

Calendar No. 379

104TH CONGRESS
2^D SESSION

S. 1698

A BILL

Entitled the "Health Insurance Reform Act of
1996".

APRIL 25, 1996

Read the second time and placed on the calendar

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104TH CONGRESS
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Entitled the “Health Insurance Reform Act of 1996”.

IN THE SENATE OF THE UNITED STATES

APRIL 24, 1996

Mr. DASCHLE introduced the following bill; which was read the first time

APRIL 25, 1996

Read the second time and placed on the calendar

A BILL

Entitled the “Health Insurance Reform Act of 1996”.

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 “Health Insurance Reform Act of 1996”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—HEALTH CARE ACCESS, PORTABILITY, AND
RENEWABILITY

Subtitle A—Group Market Rules

- Sec. 101. Guaranteed availability of health coverage.
- Sec. 102. Guaranteed renewability of health coverage.
- Sec. 103. Portability of health coverage and limitation on preexisting condition exclusions.
- Sec. 104. Special enrollment periods.
- Sec. 105. Disclosure of information.

Subtitle B—Individual Market Rules

- Sec. 110. Individual health plan portability.
- Sec. 111. Guaranteed renewability of individual health coverage.
- Sec. 112. State flexibility in individual market reforms.
- Sec. 113. Definition.

Subtitle C—COBRA Clarifications

- Sec. 121. COBRA clarifications.

Subtitle D—Private Health Plan Purchasing Cooperatives

- Sec. 131. Private health plan purchasing cooperatives.

TITLE II—APPLICATION AND ENFORCEMENT OF STANDARDS

- Sec. 201. Applicability.
- Sec. 202. Enforcement of standards.

TITLE III—MISCELLANEOUS PROVISIONS

- Sec. 301. HMOs allowed to offer plans with deductibles to individuals with medical savings accounts.
- Sec. 302. Health coverage availability study.
- Sec. 303. Reimbursement of telemedicine.
- Sec. 304. Sense of the Committee concerning medicare.
- Sec. 305. Parity for mental health services.
- Sec. 306. Waiver of foreign country residence requirement with respect to international medical graduates.
- Sec. 307. Organ and tissue donation information included with income tax refund payments.
- Sec. 308. Sense of the Senate regarding adequate health care coverage for all children and pregnant women.
- Sec. 309. Sense of the Senate regarding available treatments.
- Sec. 310. Medical volunteers.
- Sec. 311. Effective date.
- Sec. 312. Severability.

TITLE IV—TAX-RELATED HEALTH PROVISIONS

- Sec. 400. Short title; amendment of 1986 Code.

Subtitle A—Increase in Deduction for Health Insurance Costs of Self-Employed Individuals

- Sec. 401. Increase in self-employed individuals' deduction for health insurance costs.

Subtitle B—Long-Term Care Provisions

CHAPTER 1—LONG-TERM CARE SERVICES AND CONTRACTS

SUBCHAPTER A—GENERAL PROVISIONS

- Sec. 411. Treatment of long-term care insurance.
- Sec. 412. Qualified long-term care services treated as medical care.
- Sec. 413. Certain exchanges of life insurance contracts for qualified long-term care insurance contracts not taxable.
- Sec. 414. Exception from penalty tax for amounts withdrawn from certain retirement plans for qualified long-term care insurance.
- Sec. 415. Reporting requirements.

SUBCHAPTER B—CONSUMER PROTECTION PROVISIONS

- Sec. 421. Policy requirements.
- Sec. 422. Requirements for issuers of long-term care insurance policies.
- Sec. 423. Coordination with State requirements.
- Sec. 424. Effective dates.

CHAPTER 2—TREATMENT OF ACCELERATED DEATH BENEFITS

- Sec. 431. Treatment of accelerated death benefits by recipient.
- Sec. 432. Tax treatment of companies issuing qualified accelerated death benefit riders.

Subtitle C—High-Risk Pools

- Sec. 451. Exemption from income tax for State-sponsored organizations providing health coverage for high-risk individuals.

Subtitle D—Penalty-Free IRA Distributions

- Sec. 461. Distributions from certain plans may be used without penalty to pay financially devastating medical expenses.

Subtitle E—Revenue Offsets

CHAPTER 1—TREATMENT OF INDIVIDUALS WHO EXPATRIATE

- Sec. 471. Revision of tax rules on expatriation.
- Sec. 472. Information on individuals expatriating.
- Sec. 473. Report on tax compliance by United States citizens and residents living abroad.

CHAPTER 2—COMPANY-OWNED INSURANCE

- Sec. 495. Denial of deduction for interest on loans with respect to company-owned insurance.

TITLE V—HEALTH CARE FRAUD AND ABUSE PREVENTION

- Sec. 500. Amendments.

Subtitle A—Fraud and Abuse Control Program

- Sec. 501. Fraud and abuse control program.
- Sec. 502. Medicare integrity program.
- Sec. 503. Beneficiary incentive programs.
- Sec. 504. Application of certain health anti-fraud and abuse sanctions to fraud and abuse against Federal health care programs.

Sec. 505. Guidance regarding application of health care fraud and abuse sanctions.

Subtitle B—Revisions to Current Sanctions for Fraud and Abuse

- Sec. 511. Mandatory exclusion from participation in medicare and State health care programs.
- Sec. 512. Establishment of minimum period of exclusion for certain individuals and entities subject to permissive exclusion from medicare and State health care programs.
- Sec. 513. Permissive exclusion of individuals with ownership or control interest in sanctioned entities.
- Sec. 514. Sanctions against practitioners and persons for failure to comply with statutory obligations.
- Sec. 515. Intermediate sanctions for medicare health maintenance organizations.
- Sec. 516. Additional exceptions to anti-kickback penalties for risk-sharing arrangements.
- Sec. 517. Effective date.

Subtitle C—Data Collection and Miscellaneous Provisions

Sec. 521. Establishment of the health care fraud and abuse data collection program.

Subtitle D—Civil Monetary Penalties

Sec. 531. Social Security Act civil monetary penalties.

Subtitle E—Amendments to Criminal Law

- Sec. 541. Health care fraud.
- Sec. 542. Forfeitures for Federal health care offenses.
- Sec. 543. Injunctive relief relating to Federal health care offenses.
- Sec. 544. False statements.
- Sec. 545. Obstruction of criminal investigations of Federal health care offenses.
- Sec. 546. Theft or embezzlement.
- Sec. 547. Laundering of monetary instruments.
- Sec. 548. Authorized investigative demand procedures.

TITLE VI—INTERNAL REVENUE CODE AND OTHER PROVISIONS

Sec. 600. References.

Subtitle A—Foreign Trust Tax Compliance

- Sec. 601. Improved information reporting on foreign trusts.
- Sec. 602. Modifications of rules relating to foreign trusts having one or more United States beneficiaries.
- Sec. 603. Foreign persons not to be treated as owners under grantor trust rules.
- Sec. 604. Information reporting regarding foreign gifts.
- Sec. 605. Modification of rules relating to foreign trusts which are not grantor trusts.
- Sec. 606. Residence of estates and trusts, etc.

Subtitle B—Repeal of Bad Debt Reserve Method for Thrift Savings Associations

Sec. 611. Repeal of bad debt reserve method for Thrift Savings Associations.

Subtitle C—Other Provisions

Sec. 621. Extension of medicare secondary payor provisions.

Sec. 622. Annual adjustment factors for operating costs only; restraint on rent increases.

Sec. 623. Foreclosure avoidance and borrower assistance.

1 **SEC. 2. DEFINITIONS.**

2 As used in this Act:

3 (1) **BENEFICIARY.**—The term “beneficiary” has
4 the meaning given such term under section 3(8) of
5 the Employee Retirement Income Security Act of
6 1974 (29 U.S.C. 1002(8)).

7 (2) **EMPLOYEE.**—The term “employee” has the
8 meaning given such term under section 3(6) of the
9 Employee Retirement Income Security Act of 1974
10 (29 U.S.C. 1002(6)).

11 (3) **EMPLOYER.**—The term “employer” has the
12 meaning given such term under section 3(5) of the
13 Employee Retirement Income Security Act of 1974
14 (29 U.S.C. 1002(5)), except that such term shall in-
15 clude only employers of two or more employees.

16 (4) **EMPLOYEE HEALTH BENEFIT PLAN.**—

17 (A) **IN GENERAL.**—The term “employee
18 health benefit plan” means any employee wel-
19 fare benefit plan, governmental plan, or church
20 plan (as defined under paragraphs (1), (32),
21 and (33) of section 3 of the Employee Retire-
22 ment Income Security Act of 1974 (29 U.S.C.

1 1002 (1), (32), and (33))), or any health bene-
2 fit plan under section 5(e) of the Peace Corps
3 Act (22 U.S.C. 2504(e)), that provides or pays
4 for health benefits (such as provider and hos-
5 pital benefits) for participants and beneficiaries
6 whether—

7 (i) directly;

8 (ii) through a group health plan of-
9 fered by a health plan issuer as defined in
10 paragraph (8); or

11 (iii) otherwise.

12 (B) RULE OF CONSTRUCTION.—An em-
13 ployee health benefit plan shall not be con-
14 strued to be a group health plan, an individual
15 health plan, or a health plan issuer.

16 (C) ARRANGEMENTS NOT INCLUDED.—
17 Such term does not include the following, or
18 any combination thereof:

19 (i) Coverage only for accident, or dis-
20 ability income insurance, or any combina-
21 tion thereof.

22 (ii) Medicare supplemental health in-
23 surance (as defined under section
24 1882(g)(1) of the Social Security Act).

1 (iii) Coverage issued as a supplement
2 to liability insurance.

3 (iv) Liability insurance, including gen-
4 eral liability insurance and automobile li-
5 ability insurance.

6 (v) Workers compensation or similar
7 insurance.

8 (vi) Automobile medical payment in-
9 surance.

10 (vii) Coverage for a specified disease
11 or illness.

12 (viii) Hospital or fixed indemnity in-
13 surance.

14 (ix) Short-term limited duration in-
15 surance.

16 (x) Credit-only, dental-only, or vision-
17 only insurance.

18 (xi) A health insurance policy provid-
19 ing benefits only for long-term care, nurs-
20 ing home care, home health care, commu-
21 nity-based care, or any combination there-
22 of.

23 (5) FAMILY.—

1 (A) IN GENERAL.—The term “family”
2 means an individual, the individual’s spouse,
3 and the child of the individual (if any).

4 (B) CHILD.—For purposes of subpara-
5 graph (A), the term “child” means any individ-
6 ual who is a child within the meaning of section
7 151(c)(3) of the Internal Revenue Code of
8 1986.

9 (6) GROUP HEALTH PLAN.—

10 (A) IN GENERAL.—The term “group
11 health plan” means any contract, policy, certifi-
12 cate or other arrangement offered by a health
13 plan issuer to a group purchaser that provides
14 or pays for health benefits (such as provider
15 and hospital benefits) in connection with an em-
16 ployee health benefit plan.

17 (B) ARRANGEMENTS NOT INCLUDED.—
18 Such term does not include the following, or
19 any combination thereof:

20 (i) Coverage only for accident, or dis-
21 ability income insurance, or any combina-
22 tion thereof.

23 (ii) Medicare supplemental health in-
24 surance (as defined under section
25 1882(g)(1) of the Social Security Act).

1 (iii) Coverage issued as a supplement
2 to liability insurance.

3 (iv) Liability insurance, including gen-
4 eral liability insurance and automobile li-
5 ability insurance.

6 (v) Workers compensation or similar
7 insurance.

8 (vi) Automobile medical payment in-
9 surance.

10 (vii) Coverage for a specified disease
11 or illness.

12 (viii) Hospital or fixed indemnity in-
13 surance.

14 (ix) Short-term limited duration in-
15 surance.

16 (x) Credit-only, dental-only, or vision-
17 only insurance.

18 (xi) A health insurance policy provid-
19 ing benefits only for long-term care, nurs-
20 ing home care, home health care, commu-
21 nity-based care, or any combination there-
22 of.

23 (7) GROUP PURCHASER.—The term “group
24 purchaser” means any person (as defined under
25 paragraph (9) of section 3 of the Employee Retire-

1 ment Income Security Act of 1974 (29 U.S.C.
2 1002(9)) or entity that purchases or pays for health
3 benefits (such as provider or hospital benefits) on
4 behalf of two or more participants or beneficiaries in
5 connection with an employee health benefit plan. A
6 health plan purchasing cooperative established under
7 section 131 shall not be considered to be a group
8 purchaser.

