

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2964

To amend titles XVIII, XIX, and XXI of the Social Security Act to prevent fraud, waste, and abuse under Medicare, Medicaid, and CHIP, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2010

Mr. GRASSLEY introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend titles XVIII, XIX, and XXI of the Social Security Act to prevent fraud, waste, and abuse under Medicare, Medicaid, and CHIP, and for other purposes.

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

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

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Strengthening Program Integrity and Accountability in  
6 Health Care Act”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of  
8 this title is as follows:

Sec. 1. Short title; table of contents.

## TITLE I—MEDICARE, MEDICAID, AND CHIP

- Sec. 101. Provider screening and other enrollment requirements under Medicare, Medicaid, and CHIP.
- Sec. 102. Enhanced Medicare and Medicaid program integrity provisions.
- Sec. 103. Elimination of duplication between the Healthcare Integrity and Protection Data Bank and the National Practitioner Data Bank.
- Sec. 104. Maximum period for submission of Medicare claims reduced to not more than 12 months.
- Sec. 105. Physicians who order items or services required to be Medicare enrolled physicians or eligible professionals.
- Sec. 106. Requirement for physicians to provide documentation on referrals to programs at high risk of waste and abuse.
- Sec. 107. Face to face encounter with patient required before physicians may certify eligibility for home health services or durable medical equipment under Medicare.
- Sec. 108. Enhanced penalties.
- Sec. 109. Medicare self-referral disclosure protocol.
- Sec. 110. Expansion of the Recovery Audit Contractor (RAC) program.
- Sec. 111. Requirements for the transmission of management implication reports by the HHS OIG.
- Sec. 112. Medical ID theft information sharing program and clearinghouse.

## TITLE II—ADDITIONAL MEDICAID PROVISIONS

- Sec. 201. Termination of provider participation under Medicaid if terminated under Medicare or other State plan.
- Sec. 202. Medicaid exclusion from participation relating to certain ownership, control, and management affiliations.
- Sec. 203. Billing agents, clearinghouses, or other alternate payees required to register under Medicaid.
- Sec. 204. Requirement to report expanded set of data elements under MMIS to detect fraud and abuse.
- Sec. 205. Prohibition on payments to institutions or entities located outside of the United States.
- Sec. 206. Overpayments.
- Sec. 207. Mandatory State use of national correct coding initiative.
- Sec. 208. Payment for illegal unapproved drugs.
- Sec. 209. General effective date.

## TITLE III—ADDITIONAL PROVISIONS

- Sec. 301. Requiring individuals or entities that participate in or conduct activities under Federal health care programs to comply with certain Congressional requests.
- Sec. 302. Amendments to the False Claims Act.
- Sec. 303. Dismissal of certain actions or claims under the False Claims Act.

1 **TITLE I—MEDICARE, MEDICAID,**  
 2 **AND CHIP**

3 **SEC. 101. PROVIDER SCREENING AND OTHER ENROLLMENT**  
 4 **REQUIREMENTS UNDER MEDICARE, MED-**  
 5 **ICAID, AND CHIP.**

6 (a) **MEDICARE.**—Section 1866(j) of the Social Secu-  
 7 rity Act (42 U.S.C. 1395cc(j)) is amended—

8 (1) in paragraph (1)(A), by adding at the end  
 9 the following: “Such process shall include screening  
 10 of providers and suppliers in accordance with para-  
 11 graph (2), a provisional period of enhanced oversight  
 12 in accordance with paragraph (3), disclosure require-  
 13 ments in accordance with paragraph (4), the imposi-  
 14 tion of temporary enrollment moratoria in accord-  
 15 ance with paragraph (5), and the establishment of  
 16 compliance programs in accordance with paragraph  
 17 (6).”;

18 (2) by redesignating paragraph (2) as para-  
 19 graph (7); and

20 (3) by inserting after paragraph (1) the fol-  
 21 lowing:

22 “(2) **PROVIDER SCREENING.**—

23 “(A) **PROCEDURES.**—Not later than 180  
 24 days after the date of enactment of this para-  
 25 graph, the Secretary, in consultation with the

1 Inspector General of the Department of Health  
2 and Human Services, shall establish procedures  
3 under which screening is conducted with respect  
4 to providers of medical or other items or serv-  
5 ices and suppliers under the program under this  
6 title, the Medicaid program under title XIX,  
7 and the CHIP program under title XXI.

8 “(B) LEVEL OF SCREENING.—The Sec-  
9 retary shall determine the level of screening  
10 conducted under this paragraph according to  
11 the risk of fraud, waste, and abuse, as deter-  
12 mined by the Secretary, with respect to the cat-  
13 egory of provider of medical or other items or  
14 services or supplier. Such screening—

15 “(i) shall include a licensure check,  
16 which may include such checks across  
17 States; and

18 “(ii) may, as the Secretary determines  
19 appropriate based on the risk of fraud,  
20 waste, and abuse described in the pre-  
21 ceding sentence, include—

22 “(I) a criminal background  
23 check;

24 “(II) fingerprinting;

1           “(III) unscheduled and unan-  
2           nounced site visits, including  
3           preenrollment site visits;

4           “(IV) database checks (including  
5           such checks across States); and

6           “(V) such other screening as the  
7           Secretary determines appropriate.

8           “(C) APPLICATION FEES.—

9           “(i) INSTITUTIONAL PROVIDERS.—Ex-  
10           cept as provided in clause (ii), the Sec-  
11           retary shall impose a fee on each institu-  
12           tional provider of medical or other items or  
13           services or supplier (such as a hospital or  
14           skilled nursing facility) with respect to  
15           which screening is conducted under this  
16           paragraph in an amount equal to—

17           “(I) for 2011, \$500; and

18           “(II) for 2012 and each subse-  
19           quent year, the amount determined  
20           under this clause for the preceding  
21           year, adjusted by the percentage  
22           change in the consumer price index  
23           for all urban consumers (all items;  
24           United States city average) for the

1                   12-month period ending with June of  
2                   the previous year.

3                   “(ii) HARDSHIP EXCEPTION; WAIVER  
4                   FOR CERTAIN MEDICAID PROVIDERS.—The  
5                   Secretary may, on a case-by-case basis, ex-  
6                   empt a provider of medical or other items  
7                   or services or supplier from the imposition  
8                   of an application fee under this subpara-  
9                   graph if the Secretary determines that the  
10                  imposition of the application fee would re-  
11                  sult in a hardship. The Secretary may  
12                  waive the application fee under this sub-  
13                  paragraph for providers enrolled in a State  
14                  Medicaid program for whom the State  
15                  demonstrates that imposition of the fee  
16                  would impede beneficiary access to care.

17                  “(iii) USE OF FUNDS.—Amounts col-  
18                  lected as a result of the imposition of a fee  
19                  under this subparagraph shall be used by  
20                  the Secretary for program integrity efforts,  
21                  including to cover the costs of conducting  
22                  screening under this paragraph and to  
23                  carry out this subsection and section  
24                  1128J.

25                  “(D) APPLICATION AND ENFORCEMENT.—

1           “(i) NEW PROVIDERS OF SERVICES  
2           AND SUPPLIERS.—The screening under  
3           this paragraph shall apply, in the case of  
4           a provider of medical or other items or  
5           services or supplier who is not enrolled in  
6           the program under this title, title XIX, or  
7           title XXI as of the date of enactment of  
8           this paragraph, on or after the date that is  
9           1 year after such date of enactment.

10           “(ii) CURRENT PROVIDERS OF SERV-  
11           ICES AND SUPPLIERS.—The screening  
12           under this paragraph shall apply, in the  
13           case of a provider of medical or other  
14           items or services or supplier who is en-  
15           rolled in the program under this title, title  
16           XIX, or title XXI as of such date of enact-  
17           ment, on or after the date that is 2 years  
18           after such date of enactment.

19           “(iii) REVALIDATION OF ENROLL-  
20           MENT.—Effective beginning on the date  
21           that is 180 days after such date of enact-  
22           ment, the screening under this paragraph  
23           shall apply with respect to the revalidation  
24           of enrollment of a provider of medical or  
25           other items or services or supplier in the

1 program under this title, title XIX, or title  
2 XXI.

3 “(iv) LIMITATION ON ENROLLMENT  
4 AND REVALIDATION OF ENROLLMENT.—In  
5 no case may a provider of medical or other  
6 items or services or supplier who has not  
7 been screened under this paragraph be ini-  
8 tially enrolled or reenrolled in the program  
9 under this title, title XIX, or title XXI on  
10 or after the date that is 3 years after such  
11 date of enactment.

12 “(E) EXPEDITED RULEMAKING.—The Sec-  
13 retary may promulgate an interim final rule to  
14 carry out this paragraph.

15 “(3) PROVISIONAL PERIOD OF ENHANCED  
16 OVERSIGHT FOR NEW PROVIDERS OF SERVICES AND  
17 SUPPLIERS.—

18 “(A) IN GENERAL.—The Secretary shall  
19 establish procedures to provide for a provisional  
20 period of not less than 30 days and not more  
21 than 1 year during which new providers of med-  
22 ical or other items or services and suppliers, as  
23 the Secretary determines appropriate, including  
24 categories of providers or suppliers, would be  
25 subject to enhanced oversight, such as prepay-

1           ment review and payment caps, under the pro-  
2           gram under this title, the Medicaid program  
3           under title XIX, and the CHIP program under  
4           title XXI.

5           “(B) IMPLEMENTATION.—The Secretary  
6           may establish by program instruction or other-  
7           wise the procedures under this paragraph.

8           “(4) INCREASED DISCLOSURE REQUIRE-  
9           MENTS.—

10           “(A) DISCLOSURE.—A provider of medical  
11           or other items or services or supplier who sub-  
12           mits an application for enrollment or revalida-  
13           tion of enrollment in the program under this  
14           title, title XIX, or title XXI on or after the date  
15           that is 1 year after the date of enactment of  
16           this paragraph shall disclose (in a form and  
17           manner and at such time as determined by the  
18           Secretary) any current or previous affiliation  
19           (directly or indirectly) with a provider of med-  
20           ical or other items or services or supplier that  
21           has uncollected debt, has been or is subject to  
22           a payment suspension under a Federal health  
23           care program (as defined in section 1128B(f)),  
24           has been excluded from participation under the  
25           program under this title, the Medicaid program

1 under title XIX, or the CHIP program under  
2 title XXI, or has had its billing privileges de-  
3 nied or revoked.

4 “(B) AUTHORITY TO DENY ENROLL-  
5 MENT.—If the Secretary determines that such  
6 previous affiliation poses an undue risk of  
7 fraud, waste, or abuse, the Secretary may deny  
8 such application. Such a denial shall be subject  
9 to appeal in accordance with paragraph (7).

10 “(5) AUTHORITY TO ADJUST PAYMENTS OF  
11 PROVIDERS OF SERVICES AND SUPPLIERS WITH THE  
12 SAME TAX IDENTIFICATION NUMBER FOR PAST-DUE  
13 OBLIGATIONS.—

14 “(A) IN GENERAL.—Notwithstanding any  
15 other provision of this title, in the case of an  
16 applicable provider of services or supplier, the  
17 Secretary may make any necessary adjustments  
18 to payments to the applicable provider of serv-  
19 ices or supplier under the program under this  
20 title in order to satisfy any past-due obligations  
21 described in subparagraph (B)(ii) of an obli-  
22 gated provider of services or supplier.

23 “(B) DEFINITIONS.—In this paragraph:

24 “(i) IN GENERAL.—The term ‘applica-  
25 ble provider of services or supplier’ means

1 a provider of services or supplier that has  
2 the same taxpayer identification number  
3 assigned under section 6109 of the Inter-  
4 nal Revenue Code of 1986 as is assigned  
5 to the obligated provider of services or sup-  
6 plier under such section, regardless of  
7 whether the applicable provider of services  
8 or supplier is assigned a different billing  
9 number or national provider identification  
10 number under the program under this title  
11 than is assigned to the obligated provider  
12 of services or supplier.

13 “(ii) OBLIGATED PROVIDER OF SERV-  
14 ICES OR SUPPLIER.—The term ‘obligated  
15 provider of services or supplier’ means a  
16 provider of services or supplier that owes a  
17 past-due obligation under the program  
18 under this title (as determined by the Sec-  
19 retary).

20 “(6) TEMPORARY MORATORIUM ON ENROLL-  
21 MENT OF NEW PROVIDERS.—

22 “(A) IN GENERAL.—The Secretary may  
23 impose a temporary moratorium on the enroll-  
24 ment of new providers of services and suppliers,  
25 including categories of providers of services and

1 suppliers, in the program under this title, under  
2 the Medicaid program under title XIX, or  
3 under the CHIP program under title XXI if the  
4 Secretary determines such moratorium is nec-  
5 essary to prevent or combat fraud, waste, or  
6 abuse under either such program.

7 “(B) LIMITATION ON REVIEW.—There  
8 shall be no judicial review under section 1869,  
9 section 1878, or otherwise, of a temporary mor-  
10 atorium imposed under subparagraph (A).

11 “(7) COMPLIANCE PROGRAMS.—

12 “(A) IN GENERAL.—On or after the date  
13 of implementation determined by the Secretary  
14 under subparagraph (C), a provider of medical  
15 or other items or services or supplier within a  
16 particular industry sector or category shall, as  
17 a condition of enrollment in the program under  
18 this title, title XIX, or title XXI, establish a  
19 compliance program that contains the core ele-  
20 ments established under subparagraph (B) with  
21 respect to that provider or supplier and indus-  
22 try or category.

23 “(B) ESTABLISHMENT OF CORE ELE-  
24 MENTS.—The Secretary, in consultation with  
25 the Inspector General of the Department of

1 Health and Human Services, shall establish  
2 core elements for a compliance program under  
3 subparagraph (A) for providers or suppliers  
4 within a particular industry or category.

5 “(C) TIMELINE FOR IMPLEMENTATION.—  
6 The Secretary shall determine the timeline for  
7 the establishment of the core elements under  
8 subparagraph (B) and the date of the imple-  
9 mentation of subparagraph (A) for providers or  
10 suppliers within a particular industry or cat-  
11 egory. The Secretary shall, in determining such  
12 date of implementation, consider the extent to  
13 which the adoption of compliance programs by  
14 a provider of medical or other items or services  
15 or supplier is widespread in a particular indus-  
16 try sector or with respect to a particular pro-  
17 vider or supplier category.”.

