.—
20 Section 403(a)(5)(C) shall apply to funds pro-
21 vided to Indian tribes under this paragraph in
22 the same manner in which such section applies
23 to funds provided under section 403(a)(5).”.

24 (d) FUNDS RECEIVED FROM GRANTS TO BE DIS-
25 REGARDED IN APPLYING DURATIONAL LIMIT ON ASSIST-

1 ANCE.—Section 408(a)(7) of such Act (42 U.S.C.
2 608(a)(7)) is amended by adding at the end the following:

3 “(G) INAPPLICABILITY TO WELFARE-TO-
4 WORK GRANTS AND ASSISTANCE.—For purposes
5 of subparagraph (A) of this paragraph, a grant
6 made under section 403(a)(5) shall not be con-
7 sidered a grant made under section 403, and
8 assistance from funds provided under section
9 403(a)(5) shall not be considered assistance.”.

10 (e) EVALUATIONS.—Section 413 of such Act (42
11 U.S.C. 613) is amended by adding at the end the follow-
12 ing:

13 “(j) EVALUATION OF WELFARE-TO-WORK PRO-
14 GRAMS.—

15 “(1) EVALUATION.—The Secretary—

16 “(A) shall, in consultation with the Sec-
17 retary of Labor, develop a plan to evaluate how
18 grants made under sections 403(a)(5) and
19 412(a)(3) have been used;

20 “(B) may evaluate the use of such grants
21 by such grantees as the Secretary deems appro-
22 priate, in accordance with an agreement entered
23 into with the grantees after good-faith negotia-
24 tions; and

1 “(C) shall include the following outcome
2 measures in the plan developed under subpara-
3 graph (A):

4 “(i) Placements in the labor force and
5 placements in the labor force that last for
6 at least 6 months.

7 “(ii) Placements in the private and
8 public sectors.

9 “(iii) Earnings of individuals who ob-
10 tain employment.

11 “(iv) Average expenditures per place-
12 ment.

13 “(2) REPORTS TO THE CONGRESS.—

14 “(A) IN GENERAL.—Subject to subpara-
15 graphs (B) and (C), the Secretary, in consulta-
16 tion with the Secretary of Labor and the Sec-
17 retary of Housing and Urban Development,
18 shall submit to the Congress reports on the
19 projects funded under sections 403(a)(5) and
20 412(a)(3) and on the evaluations of the
21 projects.

22 “(B) INTERIM REPORT.—Not later than
23 January 1, 1999, the Secretary shall submit an
24 interim report on the matter described in sub-
25 paragraph (A).

1 “(C) FINAL REPORT.—Not later than Jan-
2 uary 1, 2001 (or at a later date, if the Sec-
3 retary informs the committees of the Congress
4 with jurisdiction over the subject matter of the
5 report) the Secretary shall submit a final report
6 on the matter described in subparagraph (A).”.

7 **SEC. 5822. ENROLLMENT FLEXIBILITY.**

8 (a) DETERMINATION OF ELIGIBILITY.—Nothing in
9 this section shall be construed as affecting—

10 (1) the conditions for eligibility for benefits
11 under a program described in subsection (b)(2) (in-
12 cluding any conditions relating to income or re-
13 sources);

14 (2) any right to challenge determinations re-
15 garding eligibility or rights to benefits under such
16 programs (including any rights to grievance proce-
17 dures or appeal);

18 (3) any determinations regarding quality con-
19 trol or error rates with respect to eligibility deter-
20 minations under or the administration of such pro-
21 grams; or

22 (4) any safeguards for the privacy, confidential-
23 ity, and protections of individuals eligible for or re-
24 ceiving benefits under a program described in sub-

1 section (b)(2) that are provided under Federal or
2 State law.

3 (b) AUTHORIZATION FOR STATE PLAN TO CONSOLI-
4 DATE AND AUTOMATE THE ADMINISTRATION OF LOW-IN-
5 COME BENEFIT PROGRAMS, INCLUDING MEDICAID, AND
6 TO COMPETITIVELY CONTRACT FOR THE ADMINISTRA-
7 TION OF SUCH PROGRAMS.—

8 (1) APPROVAL OF STATE PLAN.—

9 (A) IN GENERAL.—A State plan described
10 in subparagraph (B) that was submitted by a
11 State to the Secretary of Health and Human
12 Services (in this section referred to as the “Sec-
13 retary”) prior to June 1, 1997, shall be deemed
14 by the Secretary to be approved in its entirety
15 (including any subsequent technical, clerical,
16 and clarifying corrections, or any subsequent
17 proposal submitted to comply with applicable
18 State law). Any State that has a State plan de-
19 scribed in subparagraph (B) approved shall re-
20 main eligible for Federal financial assistance for
21 the procurement, development, and operation of
22 the automated data processing equipment and
23 services described in the State plan in accord-
24 ance with the provisions of law applicable to
25 such procurement, development, and operation.

1 No provision of law shall be construed as pre-
2 venting a State that has a State plan described
3 in subparagraph (B) approved from allowing
4 eligibility determinations described in para-
5 graph (2) to be made by an entity that is not
6 a State or local government, or by an individual
7 who is not an employee of a State or local gov-
8 ernment, so long as such entity or individual
9 meets such qualifications as the State deter-
10 mines. Any eligibility determinations made by
11 an entity or individual described in the preced-
12 ing sentence shall, to the extent necessary to
13 comply with the requirements of any applicable
14 Federal law, be considered to have been made
15 by the State or by a State agency.

16 (B) STATE PLAN DESCRIBED.—A State
17 plan described in this subparagraph is a State
18 plan, including any request for offers, waivers,
19 or other State submissions, to integrate and
20 automate enrollment procedures for eligibility
21 determinations described in paragraph (2)
22 through the use of automated data processing
23 equipment and services.

24 (2) ELIGIBILITY DETERMINATIONS DE-
25 SCRIBED.—The eligibility determinations described

1 in this paragraph are eligibility determinations for
 2 low-income individuals and households to receive as-
 3 sistance and benefits under the medicaid program
 4 and other programs using the integrated and auto-
 5 mated procedures under a State plan described in
 6 paragraph (1)(B).

7 (3) EVALUATION.—A State that has a State
 8 plan described in paragraph (1)(B) approved shall,
 9 not later than 5 years after the date of the approval
 10 of such plan, have an independent evaluation of the
 11 State plan conducted and shall submit a copy of the
 12 evaluation report to the appropriate committees of
 13 Congress.

14 **SEC. 5823. CLARIFICATION OF A STATE'S ABILITY TO SANC-**
 15 **TION AN INDIVIDUAL RECEIVING ASSIST-**
 16 **ANCE UNDER TANF FOR NONCOMPLIANCE.**

17 (a) IN GENERAL.—Section 408 (42 U.S.C. 608) is
 18 amended—

19 (1) by redesignating subsections (c) and (d) as
 20 subsections (d) and (e), respectively; and

21 (2) by inserting after subsection (b), the follow-
 22 ing:

23 “(c) NONAPPLICATION OF ANY MINIMUM WAGE RE-
 24 QUIREMENTS WITH RESPECT TO INDIVIDUAL SANC-
 25 TIONS.—Notwithstanding any other provision of law, any

1 requirement imposed by law, regulation, or otherwise that
 2 requires that an individual in a family that receives assist-
 3 ance under the State program funded under this part re-
 4 ceive the applicable minimum wage under section 6 of the
 5 Fair Labor Standards Act (29 U.S.C. 206), shall not pro-
 6 hibit a State from imposing against a family that includes
 7 such an individual any penalty that may be imposed under
 8 the State program funded under this part for failure to
 9 comply with a requirement under such program.”.

10 (b) RETROACTIVITY.—The amendment made by sub-
 11 section (a) shall take effect as if included in the enactment
 12 of section 103(a) of the Personal Responsibility and Work
 13 Opportunity Reconciliation Act of 1996 (Public Law 104-
 14 193; 110 Stat. 2112).

15 **CHAPTER 3—UNEMPLOYMENT**

16 **COMPENSATION**

17 **SEC. 5831. INCREASE IN FEDERAL UNEMPLOYMENT AC-**
 18 **COUNT CEILING.**

19 (a) IN GENERAL.—Section 902(a)(2) (42 U.S.C.
 20 1102(a)(2)) is amended by striking “0.25 percent” and
 21 inserting “0.5 percent”.

22 (b) EFFECTIVE DATE.—This section and the amend-
 23 ment made by this section—

24 (1) shall take effect on October 1, 2001, and

1 (2) shall apply to fiscal years beginning on or
2 after that date.

3 **SEC. 5832. SPECIAL DISTRIBUTION TO STATES FROM UNEM-**
4 **PLOYMENT TRUST FUND.**

5 (a) IN GENERAL.—Section 903(a) (42 U.S.C.
6 1103(a)) is amended by adding at the end the following
7 new paragraph:

8 “(3)(A) Notwithstanding any other provision of this
9 section, for purposes of carrying out this subsection with
10 respect to any excess amount (referred to in paragraph
11 (1)) remaining in the employment security administration
12 account as of the close of fiscal year 1999, 2000, or 2001,
13 such amount shall—

14 “(i) to the extent of any amounts not in excess
15 of \$100,000,000, be subject to subparagraph (B),
16 and

17 “(ii) to the extent of any amounts in excess of
18 \$100,000,000, be subject to subparagraph (C).

19 “(B) Paragraphs (1) and (2) shall apply with respect
20 to any amounts described in subparagraph (A)(i), except
21 that—

22 “(i) in carrying out the provisions of paragraph
23 (2)(B) with respect to such amounts (to determine
24 the portion of such amounts which is to be allocated
25 to a State for a succeeding fiscal year), the ratio to

1 be applied under such provisions shall be the same
2 as the ratio that—

3 “(I) the amount of funds to be allocated to
4 such State for such fiscal year pursuant to title
5 III, bears to

6 “(II) the total amount of funds to be allo-
7 cated to all States for such fiscal year pursuant
8 to title III,
9 as determined by the Secretary of Labor, and

10 “(ii) the amounts allocated to a State pursuant
11 to this subparagraph shall be available to such
12 State, subject to the last sentence of subsection
13 (c)(2).

14 Nothing in this paragraph shall preclude the application
15 of subsection (b) with respect to any allocation determined
16 under this subparagraph.

17 “(C) Any amounts described in clause (ii) of subpara-
18 graph (A) (remaining in the employment security adminis-
19 tration account as of the close of any fiscal year specified
20 in such subparagraph) shall, as of the beginning of the
21 succeeding fiscal year, accrue to the Federal unemploy-
22 ment account, without regard to the limit provided in sec-
23 tion 902(a).”.

1 (b) CONFORMING AMENDMENT.—Paragraph (2) of
2 section 903(c) of the Social Security Act is amended by
3 adding at the end, as a flush left sentence, the following:
4 “Any amount allocated to a State under this section for
5 fiscal year 2000, 2001, or 2002 may be used by such State
6 only to pay expenses incurred by it for the administration
7 of its unemployment compensation law, and may be so
8 used by it without regard to any of the conditions pre-
9 scribed in any of the preceding provisions of this para-
10 graph.”.

11 **SEC. 5833. CLARIFYING PROVISION RELATING TO BASE PE-**
12 **RIODS.**

13 (a) IN GENERAL.—No provision of a State law under
14 which the base period for such State is defined or other-
15 wise determined shall, for purposes of section 303(a)(1)
16 of the Social Security Act (42 U.S.C. 503(a)(1)), be con-
17 sidered a provision for a method of administration.

18 (b) DEFINITIONS.—For purposes of this section, the
19 terms “State law”, “base period”, and “State” shall have
20 the meanings given them under section 205 of the Fed-
21 eral-State Extended Unemployment Compensation Act of
22 1970 (26 U.S.C. 3304 note).

23 (c) EFFECTIVE DATE.—This section shall apply for
24 purposes of any period beginning before, on, or after the
25 date of the enactment of this Act.

1 **SEC. 5834. TREATMENT OF CERTAIN SERVICES PER-**
2 **FORMED BY INMATES.**

3 (a) **IN GENERAL.**—Subsection (c) of section 3306 of
4 the Internal Revenue Code of 1986 (defining employment)
5 is amended—

6 (1) by striking “or” at the end of paragraph
7 (19),

8 (2) by striking the period at the end of para-
9 graph (20) and inserting “; or”, and

10 (3) by adding at the end the following new
11 paragraph:

12 “(21) service performed by a person committed
13 to a penal institution.”

14 (b) **EFFECTIVE DATE.**—The amendments made by
15 this section shall apply with respect to service performed
16 after March 26, 1996.

1 **DIVISION 4—EARNED INCOME**
2 **CREDIT AND OTHER PROVI-**
3 **SIONS**

4 **Subtitle L—Earned Income Credit**
5 **and Other Provisions**

6 **CHAPTER 1—EARNED INCOME CREDIT**

7 **SEC. 5851. RESTRICTIONS ON AVAILABILITY OF EARNED IN-**
8 **COME CREDIT FOR TAXPAYERS WHO IM-**
9 **PROPERLY CLAIMED CREDIT IN PRIOR YEAR.**

10 (a) IN GENERAL.—Section 32 of the Internal Reve-
11 nue Code of 1986 (relating to earned income credit) is
12 amended by redesignating subsections (k) and (l) as sub-
13 sections (l) and (m), respectively, and by inserting after
14 subsection (j) the following new subsection:

15 “(k) RESTRICTIONS ON TAXPAYERS WHO IMPROP-
16 ERLY CLAIMED CREDIT IN PRIOR YEAR.—

17 “(1) TAXPAYERS MAKING PRIOR FRAUDULENT
18 OR RECKLESS CLAIMS.—

19 “(A) IN GENERAL.—No credit shall be al-
20 lowed under this section for any taxable year in
21 the disallowance period.

22 “(B) DISALLOWANCE PERIOD.—For pur-
23 poses of paragraph (1), the disallowance period
24 is—

1 “(i) the period of 10 taxable years
2 after the most recent taxable year for
3 which there was a final determination that
4 the taxpayer’s claim of credit under this
5 section was due to fraud, and

6 “(ii) the period of 2 taxable years
7 after the most recent taxable year for
8 which there was a final determination that
9 the taxpayer’s claim of credit under this
10 section was due to reckless or intentional
11 disregard of rules and regulations (but not
12 due to fraud).

13 “(2) TAXPAYERS MAKING IMPROPER PRIOR
14 CLAIMS.—In the case of a taxpayer who is denied
15 credit under this section for any taxable year as a
16 result of the deficiency procedures under subchapter
17 B of chapter 63, no credit shall be allowed under
18 this section for any subsequent taxable year unless
19 the taxpayer provides such information as the Sec-
20 retary may require to demonstrate eligibility for
21 such credit.”

22 (b) DUE DILIGENCE REQUIREMENT ON INCOME TAX
23 RETURN PREPARERS.—Section 6695 of the Internal Rev-
24 enue Code of 1986 (relating to other assessable penalties
25 with respect to the preparation of income tax returns for

1 other persons) is amended by adding at the end the follow-
2 ing new subsection:

3 “(g) FAILURE TO BE DILIGENT IN DETERMINING
4 ELIGIBILITY FOR EARNED INCOME CREDIT.—Any person
5 who is an income tax preparer with respect to any return
6 or claim for refund who fails to comply with due diligence
7 requirements imposed by the Secretary by regulations with
8 respect to determining eligibility for, or the amount of,
9 the credit allowable by section 32 shall pay a penalty of
10 \$100 for each such failure.”

11 (c) EXTENSION PROCEDURES APPLICABLE TO
12 MATHEMATICAL OR CLERICAL ERRORS.—Paragraph (2)
13 of section 6213(g) (relating to the definition of mathe-
14 matical or clerical errors) is amended by striking “and”
15 at the end of subparagraph (H), by striking the period
16 at the end of subparagraph (I) and inserting “, and”, and
17 by inserting after subparagraph (I) the following new sub-
18 paragraph:

19 “(J) an omission of information required
20 by section 32(k)(2) (relating to taxpayers mak-
21 ing improper prior claims of earned income
22 credit).”

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to taxable years beginning after
25 December 31, 1996.

1 ranges between 1/2 percentage point per year and
2 1 1/2 percentage points per year”.

3 (3) The overstatement of the cost of living by
4 the Consumer Price Index has been recognized by
5 economists since at least 1961, when a report noting
6 the existence of the overstatement was issued by a
7 National Bureau of Economic Research Committee,
8 chaired by Professor George J. Stigler.

9 (4) Congress and the President, through the in-
10 dexing of Federal tax brackets, Social Security bene-
11 fits, and other Federal program benefits, have un-
12 dertaken to protect taxpayers and beneficiaries of
13 such programs from the erosion of purchasing power
14 due to inflation.

15 (5) Congress and the President intended the in-
16 dexing of Federal tax brackets, Social Security bene-
17 fits, and other Federal program benefits to accu-
18 rately reflect changes in the cost of living.

19 (6) The overstatement of the cost of living in-
20 creases the deficit and undermines the equitable ad-
21 ministration of Federal benefits and tax policies.

22 (b) SENSE OF THE SENATE.—It is the sense of the
23 Senate that all cost-of-living adjustments required by stat-
24 ute should accurately reflect the best available estimate
25 of changes in the cost of living.

1 **Subtitle M—Welfare Reform**
2 **Technical Corrections**

3 **SEC. 5900. SHORT TITLE OF SUBTITLE.**

4 This subtitle may be cited as the “Welfare Reform
5 Technical Corrections Act of 1997”.

6 **CHAPTER 1—BLOCK GRANTS FOR TEM-**
7 **PORARY ASSISTANCE TO NEEDY FAMI-**
8 **LIES**

9 **SEC. 5901. AMENDMENT OF THE SOCIAL SECURITY ACT.**

10 Except as otherwise expressly provided, wherever in
11 this chapter an amendment or repeal is expressed in terms
12 of an amendment to, or repeal of a section or other provi-
13 sion, the reference shall be considered to be made to a
14 section or other provision of the Social Security Act, and
15 if the section or other provision is of part A of title IV
16 of such Act, the reference shall be considered to be made
17 to the section or other provision as amended by section
18 103, and as in effect pursuant to section 116, of the Per-
19 sonal Responsibility and Work Opportunity Reconciliation
20 Act of 1996.

21 **SEC. 5902. ELIGIBLE STATES; STATE PLAN.**

22 (a) LATER DEADLINE FOR SUBMISSION OF STATE
23 PLANS.—Section 402(a) (42 U.S.C. 602(a)) is amended
24 by striking “2-year period immediately preceding” and in-

1 serting “27-month period ending with the close of the 1st
2 quarter of”.

3 (b) CLARIFICATION OF SCOPE OF WORK PROVI-
4 SIONS.—Section 402(a)(1)(A)(ii) (42 U.S.C.
5 602(a)(1)(A)(ii)) is amended by inserting “, consistent
6 with section 407(e)(2)” before the period.

7 (c) CORRECTION OF CROSS-REFERENCE.—Section
8 402(a)(1)(A)(v) (42 U.S.C. 602(a)(1)(A)(v)) is amended
9 by striking “403(a)(2)(B)” and inserting
10 “403(a)(2)(C)(iii)”.

11 (d) NOTIFICATION OF PLAN AMENDMENTS.—Section
12 402 (42 U.S.C. 602) is amended—

13 (1) by redesignating subsection (b) as sub-
14 section (c) and inserting after subsection (a) the fol-
15 lowing:

16 “(b) PLAN AMENDMENTS.—Within 30 days after a
17 State amends a plan submitted pursuant to subsection (a),
18 the State shall notify the Secretary of the amendment.”;
19 and

20 (2) in subsection (c) (as so redesignated), by in-
21 serting “or plan amendment” after “plan”.

22 **SEC. 5903. GRANTS TO STATES.**

23 (a) BONUS FOR DECREASE IN ILLEGITIMACY MODI-
24 FIED TO TAKE ACCOUNT OF CERTAIN TERRITORIES.—

1 (1) IN GENERAL.—Section 403(a)(2)(B) (42
2 U.S.C. 603(a)(2)(B)) is amended to read as follows:

3 “(B) AMOUNT OF GRANT.—

4 “(i) IN GENERAL.—If, for a bonus
5 year, none of the eligible States is Guam,
6 the Virgin Islands, or American Samoa,
7 then the amount of the grant shall be—

8 “(I) \$20,000,000 if there are 5
9 eligible States; or

10 “(II) \$25,000,000 if there are
11 fewer than 5 eligible States.

12 “(ii) AMOUNT IF CERTAIN TERRI-
13 TORIES ARE ELIGIBLE.—If, for a bonus
14 year, Guam, the Virgin Islands, or Amer-
15 ican Samoa is an eligible State, then the
16 amount of the grant shall be—

17 “(I) in the case of such a terri-
18 tory, 25 percent of the mandatory
19 ceiling amount (as defined in section
20 1108(e)(4)) with respect to the terri-
21 tory; and

22 “(II) in the case of a State that
23 is not such a territory—

24 “(aa) if there are 5 eligible
25 States other than such terri-

1 territories, \$20,000,000, minus $\frac{1}{5}$ of
 2 the total amount of the grants
 3 payable under this paragraph to
 4 such territories for the bonus
 5 year; or

6 “(bb) if there are fewer than
 7 5 such eligible States,
 8 \$25,000,000, or such lesser
 9 amount as may be necessary to
 10 ensure that the total amount of
 11 grants payable under this para-
 12 graph for the bonus year does
 13 not exceed \$100,000,000.”.

14 (2) CERTAIN TERRITORIES TO BE
 15 IGNORED IN RANKING OTHER STATES.—

16 Section 403(a)(2)(C)(i)(I)(aa) (42 U.S.C.
 17 603(a)(2)(C)(i)(I)(aa)) is amended by adding at the
 18 end the following: “In the case of a State that is not
 19 a territory specified in subparagraph (B), the com-
 20 parative magnitude of the decrease for the State
 21 shall be determined without regard to the magnitude
 22 of the corresponding decrease for any such terri-
 23 tory.”.

24 (b) COMPUTATION OF BONUS BASED ON RATIOS OF
 25 OUT-OF-WEDLOCK BIRTHS TO ALL BIRTHS INSTEAD OF

1 NUMBERS OF OUT-OF-WEDLOCK BIRTHS.—Section
2 403(a)(2) (42 U.S.C. 603(a)(2)) is amended—

3 (1) in the paragraph heading, by inserting
4 “RATIO” before the period;

5 (2) in subparagraph (A), by striking all that
6 follows “bonus year” and inserting a period; and

7 (3) in subparagraph (C)—

8 (A) in clause (i)—

9 (i) in subclause (I)(aa)—

10 (I) by striking “number of out-
11 of-wedlock births that occurred in the
12 State during” and inserting “illegit-
13 imacy ratio of the State for”; and

14 (II) by striking “number of such
15 births that occurred during” and in-
16 serting “illegitimacy ratio of the State
17 for”; and

18 (ii) in subclause (II)(aa)—

19 (I) by striking “number of out-
20 of-wedlock births that occurred in”
21 each place such term appears and in-
22 serting “illegitimacy ratio of”; and

23 (II) by striking “calculate the
24 number of out-of-wedlock births” and

1 inserting “calculate the illegitimacy
2 ratio”; and

3 (B) by adding at the end the following:

4 “(iii) ILLEGITIMACY RATIO.—The
5 term ‘illegitimacy ratio’ means, with re-
6 spect to a State and a period—

7 “(I) the number of out-of-wed-
8 lock births to mothers residing in the
9 State that occurred during the period;
10 divided by

11 “(II) the number of births to
12 mothers residing in the State that oc-
13 curred during the period.”.

14 (c) USE OF CALENDAR YEAR DATA INSTEAD OF FIS-
15 CAL YEAR DATA IN CALCULATING BONUS FOR DECREASE
16 IN ILLEGITIMACY RATIO.—Section 403(a)(2)(C) (42
17 U.S.C. 603(a)(2)(C)) is amended—

18 (1) in clause (i)—

19 (A) in subclause (I)(bb)—

20 (i) by striking “the fiscal year” and
21 inserting “the calendar year for which the
22 most recent data are available”; and

23 (ii) by striking “fiscal year 1995” and
24 inserting “calendar year 1995”;

1 (B) in subclause (II), by striking “fiscal”
2 each place such term appears and inserting
3 “calendar”; and

4 (2) in clause (ii), by striking “fiscal years” and
5 inserting “calendar years”.

6 (d) CORRECTION OF HEADING.—Section
7 403(a)(3)(C)(ii) (42 U.S.C. 603(a)(3)(C)(ii)) is amended
8 in the heading by striking “1997” and inserting “1998”.