9 (8) HEALTH PLAN ISSUER.—The term “health
10 plan issuer” means any entity that is licensed (prior
11 to or after the date of enactment of this Act) by a
12 State to offer a group health plan or an individual
13 health plan.

14 (9) PARTICIPANT.—The term “participant” has
15 the meaning given such term under section 3(7) of
16 the Employee Retirement Income Security Act of
17 1974 (29 U.S.C. 1002(7)).

18 (10) PLAN SPONSOR.—The term “plan spon-
19 sor” has the meaning given such term under section
20 3(16)(B) of the Employee Retirement Income Secu-
21 rity Act of 1974 (29 U.S.C. 1002(16)(B)).

22 (11) SECRETARY.—The term “Secretary”, un-
23 less specifically provided otherwise, means the Sec-
24 retary of Labor.

1 condition, claims experience, receipt of health
2 care, medical history, evidence of insurability
3 (including conditions arising out of acts of do-
4 mestic violence), genetic information, or disabil-
5 ity.

6 (2) HEALTH PROMOTION AND DISEASE PRE-
7 VENTION.—Nothing in this subsection shall prevent
8 an employee health benefit plan or a health plan is-
9 suer from establishing premium discounts or modify-
10 ing otherwise applicable copayments or deductibles
11 in return for adherence to programs of health pro-
12 motion and disease prevention.

13 (b) APPLICATION OF CAPACITY LIMITS.—

14 (1) IN GENERAL.—Subject to paragraph (2), a
15 health plan issuer offering a group health plan may
16 cease offering coverage to group purchasers under
17 the plan if—

18 (A) the health plan issuer ceases to offer
19 coverage to any additional group purchasers;
20 and

21 (B) the health plan issuer can demonstrate
22 to the applicable certifying authority (as defined
23 in section 202(d)), if required, that its financial
24 or provider capacity to serve previously covered
25 participants and beneficiaries (and additional

1 participants and beneficiaries who will be ex-
2 pected to enroll because of their affiliation with
3 a group purchaser or such previously covered
4 participants or beneficiaries) will be impaired if
5 the health plan issuer is required to offer cov-
6 erage to additional group purchasers.

7 Such health plan issuer shall be prohibited from of-
8 fering coverage after a cessation in offering coverage
9 under this paragraph for a 6-month period or until
10 the health plan issuer can demonstrate to the appli-
11 cable certifying authority (as defined in section
12 202(d)) that the health plan issuer has adequate ca-
13 pacity, whichever is later.

14 (2) FIRST-COME-FIRST-SERVED.—A health plan
15 issuer offering a group health plan is only eligible to
16 exercise the limitations provided for in paragraph
17 (1) if the health plan issuer offers coverage to group
18 purchasers under such plan on a first-come-first-
19 served basis or other basis established by a State to
20 ensure a fair opportunity to enroll in the plan and
21 avoid risk selection.

22 (c) CONSTRUCTION.—

23 (1) MARKETING OF GROUP HEALTH PLANS.—
24 Nothing in this section shall be construed to prevent

1 a State from requiring health plan issuers offering
2 group health plans to actively market such plans.

3 (2) INVOLUNTARY OFFERING OF GROUP
4 HEALTH PLANS.—Nothing in this section shall be
5 construed to require a health plan issuer to involun-
6 tarily offer group health plans in a particular mar-
7 ket or to require a health plan issuer to involuntarily
8 issue a group health plan to a group health plan
9 purchaser in a particular market if the group health
10 plan was specifically designed for a different market.
11 For the purposes of this paragraph, the term “mar-
12 ket” means either the large employer market or the
13 small employer market (as defined under applicable
14 State law, or if not so defined, an employer with
15 more than one employee and not more than 50 em-
16 ployees).

17 **SEC. 102. GUARANTEED RENEWABILITY OF HEALTH COV-**
18 **ERAGE.**

19 (a) IN GENERAL.—

20 (1) GROUP PURCHASER.—Subject to sub-
21 sections (b) and (c), a group health plan shall be re-
22 newed or continued in force by a health plan issuer
23 at the option of the group purchaser, except that the
24 requirement of this subparagraph shall not apply in
25 the case of—

1 (A) the nonpayment of premiums or con-
2 tributions by the group purchaser in accordance
3 with the terms of the group health plan or
4 where the health plan issuer has not received
5 timely premium payments;

6 (B) fraud or misrepresentation of material
7 fact on the part of the group purchaser;

8 (C) the termination of the group health
9 plan in accordance with subsection (b); or

10 (D) the failure of the group purchaser to
11 meet contribution or participation requirements
12 in accordance with paragraph (3).

13 (2) PARTICIPANT.—Subject to subsections (b)
14 and (c), coverage under an employee health benefit
15 plan or group health plan shall be renewed or con-
16 tinued in force, if the group purchaser elects to con-
17 tinue to provide coverage under such plan, at the op-
18 tion of the participant (or beneficiary where such
19 right exists under the terms of the plan or under ap-
20 plicable law), except that the requirement of this
21 paragraph shall not apply in the case of—

22 (A) the nonpayment of premiums or con-
23 tributions by the participant or beneficiary in
24 accordance with the terms of the employee
25 health benefit plan or group health plan or

1 where such plan has not received timely pre-
2 mium payments;

3 (B) fraud or misrepresentation of material
4 fact on the part of the participant or bene-
5 ficiary relating to an application for coverage or
6 claim for benefits;

7 (C) the termination of the employee health
8 benefit plan or group health plan;

9 (D) loss of eligibility for continuation cov-
10 erage as described in part 6 of subtitle B of
11 title I of the Employee Retirement Income Se-
12 curity Act of 1974 (29 U.S.C. 1161 et seq.); or

13 (E) failure of a participant or beneficiary
14 to meet requirements for eligibility for coverage
15 under an employee health benefit plan or group
16 health plan that are not prohibited by this Act.

17 (3) RULES OF CONSTRUCTION.—Nothing in
18 this subsection, nor in section 101(a), shall be con-
19 strued to—

20 (A) preclude a health plan issuer from es-
21 tablishing employer contribution rules or group
22 participation rules for group health plans as al-
23 lowed under applicable State law;

24 (B) preclude a plan defined in section
25 3(37) of the Employee Retirement Income Se-

1 curity Act of 1974 (29 U.S.C. 1102(37)) from
2 establishing employer contribution rules or
3 group participation rules; or

4 (C) permit individuals to decline coverage
5 under an employee health benefit plan if such
6 right is not otherwise available under such plan.

7 (b) TERMINATION OF GROUP HEALTH PLANS.—

8 (1) PARTICULAR TYPE OF GROUP HEALTH
9 PLAN NOT OFFERED.—In any case in which a health
10 plan issuer decides to discontinue offering a particu-
11 lar type of group health plan, a group health plan
12 of such type may be discontinued by the health plan
13 issuer only if—

14 (A) the health plan issuer provides notice
15 to each group purchaser covered under a group
16 health plan of this type (and participants and
17 beneficiaries covered under such group health
18 plan) of such discontinuation at least 90 days
19 prior to the date of the discontinuation of such
20 plan;

21 (B) the health plan issuer offers to each
22 group purchaser covered under a group health
23 plan of this type, the option to purchase any
24 other group health plan currently being offered
25 by the health plan issuer; and

1 (C) in exercising the option to discontinue
2 a group health plan of this type and in offering
3 one or more replacement plans, the health plan
4 issuer acts uniformly without regard to the
5 health status or insurability of participants or
6 beneficiaries covered under the group health
7 plan, or new participants or beneficiaries who
8 may become eligible for coverage under the
9 group health plan.

10 (2) DISCONTINUANCE OF ALL GROUP HEALTH
11 PLANS.—

12 (A) IN GENERAL.—In any case in which a
13 health plan issuer elects to discontinue offering
14 all group health plans in a State, a group
15 health plan may be discontinued by the health
16 plan issuer only if—

17 (i) the health plan issuer provides no-
18 tice to the applicable certifying authority
19 (as defined in section 202(d)) and to each
20 group purchaser (and participants and
21 beneficiaries covered under such group
22 health plan) of such discontinuation at
23 least 180 days prior to the date of the ex-
24 piration of such plan; and

1 (ii) all group health plans issued or
2 delivered for issuance in the State are dis-
3 continued and coverage under such plans is
4 not renewed.

5 (B) APPLICATION OF PROVISIONS.—The
6 provisions of this paragraph and paragraph (3)
7 may be applied separately by a health plan is-
8 suer—

9 (i) to all group health plans offered to
10 small employers (as defined under applica-
11 ble State law, or if not so defined, an em-
12 ployer with not more than 50 employees);
13 or

14 (ii) to all other group health plans of-
15 fered by the health plan issuer in the
16 State.

17 (3) PROHIBITION ON MARKET REENTRY.—In
18 the case of a discontinuation under paragraph (2),
19 the health plan issuer may not provide for the issu-
20 ance of any group health plan in the market sector
21 (as described in paragraph (2)(B)) in which issuance
22 of such group health plan was discontinued in the
23 State involved during the 5-year period beginning on
24 the date of the discontinuation of the last group
25 health plan not so renewed.

1 (c) TREATMENT OF NETWORK PLANS.—

2 (1) GEOGRAPHIC LIMITATIONS.—A network
3 plan (as defined in paragraph (2)) may deny contin-
4 ued participation under such plan to participants or
5 beneficiaries who neither live, reside, nor work in an
6 area in which such network plan is offered, but only
7 if such denial is applied uniformly, without regard to
8 health status or the insurability of particular partici-
9 pants or beneficiaries.

10 (2) NETWORK PLAN.—As used in paragraph
11 (1), the term “network plan” means an employee
12 health benefit plan or a group health plan that ar-
13 ranges for the financing and delivery of health care
14 services to participants or beneficiaries covered
15 under such plan, in whole or in part, through ar-
16 rangements with providers.

17 (d) COBRA COVERAGE.—Nothing in subsection
18 (a)(2)(E) or subsection (c) shall be construed to affect any
19 right to COBRA continuation coverage as described in
20 part 6 of subtitle B of title I of the Employee Retirement
21 Income Security Act of 1974 (29 U.S.C. 1161 et seq.).

1 **SEC. 103. PORTABILITY OF HEALTH COVERAGE AND LIM-**
2 **TATION ON PREEXISTING CONDITION EXCLU-**
3 **SIONS.**

4 (a) IN GENERAL.—An employee health benefit plan
5 or a health plan issuer offering a group health plan may,
6 with respect to a participant or beneficiary, impose a limi-
7 tation or exclusion of benefits, otherwise available under
8 the terms of the plan only if—

9 (1) such limitation or exclusion is a limitation
10 or exclusion of benefits relating to the treatment of
11 a preexisting condition; and

12 (2) such limitation or exclusion extends for a
13 period of not more than 12 months after the date
14 of enrollment in the plan.

15 (b) CREDITING OF PREVIOUS QUALIFYING COV-
16 ERAGE.—

17 (1) IN GENERAL.—Subject to paragraph (4), an
18 employee health benefit plan or a health plan issuer
19 offering a group health plan shall provide that if a
20 participant or beneficiary is in a period of previous
21 qualifying coverage as of the date of enrollment
22 under such plan, any period of exclusion or limita-
23 tion of coverage with respect to a preexisting condi-
24 tion shall be reduced by 1 month for each month in
25 which the participant or beneficiary was in the pe-
26 riod of previous qualifying coverage. With respect to

1 a participant or beneficiary described in subsection
2 (e)(2)(A) who maintains continuous coverage, no
3 limitation or exclusion of benefits relating to treat-
4 ment of a preexisting condition may be applied to a
5 child within the child's first 12 months of life or
6 within 12 months after the placement of a child for
7 adoption.

8 (2) DISCHARGE OF DUTY.—An employee health
9 benefit plan shall provide documentation of coverage
10 to participants and beneficiaries whose coverage is
11 terminated under the plan. Pursuant to regulations
12 promulgated by the Secretary, the duty of an em-
13 ployee health benefit plan to verify previous qualify-
14 ing coverage with respect to a participant or bene-
15 ficiary is effectively discharged when such employee
16 health benefit plan provides documentation to a par-
17 ticipant or beneficiary that includes the following in-
18 formation:

19 (A) the dates that the participant or bene-
20 ficiary was covered under the plan; and

21 (B) the benefits and cost-sharing arrange-
22 ment available to the participant or beneficiary
23 under such plan.