18 (b) MEDICAID.—

19 (1) STATE PLAN AMENDMENT.—Section  
20 1902(a) of the Social Security Act (42 U.S.C.  
21 1396a(a)) is amended—

22 (A) in subsection (a)—

23 (i) by striking “and” at the end of  
24 paragraph (72);

1 (ii) by striking the period at the end  
2 of paragraph (73) and inserting a semi-  
3 colon; and

4 (iii) by inserting after paragraph (73)  
5 the following:

6 “(74) provide that the State shall comply with  
7 provider and supplier screening, oversight, and re-  
8 porting requirements in accordance with subsection  
9 (ii);” and

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

11 “(ii) PROVIDER AND SUPPLIER SCREENING, OVER-  
12 SIGHT, AND REPORTING REQUIREMENTS.—For purposes  
13 of subsection (a)(74), the requirements of this subsection  
14 are the following:

15 “(1) SCREENING.—The State complies with the  
16 process for screening providers and suppliers under  
17 this title, as established by the Secretary under sec-  
18 tion 1886(j)(2).

19 “(2) PROVISIONAL PERIOD OF ENHANCED  
20 OVERSIGHT FOR NEW PROVIDERS AND SUPPLIERS.—  
21 The State complies with procedures to provide for a  
22 provisional period of enhanced oversight for new pro-  
23 viders and suppliers under this title, as established  
24 by the Secretary under section 1886(j)(3).

1           “(3) DISCLOSURE REQUIREMENTS.—The State  
2 requires providers and suppliers under the State  
3 plan or under a waiver of the plan to comply with  
4 the disclosure requirements established by the Sec-  
5 retary under section 1886(j)(4).

6           “(4) TEMPORARY MORATORIUM ON ENROLL-  
7 MENT OF NEW PROVIDERS OR SUPPLIERS.—

8           “(A) TEMPORARY MORATORIUM IMPOSED  
9 BY THE SECRETARY.—

10           “(i) IN GENERAL.—Subject to clause  
11 (ii), the State complies with any temporary  
12 moratorium on the enrollment of new pro-  
13 viders or suppliers imposed by the Sec-  
14 retary under section 1886(j)(6).

15           “(ii) EXCEPTION.—A State shall not  
16 be required to comply with a temporary  
17 moratorium described in clause (i) if the  
18 State determines that the imposition of  
19 such temporary moratorium would ad-  
20 versely impact beneficiaries’ access to med-  
21 ical assistance.

22           “(B) MORATORIUM ON ENROLLMENT OF  
23 PROVIDERS AND SUPPLIERS.—At the option of  
24 the State, the State imposes, for purposes of  
25 entering into participation agreements with pro-

1           viders or suppliers under the State plan or  
2           under a waiver of the plan, periods of enroll-  
3           ment moratoria, or numerical caps or other lim-  
4           its, for providers or suppliers identified by the  
5           Secretary as being at high-risk for fraud, waste,  
6           or abuse as necessary to combat fraud, waste,  
7           or abuse, but only if the State determines that  
8           the imposition of any such period, cap, or other  
9           limits would not adversely impact beneficiaries'  
10          access to medical assistance.

11           “(5) COMPLIANCE PROGRAMS.—The State re-  
12          quires providers and suppliers under the State plan  
13          or under a waiver of the plan to establish, in accord-  
14          ance with the requirements of section 1866(j)(7), a  
15          compliance program that contains the core elements  
16          established under subparagraph (B) of that section  
17          1866(j)(7) for providers or suppliers within a par-  
18          ticular industry or category.

19           “(6) REPORTING OF ADVERSE PROVIDER AC-  
20          TIONS.—The State complies with the national sys-  
21          tem for reporting criminal and civil convictions,  
22          sanctions, negative licensure actions, and other ad-  
23          verse provider actions to the Secretary, through the  
24          Administrator of the Centers for Medicare & Med-

1       icaid Services, in accordance with regulations of the  
2       Secretary.

3               “(7) ENROLLMENT AND NPI OF ORDERING OR  
4       REFERRING PROVIDERS.—The State requires—

5                       “(A) all ordering or referring physicians or  
6                       other professionals to be enrolled under the  
7                       State plan or under a waiver of the plan as a  
8                       participating provider; and

9                       “(B) the national provider identifier of any  
10                      ordering or referring physician or other profes-  
11                      sional to be specified on any claim for payment  
12                      that is based on an order or referral of the phy-  
13                      sician or other professional.

14               “(8) OTHER STATE OVERSIGHT.—Nothing in  
15       this subsection shall be interpreted to preclude or  
16       limit the ability of a State to engage in provider and  
17       supplier screening or enhanced provider and supplier  
18       oversight activities beyond those required by the Sec-  
19       retary.”.

20               (2) DISCLOSURE OF MEDICARE TERMINATED  
21       PROVIDERS AND SUPPLIERS TO STATES.—The Ad-  
22       ministrator of the Centers for Medicare & Medicaid  
23       Services shall establish a process for making avail-  
24       able to the each State agency with responsibility for  
25       administering a State Medicaid plan (or a waiver of

1 such plan) under title XIX of the Social Security  
2 Act or a child health plan under title XXI the name,  
3 national provider identifier, and other identifying in-  
4 formation for any provider of medical or other items  
5 or services or supplier under the Medicare program  
6 under title XVIII or under the CHIP program under  
7 title XXI that is terminated from participation  
8 under that program within 30 days of the termi-  
9 nation (and, with respect to all such providers or  
10 suppliers who are terminated from the Medicare pro-  
11 gram on the date of enactment of this Act, within  
12 90 days of such date).

13 (3) CONFORMING AMENDMENT.—Section  
14 1902(a)(23) of the Social Security Act (42 U.S.C.  
15 1396a), is amended by inserting before the semi-  
16 colon at the end the following: “or by a provider or  
17 supplier to which a moratorium under subsection  
18 (ii)(4) is applied during the period of such morato-  
19 rium”.

20 (c) CHIP.—Section 2107(e)(1) of the Social Security  
21 Act (42 U.S.C. 1397gg(e)(1)) is amended—

22 (1) by redesignating subparagraphs (D)  
23 through (L) as subparagraphs (E) through (M), re-  
24 spectively; and

1 (2) by inserting after subparagraph (C), the fol-  
 2 lowing:

3 “(D) Subsections (a)(74) and (ii) of sec-  
 4 tion 1902 (relating to provider and supplier  
 5 screening, oversight, and reporting require-  
 6 ments).”.

7 **SEC. 102. ENHANCED MEDICARE AND MEDICAID PROGRAM**  
 8 **INTEGRITY PROVISIONS.**

9 (a) IN GENERAL.—Part A of title XI of the Social  
 10 Security Act (42 U.S.C. 1301 et seq.) is amended by in-  
 11 serting after section 1128F the following new section:

12 **“SEC. 1128G. MEDICARE AND MEDICAID PROGRAM INTEG-**  
 13 **RITY PROVISIONS.**

14 “(a) DATA MATCHING.—

15 “(1) INTEGRATED DATA REPOSITORY.—

16 “(A) INCLUSION OF CERTAIN DATA.—

17 “(i) IN GENERAL.—The Integrated  
 18 Data Repository of the Centers for Medi-  
 19 care & Medicaid Services shall include, at  
 20 a minimum, claims and payment data from  
 21 the following:

22 “(I) The programs under titles  
 23 XVIII and XIX (including parts A, B,  
 24 C, and D of title XVIII).

1                   “(II) The program under title  
2                   XXI.

3                   “(III) Health-related programs  
4                   administered by the Secretary of Vet-  
5                   erans Affairs.

6                   “(IV) Health-related programs  
7                   administered by the Secretary of De-  
8                   fense.

9                   “(V) The program of old-age,  
10                  survivors, and disability insurance  
11                  benefits established under title II.

12                  “(VI) The Indian Health Service  
13                  and the Contract Health Service pro-  
14                  gram.

15                  “(ii) PRIORITY FOR INCLUSION OF  
16                  CERTAIN DATA.—Inclusion of the data de-  
17                  scribed in subclause (I) of such clause in  
18                  the Integrated Data Repository shall be a  
19                  priority. Data described in subclauses (II)  
20                  through (VI) of such clause shall be in-  
21                  cluded in the Integrated Data Repository  
22                  as appropriate.

23                  “(B) DATA SHARING AND MATCHING.—

24                  “(i) IN GENERAL.—The Secretary  
25                  shall enter into agreements with the indi-

1 individuals described in clause (ii) under which  
2 such individuals share and match data in  
3 the system of records of the respective  
4 agencies of such individuals with data in  
5 the system of records of the Department of  
6 Health and Human Services for the pur-  
7 pose of identifying potential fraud, waste,  
8 and abuse under the programs under titles  
9 XVIII and XIX.

10 “(ii) INDIVIDUALS DESCRIBED.—The  
11 following individuals are described in this  
12 clause:

13 “(I) The Commissioner of Social  
14 Security.

15 “(II) The Secretary of Veterans  
16 Affairs.

17 “(III) The Secretary of Defense.

18 “(IV) The Director of the Indian  
19 Health Service.

20 “(iii) DEFINITION OF SYSTEM OF  
21 RECORDS.—For purposes of this para-  
22 graph, the term ‘system of records’ has the  
23 meaning given such term in section  
24 552a(a)(5) of title 5, United States Code.

1           “(2) ACCESS TO CLAIMS AND PAYMENT DATA-  
2 BASES.—For purposes of conducting law enforce-  
3 ment and oversight activities and to the extent con-  
4 sistent with applicable information, privacy, security,  
5 and disclosure laws, including the regulations pro-  
6 mulgated under the Health Insurance Portability  
7 and Accountability Act of 1996 and section 552a of  
8 title 5, United States Code, and subject to any infor-  
9 mation systems security requirements under such  
10 laws or otherwise required by the Secretary, the In-  
11 spector General of the Department of Health and  
12 Human Services and the Attorney General shall  
13 have access to claims and payment data of the De-  
14 partment of Health and Human Services and its  
15 contractors related to titles XVIII, XIX, and XXI.

16           “(b) OIG AUTHORITY TO OBTAIN INFORMATION.—

17           “(1) IN GENERAL.—Notwithstanding and in ad-  
18 dition to any other provision of law, the Inspector  
19 General of the Department of Health and Human  
20 Services may, for purposes of protecting the integ-  
21 rity of the programs under titles XVIII and XIX,  
22 obtain information from any individual (including a  
23 beneficiary provided all applicable privacy protec-  
24 tions are followed) or entity that—

1           “(A) is a provider of medical or other  
2 items or services, supplier, grant recipient, con-  
3 tractor, or subcontractor; or

4           “(B) directly or indirectly provides, orders,  
5 manufactures, distributes, arranges for, pre-  
6 scribes, supplies, or receives medical or other  
7 items or services payable by any Federal health  
8 care program (as defined in section 1128B(f))  
9 regardless of how the item or service is paid  
10 for, or to whom such payment is made.

11           “(2) INCLUSION OF CERTAIN INFORMATION.—  
12 Information which the Inspector General may obtain  
13 under paragraph (1) includes any supporting docu-  
14 mentation necessary to validate claims for payment  
15 or payments under title XVIII or XIX, including a  
16 prescribing physician’s medical records for an indi-  
17 vidual who is prescribed an item or service which is  
18 covered under part B of title XVIII, a covered part  
19 D drug (as defined in section 1860D–2(e)) for which  
20 payment is made under an MA–PD plan under part  
21 C of such title, or a prescription drug plan under  
22 part D of such title, and any records necessary for  
23 evaluation of the economy, efficiency, and effective-  
24 ness of the programs under titles XVIII and XIX.

1       “(c) ADMINISTRATIVE REMEDY FOR KNOWING PAR-  
 2 PARTICIPATION BY BENEFICIARY IN HEALTH CARE FRAUD  
 3 SCHEME.—

4           “(1) IN GENERAL.—In addition to any other  
 5 applicable remedies, if an applicable individual has  
 6 knowingly participated in a Federal health care  
 7 fraud offense or a conspiracy to commit a Federal  
 8 health care fraud offense, the Secretary shall impose  
 9 an appropriate administrative penalty commensurate  
 10 with the offense or conspiracy.

11           “(2) APPLICABLE INDIVIDUAL.—For purposes  
 12 of paragraph (1), the term ‘applicable individual’  
 13 means an individual—

14           “(A) entitled to, or enrolled for, benefits  
 15 under part A of title XVIII or enrolled under  
 16 part B of such title;

17           “(B) eligible for medical assistance under  
 18 a State plan under title XIX or under a waiver  
 19 of such plan; or

20           “(C) eligible for child health assistance  
 21 under a child health plan under title XXI.

22       “(d) REPORTING AND RETURNING OF OVERPAY-  
 23 MENTS.—

24           “(1) IN GENERAL.—If a person has received an  
 25 overpayment, the person shall—

1           “(A) report and return the overpayment to  
2           the Secretary, the State, an intermediary, a  
3           carrier, or a contractor, as appropriate, at the  
4           correct address; and

5           “(B) notify the Secretary, State, inter-  
6           mediary, carrier, or contractor to whom the  
7           overpayment was returned in writing of the rea-  
8           son for the overpayment.

9           “(2) DEADLINE FOR REPORTING AND RETURN-  
10          ING OVERPAYMENTS.—An overpayment must be re-  
11          ported and returned under paragraph (1) by the  
12          later of—

13                 “(A) the date which is 60 days after the  
14                 date on which the overpayment was identified;  
15                 or

16                 “(B) the date any corresponding cost re-  
17                 port is due, if applicable.

18           “(3) ENFORCEMENT.—Any overpayment re-  
19          tained by a person after the deadline for reporting  
20          and returning the overpayment under paragraph (2)  
21          is an obligation (as defined in section 3729(b)(3) of  
22          title 31, United States Code) for purposes of section  
23          3729 of such title.

24           “(4) DEFINITIONS.—In this subsection:

1           “(A) KNOWING AND KNOWINGLY.—The  
2 terms ‘knowing’ and ‘knowingly’ have the mean-  
3 ing given those terms in section 3729(b) of title  
4 31, United States Code.

