

104TH CONGRESS
1ST SESSION

S. 1255

To amend title XVIII of the Social Security Act to provide for medicare contracting reforms, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18 (legislative day, SEPTEMBER 5), 1995

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

A BILL

To amend title XVIII of the Social Security Act to provide for medicare contracting reforms, 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 AND REFERENCES IN ACT.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Medicare Contractor Reform Act of 1995”.

6 (b) REFERENCES IN ACT.—Except as otherwise ex-
7 pressly provided, whenever in this Act an amendment or
8 repeal is expressed in terms of an amendment to, or repeal
9 of, a section or other provision, the reference shall be con-

1 sidered to be made a section or other provision of the So-
2 cial Security Act.

3 **SEC. 2. INCREASED FLEXIBILITY IN CONTRACTING FOR**
4 **MEDICARE CLAIMS PROCESSING.**

5 (a) CARRIERS TO INCLUDE ENTITIES THAT ARE
6 NOT INSURANCE COMPANIES.—

7 (1) Section 1842(a) (42 U.S.C. 1395u(a)) is
8 amended in the matter preceding paragraph (1) by
9 striking “with carriers” and inserting “with agencies
10 and organizations (hereafter in this section referred
11 to as ‘carriers’)”.

12 (2) Section 1842(f) (42 U.S.C. 1395u(f)) is re-
13 pealed.

14 (b) CHOICE OF FISCAL INTERMEDIARIES BY PROVID-
15 ERS OF SERVICES; SECRETARIAL FLEXIBILITY IN AS-
16 SIGNING FUNCTIONS TO INTERMEDIARIES AND CAR-
17 RIERS.—

18 (1) Section 1816(a) (42 U.S.C. 1395h(a)) to
19 read as follows:

20 “(a)(1) The Secretary may enter into contracts with
21 agencies or organizations to perform any or all of the fol-
22 lowing functions, or parts of those functions (or, to the
23 extent provided in a contract, to secure performance there-
24 of by other organizations):

1 “(A) Determination (subject to the provisions
2 of section 1878 and to such review by the Secretary
3 as may be provided for by the contracts) the amount
4 of the payments required pursuant to this part to be
5 made to providers of services.

6 “(B) Making payments described in subpara-
7 graph (A).

8 “(C) Provision of consultative services to insti-
9 tutions or agencies to enable them to establish and
10 maintain fiscal records necessary for purposes of
11 this part and otherwise to qualify as providers of
12 services.

13 “(D) Serving as a center for, and communicate
14 to individuals entitled to benefits under this part
15 and to providers of services, any information or in-
16 structions furnished to the agency or organization by
17 the Secretary, and serve as a channel of communica-
18 tion from individuals entitled to benefits under this
19 part and from providers of services to the Secretary.

20 “(E) Making such audits of the records of pro-
21 viders of services as may be necessary to ensure that
22 proper payments are made under this part.

23 “(F) Performance of the functions described
24 under subsection (d).

1 “(G) Performance of such other functions as
2 are necessary to carry out the purposes of this part.

3 “(2) As used in this title and title XI, the term ‘fiscal
4 intermediary’ means an agency or organization with a con-
5 tract under this section.”.

6 (2) Subsections (d) and (e) of section 1816 (42
7 U.S.C. 1395h) are amended to read as follows:

8 “(d) Each provider of services shall have a fiscal
9 intermediary that—

10 “(1) acts as a single point of contact for the
11 provider of services under this part,

12 “(2) makes its services sufficiently available to
13 meet the needs of the provider of services, and

14 “(3) is responsible and accountable for arrang-
15 ing the resolution of issues raised under this part by
16 the provider of services.

17 “(e)(1)(A) The Secretary shall, at least every 5 years,
18 permit each provider of services (other than a home health
19 agency or a hospice program) to choose an agency or orga-
20 nization (from at least 3 proposed by the Secretary, of
21 which at least 1 shall have an office in the geographic area
22 of the provider of services, except as provided by subpara-
23 graph (B)(ii)(II)) as the fiscal intermediary under sub-
24 section (d) for that provider of services. If a contract with
25 that fiscal intermediary is discontinued, the Secretary

1 shall permit the provider of services to choose under the
2 same conditions from 3 other agencies or organizations.

