

107TH CONGRESS
1ST SESSION

H. R. 3046

To amend title XVIII of the Social Security Act to provide regulatory relief, appeals process reforms, contracting flexibility, and education improvements under the Medicare Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 4, 2001

Mr. TOOMEY (for himself, Ms. BERKLEY, Mr. BILIRAKIS, Mr. BROWN of Ohio, Mr. TAUZIN, Mr. DINGELL, Mr. NORWOOD, Mr. HALL of Texas, Mr. GREENWOOD, Mr. PALLONE, Mr. UPTON, Mrs. CAPPS, Mr. BURR of North Carolina, Mr. STRICKLAND, Mr. BUYER, Mr. WAXMAN, Mr. DEAL of Georgia, Mr. BARRETT of Wisconsin, Mr. WHITFIELD, Mr. STUPAK, Mr. BRYANT, Mr. TOWNS, Mr. PICKERING, Mr. DEUTSCH, Mr. EHRLICH, Mr. WYNN, Mr. BARTON of Texas, Mr. GREEN of Texas, Mr. BAKER, and Mr. COOKSEY) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period of time to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to provide regulatory relief, appeals process reforms, contracting flexibility, and education improvements under the Medicare Program, and for other purposes.

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

1 **SECTION 1. SHORT TITLE; AMENDMENTS TO SOCIAL SECUR-**
 2 **RITY ACT; TABLE OF CONTENTS.**

3 (a) **SHORT TITLE.**—This Act may be cited as the
 4 “Medicare Regulatory, Appeals, Contracting, and Edu-
 5 cation Reform Act of 2001”.

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

12 (c) **BIPA.**—In this Act, the term “BIPA” means the
 13 Medicare, Medicaid, and SCHIP Benefits Improvement
 14 and Protection Act of 2000, as enacted into law by section
 15 1(a)(6) of Public Law 106–554.

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

- Sec. 1. Short title; amendments to Social Security Act; table of contents.
- Sec. 2. Findings.
- Sec. 3. Construction.

TITLE I—REGULATORY REFORM

- Sec. 101. Issuance of regulations.
- Sec. 102. Compliance with changes in regulations and policies.
- Sec. 103. Report on regulatory burdens.
- Sec. 104. Report on the sustainable growth rate and regulatory costs.

TITLE II—APPEALS PROCESS REFORM

- Sec. 201. Transfer of responsibility for medicare appeals.
- Sec. 202. Expedited access to judicial review.
- Sec. 203. Expedited review of certain provider agreement determinations.
- Sec. 204. Revisions to medicare appeals process.

- Sec. 205. Hearing rights related to decisions by the Secretary to deny or not renew a medicare enrollment agreement; consultation before changing provider enrollment forms.
- Sec. 206. Appeals by providers when there is no other party available.

TITLE III—CONTRACTING REFORM

- Sec. 301. Increased flexibility in medicare administration.
- Sec. 302. Requirements for information security.

TITLE IV—EDUCATION AND OUTREACH IMPROVEMENTS

- Sec. 401. Provider education and technical assistance.
- Sec. 402. Access to and prompt responses from medicare administrative contractors.
- Sec. 403. Reliance on guidance.
- Sec. 404. Facilitation of consistent information to providers.
- Sec. 405. Policy development regarding evaluation and management (E & M) documentation guidelines.
- Sec. 406. Beneficiary outreach demonstration program.

TITLE V—REVIEW, RECOVERY, AND ENFORCEMENT REFORM

- Sec. 501. Prepayment review.
- Sec. 502. Recovery of overpayments.
- Sec. 503. Process for correction of incomplete or missing data without pursuing appeals process.
- Sec. 504. Authority to waive a program exclusion.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

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

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

1 **SEC. 3. CONSTRUCTION.**

2 (a) **NO EFFECT ON LEGAL AUTHORITY.**—Nothing in
3 this Act shall be construed to compromise or affect exist-
4 ing legal authority for addressing fraud or abuse, whether
5 it be criminal prosecution, civil enforcement, or adminis-
6 trative remedies, including under sections 3729 through
7 3733 of title 31, United States Code (known as the False
8 Claims Act).

9 (b) **NO EFFECT ON MEDICARE WASTE, FRAUD, AND**
10 **ABUSE EFFORTS.**—Nothing in this Act shall be construed
11 to prevent or impede the Department of Health and
12 Human Services in any way from its ongoing efforts to
13 eliminate waste, fraud, and abuse in the medicare pro-
14 gram.

15 (c) **CLARIFICATION RELATED TO MEDICARE TRUST**
16 **FUNDS.**—The consolidation of medicare administrative
17 contracting set forth in this Act does not constitute (or
18 reflect any position on the issue of) consolidation of the
19 Federal Hospital Insurance Trust Fund and the Federal
20 Supplementary Medical Insurance Trust Fund.

21 **TITLE I—REGULATORY REFORM**

22 **SEC. 101. ISSUANCE OF REGULATIONS.**

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

1 (1) IN GENERAL.—Section 1871 (42 U.S.C.
2 1395hh) is amended by adding at the end the fol-
3 lowing new subsection:

4 “(d)(1) Subject to paragraph (2), the Secretary shall
5 issue proposed or final (including interim final) regula-
6 tions to carry out this title only on one business day of
7 every month.

8 “(2) The Secretary may issue a proposed or final reg-
9 ulation described in paragraph (1) on any other day than
10 the day described in paragraph (1) if the Secretary—

11 “(A) finds that issuance of such regulation on
12 another day is necessary to comply with require-
13 ments under law; or

14 “(B) finds that with respect to that regulation
15 the limitation of issuance on the date described in
16 paragraph (1) is contrary to the public interest.

17 If the Secretary makes a finding under this paragraph,
18 the Secretary shall include such finding, and brief state-
19 ment of the reasons for such finding, in the issuance of
20 such regulation.”.

21 (2) REPORT ON PUBLICATION OF REGULATIONS
22 ON A QUARTERLY BASIS.—Not later than 3 years
23 after the date of the enactment of this Act, the Sec-
24 retary of Health and Human Services (in this Act
25 referred to as the “Secretary”) shall submit to Con-

1 gress a report on the feasibility of requiring that
2 regulations described in section 1871(d) of the So-
3 cial Security Act only be promulgated on a single
4 day every calendar quarter.

5 (3) EFFECTIVE DATE.—The amendment made
6 by paragraph (1) shall apply to regulations promul-
7 gated on or after the date that is 30 days after the
8 date of the enactment of this Act.

9 (b) REGULAR TIMELINE FOR PUBLICATION OF
10 FINAL REGULATIONS.—

11 (1) IN GENERAL.—Section 1871(a) (42 U.S.C.
12 1395hh(a)) is amended by adding at the end the fol-
13 lowing new paragraph:

14 “(3)(A) The Secretary, in consultation with the Di-
15 rector of the Office of Management and Budget, shall es-
16 tablish a regular timeline for the publication of final regu-
17 lations based on the previous publication of a proposed
18 regulation or an interim final regulation.

19 “(B) With respect to publication of final regulations
20 based on the previous publication of a proposed regulation,
21 such timeline may vary among different regulations based
22 on differences in the complexity of the regulation, the
23 number and scope of comments received, and other rel-
24 evant factors.

1 “(C)(i) With respect to the publication of final regu-
2 lations based on the previous publication of an interim
3 final regulation—

4 “(I) subject to clause (ii), the Secretary shall
5 publish the final regulation within the 12-month pe-
6 riod that begins on the date of publication of the in-
7 terim final regulation;

8 “(II) if a final regulation is not published by
9 the deadline established under this subparagraph,
10 the interim final regulation shall not continue in ef-
11 fect unless the Secretary publishes a notice described
12 in clause (ii) by such deadline; and

13 “(III) the final regulation shall include re-
14 sponses to comments submitted in response to the
15 interim final regulation.

16 “(ii) If the Secretary determines before the deadline
17 otherwise established in this subparagraph that there is
18 good cause, specified in a notice published before such
19 deadline, for delaying the deadline otherwise applicable
20 under this subparagraph, the deadline otherwise estab-
21 lished under this subparagraph shall be extended for such
22 period as the Secretary specifies in such notice.”.

23 (2) EFFECTIVE DATE.—The amendment made
24 by paragraph (1) shall take effect on the date of the
25 enactment of this Act. The Secretary of Health and

1 Human Services shall provide for an appropriate
2 transition to take into account the backlog of pre-
3 viously published interim final regulations.

4 (c) LIMITATIONS ON NEW MATTER IN FINAL REGU-
5 LATIONS.—

6 (1) IN GENERAL.—Section 1871(a) (42 U.S.C.
7 1395hh(a)), as amended by subsection (b), is further
8 amended by adding at the end the following new
9 paragraph:

10 “(4) Insofar as a final regulation (other than
11 an interim final regulation) includes a provision that
12 is not a logical outgrowth of the relevant notice of
13 proposed rulemaking relating to such regulation,
14 that provision shall be treated as a proposed regula-
15 tion and shall not take effect until there is the fur-
16 ther opportunity for public comment and a publica-
17 tion of the provision again as a final regulation.”.

18 (2) EFFECTIVE DATE.—The amendment made
19 by paragraph (1) shall apply to final regulations
20 published on or after the date of the enactment of
21 this Act.

22 **SEC. 102. COMPLIANCE WITH CHANGES IN REGULATIONS**
23 **AND POLICIES.**

24 (a) NO RETROACTIVE APPLICATION OF SUB-
25 STANTIVE CHANGES.—

1 (1) IN GENERAL.—Section 1871 (42 U.S.C.
2 1395hh), as amended by section 101(a), is amended
3 by adding at the end the following new subsection:

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

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

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

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

18 (b) TIMELINE FOR COMPLIANCE WITH SUBSTANTIVE
19 CHANGES AFTER NOTICE.—

20 (1) IN GENERAL.—Section 1871(e)(1), as
21 added by subsection (a), is further amended by add-
22 ing at the end the following:

23 “(B) A compliance action may be made against a pro-
24 vider of services, physician, practitioner, or other supplier
25 with respect to noncompliance with such a substantive

1 change only for items and services furnished on or after
2 the effective date of the change.

3 “(C)(i) Except as provided in clause (ii), a sub-
4 stantive change may not take effect until not earlier than
5 the date that is the end of the 30-day period that begins
6 on the date that the Secretary has issued or published,
7 as the case may be, the substantive change.

8 “(ii) The Secretary may provide for a substantive
9 change to take effect on a date the precedes the end of
10 the 30-day period under clause (i) if the Secretary finds
11 that waiver of such 30-day period is necessary to comply
12 with statutory requirements or that the application of such
13 30-day period is contrary to the public interest. If the Sec-
14 retary provides for an earlier effective date pursuant to
15 this clause, the Secretary shall include in the issuance or
16 publication of the substantive change a finding described
17 in the first sentence, and a brief statement of the reasons
18 for such finding.”.