24 An employee health benefit plan shall retain the doc-
25 umentation provided to a participant or beneficiary

1 under subparagraphs (A) and (B) for at least the
2 12-month period following the date on which the
3 participant or beneficiary ceases to be covered under
4 the plan. Upon request, an employee health benefit
5 plan shall provide a second copy of such documenta-
6 tion to such participant or beneficiary within the 12-
7 month period following the date of such ineligibility.

8 (3) DEFINITIONS.—As used in this section:

9 (A) PREVIOUS QUALIFYING COVERAGE.—

10 The term “previous qualifying coverage” means
11 the period beginning on the date—

12 (i) a participant or beneficiary is en-
13 rolled under an employee health benefit
14 plan or a group health plan, and ending on
15 the date the participant or beneficiary is
16 not so enrolled; or

17 (ii) an individual is enrolled under an
18 individual health plan (as defined in sec-
19 tion 113) or under a public or private
20 health plan established under Federal or
21 State law, and ending on the date the indi-
22 vidual is not so enrolled;

23 for a continuous period of more than 30 days
24 (without regard to any waiting period).

1 (B) LIMITATION OR EXCLUSION OF BENE-
2 FITS RELATING TO TREATMENT OF A PRE-
3 EXISTING CONDITION.—The term “limitation or
4 exclusion of benefits relating to treatment of a
5 preexisting condition” means a limitation or ex-
6 clusion of benefits imposed on an individual
7 based on a preexisting condition of such individ-
8 ual.

9 (4) EFFECT OF PREVIOUS COVERAGE.—An em-
10 ployee health benefit plan or a health plan issuer of-
11 fering a group health plan may impose a limitation
12 or exclusion of benefits relating to the treatment of
13 a preexisting condition, subject to the limits in sub-
14 section (a), only to the extent that such service or
15 benefit was not previously covered under the group
16 health plan, employee health benefit plan, or individ-
17 ual health plan in which the participant or bene-
18 ficiary was enrolled immediately prior to enrollment
19 in the plan involved.

20 (c) LATE ENROLLEES.—Except as provided in sec-
21 tion 104, with respect to a participant or beneficiary en-
22 rolling in an employee health benefit plan or a group
23 health plan during a time that is other than the first op-
24 portunity to enroll during an enrollment period of at least
25 30 days, coverage with respect to benefits or services relat-

1 ing to the treatment of a preexisting condition in accord-
2 ance with subsections (a) and (b) may be excluded, except
3 the period of such exclusion may not exceed 18 months
4 beginning on the date of coverage under the plan.

5 (d) AFFILIATION PERIODS.—With respect to a par-
6 ticipant or beneficiary who would otherwise be eligible to
7 receive benefits under an employee health benefit plan or
8 a group health plan but for the operation of a preexisting
9 condition limitation or exclusion, if such plan does not uti-
10 lize a limitation or exclusion of benefits relating to the
11 treatment of a preexisting condition, such plan may im-
12 pose an affiliation period on such participant or bene-
13 ficiary not to exceed 60 days (or in the case of a late par-
14 ticipant or beneficiary described in subsection (c), 90
15 days) from the date on which the participant or bene-
16 ficiary would otherwise be eligible to receive benefits under
17 the plan. An employee health benefit plan or a health plan
18 issuer offering a group health plan may also use alter-
19 native methods to address adverse selection as approved
20 by the applicable certifying authority (as defined in section
21 202(d)). During such an affiliation period, the plan may
22 not be required to provide health care services or benefits
23 and no premium shall be charged to the participant or
24 beneficiary.

25 (e) PREEXISTING CONDITION.—

1 (1) IN GENERAL.—For purposes of this section,
2 the term “preexisting condition” means a condition,
3 regardless of the cause of the condition, for which
4 medical advice, diagnosis, care, or treatment was
5 recommended or received within the 6-month period
6 ending on the day before the effective date of the
7 coverage (without regard to any waiting period).

8 (2) BIRTH, ADOPTION AND PREGNANCY EX-
9 CLUDED.—The term “preexisting condition” does
10 not apply to—

11 (A) an individual who, within 30 days of
12 the date of the birth or placement for adoption
13 of a child (as determined under section
14 609(c)(3)(B) of the Employee Retirement In-
15 come Security Act of 1974 (29 U.S.C.
16 1169(c)(3)(B)), was covered under the plan; or

17 (B) pregnancy.

18 (f) STATE FLEXIBILITY.—Nothing in this section
19 shall be construed to preempt State laws that—

20 (1) require health plan issuers to impose a limi-
21 tation or exclusion of benefits relating to the treat-
22 ment of a preexisting condition for periods that are
23 shorter than those provided for under this section;
24 or

1 (2) allow individuals, participants, and bene-
2 ficiaries to be considered to be in a period of pre-
3 vious qualifying coverage if such individual, partici-
4 pant, or beneficiary experiences a lapse in coverage
5 that is greater than the 30-day period provided for
6 under subsection (b)(3); or

7 (3) require health plan issuers to have a
8 lookback period that is shorter than the period de-
9 scribed in subsection (e)(1);

10 unless such laws are preempted by section 514 of the Em-
11 ployee Retirement Income Security Act of 1974 (29
12 U.S.C. 1144).

13 **SEC. 104. SPECIAL ENROLLMENT PERIODS.**

14 In the case of a participant, beneficiary or family
15 member who—

16 (1) through marriage, separation, divorce,
17 death, birth or placement of a child for adoption, ex-
18 periences a change in family composition affecting
19 eligibility under a group health plan, individual
20 health plan, or employee health benefit plan;

21 (2) experiences a change in employment status,
22 as described in section 603(2) of the Employee Re-
23 tirement Income Security Act of 1974 (29 U.S.C.
24 1163(2)), that causes the loss of eligibility for cov-
25 erage, other than COBRA continuation coverage

1 under a group health plan, individual health plan, or
2 employee health benefit plan; or

3 (3) experiences a loss of eligibility under a
4 group health plan, individual health plan, or em-
5 ployee health benefit plan because of a change in the
6 employment status of a family member;

7 each employee health benefit plan and each group health
8 plan shall provide for a special enrollment period extend-
9 ing for a reasonable time after such event that would per-
10 mit the participant to change the individual or family basis
11 of coverage or to enroll in the plan if coverage would have
12 been available to such individual, participant, or bene-
13 ficiary but for failure to enroll during a previous enroll-
14 ment period. Such a special enrollment period shall ensure
15 that a child born or placed for adoption shall be deemed
16 to be covered under the plan as of the date of such birth
17 or placement for adoption if such child is enrolled within
18 30 days of the date of such birth or placement for adop-
19 tion.

20 **SEC. 105. DISCLOSURE OF INFORMATION.**

21 (a) DISCLOSURE OF INFORMATION BY HEALTH PLAN
22 ISSUERS.—

23 (1) IN GENERAL.—In connection with the offer-
24 ing of any group health plan to a small employer (as
25 defined under applicable State law, or if not so de-

1 fined, an employer with not more than 50 employ-
2 ees), a health plan issuer shall make a reasonable
3 disclosure to such employer, as part of its sollicita-
4 tion and sales materials, of—

5 (A) the provisions of such group health
6 plan concerning the health plan issuer’s right to
7 change premium rates and the factors that may
8 affect changes in premium rates;

9 (B) the provisions of such group health
10 plan relating to renewability of coverage;

11 (C) the provisions of such group health
12 plan relating to any preexisting condition provi-
13 sion; and

14 (D) descriptive information about the ben-
15 efits and premiums available under all group
16 health plans for which the employer is qualified.

17 Information shall be provided to small employers
18 under this paragraph in a manner determined to be
19 understandable by the average small employer, and
20 shall be sufficiently accurate and comprehensive to
21 reasonably inform small employers, participants and
22 beneficiaries of their rights and obligations under
23 the group health plan.

24 (2) EXCEPTION.—With respect to the require-
25 ment of paragraph (1), any information that is pro-

1 proprietary and trade secret information under applica-
2 ble law shall not be subject to the disclosure require-
3 ments of such paragraph.

4 (3) CONSTRUCTION.—Nothing in this sub-
5 section shall be construed to preempt State report-
6 ing and disclosure requirements to the extent that
7 such requirements are not preempted under section
8 514 of the Employee Retirement Income Security
9 Act of 1974 (29 U.S.C. 1144).

10 (b) DISCLOSURE OF INFORMATION TO PARTICIPANTS
11 AND BENEFICIARIES.—

12 (1) IN GENERAL.—Section 104(b)(1) of the
13 Employee Retirement Income Security Act of 1974
14 (29 U.S.C. 1024(b)(1)) is amended in the matter
15 following subparagraph (B)—

16 (A) by striking “102(a)(1),” and inserting
17 “102(a)(1) that is not a material reduction in
18 covered services or benefits provided,”; and

19 (B) by adding at the end thereof the fol-
20 lowing new sentences: “If there is a modifica-
21 tion or change described in section 102(a)(1)
22 that is a material reduction in covered services
23 or benefits provided, a summary description of
24 such modification or change shall be furnished
25 to participants not later than 60 days after the

1 date of the adoption of the modification or
2 change. In the alternative, the plan sponsors
3 may provide such description at regular inter-
4 vals of not more than 90 days. The Secretary
5 shall issue regulations within 180 days after the
6 date of enactment of the Health Insurance Re-
7 form Act of 1996, providing alternative mecha-
8 nisms to delivery by mail through which em-
9 ployee health benefit plans may notify partici-
10 pants of material reductions in covered services
11 or benefits.”.

12 (2) PLAN DESCRIPTION AND SUMMARY.—Sec-
13 tion 102(b) of the Employee Retirement Income Se-
14 curity Act of 1974 (29 U.S.C. 1022(b)) is amend-
15 ed—

16 (A) by inserting “including the office or
17 title of the individual who is responsible for ap-
18 proving or denying claims for coverage of bene-
19 fits” after “type of administration of the plan”;

20 (B) by inserting “including the name of
21 the organization responsible for financing
22 claims” after “source of financing of the plan”;
23 and

24 (C) by inserting “including the office, con-
25 tact, or title of the individual at the Depart-

1 ment of Labor through which participants may
 2 seek assistance or information regarding their
 3 rights under this Act and the Health Insurance
 4 Reform Act of 1996 with respect to health ben-
 5 efits that are not offered through a group
 6 health plan.” after “benefits under the plan”.

7 **Subtitle B—Individual Market** 8 **Rules**

9 **SEC. 110. INDIVIDUAL HEALTH PLAN PORTABILITY.**

10 (a) LIMITATION ON REQUIREMENTS.—

11 (1) IN GENERAL.—Except as provided in sub-
 12 sections (c) and (d), a health plan issuer described
 13 in paragraph (3) may not, with respect to an eligible
 14 individual (described in subsection (b)) desiring to
 15 enroll in an individual health plan—

16 (A) decline to offer coverage to, or deny
 17 enrollment of, such individual; or

18 (B) impose a limitation or exclusion of
 19 benefits, otherwise available under such plan,
 20 for which coverage was available under the
 21 group health plan or employee health benefit
 22 plan in which the individual was previously en-
 23 rolled.

24 (2) HEALTH PROMOTION AND DISEASE PRE-
 25 VENTION.—Nothing in this subsection shall be con-

1 strued to prevent a health plan issuer offering an in-
2 dividual health plan from establishing premium dis-
3 counts or modifying otherwise applicable copayments
4 or deductibles in return for adherence to programs
5 of health promotion or disease prevention.

6 (3) HEALTH PLAN ISSUER.—A health plan is-
7 suer described in this paragraph is a health plan is-
8 suer that issues or renews individual health plans.

9 (4) PREMIUMS.—Nothing in this subsection
10 shall be construed to affect the determination of a
11 health plan issuer as to the amount of the premium
12 payable under an individual health plan under appli-
13 cable State law.

14 (b) DEFINITION OF ELIGIBLE INDIVIDUAL.—As used
15 in subsection (a)(1), the term “eligible individual” means
16 an individual who—

17 (1) was a participant or beneficiary enrolled
18 under one or more group health plans or employee
19 health benefit plans for not less than 18 months
20 (without a lapse of more than 30 days) immediately
21 prior to the date on which such individual applies for
22 enrollment in the individual health plan;

23 (2) is not eligible for coverage under a group
24 health plan or an employee health benefit plan;

1 (3) has not had coverage terminated under a
2 group health plan or employee health benefit plan
3 for failure to make required premium payments or
4 contributions, or for fraud or misrepresentation of
5 material fact; and

6 (4) has, if applicable, elected coverage and ex-
7 hausted the maximum period of coverage as de-
8 scribed in section 602(2)(A) of the Employee Retire-
9 ment Income Security Act of 1974 (29 U.S.C.
10 1162(2)(A)) or under a State program providing an
11 extension of such coverage.