5           “(B) OVERPAYMENT.—The term ‘overpay-  
6 ment’ means any funds that a person receives  
7 or retains under title XVIII or XIX to which  
8 the person, after applicable reconciliation, is not  
9 entitled under such title.

10          “(C) PERSON.—

11           “(i) IN GENERAL.—The term ‘person’  
12 means a provider of services, supplier,  
13 Medicaid managed care organization (as  
14 defined in section 1903(m)(1)(A)), Medi-  
15 care Advantage organization (as defined in  
16 section 1859(a)(1)), or PDP sponsor (as  
17 defined in section 1860D–41(a)(13)).

18           “(ii) EXCLUSION.—Such term does  
19 not include a beneficiary.

20          “(e) INCLUSION OF NATIONAL PROVIDER IDENTI-  
21 FIER ON ALL APPLICATIONS AND CLAIMS.—The Sec-  
22 retary shall promulgate a regulation that requires, not  
23 later than January 1, 2011, all providers of medical or  
24 other items or services and suppliers under the programs  
25 under titles XVIII and XIX that qualify for a national

1 provider identifier to include their national provider identi-  
2 fier on all applications to enroll in such programs and on  
3 all claims for payment submitted under such programs.”.

4 (b) ACCESS TO DATA.—

5 (1) MEDICARE PART D.—Section 1860D-  
6 15(f)(2) of the Social Security Act (42 U.S.C.  
7 1395w-116(f)(2)) is amended by striking “may be  
8 used by” and all that follows through the period at  
9 the end and inserting “may be used—

10 “(A) by officers, employees, and contrac-  
11 tors of the Department of Health and Human  
12 Services for the purposes of, and to the extent  
13 necessary in—

14 “(i) carrying out this section; and

15 “(ii) conducting oversight, evaluation,  
16 and enforcement under this title; and

17 “(B) by the Attorney General and the  
18 Comptroller General of the United States for  
19 the purposes of, and to the extent necessary in,  
20 carrying out health oversight activities.”.

21 (2) DATA MATCHING.—Section 552a(a)(8)(B)  
22 of title 5, United States Code, is amended—

23 (A) in clause (vii), by striking “or” at the  
24 end;

1 (B) in clause (viii), by inserting “or” after  
2 the semicolon; and

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

5 “(ix) matches performed by the Sec-  
6 retary of Health and Human Services or  
7 the Inspector General of the Department  
8 of Health and Human Services with re-  
9 spect to potential fraud, waste, and abuse,  
10 including matches of a system of records  
11 with non-Federal records;”.

12 (3) MATCHING AGREEMENTS WITH THE COM-  
13 MISSIONER OF SOCIAL SECURITY.—Section 205(r) of  
14 the Social Security Act (42 U.S.C. 405(r)) is amend-  
15 ed by adding at the end the following new para-  
16 graph:

17 “(9)(A) The Commissioner of Social Security  
18 shall, upon the request of the Secretary or the In-  
19 spector General of the Department of Health and  
20 Human Services—

21 “(i) enter into an agreement with the Sec-  
22 retary or such Inspector General for the pur-  
23 pose of matching data in the system of records  
24 of the Social Security Administration and the

1 system of records of the Department of Health  
2 and Human Services; and

3 “(ii) include in such agreement safeguards  
4 to assure the maintenance of the confidentiality  
5 of any information disclosed.

6 “(B) For purposes of this paragraph, the term  
7 ‘system of records’ has the meaning given such term  
8 in section 552a(a)(5) of title 5, United States  
9 Code.”.

10 (c) WITHHOLDING OF FEDERAL MATCHING PAY-  
11 MENTS FOR STATES THAT FAIL TO REPORT ENROLLEE  
12 ENCOUNTER DATA IN THE MEDICAID STATISTICAL IN-  
13 FORMATION SYSTEM.—Section 1903(i) of the Social Secu-  
14 rity Act (42 U.S.C. 1396b(i)) is amended—

15 (1) in paragraph (23), by striking “or” at the  
16 end;

17 (2) in paragraph (24), by striking the period at  
18 the end and inserting “; or”; and

19 (3) by adding at the end the following new  
20 paragraph:

21 “(25) with respect to any amounts expended for  
22 medical assistance for individuals for whom the  
23 State does not report enrollee encounter data (as de-  
24 fined by the Secretary) to the Medicaid Statistical

1 Information System (MSIS) in a timely manner (as  
2 determined by the Secretary).”.

3 (d) PERMISSIVE EXCLUSIONS AND CIVIL MONETARY  
4 PENALTIES.—

5 (1) PERMISSIVE EXCLUSIONS.—Section 1128(b)  
6 of the Social Security Act (42 U.S.C. 1320a–7(b))  
7 is amended—

8 (A) by striking clauses (i) and (ii) of para-  
9 graph (15)(A) and inserting the following:

10 “(i) who has or had a direct or indi-  
11 rect ownership or control interest in the  
12 sanctioned entity and who knew or should  
13 have known (as defined in section  
14 1128A(i)(7)) of the action constituting the  
15 basis for the conviction or exclusion de-  
16 scribed in subparagraph (B); or

17 “(ii) who is or was an officer or man-  
18 aging employee (as defined in section  
19 1126(b)) of such an entity at the time of  
20 the action constituting the basis for the  
21 conviction or exclusion so described.”; and

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

24 “(16) MAKING FALSE STATEMENTS OR MIS-  
25 REPRESENTATION OF MATERIAL FACTS.—Any indi-

1       vidual or entity that knowingly makes or causes to  
2       be made any false statement, omission, or misrepre-  
3       sentation of a material fact in any application,  
4       agreement, bid, or contract to participate or enroll  
5       as a provider of services or supplier under a Federal  
6       health care program (as defined in section  
7       1128B(f)), including Medicare Advantage organiza-  
8       tions under part C of title XVIII, prescription drug  
9       plan sponsors under part D of title XVIII, Medicaid  
10      managed care organizations under title XIX, and en-  
11      tities that apply to participate as providers of serv-  
12      ices or suppliers in such managed care organizations  
13      and such plans.”.

14               (2) CIVIL MONETARY PENALTIES.—

15                   (A) IN GENERAL.—Section 1128A(a) of  
16                   the Social Security Act (42 U.S.C. 1320a-  
17                   7a(a)) is amended—

18                           (i) in paragraph (1)(D), by striking  
19                           “was excluded” and all that follows  
20                           through the period at the end and insert-  
21                           ing “was excluded from the Federal health  
22                           care program (as defined in section  
23                           1128B(f)) under which the claim was  
24                           made pursuant to Federal law.”;

1 (ii) in paragraph (6), by striking “or”  
2 at the end;

3 (iii) by inserting after paragraph (7),  
4 the following new paragraphs:

5 “(8) orders or prescribes a medical or other  
6 item or service during a period in which the person  
7 was excluded from a Federal health care program  
8 (as so defined), in the case where the person knows  
9 or should know that a claim for such medical or  
10 other item or service will be made under such a pro-  
11 gram;

12 “(9) knowingly makes or causes to be made any  
13 false statement, omission, or misrepresentation of a  
14 material fact in any application, bid, or contract to  
15 participate or enroll as a provider of services or a  
16 supplier under a Federal health care program (as so  
17 defined), including Medicare Advantage organiza-  
18 tions under part C of title XVIII, prescription drug  
19 plan sponsors under part D of title XVIII, Medicaid  
20 managed care organizations under title XIX, and en-  
21 tities that apply to participate as providers of serv-  
22 ices or suppliers in such managed care organizations  
23 and such plans;

24 “(10) knows of an overpayment (as defined in  
25 paragraph (4) of section 1128G(d)) and does not re-

1 port and return the overpayment in accordance with  
2 such section;”;

3 (iv) in the first sentence—

4 (I) by striking the “or” after  
5 “prohibited relationship occurs;”; and

6 (II) by striking “act)” and in-  
7 serting “act; or in cases under para-  
8 graph (9), \$50,000 for each false  
9 statement or misrepresentation of a  
10 material fact)”;

11 (v) in the second sentence, by striking  
12 “purpose)” and inserting “purpose; or in  
13 cases under paragraph (9), an assessment  
14 of not more than 3 times the total amount  
15 claimed for each item or service for which  
16 payment was made based upon the applica-  
17 tion containing the false statement or mis-  
18 representation of a material fact)”.

19 (B) CLARIFICATION OF TREATMENT OF  
20 CERTAIN CHARITABLE AND OTHER INNOCUOUS  
21 PROGRAMS.—Section 1128A(i)(6) of the Social  
22 Security Act (42 U.S.C. 1320a–7a(i)(6)) is  
23 amended—

24 (i) in subparagraph (C), by striking  
25 “or” at the end;

1           (ii) in subparagraph (D), as redesignig-  
2           nated by section 4331(e) of the Balanced  
3           Budget Act of 1997 (Public Law 105–33),  
4           by striking the period at the end and in-  
5           serting a semicolon;

6           (iii) by redesignating subparagraph  
7           (D), as added by section 4523(c) of such  
8           Act, as subparagraph (E) and striking the  
9           period at the end and inserting “; or”; and

10          (iv) by adding at the end the following  
11          new subparagraphs:

12           “(F) any other remuneration which pro-  
13           motes access to care and poses a low risk of  
14           harm to patients and Federal health care pro-  
15           grams (as defined in section 1128B(f) and des-  
16           ignated by the Secretary under regulations);

17           “(G) the offer or transfer of items or serv-  
18           ices for free or less than fair market value by  
19           a person, if—

20            “(i) the items or services consist of  
21            coupons, rebates, or other rewards from a  
22            retailer;

23            “(ii) the items or services are offered  
24            or transferred on equal terms available to

1 the general public, regardless of health in-  
2 surance status; and

3 “(iii) the offer or transfer of the items  
4 or services is not tied to the provision of  
5 other items or services reimbursed in whole  
6 or in part by the program under title  
7 XVIII or a State health care program (as  
8 defined in section 1128(h));

9 “(H) the offer or transfer of items or serv-  
10 ices for free or less than fair market value by  
11 a person, if—

12 “(i) the items or services are not of-  
13 fered as part of any advertisement or solie-  
14 itation;

15 “(ii) the items or services are not tied  
16 to the provision of other services reim-  
17 bursed in whole or in part by the program  
18 under title XVIII or a State health care  
19 program (as so defined);

20 “(iii) there is a reasonable connection  
21 between the items or services and the med-  
22 ical care of the individual; and

23 “(iv) the person provides the items or  
24 services after determining in good faith  
25 that the individual is in financial need; or

1           “(I) effective on a date specified by the  
2           Secretary (but not earlier than January 1,  
3           2011), the waiver by a PDP sponsor of a pre-  
4           scription drug plan under part D of title XVIII  
5           or an MA organization offering an MA–PD  
6           plan under part C of such title of any copay-  
7           ment for the first fill of a covered part D drug  
8           (as defined in section 1860D–2(e)) that is a ge-  
9           neric drug for individuals enrolled in the pre-  
10          scription drug plan or MA–PD plan, respec-  
11          tively.”.

12          (e) TESTIMONIAL SUBPOENA AUTHORITY IN EXCLU-  
13          SION-ONLY CASES.—Section 1128(f) of the Social Secu-  
14          rity Act (42 U.S.C. 1320a–7(f)) is amended by adding at  
15          the end the following new paragraph:

16               “(4) The provisions of subsections (d) and (e)  
17               of section 205 shall apply with respect to this sec-  
18               tion to the same extent as they are applicable with  
19               respect to title II. The Secretary may delegate the  
20               authority granted by section 205(d) (as made appli-  
21               cable to this section) to the Inspector General of the  
22               Department of Health and Human Services for pur-  
23               poses of any investigation under this section.”.

24          (f) REVISING THE INTENT REQUIREMENT FOR  
25          HEALTH CARE FRAUD.—Section 1128B of the Social Se-

1 curity Act (42 U.S.C. 1320a–7b) is amended by adding  
 2 at the end the following new subsection:

3 “(g) With respect to violations of this section, a per-  
 4 son need not have actual knowledge of this section or spe-  
 5 cific intent to commit a violation of this section.”.

6 (g) SURETY BOND REQUIREMENTS.—

7 (1) DURABLE MEDICAL EQUIPMENT.—Section  
 8 1834(a)(16)(B) of the Social Security Act (42  
 9 U.S.C. 1395m(a)(16)(B)) is amended by inserting  
 10 “that the Secretary determines is commensurate  
 11 with the volume of the billing of the supplier” before  
 12 the period at the end.

13 (2) HOME HEALTH AGENCIES.—Section  
 14 1861(o)(7)(C) of the Social Security Act (42 U.S.C.  
 15 1395x(o)(7)(C)) is amended by inserting “that the  
 16 Secretary determines is commensurate with the vol-  
 17 ume of the billing of the home health agency” before  
 18 the semicolon at the end.

19 (3) REQUIREMENTS FOR CERTAIN OTHER PRO-  
 20 VIDERS OF SERVICES AND SUPPLIERS.—Section  
 21 1862 of the Social Security Act (42 U.S.C. 1395y)  
 22 is amended by adding at the end the following new  
 23 subsection:

24 “(n) REQUIREMENT OF A SURETY BOND FOR CER-  
 25 TAIN PROVIDERS OF SERVICES AND SUPPLIERS.—

1           “(1) IN GENERAL.—The Secretary may require  
2           a provider of services or supplier described in para-  
3           graph (2) to provide the Secretary on a continuing  
4           basis with a surety bond in a form specified by the  
5           Secretary in an amount (not less than \$50,000) that  
6           the Secretary determines is commensurate with the  
7           volume of the billing of the provider of services or  
8           supplier. The Secretary may waive the requirement  
9           of a bond under the preceding sentence in the case  
10          of a provider of services or supplier that provides a  
11          comparable surety bond under State law.

12           “(2) PROVIDER OF SERVICES OR SUPPLIER DE-  
13          SCRIBED.—A provider of services or supplier de-  
14          scribed in this paragraph is a provider of services or  
15          supplier the Secretary determines appropriate based  
16          on the level of risk involved with respect to the pro-  
17          vider of services or supplier, and consistent with the  
18          surety bond requirements under sections  
19          1834(a)(16)(B) and 1861(o)(7)(C).”.