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

1 **SEC. 103. REPORT ON REGULATORY BURDENS.**

2 Section 1871 (42 U.S.C. 1395hh), as amended by
3 sections 101(a) and 102, is amended by adding at the end
4 the following new subsection:

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

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

13 “(A) information from beneficiaries, providers
14 of services, physicians, practitioners, and other sup-
15 pliers, and from the individual under section 404 of
16 the Medicare Regulatory, Appeals, Contracting, and
17 Education Reform Act of 2001 with respect to such
18 areas of inconsistency and conflict; and

19 “(B) information from medicare contractors
20 that tracks the nature of written and telephones in-
21 quiries.

22 “(3) A report under paragraph (1) shall include a de-
23 scription of efforts by the Secretary to reduce such incon-
24 sistency or conflicts, and recommendations for legislation
25 or administrative action that the Secretary determines ap-

1 appropriate to further reduce such inconsistency or con-
2 flicts.”.

3 **SEC. 104. REPORT ON THE SUSTAINABLE GROWTH RATE**
4 **AND REGULATORY COSTS.**

5 Not later than 18 months after the date of the enact-
6 ment of this Act, the Comptroller General of the United
7 States shall submit to Congress a report on the accuracy
8 of the sustainable growth rate (under section 1848(f) of
9 the Social Security Act, 42 U.S.C. 1395w-4(f)) in ac-
10 counting for regulatory costs.

11 **TITLE II—APPEALS PROCESS**
12 **REFORM**

13 **SEC. 201. TRANSFER OF RESPONSIBILITY FOR MEDICARE**
14 **APPEALS.**

15 (a) DESIGNATION OF MEDICARE-ONLY ADMINISTRA-
16 TIVE LAW JUDGES.—The Commissioner of Social Security
17 shall designate, not later than 60 days after the date of
18 the enactment of this Act, certain administrative law
19 judges of the Social Security Administration whose duties
20 to hear and decide appeals shall be limited to those ap-
21 peals arising under title XVIII of the Social Security Act,
22 including under section 1869 of such Act (as amended by
23 section 521 of BIPA, 114 Stat. 2763A-534). The Com-
24 missioner shall only provide for the assignment of such
25 appeals to the judges so designated.

1 (b) MEDICARE-SPECIFIC TRAINING.—Not later than
2 60 days after the date on which the Commissioner of So-
3 cial Security designates administrative law judges under
4 subsection (a), the Secretary of Health and Human Serv-
5 ices shall provide for appropriate education and training
6 of those judges with respect to appeals under the medicare
7 program. Such education and training shall be furnished
8 not less frequently than annually, and shall be updated
9 as the Secretary determines appropriate.

10 (c) TRANSITION PLAN.—

11 (1) IN GENERAL.—Not later than October 1,
12 2002, the Commissioner of Social Security and the
13 Secretary of Health and Human Services shall de-
14 velop and transmit to Congress a plan under which
15 administrative law judges responsible solely for hear-
16 ing appeals described in subsection (a)(1) are trans-
17 ferred from the responsibility of the Commissioner
18 and the Social Security Administration to the Sec-
19 retary and the Department of Health and Human
20 Services.

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

23 (A) WORKLOAD.—The number of such ad-
24 ministrative law judges and support staff re-
25 quired now and in the future to hear and decide

1 such cases in a timely manner, taking into ac-
2 count the current and anticipated claims vol-
3 ume, appeals, number of beneficiaries, and stat-
4 utory changes.

5 (B) COST PROJECTIONS.—Funding levels
6 required for fiscal year 2004 and subsequent
7 fiscal years under this subsection to hear such
8 cases in a timely manner.

9 (C) TRANSITION TIMETABLE.—A timetable
10 for the transition.

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

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

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

1 (G) ACCESS TO ADMINISTRATIVE LAW
2 JUDGES.—The feasibility of filing appeals with
3 administrative law judges electronically, and the
4 feasibility of conducting hearings using tele- or
5 video-conference technologies.

6 (3) ADDITIONAL INFORMATION.—The plan may
7 also include recommendations for further Congres-
8 sional action, including modifications to the require-
9 ments and deadlines established under section 1869
10 of the Social Security Act (as amended by sections
11 521 and 522 of BIPA, 114 Stat. 2763A–534).

12 (d) TRANSFER OF ADJUDICATION AUTHORITY.—

13 (1) IN GENERAL.—Not later than October 1,
14 2003, the Commissioner of Social Security and the
15 Secretary shall provide for the transfer of responsi-
16 bility for the administrative law judges designated
17 under subsection (a) (and responsibilities of such
18 judges) from the Social Security Administration to
19 the Secretary of Health and Human Services.

20 (2) ASSURING INDEPENDENCE OF JUDGES.—
21 The Secretary shall effect such transfer in a manner
22 that assures the independence of such judges from
23 the Centers for Medicare & Medicaid Services and
24 its contractors.

1 (3) GEOGRAPHIC DISTRIBUTION.—The Sec-
2 retary shall provide for an appropriate geographic
3 distribution of such judges throughout the United
4 States to ensure timely access to such judges.

5 (4) HIRING AUTHORITY.—Subject to the
6 amounts provided in advance in appropriations Act,
7 the Secretary shall have authority to hire additional
8 administrative law judges to hear such cases, giving
9 priority to those judges with prior experience in han-
10 dling medicare appeals and in a manner consistent
11 with paragraph (3), and to hire support staff for
12 such judges.

13 (5) FINANCING.—Amounts payable under law
14 to the Commissioner for such judges from the Fed-
15 eral Hospital Insurance Trust Fund and the Federal
16 Supplementary Medical Insurance Trust Fund shall
17 become payable to the Secretary for the judges so
18 transferred.

19 (6) SHARED OFFICE SPACE.—The Secretary
20 shall enter into such arrangements with the Com-
21 missioner as may be appropriate for transferred ad-
22 ministrative law judges to share office space, sup-
23 port staff, and other resources, with appropriate re-
24 imbursement from the Trust Funds described in
25 paragraph (5).

1 (e) INCREASED FINANCIAL SUPPORT.—In addition to
2 any amounts otherwise appropriated, to ensure timely ac-
3 tion on appeals before administrative law judges consistent
4 with section 1869 of the Social Security Act (as amended
5 by section 521 of BIPA, 114 Stat. 2763A–534), there are
6 authorized to be appropriated (in appropriate part from
7 the Federal Hospital Insurance Trust Fund and the Fed-
8 eral Supplementary Medical Insurance Trust Fund) to the
9 Secretary to increase the number of administrative law
10 judges (and their staffs) under subsection (d)(4) and to
11 improve education and training opportunities for adminis-
12 trative law judges (and their staffs), such sums as are nec-
13 essary for fiscal year 2003 and each subsequent fiscal
14 year.

15 **SEC. 202. EXPEDITED ACCESS TO JUDICIAL REVIEW.**

16 (a) IN GENERAL.—Section 1869(b) (42 U.S.C.
17 1395ff(b)), as amended by section 521 of BIPA, 114 Stat.
18 2763A–534, is amended—

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

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

24 “(2) EXPEDITED ACCESS TO JUDICIAL RE-
25 VIEW.—

1 “(A) IN GENERAL.—The Secretary shall
2 establish a process under which a provider of
3 service or supplier that furnishes an item or
4 service or a beneficiary who has filed an appeal
5 under paragraph (1) (other than an appeal filed
6 under paragraph (1)(F)) may obtain access to
7 judicial review when a review panel (described
8 in subparagraph (D)), on its own motion or at
9 the request of the appellant, determines that
10 the Departmental Appeals Board does not have
11 the authority to decide the question of law or
12 regulation relevant to the matters in con-
13 troversy and that there is no material issue of
14 fact in dispute. The appellant may make such
15 request only once with respect to a question of
16 law or regulation for a specific matter in dis-
17 pute in a case of an appeal.

18 “(B) PROMPT DETERMINATIONS.—If, after
19 or coincident with appropriately filing a request
20 for an administrative hearing, the appellant re-
21 quests a determination by the appropriate re-
22 view panel that the Departmental Appeals
23 Board does not have the authority to decide the
24 question of law or regulations relevant to the
25 matters in controversy and that there is no ma-

1 material issue of fact in dispute and if such re-
2 quest is accompanied by the documents and
3 materials as the appropriate review panel shall
4 require for purposes of making such determina-
5 tion, such review panel shall make a determina-
6 tion on the request in writing within 60 days
7 after the date such review panel receives the re-
8 quest and such accompanying documents and
9 materials. Such a determination by such review
10 panel shall be considered a final decision and
11 not subject to review by the Secretary.

12 “(C) ACCESS TO JUDICIAL REVIEW.—

13 “(i) IN GENERAL.—If the appropriate
14 review panel—

15 “(I) determines that there are no
16 material issues of fact in dispute and
17 that the only issue is one of law or
18 regulation that the Departmental Ap-
19 peals Board does not have authority
20 to decide; or

21 “(II) fails to make such deter-
22 mination within the period provided
23 under subparagraph (B);

24 then the appellant may bring a civil action
25 as described in this subparagraph.

1 “(ii) DEADLINE FOR FILING.—Such
2 action shall be filed, in the case described
3 in—

4 “(I) clause (i)(I), within 60 days
5 of date of the determination described
6 in such subparagraph; or

7 “(II) clause (i)(II), within 60
8 days of the end of the period provided
9 under subparagraph (B) for the deter-
10 mination.

11 “(iii) VENUE.—Such action shall be
12 brought in the district court of the United
13 States for the judicial district in which the
14 appellant is located (or, in the case of an
15 action brought jointly by more than one
16 applicant, the judicial district in which the
17 greatest number of applicants are located)
18 or in the district court for the District of
19 Columbia.

20 “(iv) INTEREST ON ANY AMOUNTS IN
21 CONTROVERSY.—Where a provider of serv-
22 ices or supplier seeks judicial review pursu-
23 ant to this paragraph, the amount in con-
24 troversy (if any) shall be subject to annual
25 interest beginning on the first day of the

1 first month beginning after the 60-day pe-
2 riod as determined pursuant to clause (ii)
3 and equal to the rate of interest on obliga-
4 tions issued for purchase by the Federal
5 Supplementary Medical Insurance Trust
6 Fund for the month in which the civil ac-
7 tion authorized under this paragraph is
8 commenced, to be awarded by the review-
9 ing court in favor of the prevailing party.
10 No interest awarded pursuant to the pre-
11 ceding sentence shall be deemed income or
12 cost for the purposes of determining reim-
13 bursement due providers of services, physi-
14 cians, practitioners, and other suppliers
15 under this Act.

16 “(D) REVIEW PANEL DEFINED.—For pur-
17 poses of this subsection, a ‘review panel’ is a
18 panel of 3 members from the Departmental Ap-
19 peals Board, selected for the purpose of making
20 determinations under this paragraph.”.