3 “(B)(i) The Secretary, in carrying out subparagraph
4 (A), shall permit a group of hospitals (or a group of an-
5 other class of providers other than home health agencies
6 or hospice programs) under common ownership by, or con-
7 trol of, a particular entity to choose one agency or organi-
8 zation (from at least 3 proposed by the Secretary) as the
9 fiscal intermediary under subsection (d) for all the provid-
10 ers in that group if the conditions specified in clause (ii)
11 are met.

12 “(ii) The conditions specified in this clause are that—

13 “(I) the group includes all the providers of serv-
14 ices of that class that are under common ownership
15 by, or control of, that particular entity, and

16 “(II) all the providers of services in that group
17 agree that none of the agencies or organizations pro-
18 posed by the Secretary is required to have an office
19 in any particular geographic area.

20 “(2) The Secretary, in evaluating the performance of
21 a fiscal intermediary, shall solicit comments from provid-
22 ers of services.”.

23 (3)(A) Section 1816(b)(1)(A) (42 U.S.C.
24 1395h(b)(1)(A)) is amended by striking “after ap-
25 plying the standards, criteria, and procedures” and

1 inserting “after evaluating the ability of the agency
2 or organization to fulfill the contract performance
3 requirements”.

4 (B) The first sentence of section 1816(f)(1) (42
5 U.S.C. 1395h(f)(1)) is amended—

6 (i) by striking “develop standards, criteria,
7 and procedures” and inserting “, after public
8 notice and opportunity for comment, develop
9 contract performance requirements”, and

10 (ii) by striking “, and the Secretary shall
11 establish standards and criteria with respect to
12 the efficient and effective administration of this
13 part”.

14 (C) The second sentence of section
15 1842(b)(2)(A) (42 U.S.C. 1395u(b)(2)(A)) is
16 amended to read as follows: “The Secretary shall,
17 after public notice and opportunity for comment, de-
18 velop contract performance requirements for the effi-
19 cient and effective performance of contract obliga-
20 tions under this section.”.

21 (D) Section 1842(b)(2)(A) (42 U.S.C.
22 1395u(b)(2)(A)) is amended by striking the third
23 sentence.

24 (E) Section 1842(b)(2)(B) (42 U.S.C.
25 1395u(b)(2)(B)) is amended in the matter preceding

1 clause (i) by striking “establish standards” and in-
2 sserting “develop contract performance require-
3 ments”.

4 (F) Section 1842(b)(2)(D) (42 U.S.C.
5 1395u(b)(2)(D)) is amended by striking “standards
6 and criteria” each place it appears and inserting
7 “contract performance requirements”.

8 (4)(A) Section 1816(b) (42 U.S.C. 1395h(b)) is
9 amended in the matter preceding paragraph (1) by
10 striking “an agreement” and inserting “a contract”.

11 (B) Paragraphs (1)(B) and (2)(A) of section
12 1816(b) (42 U.S.C. 1395h(b)) are each amended by
13 striking “agreement” and inserting “contract”.

14 (C) The first sentence of section 1816(c)(1) (42
15 U.S.C. 1395h(c)(1)) is amended by striking “An
16 agreement” and inserting “A contract”.

17 (D) The last sentence of section 1816(c)(1) (42
18 U.S.C. 1395h(c)(1)) is amended by striking “an
19 agreement” and inserting “a contract”.

20 (E) Section 1816(c)(2)(A) (42 U.S.C.
21 1395h(c)(2)(A)) is amended in the matter preceding
22 clause (i) by striking “agreement” and inserting
23 “contract”.

1 (F) Section 1816(c)(3)(A) (42 U.S.C.
2 1395h(c)(3)(A)) is amended by striking “agree-
3 ment” and inserting “contract”.

4 (G) The first sentence of section 1816(f)(1) (42
5 U.S.C. 1395h(f)(1)) is amended by striking “an
6 agreement” and inserting “a contract”.

7 (H) Section 1816(h) (42 U.S.C. 1395h(h)) is
8 amended—

9 (i) by striking “An agreement” and insert-
10 ing “A contract”, and

11 (ii) by striking “the agreement” each place
12 it appears and inserting “the contract”.

13 (I) Section 1816(i)(1) (42 U.S.C. 1395h(i)(1))
14 is amended by striking “an agreement” and insert-
15 ing “a contract”.