12 (c) APPLICATION OF CAPACITY LIMITS.—

13 (1) IN GENERAL.—Subject to paragraph (2), a
14 health plan issuer offering coverage to individuals
15 under an individual health plan may cease enrolling
16 individuals under the plan if—

17 (A) the health plan issuer ceases to enroll
18 any new individuals; and

19 (B) the health plan issuer can demonstrate
20 to the applicable certifying authority (as defined
21 in section 202(d)), if required, that its financial
22 or provider capacity to serve previously covered
23 individuals will be impaired if the health plan
24 issuer is required to enroll additional individ-
25 uals.

1 Such a health plan issuer shall be prohibited from
2 offering coverage after a cessation in offering cov-
3 erage under this paragraph for a 6-month period or
4 until the health plan issuer can demonstrate to the
5 applicable certifying authority (as defined in section
6 202(d)) that the health plan issuer has adequate ca-
7 pacity, whichever is later.

8 (2) FIRST-COME-FIRST-SERVED.—A health plan
9 issuer offering coverage to individuals under an indi-
10 vidual health plan is only eligible to exercise the lim-
11 itations provided for in paragraph (1) if the health
12 plan issuer provides for enrollment of individuals
13 under such plan on a first-come-first-served basis or
14 other basis established by a State to ensure a fair
15 opportunity to enroll in the plan and avoid risk se-
16 lection.

17 (d) MARKET REQUIREMENTS.—

18 (1) IN GENERAL.—The provisions of subsection
19 (a) shall not be construed to require that a health
20 plan issuer offering group health plans to group pur-
21 chasers offer individual health plans to individuals.

22 (2) CONVERSION POLICIES.—A health plan is-
23 suer offering group health plans to group purchasers
24 under this Act shall not be deemed to be a health
25 plan issuer offering an individual health plan solely

1 because such health plan issuer offers a conversion
2 policy.

3 (3) **MARKETING OF PLANS.**—Nothing in this
4 section shall be construed to prevent a State from
5 requiring health plan issuers offering coverage to in-
6 dividuals under an individual health plan to actively
7 market such plan.

8 (4) **CONSTRUCTION.**—Nothing in this Act shall
9 be construed to require that a State replace or dis-
10 solve high risk pools or other similar State mecha-
11 nisms which are designed to provide individuals in
12 such State with access to health benefits.

13 **SEC. 111. GUARANTEED RENEWABILITY OF INDIVIDUAL**
14 **HEALTH COVERAGE.**

15 (a) **IN GENERAL.**—Subject to subsections (b) and (c),
16 coverage for individuals under an individual health plan
17 shall be renewed or continued in force by a health plan
18 issuer at the option of the individual, except that the re-
19 quirement of this subsection shall not apply in the case
20 of—

21 (1) the nonpayment of premiums or contribu-
22 tions by the individual in accordance with the terms
23 of the individual health plan or where the health
24 plan issuer has not received timely premium pay-
25 ments;

1 (2) fraud or misrepresentation of material fact
2 on the part of the individual; or

3 (3) the termination of the individual health plan
4 in accordance with subsection (b).

5 (b) TERMINATION OF INDIVIDUAL HEALTH
6 PLANS.—

7 (1) PARTICULAR TYPE OF INDIVIDUAL HEALTH
8 PLAN NOT OFFERED.—In any case in which a health
9 plan issuer decides to discontinue offering a particu-
10 lar type of individual health plan to individuals, an
11 individual health plan may be discontinued by the
12 health plan issuer only if—

13 (A) the health plan issuer provides notice
14 to each individual covered under the plan of
15 such discontinuation at least 90 days prior to
16 the date of the expiration of the plan;

17 (B) the health plan issuer offers to each
18 individual covered under the plan the option to
19 purchase any other individual health plan cur-
20 rently being offered by the health plan issuer to
21 individuals; and

22 (C) in exercising the option to discontinue
23 the individual health plan and in offering one or
24 more replacement plans, the health plan issuer

1 acts uniformly without regard to the health sta-
2 tus or insurability of particular individuals.

3 (2) DISCONTINUANCE OF ALL INDIVIDUAL
4 HEALTH PLANS.—In any case in which a health plan
5 issuer elects to discontinue all individual health
6 plans in a State, an individual health plan may be
7 discontinued by the health plan issuer only if—

8 (A) the health plan issuer provides notice
9 to the applicable certifying authority (as defined
10 in section 202(d)) and to each individual cov-
11 ered under the plan of such discontinuation at
12 least 180 days prior to the date of the dis-
13 continuation of the plan; and

14 (B) all individual health plans issued or
15 delivered for issuance in the State are discon-
16 tinued and coverage under such plans is not re-
17 newed.

18 (3) PROHIBITION ON MARKET REENTRY.—In
19 the case of a discontinuation under paragraph (2),
20 the health plan issuer may not provide for the issu-
21 ance of any individual health plan in the State in-
22 volved during the 5-year period beginning on the
23 date of the discontinuation of the last plan not so
24 renewed.

25 (c) TREATMENT OF NETWORK PLANS.—

1 (1) GEOGRAPHIC LIMITATIONS.—A health plan
 2 issuer which offers a network plan (as defined in
 3 paragraph (2)) may deny continued participation
 4 under the plan to individuals who neither live, re-
 5 side, nor work in an area in which the individual
 6 health plan is offered, but only if such denial is ap-
 7 plied uniformly, without regard to health status or
 8 the insurability of particular individuals.

9 (2) NETWORK PLAN.—As used in paragraph
 10 (1), the term “network plan” means an individual
 11 health plan that arranges for the financing and de-
 12 livery of health care services to individuals covered
 13 under such health plan, in whole or in part, through
 14 arrangements with providers.

15 **SEC. 112. STATE FLEXIBILITY IN INDIVIDUAL MARKET RE-**
 16 **FORMS.**

17 (a) ADOPTION OF ALTERNATIVE MECHANISMS.—

18 (1) IN GENERAL.—A State, in accordance with
 19 this section, may adopt alternative mechanisms
 20 (public or private) that are designed to provide ac-
 21 cess to affordable health benefits for individuals
 22 meeting the requirements of sections 110(b) and
 23 111 (such as mechanisms providing for guaranteed
 24 issue, open enrollment by one or more health plan

1 issuers, high-risk pools, mandatory conversion poli-
2 cies, or any combination thereof).

3 (2) PROCEDURE FOR STATE ELECTION.—If, not
4 later than 6 months after the date of enactment of
5 this Act, the Governor of a State notifies the Sec-
6 retary of Health and Human Services that—

7 (A) the State has adopted an alternative
8 mechanism that achieves the goals of sections
9 110 and 111; or

10 (B) the State intends to implement an al-
11 ternative mechanism that is designed to achieve
12 the goals of sections 110 and 111;

13 such State alternative mechanism shall, except as
14 provided in paragraphs (3) and (4), apply in lieu of
15 the standards described in sections 110 and 111.

16 (3) NONAPPLICATION OF MECHANISM.—A State
17 alternative mechanism adopted under paragraph (1)
18 shall be presumed to achieve the goals of sections
19 110 and 111 and shall apply in lieu of such sections,
20 unless the Secretary of Health and Human Services,
21 in consultation with the Governor and Insurance
22 Commissioner or chief insurance regulatory official
23 of the State, finds that the State alternative mecha-
24 nism fails to—

1 (A) offer coverage to those individuals who
2 meet the requirements of sections 110(b) and
3 111;

4 (B) prohibit a limitation or exclusion of
5 benefits relating to treatment of a preexisting
6 condition that was covered under the previous
7 group health plan or employee health benefit
8 plan of an individual who meets the require-
9 ments of sections 110(b) and 111;

10 (C) offer individuals who meet the require-
11 ments of sections 110(b) and 111 a choice of
12 individual health plans, including at least one
13 plan comparable to comprehensive plans offered
14 in the individual market in such State or a plan
15 comparable to a standard option plan available
16 under the group or individual health insurance
17 laws of such State; or

18 (D) except as provided in paragraph (4),
19 implement a risk spreading mechanism, cross
20 subsidy mechanism, risk adjustment mecha-
21 nism, rating limitation or other mechanism
22 (such as mechanisms described in the NAIC
23 Model Health Plan for Uninsurable Individuals
24 Act) designed to reduce the variation among the
25 cost of such plans and other individual health

1 plans offered by the carrier or available in such
2 State.

3 (4) CHOICE OF PLANS.—The Secretary of
4 Health and Human Services shall waive the require-
5 ment in subparagraph (D) of paragraph (3) with re-
6 spect to a State if individuals who meet the require-
7 ments of sections 110(b) and 111 in such State are
8 provided with a choice of all individual health plans
9 otherwise available in the individual market.

10 (5) FUTURE ADOPTION OF MECHANISMS.—
11 With respect to a State that implements an alter-
12 native mechanism under paragraph (1) after the pe-
13 riod referred to in paragraph (2)—

14 (A) the State shall provide notice to the
15 Secretary that such alternative mechanism
16 achieves the goals of sections 110 and 111;

17 (B) the State alternative mechanism shall
18 apply in lieu of sections 110 and 111;

19 (C) except as provided in subsections (d)
20 and (e), the Secretary may make a determina-
21 tion as provided for in paragraph (3); and

22 (D) the procedures described in subsection
23 (c) shall apply.

24 (b) TIMEFRAME FOR SECRETARIAL DETERMINA-
25 TION.—

1 (1) IN GENERAL.—With respect to a State elec-
2 tion under subsection (a)(2)(B), the Secretary of
3 Health and Human Services shall not make a deter-
4 mination under subsection (a)(3) until the expiration
5 of the 12-month period beginning on the date on
6 which such notification is made, or until January 1,
7 1998, whichever is later.

8 (2) RULE APPLICABLE TO CERTAIN STATES.—
9 With respect to a State that makes an election
10 under subsection (a)(2)(B) and that has a legisla-
11 ture that does not meet within the 12-month period
12 beginning on the date of enactment of this Act, the
13 Secretary of Health and Human Services shall not
14 make a determination under subsection (a) prior to
15 January 1, 1999.

16 (c) NOTICE TO STATE.—If the Secretary of Health
17 and Human Services determines that a State alternative
18 mechanism fails to meet the criteria described in sub-
19 section (a)(3), or that such mechanism is no longer being
20 implemented, the Secretary of Health and Human Serv-
21 ices shall notify the Governor of such State of such pre-
22 liminary determination and permit the State a reasonable
23 opportunity in which to modify the alternative mechanism
24 or to adopt another mechanism that is designed to meet
25 the goals of sections 110 and 111. If, after an opportunity

1 to modify such State alternative mechanism, the mecha-
2 nism fails to meet the criteria described in subsection
3 (a)(3), the Secretary shall notify the Governor of such
4 State that sections 110 and 111 shall apply in the State.

5 (d) ADOPTION OF NAIC MODEL.—If, not later than
6 9 months after the date of enactment of this Act—

7 (1) the National Association of Insurance Com-
8 missioners (hereafter referred to as the “NAIC”),
9 through a process which the Secretary of Health and
10 Human Services determines has included consulta-
11 tion with representatives of the insurance industry
12 and consumer groups, has adopted a model act or
13 acts including provisions addressing portability from
14 a group health plan or employee health benefit plan
15 into the individual health insurance market; and

16 (2) the Secretary of Health and Human Serv-
17 ices determines, within 30 days of the adoption of
18 such NAIC model act or acts, that such act or acts
19 comply with the goals of sections 110 and 111;

20 a State that elects to adopt such model act or acts shall
21 be deemed to have met the requirements of sections 110
22 and 111 and shall not be subject to a determination under
23 subsection (a)(3).

24 (e) STATE HIGH RISK POOLS DEEMED IN COMPLI-
25 ANCE.—If the Governor of a State notifies the Secretary

1 of Health and Human Services in a timeframe consistent
2 with either subsection (a)(2) or (a)(5) that such State has
3 a high risk pool open to those individuals meeting the re-
4 quirements of sections 110(b) and 111, that limits pre-
5 existing condition waiting periods consistent with section
6 110(a)(1)(B) and that with respect to premium rates and
7 covered benefits is consistent with standards included in
8 the NAIC Model Health Plan for Uninsurable Individuals
9 Act, such State high risk pool shall be deemed to have
10 met the requirements of sections 110 and 111 and shall
11 not be subject to a determination under subsection (a)(3).