21 (b) APPLICATION TO PROVIDER AGREEMENT DETER-
22 MINATIONS.—Section 1866(h)(1) (42 U.S.C.
23 1395cc(h)(1)) is amended—

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

1 (b) INCREASED FINANCIAL SUPPORT.—In addition
2 to any amounts otherwise appropriated, to reduce by 50
3 percent the average time for administrative determina-
4 tions on appeals under section 1866(h) of the Social Secu-
5 rity Act (42 U.S.C. 1395cc(h)), there are authorized to
6 be appropriated (in appropriate part from the Federal
7 Hospital Insurance Trust Fund and the Federal Supple-
8 mentary Medical Insurance Trust Fund) to the Secretary
9 such additional sums such sums for fiscal year 2003 and
10 each subsequent fiscal year as may be necessary to in-
11 crease the number of administrative law judges (and their
12 staffs) at the Departmental Appeals Board of the Depart-
13 ment of Health and Human Services and to educate such
14 judges and staff on long-term care issues.

15 **SEC. 204. REVISIONS TO MEDICARE APPEALS PROCESS.**

16 (a) TIMEFRAMES FOR THE COMPLETION OF THE
17 RECORD.—Section 1869(b) (42 U.S.C. 1395ff(b)), as
18 amended by section 521 of BIPA, 114 Stat. 2763A–534,
19 and as amended in section 202(a), is further amended by
20 adding at the end the following new paragraph:

21 “(3) TIMELY SUBMISSION OF EVIDENCE.—

22 “(A) DEADLINE FOR SUBMISSION OF EVI-
23 DENCE.—The deadline to complete the record
24 in an appeal is 90 days after the date the re-
25 quest for appeal is filed. The appellant in such

1 an appeal may request an extension of such
2 deadline for good cause. The adjudicator may
3 extend such deadline based upon a finding of
4 good cause to a date specified by the adjudi-
5 cator.

6 “(B) DELAY IN DECISION DEADLINES
7 UNTIL COMPLETION OF RECORD.—Notwith-
8 standing any other provision of this section, the
9 deadlines otherwise established for the making
10 of determination by adjudicators under this sec-
11 tion shall be tolled during time period between
12 the date of the filing of the request for appeal
13 and the date on which the record is complete.

14 “(C) ADJUDICATOR DEFINED.—For pur-
15 poses of this paragraph, the term ‘adjudicator’
16 means a qualified independent contractor under
17 subsection (c), an administrative law judge, or
18 an administrative appeals judge under the De-
19 partmental Appeals Board.”.

20 (b) USE OF PATIENTS’ MEDICAL RECORDS.—Section
21 1869(c)(3)(B)(i) (42 U.S.C. 1395ff(c)(3)(B)(i)) is amend-
22 ed by inserting “(including the medical records of the indi-
23 vidual involved)” after “clinical experience”.

24 (c) NOTICE REQUIREMENTS FOR MEDICARE AP-
25 PEALS.—

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

5 “(4) REQUIREMENTS OF NOTICE OF DETER-
6 MINATIONS AND REDETERMINATIONS.—A written
7 notice of a determination on an initial determination
8 or on a redetermination, insofar as such determina-
9 tion or redetermination results in a denial of a claim
10 for benefits, shall be provided in printed form and
11 written in a manner calculated to be understood by
12 the beneficiary and shall include—

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

17 “(B) the procedures for obtaining addi-
18 tional information concerning the determination
19 or redetermination; and

20 “(C) notification of the right to seek a re-
21 determination or otherwise appeal the deter-
22 mination and instructions on how to initiate
23 such a redetermination or appeal under this
24 section.”.

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

4 (A) by inserting “be written in a manner
5 calculated to be understood by the beneficiary,
6 and shall include (to the extent appropriate)”
7 after “in writing, ”; and

8 (B) by inserting “and a notification of the
9 right to appeal such determination and instruc-
10 tions on how to initiate such appeal under this
11 section” after “such decision, ”.

12 (3) APPEALS.—Section 1869(d) (42 U.S.C.
13 1395ff(d)) is amended—

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

16 (B) by adding at the end the following new
17 paragraph:

18 “(4) NOTICE.—Notice of the decision of an ad-
19 ministrative law judge shall be in writing in a man-
20 ner calculated to be understood by the beneficiary
21 and shall include—

22 “(A) the specific reasons for the deter-
23 mination (including, to the extent appropriate,
24 a summary of the clinical or scientific evidence
25 used in making the determination);

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

3 “(C) notification of the right to appeal the
4 decision and instructions on how to initiate
5 such an appeal under this section.”.

6 (4) PREPARATION OF RECORD FOR APPEAL.—
7 Section 1869(c)(3)(J) (42 U.S.C. 1395ff(c)(3)(J))
8 by striking “such information as is required for an
9 appeal” and inserting “the record for the appeal”.

10 (d) QUALIFIED INDEPENDENT CONTRACTORS.—

11 (1) ELIGIBILITY REQUIREMENTS OF QUALIFIED
12 INDEPENDENT CONTRACTORS.—Section 1869(c) (42
13 U.S.C. 1395ff(c)) is amended—

14 (A) in paragraph (2)—

15 (i) by inserting “(except in the case of
16 a utilization and quality control peer re-
17 view organization, as defined in section
18 1152)” after “means an entity or organi-
19 zation that”; and

20 (ii) by striking the period at the end
21 and inserting the following: “and meets the
22 following requirements:

23 “(A) GENERAL REQUIREMENTS.—

24 “(i) The entity or organization has
25 (directly or through contracts or other ar-

1 rangements) sufficient medical, legal, and
2 other expertise (including knowledge of the
3 program under this title) and sufficient
4 staffing to carry out duties of a qualified
5 independent contractor under this section
6 on a timely basis.

7 “(ii) The entity or organization has
8 provided assurances that it will conduct ac-
9 tivities consistent with the applicable re-
10 quirements of this section, including that it
11 will not conduct any activities in a case un-
12 less the independence requirements of sub-
13 paragraph (B) are met with respect to the
14 case.

15 “(iii) The entity or organization meets
16 such other requirements as the appropriate
17 Secretary provides by regulation.

18 “(B) INDEPENDENCE REQUIREMENTS.—

19 “(i) IN GENERAL.—Subject to clause
20 (ii), an entity or organization meets the
21 independence requirements of this sub-
22 paragraph with respect to any case if the
23 entity—

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

1 “(II) does not have a material fa-
2 miliar, financial, or professional rela-
3 tionship with such a party in relation
4 to such case; and

5 “(III) does not otherwise have a
6 conflict of interest with such a party
7 (as determined under regulations).

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

16 “(iii) LIMITATIONS ON ENTITY COM-
17 PENSATION.—Compensation provided by
18 the Secretary to a qualified independent
19 contractor in connection with reviews
20 under this section shall—

21 “(I) not exceed a reasonable
22 level; and

23 “(II) not be contingent on any
24 decision rendered by the contractor or
25 by any reviewing professional.”; and

1 (B) in paragraph (3)(A), by striking “,
2 and shall have sufficient training and expertise
3 in medical science and legal matters to make
4 reconsiderations under this subsection”.

5 (2) ELIGIBILITY REQUIREMENTS FOR REVIEW-
6 ERS.—Section 1869 (42 U.S.C. 1395ff) is
7 amended—

8 (A) by amending subsection (c)(3)(D) to
9 read as follows:

10 “(D) QUALIFICATIONS FOR REVIEWERS.—
11 The requirements of subsection (g) shall be met
12 (relating to qualifications of reviewing profes-
13 sionals).”; and

14 (B) by adding at the end the following new
15 subsection:

16 “(g) QUALIFICATIONS OF REVIEWERS.—

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

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

22 “(B) compensation provided by the con-
23 tractor to each such reviewer is consistent with
24 paragraph (3); and

1 “(C) in the case of a review by a panel de-
2 scribed in subsection (c)(3)(B) composed of
3 physicians or other health care professionals
4 (each in this subsection referred to as a ‘review-
5 ing professional’), each reviewing professional
6 meets the qualifications described in paragraph
7 (4).

8 “(2) INDEPENDENCE.—

9 “(A) IN GENERAL.—Subject to subpara-
10 graph (B), each individual conducting a review
11 in a case shall—

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

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

17 “(iii) not otherwise have a conflict of
18 interest with such a party (as determined
19 under regulations).

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

22 “(i) prohibit an individual, solely on
23 the basis of affiliation with a fiscal inter-
24 mediary, carrier, or other contractor, from
25 serving as an reviewing professional if—

1 “(I) a non-affiliated individual is
2 not reasonably available;

3 “(II) the affiliated individual is
4 not involved in the provision of items
5 or services in the case under review;

6 “(III) the fact of such an affili-
7 ation is disclosed to the Secretary and
8 the beneficiary (or authorized rep-
9 resentative) and neither party objects;
10 and

11 “(IV) the affiliated individual is
12 not an employee of the intermediary,
13 carrier, or contractor and does not
14 provide services exclusively or pri-
15 marily to or on behalf of such inter-
16 mediary, carrier, or contractor;

17 “(ii) prohibit an individual who has
18 staff privileges at the institution where the
19 treatment involved takes place from serv-
20 ing as a reviewer merely on the basis of
21 such affiliation if the affiliation is disclosed
22 to the Secretary and the beneficiary (or
23 authorized representative), and neither
24 party objects; or

1 “(iii) prohibit receipt of compensation
2 by a reviewing professional from a con-
3 tractor if the compensation is provided
4 consistent with paragraph (3).

5 “(3) LIMITATIONS ON REVIEWER COMPENSA-
6 TION.—Compensation provided by a qualified inde-
7 pendent contractor to a reviewer in connection with
8 a review under this section shall—

9 “(A) not exceed a reasonable level; and

10 “(B) not be contingent on the decision ren-
11 dered by the reviewer.

12 “(4) LICENSURE AND EXPERTISE.—Each re-
13 viewing professional shall be a physician (allopathic
14 or osteopathic) or health care professional who—

15 “(A) is appropriately credentialed or li-
16 censed in 1 or more States to deliver health
17 care services; and

18 “(B) typically treats the condition, makes
19 the diagnosis, or provides the type of treatment
20 under review.

21 “(5) RELATED PARTY DEFINED.—For purposes
22 of this section, the term ‘related party’ means, with
23 respect to a case under this title involving an indi-
24 vidual beneficiary, any of the following:

1 “(A) The Secretary, the fiscal intermediary
2 or carrier involved, or any fiduciary, officer, di-
3 rector, or employee of the Department of
4 Health and Human Services, or of such inter-
5 mediary or carrier.

6 “(B) The individual (or authorized rep-
7 resentative).

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

10 “(D) The institution at which the items or
11 services (or treatment) involved in the case are
12 provided.

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

16 “(F) Any other party determined under
17 any regulations to have a substantial interest in
18 the case involved.”.