9 (e) CLARIFICATION OF CONTINGENCY FUND PROVI-
10 SION.—Section 403(b) (42 U.S.C. 603(b)) is amended—

11 (1) in paragraph (6), by striking “(5)” and in-
12 serting “(4)”;

13 (2) by striking paragraph (4) and redesignating
14 paragraphs (5) and (6) as paragraphs (4) and (5),
15 respectively; and

16 (3) by inserting after paragraph (5) the follow-
17 ing:

18 “(6) ANNUAL RECONCILIATION.—

19 “(A) IN GENERAL.—Notwithstanding para-
20 graph (3), if the Secretary makes a payment to
21 a State under this subsection in a fiscal year,
22 then the State shall remit to the Secretary,
23 within 1 year after the end of the first subse-
24 quent period of 3 consecutive months for which

1 the State is not a needy State, an amount equal
2 to the amount (if any) by which—

3 “(i) the total amount paid to the
4 State under paragraph (3) of this sub-
5 section in the fiscal year; exceeds

6 “(ii) the product of—

7 “(I) the Federal medical assist-
8 ance percentage for the State (as de-
9 fined in section 1905(b), as such sec-
10 tion was in effect on September 30,
11 1995);

12 “(II) the State’s reimbursable ex-
13 penditures for the fiscal year; and

14 “(III) $\frac{1}{12}$ times the number of
15 months during the fiscal year for
16 which the Secretary made a payment
17 to the State under such paragraph
18 (3).

19 “(B) DEFINITIONS.—As used in subpara-
20 graph (A):

21 “(i) REIMBURSABLE EXPENDI-
22 TURES.—The term ‘reimbursable expendi-
23 tures’ means, with respect to a State and
24 a fiscal year, the amount (if any) by
25 which—

1 “(I) countable State expenditures
2 for the fiscal year; exceeds

3 “(II) historic State expenditures
4 (as defined in section
5 409(a)(7)(B)(iii)), excluding any
6 amount expended by the State for
7 child care under subsection (g) or (i)
8 of section 402 (as in effect during fis-
9 cal year 1994) for fiscal year 1994.

10 “(ii) COUNTABLE STATE EXPENDI-
11 TURES.—The term ‘countable expendi-
12 tures’ means, with respect to a State and
13 a fiscal year—

14 “(I) the qualified State expendi-
15 tures (as defined in section
16 409(a)(7)(B)(i) (other than the ex-
17 penditures described in subclause
18 (I)(bb) of such section)) under the
19 State program funded under this part
20 for the fiscal year; plus

21 “(II) any amount paid to the
22 State under paragraph (3) during the
23 fiscal year that is expended by the
24 State under the State program funded
25 under this part.”.

1 (f) ADMINISTRATION OF CONTINGENCY FUND
2 TRANSFERRED TO THE SECRETARY OF HHS.—Section
3 403(b)(7) (42 U.S.C. 603(b)(7)) is amended to read as
4 follows:

5 “(7) STATE DEFINED.—As used in this sub-
6 section, the term ‘State’ means each of the 50
7 States and the District of Columbia.”.

8 **SEC. 5904. USE OF GRANTS.**

9 Section 404(a)(2) (42 U.S.C. 604(a)(2)) is amended
10 by inserting “, or (at the option of the State) August 21,
11 1996” before the period.

12 **SEC. 5905. MANDATORY WORK REQUIREMENTS.**

13 (a) FAMILY WITH A DISABLED PARENT NOT TREAT-
14 ED AS A 2-PARENT FAMILY.—Section 407(b)(2) (42
15 U.S.C. 607(b)(2)) is amended by adding at the end the
16 following:

17 “(C) FAMILY WITH A DISABLED PARENT
18 NOT TREATED AS A 2-PARENT FAMILY.—A fam-
19 ily that includes a disabled parent shall not be
20 considered a 2-parent family for purposes of
21 subsections (a) and (b) of this section.”.

22 (b) CORRECTION OF HEADING.—Section 407(b)(3)
23 (42 U.S.C. 607(b)(3)) is amended in the heading by in-
24 serting “AND NOT RESULTING FROM CHANGES IN STATE
25 ELIGIBILITY CRITERIA” before the period.

1 (c) STATE OPTION TO INCLUDE INDIVIDUALS RE-
2 CEIVING ASSISTANCE UNDER A TRIBAL WORK PROGRAM
3 IN PARTICIPATION RATE CALCULATION.—Section
4 407(b)(4) (42 U.S.C. 607(b)(4)) is amended—

5 (1) in the heading, by inserting “OR TRIBAL
6 WORK PROGRAM” before the period; and

7 (2) by inserting “or under a tribal work pro-
8 gram to which funds are provided under this part”
9 before the period.

10 (d) SHARING OF 35-HOUR WORK REQUIREMENT BE-
11 TWEEN PARENTS IN 2-PARENT FAMILIES.—Section
12 407(c)(1)(B) (42 U.S.C. 607(c)(1)(B)) is amended—

13 (1) in clause (i)—

14 (A) by striking “is” and inserting “and the
15 other parent in the family are”; and

16 (B) by inserting “a total of” before “at
17 least”; and

18 (2) in clause (ii)—

19 (A) by striking “individual’s spouse is”
20 and inserting “individual and the other parent
21 in the family are”;

22 (B) by inserting “for a total of at least 55
23 hours per week” before “during the month”;
24 and

25 (C) by striking “20” and inserting “50”.

1 (e) CLARIFICATION OF EFFORT REQUIRED IN WORK
2 ACTIVITIES.—Section 407(c)(1)(B) (42 U.S.C.
3 607(c)(1)(B)) is amended by striking “making progress”
4 each place such term appears and inserting “participat-
5 ing”.

6 (f) ADDITIONAL CONDITION UNDER WHICH 12
7 WEEKS OF JOB SEARCH MAY COUNT AS WORK.—Section
8 407(c)(2)(A)(i) (42 U.S.C. 607(c)(2)(A)(i)) is amended by
9 inserting “or the State is a needy State (within the mean-
10 ing of section 403(b)(6))” after “United States”.

11 (g) CARETAKER RELATIVE OF CHILD UNDER AGE
12 6 DEEMED TO BE MEETING WORK REQUIREMENTS IF
13 ENGAGED IN WORK FOR 20 HOURS PER WEEK.—Section
14 407(c)(2)(B) (42 U.S.C. 607(c)(2)(B)) is amended—

15 (1) in the heading, by inserting “OR RELATIVE”
16 after “PARENT” each place such term appears; and

17 (2) by striking “in a 1-parent family who is the
18 parent” and inserting “who is the only parent or
19 caretaker relative in the family”.

20 (h) EXTENSION TO MARRIED TEENS OF RULE THAT
21 RECEIPT OF SUFFICIENT EDUCATION IS ENOUGH TO
22 MEET WORK PARTICIPATION REQUIREMENTS.—Section
23 407(c)(2)(C) (42 U.S.C. 607(c)(2)(C)) is amended—

1 (1) in the heading, by striking “TEEN HEAD OF
2 HOUSEHOLD” and inserting “SINGLE TEEN HEAD
3 OF HOUSEHOLD OR MARRIED TEEN”; and

4 (2) by striking “a single” and inserting “mar-
5 ried or a”.

6 (i) CLARIFICATION OF NUMBER OF HOURS OF PAR-
7 TICIPATION IN EDUCATION DIRECTLY RELATED TO EM-
8 PLOYMENT THAT ARE REQUIRED IN ORDER FOR SINGLE
9 TEEN HEAD OF HOUSEHOLD OR MARRIED TEEN TO BE
10 DEEMED TO BE ENGAGED IN WORK.—Section
11 407(e)(2)(C)(ii) (42 U.S.C. 607(e)(2)(C)(ii)) is amended
12 by striking “at least” and all that follows through “sub-
13 section” and inserting “an average of at least 20 hours
14 per week during the month”.

15 (j) CLARIFICATION OF REFUSAL TO WORK FOR PUR-
16 POSES OF WORK PENALTIES FOR INDIVIDUALS.—Section
17 407(e)(2) (42 U.S.C. 607(e)(2)) is amended by striking
18 “work” and inserting “engage in work required in accord-
19 ance with this section”.

20 (k) CLARIFICATION OF REMOVAL OF TEEN PARENTS
21 WITH RESPECT TO VOCATIONAL EDUCATION.—Section
22 407(e)(2) (42 U.S.C. 607(e)(2)) is amended—

23 (1) in subparagraph (C), by striking “, subject
24 to subparagraph (D) of this paragraph,”; and

1 (2) by striking subparagraph (D) and inserting
2 the following:

3 “(D) NUMBER OF PERSONS THAT MAY BE
4 TREATED AS ENGAGED IN WORK BY VIRTUE OF
5 PARTICIPATION IN VOCATIONAL EDUCATION AC-
6 TIVITIES.—For purposes of determining month-
7 ly participation rates under paragraphs
8 (1)(B)(i) and (2)(B) of subsection (b), not more
9 than 20 percent of individuals in all families
10 and in 2-parent families (other than individuals
11 in such families who are described in subpara-
12 graph (C)) may be determined to be engaged in
13 work in the State for a month by reason of par-
14 ticipation in vocational educational training.”.

15 **SEC. 5906. PROHIBITIONS; REQUIREMENTS.**

16 (a) **ELIMINATION OF REDUNDANT LANGUAGE; CLAR-**
17 **IFICATION OF HOME RESIDENCE REQUIREMENT.**—Sec-
18 tion 408(a)(1) (42 U.S.C. 608(a)(1)) is amended to read
19 as follows:

20 “(1) **NO ASSISTANCE FOR FAMILIES WITHOUT A**
21 **MINOR CHILD.**—A State to which a grant is made
22 under section 403 shall not use any part of the
23 grant to provide assistance to a family, unless the
24 family includes a minor child who resides with the

1 family (consistent with paragraph (10)) or a preg-
2 nant individual.”.

3 (b) CLARIFICATION OF TERMINOLOGY.—Section
4 408(a)(3) (42 U.S.C. 608(a)(3)) is amended—

5 (1) by striking “leaves” the 1st, 3rd, and 4th
6 places such term appears and inserting “ceases to
7 receive assistance under”; and

8 (2) by striking “the date the family leaves the
9 program” the 2nd place such term appears and in-
10 sserting “such date”.

11 (c) ELIMINATION OF SPACE.—Section
12 408(a)(5)(A)(ii) (42 U.S.C. 608(a)(5)(A)(ii)) is amended
13 by striking “DESCRIBED.— For” and inserting “DE-
14 SCRIBED.—For”.

15 (d) CORRECTIONS TO 5-YEAR LIMIT ON ASSIST-
16 ANCE.—

17 (1) CLARIFICATION OF LIMITATION ON HARD-
18 SHIP EXEMPTION.—Section 408(a)(7)(C)(ii) (42
19 U.S.C. 608(a)(7)(C)(ii)) is amended—

20 (A) by striking “The number” and insert-
21 ing “The average monthly number”; and

22 (B) by inserting “during the fiscal year or
23 the immediately preceding fiscal year (but not
24 both), as the State may elect” before the pe-
25 riod.

1 (2) RESIDENCE EXCEPTION MADE MORE UNI-
2 FORM AND EASIER TO ADMINISTER.—Section
3 408(a)(7)(D) (42 U.S.C. 608(a)(7)(D)) is amended
4 to read as follows:

5 “(D) DISREGARD OF MONTHS OF ASSIST-
6 ANCE RECEIVED BY ADULT WHILE LIVING IN
7 INDIAN COUNTRY OR AN ALASKAN NATIVE VIL-
8 LAGE WITH 50 PERCENT UNEMPLOYMENT.—

9 “(i) IN GENERAL.—In determining
10 the number of months for which an adult
11 has received assistance under a State or
12 tribal program funded under this part, the
13 State or tribe shall disregard any month
14 during which the adult lived in Indian
15 country or an Alaskan Native village if the
16 most reliable data available with respect to
17 the month (or a period including the
18 month) indicate that at least 50 percent of
19 the adults living in Indian country or in
20 the village were not employed.

21 “(ii) INDIAN COUNTRY DEFINED.—As
22 used in clause (i), the term ‘Indian coun-
23 try’ has the meaning given such term in
24 section 1151 of title 18, United States
25 Code.”.

1 (e) REINSTATEMENT OF DEEMING AND OTHER
2 RULES APPLICABLE TO ALIENS WHO ENTERED THE
3 UNITED STATES UNDER AFFIDAVITS OF SUPPORT FOR-
4 MERLY USED.—Section 408 (42 U.S.C. 608) is amended
5 by striking subsection (d) and inserting the following:

6 “(d) SPECIAL RULES RELATING TO TREATMENT OF
7 CERTAIN ALIENS.—For special rules relating to the treat-
8 ment of certain aliens, see title IV of the Personal Respon-
9 sibility and Work Opportunity Reconciliation Act of 1996.

10 “(e) SPECIAL RULES RELATING TO THE TREATMENT
11 OF NON-213A ALIENS.—The following rules shall apply
12 if a State elects to take the income or resources of any
13 sponsor of a non-213A alien into account in determining
14 whether the alien is eligible for assistance under the State
15 program funded under this part, or in determining the
16 amount or types of such assistance to be provided to the
17 alien:

18 “(1) DEEMING OF SPONSOR’S INCOME AND RE-
19 SOURCES.—For a period of 3 years after a non-
20 213A alien enters the United States:

21 “(A) INCOME DEEMING RULE.—The in-
22 come of any sponsor of the alien and of any
23 spouse of the sponsor is deemed to be income
24 of the alien, to the extent that the total amount
25 of the income exceeds the sum of—

1 “(i) the lesser of—

2 “(I) 20 percent of the total of
3 any amounts received by the sponsor
4 or any such spouse in the month as
5 wages or salary or as net earnings
6 from self-employment, plus the full
7 amount of any costs incurred by the
8 sponsor and any such spouse in pro-
9 ducing self-employment income in
10 such month; or

11 “(II) \$175;

12 “(ii) the cash needs standard estab-
13 lished by the State for purposes of deter-
14 mining eligibility for assistance under the
15 State program funded under this part for
16 a family of the same size and composition
17 as the sponsor and any other individuals
18 living in the same household as the sponsor
19 who are claimed by the sponsor as depend-
20 ents for purposes of determining the spon-
21 sor’s Federal personal income tax liability
22 but whose needs are not taken into account
23 in determining whether the sponsor’s fam-
24 ily has met the cash needs standard;

1 “(iii) any amounts paid by the spon-
2 sor or any such spouse to individuals not
3 living in the household who are claimed by
4 the sponsor as dependents for purposes of
5 determining the sponsor’s Federal personal
6 income tax liability; and

7 “(iv) any payments of alimony or
8 child support with respect to individuals
9 not living in the household.

10 “(B) RESOURCE DEEMING RULE.—The re-
11 sources of a sponsor of the alien and of any
12 spouse of the sponsor are deemed to be re-
13 sources of the alien to the extent that the ag-
14 gregate value of the resources exceeds \$1,500.

15 “(C) SPONSORS OF MULTIPLE NON-213A
16 ALIENS.—If a person is a sponsor of 2 or more
17 non-213A aliens who are living in the same
18 home, the income and resources of the sponsor
19 and any spouse of the sponsor that would be
20 deemed income and resources of any such alien
21 under subparagraph (A) shall be divided into a
22 number of equal shares equal to the number of
23 such aliens, and the State shall deem the in-
24 come and resources of each such alien to in-
25 clude 1 such share.

1 “(2) INELIGIBILITY OF NON-213A ALIENS SPON-
2 SORED BY AGENCIES; EXCEPTION.—A non-213A
3 alien whose sponsor is or was a public or private
4 agency shall be ineligible for assistance under a
5 State program funded under this part, during a pe-
6 riod of 3 years after the alien enters the United
7 States, unless the State agency administering the
8 program determines that the sponsor either no
9 longer exists or has become unable to meet the
10 alien’s needs.

11 “(3) INFORMATION PROVISIONS.—

12 “(A) DUTIES OF NON-213A ALIENS.—A
13 non-213A alien, as a condition of eligibility for
14 assistance under a State program funded under
15 this part during the period of 3 years after the
16 alien enters the United States, shall be required
17 to provide to the State agency administering
18 the program—

19 “(i) such information and documenta-
20 tion with respect to the alien’s sponsor as
21 may be necessary in order for the State
22 agency to make any determination required
23 under this subsection, and to obtain any
24 cooperation from the sponsor necessary for
25 any such determination; and

1 “(ii) such information and documenta-
2 tion as the State agency may request and
3 which the alien or the alien’s sponsor pro-
4 vided in support of the alien’s immigration
5 application.

6 “(B) DUTIES OF FEDERAL AGENCIES.—
7 The Secretary shall enter into agreements with
8 the Secretary of State and the Attorney Gen-
9 eral under which any information available to
10 them and required in order to make any deter-
11 mination under this subsection will be provided
12 by them to the Secretary (who may, in turn,
13 make the information available, upon request,
14 to a concerned State agency).

15 “(4) NON-213A ALIEN DEFINED.—An alien is a
16 non-213A alien for purposes of this subsection if the
17 affidavit of support or similar agreement with re-
18 spect to the alien that was executed by the sponsor
19 of the alien’s entry into the United States was exe-
20 cuted other than pursuant to section 213A of the
21 Immigration and Nationality Act.

22 “(5) INAPPLICABILITY TO ALIEN MINOR SPON-
23 SORED BY A PARENT.—This subsection shall not
24 apply to an alien who is a minor child if the sponsor

1 of the alien or any spouse of the sponsor is a parent
2 of the alien.

3 “(6) INAPPLICABILITY TO CERTAIN CAT-
4 EGORIES OF ALIENS.—This subsection shall not
5 apply to an alien who is—

6 “(A) admitted to the United States as a
7 refugee under section 207 of the Immigration
8 and Nationality Act;

9 “(B) paroled into the United States under
10 section 212(d)(5) of such Act for a period of at
11 least 1 year; or

12 “(C) granted political asylum by the Attor-
13 ney General under section 208 of such Act.”.

14 **SEC. 5907. PENALTIES.**

15 (a) STATES GIVEN MORE TIME TO FILE QUARTERLY
16 REPORTS.—Section 409(a)(2)(A) (42 U.S.C.
17 609(a)(2)(A)) is amended by striking “1 month” and in-
18 serting “45 days”.

19 (b) TREATMENT OF SUPPORT PAYMENTS PASSED
20 THROUGH TO FAMILIES AS QUALIFIED STATE EXPENDI-
21 TURES.—Section 409(a)(7)(B)(i)(I)(aa) (42 U.S.C.
22 609(a)(7)(B)(i)(I)(aa)) is amended by inserting “, includ-
23 ing any amount collected by the State as support pursuant
24 to a plan approved under part D, on behalf of a family
25 receiving assistance under the State program funded

1 under this part, that is distributed to the family under
2 section 457(a)(1)(B) and disregarded in determining the
3 eligibility of the family for, and the amount of, such assist-
4 ance” before the period.

5 (c) DISREGARD OF EXPENDITURES MADE TO RE-
6 PLACE PENALTY GRANT REDUCTIONS.—Section
7 409(a)(7)(B)(i) (42 U.S.C. 609(a)(7)(B)(i)) is amended
8 by redesignating subclause (III) as subclause (IV) and by
9 inserting after subclause (II) the following:

10 “(III) EXCLUSION OF AMOUNTS
11 EXPENDED TO REPLACE PENALTY
12 GRANT REDUCTIONS.—Such term
13 does not include any amount expended
14 in order to comply with paragraph
15 (12).”.

16 (d) TREATMENT OF FAMILIES OF CERTAIN ALIENS
17 AS ELIGIBLE FAMILIES.—Section 409(a)(7)(B)(i)(IV) (42
18 U.S.C. 609(a)(7)(B)(i)(IV)), as so redesignated by sub-
19 section (c) of this section, is amended—

20 (1) by striking “and families” and inserting
21 “families”; and

22 (2) by striking “Act or section 402” and insert-
23 ing “Act, and families of aliens lawfully present in
24 the United States that would be eligible for such as-
25 sistance but for the application of title IV”.

1 (e) ELIMINATION OF MEANINGLESS LANGUAGE.—
2 Section 409(a)(7)(B)(ii) (42 U.S.C. 609(a)(7)(B)(ii)) is
3 amended by striking “reduced (if appropriate) in accord-
4 ance with subparagraph (C)(ii)”.

5 (f) CLARIFICATION OF SOURCE OF DATA TO BE
6 USED IN DETERMINING HISTORIC STATE EXPENDI-
7 TURES.—Section 409(a)(7)(B) (42 U.S.C. 609(a)(7)(B))
8 is amended by adding at the end the following:

9 “(v) SOURCE OF DATA.—In determin-
10 ing expenditures by a State for fiscal years
11 1994 and 1995, the Secretary shall use in-
12 formation which was reported by the State
13 on ACF Form 231 or (in the case of ex-
14 penditures under part F) ACF Form 331,
15 available as of the dates specified in
16 clauses (ii) and (iii) of section
17 403(a)(1)(D).”.

18 (g) CONFORMING TITLE IV–A PENALTIES TO TITLE
19 IV–D PERFORMANCE-BASED STANDARDS.—Section
20 409(a)(8) (42 U.S.C. 609(a)(8)) is amended to read as
21 follows:

22 “(8) NONCOMPLIANCE OF STATE CHILD SUP-
23 PORT ENFORCEMENT PROGRAM WITH REQUIRE-
24 MENTS OF PART D.—

1 “(A) IN GENERAL.—If the Secretary finds,
2 with respect to a State’s program under part D,
3 in a fiscal year beginning on or after October
4 1, 1997—

5 “(i)(I) on the basis of data submitted
6 by a State pursuant to section 454(15)(B),
7 or on the basis of the results of a review
8 conducted under section 452(a)(4), that
9 the State program failed to achieve the pa-
10 ternity establishment percentages (as de-
11 fined in section 452(g)(2)), or to meet
12 other performance measures that may be
13 established by the Secretary;

14 “(II) on the basis of the results of an
15 audit or audits conducted under section
16 452(a)(4)(C)(i) that the State data sub-
17 mitted pursuant to section 454(15)(B) is
18 incomplete or unreliable; or

19 “(III) on the basis of the results of an
20 audit or audits conducted under section
21 452(a)(4)(C) that a State failed to sub-
22 stantially comply with 1 or more of the re-
23 quirements of part D; and

24 “(ii) that, with respect to the succeed-
25 ing fiscal year—

1 “(I) the State failed to take suffi-
2 cient corrective action to achieve the
3 appropriate performance levels or
4 compliance as described in subpara-
5 graph (A)(i); or

6 “(II) the data submitted by the
7 State pursuant to section 454(15)(B)
8 is incomplete or unreliable;

9 the amounts otherwise payable to the State
10 under this part for quarters following the end
11 of such succeeding fiscal year, prior to quarters
12 following the end of the first quarter through-
13 out which the State program has achieved the
14 paternity establishment percentages or other
15 performance measures as described in subpara-
16 graph (A)(i)(I), or is in substantial compliance
17 with 1 or more of the requirements of part D
18 as described in subparagraph (A)(i)(III), as ap-
19 propriate, shall be reduced by the percentage
20 specified in subparagraph (B).

21 “(B) AMOUNT OF REDUCTIONS.—The re-
22 ductions required under subparagraph (A) shall
23 be—

24 “(i) not less than 1 nor more than 2
25 percent;

1 “(ii) not less than 2 nor more than 3
2 percent, if the finding is the 2nd consecu-
3 tive finding made pursuant to subpara-
4 graph (A); or

5 “(iii) not less than 3 nor more than 5
6 percent, if the finding is the 3rd or a sub-
7 sequent consecutive such finding.

8 “(C) DISREGARD OF NONCOMPLIANCE
9 WHICH IS OF A TECHNICAL NATURE.—For pur-
10 poses of this section and section 452(a)(4), a
11 State determined as a result of an audit—

12 “(i) to have failed to have substan-
13 tially complied with 1 or more of the re-
14 quirements of part D shall be determined
15 to have achieved substantial compliance
16 only if the Secretary determines that the
17 extent of the noncompliance is of a tech-
18 nical nature which does not adversely af-
19 fect the performance of the State’s pro-
20 gram under part D; or

21 “(ii) to have submitted incomplete or
22 unreliable data pursuant to section
23 454(15)(B) shall be determined to have
24 submitted adequate data only if the Sec-
25 retary determines that the extent of the in-

1 completeness or unreliability of the data is
2 of a technical nature which does not ad-
3 versely affect the determination of the level
4 of the State’s paternity establishment per-
5 centages (as defined under section
6 452(g)(2)) or other performance measures
7 that may be established by the Secretary.”.

8 (h) CORRECTION OF REFERENCE TO 5-YEAR LIMIT
9 ON ASSISTANCE.—Section 409(a)(9) (42 U.S.C.
10 609(a)(9)) is amended by striking “408(a)(1)(B)” and in-
11 serting “408(a)(7)”.