20          (h) SUSPENSION OF MEDICARE AND MEDICAID PAY-  
21          MENTS PENDING INVESTIGATION OF CREDIBLE ALLEGA-  
22          TIONS OF FRAUD.—

23           (1) MEDICARE.—Section 1862 of the Social Se-  
24          curity Act (42 U.S.C. 1395y), as amended by sub-

1 section (g)(3), is amended by adding at the end the  
2 following new subsection:

3 “(o) SUSPENSION AUTHORITY.—

4 “(1) IN GENERAL.—The Secretary shall sus-  
5 pend payment to a provider of services or supplier  
6 under this title pending an investigation of credible  
7 allegations of fraud against the provider of services  
8 or supplier, unless the Secretary finds good cause  
9 not to suspend such payment.

10 “(2) CONSULTATION.—The Secretary shall con-  
11 sult with the Inspector General of the Department  
12 of Health and Human Services in determining  
13 whether there is a credible allegation of fraud  
14 against a provider of services or supplier.

15 “(3) PROMULGATION OF REGULATIONS.—The  
16 Secretary shall promulgate regulations to carry out  
17 this subsection and section 1903(i)(2)(C).”.

18 (2) MEDICAID.—Section 1903(i)(2) of such Act  
19 (42 U.S.C. 1396b(i)(2)) is amended—

20 (A) in subparagraph (A), by striking “or”  
21 at the end; and

22 (B) by inserting after subparagraph (B),  
23 the following:

24 “(C) by any individual or entity to whom  
25 the State has failed to suspend payments under

1 the plan during any period when there is pend-  
2 ing an investigation of a credible allegation of  
3 fraud against the individual or entity, as deter-  
4 mined by the State in accordance with regula-  
5 tions promulgated by the Secretary for pur-  
6 poses of section 1862(o) and this subparagraph,  
7 unless the State determines in accordance with  
8 such regulations there is good cause not to sus-  
9 pend such payments; or”.

10 (i) EXTENSION OF NUMBER OF DAYS IN WHICH  
11 MEDICARE CLAIMS ARE REQUIRED TO BE PAID IN  
12 ORDER TO PREVENT OR COMBAT FRAUD, WASTE, OR  
13 ABUSE.—

14 (1) PART A CLAIMS.—Section 1816(c)(2) of the  
15 Social Security Act (42 U.S.C. 1395h(c)(2)) is  
16 amended—

17 (A) in subparagraph (B)(ii)(V), by striking  
18 “with respect” and inserting “subject to sub-  
19 paragraph (D), with respect”; and

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

22 “(D)(i) Upon a determination by the Sec-  
23 retary that there is a likelihood of fraud, waste,  
24 or abuse involving a particular category of pro-  
25 viders of services or suppliers, categories of pro-

1           viders of services or suppliers in a certain geo-  
2           graphic area, or individual providers of services  
3           or suppliers, the Secretary shall extend the  
4           number of calendar days described in subpara-  
5           graph (B)(ii)(V) to—

6                   “(I) up to 365 calendar days with re-  
7                   spect to claims submitted by—

8                           “(aa) categories of providers of  
9                           services or suppliers; or

10                           “(bb) categories of providers of  
11                           services or suppliers in a certain geo-  
12                           graphic area; or

13                   “(II) such time that the Secretary de-  
14                   termines is necessary to ensure that the  
15                   claims with respect to individual providers  
16                   of services or suppliers are clean claims.

17                   “(ii) During the extended period of time  
18                   under subclauses (I) and (II) of clause (ii), the  
19                   Secretary shall engage in heightened scrutiny of  
20                   claims, such as prepayment review and other  
21                   methods the Secretary determines to be appro-  
22                   priate.

23                   “(iii) Not later than 90 days after the date  
24                   of enactment of this subparagraph and not less  
25                   than annually thereafter, the Inspector General

1 of the Department of Health and Human Serv-  
2 ices shall submit to the Secretary a report con-  
3 taining recommendations with respect to the  
4 application of this subparagraph and section  
5 1842(c)(2)(D). Not later than 60 days after re-  
6 ceiving such a report, the Secretary shall sub-  
7 mit to the Inspector General a written response  
8 to the recommendations contained in the report.

9 “(iv) There shall be no administrative or  
10 judicial review under section 1869, section  
11 1878, or otherwise of the implementation of  
12 this subparagraph by the Secretary.”.

13 (2) PART B CLAIMS.—Section 1842(c)(2) of the  
14 Social Security Act (42 U.S.C. 1395u(c)(2)) is  
15 amended—

16 (A) in subparagraph (B)(ii)(V), by striking  
17 “with respect” and inserting “subject to sub-  
18 paragraph (D), with respect”; and

19 (B) by adding at the end the following new  
20 subparagraph:

21 “(D)(i) Upon a determination by the Sec-  
22 retary that there is a likelihood of fraud, waste,  
23 or abuse involving a particular category of pro-  
24 viders of services or suppliers, categories of pro-  
25 viders of services or suppliers in a certain geo-

1 graphic area, or individual providers of services  
2 or suppliers, the Secretary shall extend the  
3 number of calendar days described in subpara-  
4 graph (B)(ii)(V) to—

5 “(I) up to 365 calendar days with re-  
6 spect to claims submitted by—

7 “(aa) categories of providers of  
8 services or suppliers; or

9 “(bb) categories of providers of  
10 services or suppliers in a certain geo-  
11 graphic area; or

12 “(II) such time that the Secretary de-  
13 termines is necessary to ensure that the  
14 claims with respect to individual providers  
15 of services or suppliers are clean claims.

16 “(ii) During the extended period of time  
17 under subclauses (I) and (II) of clause (ii), the  
18 Secretary shall engage in heightened scrutiny of  
19 claims, such as prepayment review and other  
20 methods the Secretary determines to be appro-  
21 priate.

22 “(iii) There shall be no administrative or  
23 judicial review under section 1869, section  
24 1878, or otherwise of the implementation of  
25 this subparagraph by the Secretary.”.

1 (3) EFFECTIVE DATE.—

2 (A) IN GENERAL.—The amendments made  
3 by this subsection shall take effect on the day  
4 that is 6 months after the date of the enact-  
5 ment of this Act.

6 (B) EXPEDITING IMPLEMENTATION.—The  
7 Secretary shall promulgate regulations to carry  
8 out the amendments made by this subsection  
9 which may be effective and final immediately on  
10 an interim basis as of the date of publication of  
11 the interim final regulation. If the Secretary  
12 provides for an interim final regulation, the  
13 Secretary shall provide for a period of public  
14 comment on such regulation after the date of  
15 publication. The Secretary may change or revise  
16 such regulation after completion of the period  
17 of public comment.

18 (j) INCREASED FUNDING TO FIGHT FRAUD AND  
19 ABUSE.—

20 (1) IN GENERAL.—Section 1817(k) of the So-  
21 cial Security Act (42 U.S.C. 1395i(k)) is amended—

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

24 “(7) ADDITIONAL FUNDING.—In addition to the  
25 funds otherwise appropriated to the Account from

1 the Trust Fund under paragraphs (3) and (4) and  
2 for purposes described in paragraphs (3)(C) and  
3 (4)(A), there are hereby appropriated an additional  
4 \$10,000,000 to such Account from such Trust Fund  
5 for each of fiscal years 2011 through 2020. The  
6 funds appropriated under this paragraph shall be al-  
7 located in the same proportion as the total funding  
8 appropriated with respect to paragraphs (3)(A) and  
9 (4)(A) was allocated with respect to fiscal year  
10 2010, and shall be available without further appro-  
11 priation until expended.”; and

12 (B) in paragraph (4)(A), by inserting  
13 “until expended” after “appropriation”.

14 (2) INDEXING OF AMOUNTS APPROPRIATED.—

15 (A) DEPARTMENTS OF HEALTH AND  
16 HUMAN SERVICES AND JUSTICE.—Section  
17 1817(k)(3)(A)(i) of the Social Security Act (42  
18 U.S.C. 1395i(k)(3)(A)(i)) is amended—

19 (i) in subclause (III), by inserting  
20 “and” at the end;

21 (ii) in subclause (IV)—

22 (I) by striking “for each of fiscal  
23 years 2007, 2008, 2009, and 2010”  
24 and inserting “for each fiscal year  
25 after fiscal year 2006”; and

1 (II) by striking “; and” and in-  
2 serting a period; and

3 (iii) by striking subclause (V).

4 (B) OFFICE OF THE INSPECTOR GENERAL  
5 OF THE DEPARTMENT OF HEALTH AND HUMAN  
6 SERVICES.—Section 1817(k)(3)(A)(ii) of such  
7 Act (42 U.S.C. 1395i(k)(3)(A)(ii)) is amend-  
8 ed—

9 (i) in subclause (VIII), by inserting  
10 “and” at the end;

11 (ii) in subclause (IX)—

12 (I) by striking “for each of fiscal  
13 years 2008, 2009, and 2010” and in-  
14 serting “for each fiscal year after fis-  
15 cal year 2007”; and

16 (II) by striking “; and” and in-  
17 serting a period; and

18 (iii) by striking subclause (X).

19 (C) FEDERAL BUREAU OF INVESTIGA-  
20 TION.—Section 1817(k)(3)(B) of the Social Se-  
21 curity Act (42 U.S.C. 1395i(k)(3)(B)) is  
22 amended—

23 (i) in clause (vii), by inserting “and”  
24 at the end;

25 (ii) in clause (viii)—

1 (I) by striking “for each of fiscal  
2 years 2007, 2008, 2009, and 2010”  
3 and inserting “for each fiscal year  
4 after fiscal year 2006”; and

5 (II) by striking “; and” and in-  
6 serting a period; and

7 (iii) by striking clause (ix).

8 (D) MEDICARE INTEGRITY PROGRAM.—  
9 Section 1817(k)(4)(C) of the Social Security  
10 Act (42 U.S.C. 1395i(k)(4)(C)) is amended by  
11 adding at the end the following new clause:

12 “(ii) For each fiscal year after 2010,  
13 by the percentage increase in the consumer  
14 price index for all urban consumers (all  
15 items; United States city average) over the  
16 previous year.”.

17 (k) MEDICARE INTEGRITY PROGRAM AND MEDICAID  
18 INTEGRITY PROGRAM.—

19 (1) MEDICARE INTEGRITY PROGRAM.—

20 (A) REQUIREMENT TO PROVIDE PERFORM-  
21 ANCE STATISTICS.—Section 1893(c) of the So-  
22 cial Security Act (42 U.S.C. 1395ddd(e)) is  
23 amended—

24 (i) in paragraph (3), by striking  
25 “and” at the end;

1 (ii) by redesignating paragraph (4) as  
2 paragraph (5); and

3 (iii) by inserting after paragraph (3)  
4 the following new paragraph:

5 “(4) the entity agrees to provide the Secretary  
6 and the Inspector General of the Department of  
7 Health and Human Services with such performance  
8 statistics (including the number and amount of over-  
9 payments recovered, the number of fraud referrals,  
10 and the return on investment of such activities by  
11 the entity) as the Secretary or the Inspector General  
12 may request; and”.

13 (B) EVALUATIONS AND ANNUAL RE-  
14 PORT.—Section 1893 of the Social Security Act  
15 (42 U.S.C. 1395ddd) is amended by adding at  
16 the end the following new subsection:

17 “(i) EVALUATIONS AND ANNUAL REPORT.—

18 “(1) EVALUATIONS.—The Secretary shall con-  
19 duct evaluations of eligible entities which the Sec-  
20 retary contracts with under the Program not less  
21 frequently than every 3 years.

22 “(2) ANNUAL REPORT.—Not later than 180  
23 days after the end of each fiscal year (beginning  
24 with fiscal year 2011), the Secretary shall submit a  
25 report to Congress which identifies—

1           “(A) the use of funds, including funds  
2 transferred from the Federal Hospital Insur-  
3 ance Trust Fund under section 1817 and the  
4 Federal Supplementary Insurance Trust Fund  
5 under section 1841, to carry out this section;  
6 and

7           “(B) the effectiveness of the use of such  
8 funds.”.

9           (C) FLEXIBILITY IN PURSUING FRAUD  
10 AND ABUSE.—Section 1893(a) of the Social Se-  
11 curity Act (42 U.S.C. 1395ddd(a)) is amended  
12 by inserting “, or otherwise,” after “entities”.

13 (2) MEDICAID INTEGRITY PROGRAM.—

14           (A) REQUIREMENT TO PROVIDE PERFORM-  
15 ANCE STATISTICS.—Section 1936(c)(2) of the  
16 Social Security Act (42 U.S.C. 1396u–6(c)(2))  
17 is amended—

18                   (i) by redesignating subparagraph (D)  
19 as subparagraph (E); and

20                   (ii) by inserting after subparagraph  
21 (C) the following new subparagraph:

22           “(D) The entity agrees to provide the Sec-  
23 retary and the Inspector General of the Depart-  
24 ment of Health and Human Services with such  
25 performance statistics (including the number

1 and amount of overpayments recovered, the  
2 number of fraud referrals, and the return on in-  
3 vestment of such activities by the entity) as the  
4 Secretary or the Inspector General may re-  
5 quest.”.

6 (B) EVALUATIONS AND ANNUAL RE-  
7 PORT.—Section 1936(e) of the Social Security  
8 Act (42 U.S.C. 1396u–7(e)) is amended—

9 (i) by redesignating paragraph (4) as  
10 paragraph (5); and

11 (ii) by inserting after paragraph (3)  
12 the following new paragraph:

13 “(4) EVALUATIONS.—The Secretary shall con-  
14 duct evaluations of eligible entities which the Sec-  
15 retary contracts with under the Program not less  
16 frequently than every 3 years.”.

17 (I) EXPANDED APPLICATION OF HARDSHIP WAIVERS  
18 FOR EXCLUSIONS.—Section 1128(c)(3)(B) of the Social  
19 Security Act (42 U.S.C. 1320a–7(c)(3)(B)) is amended by  
20 striking “individuals entitled to benefits under part A of  
21 title XVIII or enrolled under part B of such title, or both”  
22 and inserting “beneficiaries (as defined in section  
23 1128A(i)(5)) of that program”.