19 (e) IMPLEMENTATION OF CERTAIN BIPA RE-
20 FORMS.—

21 (1) Section 521 of BIPA (114 Stat. 2763A–
22 543) is amended—

23 (A) in subsection (c), by striking “and (4)”
24 and inserting “(4), and (5)”;

1 (B) in subsection (d), by striking “October
2 1, 2002” and inserting “October 1, 2003”; and

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

5 “(e) USE OF PRO PROCESS FOR TERMINATION AND
6 DISCHARGES DURING TRANSITION PERIOD.—

7 “(1) IN GENERAL.—In the case of an individual
8 who receives a notice of termination or discharge de-
9 scribed in subsection (b)(1)(F) of section 1869 of
10 the Social Security Act (as added by subsection (a))
11 that relates to an initial determination described in
12 subsection (a)(1)(C) of such section and that is
13 made during the applicable period described in para-
14 graph (2), the individual may request, in writing or
15 orally, an expedited review of such termination or
16 discharge under section 1154(e) of such Act (as in
17 effect before the end of such period and subject to
18 paragraph (3)).

19 “(2) APPLICABLE PERIOD.—This subsection
20 shall apply on or after October 1, 2002, and before
21 the effective date provided under subsection (d).

22 “(3) RULES OF APPLICATION.—In applying sec-
23 tion 1154(e) of the Social Security Act under para-
24 graph (1)—

25 “(A) any reference in such section—

1 “(i) to a hospital is deemed a ref-
2 erence to a provider of services;

3 “(ii) to inpatient hospital care or serv-
4 ices is deemed a reference to services of
5 such a provider of services;

6 “(iii) a notice under paragraph (1) is
7 deemed a reference to the notice described
8 in paragraph (1) of this subsection; and

9 “(iv) an inpatient is deemed a ref-
10 erence to a patient;

11 “(B) paragraph (1) of such section
12 1154(e) shall not apply; and

13 “(C) the provisions of section
14 1869(b)(1)(F)(ii) of such Act (as amended by
15 subsection (a)) (relating to expedited hearings)
16 shall apply to the review under this subsection
17 except that any reference in such section to the
18 Secretary or a hearing under this subsection
19 shall be deemed a reference to a peer review or-
20 ganization and a review under such section
21 1154(e).”.

22 (2) Section 522(d) of BIPA (114 Stat. 2763A-
23 547) is amended by striking “October 1, 2001” and
24 inserting “October 1, 2002”.

1 (f) EFFECTIVE DATE.—The amendments made by
2 this section shall be effective as if included in the enact-
3 ment of the respective provisions of subtitle C of title V
4 of BIPA, 114 Stat. 2763A–534.

5 **SEC. 205. HEARING RIGHTS RELATED TO DECISIONS BY**
6 **THE SECRETARY TO DENY OR NOT RENEW A**
7 **MEDICARE ENROLLMENT AGREEMENT; CON-**
8 **SULTATION BEFORE CHANGING PROVIDER**
9 **ENROLLMENT FORMS.**

10 (a) HEARING RIGHTS.—

11 (1) IN GENERAL.—Section 1866 (42 U.S.C.
12 1395cc) is amended by adding at the end the fol-
13 lowing new subsection:

14 “(j) HEARING RIGHTS IN CASES OF DENIAL OR
15 NON-RENEWAL.—The Secretary shall establish by regula-
16 tion procedures under which—

17 “(1) there are deadlines for actions on applica-
18 tions for enrollment (and, if applicable, renewal of
19 enrollment); and

20 “(2) providers of services, physicians, practi-
21 tioners, and suppliers whose application to enroll
22 (or, if applicable, to renew enrollment) are denied
23 are provided a mechanism to appeal such denial and
24 a deadline for consideration of such appeals.”.

1 (2) EFFECTIVE DATE.—The Secretary of
2 Health and Human Services shall provide for the es-
3 tablishment of the procedures under the amendment
4 made by paragraph (1) within 6 months after the
5 date of the enactment of this Act.

6 (b) CONSULTATION BEFORE CHANGING PROVIDER
7 ENROLLMENT FORMS.—Section 1871 (42 U.S.C.
8 1395hh), as amended by sections 101(a), 102, and 103,
9 is further amended by adding at the end the following new
10 subsection:

11 “(g) The Secretary shall consult with providers of
12 services, physicians, practitioners, and suppliers before
13 making changes in the provider enrollment forms required
14 of such providers, physicians, practitioners, and suppliers
15 to be eligible to submit claims for which payment may be
16 made under this title.”.

17 **SEC. 206. APPEALS BY PROVIDERS WHEN THERE IS NO**
18 **OTHER PARTY AVAILABLE.**

19 (a) IN GENERAL.—Section 1870 (42 U.S.C. 1395gg)
20 is amended by adding at the end the following new sub-
21 section:

22 “(h) Notwithstanding subsection (f) or any other pro-
23 vision of law, the Secretary shall permit a provider of serv-
24 ices, physician, practitioner, or other supplier to appeal
25 any determination of the Secretary under this title relating

1 to services rendered under this title to an individual who
 2 subsequently dies, if there is no other party available to
 3 appeal such determination, so long as the estate of the
 4 individual, and the individual's family and heirs, are not
 5 liable for paying for the item or service and are not liable
 6 for any increased coinsurance or deductible amounts re-
 7 sulting from any decision increasing the reimbursement
 8 amount for the provider of services, physician, practi-
 9 tioner, or supplier.”.

10 (b) EFFECTIVE DATE.—The amendment made by
 11 subsection (a) shall take effect on the date of the enact-
 12 ment of this Act and shall apply to items and services fur-
 13 nished on or after such date.

14 **TITLE III—CONTRACTING**
 15 **REFORM**

16 **SEC. 301. INCREASED FLEXIBILITY IN MEDICARE ADMINIS-**
 17 **TRATION.**

18 (a) CONSOLIDATION AND FLEXIBILITY IN MEDICARE
 19 ADMINISTRATION.—

20 (1) IN GENERAL.—Title XVIII is amended by
 21 inserting after section 1874 the following new sec-
 22 tion:

23 “CONTRACTS WITH MEDICARE ADMINISTRATIVE
 24 CONTRACTORS

25 “SEC. 1874A. (a) AUTHORITY.—

1 “(1) AUTHORITY TO ENTER INTO CON-
2 TRACTS.—The Secretary may enter into contracts
3 with any eligible entity to serve as a medicare ad-
4 ministrative contractor with respect to the perform-
5 ance of any or all of the functions described in para-
6 graph (4) or parts of those functions (or, to the ex-
7 tent provided in a contract, to secure performance
8 thereof by other entities).

9 “(2) ELIGIBILITY OF ENTITIES.—An entity is
10 eligible to enter into a contract with respect to the
11 performance of a particular function or activity de-
12 scribed in paragraph (4) only if—

13 “(A) the entity has demonstrated capa-
14 bility to carry out such function;

15 “(B) the entity complies with such conflict
16 of interest standards as are generally applicable
17 to Federal acquisition and procurement;

18 “(C) the entity has sufficient assets to fi-
19 nancially support the performance of such func-
20 tion; and

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

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

1 “(A) IN GENERAL.—The term ‘medicare
2 administrative contractor’ means an agency, or-
3 ganization, or other person with a contract
4 under this section.

5 “(B) APPROPRIATE MEDICARE ADMINIS-
6 TRATIVE CONTRACTOR.—With respect to the
7 performance of a particular function or activity
8 in relation to an individual entitled to benefits
9 under part A or enrolled under part B, or both,
10 a specific provider of services, physician, practi-
11 tioner, or supplier (or class of such providers of
12 services, physicians, practitioners, or suppliers),
13 the ‘appropriate’ medicare administrative con-
14 tractor is the medicare administrative con-
15 tractor that has a contract under this section
16 with respect to the performance of that function
17 or activity in relation to that individual, pro-
18 vider of services, physician, practitioner, or sup-
19 plier or class of provider of services, physician,
20 practitioner, or supplier.

21 “(4) FUNCTIONS DESCRIBED.—The functions
22 referred to in paragraphs (1) and (2) are payment
23 functions, provider services functions, and bene-
24 ficiary services functions as follows:

1 “(A) DETERMINATION OF PAYMENT
2 AMOUNTS.—Determining (subject to the provi-
3 sions of section 1878 and to such review by the
4 Secretary as may be provided for by the con-
5 tracts) the amount of the payments required
6 pursuant to this title to be made to providers
7 of services, physicians, practitioners, and sup-
8 pliers.

9 “(B) MAKING PAYMENTS.—Making pay-
10 ments described in subparagraph (A).

11 “(C) BENEFICIARY EDUCATION AND AS-
12 SISTANCE.—Serving as a center for, and com-
13 municating to individuals entitled to benefits
14 under part A or enrolled under part B, or both,
15 with respect to education and outreach for
16 those individuals, and assistance with specific
17 issues, concerns or problems of those individ-
18 uals.

19 “(D) PROVIDER CONSULTATIVE SERV-
20 ICES.—Providing consultative services to insti-
21 tutions, agencies, and other persons to enable
22 them to establish and maintain fiscal records
23 necessary for purposes of this title and other-
24 wise to qualify as providers of services, physi-
25 cians, practitioners, or suppliers.

1 “(E) COMMUNICATION WITH PRO-
2 VIDERS.—Serving as a center for, and commu-
3 nicating to providers of services, physicians,
4 practitioners, and suppliers, any information or
5 instructions furnished to the medicare adminis-
6 trative contractor by the Secretary, and serving
7 as a channel of communication from such pro-
8 viders, physicians, practitioners, and suppliers
9 to the Secretary.

10 “(F) PROVIDER EDUCATION AND TECH-
11 NICAL ASSISTANCE.—Performing the functions
12 described in subsections (e) and (f), relating to
13 education, training, and technical assistance to
14 providers of services, physicians, practitioners,
15 and suppliers.

16 “(G) ADDITIONAL FUNCTIONS.—Per-
17 forming such other functions as are necessary
18 to carry out the purposes of this title.

19 “(5) RELATIONSHIP TO MIP CONTRACTS.—

20 “(A) NONDUPLICATION OF DUTIES.—In
21 entering into contracts under this section, the
22 Secretary shall assure that functions of medi-
23 care administrative contractors in carrying out
24 activities under parts A and B do not duplicate
25 functions carried out under the Medicare Integ-

1 rity Program under section 1893. The previous
2 sentence shall not apply with respect to the ac-
3 tivity described in section 1893(b)(5) (relating
4 to prior authorization of certain items of dura-
5 ble medical equipment under section
6 1834(a)(15)).

7 “(B) CONSTRUCTION.—An entity shall not
8 be treated as a medicare administrative con-
9 tractor merely by reason of having entered into
10 a contract with the Secretary under section
11 1893.

12 “(6) APPLICATION OF FEDERAL ACQUISITION
13 REGULATION.—Except to the extent inconsistent
14 with a specific requirement of this title, the Federal
15 Acquisition Regulation applies to contracts under
16 this title.

17 “(b) CONTRACTING REQUIREMENTS.—

18 “(1) USE OF COMPETITIVE PROCEDURES.—

19 “(A) IN GENERAL.—Except as provided in
20 laws with general applicability to Federal acqui-
21 sition and procurement or in subparagraph (B),
22 the Secretary shall use competitive procedures
23 when entering into contracts with medicare ad-
24 ministrative contractors under this section.