12 (i) CORRECTION OF ERRORS IN PENALTY FOR FAIL-
13 URE TO MEET MAINTENANCE OF EFFORT REQUIREMENT
14 APPLICABLE TO THE CONTINGENCY FUND.—Section
15 409(a)(10) (42 U.S.C. 609(a)(10)) is amended—

16 (1) by striking “the expenditures under the
17 State program funded under this part for the fiscal
18 year (excluding any amounts made available by the
19 Federal Government)” and inserting “the qualified
20 State expenditures (as defined in paragraph
21 (7)(B)(i) (other than the expenditures described in
22 subclause (I)(bb) of that paragraph)) under the
23 State program funded under this part for the fiscal
24 year”;

1 (2) by inserting “excluding any amount ex-
2 pended by the State for child care under subsection
3 (g) or (i) of section 402 (as in effect during fiscal
4 year 1994) for fiscal year 1994,” after “(as defined
5 in paragraph (7)(B)(iii) of this subsection),”; and

6 (3) by inserting “that the State has not remit-
7 ted under section 403(b)(6)” before the period.

8 (j) PENALTY FOR STATE FAILURE TO EXPEND AD-
9 DITIONAL STATE FUNDS TO REPLACE GRANT REDUC-
10 TIONS.—Section 409(a)(12) (42 U.S.C. 609(a)(12)) is
11 amended—

12 (1) in the heading—

13 (A) by striking “FAILURE” and inserting
14 “REQUIREMENT”; and

15 (B) by striking “REDUCTIONS” and insert-
16 ing “REDUCTIONS; PENALTY FOR FAILURE TO
17 DO SO”; and

18 (2) by inserting “, and if the State fails to do
19 so, the Secretary may reduce the grant payable to
20 the State under section 403(a)(1) for the fiscal year
21 that follows such succeeding fiscal year by an
22 amount equal to not more than 2 percent of the
23 State family assistance grant” before the period.

24 (k) ELIMINATION OF CERTAIN REASONABLE CAUSE
25 EXCEPTIONS.—Section 409(b)(2) (42 U.S.C. 609(b)(2))

1 is amended by striking “(7) or (8)” and inserting “(6),
2 (7), (8), (10), or (12)”.

3 (l) CLARIFICATION OF WHAT IT MEANS TO CORRECT
4 A VIOLATION.—Section 409(c) (42 U.S.C. 609(c)) is
5 amended—

6 (1) in each of subparagraphs (A) and (B) of
7 paragraph (1), by inserting “or discontinue, as ap-
8 propriate,” after “correct”;

9 (2) in paragraph (2)—

10 (A) in the heading, by inserting “OR DIS-
11 CONTINUING” after “CORRECTING”; and

12 (B) by inserting “or discontinues, as ap-
13 propriate” after “corrects”; and

14 (3) in paragraph (3)—

15 (A) in the heading, by inserting “OR DIS-
16 CONTINUE” after “CORRECT”; and

17 (B) by inserting “or discontinue, as appro-
18 priate,” before “the violation”.

19 (m) CERTAIN PENALTIES NOT AVOIDABLE
20 THROUGH CORRECTIVE COMPLIANCE PLANS.—Section
21 409(c)(4) (42 U.S.C. 609(c)(4)) is amended to read as
22 follows:

23 “(4) INAPPLICABILITY TO CERTAIN PEN-
24 ALTIES.—This subsection shall not apply to the im-

1 position of a penalty against a State under para-
2 graph (6), (7), (8), (10), or (12) of subsection (a).”.

3 **SEC. 5908. DATA COLLECTION AND REPORTING.**

4 Section 411(a) (42 U.S.C. 611(a)) is amended—

5 (1) in paragraph (1)—

6 (A) in subparagraph (A)—

7 (i) by striking clause (ii) and inserting
8 the following:

9 “(ii) Whether a child receiving such
10 assistance or an adult in the family is re-
11 ceiving—

12 “(I) Federal disability insurance
13 benefits;

14 “(II) benefits based on Federal
15 disability status;

16 “(III) aid under a State plan ap-
17 proved under title XIV (as in effect
18 without regard to the amendment
19 made by section 301 of the Social Se-
20 curity Amendments of 1972));

21 “(IV) aid or assistance under a
22 State plan approved under title XVI
23 (as in effect without regard to such
24 amendment) by reason of being per-
25 manently and totally disabled; or

1 “(V) supplemental security in-
2 come benefits under title XVI (as in
3 effect pursuant to such amendment)
4 by reason of disability.”;

5 (ii) in clause (iv), by striking “young-
6 est child in” and inserting “head of”;

7 (iii) in each of clauses (vii) and (viii),
8 by striking “status” and inserting “level”;
9 and

10 (iv) by adding at the end the follow-
11 ing:

12 “(xvii) With respect to each individual
13 in the family who has not attained 20
14 years of age, whether the individual is a
15 parent of a child in the family.”; and

16 (B) in subparagraph (B)—

17 (i) in the heading, by striking “ESTI-
18 MATES” and inserting “SAMPLES”; and

19 (ii) in clause (i), by striking “an esti-
20 mate which is obtained” and inserting
21 “disaggregated case record information on
22 a sample of families selected”; and

23 (2) by redesignating paragraph (6) as para-
24 graph (7) and inserting after paragraph (5) the fol-
25 lowing:

1 “(6) REPORT ON FAMILIES RECEIVING ASSIST-
2 ANCE.—The report required by paragraph (1) for a
3 fiscal quarter shall include for each month in the
4 quarter the number of families and individuals re-
5 ceiving assistance under the State program funded
6 under this part (including the number of 2-parent
7 and 1-parent families), and the total dollar value of
8 such assistance received by all families.”.

9 **SEC. 5909. DIRECT FUNDING AND ADMINISTRATION BY IN-**
10 **DIAN TRIBES.**

11 (a) PRORATING OF TRIBAL FAMILY ASSISTANCE
12 GRANTS.—Section 412(a)(1)(A) (42 U.S.C. 612(a)(1)(A))
13 is amended by inserting “which shall be reduced for a fis-
14 cal year, on a pro rata basis for each quarter, in the case
15 of a tribal family assistance plan approved during a fiscal
16 year for which the plan is to be in effect,” before “and
17 shall”.

18 (b) TRIBAL OPTION TO OPERATE WORK ACTIVITIES
19 PROGRAM.—Section 412(a)(2)(A) (42 U.S.C.
20 612(a)(2)(A)) is amended by striking “The Secretary”
21 and all that follows through “2002” and inserting “For
22 each of fiscal years 1997, 1998, 1999, 2000, 2001, and
23 2002, the Secretary shall pay to each eligible Indian tribe
24 that proposes to operate a program described in subpara-
25 graph (C)”.

1 (c) DISCRETION OF TRIBES TO SELECT POPULATION
2 TO BE SERVED BY TRIBAL WORK ACTIVITIES PRO-
3 GRAM.—Section 412(a)(2)(C) (42 U.S.C. 612(a)(2)(C)) is
4 amended by striking “members of the Indian tribe” and
5 inserting “such population and such service area or areas
6 as the tribe specifies”.

7 (d) REDUCTION OF APPROPRIATION FOR TRIBAL
8 WORK ACTIVITIES PROGRAMS.—Section 412(a)(2)(D) (42
9 U.S.C. 612(a)(2)(D)) is amended by striking
10 “\$7,638,474” and inserting “\$7,633,287”.

11 (e) AVAILABILITY OF CORRECTIVE COMPLIANCE
12 PLANS TO INDIAN TRIBES.—Section 412(f)(1) (42 U.S.C.
13 612(f)(1)) is amended by striking “and (b)” and inserting
14 “(b), and (c)”.

15 (f) ELIGIBILITY OF TRIBES FOR FEDERAL LOANS
16 FOR WELFARE PROGRAMS.—Section 412 (42 U.S.C. 612)
17 is amended by redesignating subsections (f), (g), and (h)
18 as subsections (g), (h), and (i), respectively, and by insert-
19 ing after subsection (e) the following:

20 “(f) ELIGIBILITY FOR FEDERAL LOANS.—Section
21 406 shall apply to an Indian tribe with an approved tribal
22 assistance plan in the same manner as such section applies
23 to a State, except that section 406(c) shall be applied by
24 substituting ‘section 412(a)’ for ‘section 403(a)’.”.

1 **SEC. 5910. RESEARCH, EVALUATIONS, AND NATIONAL**
2 **STUDIES.**

3 (a) RESEARCH.—

4 (1) METHODS.—Section 413(a) (42 U.S.C.
5 613(a)) is amended by inserting “, directly or
6 through grants, contracts, or interagency agree-
7 ments,” before “shall conduct”.

8 (2) CORRECTION OF CROSS REFERENCE.—Sec-
9 tion 413(a) (42 U.S.C. 613(a)) is amended by strik-
10 ing “409” and inserting “407”.

11 (b) CORRECTION OF ERRONEOUSLY INDENTED
12 PARAGRAPH.—Section 413(e)(1) (42 U.S.C. 613(e)(1)) is
13 amended to read as follows:

14 “(1) IN GENERAL.—The Secretary shall annu-
15 ally rank States to which grants are made under
16 section 403 based on the following ranking factors:

17 “(A) ABSOLUTE OUT-OF-WEDLOCK RA-
18 TIOS.—The ratio represented by—

19 “(i) the total number of out-of-wed-
20 lock births in families receiving assistance
21 under the State program under this part
22 in the State for the most recent year for
23 which information is available; over

24 “(ii) the total number of births in
25 families receiving assistance under the

1 State program under this part in the State
2 for the year.

3 “(B) NET CHANGES IN THE OUT-OF-WED-
4 LOCK RATIO.—The difference between the ratio
5 described in subparagraph (A) with respect to
6 a State for the most recent year for which such
7 information is available and the ratio with re-
8 spect to the State for the immediately preceding
9 year.”.

10 (c) FUNDING OF PRIOR AUTHORIZED DEMONSTRATION-
11 TIONS.—Section 413(h)(1)(D) (42 U.S.C. 613(h)(1)(D))
12 is amended by striking “September 30, 1995” and insert-
13 ing “August 22, 1996”.

14 (d) CHILD POVERTY REPORTS.—

15 (1) DELAYED DUE DATE FOR INITIAL RE-
16 PORT.—Section 413(i)(1) (42 U.S.C. 613(i)(1)) is
17 amended by striking “90 days after the date of the
18 enactment of this part” and inserting “November
19 30, 1997”.

20 (2) MODIFICATION OF FACTORS TO BE USED IN
21 ESTABLISHING METHODOLOGY FOR USE IN DETER-
22 MINING CHILD POVERTY RATES.—Section 413(i)(5)
23 (42 U.S.C. 613(i)(5)) is amended by striking “the
24 county-by-county” and inserting “, to the extent
25 available, county-by-county”.

1 **SEC. 5911. REPORT ON DATA PROCESSING.**

2 Section 106(a)(1) of the Personal Responsibility and
3 Work Opportunity Reconciliation Act of 1996 (Public Law
4 104–193; 110 Stat. 2164) is amended by striking
5 “(whether in effect before or after October 1, 1995)”.

6 **SEC. 5912. STUDY ON ALTERNATIVE OUTCOMES MEASURES.**

7 Section 107(a) of the Personal Responsibility and
8 Work Opportunity Reconciliation Act of 1996 (Public Law
9 104–193; 110 Stat. 2164) is amended by striking
10 “409(a)(7)(C)” and inserting “408(a)(7)(C)”.

11 **SEC. 5913. LIMITATION ON PAYMENTS TO THE TERRI-**
12 **TORIES.**

13 (a) CERTAIN PAYMENTS TO BE DISREGARDED IN
14 DETERMINING LIMITATION.—Section 1108(a) (42 U.S.C.
15 1308) is amended to read as follows:

16 “(a) LIMITATION ON TOTAL PAYMENTS TO EACH
17 TERRITORY.—

18 “(1) IN GENERAL.—Notwithstanding any other
19 provision of this Act (except for paragraph (2) of
20 this subsection), the total amount certified by the
21 Secretary of Health and Human Services under ti-
22 tles I, X, XIV, and XVI, under parts A and E of
23 title IV, and under subsection (b) of this section, for
24 payment to any territory for a fiscal year shall not
25 exceed the ceiling amount for the territory for the
26 fiscal year.

1 “(2) CERTAIN PAYMENTS DISREGARDED.—
 2 Paragraph (1) of this subsection shall be applied
 3 without regard to any payment made under section
 4 403(a)(2), 403(a)(4), 406, or 413(f).”.

5 (b) CERTAIN CHILD CARE AND SOCIAL SERVICES
 6 EXPENDITURES BY TERRITORIES TREATED AS IV–A EX-
 7 PENDITURES FOR PURPOSES OF MATCHING GRANT.—
 8 Section 1108(b)(1)(A) (42 U.S.C. 1308(b)(1)(A)) is
 9 amended by inserting “, including any amount paid to the
 10 State under part A of title IV that is transferred in ac-
 11 cordance with section 404(d) and expended under the pro-
 12 gram to which transferred” before the semicolon.

13 (c) ELIMINATION OF DUPLICATIVE MAINTENANCE
 14 OF EFFORT REQUIREMENT.—Section 1108 (42 U.S.C.
 15 1308) is amended by striking subsection (e).

16 **SEC. 5914. CONFORMING AMENDMENTS TO THE SOCIAL SE-**
 17 **CURITY ACT.**

18 (a) AMENDMENTS TO PART D OF TITLE IV.—

19 (1) CORRECTIONS TO DETERMINATION OF PA-
 20 TERNITY ESTABLISHMENT PERCENTAGES.—Section
 21 452 (42 U.S.C. 652) is amended—

22 (A) in subsection (d)(3)(A), by striking all
 23 that follows “for purposes of” and inserting
 24 “section 409(a)(8), to achieve the paternity es-
 25 tablishment percentages (as defined under sec-

1 tion 452(g)(2)) and other performance meas-
2 ures that may be established by the Secretary,
3 and to submit data under section 454(15)(B)
4 that is complete and reliable, and to substan-
5 tially comply with the requirements of this part;
6 and”; and

7 (B) in subsection (g)(1), by striking “sec-
8 tion 403(h)” and inserting “section 409(a)(8)”.

9 (2) ELIMINATION OF OBSOLETE LANGUAGE.—
10 Section 108(c)(8)(C) of the Personal Responsibility
11 and Work Opportunity Reconciliation Act of 1996
12 (Public Law 104–193; 110 Stat. 2165) is amended
13 by inserting “and all that follows through ‘the best
14 interests of such child to do so’” before “and insert-
15 ing”.

16 (3) INSERTION OF LANGUAGE INADVERTENTLY
17 OMITTED.—Section 108(c)(13) of the Personal Re-
18 sponsibility and Work Opportunity Reconciliation
19 Act of 1996 (Public Law 104–193; 110 Stat. 2166)
20 is amended by inserting “and inserting ‘pursuant to
21 section 408(a)(3)’” before the period.

22 (4) ELIMINATION OF OBSOLETE CROSS REF-
23 ERENCE.—Section 464(a)(1) (42 U.S.C. 664(a)(1))
24 is amended by striking “section 402(a)(26)” and in-
25 serting “section 408(a)(3)”.

1 (b) AMENDMENTS TO PART E OF TITLE IV.—Each
2 of the following is amended by striking “June 1, 1995”
3 each place such term appears and inserting “July 16,
4 1996”:

5 (1) Section 472(a) (42 U.S.C. 672(a)).

6 (2) Section 472(h) (42 U.S.C. 672(h)).

7 (3) Section 473(a)(2) (42 U.S.C. 673(a)(2)).

8 (4) Section 473(b) (42 U.S.C. 673(b)).

9 **SEC. 5915. OTHER CONFORMING AMENDMENTS.**

10 (a) ELIMINATION OF AMENDMENTS INCLUDED INAD-
11 VERTENTLY.—Section 110(l) of the Personal Responsibil-
12 ity and Work Opportunity Reconciliation Act of 1996
13 (Public Law 104–193; 110 Stat. 2173) is amended—

14 (1) by striking paragraphs (1), (4), (5), and
15 (7);

16 (2) by redesignating paragraphs (2), (3), (6),
17 and (8) as paragraphs (1), (2), (3), and (4), respec-
18 tively; and

19 (3) by adding “and” at the end of paragraph
20 (3), as so redesignated.

21 (b) CORRECTION OF CITATION.—Section 109(f) of
22 the Personal Responsibility and Work Opportunity Rec-
23 onciliation Act of 1996 (Public Law 104–193; 110 Stat.
24 2177) is amended by striking “93–186” and inserting
25 “93–86”.

1 (c) CORRECTION OF INTERNAL CROSS REF-
2 ERENCE.—Section 103(a)(1) of the Personal Responsibil-
3 ity and Work Opportunity Reconciliation Act of 1996
4 (Public Law 104–193; 110 Stat. 2112) is amended by
5 striking “603(b)(2)” and inserting “603(b)”.

6 (d) CORRECTION OF REFERENCES.—Section 416 (42
7 U.S.C. 616) is amended by striking “amendment made by
8 section 2103 of the Personal Responsibility and Work Op-
9 portunity” and inserting “amendments made by section
10 103 of the Personal Responsibility and Work Opportunity
11 Reconciliation”.

12 **SEC. 5916. MODIFICATIONS TO THE JOB OPPORTUNITIES**
13 **FOR CERTAIN LOW-INCOME INDIVIDUALS**
14 **PROGRAM.**

15 Section 112(5) of the Personal Responsibility and
16 Work Opportunity Reconciliation Act of 1996 (Public Law
17 104–193; 110 Stat. 2177) is amended in each of subpara-
18 graphs (A) and (B) by inserting “under” after “funded”.

19 **SEC. 5917. DENIAL OF ASSISTANCE AND BENEFITS FOR**
20 **DRUG-RELATED CONVICTIONS.**

21 (a) EXTENSION OF CERTAIN REQUIREMENTS CO-
22 ORDINATED WITH DELAYED EFFECTIVE DATE FOR SUC-
23 CESSOR PROVISIONS.—Section 115(d)(2) of the Personal
24 Responsibility and Work Opportunity Reconciliation Act
25 of 1996 (Public Law 104–193; 110 Stat. 2181) is amend-

1 ed by striking “convictions” and inserting “a conviction
2 if the conviction is for conduct”.

3 (b) IMMEDIATE EFFECTIVENESS OF PROVISIONS RE-
4 LATING TO RESEARCH, EVALUATIONS, AND NATIONAL
5 STUDIES.—Section 116(a) of such Act (Public Law 104–
6 193; 110 Stat. 2181) is amended by adding at the end
7 the following:

8 “(6) RESEARCH, EVALUATIONS, AND NATIONAL
9 STUDIES.—Section 413 of the Social Security Act,
10 as added by the amendment made by section 103(a)
11 of this Act, shall take effect on the date of the en-
12 actment of this Act.”.

13 **SEC. 5918. TRANSITION RULE.**

14 Section 116 of the Personal Responsibility and Work
15 Opportunity Reconciliation Act of 1996 (Public Law 104–
16 193; 110 Stat. 2181) is amended—

17 (1) in subsection (a)(2), by inserting “(but sub-
18 ject to subsection (b)(1)(A)(ii))” after “this sec-
19 tion”; and

20 (2) in subsection (b)(1)(A)(ii), by striking
21 “June 30, 1997” and inserting “the later of June
22 30, 1997, or the day before the date described in
23 subsection (a)(2)(B) of this section”.

1 **SEC. 5919. EFFECTIVE DATES.**

2 (a) AMENDMENTS TO PART A OF TITLE IV OF THE
3 SOCIAL SECURITY ACT.—The amendments made by this
4 chapter to a provision of part A of title IV of the Social
5 Security Act shall take effect as if the amendments had
6 been included in section 103(a) of the Personal Respon-
7 sibility and Work Opportunity Reconciliation Act of 1996
8 at the time such section became law.

9 (b) AMENDMENTS TO PARTS D AND E OF TITLE IV
10 OF THE SOCIAL SECURITY ACT.—The amendments made
11 by section 5914 of this Act shall take effect as if the
12 amendments had been included in section 108 of the Per-
13 sonal Responsibility and Work Opportunity Reconciliation
14 Act of 1996 at the time such section 108 became law.

15 (c) AMENDMENTS TO OTHER AMENDATORY PROVI-
16 SIONS.—The amendments made by section 5915(a) of this
17 Act shall take effect as if the amendments had been in-
18 cluded in section 110 of the Personal Responsibility and
19 Work Opportunity Reconciliation Act of 1996 at the time
20 such section 110 became law.

21 (d) AMENDMENTS TO FREESTANDING PROVISIONS
22 OF THE PERSONAL RESPONSIBILITY AND WORK OPPOR-
23 TUNITY RECONCILIATION ACT OF 1996.—The amend-
24 ments made by this chapter to a provision of the Personal
25 Responsibility and Work Opportunity Reconciliation Act
26 of 1996 that, as of July 1, 1997, will not have become

1 part of another statute shall take effect as if the amend-
2 ments had been included in the provision at the time the
3 provision became law.

4 **CHAPTER 2—SUPPLEMENTAL SECURITY**
5 **INCOME**

6 **SEC. 5921. CONFORMING AND TECHNICAL AMENDMENTS**
7 **RELATING TO ELIGIBILITY RESTRICTIONS.**

8 (a) DENIAL OF SSI BENEFITS FOR FUGITIVE FEL-
9 ONS AND PROBATION AND PAROLE VIOLATORS.—Section
10 1611(e)(6) (42 U.S.C. 1382(e)(6)) is amended by insert-
11 ing “and section 1106(e) of this Act” after “of 1986”.

12 (b) TREATMENT OF PRISONERS.—Section
13 1611(e)(1)(I)(i)(II) (42 U.S.C. 1382(e)(1)(I)(i)(II)) is
14 amended by striking “inmate of the institution” and all
15 that follows through “this subparagraph” and inserting
16 “individual who receives in the month preceding the first
17 month throughout which such individual is an inmate of
18 the jail, prison, penal institution, or correctional facility
19 that furnishes information respecting such individual pur-
20 suant to subclause (I), or is confined in the institution
21 (that so furnishes such information) as described in sec-
22 tion 202(x)(1)(A)(ii), a benefit under this title for such
23 preceding month, and who is determined by the Commis-
24 sioner to be ineligible for benefits under this title by rea-

1 son of confinement based on the information provided by
2 such institution”.

3 (c) CORRECTION OF REFERENCE.—Section
4 1611(e)(1)(I)(i)(I) (42 U.S.C. 1382(e)(1)(I)(i)(I)) is
5 amended by striking “paragraph (1)” and inserting “this
6 paragraph”.

7 **SEC. 5922. CONFORMING AND TECHNICAL AMENDMENTS**
8 **RELATING TO BENEFITS FOR DISABLED**
9 **CHILDREN.**

10 (a) ELIGIBILITY REDETERMINATIONS FOR CURRENT
11 RECIPIENTS.—Section 211(d)(2)(A) of the Personal Re-
12 sponsibility and Work Opportunity Reconciliation Act of
13 1996 (42 U.S.C. 1382c note) is amended by striking “1
14 year” and inserting “18 months”.

15 (b) ELIGIBILITY REDETERMINATIONS AND CONTINU-
16 ING DISABILITY REVIEWS.—

17 (1) DISABILITY ELIGIBILITY REDETERMINA-
18 TIONS REQUIRED FOR SSI RECIPIENTS WHO ATTAIN
19 18 YEARS OF AGE.—Section 1614(a)(3)(H)(iii) (42
20 U.S.C. 1382c(a)(3)(H)(iii)) is amended by striking
21 subclauses (I) and (II) and all that follows and in-
22 serting the following:

23 “(I) by applying the criteria used in determin-
24 ing initial eligibility for individuals who are age 18
25 or older; and

1 “(II) either during the 1-year period beginning
2 on the individual’s 18th birthday or, in lieu of a con-
3 tinuing disability review, whenever the Commissioner
4 determines that an individual’s case is subject to a
5 redetermination under this clause.

6 With respect to any redetermination under this clause,
7 paragraph (4) shall not apply.”.

8 (2) CONTINUING DISABILITY REVIEW REQUIRED
9 FOR LOW BIRTH WEIGHT BABIES.—Section
10 1614(a)(3)(H)(iv) (42 U.S.C. 1382c(a)(3)(H)(iv)) is
11 amended—

12 (A) in subclause (I), by striking “Not” and
13 inserting “Except as provided in subclause (VI),
14 not”; and

15 (B) by adding at the end the following:

16 “(VI) Subclause (I) shall not apply in the case of an
17 individual described in that subclause who, at the time of
18 the individual’s initial disability determination, the Com-
19 missioner determines has an impairment that is not ex-
20 pected to improve within 12 months after the birth of that
21 individual, and who the Commissioner schedules for a con-
22 tinuing disability review at a date that is after the individ-
23 ual attains 1 year of age.”.