1 **SEC. 103. ELIMINATION OF DUPLICATION BETWEEN THE**  
2 **HEALTHCARE INTEGRITY AND PROTECTION**  
3 **DATA BANK AND THE NATIONAL PRACTI-**  
4 **TIONER DATA BANK.**

5 (a) INFORMATION REPORTED BY FEDERAL AGEN-  
6 CIES AND HEALTH PLANS.—Section 1128E of the Social  
7 Security Act (42 U.S.C. 1320a–7e) is amended—

8 (1) by striking subsection (a) and inserting the  
9 following:

10 “(a) IN GENERAL.—The Secretary shall maintain a  
11 national health care fraud and abuse data collection pro-  
12 gram under this section for the reporting of certain final  
13 adverse actions (not including settlements in which no  
14 findings of liability have been made) against health care  
15 providers, suppliers, or practitioners as required by sub-  
16 section (b), with access as set forth in subsection (d), and  
17 shall furnish the information collected under this section  
18 to the National Practitioner Data Bank established pursu-  
19 ant to the Health Care Quality Improvement Act of 1986  
20 (42 U.S.C. 11101 et seq.).”;

21 (2) by striking subsection (d) and inserting the  
22 following:

23 “(d) ACCESS TO REPORTED INFORMATION.—

24 “(1) AVAILABILITY.—The information collected  
25 under this section shall be available from the Na-  
26 tional Practitioner Data Bank to the agencies, au-

1       thorities, and officials which are provided under sec-  
 2       tion 1921(b) information reported under section  
 3       1921(a).

4               “(2) FEES FOR DISCLOSURE.—The Secretary  
 5       may establish or approve reasonable fees for the dis-  
 6       closure of information under this section. The  
 7       amount of such a fee may not exceed the costs of  
 8       processing the requests for disclosure and of pro-  
 9       viding such information. Such fees shall be available  
 10      to the Secretary to cover such costs.”;

11              (3) by striking subsection (f) and inserting the  
 12      following:

13              “(f) APPROPRIATE COORDINATION.—In imple-  
 14      menting this section, the Secretary shall provide for the  
 15      maximum appropriate coordination with part B of the  
 16      Health Care Quality Improvement Act of 1986 (42 U.S.C.  
 17      11131 et seq.) and section 1921.”; and

18              (4) in subsection (g)—

19                      (A) in paragraph (1)(A)—

20                              (i) in clause (iii)—

21                                      (I) by striking “or State” each  
 22                                      place it appears;

23                                      (II) by redesignating subclauses  
 24                                      (II) and (III) as subclauses (III) and  
 25                                      (IV), respectively; and

1 (III) by inserting after subclause  
2 (I) the following new subclause:

3 “(II) any dismissal or closure of  
4 the proceedings by reason of the pro-  
5 vider, supplier, or practitioner surren-  
6 dering their license or leaving the  
7 State or jurisdiction”; and

8 (ii) by striking clause (iv) and insert-  
9 ing the following:

10 “(iv) Exclusion from participation in a  
11 Federal health care program (as defined in  
12 section 1128B(f)).”;

13 (B) in paragraph (3)—

14 (i) by striking subparagraphs (D) and  
15 (E); and

16 (ii) by redesignating subparagraph  
17 (F) as subparagraph (D); and

18 (C) in subparagraph (D) (as so redesign-  
19 ated), by striking “or State”.

20 (b) INFORMATION REPORTED BY STATE LAW OR  
21 FRAUD ENFORCEMENT AGENCIES.—Section 1921 of the  
22 Social Security Act (42 U.S.C. 1396r-2) is amended—

23 (1) in subsection (a)—

24 (A) in paragraph (1)—

1 (i) by striking “SYSTEM.—The State”  
2 and all that follows through the semicolon  
3 and inserting SYSTEM.—

4 “(A) LICENSING OR CERTIFICATION AC-  
5 TIONS.—The State must have in effect a system  
6 of reporting the following information with re-  
7 spect to formal proceedings (as defined by the  
8 Secretary in regulations) concluded against a  
9 health care practitioner or entity by a State li-  
10 censing or certification agency.”;

11 (ii) by redesignating subparagraphs  
12 (A) through (D) as clauses (i) through  
13 (iv), respectively, and indenting appro-  
14 priately;

15 (iii) in subparagraph (A)(iii) (as so  
16 redesignated)—

17 (I) by striking “the license of”  
18 and inserting “license or the right to  
19 apply for, or renew, a license by”; and

20 (II) by inserting “nonrenew-  
21 ability,” after “voluntary surrender,”;  
22 and

23 (iv) by adding at the end the following  
24 new subparagraph:

1           “(B) OTHER FINAL ADVERSE ACTIONS.—  
2           The State must have in effect a system of re-  
3           porting information with respect to any final  
4           adverse action (not including settlements in  
5           which no findings of liability have been made)  
6           taken against a health care provider, supplier,  
7           or practitioner by a State law or fraud enforce-  
8           ment agency.”; and

9           (B) in paragraph (2), by striking “the au-  
10          thority described in paragraph (1)” and insert-  
11          ing “a State licensing or certification agency or  
12          State law or fraud enforcement agency”;

13          (2) in subsection (b)—

14                 (A) by striking paragraph (2) and insert-  
15                 ing the following:

16                 “(2) to State licensing or certification agencies  
17                 and Federal agencies responsible for the licensing  
18                 and certification of health care providers, suppliers,  
19                 and licensed health care practitioners;”;

20                 (B) in each of paragraphs (4) and (6), by  
21                 inserting “, but only with respect to information  
22                 provided pursuant to subsection (a)(1)(A)” be-  
23                 fore the comma at the end;

24                 (C) by striking paragraph (5) and insert-  
25                 ing the following:

1           “(5) to State law or fraud enforcement agen-  
2           cies,”;

3           (D) by redesignating paragraphs (7) and  
4           (8) as paragraphs (8) and (9), respectively; and

5           (E) by inserting after paragraph (6) the  
6           following new paragraph:

7           “(7) to health plans (as defined in section  
8           1128C(c));”;

9           (3) by redesignating subsection (d) as sub-  
10          section (h), and by inserting after subsection (e) the  
11          following new subsections:

12          “(d) DISCLOSURE AND CORRECTION OF INFORMA-  
13          TION.—

14               “(1) DISCLOSURE.—With respect to informa-  
15               tion reported pursuant to subsection (a)(1), the Sec-  
16               retary shall—

17                       “(A) provide for disclosure of the informa-  
18                       tion, upon request, to the health care practi-  
19                       tioner who, or the entity that, is the subject of  
20                       the information reported; and

21                       “(B) establish procedures for the case  
22                       where the health care practitioner or entity dis-  
23                       putes the accuracy of the information reported.

24               “(2) CORRECTIONS.—Each State licensing or  
25               certification agency and State law or fraud enforce-

1       ment agency shall report corrections of information  
2       already reported about any formal proceeding or  
3       final adverse action described in subsection (a), in  
4       such form and manner as the Secretary prescribes  
5       by regulation.

6       “(e) FEES FOR DISCLOSURE.—The Secretary may  
7       establish or approve reasonable fees for the disclosure of  
8       information under this section. The amount of such a fee  
9       may not exceed the costs of processing the requests for  
10      disclosure and of providing such information. Such fees  
11      shall be available to the Secretary to cover such costs.

12      “(f) PROTECTION FROM LIABILITY FOR REPORT-  
13      ING.—No person or entity, including any agency des-  
14      ignated by the Secretary in subsection (b), shall be held  
15      liable in any civil action with respect to any reporting of  
16      information as required under this section, without knowl-  
17      edge of the falsity of the information contained in the re-  
18      port.

19      “(g) REFERENCES.—For purposes of this section:

20           “(1) STATE LICENSING OR CERTIFICATION  
21      AGENCY.—The term ‘State licensing or certification  
22      agency’ includes any authority of a State (or of a  
23      political subdivision thereof) responsible for the li-  
24      censing of health care practitioners (or any peer re-  
25      view organization or private accreditation entity re-

1 viewing the services provided by health care practi-  
2 tioners) or entities.

3 “(2) STATE LAW OR FRAUD ENFORCEMENT  
4 AGENCY.—The term ‘State law or fraud enforcement  
5 agency’ includes—

6 “(A) a State law enforcement agency; and

7 “(B) a State Medicaid fraud control unit  
8 (as defined in section 1903(q)).

9 “(3) FINAL ADVERSE ACTION.—

10 “(A) IN GENERAL.—Subject to subpara-  
11 graph (B), the term ‘final adverse action’ in-  
12 cludes—

13 “(i) civil judgments against a health  
14 care provider, supplier, or practitioner in  
15 State court related to the delivery of a  
16 health care item or service;

17 “(ii) State criminal convictions related  
18 to the delivery of a health care item or  
19 service;

20 “(iii) exclusion from participation in  
21 State health care programs (as defined in  
22 section 1128(h));

23 “(iv) any licensing or certification ac-  
24 tion described in subsection (a)(1)(A)

1 taken against a supplier by a State licens-  
 2 ing or certification agency; and

3 “(v) any other adjudicated actions or  
 4 decisions that the Secretary shall establish  
 5 by regulation.

6 “(B) EXCEPTION.—Such term does not in-  
 7 clude any action with respect to a malpractice  
 8 claim.”; and

9 (4) in subsection (h), as so redesignated, by  
 10 striking “The Secretary” and all that follows  
 11 through the period at the end and inserting “In im-  
 12 plementing this section, the Secretary shall provide  
 13 for the maximum appropriate coordination with part  
 14 B of the Health Care Quality Improvement Act of  
 15 1986 (42 U.S.C. 11131 et seq.) and section  
 16 1128E.”.

17 (c) CONFORMING AMENDMENT.—Section  
 18 1128C(a)(1) of the Social Security Act (42 U.S.C. 1320a-  
 19 7c(a)(1)) is amended—

20 (1) in subparagraph (C), by adding “and” after  
 21 the comma at the end;

22 (2) in subparagraph (D), by striking “, and”  
 23 and inserting a period; and

24 (3) by striking subparagraph (E).

25 (d) TRANSITION PROCESS; EFFECTIVE DATE.—

1           (1) IN GENERAL.—Effective on the date of en-  
2           actment of this Act, the Secretary of Health and  
3           Human Services (in this section referred to as the  
4           “Secretary”) shall implement a transition process  
5           under which, by not later than the end of the transi-  
6           tion period described in paragraph (5), the Secretary  
7           shall cease operating the Healthcare Integrity and  
8           Protection Data Bank established under section  
9           1128E of the Social Security Act (as in effect before  
10          the effective date specified in paragraph (6)) and  
11          shall transfer all data collected in the Healthcare In-  
12          tegrity and Protection Data Bank to the National  
13          Practitioner Data Bank established pursuant to the  
14          Health Care Quality Improvement Act of 1986 (42  
15          U.S.C. 11101 et seq.). During such transition proc-  
16          ess, the Secretary shall have in effect appropriate  
17          procedures to ensure that data collection and access  
18          to the Healthcare Integrity and Protection Data  
19          Bank and the National Practitioner Data Bank are  
20          not disrupted.

21           (2) REGULATIONS.—The Secretary shall pro-  
22          mulgate regulations to carry out the amendments  
23          made by subsections (a) and (b).

24           (3) FUNDING.—

1           (A) AVAILABILITY OF FEES.—Fees col-  
2           lected pursuant to section 1128E(d)(2) of the  
3           Social Security Act prior to the effective date  
4           specified in paragraph (6) for the disclosure of  
5           information in the Healthcare Integrity and  
6           Protection Data Bank shall be available to the  
7           Secretary, without fiscal year limitation, for  
8           payment of costs related to the transition proc-  
9           ess described in paragraph (1). Any such fees  
10          remaining after the transition period is com-  
11          plete shall be available to the Secretary, without  
12          fiscal year limitation, for payment of the costs  
13          of operating the National Practitioner Data  
14          Bank.

15          (B) AVAILABILITY OF ADDITIONAL  
16          FUNDS.—In addition to the fees described in  
17          subparagraph (A), any funds available to the  
18          Secretary or to the Inspector General of the  
19          Department of Health and Human Services for  
20          a purpose related to combating health care  
21          fraud, waste, or abuse shall be available to the  
22          extent necessary for operating the Healthcare  
23          Integrity and Protection Data Bank during the  
24          transition period, including systems testing and  
25          other activities necessary to ensure that infor-

1           mation formerly reported to the Healthcare In-  
2           tegrity and Protection Data Bank will be acces-  
3           sible through the National Practitioner Data  
4           Bank after the end of such transition period.

5           (4) SPECIAL PROVISION FOR ACCESS TO THE  
6           NATIONAL PRACTITIONER DATA BANK BY THE DE-  
7           PARTMENT OF VETERANS AFFAIRS.—

8                   (A) IN GENERAL.—Notwithstanding any  
9           other provision of law, during the 1-year period  
10          that begins on the effective date specified in  
11          paragraph (6), the information described in  
12          subparagraph (B) shall be available from the  
13          National Practitioner Data Bank to the Sec-  
14          retary of Veterans Affairs without charge.

15                   (B) INFORMATION DESCRIBED.—For pur-  
16          poses of subparagraph (A), the information de-  
17          scribed in this subparagraph is the information  
18          that would, but for the amendments made by  
19          this section, have been available to the Sec-  
20          retary of Veterans Affairs from the Healthcare  
21          Integrity and Protection Data Bank.

22           (5) TRANSITION PERIOD DEFINED.—For pur-  
23          poses of this subsection, the term “transition pe-  
24          riod” means the period that begins on the date of  
25          enactment of this Act and ends on the later of—

1 (A) the date that is 1 year after such date  
2 of enactment; or

3 (B) the effective date of the regulations  
4 promulgated under paragraph (2).

5 (6) EFFECTIVE DATE.—The amendments made  
6 by subsections (a), (b), and (c) shall take effect on  
7 the first day after the final day of the transition pe-  
8 riod.

9 **SEC. 104. MAXIMUM PERIOD FOR SUBMISSION OF MEDI-**  
10 **CARE CLAIMS REDUCED TO NOT MORE THAN**  
11 **12 MONTHS.**

12 (a) REDUCING MAXIMUM PERIOD FOR SUBMIS-  
13 SION.—

14 (1) PART A.—Section 1814(a) of the Social Se-  
15 curity Act (42 U.S.C. 1395f(a)(1)) is amended—

16 (A) in paragraph (1), by striking “period  
17 of 3 calendar years” and all that follows  
18 through the semicolon and inserting “period  
19 ending 1 calendar year after the date of serv-  
20 ice;”; and

21 (B) by adding at the end the following new  
22 sentence: “In applying paragraph (1), the Sec-  
23 retary may specify exceptions to the 1 calendar  
24 year period specified in such paragraph.”