1 “(B) RENEWAL OF CONTRACTS.—The Sec-
2 retary may renew a contract with a medicare
3 administrative contractor under this section
4 from term to term without regard to section 5
5 of title 41, United States Code, or any other
6 provision of law requiring competition, if the
7 medicare administrative contractor has met or
8 exceeded the performance requirements applica-
9 ble with respect to the contract and contractor,
10 except that the Secretary shall provide for the
11 application of competitive procedures under
12 such a contract not less frequently than once
13 every five years.

14 “(C) TRANSFER OF FUNCTIONS.—The
15 Secretary may transfer functions among medi-
16 care administrative contractors without regard
17 to any provision of law requiring competition.
18 The Secretary shall ensure that performance
19 quality is considered in such transfers.

20 “(D) INCENTIVES FOR QUALITY.—The
21 Secretary shall provide incentives for medicare
22 administrative contractors to provide quality
23 service and to promote efficiency.

24 “(2) COMPLIANCE WITH REQUIREMENTS.—No
25 contract under this section shall be entered into with

1 any medicare administrative contractor unless the
2 Secretary finds that such medicare administrative
3 contractor will perform its obligations under the con-
4 tract efficiently and effectively and will meet such
5 requirements as to financial responsibility, legal au-
6 thority, and other matters as the Secretary finds
7 pertinent.

8 “(3) PERFORMANCE REQUIREMENTS.—

9 “(A) DEVELOPMENT OF SPECIFIC PER-
10 FORMANCE REQUIREMENTS.—The Secretary
11 shall develop contract performance require-
12 ments to carry out the specific requirements ap-
13 plicable under this title to a function described
14 in subsection (a)(4) and shall develop standards
15 for measuring the extent to which a contractor
16 has met such requirements. The Secretary shall
17 publish in the Federal Register such perform-
18 ance requirements and measurement standards.

19 “(B) CONSIDERATIONS.—The Secretary
20 may include as one of the standards satisfaction
21 level as measured by provider and beneficiary
22 surveys.

23 “(C) INCLUSION IN CONTRACTS.—All con-
24 tractor performance requirements shall be set
25 forth in the contract between the Secretary and

1 the appropriate medicare administrative con-
2 tractor. Such performance requirements—

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

7 “(ii) shall be used for evaluating con-
8 tractor performance under the contract;
9 and

10 “(iii) shall be consistent with the writ-
11 ten statement of work provided under the
12 contract.

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

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

21 “(B) to maintain such records and afford
22 such access thereto as the Secretary finds nec-
23 essary to assure the correctness and verification
24 of the information and reports under subpara-

1 graph (A) and otherwise to carry out the pur-
2 poses of this title.

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

12 “(c) TERMS AND CONDITIONS.—

13 “(1) IN GENERAL.—A contract with any medi-
14 care administrative contractor under this section
15 may contain such terms and conditions as the Sec-
16 retary finds necessary or appropriate and may pro-
17 vide for advances of funds to the medicare adminis-
18 trative contractor for the making of payments by it
19 under subsection (a)(3)(B).

20 “(2) PROHIBITION ON MANDATES FOR CERTAIN
21 DATA COLLECTION.—The Secretary may not require,
22 as a condition of entering into, or renewing, a con-
23 tract under this section, that the medicare adminis-
24 trative contractor match data obtained other than in
25 its activities under this title with data used in the

1 administration of this title for purposes of identi-
2 fying situations in which the provisions of section
3 1862(b) may apply.

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

6 “(1) CERTIFYING OFFICER.—No individual des-
7 ignated pursuant to a contract under this section as
8 a certifying officer shall, in the absence of gross neg-
9 ligence, recklessness, or knowledge, or intent to de-
10 fraud the United States, be liable with respect to
11 any payments certified by the individual under this
12 section.

13 “(2) DISBURSING OFFICER.—No disbursing of-
14 ficer shall, in the absence of gross negligence, reck-
15 lessness, or knowledge, or intent to defraud the
16 United States, be liable with respect to any payment
17 by such officer under this section if it was based
18 upon an authorization (which meets the applicable
19 requirements for such internal controls established
20 by the Comptroller General) of a certifying officer
21 designated as provided in paragraph (1) of this sub-
22 section.

23 “(3) LIABILITY OF MEDICARE ADMINISTRATIVE
24 CONTRACTOR.—A medicare administrative con-
25 tractor shall be liable to the United States for a pay-

1 ment referred to in paragraph (1) or (2) if, in con-
2 nection with such payment, an individual referred to
3 in either such paragraph acted with gross neg-
4 ligence, recklessness, or knowledge, or intent to de-
5 fraud the United States.

6 “(4) LIMITATION ON CIVIL LIABILITY.—

7 “(A) IN GENERAL.—No medicare adminis-
8 trative contractor having a contract with the
9 Secretary under this section, and no person em-
10 ployed by, or having a fiduciary relationship
11 with, any such medicare administrative con-
12 tractor or who furnishes professional services to
13 such medicare administrative contractor, shall
14 by reason of the performance of any duty, func-
15 tion, or activity required or authorized pursuant
16 to this section or to a valid contract entered
17 into under this section, be held civilly liable
18 under any law of the United States or of any
19 State (or political subdivision thereof), absent a
20 finding of gross negligence, recklessness, or
21 knowledge, or intent to defraud the United
22 States in the performance of such duty, func-
23 tion, or activity.

24 “(B) INDEMNIFICATION BY SECRETARY.—

25 The Secretary shall make payment to a medi-

1 care administrative contractor under contract
2 with the Secretary pursuant to this section, or
3 to any member or employee thereof, or to any
4 person who furnishes legal counsel or services
5 to such medicare administrative contractor, in
6 an amount equal to the reasonable amount of
7 the expenses incurred, as determined by the
8 Secretary, in connection with the defense of any
9 civil suit, action, or proceeding brought against
10 such medicare administrative contractor or per-
11 son related to the performance of any duty,
12 function, or activity under such contract, absent
13 a finding of gross negligence, recklessness, or
14 knowledge, or intent to defraud the United
15 States in the performance of such duty, func-
16 tion, or activity.”.

17 (2) CONSIDERATION OF INCORPORATION OF
18 CURRENT LAW STANDARDS.—In developing contract
19 performance requirements under section 1874A(b)
20 of the Social Security Act, as inserted by paragraph
21 (1), the Secretary of Health and Human Services
22 shall consider inclusion of the performance stand-
23 ards described in sections 1816(f)(2) of such Act
24 (relating to timely processing of reconsiderations and
25 applications for exemptions) and section

1 1842(b)(2)(B) of such Act (relating to timely review
2 of determinations and fair hearing requests), as such
3 sections were in effect before the date of the enact-
4 ment of this Act.

5 (b) CONFORMING AMENDMENTS TO SECTION 1816
6 (RELATING TO FISCAL INTERMEDIARIES).—Section 1816
7 (42 U.S.C. 1395h) is amended as follows:

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

9 “PROVISIONS RELATING TO THE ADMINISTRATION OF
10 PART A”.

11 (2) Subsection (a) is amended to read as fol-
12 lows:

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

16 (3) Subsection (b) is repealed.

17 (4) Subsection (c) is amended—

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

19 (B) in each of paragraphs (2)(A) and
20 (3)(A), by striking “agreement under this sec-
21 tion” and inserting “contract under section
22 1874A that provides for making payments
23 under this part”.

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

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

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

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

9 (7) Subsection (l) is repealed.

10 (c) CONFORMING AMENDMENTS TO SECTION 1842
11 (RELATING TO CARRIERS).—Section 1842 (42 U.S.C.
12 1395u) is amended as follows:

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

14 “PROVISIONS RELATING TO THE ADMINISTRATION OF
15 PART B”.

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

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

21 (3) Subsection (b) is amended—

22 (A) by striking paragraph (1);

23 (B) in paragraph (2)—

24 (i) by striking subparagraphs (A) and

25 (B);

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

1 (v) in the seventh sentence, by insert-
2 ing “medicare administrative contractor,”
3 after “carrier,”; and

4 (D) by striking paragraph (5); and

5 (E) in paragraph (7) and succeeding para-
6 graphs, by striking “the carrier” and inserting
7 “the Secretary” each place it appears.

8 (4) Subsection (c) is amended—

9 (A) by striking paragraph (1);

10 (B) in paragraph (2), by striking “contract
11 under this section which provides for the dis-
12 bursement of funds, as described in subsection
13 (a)(1)(B),” and inserting “contract under sec-
14 tion 1874A that provides for making payments
15 under this part shall provide that the medicare
16 administrative contractor”;

17 (C) in paragraph (4), by striking “a car-
18 rier” and inserting “medicare administrative
19 contractor”;

20 (D) in paragraph (5), by striking “contract
21 under this section which provides for the dis-
22 bursement of funds, as described in subsection
23 (a)(1)(B), shall require the carrier” and insert-
24 ing “contract under section 1874A that pro-
25 vides for making payments under this part shall

1 require the medicare administrative con-
2 tractor”; and

3 (E) by striking paragraph (6).

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

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

8 (7) Subsection (h) is amended—

9 (A) in paragraph (2)—

10 (i) by striking “Each carrier having
11 an agreement with the Secretary under
12 subsection (a)” and inserting “The Sec-
13 retary”; and

14 (ii) by striking “Each such carrier”
15 and inserting “The Secretary”; and

16 (B) in paragraph (3)(A)—

17 (i) by striking “a carrier having an
18 agreement with the Secretary under sub-
19 section (a)” and inserting “medicare ad-
20 ministrative contractor having a contract
21 under section 1874A that provides for
22 making payments under this part”; and

23 (ii) by striking “such carrier” and in-
24 serting “such contractor”.

25 (d) EFFECTIVE DATE; TRANSITION RULE.—

1 (1) EFFECTIVE DATE.—

2 (A) APPLICATION TO COMPETITIVELY BID
3 CONTRACTS.—The amendments made by this
4 section shall apply to contracts that are com-
5 petitively bid on or after such date or dates
6 (but not later than 1 year after the date of the
7 enactment of this Act) as the Secretary of
8 Health and Human Services specifies.

9 (B) CONSTRUCTION FOR CURRENT CON-
10 TRACTS.—Such amendments shall not apply to
11 contracts in effect before the date specified
12 under subparagraph (A) that continue to retain
13 the terms and conditions in effect on such date
14 until such date as the contract is let out for
15 competitive bidding under such amendments.

16 (C) DEADLINE FOR COMPETITIVE BID-
17 DING.—The Secretary shall provide for the let-
18 ting by competitive bidding of all contracts for
19 functions of medicare administrative contrac-
20 tors for annual contract periods that begin on
21 or after October 1, 2008.

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

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

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

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

24 (f) SECRETARIAL SUBMISSION OF LEGISLATIVE PRO-
25 POSAL.—Not later than 6 months after the date of the

1 enactment of this Act, the Secretary of Health and
2 Human Services shall submit to the appropriate commit-
3 tees of Congress a legislative proposal providing for such
4 technical and conforming amendments in the law as are
5 required by the provisions of this section.