1 (c) ADDITIONAL ACCOUNTABILITY REQUIRE-
2 MENTS.—Section 1631(a)(2)(F) (42 U.S.C.
3 1383(a)(2)(F)) is amended—

4 (1) in clause (ii)(III)(bb), by striking “the total
5 amount” and all that follows through “1613(c)” and
6 inserting “in any case in which the individual know-
7 ingly misapplies benefits from such an account, the
8 Commissioner shall reduce future benefits payable to
9 such individual (or to such individual and his
10 spouse) by an amount equal to the total amount of
11 such benefits so misapplied”; and

12 (2) by striking clause (iii) and inserting the fol-
13 lowing:

14 “(iii) The representative payee may deposit into the
15 account established under clause (i) any other funds rep-
16 resenting past due benefits under this title to the eligible
17 individual, provided that the amount of such past due ben-
18 efits is equal to or exceeds the maximum monthly benefit
19 payable under this title to an eligible individual (including
20 State supplementary payments made by the Commissioner
21 pursuant to an agreement under section 1616 or section
22 212(b) of Public Law 93–66).”.

23 (d) REDUCTION IN CASH BENEFITS PAYABLE TO IN-
24 STITUTIONALIZED INDIVIDUALS WHOSE MEDICAL COSTS

1 ARE COVERED BY PRIVATE INSURANCE.—Section
2 1611(e) (42 U.S.C. 1382(e)) is amended—

3 (1) in paragraph (1)(B)—

4 (A) in the matter preceding clause (i), by
5 striking “hospital, extended care facility, nurs-
6 ing home, or intermediate care facility” and in-
7 serting “medical treatment facility”;

8 (B) in clause (ii)—

9 (i) in the matter preceding subclause
10 (I), by striking “hospital, home or”; and

11 (ii) in subclause (I), by striking “hos-
12 pital, home, or”;

13 (C) in clause (iii), by striking “hospital,
14 home, or”; and

15 (D) in the matter following clause (iii), by
16 striking “hospital, extended care facility, nurs-
17 ing home, or intermediate care facility which is
18 a ‘medical institution or nursing facility’ within
19 the meaning of section 1917(c)” and inserting
20 “medical treatment facility that provides serv-
21 ices described in section 1917(c)(1)(C)”;

22 (2) in paragraph (1)(E)—

23 (A) in clause (i)(II), by striking “hospital,
24 extended care facility, nursing home, or inter-

1 mediate care facility” and inserting “medical
2 treatment facility”; and

3 (B) in clause (iii), by striking “hospital,
4 extended care facility, nursing home, or inter-
5 mediate care facility” and inserting “medical
6 treatment facility”;

7 (3) in paragraph (1)(G), in the matter preced-
8 ing clause (i)—

9 (A) by striking “or which is a hospital, ex-
10 tended care facility, nursing home, or inter-
11 mediate care” and inserting “or is in a medical
12 treatment”; and

13 (B) by inserting “or, in the case of an in-
14 dividual who is a child under the age of 18,
15 under any health insurance policy issued by a
16 private provider of such insurance” after “title
17 XIX”; and

18 (4) in paragraph (3)—

19 (A) by striking “same hospital, home, or
20 facility” and inserting “same medical treatment
21 facility”; and

22 (B) by striking “same such hospital, home,
23 or facility” and inserting “same such facility”.

24 (e) CORRECTION OF U.S.C. CITATION.—Section
25 211(c) of the Personal Responsibility and Work Oppor-

1 tunity Reconciliation Act of 1996 (Public Law 104–193;
2 110 Stat. 2189) is amended by striking “1382(a)(4)” and
3 inserting “1382c(a)(4)”.

4 **SEC. 5923. ADDITIONAL TECHNICAL AMENDMENTS TO**
5 **TITLE XVI.**

6 Section 1615(d) (42 U.S.C. 1382d(d)) is amended—

7 (1) in the first sentence, by inserting a comma
8 after “subsection (a)(1)”; and

9 (2) in the last sentence, by striking “him” and
10 inserting “the Commissioner”.

11 **SEC. 5924. ADDITIONAL TECHNICAL AMENDMENTS RELAT-**
12 **ING TO TITLE XVI.**

13 Section 1110(a)(3) (42 U.S.C. 1310(a)(3)) is amend-
14 ed—

15 (1) by inserting “(or the Commissioner, with
16 respect to any jointly financed cooperative agree-
17 ment or grant concerning title XVI)” after “Sec-
18 retary” the first place it appears; and

19 (2) by inserting “(or the Commissioner, as ap-
20 plicable)” after “Secretary” the second place it ap-
21 pears.

22 **SEC. 5925. EFFECTIVE DATES.**

23 (a) IN GENERAL.—Except as provided in subsection
24 (b), the amendments made by this part shall take effect
25 as if included in the enactment of title II of the Personal

1 Responsibility and Work Opportunity Reconciliation Act
2 of 1996 (Public Law 104–193; 110 Stat. 2185).

3 (b) EXCEPTION.—The amendments made by section
4 5925 shall take effect as if included in the enactment of
5 the Social Security Independence and Program Improve-
6 ments Act of 1994 (Public Law 103–296; 108 Stat.
7 1464).

8 **CHAPTER 3—CHILD SUPPORT**

9 **SEC. 5935. STATE OBLIGATION TO PROVIDE CHILD SUP-** 10 **PORT ENFORCEMENT SERVICES.**

11 (a) INDIVIDUALS SUBJECT TO FEE FOR CHILD SUP-
12 PORT ENFORCEMENT SERVICES.—Section 454(6)(B) (42
13 U.S.C. 654(6)(B)) is amended by striking “individuals not
14 receiving assistance under any State program funded
15 under part A, which” and inserting “an individual, other
16 than an individual receiving assistance under a State pro-
17 gram funded under part A or E, or under a State plan
18 approved under title XIX, or who is required by the State
19 to cooperate with the State agency administering the pro-
20 gram under this part pursuant to subsection (l) or (m)
21 of section 6 of the Food Stamp Act of 1977, and”.

22 (b) CORRECTION OF REFERENCE.—Section
23 464(a)(2)(A) (42 U.S.C. 654(a)(2)(A)) is amended in the
24 first sentence by striking “section 454(6)” and inserting
25 “section 454(4)(A)(ii)”.

1 **SEC. 5936. DISTRIBUTION OF COLLECTED SUPPORT.**

2 (a) CONTINUATION OF ASSIGNMENTS.—Section
3 457(b) (42 U.S.C. 657(b)) is amended—

4 (1) by striking “which were assigned” and in-
5 serting “assigned”; and

6 (2) by striking “and which were in effect” and
7 all that follows and inserting “and in effect on Sep-
8 tember 30, 1997 (or such earlier date, on or after
9 August 22, 1996, as the State may choose), shall re-
10 main assigned after such date.”.

11 (b) STATE OPTION FOR APPLICABILITY.—

12 (1) IN GENERAL.—Section 457(a) (42 U.S.C.
13 657(a)) is amended by adding at the end the follow-
14 ing:

15 “(6) STATE OPTION FOR APPLICABILITY.—Not-
16 withstanding any other provision of this subsection,
17 a State may elect to apply the rules described in
18 clauses (i)(II), (ii)(II), and (v) of paragraph (2)(B)
19 to support arrearages collected on and after October
20 1, 1998, and, if the State makes such an election,
21 shall apply the provisions of this section, as in effect
22 and applied on the day before the date of enactment
23 of section 302 of the Personal Responsibility and
24 Work Opportunity Act of 1996 (Public Law 104-
25 193, 110 Stat. 2200), other than subsection (b)(1)

1 (as so in effect), to amounts collected before October
2 1, 1998.”.

3 (2) CONFORMING AMENDMENTS.—Section
4 408(a)(3)(A) (42 U.S.C. 608(a)(3)(A)) is amend-
5 ed—

6 (A) in clause (i), by inserting “(I)” after
7 “(i)”;

8 (B) in clause (ii)—

9 (i) by striking “(ii)” and inserting
10 “(II)”;

11 (ii) by striking the period and insert-
12 ing “; or”;

13 (C) by adding at the end, the following:

14 “(ii) if the State elects to distribute
15 collections under section 457(a)(6), the
16 date the family ceases to receive assistance
17 under the program, if the assignment is
18 executed on or after October 1, 1998.”.

19 (c) DISTRIBUTION OF COLLECTIONS WITH RESPECT
20 TO FAMILIES RECEIVING ASSISTANCE.—Section
21 457(a)(1) (42 U.S.C. 657(a)(1)) is amended by adding at
22 the end the following flush language:

23 “In no event shall the total of the amounts paid to
24 the Federal Government and retained by the State

1 exceed the total of the amounts that have been paid
2 to the family as assistance by the State.”.

3 (d) FAMILIES UNDER CERTAIN AGREEMENTS.—Sec-
4 tion 457(a)(4) (42 U.S.C. 657(a)(4)) is amended to read
5 as follows:

6 “(4) FAMILIES UNDER CERTAIN AGREE-
7 MENTS.—In the case of an amount collected for a
8 family in accordance with a cooperative agreement
9 under section 454(33), distribute the amount so col-
10 lected pursuant to the terms of the agreement.”.

11 (e) STUDY AND REPORT.—Section 457(a)(5) (42
12 U.S.C. 657(a)(5)) is amended by striking “1998” and in-
13 serting “1999”.

14 (f) CORRECTIONS OF REFERENCES.—Section
15 457(a)(2)(B) (42 U.S.C. 657(a)(2)(B)) is amended—

16 (1) in clauses (i)(I) and (ii)(I)—

17 (A) by striking “(other than subsection
18 (b)(1))” each place it appears; and

19 (B) by inserting “(other than subsection
20 (b)(1) (as so in effect))” after “1996” each
21 place it appears; and

22 (2) in clause (ii)(II), by striking “paragraph
23 (4)” and inserting “paragraph (5)”.

24 (g) CORRECTION OF TERRITORIAL MATCH.—Section
25 457(c)(3)(A) (42 U.S.C. 657(c)(3)(A)) is amended by

1 striking “the Federal medical assistance percentage (as
2 defined in section 1118)” and inserting “75 percent”.

3 (h) DEFINITIONS.—

4 (1) FEDERAL SHARE.—Section 457(c)(2) (42
5 U.S.C. 657(c)(2)) is amended by striking “collected”
6 the second place it appears and inserting “distrib-
7 uted”.

8 (2) FEDERAL MEDICAL ASSISTANCE PERCENT-
9 AGE.—Section 457(c)(3)(B) (42 U.S.C.
10 657(c)(3)(B)) is amended by striking “as in effect
11 on September 30, 1996” and inserting “as such sec-
12 tion was in effect on September 30, 1995”.

13 (i) CONFORMING AMENDMENTS.—

14 (1) Section 464(a)(2)(A) (42 U.S.C.
15 664(a)(2)(A)) is amended, in the penultimate sen-
16 tence, by inserting “in accordance with section 457”
17 after “owed”.

18 (2) Section 466(a)(3)(B) (42 U.S.C.
19 666(a)(3)(B)) is amended by striking “457(b)(4) or
20 (d)(3)” and inserting “457”.

21 **SEC. 5937. CIVIL PENALTIES RELATING TO STATE DIREC-**
22 **TORY OF NEW HIRES.**

23 Section 453A (42 U.S.C. 653a) is amended—

24 (1) in subsection (d)—

1 (A) in the matter preceding paragraph (1),
2 by striking “shall be less than” and inserting
3 “shall not exceed”; and

4 (B) in paragraph (1), by striking “\$25”
5 and inserting “\$25 per failure to meet the re-
6 quirements of this section with respect to a
7 newly hired employee”; and

8 (2) in subsection (g)(2)(B), by striking “ex-
9 tracts” and all that follows through “Labor” and in-
10 serting “information”.

11 **SEC. 5938. FEDERAL PARENT LOCATOR SERVICE.**

12 (a) IN GENERAL.—Section 453 (42 U.S.C. 653) is
13 amended—

14 (1) in subsection (a)—

15 (A) by inserting “(1)” after “(a)”; and

16 (B) by striking “to obtain” and all that
17 follows through the period and inserting “for
18 the purposes specified in paragraphs (2) and
19 (3).

20 “(2) For the purpose of establishing parentage, es-
21 tablishing, setting the amount of, modifying, or enforcing
22 child support obligations, the Federal Parent Locator
23 Service shall obtain and transmit to any authorized person
24 specified in subsection (c)—

1 “(A) information on, or facilitating the discov-
2 ery of, the location of any individual—

3 “(i) who is under an obligation to pay child
4 support;

5 “(ii) against whom such an obligation is
6 sought; or

7 “(iii) to whom such an obligation is owed,
8 including the individual’s social security number (or
9 numbers), most recent address, and the name, ad-
10 dress, and employer identification number of the in-
11 dividual’s employer;

12 “(B) information on the individual’s wages (or
13 other income) from, and benefits of, employment (in-
14 cluding rights to or enrollment in group health care
15 coverage); and

16 “(C) information on the type, status, location,
17 and amount of any assets of, or debts owed by or
18 to, any such individual.

19 “(3) For the purpose of enforcing any Federal or
20 State law with respect to the unlawful taking or restraint
21 of a child, or making or enforcing a child custody or visita-
22 tion determination, as defined in section 463(d)(1), the
23 Federal Parent Locator Service shall be used to obtain
24 and transmit the information specified in section 463(c)
25 to the authorized persons specified in section 463(d)(2).”;

1 (2) by striking subsection (b) and inserting the
2 following:

3 “(b)(1) Upon request, filed in accordance with sub-
4 section (d), of any authorized person, as defined in sub-
5 section (c) for the information described in subsection
6 (a)(2), or of any authorized person, as defined in section
7 463(d)(2) for the information described in section 463(c),
8 the Secretary shall, notwithstanding any other provision
9 of law, provide through the Federal Parent Locator Serv-
10 ice such information to such person, if such information—

11 “(A) is contained in any files or records main-
12 tained by the Secretary or by the Department of
13 Health and Human Services; or

14 “(B) is not contained in such files or records,
15 but can be obtained by the Secretary, under the au-
16 thority conferred by subsection (e), from any other
17 department, agency, or instrumentality of the United
18 States or of any State,

19 and is not prohibited from disclosure under paragraph (2).

20 “(2) No information shall be disclosed to any person
21 if the disclosure of such information would contravene the
22 national policy or security interests of the United States
23 or the confidentiality of census data. The Secretary shall
24 give priority to requests made by any authorized person
25 described in subsection (c)(1). No information shall be dis-

1 closed to any person if the State has notified the Secretary
2 that the State has reasonable evidence of domestic violence
3 or child abuse and the disclosure of such information could
4 be harmful to the custodial parent or the child of such
5 parent, provided that—

6 “(A) in response to a request from an author-
7 ized person (as defined in subsection (c) and section
8 463(d)(2)), the Secretary shall advise the authorized
9 person that the Secretary has been notified that
10 there is reasonable evidence of domestic violence or
11 child abuse and that information can only be dis-
12 closed to a court or an agent of a court pursuant to
13 subparagraph (B); and

14 “(B) information may be disclosed to a court or
15 an agent of a court described in subsection (c)(2) or
16 section 463(d)(2)(B), if—

17 “(i) upon receipt of information from the
18 Secretary, the court determines whether disclo-
19 sure to any other person of that information
20 could be harmful to the parent or the child; and

21 “(ii) if the court determines that disclosure
22 of such information to any other person could
23 be harmful, the court and its agents shall not
24 make any such disclosure.

1 “(3) Information received or transmitted pursuant to
2 this section shall be subject to the safeguard provisions
3 contained in section 454(26).”; and

4 (3) in subsection (c)—

5 (A) in paragraph (1), by striking “or to
6 seek to enforce orders providing child custody
7 or visitation rights”; and

8 (B) in paragraph (2)—

9 (i) by inserting “or to serve as the ini-
10 tiating court in an action to seek an order”
11 after “issue an order”; and

12 (ii) by striking “or to issue an order
13 against a resident parent for child custody
14 or visitation rights”.

15 (b) USE OF THE FEDERAL PARENT LOCATOR SERV-
16 ICE.—Section 463 (42 U.S.C. 663) is amended—

17 (1) in subsection (a)—

18 (A) in the matter preceding paragraph

19 (1)—

20 (i) by striking “any State which is
21 able and willing to do so,” and inserting
22 “every State”; and

23 (ii) by striking “such State” and in-
24 serting “each State”; and

1 (B) in paragraph (2), by inserting “or visi-
2 tation” after “custody”;

3 (2) in subsection (b)(2), by inserting “or visita-
4 tion” after “custody”;

5 (3) in subsection (d)—

6 (A) in paragraph (1), by inserting “or visi-
7 tation” after “custody”; and

8 (B) in subparagraphs (A) and (B) of para-
9 graph (2), by inserting “or visitation” after
10 “custody” each place it appears;

11 (4) in subsection (f)(2), by inserting “or visita-
12 tion” after “custody”; and

13 (5) by striking “noncustodial” each place it ap-
14 pears.

15 **SEC. 5939. ACCESS TO REGISTRY DATA FOR RESEARCH**
16 **PURPOSES.**

17 (a) IN GENERAL.—Section 453(j)(5) (42 U.S.C.
18 653(j)(5)) is amended by inserting “data in each compo-
19 nent of the Federal Parent Locator Service maintained
20 under this section and to” before “information”.

21 (b) CONFORMING AMENDMENTS.—Section 453 (42
22 U.S.C. 653) is amended—

23 (1) in subsection (j)(3)(B), by striking “reg-
24 istries” and inserting “components”; and

1 (2) in subsection (k)(2), by striking “subsection
2 (j)(3)” and inserting “section 453A(g)(2)”.

3 **SEC. 5940. COLLECTION AND USE OF SOCIAL SECURITY**
4 **NUMBERS FOR USE IN CHILD SUPPORT EN-**
5 **FORCEMENT.**

6 Section 466(a)(13) (42 U.S.C. 666(a)(13)) is amend-
7 ed—

8 (1) in subparagraph (A)—

9 (A) by striking “commercial”; and

10 (B) by inserting “recreational license,”
11 after “occupational license,”; and

12 (2) in the matter following subparagraph (C),
13 by inserting “to be used on the face of the document
14 while the social security number is kept on file at
15 the agency” after “other than the social security
16 number”.

17 **SEC. 5941. ADOPTION OF UNIFORM STATE LAWS.**

18 Section 466(f) (42 U.S.C. 666(f)) is amended by
19 striking “together” and all that follows and inserting “and
20 as in effect on August 22, 1996, including any amend-
21 ments officially adopted as of such date by the National
22 Conference of Commissioners on Uniform State Laws.”.

23 **SEC. 5942. STATE LAWS PROVIDING EXPEDITED PROCE-**
24 **DURES.**

25 Section 466(c) (42 U.S.C. 666(c)) is amended—

1 (1) in paragraph (1)—

2 (A) in subparagraph (E), by inserting “,
3 part E,” after “part A”; and

4 (B) in subparagraph (G), by inserting
5 “any current support obligation and” after “to
6 satisfy”; and

7 (2) in paragraph (2)(A)—

8 (A) in clause (i), by striking “the tribunal
9 and”; and

10 (B) in clause (ii)—

11 (i) by striking “tribunal may” and in-
12 serting “court or administrative agency of
13 competent jurisdiction shall”; and

14 (ii) by striking “filed with the tribu-
15 nal” and inserting “filed with the State
16 case registry”.

17 **SEC. 5943. VOLUNTARY PATERNITY ACKNOWLEDGEMENT.**

18 Section 466(a)(5)(C)(i) (42 U.S.C. 666(a)(5)(C)(i))
19 is amended by inserting “, or through the use of video
20 or audio equipment,” after “orally”.

21 **SEC. 5944. CALCULATION OF PATERNITY ESTABLISHMENT**
22 **PERCENTAGE.**

23 Section 452(g)(2) (42 U.S.C. 652(g)(2)) is amended,
24 in the matter following subparagraph (C), by striking

1 “subparagraph (A)” and inserting “subparagraphs (A)
2 and (B)”.

3 **SEC. 5945. MEANS AVAILABLE FOR PROVISION OF TECH-**
4 **NICAL ASSISTANCE AND OPERATION OF FED-**
5 **ERAL PARENT LOCATOR SERVICE.**

6 (a) TECHNICAL ASSISTANCE.—Section 452(j) (42
7 U.S.C. 652(j)), is amended, in the matter preceding para-
8 graph (1), by striking “to cover costs incurred by the Sec-
9 retary” and inserting “which shall be available for use by
10 the Secretary, either directly or through grants, contracts,
11 or interagency agreements,”.

12 (b) OPERATION OF FEDERAL PARENT LOCATOR
13 SERVICE.—

14 (1) MEANS AVAILABLE.—Section 453(o) (42
15 U.S.C. 653(o)) is amended—

16 (A) in the heading, by striking “RECOVERY
17 OF COSTS” and inserting “USE OF SET-ASIDE
18 FUNDS”; and

19 (B) by striking “to cover costs incurred by
20 the Secretary” and inserting “which shall be
21 available for use by the Secretary, either di-
22 rectly or through grants, contracts, or inter-
23 agency agreements,”.

24 (2) AVAILABILITY OF FUNDS.—Section 453(o)
25 (42 U.S.C. 653(o)) is amended by adding at the end

1 the following: “Amounts appropriated under this
2 subsection for each of fiscal years 1997 through
3 2001 shall remain available until expended.”.

4 **SEC. 5946. AUTHORITY TO COLLECT SUPPORT FROM FED-**
5 **ERAL EMPLOYEES.**

6 (a) RESPONSE TO NOTICE OR PROCESS.—Section
7 459(c)(2)(C) (42 U.S.C. 659(c)(2)(C)) is amended by
8 striking “respond to the order, process, or interrogatory”
9 and inserting “withhold available sums in response to the
10 order or process, or answer the interrogatory”.

11 (b) MONEYS SUBJECT TO PROCESS.—Section
12 459(h)(1) (42 U.S.C. 659(h)(1)) is amended—

13 (1) in the matter preceding subparagraph (A)
14 and in subparagraph (A)(i), by striking “paid or”
15 each place it appears;

16 (2) in subparagraph (A)—

17 (A) in clause (ii)(V), by striking “and” at
18 the end;

19 (B) in clause (iii)—

20 (i) by inserting “or payable” after
21 “paid”; and

22 (ii) by striking “but” and inserting “;
23 and”; and

24 (C) by inserting after clause (iii), the fol-
25 lowing:

1 “(iv) benefits paid or payable under
2 the Railroad Retirement System, but”; and

3 (3) in subparagraph (B)—

4 (A) in clause (i), by striking “or” at the
5 end;

6 (B) in clause (ii), by striking the period
7 and inserting “; or”; and

8 (C) by adding at the end the following:

9 “(iii) of periodic benefits under title
10 38, United States Code, except as provided
11 in subparagraph (A)(ii)(V).”.

12 (e) CONFORMING AMENDMENT.—Section
13 454(19)(B)(ii) (42 U.S.C. 654(19)(B)(ii)) is amended by
14 striking “section 462(e)” and inserting “section
15 459(i)(5)”.

16 **SEC. 5947. DEFINITION OF SUPPORT ORDER.**

17 Section 453(p) (42 U.S.C. 653(p)), is amended by
18 striking “a child and” and inserting “of”.

19 **SEC. 5948. STATE LAW AUTHORIZING SUSPENSION OF LI-**
20 **CENSES.**

21 Section 466(a)(16) (42 U.S.C. 666(a)(16)) is amend-
22 ed by inserting “and sporting” after “recreational”.

1 **SEC. 5949. INTERNATIONAL SUPPORT ENFORCEMENT.**

2 Section 454(32)(A) (42 U.S.C. 654(32)(A)) is
3 amended by striking “section 459A(d)(2)” and inserting
4 “section 459A(d)”.

5 **SEC. 5950. CHILD SUPPORT ENFORCEMENT FOR INDIAN**
6 **TRIBES.**

7 (a) COOPERATIVE AGREEMENTS BY INDIAN TRIBES
8 AND STATES FOR CHILD SUPPORT ENFORCEMENT.—Sec-
9 tion 454(33) (42 U.S.C. 654(33)) is amended—

10 (1) by striking “and enforce support orders,
11 and” and inserting “or enforce support orders, or”;

12 (2) by striking “guidelines established by such
13 tribe or organization” and inserting “guidelines es-
14 tablished or adopted by such tribe or organization”;

15 (3) by striking “funding collected” and insert-
16 ing “collections”; and

17 (4) by striking “such funding” and inserting
18 “such collections”.

19 (b) CORRECTION OF SUBSECTION DESIGNATION.—
20 Section 455 (42 U.S.C. 655), is amended by redesignating
21 subsection (b), as added by section 375(b) of the Personal
22 Responsibility and Work Opportunity Reconciliation Act
23 of 1996 (Public Law 104–193, 110 Stat. 2256), as sub-
24 section (f).