25 (2) PART B.—

1 (A) Section 1842(b)(3) of such Act (42  
2 U.S.C. 1395u(b)(3)(B)) is amended—

3 (i) in subparagraph (B), in the flush  
4 language following clause (ii), by striking  
5 “close of the calendar year following the  
6 year in which such service is furnished  
7 (deeming any service furnished in the last  
8 3 months of any calendar year to have  
9 been furnished in the succeeding calendar  
10 year)” and inserting “period ending 1 cal-  
11 endar year after the date of service”; and

12 (ii) by adding at the end the following  
13 new sentence: “In applying subparagraph  
14 (B), the Secretary may specify exceptions  
15 to the 1 calendar year period specified in  
16 such subparagraph.”

17 (B) Section 1835(a) of such Act (42  
18 U.S.C. 1395n(a)) is amended—

19 (i) in paragraph (1), by striking “pe-  
20 riod of 3 calendar years” and all that fol-  
21 lows through the semicolon and inserting  
22 “period ending 1 calendar year after the  
23 date of service;”; and

24 (ii) by adding at the end the following  
25 new sentence: “In applying paragraph (1),

1 the Secretary may specify exceptions to the  
2 1 calendar year period specified in such  
3 paragraph.”

4 (b) EFFECTIVE DATE.—

5 (1) IN GENERAL.—The amendments made by  
6 subsection (a) shall apply to services furnished on or  
7 after March 1, 2010.

8 (2) SERVICES FURNISHED BEFORE MARCH  
9 2010.—In the case of services furnished before  
10 March 1, 2010, a bill or request for payment under  
11 section 1814(a)(1), 1842(b)(3)(B), or 1835(a) shall  
12 be filed not later than December 31, 2010.

13 **SEC. 105. PHYSICIANS WHO ORDER ITEMS OR SERVICES RE-**  
14 **QUIRED TO BE MEDICARE ENROLLED PHYSI-**  
15 **CANS OR ELIGIBLE PROFESSIONALS.**

16 (a) DME.—Section 1834(a)(11)(B) of the Social Se-  
17 curity Act (42 U.S.C. 1395m(a)(11)(B)) is amended by  
18 striking “physician” and inserting “physician enrolled  
19 under section 1866(j) or an eligible professional under sec-  
20 tion 1848(k)(3)(B) that is enrolled under section  
21 1866(j)”.

22 (b) HOME HEALTH SERVICES.—

23 (1) PART A.—Section 1814(a)(2) of such Act  
24 (42 U.S.C. 1395(a)(2)) is amended in the matter  
25 preceding subparagraph (A) by inserting “in the

1 case of services described in subparagraph (C), a  
2 physician enrolled under section 1866(j) or an eligi-  
3 ble professional under section 1848(k)(3)(B),” be-  
4 fore “or, in the case of services”.

5 (2) PART B.—Section 1835(a)(2) of such Act  
6 (42 U.S.C. 1395n(a)(2)) is amended in the matter  
7 preceding subparagraph (A) by inserting “, or in the  
8 case of services described in subparagraph (A), a  
9 physician enrolled under section 1866(j) or an eligi-  
10 ble professional under section 1848(k)(3)(B),” after  
11 “a physician”.

12 (c) APPLICATION TO OTHER ITEMS OR SERVICES.—  
13 The Secretary may extend the requirement applied by the  
14 amendments made by subsections (a) and (b) to durable  
15 medical equipment and home health services (relating to  
16 requiring certifications and written orders to be made by  
17 enrolled physicians and health professions) to all other  
18 categories of items or services under title XVIII of the  
19 Social Security Act (42 U.S.C. 1395 et seq.), including  
20 covered part D drugs as defined in section 1860D–2(e)  
21 of such Act (42 U.S.C. 1395w–102), that are ordered, pre-  
22 scribed, or referred by a physician enrolled under section  
23 1866(j) of such Act (42 U.S.C. 1395cc(j)) or an eligible  
24 professional under section 1848(k)(3)(B) of such Act (42  
25 U.S.C. 1395w–4(k)(3)(B)).

1 (d) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to written orders and certifications  
3 made on or after July 1, 2010.

4 **SEC. 106. REQUIREMENT FOR PHYSICIANS TO PROVIDE**  
5 **DOCUMENTATION ON REFERRALS TO PRO-**  
6 **GRAMS AT HIGH RISK OF WASTE AND ABUSE.**

7 (a) PHYSICIANS AND OTHER SUPPLIERS.—Section  
8 1842(h) of the Social Security Act (42 U.S.C. 1395u(h))  
9 is amended by adding at the end the following new para-  
10 graph:

11 “(9) The Secretary may revoke enrollment, for a pe-  
12 riod of not more than one year for each act, for a physi-  
13 cian or supplier under section 1866(j) if such physician  
14 or supplier fails to maintain and, upon request of the Sec-  
15 retary, provide access to documentation relating to written  
16 orders or requests for payment for durable medical equip-  
17 ment, certifications for home health services, or referrals  
18 for other items or services written or ordered by such phy-  
19 sician or supplier under this title, as specified by the Sec-  
20 retary.”.

21 (b) PROVIDERS OF SERVICES.—Section 1866(a)(1)  
22 of such Act (42 U.S.C. 1395cc) is further amended—

23 (1) in subparagraph (U), by striking at the end  
24 “and”;

1           (2) in subparagraph (V), by striking the period  
2           at the end and adding “; and”; and

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

5                   “(W) maintain and, upon request of the  
6           Secretary, provide access to documentation re-  
7           lating to written orders or requests for payment  
8           for durable medical equipment, certifications for  
9           home health services, or referrals for other  
10          items or services written or ordered by the pro-  
11          vider under this title, as specified by the Sec-  
12          retary.”.

13          (c) **OIG PERMISSIVE EXCLUSION AUTHORITY.**—Sec-  
14          tion 1128(b)(11) of the Social Security Act (42 U.S.C.  
15          1320a–7(b)(11)) is amended by inserting “, ordering, re-  
16          ferring for furnishing, or certifying the need for” after  
17          “furnishing”.

18          (d) **EFFECTIVE DATE.**—The amendments made by  
19          this section shall apply to orders, certifications, and refer-  
20          rals made on or after March 1, 2010.

1 **SEC. 107. FACE TO FACE ENCOUNTER WITH PATIENT RE-**  
2 **QUIRED BEFORE PHYSICIANS MAY CERTIFY**  
3 **ELIGIBILITY FOR HOME HEALTH SERVICES**  
4 **OR DURABLE MEDICAL EQUIPMENT UNDER**  
5 **MEDICARE.**

6 (a) **CONDITION OF PAYMENT FOR HOME HEALTH**  
7 **SERVICES.—**

8 (1) **PART A.—**Section 1814(a)(2)(C) of such  
9 Act is amended—

10 (A) by striking “and such services” and in-  
11 serting “such services”; and

12 (B) by inserting after “care of a physi-  
13 cian” the following: “, and, in the case of a cer-  
14 tification made by a physician after March 1,  
15 2010, prior to making such certification the  
16 physician must document that the physician  
17 himself or herself has had a face-to-face en-  
18 counter (including through use of telehealth,  
19 subject to the requirements in section 1834(m),  
20 and other than with respect to encounters that  
21 are incident to services involved) with the indi-  
22 vidual within a reasonable timeframe as deter-  
23 mined by the Secretary”.

24 (2) **PART B.—**Section 1835(a)(2)(A) of the So-  
25 cial Security Act is amended—

26 (A) by striking “and” before “(iii)”; and

1           (B) by inserting after “care of a physi-  
2           cian” the following: “, and (iv) in the case of  
3           a certification after March 1, 2010, prior to  
4           making such certification the physician must  
5           document that the physician has had a face-to-  
6           face encounter (including through use of tele-  
7           health and other than with respect to encoun-  
8           ters that are incident to services involved) with  
9           the individual during the 6-month period pre-  
10          ceding such certification, or other reasonable  
11          timeframe as determined by the Secretary”.

12          (b) CONDITION OF PAYMENT FOR DURABLE MED-  
13          ICAL EQUIPMENT.—Section 1834(a)(11)(B) of the Social  
14          Security Act (42 U.S.C. 1395m(a)(11)(B)) is amended—

15               (1) by striking “ORDER.—The Secretary” and  
16          inserting “ORDER.—

17                       “(i) IN GENERAL.—The Secretary”;

18                       and

19               (2) by adding at the end the following new  
20          clause:

21                       “(ii) REQUIREMENT FOR FACE TO  
22                       FACE ENCOUNTER.—The Secretary shall  
23                       require that such an order be written pur-  
24                       suant to the physician documenting that a  
25                       physician, a physician assistant, a nurse

1 practitioner, or a clinical nurse specialist  
2 (as those terms are defined in section  
3 1861(aa)(5)) has had a face-to-face en-  
4 counter (including through use of tele-  
5 health under subsection (m) and other  
6 than with respect to encounters that are  
7 incident to services involved) with the indi-  
8 vidual involved during the 6-month period  
9 preceding such written order, or other rea-  
10 sonable timeframe as determined by the  
11 Secretary.”.

12 (c) APPLICATION TO OTHER AREAS UNDER MEDI-  
13 CARE.—The Secretary may apply the face-to-face encoun-  
14 ter requirement described in the amendments made by  
15 subsections (a) and (b) to other items and services for  
16 which payment is provided under title XVIII of the Social  
17 Security Act based upon a finding that such an decision  
18 would reduce the risk of waste, fraud, or abuse.

19 (d) APPLICATION TO MEDICAID.—The requirements  
20 pursuant to the amendments made by subsections (a) and  
21 (b) shall apply in the case of physicians making certifi-  
22 cations for home health services under title XIX of the  
23 Social Security Act in the same manner and to the same  
24 extent as such requirements apply in the case of physi-

1 cians making such certifications under title XVIII of such  
2 Act.

3 **SEC. 108. ENHANCED PENALTIES.**

4 (a) CIVIL MONETARY PENALTIES FOR FALSE STATE-  
5 MENTS OR DELAYING INSPECTIONS.—Section 1128A(a)  
6 of the Social Security Act (42 U.S.C. 1320a–7a(a)), as  
7 amended by section 102(d)(2)(A), is amended—

8 (1) by inserting after paragraph (10) the fol-  
9 lowing new paragraphs:

10 “(11) knowingly makes, uses, or causes to be  
11 made or used, a false record or statement material  
12 to a false or fraudulent claim for payment for items  
13 and services furnished under a Federal health care  
14 program; or

15 “(12) fails to grant timely access, upon reason-  
16 able request (as defined by the Secretary in regula-  
17 tions), to the Inspector General of the Department  
18 of Health and Human Services, for the purpose of  
19 audits, investigations, evaluations, or other statutory  
20 functions of the Inspector General of the Depart-  
21 ment of Health and Human Services;” and

22 (2) in the first sentence (as so amended)—

23 (A) by striking “or in cases under para-  
24 graph (9)” and inserting “in cases under para-  
25 graph (9)”; and

1 (B) by striking “a material fact)” and in-  
2 serting “a material fact, in cases under para-  
3 graph (11), \$50,000 for each false record or  
4 statement, or in cases under paragraph (12),  
5 \$15,000 for each day of the failure described in  
6 such paragraph)”.

7 (b) MEDICARE ADVANTAGE AND PART D PLANS.—

8 (1) ENSURING TIMELY INSPECTIONS RELATING  
9 TO CONTRACTS WITH MA ORGANIZATIONS.—Section  
10 1857(d)(2) of such Act (42 U.S.C. 1395w–27(d)(2))  
11 is amended—

12 (A) in subparagraph (A), by inserting  
13 “timely” before “inspect”; and

14 (B) in subparagraph (B), by inserting  
15 “timely” before “audit and inspect”.

16 (2) MARKETING VIOLATIONS.—Section  
17 1857(g)(1) of the Social Security Act (42 U.S.C.  
18 1395w–27(g)(1)) is amended—

19 (A) in subparagraph (F), by striking “or”  
20 at the end;

21 (B) by inserting after subparagraph (G)  
22 the following new subparagraphs:

23 “(H) except as provided under subpara-  
24 graph (C) or (D) of section 1860D–1(b)(1), en-  
25 rolls an individual in any plan under this part

1 without the prior consent of the individual or  
2 the designee of the individual;

3 “(I) transfers an individual enrolled under  
4 this part from one plan to another without the  
5 prior consent of the individual or the designee  
6 of the individual or solely for the purpose of  
7 earning a commission;

8 “(J) fails to comply with marketing re-  
9 strictions described in subsections (h) and (j) of  
10 section 1851 or applicable implementing regula-  
11 tions or guidance; or

12 “(K) employs or contracts with any indi-  
13 vidual or entity who engages in the conduct de-  
14 scribed in subparagraphs (A) through (J) of  
15 this paragraph;”; and

16 (C) by adding at the end the following new  
17 sentence: “The Secretary may provide, in addi-  
18 tion to any other remedies authorized by law,  
19 for any of the remedies described in paragraph  
20 (2), if the Secretary determines that any em-  
21 ployee or agent of such organization, or any  
22 provider or supplier who contracts with such or-  
23 ganization, has engaged in any conduct de-  
24 scribed in subparagraphs (A) through (K) of  
25 this paragraph.”.

1           (3) PROVISION OF FALSE INFORMATION.—Sec-  
2           tion 1857(g)(2)(A) of the Social Security Act (42  
3           U.S.C. 1395w–27(g)(2)(A)) is amended by inserting  
4           “except with respect to a determination under sub-  
5           paragraph (E), an assessment of not more than the  
6           amount claimed by such plan or plan sponsor based  
7           upon the misrepresentation or falsified information  
8           involved,” after “for each such determination.”.