16 (J) Section 1816(j) (42 U.S.C. 1395h(j)) is
17 amended by striking “An agreement” and inserting
18 “A contract”.

19 (K) Section 1816(k) (42 U.S.C. 1395h(k)) is
20 amended by striking “An agreement” and inserting
21 “A contract”.

22 (L) Section 1842(a) (42 U.S.C. 1395u(a)) is
23 amended in the matter preceding paragraph (1) is
24 amended by striking “agreements” and inserting
25 “contracts”.

1 (M) Section 1842(h)(3)(A) (42 U.S.C.
2 1395u(h)(3)(A)) is amended by striking “an agree-
3 ment” and inserting “a contract”.

4 (5) Section 1816(f)(1) (42 U.S.C. 1395h(f)(1))
5 is amended by striking the second sentence.

6 (6)(A) Section 1816(c)(2)(A) (42 U.S.C.
7 1395h(c)(2)(A)) is amended in the matter preceding
8 clause (i) by inserting “that provides for making
9 payments under this part” after “this section”.

10 (B) Section 1816(c)(3)(A) (42 U.S.C.
11 1395h(c)(3)(A)) is amended by inserting “that pro-
12 vides for making payments under this part” after
13 “this section”.

14 (C) Section 1816(k) (42 U.S.C. 1395h(k)) is
15 amended by inserting “(as appropriate)” after “sub-
16 mit”.

17 (D) Section 1842(a) (42 U.S.C. 1395u(a)) is
18 amended in the matter preceding paragraph (1) by
19 striking “some or all of the following functions” and
20 inserting “any or all of the following functions, or
21 parts of those functions”.

22 (E) The first sentence of section 1842(b)(2)(C)
23 (42 U.S.C. 1395u(b)(2)(C)) is amended by inserting
24 “(as appropriate)” after “carriers”.

1 (F) Section 1842(b)(3) (42 U.S.C.
2 1395u(b)(3)) is amended in the matter preceding
3 subparagraph (A) by inserting “(as appropriate)”
4 after “contract”.

5 (G) Section 1842(b)(7)(A) (42 U.S.C.
6 1395u(b)(7)(A)) is amended in the matter preceding
7 clause (i) by striking “the carrier” and inserting “a
8 carrier”.

9 (H) Section 1842(b)(11)(A) (42 U.S.C.
10 1395u(b)(11)(A)) is amended in the matter preced-
11 ing clause (i) by inserting “(as appropriate)” after
12 “each carrier”.

13 (I) Section 1842(h)(2) (42 U.S.C. 1395u(h)(2))
14 is amended in the first sentence by inserting “(as
15 appropriate)” after “shall”.

16 (J) Section 1842(h)(5)(A) (42 U.S.C.
17 1395u(h)(5)(A)) is amended by inserting “(as ap-
18 propriate)” after “carriers”.

19 (7)(A) Section 1816(c)(2)(C) (42 U.S.C.
20 1395h(c)(2)(C)) is amended by striking “hospital,
21 rural primary care hospital, skilled nursing facility,
22 home health agency, hospice program, comprehen-
23 sive outpatient rehabilitation facility, or rehabilita-
24 tion agency” and inserting “provider of services”.

1 (B) Section 1816(j) (42 U.S.C. 1395h(j)) is
2 amended in the matter preceding paragraph (1) by
3 striking “for home health services, extended care
4 services, or post-hospital extended care services”.

5 (8) Section 1842(a)(3) (42 U.S.C. 1395u(a)(3))
6 is amended by inserting “(to and from individuals
7 enrolled under this part and to and from physicians
8 and other entities that furnish items and services)”
9 after “communication”.

10 (c) ELIMINATION OF SPECIAL PROVISIONS FOR TER-
11 MINATIONS OF CONTRACTS.—

12 (1) Section 1816(b) (42 U.S.C. 1395h(b)) is
13 amended in the matter preceding paragraph (1) is
14 amended by striking “or renew”.

15 (2) The last sentence of section 1816(c)(1) (42
16 U.S.C. 1395h(c)(1)) is amended by striking “or re-
17 newing”.

18 (3) Section 1816(f)(1) (42 U.S.C. 1395h(f)(1))
19 is amended—

20 (A) by striking “, renew, or terminate”,
21 and

22 (B) by striking “, whether the Secretary
23 should assign or reassign a provider of services
24 to an agency or organization,”.