12 **SEC. 113. DEFINITION.**

13 (a) IN GENERAL.—As used in this title, the term “in-
14 dividual health plan” means any contract, policy, certifi-
15 cate or other arrangement offered to individuals by a
16 health plan issuer that provides or pays for health benefits
17 (such as provider and hospital benefits) and that is not
18 a group health plan under section 2(6).

19 (b) ARRANGEMENTS NOT INCLUDED.—Such term
20 does not include the following, or any combination thereof:

21 (1) Coverage only for accident, or disability in-
22 come insurance, or any combination thereof.

23 (2) Medicare supplemental health insurance (as
24 defined under section 1882(g)(1) of the Social Secu-
25 rity Act).

1 (3) Coverage issued as a supplement to liability
2 insurance.

3 (4) Liability insurance, including general liabil-
4 ity insurance and automobile liability insurance.

5 (5) Workers' compensation or similar insurance.

6 (6) Automobile medical payment insurance.

7 (7) Coverage for a specified disease or illness.

8 (8) Hospital or fixed indemnity insurance.

9 (9) Short-term limited duration insurance.

10 (10) Credit-only, dental-only, or vision-only in-
11 surance.

12 (11) A health insurance policy providing bene-
13 fits only for long-term care, nursing home care,
14 home health care, community-based care, or any
15 combination thereof.

16 **Subtitle C—COBRA Clarifications**

17 **SEC. 121. COBRA CLARIFICATIONS.**

18 (a) PUBLIC HEALTH SERVICE ACT.—

19 (1) PERIOD OF COVERAGE.—Section 2202(2) of
20 the Public Health Service Act (42 U.S.C. 300bb-
21 2(2)) is amended—

22 (A) in subparagraph (A)—

23 (i) by transferring the sentence imme-
24 diately preceding clause (iv) so as to ap-

1 pear immediately following such clause
2 (iv); and

3 (ii) in the last sentence (as so trans-
4 ferred)—

5 (I) by inserting “, or a bene-
6 ficiary-family member of the individ-
7 ual,” after “an individual”; and

8 (II) by striking “at the time of a
9 qualifying event described in section
10 2203(2)” and inserting “at any time
11 during the initial 18-month period of
12 continuing coverage under this title”;

13 (B) in subparagraph (D)(i), by inserting
14 before “, or” the following: “, except that the
15 exclusion or limitation contained in this clause
16 shall not be considered to apply to a plan under
17 which a preexisting condition or exclusion does
18 not apply to an individual otherwise eligible for
19 continuation coverage under this section be-
20 cause of the provision of the Health Insurance
21 Reform Act of 1996”; and

22 (C) in subparagraph (E), by striking “at
23 the time of a qualifying event described in sec-
24 tion 2203(2)” and inserting “at any time dur-

1 ing the initial 18-month period of continuing
2 coverage under this title”.

3 (2) NOTICES.—Section 2206(3) of the Public
4 Health Service Act (42 U.S.C. 300bb–6(3)) is
5 amended by striking “at the time of a qualifying
6 event described in section 2203(2)” and inserting
7 “at any time during the initial 18-month period of
8 continuing coverage under this title”.

9 (3) BIRTH OR ADOPTION OF A CHILD.—Section
10 2208(3)(A) of the Public Health Service Act (42
11 U.S.C. 300bb–8(3)(A)) is amended by adding at the
12 end thereof the following new flush sentence:

13 “Such term shall also include a child who is born to
14 or placed for adoption with the covered employee
15 during the period of continued coverage under this
16 title.”.

17 (b) EMPLOYEE RETIREMENT INCOME SECURITY ACT
18 OF 1974.—

19 (1) PERIOD OF COVERAGE.—Section 602(2) of
20 the Employee Retirement Income Security Act of
21 1974 (29 U.S.C. 1162(2)) is amended—

22 (A) in the last sentence of subparagraph

23 (A)—

1 (i) by inserting “, or a beneficiary-
2 family member of the individual,” after
3 “an individual”; and

4 (ii) by striking “at the time of a
5 qualifying event described in section
6 603(2)” and inserting “at any time during
7 the initial 18-month period of continuing
8 coverage under this part”;

9 (B) in subparagraph (D)(i), by inserting
10 before “, or” the following: “, except that the
11 exclusion or limitation contained in this clause
12 shall not be considered to apply to a plan under
13 which a preexisting condition or exclusion does
14 not apply to an individual otherwise eligible for
15 continuation coverage under this section be-
16 cause of the provision of the Health Insurance
17 Reform Act of 1996”; and

18 (C) in subparagraph (E), by striking “at
19 the time of a qualifying event described in sec-
20 tion 603(2)” and inserting “at any time during
21 the initial 18-month period of continuing cov-
22 erage under this part”.

23 (2) NOTICES.—Section 606(3) of the Employee
24 Retirement Income Security Act of 1974 (29 U.S.C.
25 1166(3)) is amended by striking “at the time of a

1 qualifying event described in section 603(2)” and in-
2 sserting “at any time during the initial 18-month pe-
3 riod of continuing coverage under this part”.

4 (3) BIRTH OR ADOPTION OF A CHILD.—Section
5 607(3)(A) of the Employee Retirement Income Secu-
6 rity Act of 1974 (29 U.S.C. 1167(3)) is amended by
7 adding at the end thereof the following new flush
8 sentence:

9 “Such term shall also include a child who is born to
10 or placed for adoption with the covered employee
11 during the period of continued coverage under this
12 part.”.

13 (c) INTERNAL REVENUE CODE OF 1986.—

14 (1) PERIOD OF COVERAGE.—Section
15 4980B(f)(2)(B) of the Internal Revenue Code of
16 1986 is amended—

17 (A) in the last sentence of clause (i) by
18 striking “at the time of a qualifying event de-
19 scribed in paragraph (3)(B)” and inserting “at
20 any time during the initial 18-month period of
21 continuing coverage under this section”;

22 (B) in clause (iv)(I), by inserting before “,
23 or” the following: “, except that the exclusion
24 or limitation contained in this subclause shall
25 not be considered to apply to a plan under

1 which a preexisting condition or exclusion does
2 not apply to an individual otherwise eligible for
3 continuation coverage under this subsection be-
4 cause of the provision of the Health Insurance
5 Reform Act of 1995”; and

6 (C) in clause (v), by striking “at the time
7 of a qualifying event described in paragraph
8 (3)(B)” and inserting “at any time during the
9 initial 18-month period of continuing coverage
10 under this section”.

11 (2) NOTICES.—Section 4980B(f)(6)(C) of the
12 Internal Revenue Code of 1986 is amended by strik-
13 ing “at the time of a qualifying event described in
14 paragraph (3)(B)” and inserting “at any time dur-
15 ing the initial 18-month period of continuing cov-
16 erage under this section”.

17 (3) BIRTH OR ADOPTION OF A CHILD.—Section
18 4980B(g)(1)(A) of the Internal Revenue Code of
19 1986 is amended by adding at the end thereof the
20 following new flush sentence:

21 “Such term shall also include a child who
22 is born to or placed for adoption with the
23 covered employee during the period of con-
24 tinued coverage under this section.”.

1 (d) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to qualifying events occurring on
 3 or after the date of the enactment of this Act for plan
 4 years beginning after December 31, 1997.

5 (e) NOTIFICATION OF CHANGES.—Not later than 60
 6 days prior to the date on which this section becomes effec-
 7 tive, each group health plan (covered under title XXII of
 8 the Public Health Service Act, part 6 of subtitle B of title
 9 I of the Employee Retirement Income Security Act of
 10 1974, and section 4980B(f) of the Internal Revenue Code
 11 of 1986) shall notify each qualified beneficiary who has
 12 elected continuation coverage under such title, part or sec-
 13 tion of the amendments made by this section.

14 **Subtitle D—Private Health Plan**
 15 **Purchasing Cooperatives**

16 **SEC. 131. PRIVATE HEALTH PLAN PURCHASING COOPERA-**
 17 **TIVES.**

18 (a) DEFINITION.—As used in this Act, the term
 19 “health plan purchasing cooperative” means a group of
 20 employees or a group of individuals and employers that,
 21 on a voluntary basis and in accordance with this section,
 22 form a cooperative for the purpose of purchasing individ-
 23 ual health plans or group health plans offered by health
 24 plan issuers.

25 (b) CERTIFICATION.—

1 (1) REQUIREMENT.—If a group described in
2 subsection (a), desires to form a health plan pur-
3 chasing cooperative in accordance with this section
4 and such group appropriately notifies the State and
5 the Secretary of such desire, the State, upon a de-
6 termination that such group meets the requirements
7 of this section, shall certify the group as a health
8 plan purchasing cooperative. The State shall make a
9 determination of whether such group meets the re-
10 quirements of this section in a timely fashion and
11 shall oversee the operations of such cooperative in
12 order to ensure continued compliance with the re-
13 quirements of this section. Each such cooperative
14 shall also be registered with the Secretary.

15 (2) STATE REFUSAL TO CERTIFY.—

16 (A) IN GENERAL.—If a State fails to im-
17 plement a program for certifying health plan
18 purchasing cooperatives in accordance with the
19 standards under this Act, the Secretary shall
20 certify and oversee the operations of such co-
21 operatives in such State.

22 (B) EXCEPTION.—The Secretary shall not
23 certify a health plan purchasing cooperative de-
24 scribed in this section if, upon the submission
25 of an application by the State to the Secretary,

1 the Secretary determines that under a State
2 law in effect on the date of enactment of this
3 Act, all small employers have a means readily
4 available that ensures—

5 (i) that individuals and employees
6 have a choice of multiple, unaffiliated
7 health plan issuers;

8 (ii) that health plan coverage is sub-
9 ject to State premium rating requirements
10 that are not based on the factors described
11 in subsection (f)(3) and that contains a
12 mandatory minimum loss ratio; and

13 (iii) that comparative health plan ma-
14 terials are disseminated consistent with
15 subsection (e)(1)(D);

16 and that otherwise meets the objectives of this
17 Act.

18 (3) INTERSTATE COOPERATIVES.—For purposes
19 of this section, a health plan purchasing cooperative
20 operating in more than one State shall be certified
21 by the State in which the cooperative is domiciled.
22 States may enter into cooperative agreements for the
23 purpose of overseeing the operation of such coopera-
24 tives. For purposes of this subsection, a cooperative

1 shall be considered to be domiciled in the State in
2 which most of the members of the cooperative reside.

3 (c) BOARD OF DIRECTORS.—

4 (1) IN GENERAL.—Each health plan purchasing
5 cooperative shall be governed by a Board of Direc-
6 tors that shall be responsible for ensuring the per-
7 formance of the duties of the cooperative under this
8 section. The Board shall be composed of a broad
9 cross-section of representatives of employers, em-
10 ployees, and individuals participating in the coopera-
11 tive.

12 (2) LIMITATION ON COMPENSATION.—A health
13 plan purchasing cooperative may not provide com-
14 pensation to members of the Board of Directors.
15 The cooperative may provide reimbursements to
16 such members for the reasonable and necessary ex-
17 penses incurred by the members in the performance
18 of their duties as members of the Board.

19 (d) MEMBERSHIP AND MARKETING AREA.—

20 (1) MEMBERSHIP.—A health plan purchasing
21 cooperative may establish limits on the maximum
22 size of employers who may become members of the
23 cooperative, and may determine whether to permit
24 individuals to become members. Upon the establish-
25 ment of such membership requirements, the coopera-

1 tive shall, except as provided in subparagraph (B),
2 accept all employers (or individuals) residing within
3 the area served by the cooperative who meet such re-
4 quirements as members on a first come, first-served
5 basis, or on another basis established by the State
6 to ensure equitable access to the cooperative.

7 (2) **MARKETING AREA.**—A State may establish
8 rules regarding the geographic area that must be
9 served by health plan purchasing cooperatives to en-
10 sure that cooperatives do not discriminate on the
11 basis of the health status or insurability of the popu-
12 lations that reside in the area served. A State may
13 not use such rules to arbitrarily limit the number of
14 health plan purchasing cooperatives.

15 (e) **DUTIES AND RESPONSIBILITIES.**—

16 (1) **IN GENERAL.**—A health plan purchasing co-
17 operative shall—

18 (A) objectively evaluate potential health
19 plan issuers and enter into agreements with
20 multiple, unaffiliated health plan issuers, except
21 that the requirement of this subparagraph shall
22 not apply in regions (such as remote or frontier
23 areas) in which compliance with such require-
24 ment is not possible;

1 (B) enter into agreements with employers
2 and individuals who become members of the co-
3 operative;

4 (C) participate in any program of risk-ad-
5 justment or reinsurance, or any similar pro-
6 gram, that is established by the State;

7 (D) prepare and disseminate comparative
8 health plan materials (including information
9 about cost, quality, benefits, and other informa-
10 tion concerning group health plans and individ-
11 ual health plans offered through the coopera-
12 tive);

13 (E) broadly solicit and actively market to
14 all eligible employers and individuals residing
15 within the service area; and

16 (F) act as an ombudsman for group health
17 plan or individual health plan enrollees.