1 (c) DIRECT GRANTS TO TRIBES.—Section 455(f) (42
2 U.S.C. 655(f)), as redesignated by subsection (b), is
3 amended to read as follows:

4 “(f) The Secretary may make direct payments under
5 this part to an Indian tribe or tribal organization that
6 demonstrates to the satisfaction of the Secretary that it
7 has the capacity to operate a child support enforcement
8 program meeting the objectives of this part, including es-
9 tablishment of paternity, establishment, modification, and
10 enforcement of support orders, and location of absent par-
11 ents. The Secretary shall promulgate regulations estab-
12 lishing the requirements which must be met by an Indian
13 tribe or tribal organization to be eligible for a grant under
14 this subsection.”.

15 **SEC. 5951. CONTINUATION OF RULES FOR DISTRIBUTION**
16 **OF SUPPORT IN THE CASE OF A TITLE IV-E**
17 **CHILD.**

18 Section 457 (42 U.S.C. 657) is amended—

19 (1) in subsection (a), in the matter preceding
20 paragraph (1), by striking “subsection (e)” and in-
21 serting “subsections (e) and (f)”; and

22 (2) by adding at the end, the following:

23 “(f) Notwithstanding the preceding provisions of this
24 section, amounts collected by a State as child support for
25 months in any period on behalf of a child for whom a pub-

1 lic agency is making foster care maintenance payments
2 under part E—

3 “(1) shall be retained by the State to the extent
4 necessary to reimburse it for the foster care mainte-
5 nance payments made with respect to the child dur-
6 ing such period (with appropriate reimbursement of
7 the Federal Government to the extent of its partici-
8 pation in the financing);

9 “(2) shall be paid to the public agency respon-
10 sible for supervising the placement of the child to
11 the extent that the amounts collected exceed the fos-
12 ter care maintenance payments made with respect to
13 the child during such period but not the amounts re-
14 quired by a court or administrative order to be paid
15 as support on behalf of the child during such period;
16 and the responsible agency may use the payments in
17 the manner it determines will serve the best inter-
18 ests of the child, including setting such payments
19 aside for the child’s future needs or making all or
20 a part thereof available to the person responsible for
21 meeting the child’s day-to-day needs; and

22 “(3) shall be retained by the State, if any por-
23 tion of the amounts collected remains after making
24 the payments required under paragraphs (1) and
25 (2), to the extent that such portion is necessary to

1 reimburse the State (with appropriate reimburse-
 2 ment to the Federal Government to the extent of its
 3 participation in the financing) for any past foster
 4 care maintenance payments (or payments of assist-
 5 ance under the State program funded under part A)
 6 which were made with respect to the child (and with
 7 respect to which past collections have not previously
 8 been retained);
 9 and any balance shall be paid to the State agency respon-
 10 sible for supervising the placement of the child, for use
 11 by such agency in accordance with paragraph (2).”.

12 **SEC. 5952. GOOD CAUSE IN FOSTER CARE AND FOOD STAMP**
 13 **CASES.**

14 (a) STATE PLAN.—Section 454(4)(A)(i) (42 U.S.C.
 15 654(4)(A)(i)) is amended—

16 (1) by striking “or” before “(III)”; and

17 (2) by inserting “or (IV) cooperation is required
 18 pursuant to section 6(l)(1) of the Food Stamp Act
 19 of 1977 (7 U.S.C. 2015(l)(1)),” after “title XIX,”.

20 (b) CONFORMING AMENDMENTS.—Section 454(29)
 21 (42 U.S.C. 654(29)) is amended—

22 (1) in subparagraph (A)—

23 (A) in the matter preceding clause (i), by
 24 striking “part A of this title or the State pro-
 25 gram under title XIX” and inserting “part A,

1 the State program under part E, the State pro-
2 gram under title XIX, or the food stamp pro-
3 gram, as defined under section 3(h) of the Food
4 Stamp Act of 1977 (7 U.S.C. 2012(h)),”; and

5 (B) by striking clauses (i) and (ii) and all
6 that follows through the semicolon and insert-
7 ing the following:

8 “(i) in the case of the State program
9 funded under part A, the State program
10 under part E, or the State program under
11 title XIX shall, at the option of the State,
12 be defined, taking into account the best in-
13 terests of the child, and applied in each
14 case, by the State agency administering
15 such program; and

16 “(ii) in the case of the food stamp
17 program, as defined under section 3(h) of
18 the Food Stamp Act of 1977 (7 U.S.C.
19 2012(h)), shall be defined and applied in
20 each case under that program in accord-
21 ance with section 6(l)(2) of the Food
22 Stamp Act of 1977 (7 U.S.C.
23 2015(l)(2));”;

24 (2) in subparagraph (D), by striking “or the
25 State program under title XIX” and inserting “the

1 State program under part E, the State program
2 under title XIX, or the food stamp program, as de-
3 fined under section 3(h) of the Food Stamp Act of
4 1977 (7 U.S.C. 2012(h))”; and

5 (3) in subparagraph (E), by striking “individ-
6 ual,” and all that follows through “XIX,” and in-
7 serting “individual and the State agency administer-
8 ing the State program funded under part A, the
9 State agency administering the State program under
10 part E, the State agency administering the State
11 program under title XIX, or the State agency ad-
12 ministering the food stamp program, as defined
13 under section 3(h) of the Food Stamp Act of 1977
14 (7 U.S.C. 2012(h)),”.

15 **SEC. 5953. DATE OF COLLECTION OF SUPPORT.**

16 Section 454B(c)(1) (42 U.S.C. 654B(c)(1)) is
17 amended by adding at the end the following: “The date
18 of collection for amounts collected and distributed under
19 this part is the date of receipt by the State disbursement
20 unit, except that if current support is withheld by an em-
21 ployer in the month when due and is received by the State
22 disbursement unit in a month other than the month when
23 due, the date of withholding may be deemed to be the date
24 of collection.”.

1 **SEC. 5954. ADMINISTRATIVE ENFORCEMENT IN INTER-**
2 **STATE CASES.**

3 (a) PROCEDURES.—Section 466(a)(14) (42 U.S.C.
4 666(a)(14)) is amended to read as follows:

5 “(14) HIGH-VOLUME, AUTOMATED ADMINIS-
6 TRATIVE ENFORCEMENT IN INTERSTATE CASES.—

7 “(A) IN GENERAL.—Procedures under
8 which—

9 “(i) the State shall use high-volume
10 automated administrative enforcement, to
11 the same extent as used for intrastate
12 cases, in response to a request made by
13 another State to enforce support orders,
14 and shall promptly report the results of
15 such enforcement procedure to the request-
16 ing State;

17 “(ii) the State may, by electronic or
18 other means, transmit to another State a
19 request for assistance in enforcing support
20 orders through high-volume, automated ad-
21 ministrative enforcement, which request—

22 “(I) shall include such informa-
23 tion as will enable the State to which
24 the request is transmitted to compare
25 the information about the cases to the

1 information in the data bases of the
2 State; and

3 “(II) shall constitute a certifi-
4 cation by the requesting State—

5 “(aa) of the amount of sup-
6 port under an order the payment
7 of which is in arrears; and

8 “(bb) that the requesting
9 State has complied with all pro-
10 cedural due process requirements
11 applicable to each case;

12 “(iii) if the State provides assistance
13 to another State pursuant to this para-
14 graph with respect to a case, neither State
15 shall consider the case to be transferred to
16 the caseload of such other State; and

17 “(iv) the State shall maintain records
18 of—

19 “(I) the number of such requests
20 for assistance received by the State;

21 “(II) the number of cases for
22 which the State collected support in
23 response to such a request; and

24 “(III) the amount of such col-
25 lected support.

1 “(B) HIGH-VOLUME AUTOMATED ADMINIS-
2 TRATIVE ENFORCEMENT.—In this part, the
3 term ‘high-volume automated administrative en-
4 forcement’ means the use of automatic data
5 processing to search various State data bases,
6 including license records, employment service
7 data, and State new hire registries, to deter-
8 mine whether information is available regarding
9 a parent who owes a child support obligation.”.

10 (b) INCENTIVE PAYMENTS.—Section 458(d) (42
11 U.S.C. 658(d)) is amended by inserting “, including
12 amounts collected under section 466(a)(14),” after “an-
13 other State”.

14 **SEC. 5955. WORK ORDERS FOR ARREARAGES.**

15 Section 466(a)(15) (42 U.S.C. 666(a)(15)) is amend-
16 ed to read as follows:

17 “(15) PROCEDURES TO ENSURE THAT PERSONS
18 OWING OVERDUE SUPPORT WORK OR HAVE A PLAN
19 FOR PAYMENT OF SUCH SUPPORT.—Procedures
20 under which the State has the authority, in any case
21 in which an individual owes overdue support with re-
22 spect to a child receiving assistance under a State
23 program funded under part A, to issue an order or
24 to request that a court or an administrative process

1 established pursuant to State law issue an order
2 that requires the individual to—

3 “(A) pay such support in accordance with
4 a plan approved by the court, or, at the option
5 of the State, a plan approved by the State
6 agency administering the State program under
7 this part; or

8 “(B) if the individual is subject to such a
9 plan and is not incapacitated, participate in
10 such work activities (as defined in section
11 407(d)) as the court, or, at the option of the
12 State, the State agency administering the State
13 program under this part, deems appropriate.”.

14 **SEC. 5956. ADDITIONAL TECHNICAL STATE PLAN AMEND-**
15 **MENTS.**

16 Section 454 (42 U.S.C. 654) is amended—

17 (1) in paragraph (8)—

18 (A) in the matter preceding subparagraph

19 (A)—

20 (i) by striking “noncustodial”; and

21 (ii) by inserting “, for the purpose of
22 establishing parentage, establishing, set-
23 ting the amount of, modifying, or enforcing
24 child support obligations, or making or en-
25 forcing a child custody or visitation deter-

1 mination, as defined in section 463(d)(1)”
2 after “provide that”;

3 (B) in subparagraph (A), by striking the
4 comma and inserting a semicolon;

5 (C) in subparagraph (B), by striking the
6 semicolon and inserting a comma; and

7 (D) by inserting after subparagraph (B),
8 the following flush language:

9 “and shall, subject to the privacy safeguards re-
10 quired under paragraph (26), disclose only the infor-
11 mation described in sections 453 and 463 to the au-
12 thorized persons specified in such sections for the
13 purposes specified in such sections;”;

14 (2) in paragraph (17)—

15 (A) by striking “in the case of a State
16 which has” and inserting “provide that the
17 State will have”; and

18 (B) by inserting “and” after “section
19 453,”; and

20 (3) in paragraph (26)—

21 (A) in the matter preceding subparagraph
22 (A), by striking “will”;

23 (B) in subparagraph (A)—

24 (i) by inserting “, modify,” after “es-
25 tablish”, the second place it appears; and

1 (ii) by inserting “, or to make or en-
2 force a child custody determination” after
3 “support”;

4 (C) in subparagraph (B)—

5 (i) by inserting “or the child” after “1
6 party”;

7 (ii) by inserting “or the child” after
8 “former party”; and

9 (iii) by striking “and” at the end;

10 (D) in subparagraph (C)—

11 (i) by inserting “or the child” after “1
12 party”;

13 (ii) by striking “another party” and
14 inserting “another person”;

15 (iii) by inserting “to that person”
16 after “release of the information”; and

17 (iv) by striking “former party” and
18 inserting “party or the child”; and

19 (E) by adding at the end the following:

20 “(D) in cases in which the prohibitions
21 under subparagraphs (B) and (C) apply, the re-
22 quirement to notify the Secretary, for purposes
23 of section 453(b)(2), that the State has reason-
24 able evidence of domestic violence or child abuse
25 against a party or the child and that the dislo-

1 sure of such information could be harmful to
2 the party or the child; and

3 “(E) procedures providing that when the
4 Secretary discloses information about a parent
5 or child to a State court or an agent of a State
6 court described in section 453(c)(2) or
7 463(d)(2)(B), and advises that court or agent
8 that the Secretary has been notified that there
9 is reasonable evidence of domestic violence or
10 child abuse pursuant to section 453(b)(2), the
11 court shall determine whether disclosure to any
12 other person of information received from the
13 Secretary could be harmful to the parent or
14 child and, if the court determines that disclo-
15 sure to any other person could be harmful, the
16 court and its agents shall not make any such
17 disclosure;”.

18 **SEC. 5957. FEDERAL CASE REGISTRY OF CHILD SUPPORT**

19 **ORDERS.**

20 Section 453(h) (42 U.S.C. 653(h)) is amended—

21 (1) in paragraph (1), by inserting “and order”
22 after “with respect to each case”; and

23 (2) in paragraph (2)—

24 (A) in the heading, by inserting “AND
25 ORDER” after “CASE”;

1 (B) by inserting “or an order” after “with
2 respect to a case” and

3 (C) by inserting “or order” after “and the
4 State or States which have the case”.

5 **SEC. 5958. FULL FAITH AND CREDIT FOR CHILD SUPPORT**
6 **ORDERS.**

7 Section 1738B(f) of title 28, United States Code, is
8 amended—

9 (1) in paragraph (4), by striking “a court may”
10 and all that follows and inserting “a court having
11 jurisdiction over the parties shall issue a child sup-
12 port order, which must be recognized.”; and

13 (2) in paragraph (5), by inserting “under sub-
14 section (d)” after “jurisdiction”.

15 **SEC. 5959. DEVELOPMENT COSTS OF AUTOMATED SYS-**
16 **TEMS.**

17 (a) DEFINITION OF STATE.—Section 455(a)(3)(B)
18 (42 U.S.C. 655(a)(3)(B)) is amended—

19 (1) in clause (i)—

20 (A) by inserting “or system described in
21 clause (iii)” after “each State”; and

22 (B) by inserting “or system” after “the
23 State”; and

24 (2) by adding at the end the following:

1 “(iii) For purposes of clause (i), a system described
2 in this clause is a system that has been approved by the
3 Secretary to receive enhanced funding pursuant to the
4 Family Support Act of 1988 (Public Law 100–485; 102
5 Stat. 2343) for the purpose of developing a system that
6 meets the requirements of sections 454(16) (as in effect
7 on and after September 30, 1995) and 454A, including
8 systems that have received funding for such purpose pur-
9 suant to a waiver under section 1115(a).”.

10 (b) TEMPORARY LIMITATION ON PAYMENTS.—Sec-
11 tion 344(b)(2) of the Personal Responsibility and Work
12 Opportunity Reconciliation Act of 1996 (42 U.S.C. 655
13 note) is amended—

14 (1) in subparagraph (B)—

15 (A) by inserting “or a system described in
16 subparagraph (C)” after “to a State”; and

17 (B) by inserting “or system” after “for the
18 State”; and

19 (2) in subparagraph (C), by striking “Act,” and
20 all that follows and inserting “Act, and among sys-
21 tems that have been approved by the Secretary to
22 receive enhanced funding pursuant to the Family
23 Support Act of 1988 (Public Law 100–485; 102
24 Stat. 2343) for the purpose of developing a system
25 that meets the requirements of sections 454(16) (as

1 in effect on and after September 30, 1995) and
2 454A, including systems that have received funding
3 for such purpose pursuant to a waiver under section
4 1115(a), which shall take into account—

5 “(i) the relative size of such State and
6 system caseloads under part D of title IV
7 of the Social Security Act; and

8 “(ii) the level of automation needed to
9 meet the automated data processing re-
10 quirements of such part.”.

11 **SEC. 5960. ADDITIONAL TECHNICAL AMENDMENTS.**

12 (a) **ELIMINATION OF SURPLUSAGE.**—Section
13 466(c)(1)(F) (42 U.S.C. 666(c)(1)(F)) is amended by
14 striking “of section 466”.

15 (b) **CORRECTION OF AMBIGUOUS AMENDMENT.**—
16 Section 344(a)(1)(F) of the Personal Responsibility and
17 Work Opportunity Reconciliation Act of 1996 (Public Law
18 104–193; 110 Stat. 2234) is amended by inserting “the
19 first place such term appears” before “and all that fol-
20 lows”.

21 (c) **CORRECTION OF ERRONEOUSLY DRAFTED PRO-**
22 **VISION.**—Section 215 of the Department of Health and
23 Human Services Appropriations Act, 1997, (as contained
24 in section 101(e) of the Omnibus Consolidated Appropria-
25 tions Act, 1997) is amended to read as follows:

1 “SEC. 215. Sections 452(j) and 453(o) of the Social
2 Security Act (42 U.S.C. 652(j) and 653(o)), as amended
3 by section 345 of the Personal Responsibility and Work
4 Opportunity Reconciliation Act of 1996 (Public Law 104–
5 193; 110 Stat. 2237) are each amended by striking ‘sec-
6 tion 457(a)’ and inserting ‘a plan approved under this
7 part’. Amounts available under such sections 452(j) and
8 453(o) shall be calculated as though the amendments
9 made by this section were effective October 1, 1995.”

10 (d) ELIMINATION OF SURPLUSAGE.—Section
11 456(a)(2)(B) (42 U.S.C. 656(a)(2)(B)) is amended by
12 striking “, and” and inserting a period.

13 (e) CORRECTION OF DATE.—Section 466(a)(1)(B)
14 (42 U.S.C. 666(a)(1)(B)) is amended by striking “October
15 1, 1996” and inserting “January 1, 1994”.

16 **SEC. 5961. EFFECTIVE DATE.**

17 (a) IN GENERAL.—Except as provided in subsection
18 (b), the amendments made by this chapter shall take effect
19 as if included in the enactment of title III of the Personal
20 Responsibility and Work Opportunity Reconciliation Act
21 of 1996 (Public Law 104–193; 110 Stat. 2105).

22 (b) EXCEPTION.—The amendments made by section
23 5936(b)(2) shall take effect as if the amendments had
24 been included in the enactment of section 103(a) of the

1 Personal Responsibility and Work Opportunity Reconcili-
 2 ation Act of 1996 (Public Law 104–193; 110 Stat. 2112).

3 **CHAPTER 4—RESTRICTING WELFARE AND**
 4 **PUBLIC BENEFITS FOR ALIENS**
 5 **Subchapter A—Eligibility for Federal**
 6 **Benefits**

7 **SEC. 5965. ALIEN ELIGIBILITY FOR FEDERAL BENEFITS:**
 8 **LIMITED APPLICATION TO MEDICARE AND**
 9 **BENEFITS UNDER THE RAILROAD RETIRE-**
 10 **MENT ACT.**

11 (a) LIMITED APPLICATION TO MEDICARE.—Section
 12 401(b) of the Personal Responsibility and Work Oppor-
 13 tunity Reconciliation Act of 1996 (8 U.S.C. 1611(b)) is
 14 amended by adding at the end the following:

15 “(3) Subsection (a) shall not apply to any bene-
 16 fit payable under title XVIII of the Social Security
 17 Act (relating to the medicare program) to an alien
 18 who is lawfully present in the United States as de-
 19 termined by the Attorney General and, with respect
 20 to benefits payable under part A of such title, who
 21 was authorized to be employed with respect to any
 22 wages attributable to employment which are counted
 23 for purposes of eligibility for such benefits.”.

24 (b) LIMITED APPLICATION TO BENEFITS UNDER
 25 THE RAILROAD RETIREMENT ACT.—Section 401(b) of the

1 Personal Responsibility and Work Opportunity Reconcili-
2 ation Act of 1996 (8 U.S.C. 1611(b)) (as amended by sub-
3 section (a)) is amended by inserting at the end the follow-
4 ing:

5 “(4) Subsection (a) shall not apply to any bene-
6 fit payable under the Railroad Retirement Act of
7 1974 or the Railroad Unemployment Insurance Act
8 to an alien who is lawfully present in the United
9 States as determined by the Attorney General or to
10 an alien residing outside the United States.”.

11 **SEC. 5966. EXCEPTIONS TO BENEFIT LIMITATIONS: COR-**
12 **RECTIONS TO REFERENCE CONCERNING**
13 **ALIENS WHOSE DEPORTATION IS WITHHELD.**

14 Sections 402(a)(2)(A)(i)(III), 402(a)(2)(A)(ii)(III),
15 402(b)(2)(A)(iii), 403(b)(1)(C), 412(b)(1)(C), and
16 431(b)(5) of the Personal Responsibility and Work Oppor-
17 tunity Reconciliation Act of 1996 (8 U.S.C.
18 1612(a)(2)(A)(iii), 1612(b)(2)(A)(iii), 1613(b)(1)(C),
19 1622(b)(1)(C), and 1641(b)(5)) are each amended by
20 striking “section 243(h) of such Act” each place it ap-
21 pears and inserting “section 243(h) of such Act (as in ef-
22 fect immediately before the effective date of section 307
23 of division C of Public Law 104–208) or section 241(b)(3)
24 of such Act (as amended by section 305(a) of division C
25 of Public Law 104–208)”.

1 **SEC. 5967. VETERANS EXCEPTION: APPLICATION OF MINI-**
2 **MUM ACTIVE DUTY SERVICE REQUIREMENT;**
3 **EXTENSION TO UNREMARIED SURVIVING**
4 **SPOUSE; EXPANDED DEFINITION OF VET-**
5 **ERAN.**

6 (a) APPLICATION OF MINIMUM ACTIVE DUTY SERV-
7 ICE REQUIREMENT.—Sections 402(a)(2)(C)(i),
8 402(b)(2)(C)(i), 403(b)(2)(A), and 412(b)(3)(A) of the
9 Personal Responsibility and Work Opportunity Reconcili-
10 ation Act of 1996 (8 U.S.C. 1612(a)(2)(C)(i),
11 1612(b)(2)(C)(i), 1613(b)(2)(A), and 1622(b)(3)(A)) are
12 each amended by inserting “and who fulfills the minimum
13 active-duty service requirements of section 5303A(d) of
14 title 38, United States Code” after “alienage”.

15 (b) EXCEPTION APPLICABLE TO UNREMARIED SUR-
16 VIVING SPOUSE.—Section 402(a)(2)(C)(iii),
17 402(b)(2)(C)(iii), 403(b)(2)(C), and 412(b)(3)(C) of the
18 Personal Responsibility and Work Opportunity Reconcili-
19 ation Act of 1996 (8 U.S.C. 1612(a)(2)(C)(iii),
20 1612(b)(2)(C)(iii), 1613(b)(2)(C), and 1622(b)(3)(C)) are
21 each amended by inserting before the period “or the
22 unremarried surviving spouse of an individual described
23 in clause (i) or (ii) who is deceased if the marriage fulfills
24 the requirements of section 1304 of title 38, United States
25 Code”.

1 (c) EXPANDED DEFINITION OF VETERAN.—Sections
2 402(a)(2)(C)(i), 402(b)(2)(C)(i), 403(b)(2)(A), and
3 412(b)(3)(A) of the Personal Responsibility and Work Op-
4 portunity Reconciliation Act of 1996 (8 U.S.C.
5 1612(a)(2)(C)(i), 1612(b)(2)(C)(i), 1613(b)(2)(A), and
6 1622(b)(3)(A)) are each amended by inserting “, 1101,
7 or 1301, or as described in section 107” after “section
8 101”.

9 **SEC. 5968. CORRECTION OF REFERENCE CONCERNING**
10 **CUBAN AND HAITIAN ENTRANTS.**

11 Section 403(d) of the Personal Responsibility and
12 Work Opportunity Reconciliation Act of 1996 (8 U.S.C.
13 1613(d)) is amended—

14 (1) by striking “section 501 of the Refugee”
15 and insert “section 501(a) of the Refugee”; and

16 (2) by striking “section 501(e)(2)” and insert-
17 ing “section 501(e)”.

18 **SEC. 5969. NOTIFICATION CONCERNING ALIENS NOT LAW-**
19 **FULLY PRESENT: CORRECTION OF TERMI-**
20 **NOLOGY.**

21 Section 1631(e)(9) of the Social Security Act (42
22 U.S.C. 1383(e)(9)) and section 27 of the United States
23 Housing Act of 1937, as added by section 404 of the Per-
24 sonal Responsibility and Work Opportunity Reconciliation
25 Act of 1996, are each amended by striking “unlawfully

1 in the United States” each place it appears and inserting
2 “not lawfully present in the United States”.

3 **SEC. 5970. FREELY ASSOCIATED STATES: CONTRACTS AND**
4 **LICENSES.**

5 Sections 401(c)(2)(A) and 411(c)(2)(A) of the Per-
6 sonal Responsibility and Work Opportunity Reconciliation
7 Act of 1996 (8 U.S.C. 1611(c)(2)(A) and 1621(c)(2)(A))
8 are each amended by inserting before the semicolon at the
9 end “, or to a citizen of a freely associated state, if section
10 141 of the applicable compact of free association approved
11 in Public Law 99–239 or 99–658 (or a successor provi-
12 sion) is in effect”.

13 **SEC. 5971. CONGRESSIONAL STATEMENT REGARDING BEN-**
14 **EFITS FOR HMONG AND OTHER HIGHLAND**
15 **LAO VETERANS.**

16 (a) FINDINGS.—The Congress makes the following
17 findings:

18 (1) Hmong and other Highland Lao tribal peo-
19 ples were recruited, armed, trained, and funded for
20 military operations by the United States Department
21 of Defense, Central Intelligence Agency, Department
22 of State, and Agency for International Development
23 to further United States national security interests
24 during the Vietnam conflict.