1 (4) Section 1816(g) (42 U.S.C. 1395h(g)) is re-
2 pealed.

3 (5) The last sentence of section 1842(b)(2)(A)
4 (42 U.S.C. 1395u(b)(2)(A)) is amended by striking
5 “or renewing”.

6 (6) Section 1842(b) (42 U.S.C. 1395u(b)) is
7 amended by striking paragraph (5).

8 (d) REPEAL OF FISCAL INTERMEDIARY REQUIRE-
9 MENTS THAT ARE NOT COST-EFFECTIVE.—Section
10 1816(f)(2) (42 U.S.C. 1395h(f)(2)) is amended to read
11 as follows:

12 “(2) The contract performance requirements
13 developed under paragraph (1) shall include, with
14 respect to claims for services furnished under this
15 part by any provider of services other than a hos-
16 pital, whether such agency or organization is able to
17 process 75 percent of reconsiderations within 60
18 days and 90 percent of reconsiderations within 90
19 days.”.

20 (e) REPEAL OF COST REIMBURSEMENT REQUIRE-
21 MENTS.—

22 (1) The first sentence of section 1816(c)(1) (42
23 U.S.C. 1395h(c)(1)) is amended—

24 (A) by striking the comma after “appro-
25 priate” and inserting “and”, and

1 (B) by striking “subsection (a)” and all
2 that follows through the period and inserting
3 “subsection (a).”.

4 (2) Section 1816(c)(1) (42 U.S.C. 1395h(c)(1))
5 is further amended by striking the second and third
6 sentences.

7 (3) The first sentence of section 1842(c)(1) (42
8 U.S.C. 1395u(c)(1)) is amended—

9 (A) by striking “shall provide” the first
10 place it appears and inserting “may provide”,
11 and

12 (B) by striking “this part” and all that fol-
13 lows through the period and inserting “this
14 part.”.

15 (4) Section 1842(c)(1) (42 U.S.C. 1395u(c)(1))
16 is further amended by striking the second and third
17 sentences.

18 (5) Section 2326(a) of the Deficit Reduction
19 Act of 1984 is repealed.

20 (f) COMPETITION REQUIRED FOR NEW CONTRACTS
21 AND IN CASES OF POOR PERFORMANCE.—

22 (1) Section 1816(c) (42 U.S.C. 1395h(c)) is
23 amended by adding at the end the following new
24 paragraph:

1 “(4)(A) A contract with a fiscal intermediary
2 under this section may be renewed from term to
3 term without regard to any provision of law requir-
4 ing competition if the fiscal intermediary has met or
5 exceeded the performance requirements established
6 in the current contract.

7 “(B) Functions may be transferred among fis-
8 cal intermediaries without regard to any provision of
9 law requiring competition.”.

10 (2) Section 1842(b)(1) (42 U.S.C. 1395u(b)(1))
11 is amended to read as follows:

12 “(b)(1)(A) A contract with a carrier under subsection
13 (a) may be renewed from term to term without regard to
14 any provision of law requiring competition if the carrier
15 has met or exceeded the performance requirements estab-
16 lished in the current contract.

17 “(B) Functions may be transferred among carriers
18 without regard to any provision of law requiring competi-
19 tion.”.

20 (g) WAIVER OF COMPETITIVE REQUIREMENTS FOR
21 INITIAL CONTRACTS.—

22 (1) Contracts that have periods that begin dur-
23 ing the 1-year period that begins on the first day of
24 the fourth calendar month that begins after the date
25 of enactment of this Act may be entered into under

1 section 1816(a) of the Social Security Act (42
2 U.S.C. 1395h(a)) without regard to any provision of
3 law requiring competition.

4 (2) The amendments made by subsection (f)
5 apply to contracts that have periods beginning after
6 the end of the 1-year period specified in paragraph
7 (1).

8 (h) EFFECTIVE DATES.—

9 (1) The amendments made by subsection (c)
10 apply to contracts that have periods ending on, or
11 after, the end of the third calendar month that be-
12 gins after the date of enactment of this Act.

13 (2) The amendments made by subsections (a),
14 (b), (d), and (e) apply to contracts that have periods
15 beginning after the third calendar month that begins
16 after the date of enactment of this Act.

○