18 (2) PERMISSIBLE ACTIVITIES.—A health plan
19 purchasing cooperative may perform such other
20 functions as necessary to further the purposes of
21 this Act, including—

22 (A) collecting and distributing premiums
23 and performing other administrative functions;

24 (B) collecting and analyzing surveys of en-
25 rollee satisfaction;

1 (C) charging membership fee to enrollees
2 (such fees may not be based on health status)
3 and charging participation fees to health plan
4 issuers;

5 (D) cooperating with (or accepting as
6 members) employers who provide health bene-
7 fits directly to participants and beneficiaries
8 only for the purpose of negotiating with provid-
9 ers; and

10 (E) negotiating with health care providers
11 and health plan issuers.

12 (f) LIMITATIONS ON COOPERATIVE ACTIVITIES.—A
13 health plan purchasing cooperative shall not—

14 (1) perform any activity relating to the licens-
15 ing of health plan issuers;

16 (2) assume financial risk directly or indirectly
17 on behalf of members of a health plan purchasing
18 cooperative relating to any group health plan or in-
19 dividual health plan;

20 (3) establish eligibility, enrollment, or premium
21 contribution requirements for individual participants
22 or beneficiaries based on health status, medical con-
23 dition, claims experience, receipt of health care,
24 medical history, evidence of insurability, genetic in-
25 formation, or disability;

1 (4) operate on a for-profit or other basis where
2 the legal structure of the cooperative permits profits
3 to be made and not returned to the members of the
4 cooperative, except that a for-profit health plan pur-
5 chasing cooperative may be formed by a nonprofit
6 organization or organizations—

7 (A) in which membership in such organiza-
8 tion is not based on health status, medical con-
9 dition, claims experience, receipt of health care,
10 medical history, evidence of insurability, genetic
11 information, or disability; and

12 (B) that accepts as members all employers
13 or individuals on a first-come, first-served basis,
14 subject to any established limit on the maxi-
15 mum size of an employer that may become a
16 member; or

17 (5) perform any other activities that conflict or
18 are inconsistent with the performance of its duties
19 under this Act.

20 (g) CONFLICT OF INTEREST.—

21 (1) PROHIBITION.—No individual, partnership,
22 or corporation shall serve on the board of a health
23 plan purchasing cooperative, be employed by such a
24 cooperative, receive compensation from such a coop-

1 erative, or initiate or finance such a cooperative if
2 such individual, partnership, or corporation—

3 (A) fails to discharge the duties and re-
4 sponsibilities of such individual, partnership or
5 corporation in a manner that is solely in the in-
6 terest of the members of the cooperative; or

7 (B) derives personal benefit (other than in
8 the form of ordinary compensation received)
9 from the sale of, or has a financial interest in,
10 health plans, services or products sold by or dis-
11 tributed through that cooperative.

12 (2) CONTRACTS WITH THIRD PARTIES.—Noth-
13 ing in paragraph (1) shall be construed to prohibit
14 the board of directors of a health plan purchasing
15 cooperative, or its officers, at the initiative and
16 under this direction of the board, from contracting
17 with third parties to provide administrative, market-
18 ing, consultive, or other services to the cooperative.

19 (h) LIMITED PREEMPTION OF CERTAIN STATE
20 LAWS.—

21 (1) IN GENERAL.—With respect to a health
22 plan purchasing cooperative that meets the require-
23 ments of this section, State fictitious group laws
24 shall be preempted.

25 (2) HEALTH PLAN ISSUERS.—

1 (A) RATING.—Except as provided in sub-
2 paragraph (B), a health plan issuer offering a
3 group health plan or individual health plan
4 through a health plan purchasing cooperative
5 that meets the requirements of this section
6 shall comply with all State rating requirements
7 that would otherwise apply if the health plan
8 were offered outside of the cooperative.

9 (B) EXCEPTION.—A State shall permit a
10 health plan issuer to reduce premium rates ne-
11 gotiated with a health plan purchasing coopera-
12 tive that meets the requirements of this section
13 to reflect savings derived from administrative
14 costs, marketing costs, profit margins, econo-
15 mies of scale, or other factors, except that any
16 such reduction in premium rates may not be
17 based on the health status, demographic fac-
18 tors, industry type, duration, or other indicators
19 of health risk of the members of the coopera-
20 tive.

21 (C) BENEFITS.—Except as provided in
22 subparagraph (D), a health plan issuer offering
23 a group health plan or individual health plan
24 through a health plan purchasing cooperative
25 shall comply with all State mandated benefit

1 laws that require the offering of any services,
2 category of care, or services of any class or type
3 of provider.

4 (D) EXCEPTION.—In those States that
5 have enacted laws authorizing the issuance of
6 alternative benefit plans to small employers,
7 health plan issuers may offer such alternative
8 benefit plans through a health plan purchasing
9 cooperative that meets the requirements of this
10 section.

11 (i) RULES OF CONSTRUCTION.—Nothing in this sec-
12 tion shall be construed to—

13 (1) require that a State organize, operate, or
14 otherwise create health plan purchasing cooperatives;

15 (2) otherwise require the establishment of
16 health plan purchasing cooperatives;

17 (3) require individuals, plan sponsors, or em-
18 ployers to purchase group health plans or individual
19 health plans through a health plan purchasing coop-
20 erative;

21 (4) preempt a State from requiring licensure
22 for individuals who are involved in directly supplying
23 advice or selling health plans on behalf of a purchas-
24 ing cooperative;

1 (5) require that a health plan purchasing coop-
2 erative be the only type of purchasing arrangement
3 permitted to operate in a State;

4 (6) confer authority upon a State that the State
5 would not otherwise have to regulate health plan is-
6 suers or employee health benefits plans;

7 (7) confer authority upon a State (or the Fed-
8 eral Government) that the State (or Federal Govern-
9 ment) would not otherwise have to regulate group
10 purchasing arrangements, coalitions, association
11 plans, or other similar entities that do not desire to
12 become a health plan purchasing cooperative in ac-
13 cordance with this section; or

14 (8) except as specifically provided otherwise in
15 this subsection, prevent the application of State laws
16 and regulations otherwise applicable to health plan
17 issuers offering group health plans or individual
18 health plans through a health plan purchasing coop-
19 erative.

20 (j) APPLICATION OF ERISA.—For purposes of en-
21 forcement only, the requirements of parts 4 and 5 of sub-
22 title B of title I of the Employee Retirement Income Secu-
23 rity Act of 1974 (29 U.S.C. 1101) shall apply to a health
24 plan purchasing cooperative as if such plan were an em-
25 ployee welfare benefit plan.

1 **TITLE II—APPLICATION AND**
2 **ENFORCEMENT OF STANDARDS**

3 **SEC. 201. APPLICABILITY.**

4 (a) CONSTRUCTION.—

5 (1) ENFORCEMENT.—

6 (A) IN GENERAL.—A requirement or
7 standard imposed under this Act on a group
8 health plan or individual health plan offered by
9 a health plan issuer shall be deemed to be a re-
10 quirement or standard imposed on the health
11 plan issuer. Such requirements or standards
12 shall be enforced by the State insurance com-
13 missioner for the State involved or the official
14 or officials designated by the State to enforce
15 the requirements of this Act. In the case of a
16 group health plan offered by a health plan is-
17 suer in connection with an employee health ben-
18 efit plan, the requirements or standards im-
19 posed under this Act shall be enforced with re-
20 spect to the health plan issuer by the State in-
21 surance commissioner for the State involved or
22 the official or officials designated by the State
23 to enforce the requirements of this Act.

24 (B) LIMITATION.—Except as provided in
25 subsection (c), the Secretary shall not enforce

1 the requirements or standards of this Act as
2 they relate to health plan issuers, group health
3 plans, or individual health plans. In no case
4 shall a State enforce the requirements or stand-
5 ards of this Act as they relate to employee
6 health benefit plans.

7 (2) PREEMPTION OF STATE LAW.—Nothing in
8 this Act shall be construed to prevent a State from
9 establishing, implementing, or continuing in effect
10 standards and requirements—

11 (A) not prescribed in this Act; or

12 (B) related to the issuance, renewal, or
13 portability of health insurance or the establish-
14 ment or operation of group purchasing arrange-
15 ments, that are consistent with, and are not in
16 direct conflict with, this Act and provide greater
17 protection or benefit to participants, bene-
18 ficiaries or individuals.

19 (b) RULE OF CONSTRUCTION.—Nothing in this Act
20 shall be construed to affect or modify the provisions of
21 section 514 of the Employee Retirement Income Security
22 Act of 1974 (29 U.S.C. 1144).

23 (c) CONTINUATION.—Nothing in this Act shall be
24 construed as requiring a group health plan or an employee
25 health benefit plan to provide benefits to a particular par-

1 ticipant or beneficiary, to all participants or beneficiaries,
2 or to any class or group of participants or beneficiaries,
3 in excess of or other than those provided under the terms
4 of such plan.

5 **SEC. 202. ENFORCEMENT OF STANDARDS.**

6 (a) HEALTH PLAN ISSUERS.—Each State shall re-
7 quire that each group health plan and individual health
8 plan issued, sold, renewed, offered for sale or operated in
9 such State by a health plan issuer meet the standards es-
10 tablished under this Act pursuant to an enforcement plan
11 filed by the State with the Secretary. A State shall submit
12 such information as required by the Secretary demonstrat-
13 ing effective implementation of the State enforcement
14 plan.

15 (b) EMPLOYEE HEALTH BENEFIT PLANS.—With re-
16 spect to employee health benefit plans, the Secretary shall
17 enforce the reform standards established under this Act
18 in the same manner as provided for under sections 502,
19 504, 506, and 510 of the Employee Retirement Income
20 Security Act of 1974 (29 U.S.C. 1132, 1134, 1136, and
21 1140). The civil penalties contained in paragraphs (1) and
22 (2) of section 502(c) of such Act (29 U.S.C. 1132(c)(1)
23 and (2)) shall apply to any information required by the
24 Secretary to be disclosed and reported under this section.

1 (c) FAILURE TO IMPLEMENT PLAN.—In the case of
2 the failure of a State to substantially enforce the stand-
3 ards and requirements set forth in this Act with respect
4 to group health plans and individual health plans as pro-
5 vided for under the State enforcement plan filed under
6 subsection (a), the Secretary, in consultation with the Sec-
7 retary of Health and Human Services, shall implement an
8 enforcement plan meeting the standards of this Act in
9 such State. In the case of a State that fails to substan-
10 tially enforce the standards and requirements set forth in
11 this Act, each health plan issuer operating in such State
12 shall be subject to civil enforcement as provided for under
13 sections 502, 504, 506, and 510 of the Employee Retire-
14 ment Income Security Act of 1974 (29 U.S.C. 1132, 1134,
15 1136, and 1140). The civil penalties contained in para-
16 graphs (1) and (2) of section 502(c) of such Act (29
17 U.S.C. 1132(c)(1) and (2)) shall apply to any information
18 required by the Secretary to be disclosed and reported
19 under this section.

20 (d) APPLICABLE CERTIFYING AUTHORITY.—As used
21 in this title, the term “applicable certifying authority”
22 means, with respect to—

23 (1) health plan issuers, the State insurance
24 commissioner or official or officials designated by

1 the State to enforce the requirements of this Act for
 2 the State involved; and

3 (2) an employee health benefit plan, the Sec-
 4 retary.

5 (e) REGULATIONS.—The Secretary may promulgate
 6 such regulations as may be necessary or appropriate to
 7 carry out this Act.

8 (f) TECHNICAL AMENDMENT.—Section 508 of the
 9 Employee Retirement Income Security Act of 1974 (29
 10 U.S.C. 1138) is amended by inserting “and under the
 11 Health Insurance Reform Act of 1996” before the period.