6 (g) REPORTS ON IMPLEMENTATION.—

7 (1) PROPOSAL FOR IMPLEMENTATION.—The
8 Secretary shall submit a report to Congress not later
9 than one year after the date of the enactment of this
10 Act that describes the Secretary’s plan for imple-
11 mentation of the amendments made by this section.

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

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

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

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

23 (D) A detailed description of how the Sec-
24 retary of Health and Human Services has

1 modified oversight and management of medi-
2 care contractors to adapt to full competition.

3 **SEC. 302. REQUIREMENTS FOR INFORMATION SECURITY.**

4 (a) IN GENERAL.—Section 1874A, as added by sec-
5 tion 301, is amended by adding at the end the following
6 new subsection:

7 “(e) REQUIREMENTS FOR INFORMATION SECUR-
8 RITY.—

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

24 “(2) INDEPENDENT AUDITS.—

1 “(A) PERFORMANCE OF ANNUAL EVALUA-
2 TIONS.—Each year a medicare administrative
3 contractor that performs the functions referred
4 to in subparagraphs (A) and (B) of subsection
5 (a)(4) (relating to determining and making pay-
6 ments) shall undergo an evaluation of the infor-
7 mation security program and practices of the
8 contractor with respect to such functions under
9 this title. The evaluation shall—

10 “(i) be performed by an independent
11 entity that meets such requirements as the
12 Inspector General of the Department of
13 Health and Human Services may establish;
14 and

15 “(ii) include testing of the effective-
16 ness of information security control tech-
17 niques for an appropriate subset of the
18 contractor’s information systems (as de-
19 fined in section 3502(8) of title 44, United
20 States Code) relating to such functions
21 under this title and an assessment of com-
22 pliance with the requirements of this sub-
23 section and related information security
24 policies, procedures, standards and guide-
25 lines.

1 “(B) DEADLINE FOR INITIAL EVALUA-
2 TION.—

3 “(i) NEW CONTRACTORS.—In the case
4 of a medicare administrative contractor
5 covered by this subsection that has not
6 previously performed the functions referred
7 to in subparagraphs (A) and (B) of sub-
8 section (a)(4) (relating to determining and
9 making payments) as a fiscal intermediary
10 or carrier under section 1816 or 1842, the
11 first independent evaluation conducted
12 pursuant subparagraph (A) shall be com-
13 pleted prior to commencing such functions.

14 “(ii) OTHER CONTRACTORS.—In the
15 case of a medicare administrative con-
16 tractor covered by this subsection that is
17 not described in clause (i), the first inde-
18 pendent evaluation conducted pursuant
19 subparagraph (A) shall be completed with-
20 in 1 year after the date the contractor
21 commences functions referred to in clause
22 (i) under this section.

23 “(C) REPORTS ON EVALUATIONS.—

24 “(i) TO THE INSPECTOR GENERAL.—
25 The results of independent evaluations

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

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

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

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

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

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

6 **TITLE IV—EDUCATION AND** 7 **OUTREACH IMPROVEMENTS**

8 **SEC. 401. PROVIDER EDUCATION AND TECHNICAL ASSIST-** 9 **ANCE.**

10 (a) COORDINATION OF EDUCATION FUNDING.—

11 (1) IN GENERAL.—The Social Security Act is
12 amended by inserting after section 1888 the fol-
13 lowing new section:

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

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

25 (3) REPORT.—Not later than October 1, 2002,
26 the Secretary of Health and Human Services shall

1 submit to Congress a report that includes a descrip-
2 tion and evaluation of the steps taken to coordinate
3 the funding of provider education under section
4 1889(a) of the Social Security Act, as added by
5 paragraph (1).

6 (b) INCENTIVES TO IMPROVE CONTRACTOR PER-
7 FORMANCE.—

8 (1) IN GENERAL.—Section 1874A, as added by
9 section 301(a)(1) and as amended by section 302, is
10 amended by adding at the end the following new
11 subsection:

12 “(f) INCENTIVES TO IMPROVE CONTRACTOR PER-
13 FORMANCE IN PROVIDER EDUCATION AND OUTREACH.—

14 “(1) METHODOLOGY TO MEASURE CONTRACTOR
15 ERROR RATES.—In order to give medicare adminis-
16 trative contractors an incentive to implement effec-
17 tive education and outreach programs for providers
18 of services, physicians, practitioners, and suppliers,
19 the Secretary shall develop and implement by Octo-
20 ber 1, 2002, a methodology to measure the specific
21 claims payment error rates of such contractors in
22 the processing or reviewing of medicare claims.

23 “(2) GAO REVIEW OF METHODOLOGY.—Before
24 implementation of such methodology, the Comp-
25 troller General of the United States shall review, and

1 make recommendations to the Secretary, regarding
2 the adequacy of such methodology.”.

3 (2) REPORT.—Before implementation of the
4 methodology developed under section 1874A(f)(1) of
5 the Social Security Act, as added by paragraph (1),
6 the Secretary shall submit to Congress a report that
7 describes how the Secretary intends to use the meth-
8 odology in assessing medicare contractor perform-
9 ance in implementing effective education and out-
10 reach programs, including whether to use such
11 methodology as a basis for performance bonuses.

12 (c) REQUIREMENT TO MAINTAIN INTERNET
13 SITES.—

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

17 “(b) INTERNET SITES; FAQs.—The Secretary, and
18 each medicare contractor insofar as it provides services
19 (including claims processing) for providers of services,
20 physicians, practitioners, or suppliers, shall maintain an
21 Internet site which—

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

24 “(2) includes all materials published by the Sec-
25 retary or the contractor,

1 relating to providers of services, physicians, practitioners,
2 and suppliers under the programs under this title and title
3 XI insofar as it relates to such programs.”.

4 (2) EFFECTIVE DATE.—The amendment made
5 by paragraph (1) shall take effect on October 1,
6 2002.

7 (d) IMPROVED PROVIDER EDUCATION AND TRAIN-
8 ING.—

9 (1) INCREASED FUNDING FOR ENHANCED EDU-
10 CATION AND TRAINING THROUGH MEDICARE INTEG-
11 RITY PROGRAM.—Section 1817(k)(4) (42 U.S.C.
12 1395i(k)(4)) is amended—

13 (A) in subparagraph (A), by striking “sub-
14 subparagraph (B)” and inserting “subparagraphs
15 (B) and (C)”;

16 (B) in subparagraph (B), by striking “The
17 amount appropriated” and inserting “Subject
18 to subparagraph (C), the amount appro-
19 priated”; and

20 (C) by adding at the end the following new
21 subparagraph:

22 “(C) ENHANCED PROVIDER EDUCATION
23 AND TRAINING.—

24 “(i) IN GENERAL.—In addition to the
25 amount appropriated under subparagraph

1 (B), the amount appropriated under sub-
2 paragraph (A) for a fiscal year (beginning
3 with fiscal year 2003) is increased by
4 \$35,000,000.

5 “(ii) USE.—The funds made available
6 under this subparagraph shall be used only
7 to increase the conduct by medicare con-
8 tractors of education and training of pro-
9 viders of services, physicians, practitioners,
10 and suppliers regarding billing, coding, and
11 other appropriate items and may also be
12 used to improve the accuracy, consistency,
13 and timeliness of contractor responses to
14 written and phone inquiries from providers
15 of services, physicians, practitioners, and
16 suppliers.”.

17 (2) TAILORING EDUCATION AND TRAINING FOR
18 SMALL PROVIDERS OR SUPPLIERS.—

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

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

1 “(1) IN GENERAL.—Insofar as a medicare con-
2 tractor conducts education and training activities, it
3 shall take into consideration the special needs of
4 small providers of services or suppliers (as defined in
5 paragraph (2)). Such education and training activi-
6 ties for small providers or services and suppliers
7 may include the provision of technical assistance
8 (such as review of billing systems and internal con-
9 trols to determine program compliance and to sug-
10 gest more efficient and effective means of achieving
11 such compliance).

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

15 “(A) an institutional provider of services
16 with fewer than 25 full-time-equivalent employ-
17 ees; or

18 “(B) a physician, practitioner, or supplier
19 with fewer than 10 full-time-equivalent employ-
20 ees.”.

21 (B) EFFECTIVE DATE.—The amendment
22 made by subparagraph (A) shall take effect on
23 October 1, 2002.

24 (e) ADDITIONAL PROVIDER EDUCATION PROVI-
25 SIONS.—

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

5 “(d) ENCOURAGEMENT OF PARTICIPATION IN EDU-
6 CATION PROGRAM ACTIVITIES.—A medicare contractor
7 may not use a record of attendance at (or failure to at-
8 tend) educational activities or other information gathered
9 during an educational program conducted under this sec-
10 tion or otherwise by the Secretary to select or track pro-
11 viders of services, physicians, practitioners, or suppliers
12 for the purpose of conducting any type of audit or prepay-
13 ment review.

14 “(e) CONSTRUCTION.—Nothing in this section or sec-
15 tion 1893(g) shall be construed as providing for disclosure
16 by a medicare contractor of information that would com-
17 promise pending law enforcement activities or reveal find-
18 ings of law enforcement-related audits.

19 “(f) DEFINITIONS.—For purposes of this section and
20 section 1817(k)(4)(C), the term ‘medicare contractor’ in-
21 cludes the following:

22 “(1) A medicare administrative contractor with
23 a contract under section 1874A, a fiscal inter-
24 mediary with a contract under section 1816, and a
25 carrier with a contract under section 1842.

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

3 Such term does not include, with respect to activities of
4 a specific provider of services, physician, practitioner, or
5 supplier an entity that has no authority under this title
6 or title XI with respect to such activities and such provider
7 of services, physician, practitioner, or supplier.”.

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

11 **SEC. 402. ACCESS TO AND PROMPT RESPONSES FROM**
12 **MEDICARE ADMINISTRATIVE CONTRACTORS.**

13 (a) IN GENERAL.—Section 1874A, as added by sec-
14 tion 301 and as amended by sections 302 and 401(b)(1),
15 is further amended by adding at the end the following new
16 subsection:

17 “(g) COMMUNICATIONS WITH BENEFICIARIES AND
18 PROVIDERS.—

19 “(1) COMMUNICATION STRATEGY.—The Sec-
20 retary shall develop a strategy for communications
21 with beneficiaries and with providers of services,
22 physicians, practitioners, and suppliers under this
23 title.

24 “(2) RESPONSE TO WRITTEN INQUIRIES.—Each
25 medicare administrative contractor shall provide

1 general written responses (which may be through
2 electronic transmission) in a clear, concise, and ac-
3 curate manner to inquiries by beneficiaries, pro-
4 viders of services, physicians, practitioners, and sup-
5 pliers concerning the programs under this title with-
6 in 45 business days of the date of receipt of such in-
7 quiries.

8 “(3) RESPONSE TO TOLL-FREE LINES.—Each
9 medicare administrative contractor shall maintain a
10 toll-free telephone number at which beneficiaries,
11 providers, physicians, practitioners, and suppliers
12 may obtain information regarding billing, coding,
13 claims, coverage, and other appropriate information
14 under this title.