9           (c) OBSTRUCTION OF PROGRAM AUDITS.—Section  
10          1128(b)(2) of the Social Security Act (42 U.S.C. 1320a–  
11          7(b)(2)) is amended—

12           (1) in the heading, by inserting “OR AUDIT”  
13           after “INVESTIGATION”; and

14           (2) by striking “investigation into” and all that  
15           follows through the period and inserting “investiga-  
16           tion or audit related to—

17                   “(i) any offense described in para-  
18                   graph (1) or in subsection (a); or

19                   “(ii) the use of funds received, directly  
20                   or indirectly, from any Federal health care  
21                   program (as defined in section  
22                   1128B(f)).”.

23          (d) EFFECTIVE DATE.—

24           (1) IN GENERAL.—Except as provided in para-  
25           graph (2), the amendments made by this section

1 shall apply to acts committed on or after January 1,  
2 2010.

3 (2) EXCEPTION.—The amendments made by  
4 subsection (b)(1) take effect on the date of enact-  
5 ment of this Act.

6 **SEC. 109. MEDICARE SELF-REFERRAL DISCLOSURE PRO-**  
7 **TOCOL.**

8 (a) DEVELOPMENT OF SELF-REFERRAL DISCLO-  
9 SURE PROTOCOL.—

10 (1) IN GENERAL.—The Secretary of Health and  
11 Human Services, in cooperation with the Inspector  
12 General of the Department of Health and Human  
13 Services, shall establish, not later than 6 months  
14 after the date of the enactment of this Act, a pro-  
15 tocol to enable health care providers of services and  
16 suppliers to disclose an actual or potential violation  
17 of section 1877 of the Social Security Act (42  
18 U.S.C. 1395nn) pursuant to a self-referral disclosure  
19 protocol (in this section referred to as an “SRDP”).  
20 The SRDP shall include direction to health care pro-  
21 viders of services and suppliers on—

22 (A) a specific person, official, or office to  
23 whom such disclosures shall be made; and

1 (B) instruction on the implication of the  
2 SRDP on corporate integrity agreements and  
3 corporate compliance agreements.

4 (2) PUBLICATION ON INTERNET WEBSITE OF  
5 SRDP INFORMATION.—The Secretary of Health and  
6 Human Services shall post information on the public  
7 Internet website of the Centers for Medicare & Med-  
8 icaid Services to inform relevant stakeholders of how  
9 to disclose actual or potential violations pursuant to  
10 an SRDP.

11 (3) RELATION TO ADVISORY OPINIONS.—The  
12 SRDP shall be separate from the advisory opinion  
13 process set forth in regulations implementing section  
14 1877(g) of the Social Security Act.

15 (b) REDUCTION IN AMOUNTS OWED.—The Secretary  
16 of Health and Human Services is authorized to reduce the  
17 amount due and owing for all violations under section  
18 1877 of the Social Security Act to an amount less than  
19 that specified in subsection (g) of such section. In estab-  
20 lishing such amount for a violation, the Secretary may  
21 consider the following factors:

22 (1) The nature and extent of the improper or  
23 illegal practice.

24 (2) The timeliness of such self-disclosure.

1           (3) The cooperation in providing additional in-  
2           formation related to the disclosure.

3           (4) Such other factors as the Secretary con-  
4           siders appropriate.

5           (c) REPORT.—Not later than 18 months after the  
6           date on which the SRDP protocol is established under sub-  
7           section (a)(1), the Secretary shall submit to Congress a  
8           report on the implementation of this section. Such report  
9           shall include—

10           (1) the number of health care providers of serv-  
11           ices and suppliers making disclosures pursuant to  
12           the SRDP;

13           (2) the amounts collected pursuant to the  
14           SRDP;

15           (3) the types of violations reported under the  
16           SRDP; and

17           (4) such other information as may be necessary  
18           to evaluate the impact of this section.

19 **SEC. 110. EXPANSION OF THE RECOVERY AUDIT CON-**  
20 **TRACTOR (RAC) PROGRAM.**

21           (a) EXPANSION TO MEDICAID.—

22           (1) STATE PLAN AMENDMENT.—Section  
23           1902(a)(42) of the Social Security Act (42 U.S.C.  
24           1396a(a)(42)) is amended—

1 (A) by striking “that the records” and in-  
2 serting “that—

3 “(A) the records”;

4 (B) by inserting “and” after the semicolon;  
5 and

6 (C) by adding at the end the following:

7 “(B) not later than December 31, 2010,  
8 the State shall—

9 “(i) establish a program under which  
10 the State contracts (consistent with State  
11 law and in the same manner as the Sec-  
12 retary enters into contracts with recovery  
13 audit contractors under section 1893(h),  
14 subject to such exceptions or requirements  
15 as the Secretary may require for purposes  
16 of this title or a particular State) with 1  
17 or more recovery audit contractors for the  
18 purpose of identifying underpayments and  
19 overpayments and recouping overpayments  
20 under the State plan and under any waiver  
21 of the State plan with respect to all serv-  
22 ices for which payment is made to any en-  
23 tity under such plan or waiver; and

24 “(ii) provide assurances satisfactory  
25 to the Secretary that—

1           “(I) under such contracts, pay-  
2           ment shall be made to such a con-  
3           tractor only from amounts recovered;

4           “(II) from such amounts recov-  
5           ered, payment—

6                   “(aa) shall be made on a  
7                   contingent basis for collecting  
8                   overpayments; and

9                   “(bb) may be made in such  
10                  amounts as the State may specify  
11                  for identifying underpayments;

12                  “(III) the State has an adequate  
13                  process for entities to appeal any ad-  
14                  verse determination made by such  
15                  contractors; and

16                  “(IV) such program is carried  
17                  out in accordance with such require-  
18                  ments as the Secretary shall specify,  
19                  including—

20                   “(aa) for purposes of section  
21                   1903(a)(7), that amounts ex-  
22                   pended by the State to carry out  
23                   the program shall be considered  
24                   amounts expended as necessary  
25                   for the proper and efficient ad-

1           ministration of the State plan or  
2           a waiver of the plan;

3           “(bb) that section 1903(d)  
4           shall apply to amounts recovered  
5           under the program; and

6           “(cc) that the State and any  
7           such contractors under contract  
8           with the State shall coordinate  
9           such recovery audit efforts with  
10          other contractors or entities per-  
11          forming audits of entities receiv-  
12          ing payments under the State  
13          plan or waiver in the State, in-  
14          cluding efforts with Federal and  
15          State law enforcement with re-  
16          spect to the Department of Jus-  
17          tice, including the Federal Bu-  
18          reau of Investigations, the In-  
19          spector General of the Depart-  
20          ment of Health and Human  
21          Services, and the State Medicaid  
22          fraud control unit; and”.

23           (2) COORDINATION; REGULATIONS.—

24           (A) IN GENERAL.—The Secretary of  
25           Health and Human Services, acting through the

1 Administrator of the Centers for Medicare &  
2 Medicaid Services, shall coordinate the expan-  
3 sion of the Recovery Audit Contractor program  
4 to Medicaid with States, particularly with re-  
5 spect to each State that enters into a contract  
6 with a recovery audit contractor for purposes of  
7 the State’s Medicaid program prior to Decem-  
8 ber 31, 2010.

9 (B) REGULATIONS.—The Secretary of  
10 Health and Human Services shall promulgate  
11 regulations to carry out this subsection and the  
12 amendments made by this subsection, including  
13 with respect to conditions of Federal financial  
14 participation, as specified by the Secretary.

15 (b) EXPANSION TO MEDICARE PARTS C AND D.—  
16 Section 1893(h) of the Social Security Act (42 U.S.C.  
17 1395ddd(h)) is amended—

18 (1) in paragraph (1), in the matter preceding  
19 subparagraph (A), by striking “part A or B” and in-  
20 serting “this title”;

21 (2) in paragraph (2), by striking “parts A and  
22 B” and inserting “this title”;

23 (3) in paragraph (3), by inserting “(not later  
24 than December 31, 2010, in the case of contracts re-

1 relating to payments made under part C or D)” after  
2 “2010”;

3 (4) in paragraph (4), in the matter preceding  
4 subparagraph (A), by striking “part A or B” and in-  
5 serting “this title”; and

6 (5) by adding at the end the following:

7 “(9) SPECIAL RULES RELATING TO PARTS C  
8 AND D.—The Secretary shall enter into contracts  
9 under paragraph (1) to require recovery audit con-  
10 tractors to—

11 “(A) ensure that each MA plan under part  
12 C has an anti- fraud plan in effect and to re-  
13 view the effectiveness of each such anti-fraud  
14 plan;

15 “(B) ensure that each prescription drug  
16 plan under part D has an anti- fraud plan in  
17 effect and to review the effectiveness of each  
18 such anti-fraud plan;

19 “(C) examine claims for reinsurance pay-  
20 ments under section 1860D–15(b) to determine  
21 whether prescription drug plans submitting  
22 such claims incurred costs in excess of the al-  
23 lowable reinsurance costs permitted under para-  
24 graph (2) of that section; and



1 Human Services to another agency of the Depart-  
2 ment of Health and Human Services of a manage-  
3 ment implication report, the Inspector General shall  
4 notify the relevant committees of Congress of such  
5 transmission.

6 “(2) SECRETARIAL RESPONSE.—The Secretary  
7 shall respond to a management implication report  
8 transmitted under paragraph (1) not later than 90  
9 days after such transmission.

10 “(3) RELEVANT COMMITTEES OF CONGRESS  
11 DEFINED.—In this subsection, the term ‘relevant  
12 committees of Congress’ means the Committees on  
13 Ways and Means and Energy and Commerce of the  
14 House of Representatives and the Committee on Fi-  
15 nance of the Senate.”.

16 **SEC. 112. MEDICAL ID THEFT INFORMATION SHARING PRO-**  
17 **GRAM AND CLEARINGHOUSE.**

18 (a) ESTABLISHMENT.—Not later than 24 months  
19 after the date of enactment of this Act, the Secretary of  
20 Health and Human Services (in this section referred to  
21 as the “Secretary”), acting through the Administrator of  
22 the Centers for Medicare & Medicaid Services and in co-  
23 ordination with the Chairman of the Federal Trade Com-  
24 mission, shall establish an information sharing program  
25 regarding beneficiary medical ID theft under the pro-

1 grams under titles XVIII, XIX, and XXI of the Social Se-  
2 curity Act (in this section referred to as the “program”).

3 (b) CONTENTS OF PROGRAM.—The program shall in-  
4 clude—

5 (1) the establishment of methods to identify  
6 and detect relevant warning signs of medical ID  
7 theft;

8 (2) the establishment of appropriate responses  
9 to such warning signs that would mitigate and pre-  
10 vent beneficiary medical ID theft; and

11 (3) the development of a detailed plan to up-  
12 date the program as appropriate, taking into consid-  
13 eration such warning signs and appropriate re-  
14 sponses.

15 (c) ESTABLISHMENT OF CLEARINGHOUSE.—The  
16 Secretary, in coordination with the Chairman of the Fed-  
17 eral Trade Commission, shall establish a clearinghouse at  
18 the Centers for Medicare & Medicaid Services that collects  
19 reports of ID theft against beneficiaries under the pro-  
20 grams under titles XVIII, XIX, and XXI of the Social Se-  
21 curity Act from the Federal Trade Commission and other  
22 sources determined appropriate by the Secretary. Such  
23 clearinghouse shall be used to fight medical ID theft  
24 against beneficiaries and to prevent the improper payment  
25 of claims under such programs.

1                   **TITLE II—ADDITIONAL**  
 2                   **MEDICAID PROVISIONS**

3 **SEC. 201. TERMINATION OF PROVIDER PARTICIPATION**  
 4                   **UNDER MEDICAID IF TERMINATED UNDER**  
 5                   **MEDICARE OR OTHER STATE PLAN.**

6           Section 1902(a)(39) of the Social Security Act (42  
 7 U.S.C. 42 U.S.C. 1396a(a)) is amended by inserting after  
 8 “1128A,” the following: “terminate the participation of  
 9 any individual or entity in such program if (subject to  
 10 such exceptions as are permitted with respect to exclusion  
 11 under sections 1128(e)(3)(B) and 1128(d)(3)(B)) partici-  
 12 pation of such individual or entity is terminated under title  
 13 XVIII or any other State plan under this title,”.

14 **SEC. 202. MEDICAID EXCLUSION FROM PARTICIPATION RE-**  
 15                   **LATING TO CERTAIN OWNERSHIP, CONTROL,**  
 16                   **AND MANAGEMENT AFFILIATIONS.**

17           Section 1902(a) of the Social Security Act (42 U.S.C.  
 18 1396a(a)), as amended by section 101(b), is amended by  
 19 inserting after paragraph (74) the following:

20                   “(75) provide that the State agency described  
 21           in paragraph (9) exclude, with respect to a period,  
 22           any individual or entity from participation in the  
 23           program under the State plan if such individual or  
 24           entity owns, controls, or manages an entity that (or

1 if such entity is owned, controlled, or managed by an  
 2 individual or entity that)—

3 “(A) has unpaid overpayments (as defined  
 4 by the Secretary) under this title during such  
 5 period determined by the Secretary or the State  
 6 agency to be delinquent;

7 “(B) is suspended or excluded from par-  
 8 ticipation under or whose participation is termi-  
 9 nated under this title during such period; or

10 “(C) is affiliated with an individual or enti-  
 11 ty that has been suspended or excluded from  
 12 participation under this title or whose participa-  
 13 tion is terminated under this title during such  
 14 period;”.

15 **SEC. 203. BILLING AGENTS, CLEARINGHOUSES, OR OTHER**  
 16 **ALTERNATE PAYEES REQUIRED TO REG-**  
 17 **ISTER UNDER MEDICAID.**

18 (a) IN GENERAL.—Section 1902(a) of the Social Se-  
 19 curity Act (42 U.S.C. 42 U.S.C. 1396a(a)), as amended  
 20 by section 202(a), is amended by inserting after para-  
 21 graph (75) the following:

22 “(76) provide that any agent, clearinghouse, or  
 23 other alternate payee (as defined by the Secretary)  
 24 that submits claims on behalf of a health care pro-  
 25 vider must register with the State and the Secretary

1 in a form and manner specified by the Secretary;  
2 and”.