1 (2) Hmong and other Highland Lao tribal
2 forces sacrificed their own lives and saved the lives
3 of American military personnel by rescuing downed
4 American pilots and aircrews and by engaging and
5 successfully fighting North Vietnamese troops.

6 (3) Thousands of Hmong and other Highland
7 Lao veterans who fought in special guerilla units on
8 behalf of the United States during the Vietnam con-
9 flict, along with their families, have been lawfully ad-
10 mitted to the United States in recent years.

11 (4) The Personal Responsibility and Work Op-
12 portunity Reconciliation Act of 1996 (Public Law
13 104–193), the new national welfare reform law, re-
14 stricts certain welfare benefits for noncitizens of the
15 United States and the exceptions for noncitizen vet-
16 erans of the Armed Forces of the United States do
17 not extend to Hmong veterans of the Vietnam con-
18 flict era, making Hmong veterans and their families
19 receiving certain welfare benefits subject to restric-
20 tions despite their military service on behalf of the
21 United States.

22 (b) CONGRESSIONAL STATEMENT.—It is the sense of
23 the Congress that Hmong and other Highland Lao veter-
24 ans who fought on behalf of the Armed Forces of the Unit-
25 ed States during the Vietnam conflict and have lawfully

1 been admitted to the United States for permanent resi-
 2 dence should be considered veterans for purposes of con-
 3 tinuing certain welfare benefits consistent with the excep-
 4 tions provided other noncitizen veterans under the Per-
 5 sonal Responsibility and Work Opportunity Reconciliation
 6 Act of 1996.

7 **Subchapter B—General Provisions**

8 **SEC. 5972. DETERMINATION OF TREATMENT OF BATTERED** 9 **ALIENS AS QUALIFIED ALIENS; INCLUSION** 10 **OF ALIEN CHILD OF BATTERED PARENT AS** 11 **QUALIFIED ALIEN.**

12 (a) DETERMINATION OF STATUS BY AGENCY PRO-
 13 VIDING BENEFITS.—Section 431 of the Personal Respon-
 14 sibility and Work Opportunity Reconciliation Act of 1996
 15 (8 U.S.C. 1641) is amended in subsections (c)(1)(A) and
 16 (c)(2)(A) by striking “Attorney General, which opinion is
 17 not subject to review by any court)” each place it appears
 18 and inserting “agency providing such benefits)”.

19 (b) GUIDANCE ISSUED BY ATTORNEY GENERAL.—
 20 Section 431(c) of the Personal Responsibility and Work
 21 Opportunity Reconciliation Act of 1996 (8 U.S.C.
 22 1641(c)) is amended by adding at the end the following
 23 new undesignated paragraph:

24 “After consultation with the Secretaries of Health
 25 and Human Services, Agriculture, and Housing and

1 Urban Development, the Commissioner of Social Security,
 2 and with the heads of such Federal agencies administering
 3 benefits as the Attorney General considers appropriate,
 4 the Attorney General shall issue guidance (in the Attorney
 5 General's sole and unreviewable discretion) for purposes
 6 of this subsection and section 421(f), concerning the
 7 meaning of the terms 'battery' and 'extreme cruelty', and
 8 the standards and methods to be used for determining
 9 whether a substantial connection exists between battery or
 10 cruelty suffered and an individual's need for benefits
 11 under a specific Federal, State, or local program.”.

12 (c) INCLUSION OF ALIEN CHILD OF BATTERED PAR-
 13 ENT AS QUALIFIED ALIEN.—Section 431(c) of the Per-
 14 sonal Responsibility and Work Opportunity Reconciliation
 15 Act of 1996 (8 U.S.C. 1641(c)) is amended—

16 (1) at the end of paragraph (1)(B)(iv) by strik-
 17 ing “or”;

18 (2) at the end of paragraph (2)(B) by striking
 19 the period and inserting “; or”; and

20 (3) by inserting after paragraph (2)(B) and be-
 21 fore the last sentence of such subsection the follow-
 22 ing new paragraph:

23 “(3) an alien child who—

24 “(A) resides in the same household as a
 25 parent who has been battered or subjected to

1 extreme cruelty in the United States by that
2 parent's spouse or by a member of the spouse's
3 family residing in the same household as the
4 parent and the spouse consented or acquiesced
5 to such battery or cruelty, but only if (in the
6 opinion of the agency providing such benefits)
7 there is a substantial connection between such
8 battery or cruelty and the need for the benefits
9 to be provided; and

10 “(B) who meets the requirement of sub-
11 paragraph (B) of paragraph (1).”.

12 (d) INCLUSION OF ALIEN CHILD OF BATTERED PAR-
13 ENT UNDER SPECIAL RULE FOR ATTRIBUTION OF IN-
14 COME.—Section 421(f)(1)(A) of the Personal Responsibil-
15 ity and Work Opportunity Reconciliation Act of 1996 (8
16 U.S.C. 1631(f)(1)(A)) is amended—

17 (1) at the end of clause (i) by striking “or”;

18 and

19 (2) by striking “and the battery or cruelty de-
20 scribed in clause (i) or (ii)” and inserting “or (iii)
21 the alien is a child whose parent (who resides in the
22 same household as the alien child) has been battered
23 or subjected to extreme cruelty in the United States
24 by that parent's spouse, or by a member of the
25 spouse's family residing in the same household as

1 the parent and the spouse consented to, or acqui-
2 esced in, such battery or cruelty, and the battery or
3 cruelty described in clause (i), (ii), or (iii)”.

4 **SEC. 5973. VERIFICATION OF ELIGIBILITY FOR BENEFITS.**

5 (a) REGULATIONS AND GUIDANCE.—Section 432(a)
6 of the Personal Responsibility and Work Opportunity Rec-
7 onciliation Act of 1996 (8 U.S.C. 1642(a)) is amended—

8 (1) by inserting at the end of paragraph (1) the
9 following: “Not later than 90 days after the date of
10 the enactment of the Welfare Reform Technical Cor-
11 rections Act of 1997, the Attorney General of the
12 United States, after consultation with the Secretary
13 of Health and Human Services, shall issue interim
14 verification guidance.”; and

15 (2) by adding after paragraph (2) the following
16 new paragraph:

17 “(3) Not later than 90 days after the date of the en-
18 actment of the Welfare Reform Technical Corrections Act
19 of 1997, the Attorney General shall promulgate regula-
20 tions which set forth the procedures by which a State or
21 local government can verify whether an alien applying for
22 a State or local public benefit is a qualified alien, a non-
23 immigrant under the Immigration and Nationality Act, or
24 an alien paroled into the United States under section
25 212(d)(5) of the Immigration and Nationality Act for less

1 than 1 year, for purposes of determining whether the alien
2 is ineligible for benefits under section 411 of this Act.”.

3 (b) DISCLOSURE OF INFORMATION FOR VERIFICA-
4 TION.—Section 384(b) of the Illegal Immigration Reform
5 and Immigrant Responsibility Act of 1996 (division C of
6 Public Law 104–208) is amended by adding after para-
7 graph (4) the following new paragraph:

8 “(5) The Attorney General is authorized to dis-
9 close information, to Federal, State, and local public
10 and private agencies providing benefits, to be used
11 solely in making determinations of eligibility for ben-
12 efits pursuant to section 431(c) of the Personal Re-
13 sponsibility and Work Opportunity Reconciliation
14 Act of 1996.”.

15 **SEC. 5974. QUALIFYING QUARTERS: DISCLOSURE OF QUAR-**
16 **TERS OF COVERAGE INFORMATION; CORREC-**
17 **TION TO ASSURE THAT CREDITING APPLIES**
18 **TO ALL QUARTERS EARNED BY PARENTS BE-**
19 **FORE CHILD IS 18.**

20 (a) DISCLOSURE OF QUARTERS OF COVERAGE IN-
21 FORMATION.—Section 435 of the Personal Responsibility
22 and Work Opportunity Reconciliation Act of 1996 (8
23 U.S.C. 1645) is amended by adding at the end the follow-
24 ing: “Notwithstanding section 6103 of the Internal Reve-
25 nue Code of 1986, the Commissioner of Social Security

1 is authorized to disclose quarters of coverage information
2 concerning an alien and an alien's spouse or parents to
3 a government agency for the purposes of this title.”.

4 (b) CORRECTION TO ASSURE THAT CREDITING AP-
5 PLIES TO ALL QUARTERS EARNED BY PARENTS BEFORE
6 CHILD IS 18.—Section 435(1) of the Personal Respon-
7 sibility and Work Opportunity Reconciliation Act of 1996
8 (8 U.S.C. 1645(1)) is amended by striking “while the alien
9 was under age 18,” and inserting “before the date on
10 which the alien attains age 18,”.

11 **SEC. 5975. STATUTORY CONSTRUCTION: BENEFIT ELIGI-**
12 **BILITY LIMITATIONS APPLICABLE ONLY**
13 **WITH RESPECT TO ALIENS PRESENT IN THE**
14 **UNITED STATES.**

15 Section 433 of the Personal Responsibility and Work
16 Opportunity Reconciliation Act of 1996 (8 U.S.C. 1643)
17 is amended—

18 (1) by redesignated subsections (b) and (c) as
19 subsections (c) and (d); and

20 (2) by adding after subsection (a) the following
21 new subsection:

22 “(b) BENEFIT ELIGIBILITY LIMITATIONS APPLICA-
23 BLE ONLY WITH RESPECT TO ALIENS PRESENT IN THE
24 UNITED STATES.—Notwithstanding any other provision
25 of this title, the limitations on eligibility for benefits under

1 this title shall not apply to eligibility for benefits of aliens
2 who are not residing, or present, in the United States with
3 respect to—

4 “(1) wages, pensions, annuities, and other
5 earned payments to which an alien is entitled result-
6 ing from employment by, or on behalf of, a Federal,
7 State, or local government agency which was not
8 prohibited during the period of such employment or
9 service under section 274A or other applicable provi-
10 sion of the Immigration and Nationality Act; or

11 “(2) benefits under laws administered by the
12 Secretary of Veterans Affairs.”.

13 **Subchapter C—Miscellaneous Clerical and**
14 **Technical Amendments; Effective Date**

15 **SEC. 5976. CORRECTING MISCELLANEOUS CLERICAL AND**
16 **TECHNICAL ERRORS.**

17 (a) INFORMATION REPORTING UNDER TITLE IV OF
18 THE SOCIAL SECURITY ACT.—Effective July 1, 1997, sec-
19 tion 408 of the Social Security Act (42 U.S.C. 608), as
20 amended by section 5903, and as in effect pursuant to
21 section 116 of the Personal Responsibility and Work Op-
22 portunity Reconciliation Act of 1996, and as amended by
23 section 5906(e) of this Act, is amended by adding at the
24 end the following new subsection:

1 “(f) STATE REQUIRED TO PROVIDE CERTAIN INFOR-
2 MATION.—Each State to which a grant is made under sec-
3 tion 403 shall, at least 4 times annually and upon request
4 of the Immigration and Naturalization Service, furnish the
5 Immigration and Naturalization Service with the name
6 and address of, and other identifying information on, any
7 individual who the State knows is not lawfully present in
8 the United States.”.

9 (b) MISCELLANEOUS CLERICAL AND TECHNICAL
10 CORRECTIONS.—

11 (1) Section 411(c)(3) of the Personal Respon-
12 sibility and Work Opportunity Reconciliation Act of
13 1996 (8 U.S.C. 1621(c)(3)) is amended by striking
14 “4001(c)” and inserting “401(c)”.

15 (2) Section 422(a) of the Personal Respon-
16 sibility and Work Opportunity Reconciliation Act of
17 1996 (8 U.S.C. 1632(a)) is amended by striking
18 “benefits (as defined in section 412(c)),” and insert-
19 ing “benefits,”.

20 (3) Section 412(b)(1)(C) of the Personal Re-
21 sponsibility and Work Opportunity Reconciliation
22 Act of 1996 (8 U.S.C. 1622(b)(1)(C)) is amended by
23 striking “with-holding” and inserting “withholding”.

24 (4) The subtitle heading for subtitle D of title
25 IV of the Personal Responsibility and Work Oppor-

1 tunity Reconciliation Act of 1996 is amended to
2 read as follows:

“Subtitle D—General Provisions”.

3 (5) The subtitle heading for subtitle F of title
4 IV of the Personal Responsibility and Work Oppor-
5 tunity Reconciliation Act of 1996 is amended to
6 read as follows:

**“Subtitle F—Earned Income Credit
Denied to Unauthorized Em-
ployees”.**

7 (6) Section 431(c)(2)(B) of the Personal Re-
8 sponsibility and Work Opportunity Reconciliation
9 Act of 1996 (8 U.S.C. 1641(c)(2)(B)) is amended by
10 striking “clause (ii) of subparagraph (A)” and in-
11 serting “subparagraph (B) of paragraph (1)”.

12 (7) Section 431(c)(1)(B) of the Personal Re-
13 sponsibility and Work Opportunity Reconciliation
14 Act of 1996 (8 U.S.C. 1641(c)(1)(B)) is amended—

15 (A) in clause (iii) by striking “, or” and in-
16 serting “(as in effect prior to April 1, 1997),”;
17 and

18 (B) by adding after clause (iv) the follow-
19 ing new clause:

20 “(v) cancellation of removal pursuant
21 to section 240A(b)(2) of such Act;”.

1 **SEC. 5977. EFFECTIVE DATE.**

2 Except as otherwise provided, the amendments made
3 by this chapter shall be effective as if included in the en-
4 actment of title IV of the Personal Responsibility and
5 Work Opportunity Reconciliation Act of 1996.

6 **CHAPTER 5—CHILD PROTECTION**

7 **SEC. 5981. CONFORMING AND TECHNICAL AMENDMENTS**
8 **RELATING TO CHILD PROTECTION.**

9 (a) **METHODS PERMITTED FOR CONDUCT OF STUDY**
10 **OF CHILD WELFARE.**—Section 429A(a) (42 U.S.C.
11 628b(a)) is amended by inserting “(directly, or by grant,
12 contract, or interagency agreement)” after “conduct”.

13 (b) **REDESIGNATION OF PARAGRAPH.**—Section
14 471(a) (42 U.S.C. 671(a)) is amended—

15 (1) by striking “and” at the end of paragraph
16 (17);

17 (2) by striking the period at the end of para-
18 graph (18) (as added by section 1808(a) of the
19 Small Business Job Protection Act of 1996 (Public
20 Law 104–188; 110 Stat. 1903)) and inserting “;
21 and”; and

22 (3) by redesignating paragraph (18) (as added
23 by section 505(3) of the Personal Responsibility and
24 Work Opportunity Reconciliation Act of 1996 (Pub-
25 lic Law 104–193; 110 Stat. 2278)) as paragraph
26 (19).

1 **SEC. 5982. ADDITIONAL TECHNICAL AMENDMENTS RELAT-**
2 **ING TO CHILD PROTECTION.**

3 (a) PART B AMENDMENTS.—

4 (1) IN GENERAL.—Part B of title IV (42
5 U.S.C. 620–635) is amended—

6 (A) in section 422(b)—

7 (i) by striking the period at the end of
8 the paragraph (9) (as added by section
9 554(3) of the Improving America’s Schools
10 Act of 1994 (Public Law 103–382; 108
11 Stat. 4057)) and inserting a semicolon;

12 (ii) by redesignating paragraph (10)
13 as paragraph (11); and

14 (iii) by redesignating paragraph (9),
15 as added by section 202(a)(3) of the Social
16 Security Act Amendments of 1994 (Public
17 Law 103–432, 108 Stat. 4453), as para-
18 graph (10);

19 (B) in sections 424(b) and 425(a), by
20 striking “422(b)(9)” each place it appears and
21 inserting “422(b)(10)”; and

22 (C) by transferring section 429A (as added
23 by section 503 of the Personal Responsibility
24 and Work Opportunity Reconciliation Act of
25 1996 (Public Law 104–193; 110 Stat. 2277))
26 to the end of subpart 1.

1 (2) CLARIFICATION OF CONFLICTING AMEND-
 2 MENTS.—Section 204(a)(2) of the Social Security
 3 Act Amendments of 1994 (Public Law 103–432;
 4 108 Stat. 4456) is amended by inserting “(as added
 5 by such section 202(a))” before “and inserting”.

6 (b) PART E AMENDMENTS.—Section 472(d) (42
 7 U.S.C. 672(d)) is amended by striking “422(b)(9)” and
 8 inserting “422(b)(10)”.

9 **SEC. 5983. EFFECTIVE DATE.**

10 The amendments made by this chapter shall take ef-
 11 fect as if included in the enactment of title V of the Per-
 12 sonal Responsibility and Work Opportunity Reconciliation
 13 Act of 1996 (Public Law 104–193; 110 Stat. 2277).

14 **CHAPTER 6—CHILD CARE**

15 **SEC. 5985. CONFORMING AND TECHNICAL AMENDMENTS**

16 **RELATING TO CHILD CARE.**

17 (a) FUNDING.—Section 418(a) (42 U.S.C. 618(a)) is
 18 amended—

19 (1) in paragraph (1)—

20 (A) in the matter preceding subparagraph

21 (A), by inserting “the greater of” after “equal

22 to”;

23 (B) in subparagraph (A)—

24 (i) by striking “the sum of”;

1 (ii) by striking “amounts expended”
2 and inserting “expenditures”; and

3 (iii) by striking “section—” and all
4 that follows and inserting “subsections (g)
5 and (i) of section 402 (as in effect before
6 October 1, 1995); or”;

7 (C) in subparagraph (B)—

8 (i) by striking “sections” and insert-
9 ing “subsections”; and

10 (ii) by striking the semicolon at the
11 end and inserting a period; and

12 (D) in the matter following subparagraph
13 (B), by striking “whichever is greater.”; and
14 (2) in paragraph (2)—

15 (A) by striking subparagraph (B) and in-
16 serting the following:

17 “(B) ALLOTMENTS TO STATES.—The total
18 amount available for payments to States under
19 this paragraph, as determined under subpara-
20 graph (A), shall be allotted among the States
21 based on the formula used for determining the
22 amount of Federal payments to each State
23 under section 403(n) (as in effect before Octo-
24 ber 1, 1995).”;

1 (B) by striking subparagraph (C) and in-
2 serting the following:

3 “(C) FEDERAL MATCHING OF STATE EX-
4 PENDITURES EXCEEDING HISTORICAL EXPEND-
5 ITURES.—The Secretary shall pay to each eligi-
6 ble State for a fiscal year an amount equal to
7 the lesser of the State’s allotment under sub-
8 paragraph (B) or the Federal medical assist-
9 ance percentage for the State for the fiscal year
10 (as defined in section 1905(b), as such section
11 was in effect on September 30, 1995) of so
12 much of the State’s expenditures for child care
13 in that fiscal year as exceed the total amount
14 of expenditures by the State (including expendi-
15 tures from amounts made available from Fed-
16 eral funds) in fiscal year 1994 or 1995 (which-
17 ever is greater) for the programs described in
18 paragraph (1)(A).”; and

19 (C) in subparagraph (D)(i)—

20 (i) by striking “amounts under any
21 grant awarded” and inserting “any
22 amounts allotted”; and

23 (ii) by striking “the grant is made”
24 and inserting “such amounts are allotted”.

1 (b) DATA USED TO DETERMINE HISTORIC STATE
2 EXPENDITURES.—Section 418(a) (42 U.S.C. 618(a)), is
3 amended by adding at the end the following:

4 “(5) DATA USED TO DETERMINE STATE AND
5 FEDERAL SHARES OF EXPENDITURES.—In making
6 the determinations concerning expenditures required
7 under paragraphs (1) and (2)(C), the Secretary shall
8 use information that was reported by the State on
9 ACF Form 231 and available as of the applicable
10 dates specified in clauses (i)(I), (ii), and (iii)(III) of
11 section 403(a)(1)(D).”.

12 (c) DEFINITION OF STATE.—Section 418(d) (42
13 U.S.C. 618(d)) is amended by striking “or” and inserting
14 “and”.

15 **SEC. 5986. ADDITIONAL CONFORMING AND TECHNICAL**
16 **AMENDMENTS.**

17 The Child Care and Development Block Grant Act
18 of 1990 (42 U.S.C. 9858 et seq.) is amended—

19 (1) in section 658E(c)(2)(E)(ii), by striking
20 “tribal organization” and inserting “tribal organiza-
21 tions”;

22 (2) in section 658K(a)—

23 (A) in paragraph (1)—

24 (i) in subparagraph (B)—

1 (I) by striking clause (iv) and in-
2 serting the following:

3 “(iv) whether the head of the family
4 unit is a single parent;”;

5 (II) in clause (v)—

6 (aa) in the matter preceding
7 subclause (I), by striking “in-
8 cluding the amount obtained
9 from (and separately identi-
10 fied)—” and inserting “includ-
11 ing—”; and

12 (bb) by striking subclause
13 (II) and inserting the following:

14 “(II) cash or other assistance
15 under—

16 “(aa) the temporary assist-
17 ance for needy families program
18 under part A of title IV of the
19 Social Security Act (42 U.S.C.
20 601 et seq.); and

21 “(bb) a State program for
22 which State spending is counted
23 toward the maintenance of effort
24 requirement under section

1 409(a)(7) of the Social Security
2 Act (42 U.S.C. 609(a)(7));” and
3 (III) in clause (x), by striking
4 “week” and inserting “month”; and
5 (ii) by striking subparagraph (D) and
6 inserting the following:

7 “(D) USE OF SAMPLES.—

8 “(i) AUTHORITY.—A State may com-
9 ply with the requirement to collect the in-
10 formation described in subparagraph (B)
11 through the use of disaggregated case
12 record information on a sample of families
13 selected through the use of scientifically
14 acceptable sampling methods approved by
15 the Secretary.

16 “(ii) SAMPLING AND OTHER METH-
17 ODS.—The Secretary shall provide the
18 States with such case sampling plans and
19 data collection procedures as the Secretary
20 deems necessary to produce statistically
21 valid samples of the information described
22 in subparagraph (B). The Secretary may
23 develop and implement procedures for veri-
24 fying the quality of data submitted by the
25 States.”; and

1 (B) in paragraph (2)—

2 (i) in the heading, by striking “BIAN-
3 NUAL” and inserting “ANNUAL”; and

4 (ii) by striking “6” and inserting
5 “12”;

6 (3) in section 658L, by striking “1997” and in-
7 serting “1998”;

8 (4) in section 658O(e)(6)(C), by striking “(A)”
9 and inserting “(B)”;

10 (5) in section 658P(13), by striking “or” and
11 inserting “and”.

12 **SEC. 5987. REPEALS.**

13 (a) CHILD DEVELOPMENT ASSOCIATE SCHOLARSHIP
14 ASSISTANCE ACT OF 1985.—Title VI of the Human Serv-
15 ices Reauthorization Act of 1986 (42 U.S.C. 10901–
16 10905) is repealed.

17 (b) STATE DEPENDENT CARE DEVELOPMENT
18 GRANTS ACT.—Subchapter E of chapter 8 of subtitle A
19 of title VI of the Omnibus Budget Reconciliation Act of
20 1981 (42 U.S.C. 9871–9877) is repealed.

21 (c) PROGRAMS OF NATIONAL SIGNIFICANCE.—Title
22 X of the Elementary and Secondary Education Act of
23 1965 (20 U.S.C. 8001 et seq.) is amended—

24 (1) in section 10413(a), by striking paragraph
25 (4);

1 ployee Retirement Income Security Act of 1974 (29
2 U.S.C. 1169(a)(3)(A)) is amended by adding at the end
3 the following: “except that, to the extent provided in the
4 order, the name and mailing address of an official of a
5 State or a political subdivision thereof may be substituted
6 for the mailing address of any such alternate recipient,”.

7 (b) PAYMENT TO STATE OFFICIAL TREATED AS SAT-
8 ISFACTION OF PLAN’S OBLIGATION.—Section 609(a) of
9 such Act (29 U.S.C. 1169(a)) is amended by adding at
10 the end the following new paragraph:

11 “(9) PAYMENT TO STATE OFFICIAL TREATED
12 AS SATISFACTION OF PLAN’S OBLIGATION TO MAKE
13 PAYMENT TO ALTERNATE RECIPIENT.—Payment of
14 benefits by a group health plan to an official of a
15 State or a political subdivision thereof who is named
16 in a qualified medical child support order in lieu of
17 the alternate recipient, pursuant to paragraph
18 (3)(A), shall be treated, for purposes of this title, as
19 payment of benefits to the alternate recipient.”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall be apply with respect to medical child
22 support orders issued on or after the date of the enact-
23 ment of this Act.