12 **TITLE III—MISCELLANEOUS** 13 **PROVISIONS**

14 **SEC. 301. HMOS ALLOWED TO OFFER PLANS WITH** 15 **DEDUCTIBLES TO INDIVIDUALS WITH MEDI-** 16 **CAL SAVINGS ACCOUNTS.**

17 (a) IN GENERAL.—Section 1301(b) of the Public
 18 Health Service Act (42 U.S.C. 300e(b)) is amended by
 19 adding at the end the following new paragraph:

20 “(6)(A) If a member certifies that a medical
 21 savings account has been established for the benefit
 22 of such member, a health maintenance organization
 23 may, at the request of such member reduce the basic
 24 health services payment otherwise determined under

1 paragraph (1) by requiring the payment of a deduct-
2 ible by the member for basic health services.

3 “(B) For purposes of this paragraph, the term
4 ‘medical savings account’ means an account which,
5 by its terms, allows the deposit of funds and the use
6 of such funds and income derived from the invest-
7 ment of such funds for the payment of the deduct-
8 ible described in subparagraph (A).”.

9 (b) MEDICAL SAVINGS ACCOUNTS.—It is the sense
10 of the Committee on Labor and Human Resources of the
11 Senate that the establishment of medical savings accounts,
12 including those defined in section 1301(b)(6)(B) of the
13 Public Health Service Act (42 U.S.C. 300e(b)(6)(B)),
14 should be encouraged as part of any health insurance re-
15 form legislation passed by the Senate through the use of
16 tax incentives relating to contributions to, the income
17 growth of, and the qualified use of, such accounts.

18 (c) SENSE OF THE SENATE.—It is the sense of the
19 Senate that the Congress should take measures to further
20 the purposes of this Act, including any necessary changes
21 to the Internal Revenue Code of 1986 to encourage groups
22 and individuals to obtain health coverage, and to promote
23 access, equity, portability, affordability, and security of
24 health benefits.

1 **SEC. 302. HEALTH COVERAGE AVAILABILITY STUDY.**

2 (a) IN GENERAL.—The Secretary of Health and
3 Human Services, in consultation with the Secretary, rep-
4 resentatives of State officials, consumers, and other rep-
5 resentatives of individuals and entities that have expertise
6 in health insurance and employee benefits, shall conduct
7 a three-part study, and prepare and submit reports, in ac-
8 cordance with this section.

9 (b) EVALUATION OF AVAILABILITY.—Not later than
10 January 1, 1998, the Secretary of Health and Human
11 Services shall prepare and submit to the appropriate com-
12 mittees of Congress a report, concerning—

13 (1) an evaluation, based on the experience of
14 States, expert opinions, and such additional data as
15 may be available, of the various mechanisms used to
16 ensure the availability of reasonably priced health
17 coverage to employers purchasing group coverage
18 and to individuals purchasing coverage on a non-
19 group basis; and

20 (2) whether standards that limit the variation
21 in premiums will further the purposes of this Act.

22 (c) EVALUATION OF EFFECTIVENESS.—Not later
23 than January 1, 1999, the Secretary of Health and
24 Human Services shall prepare and submit to the appro-
25 priate committees of Congress a report, concerning the ef-
26 fectiveness of the provisions of this Act and the various

1 State laws, in ensuring the availability of reasonably
2 priced health coverage to employers purchasing group cov-
3 erage and individuals purchasing coverage on a non-group
4 basis.

5 (d) EVALUATION OF ACCESS AND CHOICE.—Not
6 later than June 1, 1998, the Secretary of Health and
7 Human Services shall prepare and submit to the appro-
8 priate committees of Congress a report concerning—

9 (1) an evaluation of the extent to which pa-
10 tients have direct access to, and choice of, health
11 care provider, including specialty providers, within a
12 network of providers, as well as the opportunity to
13 utilize providers outside of the network, under the
14 various types of coverage offered under the provi-
15 sions of this Act;

16 (2) an evaluation of the cost to the insurer of
17 providing out-of-network access to providers, and the
18 feasibility of providing out-of-network access in all
19 health plans offered under provisions of this Act;
20 and

21 (3) an evaluation of the percent of premium
22 dollar utilized for medical care and administration of
23 the various types of coverage offered, including cov-
24 erage which permits out-of-network access and
25 choice of provider, under provisions of this Act.

1 **SEC. 303. REIMBURSEMENT OF TELEMEDICINE.**

2 The Health Care Financing Administration is di-
3 rected to complete their ongoing study of reimbursement
4 of all telemedicine services and submit a report to Con-
5 gress with a proposal for reimbursement of fee-for-service
6 medicine by March 1, 1997. The report shall utilize data
7 compiled from the current demonstration projects already
8 under review and gather data from other ongoing tele-
9 medicine networks. This report shall include an analysis
10 of the cost of services provided via telemedicine.

11 **SEC. 304. SENSE OF THE COMMITTEE CONCERNING MEDI-**
12 **CARE.**

13 (a) FINDINGS.—The Committee on Labor and
14 Human Resources of the Senate finds that the Public
15 Trustees of Medicare concluded in their 1995 Annual Re-
16 port that—

17 (1) the Medicare program is clearly
18 unsustainable in its present form;

19 (2) “the Hospital Insurance Trust Fund, which
20 pays inpatient hospital expenses, will be able to pay
21 benefits for only about 7 years and is severely out
22 of financial balance in the long range”; and

23 (3) the Public Trustees “strongly recommend
24 that the crisis presented by the financial condition of
25 the Medicare trust fund be urgently addressed on a
26 comprehensive basis, including a review of the

1 programs's financing methods, benefit provisions,
2 and delivery mechanisms''.

3 (b) SENSE OF THE COMMITTEE.—It is the Sense of
4 the Committee on Labor and Human Resources of the
5 Senate that the Senate should take measures necessary
6 to reform the Medicare program, to provide increased
7 choice for seniors, and to respond to the findings of the
8 Public Trustees by protecting the short-term solvency and
9 long-term sustainability of the Medicare program.

10 **SEC. 305. PARITY FOR MENTAL HEALTH SERVICES.**

11 (a) PROHIBITION.—An employee health benefit plan,
12 or a health plan issuer offering a group health plan or
13 an individual health plan, shall not impose treatment limi-
14 tations or financial requirements on the coverage of men-
15 tal health services if similar limitations or requirements
16 are not imposed on coverage for services for other condi-
17 tions.

18 (b) RULE OF CONSTRUCTION.—Nothing in sub-
19 section (a) shall be construed as prohibiting an employee
20 health benefit plan, or a health plan issuer offering a
21 group health plan or an individual health plan, from re-
22 quiring preadmission screening prior to the authorization
23 of services covered under the plan or from applying other
24 limitations that restrict coverage for mental health serv-
25 ices to those services that are medically necessary.

1 **SEC. 306. WAIVER OF FOREIGN COUNTRY RESIDENCE RE-**
2 **QUIREMENT WITH RESPECT TO INTER-**
3 **NATIONAL MEDICAL GRADUATES.**

4 (a) EXTENSION OF WAIVER PROGRAM.—Section
5 220(e) of the Immigration and Nationality Technical Cor-
6 rections Act of 1994 (8 U.S.C. 1182 note) is amended
7 by striking “June 1, 1996” and inserting “June 1, 2002”.

8 (b) CONDITIONS ON FEDERALLY REQUESTED WAIV-
9 ERS.—Section 212(e) of the Immigration and Nationality
10 Act (8 U.S.C. 1184(e)) is amended by inserting after “ex-
11 cept that in the case of a waiver requested by a State De-
12 partment of Public Health or its equivalent” the following:
13 “or in the case of a waiver requested by an interested
14 United States Government agency on behalf of an alien
15 described in clause (iii)”.

16 (c) RESTRICTIONS ON FEDERALLY REQUESTED
17 WAIVERS.—Section 214(k) (8 U.S.C. 1184(k)) is amend-
18 ed to read as follows:

19 “(k)(1) In the case of a request by an interested
20 State agency or by an interested United States Govern-
21 ment agency for a waiver of the two-year foreign residence
22 requirement under section 212(e) with respect to an alien
23 described in clause (iii) of that section, the Attorney Gen-
24 eral shall not grant such waiver unless—

25 “(A) in the case of an alien who is otherwise
26 contractually obligated to return to a foreign coun-

1 try, the government of such country furnishes the
2 Director of the United States Information Agency
3 with a statement in writing that it has no objection
4 to such waiver; and

5 “(B)(i) in the case of a request by an interested
6 State agency—

7 “(I) the alien demonstrates a bona fide
8 offer of full-time employment, agrees to begin
9 employment with the health facility or organiza-
10 tion named in the waiver application within 90
11 days of receiving such waiver, and agrees to
12 work for a total of not less than three years
13 (unless the Attorney General determines that
14 extenuating circumstances exist, such as closure
15 of the facility or hardship to the alien would
16 justify a lesser period of time); and

17 “(II) the alien’s employment continues to
18 benefit the public interest; or

19 “(ii) in the case of a request by an interested
20 United States Government agency—

21 “(I) the alien demonstrates a bona fide
22 offer of full-time employment that has been
23 found to be in the public interest, agrees to
24 begin employment with the health facility or or-
25 ganization named in the waiver application

1 within 90 days of receiving such waiver, and
2 agrees to work for a total of not less than three
3 years (unless the Attorney General determines
4 that extenuating circumstances exist, such as
5 closure of the facility or hardship to the alien
6 would justify a lesser period of time); and

7 “(II) the alien’s employment continues to
8 benefit the public interest;

9 “(C) in the case of a request by an interested
10 State agency, the alien agrees to practice medicine
11 in accordance with paragraph (2) for a total of not
12 less than three years only in the geographic area or
13 areas which are designated by the Secretary of
14 Health and Human Services as having a shortage of
15 health care professionals; and

16 “(D) in the case of a request by an interested
17 State agency, the grant of such a waiver would not
18 cause the number of waivers allotted for that State
19 for that fiscal year to exceed 20.

20 “(2)(A) Notwithstanding section 248(2) the Attorney
21 General may change the status of an alien that qualifies
22 under this subsection and section 212(e) to that of an
23 alien described in section 101(a)(15)(H)(i)(b).

24 “(B) No person who has obtained a change of status
25 under subparagraph (A) and who has failed to fulfill the

1 terms of the contract with the health facility or organiza-
2 tion named in the waiver application shall be eligible to
3 apply for an immigrant visa, for permanent residence, or
4 for any other change of nonimmigrant status until it is
5 established that such person has resided and been phys-
6 ically present in the country of his nationality or his last
7 residence for an aggregate of at least two years following
8 departure from the United States.

9 “(3) Notwithstanding any other provisions of this
10 subsection, the two-year foreign residence requirement
11 under section 212(e) shall apply with respect to an alien
12 in clause (iii) of that section who has not otherwise been
13 accorded status under section 101(a)(27)(H)—

14 “(A) in the case of a request by an interested
15 State agency, if at any time the alien practices medi-
16 cine in an area other than an area described in para-
17 graph (1)(C); and

18 “(B) in the case of a request by an interested
19 United States Government agency, if at any time the
20 alien engages in employment for a health facility or
21 organization not named in the waiver application.”.

1 **SEC. 307. ORGAN AND TISSUE DONATION INFORMATION IN-**
2 **CLUDED WITH INCOME TAX REFUND PAY-**
3 **MENTS.**

4 (a) IN GENERAL.—The Secretary of the Treasury
5 shall include with any payment of a refund of individual
6 income tax made during the period beginning on February
7 1, 1997, and ending on June 30, 1997, a copy of the docu-
8 ment described in subsection (b).

9 (b) TEXT OF DOCUMENT.—The Secretary of the
10 Treasury shall, after consultation with the Secretary of
11 Health and Human Services and organizations promoting
12 organ and tissue (including eye) donation, prepare a docu-
13 ment suitable for inclusion with individual income tax re-
14 fund payments which—

15 (1) encourages organ and tissue donation;

16 (2) includes a detachable organ and tissue
17 donor card; and

18 (3) urges recipients to—

19 (A) sign the organ and tissue donor card;

20 (B) discuss organ and tissue donation with
21 family members and tell family members about
22 the recipient's desire to be an organ and tissue
23 donor if the occasion arises; and

24 (C) encourage family members to request
25 or authorize organ and tissue donation if the
26 occasion arises.

1 **SEC. 308. SENSE OF THE SENATE REGARDING ADEQUATE**
2 **HEALTH CARE COVERAGE FOR ALL CHIL-**
3 **DREN AND PREGNANT WOMEN.**

4 (a) FINDINGS.—The Senate finds the following:

5 (1) The health care coverage of mothers and
6 children in the United States is unacceptable, with
7 more than 9,300,000 children and 500,000 expect-
8 ant mothers having no health insurance.

9 (2) Among industrial nations, the United States
10 ranks 1st in wealth but 18th in infant mortality, and
11 14th among such nations in maternal mortality.