15 “(4) MONITORING OF CONTRACTOR RE-
16 SPONSES.—

17 “(A) IN GENERAL.—Each medicare admin-
18 istrative contractor shall, consistent with stand-
19 ards developed by the Secretary under subpara-
20 graph (B)—

21 “(i) maintain a system for identifying
22 who provides the information referred to in
23 paragraphs (2) and (3); and

1 “(ii) monitor the accuracy, consist-
2 ency, and timeliness of the information so
3 provided.

4 “(B) DEVELOPMENT OF STANDARDS.—

5 “(i) IN GENERAL.—The Secretary
6 shall establish (and publish in the Federal
7 Register) standards to monitor the accu-
8 racy, consistency, and timeliness of the in-
9 formation provided in response to written
10 and telephone inquiries under this sub-
11 section. Such standards shall be consistent
12 with the performance requirements estab-
13 lished under subsection (b)(3).

14 “(ii) EVALUATION.—In conducting
15 evaluations of individual medicare adminis-
16 trative contractors, the Secretary shall
17 take into account the results of the moni-
18 toring conducted under subparagraph (A)
19 taking into account as performance re-
20 quirements the standards established
21 under clause (i).

22 “(C) DIRECT MONITORING.—Nothing in
23 this paragraph shall be construed as preventing
24 the Secretary from directly monitoring the ac-

1 accuracy, consistency, and timeliness of the infor-
2 mation so provided.”.

3 (2) EFFECTIVE DATE.—The amendment made
4 by paragraph (1) shall take effect October 1, 2002.

5 **SEC. 403. RELIANCE ON GUIDANCE.**

6 (a) IN GENERAL.—Section 1871(e), as added by sec-
7 tion 102(a), is further amended by adding at the end the
8 following new paragraph:

9 “(2) If—

10 “(A) a provider of services, physician, practi-
11 tioner, or other supplier follows written guidance
12 provided—

13 “(i) by the Secretary; or

14 “(ii) by a medicare contractor (as defined
15 in section 1889(f) and whether in the form of
16 a written response to a written inquiry under
17 section 1874A(g)(1) or otherwise) acting within
18 the scope of the contractor’s contract authority,
19 in response to a written inquiry with respect to the
20 furnishing of items or services or the submission of
21 a claim for benefits for such items or services;

22 “(B) the Secretary determines that—

23 “(i) the provider of services, physician,
24 practitioner, or supplier has accurately pre-
25 sented the circumstances relating to such items,

1 services, and claim to the Secretary or the con-
2 tractor in the written guidance; and

3 “(ii) there is no indication of fraud or
4 abuse committed by the provider of services,
5 physician, practitioner, or supplier against the
6 program under this title; and

7 “(C) the guidance was in error;

8 the provider of services, physician, practitioner or supplier
9 shall not be subject to any penalty or interest under this
10 title (or the provisions of title XI insofar as they relate
11 to this title) relating to the provision of such items or serv-
12 ice or such claim if the provider of services, physician,
13 practitioner, or supplier reasonably relied on such guid-
14 ance. In applying this paragraph with respect to guidance
15 in the form of general responses to frequently asked ques-
16 tions, the Secretary retains authority to determine the ex-
17 tent to which such general responses apply to the par-
18 ticular circumstances of individual claims.”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 subsection (a) shall apply to penalties imposed on or after
21 the date of the enactment of this Act.

1 **SEC. 404. FACILITATION OF CONSISTENT INFORMATION TO**
2 **PROVIDERS.**

3 The Secretary shall appoint an individual within the
4 Department of Health and Human Services who shall be
5 responsible—

6 (1) for responding to complaints and grievances
7 from providers of services, physicians, practitioners,
8 and suppliers under the medicare program under
9 title XVIII of the Social Security Act (including pro-
10 visions of title XI of the Social Security Act insofar
11 as they relate to such title XVIII and are not admin-
12 istered by the Office of the Inspector General of the
13 Department of Health and Human Services) con-
14 cerning inconsistent information or inconsistent re-
15 sponses provided under such program; and

16 (2) in so responding, for facilitating an appro-
17 priate response from the Department of Health and
18 Human Services or from appropriate medicare con-
19 tractors.

20 Such individual shall not serve as an advocate for any spe-
21 cific policy within the Department.

22 **SEC. 405. POLICY DEVELOPMENT REGARDING EVALUATION**
23 **AND MANAGEMENT (E & M) DOCUMENTATION**
24 **GUIDELINES.**

25 (a) IN GENERAL.—The Secretary of Health and
26 Human Services may not implement any new documenta-

1 tion guidelines for evaluation and management physician
2 services under the title XVIII of the Social Security Act
3 on or after the date of the enactment of this Act unless
4 the Secretary—

5 (1) has developed the guidelines in collaboration
6 with practicing physicians (including both generalists
7 and specialists) and provided for an assessment of
8 the proposed guidelines by the physician community;

9 (2) has established a plan that contains specific
10 goals, including a schedule, for improving the use of
11 such guidelines;

12 (3) has conducted appropriate and representa-
13 tive pilot projects under subsection (b) to test the
14 evaluation and management documentation guide-
15 lines;

16 (4) finds that the objectives described in sub-
17 section (c) will be met in the implementation of such
18 guidelines; and

19 (5) has established, and is implementing, a pro-
20 gram to educate physicians on the use of such guide-
21 lines.

22 The Secretary may make changes to the manner in which
23 existing evaluation and management documentation guide-
24 lines are implemented to reduce paperwork burdens on
25 physicians.

1 (b) PILOT PROJECTS TO TEST EVALUATION AND
2 MANAGEMENT DOCUMENTATION GUIDELINES.—

3 (1) IN GENERAL.—The Secretary shall conduct
4 under this subsection appropriate and representative
5 pilot projects to test new evaluation and manage-
6 ment documentation guidelines referred to in sub-
7 section (a).

8 (2) LENGTH AND CONSULTATION.—Each pilot
9 project under this subsection shall—

10 (A) be voluntary;

11 (B) be of sufficient length as determined
12 by the Secretary to allow for preparatory physi-
13 cian and medicare contractor education, anal-
14 ysis, and use and assessment of potential eval-
15 uation and management guidelines; and

16 (C) be conducted, in development and
17 throughout the planning and operational stages
18 of the project, in consultation with practicing
19 physicians (including both generalists and spe-
20 cialists).

21 (3) RANGE OF PILOT PROJECTS.—Of the pilot
22 projects conducted under this subsection—

23 (A) at least one shall focus on a peer re-
24 view method by physicians (not employed by a
25 medicare contractor) which evaluates medical

1 record information for claims submitted by phy-
2 sicians identified as statistical outliers relative
3 to definitions published in the Current Proce-
4 dures Terminology (CPT) code book of the
5 American Medical Association;

6 (B) at least one shall be conducted for
7 services furnished in a rural area and at least
8 one for services furnished outside such an area;
9 and

10 (C) at least one shall be conducted in a
11 setting where physicians bill under physicians
12 services in teaching settings and at least one
13 shall be conducted in a setting other than a
14 teaching setting.

15 (4) BANNING OF TARGETING OF PILOT
16 PROJECT PARTICIPANTS.—Data collected under this
17 subsection shall not be used as the basis for overpay-
18 ment demands or post-payment audits. Such limita-
19 tion applies only to claims filed as part of the pilot
20 project and lasts only for the duration of the pilot
21 project and only as long as the provider is a partici-
22 pant in the pilot project.

23 (5) STUDY OF IMPACT.—Each pilot project
24 shall examine the effect of the new evaluation and
25 management documentation guidelines on—

1 (A) different types of physician practices,
2 including those with fewer than 10 full-time-
3 equivalent employees (including physicians);
4 and

5 (B) the costs of physician compliance, in-
6 cluding education, implementation, auditing,
7 and monitoring.

8 (6) PERIODIC REPORTS.—The Secretary shall
9 submit to Congress periodic reports on the pilot
10 projects under this subsection.

11 (c) OBJECTIVES FOR EVALUATION AND MANAGE-
12 MENT GUIDELINES.—The objectives for new evaluation
13 and management documentation guidelines developed by
14 the Secretary shall be to—

15 (1) identify clinically relevant documentation
16 needed to code accurately and assess coding levels
17 accurately;

18 (2) decrease the level of non-clinically pertinent
19 and burdensome documentation time and content in
20 the physician’s medical record;

21 (3) increase accuracy by reviewers; and

22 (4) educate both physicians and reviewers.

23 (d) DEFINITIONS.—In this section—

1 (1) the term “rural area” has the meaning
2 given that term in section 1886(d)(2)(D) of the So-
3 cial Security Act, 42 U.S.C. 1395ww(d)(2)(D); and

4 (2) the term “teaching settings” are those set-
5 tings described in section 415.150 of title 42, Code
6 of Federal Regulations.

7 **SEC. 406. BENEFICIARY OUTREACH DEMONSTRATION PRO-**
8 **GRAM.**

9 (a) IN GENERAL.—The Secretary of Health and
10 Human Services shall establish a demonstration program
11 (in this section referred to as the “demonstration pro-
12 gram”) under which medicare specialists employed by the
13 Department of Health and Human Services provide advice
14 and assistance to medicare beneficiaries at the location of
15 existing local offices of the Social Security Administration.

16 (b) LOCATIONS.—

17 (1) IN GENERAL.—The demonstration program
18 shall be conducted in at least 6 offices or areas.
19 Subject to paragraph (2), in selecting such offices
20 and areas, the Secretary shall provide preference for
21 offices with a high volume of visits by medicare
22 beneficiaries.

23 (2) ASSISTANCE FOR RURAL BENEFICIARIES.—
24 The Secretary shall provide for the selection of at
25 least 2 rural areas to participate in the demonstra-

1 tion program. In conducting the demonstration pro-
2 gram in such rural areas, the Secretary shall provide
3 for medicare specialists to travel among local offices
4 in a rural area on a scheduled basis.

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

7 (d) EVALUATION AND REPORT.—

8 (1) EVALUATION.—The Secretary shall provide
9 for an evaluation of the demonstration program.
10 Such evaluation shall include an analysis of—

11 (A) utilization of, and beneficiary satisfac-
12 tion with, the assistance provided under the
13 program; and

14 (B) the cost-effectiveness of providing ben-
15 eficiary assistance through out-stationing medi-
16 care specialists at local social security offices.

17 (2) REPORT.—The Secretary shall submit to
18 Congress a report on such evaluation and shall in-
19 clude in such report recommendations regarding the
20 feasibility of permanently out-stationing medicare
21 specialists at local social security offices.

1 **TITLE V—REVIEW, RECOVERY,**
2 **AND ENFORCEMENT REFORM**

3 **SEC. 501. PREPAYMENT REVIEW.**

4 (a) IN GENERAL.—Section 1874A, as added by sec-
5 tion 301 and as amended by sections 302, 401(b)(1), and
6 402, is further amended by adding at the end the following
7 new subsection:

8 “(h) CONDUCT OF PREPAYMENT REVIEW.—

9 “(1) STANDARDIZATION OF RANDOM PREPAY-
10 MENT REVIEW.—A medicare administrative con-
11 tractor shall conduct random prepayment review
12 only in accordance with a standard protocol for ran-
13 dom prepayment audits developed by the Secretary.