1 **SEC. 5992. AMENDMENT RELATING TO SECTION 381 OF THE**
2 **PERSONAL RESPONSIBILITY AND WORK OP-**
3 **PORTUNITY RECONCILIATION ACT OF 1996.**

4 (a) **CLARIFICATION OF EFFECT OF ADMINISTRATIVE**
5 **NOTICES.**—Section 609(a)(2)(B) of the Employee Retire-
6 ment Income Security Act of 1974 (29 U.S.C.
7 1169(a)(2)(B)) is amended by adding at the end the fol-
8 lowing new sentence: “For purposes of this subparagraph,
9 an administrative notice which is issued pursuant to an
10 administrative process referred to in subclause (II) of the
11 preceding sentence and which has the effect of an order
12 described in clause (i) or (ii) of the preceding sentence
13 shall be treated as such an order.”.

14 (b) **EFFECTIVE DATE.**—The amendment made by
15 this section shall be effective as if included in the enact-
16 ment of section 381 of the Personal Responsibility and
17 Work Opportunity Reconciliation Act of 1996 (Public Law
18 104–193; 110 Stat. 2257).

19 **SEC. 5993. AMENDMENTS RELATING TO SECTION 382 OF**
20 **THE PERSONAL RESPONSIBILITY AND WORK**
21 **OPPORTUNITY RECONCILIATION ACT OF 1996.**

22 (a) **ELIMINATION OF REQUIREMENT THAT ORDERS**
23 **SPECIFY AFFECTED PLANS.**—Section 609(a)(3) of the
24 Employee Retirement Income Security Act of 1974 (29
25 U.S.C. 1169(a)(3)) is amended—

1 (1) in subparagraph (C), by striking “, and”
2 and inserting a period; and

3 (2) by striking subparagraph (D).

4 (b) EFFECTIVE DATE.—The amendments made by
5 this section shall apply with respect to medical child sup-
6 port orders issued on or after the date of the enactment
7 of this Act.

8 **TITLE VI—COMMITTEE ON**
9 **GOVERNMENTAL AFFAIRS**
10 **Subtitle A—Civil Service and**
11 **Postal Provisions**

12 **SEC. 6001. INCREASED CONTRIBUTIONS TO FEDERAL**
13 **CIVILIAN RETIREMENT SYSTEMS.**

14 (a) CIVIL SERVICE RETIREMENT SYSTEM.—

15 (1) AGENCY CONTRIBUTIONS.—Notwithstand-
16 ing section 8334(a)(1) of title 5, United States
17 Code—

18 (A) during the period beginning on Octo-
19 ber 1, 1997, through September 30, 2001, each
20 employing agency (other than the United States
21 Postal Service, the Metropolitan Washington
22 Airports Authority, or the government of the
23 District of Columbia) shall contribute—

24 (i) 8.51 percent of the basic pay of an
25 employee;

1 (ii) 9.01 percent of the basic pay of a
2 congressional employee, a law enforcement
3 officer, a member of the Capitol police, or
4 a firefighter; and

5 (iii) 9.51 percent of the basic pay of
6 a Member of Congress, a Claims Court
7 judge, a United States magistrate, a judge
8 of the United States Court of Appeals for
9 the Armed Forces, or a bankruptcy judge;
10 and

11 (B) during the period beginning on Octo-
12 ber 1, 2001, through September 30, 2002, each
13 employing agency (other than the United States
14 Postal Service, the Metropolitan Washington
15 Airports Authority, or the government of the
16 District of Columbia) shall contribute—

17 (i) 8.6 percent of the basic pay of an
18 employee;

19 (ii) 9.1 percent of the basic pay of a
20 congressional employee, a law enforcement
21 officer, a member of the Capitol police, or
22 a firefighter; and

23 (iii) 9.6 percent of the basic pay of a
24 Member of Congress, a Claims Court
25 judge, a United States magistrate, a judge

1 of the United States Court of Appeals for
2 the Armed Forces, or a bankruptcy judge;
3 in lieu of the agency contributions otherwise re-
4 quired under section 8334(a)(1) of title 5, United
5 States Code.

6 (2) NO REDUCTION IN AGENCY CONTRIBUTIONS
7 BY THE POSTAL SERVICE.—Agency contributions by
8 the United States Postal Service under section
9 8348(h) of title 5, United States Code—

10 (A) shall not be reduced as a result of the
11 amendments made under paragraph (3) of this
12 subsection; and

13 (B) shall be computed as though such
14 amendments had not been enacted.

15 (3) INDIVIDUAL DEDUCTIONS, WITHHOLDINGS,
16 AND DEPOSITS.—The table under section 8334(c) of
17 title 5, United States Code, is amended—

18 (A) in the matter relating to an employee
19 by striking:

“7 After December 31, 1969.”;

20 and inserting the following:

“7 January 1, 1970, to December 31, 1998.
7.25 January 1, 1999, to December 31, 1999.
7.4 January 1, 2000, to December 31, 2000.
7.5 January 1, 2001, to December 31, 2002.
7 After December 31, 2002.”;

1 (B) in the matter relating to a Member or
2 employee for congressional employee service by
3 striking:

“7½ After December 31, 1969.”;

4 and inserting the following:

7.5 January 1, 1970, to December 31, 1998.
7.75 January 1, 1999, to December 31, 1999.
7.9 January 1, 2000, to December 31, 2000.
8 January 1, 2001, to December 31, 2002.
7.5 After December 31, 2002.”;

5 (C) in the matter relating to a Member for
6 Member service by striking:

“8 After December 31, 1969.”;

7 and inserting the following:

“8 January 1, 1970, to December 31, 1998.
8.25 January 1, 1999, to December 31, 1999.
8.4 January 1, 2000, to December 31, 2000.
8.5 January 1, 2001, to December 31, 2002.
8 After December 31, 2002.”;

8 (D) in the matter relating to a law enforce-
9 ment officer for law enforcement service and
10 firefighter for firefighter service by striking:

“7½ After December 31, 1974.”;

11 and inserting the following:

“7.5 January 1, 1975, to December 31, 1998.
7.75 January 1, 1999, to December 31, 1999.
7.9 January 1, 2000, to December 31, 2000.
8 January 1, 2001, to December 31, 2002.
7.5 After December 31, 2002.”;

1 (E) in the matter relating to a bankruptcy
2 judge by striking:

“8 After December 31, 1983.”;

3 and inserting the following:

“8 January 1, 1984, to December 31, 1998.
8.25 January 1, 1999, to December 31, 1999.
8.4 January 1, 2000, to December 31, 2000.
8.5 January 1, 2001, to December 31, 2002.
8 After December 31, 2002.”;

4 (F) in the matter relating to a judge of the
5 United States Court of Appeals for the Armed
6 Forces for service as a judge of that court by
7 striking:

“8 On and after the date of enactment of the
Department of Defense Authorization
Act, 1984.”;

8 and inserting the following:

“8 The date of enactment of the Department
of Defense Authorization Act, 1984, to
December 31, 1998.
8.25 January 1, 1999, to December 31, 1999.
8.4 January 1, 2000, to December 31, 2000.
8.5 January 1, 2001, to December 31, 2002.
8 After December 31, 2002.”;

9 (G) in the matter relating to a United
10 States magistrate by striking:

“8 After September 30, 1987.”;

11 and inserting the following:

“8 October 1, 1987, to December 31, 1998.
8.25 January 1, 1999, to December 31, 1999.
8.4 January 1, 2000, to December 31, 2000.
8.5 January 1, 2001, to December 31, 2002.”;

8 After December 31, 2002.”;

1 (H) in the matter relating to a Claims
2 Court judge by striking:

“8 After September 30, 1988.”;

3 and insert the following:

“8 October 1, 1988, to December 31, 1998.
8.25 January 1, 1999, to December 31, 1999.
8.4 January 1, 2000, to December 31, 2000.
8.5 January 1, 2001, to December 31, 2002.
8 After December 31, 2002.”;

4 and

5 (I) by inserting after the matter relating to
6 a Claims Court judge the following:

“Member of the Capitol Police 2.5 August 1, 1920, to June 30,
1926.
3.5 July 1, 1926, to June 30,
1942.
5 July 1, 1942, to June 30,
1948.
6 July 1, 1948, to October 31,
1956.
6.5 November 1, 1956, to Decem-
ber 31, 1969.
7.5 January 1, 1970, to Decem-
ber 31, 1998.
7.75 January 1, 1999, to Decem-
ber 31, 1999.
7.9 January 1, 2000, to Decem-
ber 31, 2000.
8 January 1, 2001, to Decem-
ber 31, 2002.
7.5 After December 31, 2002.”.

7 (4) OTHER SERVICE.—

8 (A) MILITARY SERVICE.—Section 8334(j)
9 of title 5, United States Code, is amended—

10 (i) in paragraph (1)(A) by inserting
11 “and subject to paragraph (5),” after “Ex-
12 cept as provided in subparagraph (B),”;
13 and

1 (ii) by adding at the end the following
2 new paragraph:

3 “(5) Effective with respect to any period of
4 military service after December 31, 1998, the per-
5 centage of basic pay under section 204 of title 37
6 payable under paragraph (1) shall be equal to the
7 same percentage as would be applicable under sub-
8 section (c) of this section for that same period for
9 service as an employee, subject to paragraph
10 (1)(B).”.

11 (B) VOLUNTEER SERVICE.—Section
12 8334(l) of title 5, United States Code, is
13 amended—

14 (i) in paragraph (1) by adding at the
15 end the following: “This paragraph shall
16 be subject to paragraph (4).”; and

17 (ii) by adding at the end the following
18 new paragraph:

19 “(4) Effective with respect to any period of
20 service after December 31, 1998, the percentage of
21 the readjustment allowance or stipend (as the case
22 may be) payable under paragraph (1) shall be equal
23 to the same percentage as would be applicable under
24 subsection (c) of this section for the same period for
25 service as an employee.”.

1 (b) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—

2 (1) INDIVIDUAL DEDUCTIONS AND
3 WITHHOLDINGS.—

4 (A) IN GENERAL.—Section 8422(a) of title
5 5, United States Code, is amended by striking
6 paragraph (2) and inserting the following:

7 “(2) The percentage to be deducted and with-
8 held from basic pay for any pay period shall be
9 equal to—

10 “(A) the applicable percentage under para-
11 graph (3), minus

12 “(B) the percentage then in effect under
13 section 3101(a) of the Internal Revenue Code
14 of 1986 (relating to rate of tax for old-age, sur-
15 vivors, and disability insurance).

16 “(3) The applicable percentage under this para-
17 graph for civilian service shall be as follows:

“Employee	7	Before January 1, 1999.
	7.25	January 1, 1999, to Decem- ber 31, 1999.
	7.4	January 1, 2000, to Decem- ber 31, 2000.
	7.5	January 1, 2001, to Decem- ber 31, 2002.
	7	After December 31, 2002.
Congressional employee	7.5	Before January 1, 1999.
	7.75	January 1, 1999, to Decem- ber 31, 1999.
	7.9	January 1, 2000, to Decem- ber 31, 2000.
	8	January 1, 2001, to Decem- ber 31, 2002.
	7.5	After December 31, 2002.
Member	7.5	Before January 1, 1999.
	7.75	January 1, 1999, to Decem- ber 31, 1999.
	7.9	January 1, 2000, to Decem- ber 31, 2000.
	8	January 1, 2001, to Decem- ber 31, 2002.
	7.5	After December 31, 2002.

Law enforcement officer, firefighter, member of the Capitol Police, or air traffic controller.	7.5	Before January 1, 1999.
	7.75	January 1, 1999, to Decem- ber 31, 1999.
	7.9	January 1, 2000, to Decem- ber 31, 2000.
	8	January 1, 2001, to Decem- ber 31, 2002.
	7.5	After December 31, 2002.”.

1 (B) MILITARY SERVICE.—Section 8422(e)
2 of title 5, United States Code, is amended—
3 (i) in paragraph (1)(A) by inserting
4 “and subject to paragraph (6),” after “Ex-
5 cept as provided in subparagraph (B),”;
6 and
7 (ii) by adding at the end the
8 following:
9 “(6) The percentage of basic pay under section
10 204 of title 37 payable under paragraph (1), with
11 respect to any period of military service performed
12 during—
13 “(A) January 1, 1999, through December
14 31, 1999, shall be 3.25 percent;
15 “(B) January 1, 2000, through December
16 31, 2000, shall be 3.4 percent; and
17 “(C) January 1, 2001, through December
18 31, 2002, shall be 3.5 percent.”.
19 (C) VOLUNTEER SERVICE.—Section
20 8422(f) of title 5, United States Code, is
21 amended—

1 (i) in paragraph (1) by adding at the
2 end the following: “This paragraph shall
3 be subject to paragraph (4).”; and

4 (ii) by adding at the end the
5 following:

6 “(4) The percentage of the readjustment allow-
7 ance or stipend (as the case may be) payable under
8 paragraph (1), with respect to any period of volun-
9 teer service performed during—

10 “(A) January 1, 1999, through December
11 31, 1999, shall be 3.25 percent;

12 “(B) January 1, 2000, through December
13 31, 2000, shall be 3.4 percent; and

14 “(C) January 1, 2001, through December
15 31, 2002, shall be 3.5 percent.”.

16 (2) NO REDUCTION IN AGENCY CONTRIBU-
17 TIONS.—Agency contributions under section 8423
18 (a) and (b) of title 5, United States Code, shall not
19 be reduced as a result of the amendments made
20 under paragraph (1) of this subsection.

21 (c) CENTRAL INTELLIGENCE AGENCY RETIREMENT
22 AND DISABILITY SYSTEM.—

23 (1) AGENCY CONTRIBUTIONS.—Notwithstand-
24 ing section 211(a)(2) of the Central Intelligence
25 Agency Retirement Act (50 U.S.C. 2021(a)(2))—

1 (A) during the period beginning on Octo-
 2 ber 1, 1997, through September 30, 2001, the
 3 Central Intelligence Agency shall contribute
 4 8.51 percent of the basic pay of an employee
 5 participating in the Central Intelligence Agency
 6 Retirement and Disability System; and

7 (B) during the period beginning on Octo-
 8 ber 1, 2001, through September 30, 2002, the
 9 Central Intelligence Agency shall contribute 8.6
 10 percent of the basic pay of an employee partici-
 11 pating in the Central Intelligence Agency Re-
 12 tirement and Disability System.

13 (2) INDIVIDUAL DEDUCTIONS, WITHHOLDINGS,
 14 AND DEPOSITS.—Notwithstanding section 211(a)(1)
 15 of the Central Intelligence Agency Retirement Act
 16 (50 U.S.C. 2021(a)(1)) beginning on January 1,
 17 1999, through December 31, 2002, the amount
 18 withheld and deducted from the basic pay of an em-
 19 ployee participating in Central Intelligence Agency
 20 Retirement and Disability System shall be as
 21 follows:

“7.25 January 1, 1999, to December 31, 1999.
 7.4 January 1, 2000, to December 31, 2000.
 7.5 January 1, 2001, to December 31, 2002.
 7 After December 31, 2002.”

1 (3) MILITARY SERVICE.—Section 252(h)(1) of
 2 the Central Intelligence Agency Retirement Act (50
 3 U.S.C. 2082(h)(1)), is amended to read as follows:

4 “(h)(1)(A) Each participant who has performed mili-
 5 tary service before the date of separation on which entitle-
 6 ment to an annuity under this title is based may pay to
 7 the Agency an amount equal to 7 percent of the amount
 8 of basic pay paid under section 204 of title 37, United
 9 States Code, to the participant for each period of military
 10 service after December 1956; except, the amount to be
 11 paid for military service performed beginning on January
 12 1, 1999, through December 31, 2002, shall be as follows:

“7.25 percent of basic pay.	January 1, 1999, to December 31, 1999.
7.4 percent of basic pay.	January 1, 2000, to December 31, 2000.
7.5 percent of basic pay.	January 1, 2001, to December 31, 2002.
7 percent of basic pay.	After December 31, 2002.

13 “(B) The amount of such payments shall be based
 14 on such evidence of basic pay for military service as the
 15 participant may provide or, if the Director determines suf-
 16 ficient evidence has not been provided to adequately deter-
 17 mine basic pay for military service, such payment shall
 18 be based upon estimates of such basic pay provided to the
 19 Director under paragraph (4).”.

20 (d) FOREIGN SERVICE RETIREMENT AND DISABIL-
 21 ITY SYSTEM.—

1 (1) AGENCY CONTRIBUTIONS.—Notwithstand-
2 ing section 805(a) (1) and (2) of the Foreign Service
3 Act of 1980 (22 U.S.C. 4045(a) (1) and (2))—

4 (A) during the period beginning on Octo-
5 ber 1, 1997, through September 30, 2001, each
6 agency employing a participant in the Foreign
7 Service Retirement and Disability System shall
8 contribute to the Foreign Service Retirement
9 and Disability Fund—

10 (i) 8.51 percent of the basic pay of
11 each participant covered under section
12 805(a)(1) of such Act participating in the
13 Foreign Service Retirement and Disability
14 System; and

15 (ii) 9.01 percent of the basic pay of
16 each participant covered under section
17 805(a)(2) of such Act participating in the
18 Foreign Service Retirement and Disability
19 System; and

20 (B) during the period beginning on Octo-
21 ber 1, 2001, through September 30, 2002, each
22 agency employing a participant in the Foreign
23 Service Retirement and Disability System shall
24 contribute to the Foreign Service Retirement
25 and Disability Fund—

1 (i) 8.6 percent of the basic pay of
 2 each participant covered under section
 3 805(a)(1) of such Act participating in the
 4 Foreign Service Retirement and Disability
 5 System; and

6 (ii) 9.1 percent of the basic pay of
 7 each participant covered under section
 8 805(a)(2) of such Act participating in the
 9 Foreign Service Retirement and Disability
 10 System.

11 (2) INDIVIDUAL DEDUCTIONS, WITHHOLDINGS,
 12 AND DEPOSITS.—

13 (A) IN GENERAL.—Notwithstanding sec-
 14 tion 805(a)(1) of the Foreign Service Act of
 15 1980 (22 U.S.C. 4045(a)(1)), beginning on
 16 January 1, 1999, through December 31, 2002,
 17 the amount withheld and deducted from the
 18 basic pay of a participant in the Foreign Serv-
 19 ice Retirement and Disability System shall be
 20 as follows:

“7.25 January 1, 1999, to December 31, 1999.
 7.4 January 1, 2000, to December 31, 2000.
 7.5 January 1, 2001, to December 31, 2002.
 7 After December 31, 2002.”

21 (B) FOREIGN SERVICE CRIMINAL INVES-
 22 TIGATORS/INSPECTORS OF THE OFFICE OF THE
 23 INSPECTOR GENERAL, AGENCY FOR INTER-

1 NATIONAL DEVELOPMENT.—Notwithstanding
 2 section 805(a)(2) of the Foreign Service Act of
 3 1980 (22 U.S.C. 4045(a)(2)), beginning on
 4 January 1, 1999, through December 31, 2002,
 5 the amount withheld and deducted from the
 6 basic pay of an eligible Foreign Service criminal
 7 investigator/inspector of the Office of the In-
 8 spector General, Agency for International De-
 9 velopment participating in the Foreign Service
 10 Retirement and Disability System shall be as
 11 follows:

“7.75 January 1, 1999, to December 31, 1999.
 7.9 January 1, 2000, to December 31, 2000.
 8 January 1, 2001, to December 31, 2002.
 7.5 After December 31, 2002.”.

12 (C) MILITARY SERVICE.—Section 805(e) of
 13 the Foreign Service Act of 1980 (22 U.S.C.
 14 4045(e)) is amended—

15 (i) in subsection (e)(1) by striking
 16 “Each” and inserting “Subject to para-
 17 graph (5), each”; and

18 (ii) by adding after paragraph (4) the
 19 following new paragraph:

20 “(5) Effective with respect to any period of
 21 military service after December 31, 1998, the per-
 22 centage of basic pay under section 204 of title 37,
 23 United States Code, payable under paragraph (1)

1 shall be equal to the same percentage as would be
 2 applicable under section 8334(c) of title 5, United
 3 States Code, for that same period for service as an
 4 employee.”.

5 (e) FOREIGN SERVICE PENSION SYSTEM.—

6 (1) INDIVIDUAL DEDUCTIONS AND
 7 WITHHOLDINGS FROM PAY.—

8 (A) IN GENERAL.—Section 856(a) of the
 9 Foreign Service Act of 1980 (22 U.S.C.
 10 4071e(a)) is amended to read as follows:

11 “(a)(1) The employing agency shall deduct and with-
 12 hold from the basic pay of each participant the applicable
 13 percentage of basic pay specified in paragraph (2) of this
 14 subsection minus the percentage then in effect under sec-
 15 tion 3101(a) of the Internal Revenue Code of 1986 (26
 16 U.S.C. 3101(a)) (relating to the rate of tax for old age,
 17 survivors, and disability insurance).

18 “(2) The applicable percentage under this subsection
 19 shall be as follows:

“7.5	Before January 1, 1999.
7.75	January 1, 1999, to December 31, 1999.
7.9	January 1, 2000, to December 31, 2000.
8	January 1, 2001, to December 31, 2002.
7.5	After December 31, 2002.”.

20 (B) VOLUNTEER SERVICE.—Subsection
 21 854(c) of the Foreign Service Act of 1980 (22
 22 U.S.C. 4071e(c)) is amended to read as follows:

1 “(c)(1) Credit shall be given under this System to a
2 participant for a period of prior satisfactory service as—

3 “(A) a volunteer or volunteer leader under the
4 Peace Corps Act (22 U.S.C. 2501 et seq.),

5 “(B) a volunteer under part A of title VIII of
6 the Economic Opportunity Act of 1964, or

7 “(C) a full-time volunteer for a period of service
8 of at least 1 year’s duration under part A, B, or C
9 of title I of the Domestic Volunteer Service Act of
10 1973 (42 U.S.C. 4951 et seq.),

11 if the participant makes a payment to the Fund equal to
12 3 percent of pay received for the volunteer service; except,
13 the amount to be paid for volunteer service beginning on
14 January 1, 1999, through December 31, 2002, shall be
15 as follows:

“3.25 January 1, 1999, to December 31, 1999.
3.4 January 1, 2000, to December 31, 2000.
3.5 January 1, 2001, to December 31, 2002.”

16 “(2) The amount of such payments shall be deter-
17 mined in accordance with regulations of the Secretary of
18 State consistent with regulations for making correspond-
19 ing determinations under chapter 83, title 5, United
20 States Code, together with interest determined under reg-
21 ulations issued by the Secretary of State.”.

22 (2) NO REDUCTION IN AGENCY CONTRIBU-
23 TIONS.—Agency contributions under section 857 of

1 the Foreign Service Act of 1980 (22 U.S.C. 4071f)
2 shall not be reduced as a result of the amendments
3 made under paragraph (1) of this subsection.

4 (f) EFFECTIVE DATE.—Except as otherwise pro-
5 vided, the amendments made by this section shall take ef-
6 fect on the first day of the first applicable pay period be-
7 ginning on or after January 1, 1999.

8 **SEC. 6002. GOVERNMENT CONTRIBUTIONS UNDER THE**
9 **FEDERAL EMPLOYEES HEALTH BENEFITS**
10 **PROGRAM.**

11 (a) IN GENERAL.—Section 8906 of title 5, United
12 States Code, is amended by striking subsection (a) and
13 all that follows through the end of paragraph (1) of sub-
14 section (b) and inserting the following:

15 “(a)(1) Not later than October 1 of each year, the
16 Office of Personnel Management shall determine the
17 weighted average of the subscription charges that will be
18 in effect during the following contract year with respect
19 to—

20 “(A) enrollments under this chapter for self
21 alone; and

22 “(B) enrollments under this chapter for self
23 and family.

24 “(2) In determining each weighted average under
25 paragraph (1), the weight to be given to a particular sub-

1 scription charge shall, with respect to each plan (and op-
2 tion) to which it is to apply, be commensurate with the
3 number of enrollees enrolled in such plan (and option) as
4 of March 31 of the year in which the determination is
5 being made.

6 “(3) For purposes of paragraph (2), the term ‘en-
7 rollee’ means any individual who, during the contract year
8 for which the weighted average is to be used under this
9 section, will be eligible for a Government contribution for
10 health benefits.

11 “(b)(1) Except as provided in paragraphs (2) and
12 (3), the biweekly Government contribution for health bene-
13 fits for an employee or annuitant enrolled in a health bene-
14 fits plan under this chapter is adjusted to an amount equal
15 to 72 percent of the weighted average under subsection
16 (a)(1) (A) or (B), as applicable. For an employee, the ad-
17 justment begins on the first day of the employee’s first
18 pay period of each year. For an annuitant, the adjustment
19 begins on the first day of the first period of each year
20 for which an annuity payment is made.”.