3 **SEC. 204. REQUIREMENT TO REPORT EXPANDED SET OF**  
4 **DATA ELEMENTS UNDER MMIS TO DETECT**  
5 **FRAUD AND ABUSE.**

6 (a) IN GENERAL.—Section 1903(r)(1)(F) of the So-  
7 cial Security Act (42 U.S.C. 1396b(r)(1)(F)) is amended  
8 by inserting after “necessary” the following: “and includ-  
9 ing, for data submitted to the Secretary on or after March  
10 1, 2010, data elements from the automated data system  
11 that the Secretary determines to be necessary for program  
12 integrity, program oversight, and administration, at such  
13 frequency as the Secretary shall determine”.

14 (b) MANAGED CARE ORGANIZATIONS.—

15 (1) IN GENERAL.—Section 1903(m)(2)(A)(xi)  
16 of the Social Security Act (42 U.S.C.  
17 1396b(m)(2)(A)(xi)) is amended by inserting “and  
18 for the provision of such data to the State at a fre-  
19 quency and level of detail to be specified by the Sec-  
20 retary” after “patients”.

21 (2) EFFECTIVE DATE.—The amendment made  
22 by paragraph (1) shall apply with respect to contract  
23 years beginning on or after March 1, 2010.

1 **SEC. 205. PROHIBITION ON PAYMENTS TO INSTITUTIONS**  
2 **OR ENTITIES LOCATED OUTSIDE OF THE**  
3 **UNITED STATES.**

4 Section 1902(a) of the Social Security Act (42 U.S.C.  
5 1396b(a)), as amended by section 203, is amended by in-  
6 serting after paragraph (76) the following new paragraph:

7 “(77) provide that the State shall not provide  
8 any payments for items or services provided under  
9 the State plan or under a waiver to any financial in-  
10 stitution or entity located outside of the United  
11 States.”.

12 **SEC. 206. OVERPAYMENTS.**

13 (a) **EXTENSION OF PERIOD FOR COLLECTION OF**  
14 **OVERPAYMENTS DUE TO FRAUD.—**

15 (1) **IN GENERAL.—**Section 1903(d)(2) of the  
16 Social Security Act (42 U.S.C. 1396b(d)(2)) is  
17 amended—

18 (A) in subparagraph (C)—

19 (i) in the first sentence, by striking  
20 “60 days” and inserting “1 year”; and

21 (ii) in the second sentence, by striking  
22 “60 days” and inserting “1-year period”;

23 and

24 (B) in subparagraph (D)—

25 (i) in inserting “(i)” after “(D)”; and

1 (ii) by adding at the end the fol-  
2 lowing:

3 “(ii) In any case where the State is unable to recover  
4 a debt which represents an overpayment (or any portion  
5 thereof) made to a person or other entity due to fraud  
6 within 1 year of discovery because there is not a final de-  
7 termination of the amount of the overpayment under an  
8 administrative or judicial process (as applicable), includ-  
9 ing as a result of a judgment being under appeal, no ad-  
10 justment shall be made in the Federal payment to such  
11 State on account of such overpayment (or portion thereof)  
12 before the date that is 30 days after the date on which  
13 a final judgment (including, if applicable, a final deter-  
14 mination on an appeal) is made.”.

15 (2) EFFECTIVE DATE.—The amendments made  
16 by this subsection take effect on the date of enact-  
17 ment of this Act and apply to overpayments discov-  
18 ered on or after that date.

19 (b) CORRECTIVE ACTION.—The Secretary shall pro-  
20 mulgate regulations that require States to correct Feder-  
21 ally identified claims overpayments, of an ongoing or re-  
22 curring nature, with new Medicaid Management Informa-  
23 tion System (MMIS) edits, audits, or other appropriate  
24 corrective action.

1 **SEC. 207. MANDATORY STATE USE OF NATIONAL CORRECT**  
2 **CODING INITIATIVE.**

3 Section 1903(r) of the Social Security Act (42 U.S.C.  
4 1396b(r)) is amended—

5 (1) in paragraph (1)(B)—

6 (A) in clause (ii), by striking “and” at the  
7 end;

8 (B) in clause (iii), by adding “and” after  
9 the semi-colon; and

10 (C) by adding at the end the following new  
11 clause:

12 “(iv) effective for claims filed on or  
13 after October 1, 2010, incorporate compat-  
14 ible methodologies of the National Correct  
15 Coding Initiative administered by the Sec-  
16 retary (or any successor initiative to pro-  
17 mote correct coding and to control im-  
18 proper coding leading to inappropriate pay-  
19 ment) and such other methodologies of  
20 that Initiative (or such other national cor-  
21 rect coding methodologies) as the Sec-  
22 retary identifies in accordance with para-  
23 graph (4);” and

24 (2) by adding at the end the following new  
25 paragraph:

1           “(4) For purposes of paragraph (1)(B)(iv), the Sec-  
2 retary shall do the following:

3           “(A) Not later than September 1, 2010:

4                   “(i) Identify those methodologies of the  
5 National Correct Coding Initiative administered  
6 by the Secretary (or any successor initiative to  
7 promote correct coding and to control improper  
8 coding leading to inappropriate payment) which  
9 are compatible to claims filed under this title.

10                   “(ii) Identify those methodologies of such  
11 Initiative (or such other national correct coding  
12 methodologies) that should be incorporated into  
13 claims filed under this title with respect to  
14 items or services for which States provide med-  
15 ical assistance under this title and no national  
16 correct coding methodologies have been estab-  
17 lished under such Initiative with respect to title  
18 XVIII.

19                   “(iii) Notify States of—

20                           “(I) the methodologies identified  
21 under subparagraphs (A) and (B) (and of  
22 any other national correct coding meth-  
23 odologies identified under subparagraph  
24 (B)); and

1                   “(II) how States are to incorporate  
2                   such methodologies into claims filed under  
3                   this title.

4                   “(B) Not later than March 1, 2011, submit a  
5                   report to Congress that includes the notice to States  
6                   under clause (iii) of subparagraph (A) and an anal-  
7                   ysis supporting the identification of the methodolo-  
8                   gies made under clauses (i) and (ii) of subparagraph  
9                   (A).”.

10 **SEC. 208. PAYMENT FOR ILLEGAL UNAPPROVED DRUGS.**

11           (a) FINDINGS.—Congress finds that each year, the  
12 Medicaid program under title XIX of the Social Security  
13 Act (42 U.S.C. 1396 et seq.) pays millions of dollars in  
14 reimbursement for covered outpatient drugs that are not  
15 approved by the Food and Drug Administration under a  
16 new drug application under section 505(b) of the Federal  
17 Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)) or an  
18 abbreviated new drug application under section 505(j) of  
19 such Act, or that such drug is not subject such section  
20 505 or section 512 due to the application of section 201(p)  
21 of such Act (21 U.S.C. 321(p)).

22           (b) LISTING OF DRUGS AND DEVICES.—Section 510  
23 of the Food, Drug and Cosmetic Act (21 U.S.C. 360) is  
24 amended—

25                   (1) in subsection (j)(1)(B)—

1 (A) in clause (i), by inserting “in the case  
2 of a drug, the authority under this Act that  
3 does not require such drug to be subject to sec-  
4 tion 505 and section 512,” after “labeling for  
5 such drug or device,”; and

6 (B) in clause (ii), by inserting “, in the  
7 case of a drug, the authority under this Act  
8 that does not require such drug to be subject to  
9 section 505 and section 512,” after “for such  
10 drug or device”; and

11 (2) in subsection (f)—

12 (A) by striking “(f) The Secretary” and in-  
13 serting the following:

14 “(f) INSPECTION BY PUBLIC OF REGISTRATION.—

15 “(1) IN GENERAL.—The Secretary”; and

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

17 “(2) LIST OF DRUGS THAT ARE NOT APPROVED

18 UNDER SECTION 505 OR 512.—Not later than Janu-

19 ary 1, 2011, the Secretary shall make available to

20 the public on the Internet website of the Food and

21 Drug Administration a list that includes, for each

22 drug described in subsection (j)(1)(B)—

23 “(A) the drug;

24 “(B) the person who listed such drug; and

1           “(C) the authority under this Act that  
2           does not require such drug to be subject to sec-  
3           tion 505 and section 512, as provided by such  
4           person in such list.”.

5           (c) PAYMENT FOR COVERED OUTPATIENT DRUGS.—  
6 Section 1927 of the Social Security Act (42 U.S.C. 1396r-  
7 8) is amended by inserting at the end the following:

8           “(l) CONDITION.—Beginning January 1, 2011, no  
9 State shall make any payment under this section for any  
10 covered outpatient drug unless such State first verifies  
11 with the Food and Drug Administration that such covered  
12 outpatient drug has been approved by the Food and Drug  
13 Administration under a new drug application under sec-  
14 tion 505(b) of the Federal Food, Drug, and Cosmetic Act  
15 (21 U.S.C. 355(b)) or an abbreviated new drug application  
16 under section 505(j) of such Act, or that such drug is not  
17 subject such section 505 or section 512 due to the applica-  
18 tion of section 201(p) of such Act (21 U.S.C. 321(p)). The  
19 Secretary shall have the authority to proscribe regulations  
20 to create an information sharing protocol to allow States  
21 to verify that a covered outpatient drug has been approved  
22 by the Food and Drug Administration.”.

23 **SEC. 209. GENERAL EFFECTIVE DATE.**

24           (a) IN GENERAL.—Except as otherwise provided in  
25 this subtitle, this subtitle and the amendments made by

1 this subtitle take effect on January 1, 2011, without re-  
2 gard to whether final regulations to carry out such amend-  
3 ments and subtitle have been promulgated by that date.

4 (b) DELAY IF STATE LEGISLATION REQUIRED.—In  
5 the case of a State plan for medical assistance under title  
6 XIX of the Social Security Act or a child health plan  
7 under title XXI of such Act which the Secretary of Health  
8 and Human Services determines requires State legislation  
9 (other than legislation appropriating funds) in order for  
10 the plan to meet the additional requirement imposed by  
11 the amendments made by this subtitle, the State plan or  
12 child health plan shall not be regarded as failing to comply  
13 with the requirements of such title solely on the basis of  
14 its failure to meet this additional requirement before the  
15 first day of the first calendar quarter beginning after the  
16 close of the first regular session of the State legislature  
17 that begins after the date of the enactment of this Act.  
18 For purposes of the previous sentence, in the case of a  
19 State that has a 2-year legislative session, each year of  
20 such session shall be deemed to be a separate regular ses-  
21 sion of the State legislature.

1                   **TITLE III—ADDITIONAL**  
2                   **PROVISIONS**

3 **SEC. 301. REQUIRING INDIVIDUALS OR ENTITIES THAT**  
4                   **PARTICIPATE IN OR CONDUCT ACTIVITIES**  
5                   **UNDER FEDERAL HEALTH CARE PROGRAMS**  
6                   **TO COMPLY WITH CERTAIN CONGRESSIONAL**  
7                   **REQUESTS.**

8           (a) IN GENERAL.—Section 1128G of the Social Secu-  
9 rity Act, as added by section 102(a) and amended by sec-  
10 tion 111, is amended by adding at the end the following  
11 new subsection:

12           “(g) COMPLIANCE WITH CERTAIN REQUESTS BY IN-  
13 DIVIDUALS AND ENTITIES THAT PARTICIPATE IN OR  
14 CONDUCT ACTIVITIES UNDER FEDERAL HEALTH CARE  
15 PROGRAMS.—

16           “(1) IN GENERAL.—Any individual or entity  
17 that participates in or conducts activities under a  
18 Federal health care program (as defined in section  
19 1128B(f)) shall, as a condition of such participation  
20 or such conduct, comply (at a time and in a manner  
21 specified by the Chairman or ranking member) with  
22 any request submitted by the Chairman or the rank-  
23 ing member of a relevant committee of Congress to  
24 the individual or entity for the following:

25                   “(A) Documents.

1 “(B) Information.

2 “(C) Interviews.

3 “(2) RELEVANT COMMITTEE OF CONGRESS DE-  
4 FINED.—In this subsection, the term ‘relevant com-  
5 mittee of Congress’ means the Committees on Ways  
6 and Means and Energy and Commerce of the House  
7 of Representatives and the Committee on Finance of  
8 the Senate.”.

9 (b) EFFECTIVE DATE.—The amendments made by  
10 this section shall take effect on the date that is 2 years  
11 after the date of enactment of this Act.

12 **SEC. 302. AMENDMENTS TO THE FALSE CLAIMS ACT.**

13 Section 3730(h) of title 31, United States Code, is  
14 amended—

15 (1) in paragraph (1), by striking “or agent on  
16 behalf of the employee, contractor, or agent or asso-  
17 ciated others in furtherance of other efforts to stop  
18 1 or more violations of this subchapter” and insert-  
19 ing “agent or associated others in furtherance of an  
20 action under this section or other efforts to stop 1  
21 or more violations of this subchapter”; and

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

23 “(3) LIMITATION ON BRINGING CIVIL AC-  
24 TION.—A civil action under this subsection may not

1 be brought more than 2 years after the date when  
2 the retaliation occurred.”.

3 **SEC. 303. DISMISSAL OF CERTAIN ACTIONS OR CLAIMS**  
4 **UNDER THE FALSE CLAIMS ACT.**

5 Section 3730(e) of title 31, United States Code, is  
6 amended by striking paragraph (4) and inserting the fol-  
7 lowing:

8 “(4)(A) The court shall dismiss an action or  
9 claim under this section, unless opposed by the Gov-  
10 ernment, if substantially the same allegations or  
11 transactions as alleged in the action or claim were  
12 publicly disclosed—

13 “(i) in a Federal criminal, civil, or admin-  
14 istrative hearing in which the Government or its  
15 agent is a party;

16 “(ii) in a congressional, Government Ac-  
17 countability Office, or other Federal report,  
18 hearing, audit, or investigation; or

19 “(iii) from the news media, unless the ac-  
20 tion is brought by the Attorney General or the  
21 person bringing the action is an original source  
22 of the information.

23 “(B) For purposes of this paragraph, the term  
24 ‘original source’ means an individual who—

1           “(i) prior to a public disclosure under sub-  
2 section (e)(4)(a), has voluntarily disclosed to  
3 the Government the information on which alle-  
4 gations or transactions in a claim are based; or

5           “(ii) has knowledge that is independent of  
6 and materially adds to the publicly disclosed al-  
7 legations or transactions, and has voluntarily  
8 provided the information to the Government be-  
9 fore filing an action under this section.”.

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