14 “(2) LIMITATIONS ON INITIATION OF NON-RAN-
15 DOM PREPAYMENT REVIEW.—A medicare adminis-
16 trative contractor may not initiate non-random pre-
17 payment review of a provider of services, physician,
18 practitioner, or supplier based on the initial identi-
19 fication by that provider of services, physician, prac-
20 titioner, or supplier of an improper billing practice
21 unless there is a likelihood of sustained or high level
22 of payment error (as defined by the Secretary).

23 “(3) TERMINATION OF NON-RANDOM PREPAY-
24 MENT REVIEW.—The Secretary shall issue regula-
25 tions relating to the termination, including termi-

1 nation dates, of non-random prepayment review.
2 Such regulations may vary such a termination date
3 based upon the differences in the circumstances trig-
4 gering prepayment review.

5 “(4) CONSTRUCTION.—Nothing in this sub-
6 section shall be construed as preventing the denial of
7 payments for claims actually reviewed under a ran-
8 dom prepayment review. In the case of a provider of
9 services, physician, practitioner, or supplier with re-
10 spect to which amounts were previously overpaid,
11 nothing in this subsection shall be construed as lim-
12 iting the ability of a medicare administrative con-
13 tractor to request the periodic production of records
14 or supporting documentation for a limited sample of
15 submitted claims to ensure that the previous prac-
16 tice is not continuing.

17 “(5) RANDOM PREPAYMENT REVIEW DE-
18 FINED.—For purposes of this subsection, the term
19 ‘random prepayment review’ means a demand for
20 the production of records or documentation absent
21 cause with respect to a claim.”.

22 (b) EFFECTIVE DATE.—

23 (1) IN GENERAL.—Except as provided in this
24 subsection, the amendment made by subsection (a)

1 shall take effect on the date of the enactment of this
2 Act.

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

9 (3) APPLICATION OF STANDARD PROTOCOLS
10 FOR RANDOM PREPAYMENT REVIEW.—Section
11 1874A(h)(1) of the Social Security Act, as added by
12 subsection (a), shall apply to random prepayment re-
13 views conducted on or after such date (not later
14 than 1 year after the date of the enactment of this
15 Act) as the Secretary shall specify. The Secretary
16 shall develop and publish the standard protocol
17 under such section by not later than 1 year after the
18 date of the enactment of this Act.

19 **SEC. 502. RECOVERY OF OVERPAYMENTS.**

20 (a) IN GENERAL.—Section 1874A, as added by sec-
21 tion 301 and as amended by sections 302, 401(b)(1), 402,
22 and 501(a), is further amended by adding at the end the
23 following new subsection:

24 “(i) RECOVERY OF OVERPAYMENTS.—

25 “(1) USE OF REPAYMENT PLANS.—

1 “(A) IN GENERAL.—If the repayment,
2 within the period otherwise permitted by a pro-
3 vider of services, physician, practitioner, or
4 other supplier, of an overpayment under this
5 title meets the standards developed under sub-
6 paragraph (B), subject to subparagraph (C),
7 and the provider, physician, practitioner, or
8 supplier requests the Secretary to enter into a
9 repayment plan with respect to such overpay-
10 ment, the Secretary shall enter into a plan with
11 the provider, physician, practitioner, or supplier
12 for the offset or repayment (at the election of
13 the provider, physician, practitioner, or sup-
14 plier) of such overpayment over a period of at
15 least one year, but not longer than 3 years. In-
16 terest shall accrue on the balance through the
17 period of repayment. The repayment plan shall
18 meet terms and conditions determined to be ap-
19 propriate by the Secretary.

20 “(B) DEVELOPMENT OF STANDARDS.—
21 The Secretary shall develop standards for the
22 recovery of overpayments. Such standards
23 shall—

24 “(i) include a requirement that the
25 Secretary take into account (and weigh in

1 favor of the use of a repayment plan) the
2 reliance (as described in section
3 1871(e)(2)) by a provider of services, phy-
4 sician, practitioner, and supplier on guid-
5 ance when determining whether a repay-
6 ment plan should be offered; and

7 “(ii) provide for consideration of the
8 financial hardship imposed on a provider of
9 services, physician, practitioner, or supplier
10 in considering such a repayment plan.

11 In developing standards with regard to financial
12 hardship with respect to a provider of services,
13 physician, practitioner, or supplier, the Sec-
14 retary shall take into account the amount of the
15 proposed recovery as a proportion of payments
16 made to that provider, physician, practitioner,
17 or supplier.

18 “(C) EXCEPTIONS.—Subparagraph (A)
19 shall not apply if—

20 “(i) the Secretary has reason to sus-
21 pect that the provider of services, physi-
22 cian, practitioner, or supplier may file for
23 bankruptcy or otherwise cease to do busi-
24 ness or discontinue participation in the
25 program under this title; or

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

3 “(D) IMMEDIATE COLLECTION IF VIOLA-
4 TION OF REPAYMENT PLAN.—If a provider of
5 services, physician, practitioner, or supplier fails
6 to make a payment in accordance with a repay-
7 ment plan under this paragraph, the Secretary
8 may immediately seek to offset or otherwise re-
9 cover the total balance outstanding (including
10 applicable interest) under the repayment plan.

11 “(E) RELATION TO NO FAULT PROVI-
12 SION.—Nothing in this paragraph shall be con-
13 strued as affecting the application of section
14 1870(c) (relating to no adjustment in the cases
15 of certain overpayments).

16 “(2) LIMITATION ON RECOUPMENT.—

17 “(A) NO RECOUPMENT UNTIL REDETER-
18 MINATION EXERCISED.—In the case of a pro-
19 vider of services, physician, practitioner, or sup-
20 plier that is determined to have received an
21 overpayment under this title and that seeks a
22 redetermination of such determination under
23 section 1869(a)(3), the Secretary may not take
24 any action (or authorize any other person, in-
25 cluding any medicare contractor, as defined in

1 paragraph (9)) to recoup the overpayment until
2 the date the decision on the redetermination
3 has been rendered.

4 “(B) PAYMENT OF INTEREST.—

5 “(i) RETURN OF RECOUPED AMOUNT
6 WITH INTEREST IN CASE OF REVERSAL.—

7 Insofar as such determination on appeal
8 against the provider of services, physician,
9 practitioner, or supplier is later reversed,
10 the Secretary shall provide for repayment
11 of the amount recouped plus interest for
12 the period in which the amount was re-
13 couped.

14 “(ii) INTEREST IN CASE OF AFFIRMA-
15 TION.—Insofar as the determination on
16 such appeal is against the provider of serv-
17 ices, physician, practitioner, or supplier, in-
18 terest on the overpayment shall accrue on
19 and after the date of the original notice of
20 overpayment.

21 “(iii) RATE OF INTEREST.—The rate
22 of interest under this subparagraph shall
23 be the rate otherwise applicable under this
24 title in the case of overpayments.

25 “(3) PAYMENT AUDITS.—

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

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

15 “(i) give the provider of services, phy-
16 sician, practitioner, or supplier a full re-
17 view and explanation of the findings of the
18 audit in a manner that is understandable
19 to the provider of services, physician, prac-
20 titioner, or supplier and permits the devel-
21 opment of an appropriate corrective action
22 plan;

23 “(ii) inform the provider of services,
24 physician, practitioner, or supplier of the
25 appeal rights under this title as well as

1 consent settlement options (which are at
2 the discretion of the Secretary); and

3 “(iii) give the provider of services,
4 physician, practitioner, or supplier an op-
5 portunity to provide additional information
6 to the contractor.

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

13 “(D) MEDICARE CONTRACTOR DEFINED.—
14 For purposes of this paragraph and paragraph
15 (4), the term ‘medicare contractor’ has the
16 meaning given such term in section 1889(f).

17 “(4) NOTICE OF OVER-UTILIZATION OF
18 CODES.—The Secretary shall establish, in consulta-
19 tion with organizations representing the classes of
20 providers of services, physicians, practitioners, and
21 suppliers, a process under which the Secretary pro-
22 vides for notice to classes of providers of services,
23 physicians, practitioners, and suppliers served by a
24 medicare contractor in cases in which the contractor
25 has identified that particular billing codes may be

1 overutilized by that class of providers of services,
2 physicians, practitioners, or suppliers under the pro-
3 grams under this title (or provisions of title XI inso-
4 far as they relate to such programs).

5 “(5) STANDARD METHODOLOGY FOR PROBE
6 SAMPLING.—The Secretary shall establish a stand-
7 ard methodology for medicare administrative con-
8 tractors to use in selecting a sample of claims for re-
9 view in the case of an abnormal billing pattern.

10 “(6) CONSENT SETTLEMENT REFORMS.—

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

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

20 “(i) communicate to the provider of
21 services, physician, practitioner, or supplier
22 in a non-threatening manner that, based
23 on a review of the medical records re-
24 quested by the Secretary, a preliminary

1 evaluation of those records indicates that
2 there would be an overpayment; and

3 “(ii) provide for a 45-day period dur-
4 ing which the provider of services, physi-
5 cian, practitioner, or supplier may furnish
6 additional information concerning the med-
7 ical records for the claims that had been
8 reviewed.

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

17 “(i) shall provide notice of such deter-
18 mination to the provider of services, physi-
19 cian, practitioner, or supplier, including an
20 explanation of the reason for such deter-
21 mination; and

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

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

3 “(II) a consent settlement.

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

7 “(D) CONSENT SETTLEMENT DEFINED.—

8 For purposes of this paragraph, the term ‘con-
9 sent settlement’ means an agreement between
10 the Secretary and a provider of services, physi-
11 cian, practitioner, or supplier whereby both par-
12 ties agree to settle a projected overpayment
13 based on less than a statistically valid sample of
14 claims and the provider of services, physician,
15 practitioner, or supplier agrees not to appeal
16 the claims involved.”.

17 **SEC. 503. PROCESS FOR CORRECTION OF INCOMPLETE OR**
18 **MISSING DATA WITHOUT PURSUING APPEALS**
19 **PROCESS.**

20 The Secretary shall develop, in consultation with ap-
21 propriate medicare contractors (as defined in section
22 1889(g) of the Social Security Act, as inserted by section
23 401(e)(1)) and representatives of providers of services,
24 physicians, practitioners, and suppliers, a process where-
25 by, in the case of incomplete or missing information that

1 are detected in the submission of claims under the pro-
2 grams under title XVIII of such Act by such a provider,
3 physician, practitioner, or supplier, the claim—

4 (1) shall not be processed;

5 (2) shall be returned to that provider, physi-
6 cian, practitioner, or supplier; and

7 (3) may be resubmitted by the provider, physi-
8 cian, practitioner, or supplier with the incomplete or
9 missing information and without having to appeal
10 the claim.

11 **SEC. 504. AUTHORITY TO WAIVE A PROGRAM EXCLUSION.**

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

○