21 (b) EFFECTIVE DATE.—This section shall take effect
22 on the first day of the contract year that begins in 1999.
23 Nothing in this subsection shall prevent the Office of Per-
24 sonnel Management from taking any action, before such

1 first day, which it considers necessary in order to ensure
2 the timely implementation of this section.

3 **SEC. 6003. REPEAL OF AUTHORIZATION OF TRANSITIONAL**
4 **APPROPRIATIONS FOR THE UNITED STATES**
5 **POSTAL SERVICE.**

6 (a) REPEAL.—

7 (1) IN GENERAL.—Section 2004 of title 39,
8 United States Code, is repealed.

9 (2) TECHNICAL AND CONFORMING AMEND-
10 MENTS.—

11 (A) The table of sections for chapter 20 of
12 such title is amended by repealing the item re-
13 lating to section 2004.

14 (B) Section 2003(e)(2) of such title is
15 amended by striking “sections 2401 and 2004”
16 each place it appears and inserting “section
17 2401”.

18 (b) CLARIFICATION THAT LIABILITIES FORMERLY
19 PAID PURSUANT TO SECTION 2004 REMAIN LIABILITIES
20 PAYABLE BY THE POSTAL SERVICE.—Section 2003 of
21 title 39, United States Code, is amended by adding at the
22 end the following:

23 “(h) Liabilities of the former Post Office Department
24 to the Employees’ Compensation Fund (appropriations for
25 which were authorized by former section 2004, as in effect

1 before the effective date of this subsection) shall be liabil-
2 ities of the Postal Service payable out of the Fund.”.

3 (c) EFFECTIVE DATE.—This section and the amend-
4 ments made by this section shall be effective as of October
5 1, 1997.

6 **Subtitle B—GSA Property Sales**

7 **SEC. 6011. SALE OF GOVERNORS ISLAND, NEW YORK.**

8 (a) IN GENERAL.—Notwithstanding any other provi-
9 sion of law, the Administrator of General Services shall,
10 no earlier than fiscal year 2002, dispose of by sale at fair
11 market value all rights, title, and interests of the United
12 States in and to the land of, and improvements to, Gov-
13 ernors Island, New York.

14 (b) RIGHT OF FIRST OFFER.—Before a sale is made
15 under subsection (a) to any other parties, the State of
16 New York and the city of New York shall be given the
17 right of first offer to purchase all or part of Governors
18 Island at fair market value as determined by the Adminis-
19 trator of General Services. Not later than 90 days after
20 notification by the Administrator of General Services, such
21 right may be exercised by either the State of New York
22 or the city of New York or by both parties acting jointly.

23 (c) PROCEEDS.—Proceeds from the disposal of Gov-
24 ernors Island under subsection (a) shall be deposited in

1 the general fund of the Treasury and credited as mis-
2 cellaneous receipts.

3 **SEC. 6012. SALE OF AIR RIGHTS.**

4 (a) IN GENERAL.—Notwithstanding any other provi-
5 sion of law, the Administrator of General Services shall
6 sell, at fair market value and in a manner to be deter-
7 mined by the Administrator, the air rights adjacent to
8 Washington Union Station described in subsection (b), in-
9 cluding air rights conveyed to the Administrator under
10 subsection (d). The Administrator shall complete the sale
11 by such date as is necessary to ensure that the proceeds
12 from the sale will be deposited in accordance with sub-
13 section (c).

14 (b) DESCRIPTION.—The air rights referred to in sub-
15 section (a) total approximately 16.5 acres and are depicted
16 on the plat map of the District of Columbia as follows:

17 (1) Part of lot 172, square 720.

18 (2) Part of lots 172 and 823, square 720.

19 (3) Part of lot 811, square 717.

20 (c) PROCEEDS.—Before September 30, 2002, pro-
21 ceeds from the sale of air rights under subsection (a) shall
22 be deposited in the general fund of the Treasury and cred-
23 ited as miscellaneous receipts.

24 (d) CONVEYANCE OF AMTRAK AIR RIGHTS.—

1 (1) GENERAL RULE.—As a condition of future
 2 Federal financial assistance, Amtrak shall convey to
 3 the Administrator of General Services on or before
 4 December 31, 1997, at no charge, all of the air
 5 rights of Amtrak described in subsection (b).

6 (2) FAILURE TO COMPLY.—If Amtrak does not
 7 meet the condition established by paragraph (1),
 8 Amtrak shall be prohibited from obligating Federal
 9 funds after March 1, 1998.

10 **TITLE VII—COMMITTEE ON**
 11 **LABOR AND HUMAN RESOURCES**

12 **SEC. 7001. MANAGEMENT AND RECOVERY OF RESERVES.**

13 (a) AMENDMENT.—Section 422 of the Higher Edu-
 14 cation Act of 1965 (20 U.S.C. 1072) is amended by add-
 15 ing after subsection (g) the following new subsection:

16 “(h) RECALL OF RESERVES; LIMITATIONS ON USE
 17 OF RESERVE FUNDS AND ASSETS.—

18 (1) IN GENERAL.—Notwithstanding any other
 19 provision of law, the Secretary shall, except as other-
 20 wise provided in this subsection, recall
 21 \$1,028,000,000 from the reserve funds held by
 22 guaranty agencies under this part (which for pur-
 23 poses of this subsection shall include any reserve
 24 funds held by, or under the control of, any other en-
 25 tity) on September 1, 2002.

1 “(2) DEPOSIT.—Funds recalled by the Sec-
2 retary under this subsection shall be deposited in the
3 Treasury.

4 “(3) EQUITABLE SHARE.—The Secretary shall
5 require each guaranty agency to return reserve
6 funds under paragraph (1) based on such agency’s
7 equitable share of excess reserve funds held by guar-
8 anty agencies as of September 30, 1996. For pur-
9 poses of this paragraph, a guaranty agency’s equi-
10 table share of excess reserve funds shall be deter-
11 mined as follows:

12 “(A) The Secretary shall compute each
13 agency’s reserve ratio by dividing (i) the
14 amount held in such agency’s reserve (including
15 funds held by, or under the control of, any
16 other entity) as of September 30, 1996, by (ii)
17 the original principal amount of all loans for
18 which such agency has an outstanding insur-
19 ance obligation.

20 “(B) If the reserve ratio of any agency as
21 computed under subparagraph (A) exceeds 1.12
22 percent, the agency’s equitable share shall in-
23 clude so much of the amounts held in such
24 agency’s reserve fund as exceed a reserve ratio
25 of 1.12 percent.

1 “(C) If any additional amount is required
2 to be recalled under paragraph (1) (after de-
3 ducting the total of the equitable shares cal-
4 culated under subparagraph (B)), the agencies’
5 equitable shares shall include additional
6 amounts—

7 “(i) determined by imposing on each
8 such agency an equal percentage reduction
9 in the amount of each agency’s reserve
10 fund remaining after deduction of the
11 amount recalled under subparagraph (B);
12 and

13 “(ii) the total of which equals the ad-
14 ditional amount that is required to be re-
15 called under paragraph (1) (after deduct-
16 ing the total of the equitable shares cal-
17 culated under subparagraph (B)).

18 “(4) RESTRICTED ACCOUNTS.—Within 90 days
19 after the beginning of each of fiscal years 1998
20 through 2002, each guaranty agency shall transfer
21 a portion of each agency’s equitable share deter-
22 mined under paragraph (3) to a restricted account
23 established by the guaranty agency that is of a type
24 selected by the guaranty agency with the approval of
25 the Secretary. Funds transferred to such restricted

1 accounts shall be invested in obligations issued or
2 guaranteed by the United States or in other simi-
3 larly low-risk securities. A guaranty agency shall not
4 use the funds in such a restricted account for any
5 purpose without the express written permission of
6 the Secretary, except that a guaranty agency may
7 use the earnings from such restricted account for ac-
8 tivities to reduce student loan defaults under this
9 part. The portion required to be transferred shall be
10 determined as follows:

11 “(A) In fiscal year 1998—

12 “(i) all agencies combined shall trans-
13 fer to a restricted account an amount
14 equal to one-fifth of the total amount re-
15 called under paragraph (1);

16 “(ii) each agency with a reserve ratio
17 (as computed under paragraph (3)(A))
18 that exceeds 2 percent shall transfer to a
19 restricted account so much of the amounts
20 held in such agency’s reserve fund as ex-
21 ceed a reserve ratio of 2 percent; and

22 “(iii) each agency shall transfer any
23 additional amount required under clause
24 (i) (after deducting the amount transferred
25 under clause (ii)) by transferring an

1 amount that represents an equal percent-
2 age of each agency's equitable share to a
3 restricted account.

4 “(B) In fiscal years 1999 through 2002,
5 each agency shall transfer an amount equal to
6 one-fourth of the total amount remaining of the
7 agency's equitable share (after deduction of the
8 amount transferred under subparagraph (A)).

9 “(5) SHORTAGE.—If, on September 1, 2002,
10 the total amount in the restricted accounts described
11 in paragraph (4) is less than the amount the Sec-
12 retary is required to recall under paragraph (1), the
13 Secretary may require the return of the amount of
14 the shortage from other reserve funds held by guar-
15 anty agencies under procedures established by the
16 Secretary.

17 “(6) PROHIBITION.—The Secretary shall not
18 have any authority to direct a guaranty agency to
19 return reserve funds under subsection (g)(1)(A) dur-
20 ing the period from the date of enactment of this
21 subsection through September 30, 2002, and any re-
22 serve funds otherwise returned under subsection
23 (g)(1) during such period shall be treated as
24 amounts recalled under this subsection and shall not
25 be available under subsection (g)(4).

1 (1) IN GENERAL.—Each fiscal year, there shall
2 be available to the Secretary from funds not other-
3 wise appropriated, funds to be obligated for—

4 “(A) administrative costs under this part, in-
5 cluding the costs of the direct student loan programs
6 under this part, and

7 “(B) administrative cost allowances payable to
8 guaranty agencies under part B and calculated in
9 accordance with paragraph (2),

10 not to exceed (from such funds not otherwise appro-
11 priated) \$532,000,000 in fiscal year 1998, \$610,000,000
12 in fiscal year 1999, \$705,000,000 in fiscal year 2000,
13 \$750,000,000 in fiscal year 2001, and \$750,000,000 in
14 fiscal year 2002. Administrative cost allowances under
15 subparagraph (B) of this paragraph shall be paid quar-
16 terly and used in accordance with section 428(f). The Sec-
17 retary may carry over funds available under this section
18 to a subsequent fiscal year.

19 “(2) CALCULATION BASIS.—Administrative cost
20 allowances payable to guaranty agencies under para-
21 graph (1)(B) shall be calculated on the basis of 0.85
22 percent of the total principal amount of loans upon
23 which insurance is issued on or after the date of en-
24 actment of the Balanced Budget Act of 1997, except
25 that such allowances shall not exceed—

1 “(A) \$170,000,000 for each of the fiscal
2 years 1998 and 1999; or

3 “(B) \$150,000,000 for each of the fiscal
4 years 2000, 2001, and 2002.”.

5 **SEC. 7004. EXTENSION OF STUDENT AID PROGRAMS.**

6 Title IV of the Higher Education Act of 1965 (20
7 U.S.C. 1070 et seq.) is amended—

8 (1) in section 424(a), by striking “1998.” and
9 “2002.” and inserting “2002.” and “2006.”, respec-
10 tively;

11 (2) in section 428(a)(5), by striking “1998,”
12 and “2002.” and inserting “2002,” and “2006.”, re-
13 spectively; and

14 (3) in section 428C(e), by striking “1998.” and
15 inserting “2002.”.

16 **TITLE VIII—COMMITTEE ON**
17 **VETERANS’ AFFAIRS**

18 **SEC. 8001. SHORT TITLE; TABLE OF CONTENTS.**

19 (a) **SHORT TITLE.**—This title may be cited as the
20 “Veterans Reconciliation Act of 1997”.

21 (b) **TABLE OF CONTENTS.**—The table of contents for
22 this title is as follows:

TITLE VIII—COMMITTEE ON VETERANS’ AFFAIRS

Sec. 8001. Short title; table of contents.

Subtitle A—Extension of Temporary Authorities

Sec. 8011. Enhanced loan asset sale authority.

Sec. 8012. Home loan fees.

- Sec. 8013. Procedures applicable to liquidation sales on defaulted home loans guaranteed by the Department of Veterans Affairs.
- Sec. 8014. Income verification authority.
- Sec. 8015. Limitation on pension for certain recipients of medicaid-covered nursing home care.

Subtitle B—Copayments and Medical Care Cost Recovery

- Sec. 8021. Authority to require that certain veterans make copayments in exchange for receiving health care benefits.
- Sec. 8022. Medical care cost recovery authority.
- Sec. 8023. Department of Veterans Affairs medical-care receipts.

Subtitle C—Other Matters

- Sec. 8031. Rounding down of cost-of-living adjustments in compensation and DIC rates in fiscal years 1998 through 2002.
- Sec. 8032. Increase in amount of home loan fees for the purchase of repossessed homes from the Department of Veterans Affairs.
- Sec. 8033. Withholding of payments and benefits.

1 **Subtitle A—Extension of**
 2 **Temporary Authorities**

3 **SEC. 8011. ENHANCED LOAN ASSET SALE AUTHORITY.**

4 Section 3720(h)(2) of title 38, United States Code,
 5 is amended by striking out “December 31, 1997” and in-
 6 serting in lieu thereof “December 31, 2002”.

7 **SEC. 8012. HOME LOAN FEES.**

8 Section 3729(a) of title 38, United States Code, is
 9 amended—

10 (1) in paragraph (4), by striking out “October
 11 1, 1998” and inserting in lieu thereof “October 1,
 12 2002”; and

13 (2) in paragraph (5)(C), by striking out “Octo-
 14 ber 1, 1998” and inserting in lieu thereof “October
 15 1, 2002”.

1 **SEC. 8013. PROCEDURES APPLICABLE TO LIQUIDATION**
2 **SALES ON DEFAULTED HOME LOANS GUAR-**
3 **ANTEED BY THE DEPARTMENT OF VETERANS**
4 **AFFAIRS.**

5 Section 3732(c)(11) of title 38, United States Code,
6 is amended by striking out “October 1, 1998” and insert-
7 ing in lieu thereof “October 1, 2002”.

8 **SEC. 8014. INCOME VERIFICATION AUTHORITY.**

9 Section 5317(g) of title 38, United States Code, is
10 amended by striking out “September 30, 1998” and in-
11 serting in lieu thereof “September 30, 2002”.

12 **SEC. 8015. LIMITATION ON PENSION FOR CERTAIN RECIPI-**
13 **ENTS OF MEDICAID-COVERED NURSING**
14 **HOME CARE.**

15 Section 5503(f)(7) of title 38, United States Code,
16 is amended by striking out “September 30, 1998” and in-
17 serting in lieu thereof “September 30, 2002”.

18 **Subtitle B—Copayments and**
19 **Medical Care Cost Recovery**

20 **SEC. 8021. AUTHORITY TO REQUIRE THAT CERTAIN VETER-**
21 **ANS MAKE COPAYMENTS IN EXCHANGE FOR**
22 **RECEIVING HEALTH CARE BENEFITS.**

23 (a) **HOSPITAL AND MEDICAL CARE.**—Section
24 8013(e) of the Omnibus Budget Reconciliation Act of
25 1990 (38 U.S.C. 1710 note) is amended by striking out

1 “September 30, 1998” and inserting in lieu thereof “Sep-
2 tember 30, 2002”.

3 (b) **OUTPATIENT MEDICATIONS.**—Section 1722A(c)
4 of title 38, United States Code, is amended by striking
5 out “September 30, 1998” and inserting in lieu thereof
6 “September 30, 2002”.

7 **SEC. 8022. MEDICAL CARE COST RECOVERY AUTHORITY.**

8 Section 1729(a)(2)(E) of title 38, United States
9 Code, is amended by striking out “October 1, 1998” and
10 inserting in lieu thereof “October 1, 2002”.

11 **SEC. 8023. DEPARTMENT OF VETERANS AFFAIRS MEDICAL-**
12 **CARE RECEIPTS.**

13 (a) **ALLOCATION OF RECEIPTS.**—(1) Chapter 17 of
14 title 38, United States Code, is amended by inserting after
15 section 1729 the following new section:

16 **“§ 1729A. Department of Veterans Affairs Medical**
17 **Care Collections Fund**

18 “(a) There is in the Treasury a fund to be known
19 as the Department of Veterans Affairs Medical Care Col-
20 lections Fund.

21 “(b) Amounts recovered or collected after June 30,
22 1997, under any of the following provisions of law shall
23 be deposited in the fund:

24 “(1) Section 1710(f) of this title.

25 “(2) Section 1710(g) of this title.

1 “(3) Section 1711 of this title.

2 “(4) Section 1722A of this title.

3 “(5) Section 1729 of this title.

4 “(6) Public Law 87–693, popularly known as
5 the ‘Federal Medical Care Recovery Act’ (42 U.S.C.
6 2651 et seq.), to the extent that a recovery or collec-
7 tion under that law is based on medical care and
8 services furnished under this chapter.

9 “(c)(1) Subject to the provisions of appropriations
10 Acts, amounts in the fund shall be available to the Sec-
11 retary for the following purposes:

12 “(A) Furnishing medical care and services
13 under this chapter, to be available during any fiscal
14 year for the same purposes and subject to the same
15 limitations as apply to amounts appropriated for
16 that fiscal year for medical care.

17 “(B) Expenses of the Department for the iden-
18 tification, billing, auditing, and collection of amounts
19 owed the United States by reason of medical care
20 and services furnished under this chapter.

21 “(2) Amounts available under paragraph (1) shall be
22 available only for the purposes set forth in that paragraph.

23 “(d) The Secretary shall ensure that the amount
24 made available to a Veterans Integrated Service Network
25 in a fiscal year from amounts in the fund is an amount

1 equal to the amount recovered or collected by the Veterans
2 Integrated Service Network under a provision of law re-
3 ferred to in subsection (b) during the fiscal year.”.

4 (2) The table of sections at the beginning of such
5 chapter is amended by inserting after the item relating
6 to section 1729 the following new item:

“1729A. Department of Veterans Affairs Medical Care Collections Fund.”

7 (b) CONFORMING AMENDMENTS.—Chapter 17 of
8 such title is amended as follows:

9 (1) Section 1710(f) is amended by striking out
10 paragraph (4) and redesignating paragraph (5) as
11 paragraph (4).

12 (2) Section 1710(g) is amended by striking out
13 paragraph (4).

14 (3) Section 1722A(b) is amended by striking
15 out “Department of Veterans Affairs Medical-Care
16 Cost Recovery Fund” and inserting in lieu thereof
17 “Department of Veterans Affairs Medical Care Col-
18 lections Fund”.

19 (4) Section 1729 is amended by striking out
20 subsection (g).

21 (c) DISPOSITION OF FUNDS IN MEDICAL-CARE COST
22 RECOVERY FUND.—The amount of the unobligated bal-
23 ance remaining in the Department of Veterans Affairs
24 Medical-Care Cost Recovery Fund (established pursuant
25 to section 1729(g)(1) of title 38, United States Code) at

1 the close of June 30, 1997, shall be deposited, not later
2 than December 31, 1997, in the Department of Veterans
3 Affairs Medical Care Collections Fund established by sec-
4 tion 1729A(a) of title 38, United States Code, as added
5 by subsection (a).

6 **Subtitle C—Other Matters**

7 **SEC. 8031. ROUNDING DOWN OF COST-OF-LIVING ADJUST-** 8 **MENTS IN COMPENSATION AND DIC RATES IN** 9 **FISCAL YEARS 1998 THROUGH 2002.**

10 (a) COMPENSATION COLAS.—(1) Chapter 11 of title
11 38, United States Code, is amended by inserting after sec-
12 tion 1102 the following new section:

13 **“§ 1103. Cost-of-living adjustments**

14 “(a) In the computation of cost-of-living adjustments
15 for fiscal years 1998 through 2002 in the rates of, and
16 dollar limitations applicable to, compensation payable
17 under this chapter, such adjustments shall be made by a
18 uniform percentage that is no more than the percentage
19 equal to the social security increase for that fiscal year,
20 with all increased monthly rates and limitations (other
21 than increased rates or limitations equal to a whole dollar
22 amount) rounded down to the next lower whole dollar
23 amount.

24 “(b) For purposes of this section, the term ‘social se-
25 curity increase’ means the percentage by which benefit

1 amounts payable under title II of the Social Security Act
2 (42 U.S.C. 401 et seq.) are increased for any fiscal year
3 as a result of a determination under section 215(i) of such
4 Act (42 U.S.C. 415(i)).”.

5 (2) The table of sections at the beginning of such
6 chapter is amended by inserting after the item relating
7 to section 1102 the following new item:

“1103. Cost-of-living adjustments.”.

8 (b) DIC COLAs.—(1) Chapter 13 of title 38, United
9 States Code, is amended by inserting after section 1302
10 the following new section:

11 **“§ 1303. Cost-of-living adjustments**

12 “(a) In the computation of cost-of-living adjustments
13 for fiscal years 1998 through 2002 in the rates of depend-
14 ency and indemnity compensation payable under this
15 chapter, such adjustments (except as provided in sub-
16 section (b)) shall be made by a uniform percentage that
17 is no more than the percentage equal to the social security
18 increase for that fiscal year, with all increased monthly
19 rates (other than increased rates equal to a whole dollar
20 amount) rounded down to the next lower whole dollar
21 amount.

22 “(b)(1) Cost-of-living adjustments for each of fiscal
23 years 1998 through 2002 in old-law DIC rates shall be
24 in a whole dollar amount that is no greater than the

1 amount by which the new-law DIC rate is increased for
 2 that fiscal year as determined under subsection (a).

3 “(2) For purposes of paragraph (1):

4 “(A) The term ‘old-law DIC rates’ means the
 5 dollar amounts in effect under section 1311(a)(3) of
 6 this title.

7 “(B) The term ‘new-law DIC rate’ means the
 8 dollar amount in effect under section 1311(a)(1) of
 9 this title.

10 “(c) For purposes of this section, the term ‘social se-
 11 curity increase’ means the percentage by which benefit
 12 amounts payable under title II of the Social Security Act
 13 (42 U.S.C. 401 et seq.) are increased for any fiscal year
 14 as a result of a determination under section 215(i) of such
 15 Act (42 U.S.C. 415(i)).”.

16 (2) The table of sections at the beginning of such
 17 chapter is amended by inserting after the item relating
 18 to section 1302 the following new item:

“1303. Cost-of-living adjustments.”.

19 **SEC. 8032. INCREASE IN AMOUNT OF HOME LOAN FEES FOR**
 20 **THE PURCHASE OF REPOSSESSED HOMES**
 21 **FROM THE DEPARTMENT OF VETERANS AF-**
 22 **FAIRS.**

23 Section 3729(a) of title 38, United States Code, is
 24 amended—

25 (1) in paragraph (2)—

1 (A) in subparagraph (A), by striking out
2 “or 3733(a)”;

3 (B) in subparagraph (D), by striking out
4 “and” at the end;

5 (C) in subparagraph (E), by striking out
6 the period at the end and inserting in lieu
7 thereof “; and”; and

8 (D) by adding at the end the following:

9 “(F) in the case of a loan made under section
10 3733(a) of this title, the amount of such fee shall be
11 2.25 percent of the total loan amount.”; and

12 (2) in paragraph (4), as amended by section
13 8012(1) of this Act, by striking out “or (E)” and in-
14 serting in lieu thereof “(E), or (F)”.

15 **SEC. 8033. WITHHOLDING OF PAYMENTS AND BENEFITS.**

16 (a) NOTICE REQUIRED IN LIEU OF CONSENT OR
17 COURT ORDER.—Section 3726 of title 38, United States
18 Code, is amended—

19 (1) by inserting “(a)” before “No officer”; and

20 (2) by striking out “unless” and all that follows
21 and inserting in lieu thereof the following: “unless
22 the Secretary provides such veteran or surviving
23 spouse with notice by certified mail with return re-
24 ceipt requested of the authority of the Secretary to

1 waive the payment of indebtedness under section
2 5302(b) of this title.

3 “(b) If the Secretary does not waive the entire
4 amount of the liability, the Secretary shall then determine
5 whether the veteran or surviving spouse should be released
6 from liability under section 3713(b) of this title.

7 “(c) If the Secretary determines that the veteran or
8 surviving spouse should not be released from liability, the
9 Secretary shall notify the veteran or surviving spouse of
10 that determination and provide a notice of the procedure
11 for appealing that determination, unless the Secretary has
12 previously made such determination and notified the vet-
13 eran or surviving spouse of the procedure for appealing
14 the determination.”.

15 (b) CONFORMING AMENDMENT.—Section 5302(b) of
16 such title is amended by inserting “with return receipt re-
17 quested” after “certified mail”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply with respect to any indebtedness
20 to the United States arising pursuant to chapter 37 of
21 title 38, United States Code, before, on, or after the date
22 of enactment of this Act.