12 (3) 22 percent of pregnant women do not have
13 prenatal care in the first trimester, and 22 percent
14 of all poor children are uninsured, despite the medic-
15 aid program under title XIX of the Social Security
16 Act.

17 (4) Of the 1,100,000 net increase in uninsured
18 persons from 1992 to 1993, 84 percent or 922,500
19 were children.

20 (5) Since 1987, the number of children covered
21 by employment based health insurance has de-
22 creased, and many children lack health insurance de-
23 spite the relative affordability of providing insurance
24 for children.

25 (6) Health care coverage for children is rel-
26 atively inexpensive and in 1993 the medicaid pro-

1 gram spent an average of \$1,012 per child compared
2 to \$8,220 per elderly adult.

3 (7) Uninsured children are generally children of
4 lower income workers, who are less likely than high-
5 er income workers to have health insurance for their
6 families because they are less likely to work for a
7 firm that offers insurance, and if such insurance is
8 offered, it is often too costly for lower income work-
9 ers to purchase.

10 (8) In 1993, 61 percent of uninsured children
11 were in families with at least one parent working full
12 time for the entire year the child was uninsured, and
13 about 57 percent of uninsured children had a family
14 income at or below 150 percent of the Federal pov-
15 erty level.

16 (9) If Congress eliminates the Federal guaran-
17 tee of medicaid, an estimated 4,900,000 children
18 may lose their guarantee of health care coverage,
19 and those same children may be added to the cur-
20 rently projected 12,600,000 children who will be un-
21 insured by the year 2002.

22 (10) Studies have shown that uninsured chil-
23 dren are less likely than insured children to receive
24 needed health and preventive care, which can affect
25 their health status adversely throughout their lives,

1 with such children less likely to have routine doctor
2 visits, receive care for injuries, and have a regular
3 source of medical care.

4 (11) The families of uninsured children are
5 more likely to take the children to an emergency
6 room than to a private physician or health mainte-
7 nance organization.

8 (12) Children without health insurance are less
9 likely to be appropriately immunized or receive other
10 preventive care for childhood illnesses.

11 (13) Ensuring the health of children clearly in-
12 creases their chances to become productive members
13 of society and averts more serious or more expensive
14 health conditions later in life, and ensuring that all
15 pregnant women receive competent prenatal care
16 also saves social costs.

17 (14) Although the United States has made
18 great improvements in health care coverage through
19 the medicaid program, it is still the only developed
20 nation that does not ensure that all of its children
21 and pregnant women have health care coverage.

22 (15) The United States should not accept a sta-
23 tus quo in which children in many neighborhoods are
24 more likely to have access to drugs and guns than
25 to doctors, or accept a status quo in which health

1 care is ensured for all prisoners but not for all chil-
2 dren.

3 (b) SENSE OF THE SENATE.—It is the sense of the
4 Senate that the issue of adequate health care for our
5 mothers and children is important to the future of the
6 United States, and in consideration of the importance of
7 such issue, the Senate should pass health care legislation
8 that will ensure health care coverage for all of the United
9 States’s pregnant women and children.

10 **SEC. 309. SENSE OF THE SENATE REGARDING AVAILABLE**
11 **TREATMENTS.**

12 It is the sense of the Senate that the Senate finds
13 that patients deserve to know the full range of treatments
14 available to them and Congress should thoughtfully exam-
15 ine these issues to ensure that all patients get the care
16 they deserve.

17 **SEC. 310. MEDICAL VOLUNTEERS.**

18 (a) SHORT TITLE.—This title may be cited as the
19 “Medical Volunteer Act”.

20 (b) TORT CLAIM IMMUNITY.—

21 (1) GENERAL RULE.—A health care profes-
22 sional who provides a health care service to a medi-
23 cally underserved person without receiving com-
24 pensation for such health care service, shall be re-
25 garded, for purposes of any medical malpractice

1 claim that may arise in connection with the provi-
2 sion of such service, as an employee of the Federal
3 Government for purposes of the Federal tort claims
4 provisions in title 28, United States Code.

5 (2) COMPENSATION.—For purposes of para-
6 graph (1), a health care professional shall be deemed
7 to have provided a health care service without com-
8 pensation only if, prior to furnishing a health care
9 service, the health care professional—

10 (A) agrees to furnish the health care serv-
11 ice without charge to any person, including any
12 health insurance plan or program under which
13 the recipient is covered; and

14 (B) provides the recipient of the health
15 care service with adequate notice (as deter-
16 mined by the Secretary) of the limited liability
17 of the health care professional with respect to
18 the service.

19 (c) PREEMPTION.—The provisions of this section
20 shall preempt any State law to the extent that such law
21 is inconsistent with such provisions. The provisions of this
22 section shall not preempt any State law that provides
23 greater incentives or protections to a health care profes-
24 sional rendering a health care service.

25 (d) DEFINITIONS.—For purposes of this section:

1 (1) HEALTH CARE PROFESSIONAL.—The term
2 “health care professional” means a person who, at
3 the time the person provides a health care service,
4 is licensed or certified by the appropriate authorities
5 for practice in a State to furnish health care serv-
6 ices.

7 (2) HEALTH CARE SERVICE.—The term “health
8 care service” means any medical assistance to the
9 extent it is included in the plan submitted under
10 title XIX of the Social Security Act for the State in
11 which the service was provided.

12 (3) MEDICALLY UNDERSERVED PERSON.—The
13 term “medically underserved person” means a per-
14 son who resides in—

15 (A) a medically underserved area as de-
16 fined for purposes of determining a medically
17 underserved population under section 330 of
18 the Public Health Service Act (42 U.S.C.
19 254c); or

20 (B) a health professional shortage area as
21 defined in section 332 of such Act (42 U.S.C.
22 254e);

23 and who receives care in a health care facility sub-
24 stantially comparable to any of those designated in
25 the Federally Supported Health Centers Assistance

1 Act (42 U.S.C. 233 et seq.), as shall be determined
2 in regulations promulgated by the Secretary.

3 (4) SECRETARY.—The term “Secretary” means
4 the Secretary of the Department of Health and
5 Human Services.

6 **SEC. 311. EFFECTIVE DATE.**

7 Except as otherwise provided for in this Act, the pro-
8 visions of this Act shall apply as follows:

9 (1) With respect to group health plans, such
10 provisions shall apply to plans offered, sold, issued,
11 renewed, in effect, or operated on or after January
12 1, 1997.

13 (2) With respect to individual health plans,
14 such provisions shall apply to plans offered, sold, is-
15 sued, renewed, in effect, or operated on or after the
16 date that is 6 months after the date of enactment
17 of this Act, or January 1, 1997, whichever is later.

18 (3) With respect to employee health benefit
19 plans, such provisions shall apply to such plans on
20 the first day of the first plan year beginning on or
21 after January 1, 1997.

22 **SEC. 312. SEVERABILITY.**

23 If any provision of this Act or the application of such
24 provision to any person or circumstance is held to be un-
25 constitutional, the remainder of this Act and the applica-

1 tion of the provisions of such to any person or cir-
 2 cumstance shall not be affected thereby.

3 **TITLE IV—TAX-RELATED**
 4 **HEALTH PROVISIONS**

5 **SEC. 400. SHORT TITLE; AMENDMENT OF 1986 CODE.**

6 (a) **SHORT TITLE.**—This title may be cited as the
 7 “Health Insurance and Long-Term Care Affordability Act
 8 of 1996”.

9 (b) **AMENDMENT OF 1986 CODE.**—Except as other-
 10 wise expressly provided, whenever in this title an amend-
 11 ment or repeal is expressed in terms of an amendment
 12 to, or repeal of, a section or other provision, the reference
 13 shall be considered to be made to a section or other provi-
 14 sion of the Internal Revenue Code of 1986.

15 **Subtitle A—Increase in Deduction**
 16 **for Health Insurance Costs of**
 17 **Self-Employed Individuals**

18 **SEC. 401. INCREASE IN SELF-EMPLOYED INDIVIDUALS’ DE-**
 19 **DUCTION FOR HEALTH INSURANCE COSTS.**

20 (a) **IN GENERAL.**—Section 162(l) (relating to special
 21 rules for health insurance costs of self-employed individ-
 22 uals) is amended—

23 (1) by striking “30 percent” in paragraph (1)
 24 and inserting “the applicable percentage”, and

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

3 “(6) APPLICABLE PERCENTAGE.—For purposes
4 of this subsection, the term ‘applicable percentage’
5 means the percentage determined in accordance with
6 the following table:

“In the case of taxable years beginning in:	The applicable percentage is:
1997	35
1998	40
1999	45
2000	50
2001	55
2002	60
2003	65
2004	70
2005	75
2006 and thereafter	80.”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years beginning after
9 December 31, 1996.

10 **Subtitle B—Long-Term Care**
11 **Provisions**

12 **CHAPTER 1—LONG-TERM CARE SERVICES**
13 **AND CONTRACTS**

14 **Subchapter A—General Provisions**

15 **SEC. 411. TREATMENT OF LONG-TERM CARE INSURANCE.**

16 (a) GENERAL RULE.—Chapter 79 (relating to defini-
17 tions) is amended by inserting after section 7702A the fol-
18 lowing new section:

1 **“SEC. 7702B. TREATMENT OF QUALIFIED LONG-TERM CARE**
2 **INSURANCE.**

3 “(a) IN GENERAL.—For purposes of this title—

4 “(1) a qualified long-term care insurance con-
5 tract shall be treated as an accident and health in-
6 surance contract,

7 “(2) amounts (other than policyholder divi-
8 dends, as defined in section 808, or premium re-
9 funds) received under a qualified long-term care in-
10 surance contract shall be treated as amounts re-
11 ceived for personal injuries and sickness and shall be
12 treated as reimbursement for expenses actually in-
13 curred for medical care (as defined in section
14 213(d)),

15 “(3) any plan of an employer providing cov-
16 erage under a qualified long-term care insurance
17 contract shall be treated as an accident and health
18 plan with respect to such coverage,

19 “(4) except as provided in subsection (e)(3),
20 amounts paid for a qualified long-term care insur-
21 ance contract providing the benefits described in
22 subsection (b)(2)(A) shall be treated as payments
23 made for insurance for purposes of section
24 213(d)(1)(D), and

1 “(5) a qualified long-term care insurance con-
 2 tract shall be treated as a guaranteed renewable con-
 3 tract subject to the rules of section 816(e).

4 “(b) QUALIFIED LONG-TERM CARE INSURANCE
 5 CONTRACT.—For purposes of this title—

6 “(1) IN GENERAL.—The term ‘qualified long-
 7 term care insurance contract’ means any insurance
 8 contract if—

9 “(A) the only insurance protection pro-
 10 vided under such contract is coverage of quali-
 11 fied long-term care services,

12 “(B) such contract does not pay or reim-
 13 burse expenses incurred for services or items to
 14 the extent that such expenses are reimbursable
 15 under title XVIII of the Social Security Act or
 16 would be so reimbursable but for the applica-
 17 tion of a deductible or coinsurance amount,

18 “(C) such contract is guaranteed renew-
 19 able,

20 “(D) such contract does not provide for a
 21 cash surrender value or other money that can
 22 be—

23 “(i) paid, assigned, or pledged as col-
 24 lateral for a loan, or

25 “(ii) borrowed,

1 other than as provided in subparagraph (E) or
2 paragraph (2)(C), and

3 “(E) all refunds of premiums, and all pol-
4 icyholder dividends or similar amounts, under
5 such contract are to be applied as a reduction
6 in future premiums or to increase future bene-
7 fits.

8 “(2) SPECIAL RULES.—

9 “(A) PER DIEM, ETC. PAYMENTS PER-
10 MITTED.—A contract shall not fail to be de-
11 scribed in subparagraph (A) or (B) of para-
12 graph (1) by reason of payments being made on
13 a per diem or other periodic basis without re-
14 gard to the expenses incurred during the period
15 to which the payments relate.

16 “(B) SPECIAL RULES RELATING TO MEDI-
17 CARE.—

18 “(i) Paragraph (1)(B) shall not apply
19 to expenses which are reimbursable under
20 title XVIII of the Social Security Act only
21 as a secondary payor.

22 “(ii) No provision of law shall be con-
23 strued or applied so as to prohibit the of-
24 fering of a qualified long-term care insur-
25 ance contract on the basis that the con-

1 tract coordinates its benefits with those
2 provided under such title.

3 “(C) REFUNDS OF PREMIUMS.—Paragraph
4 (1)(E) shall not apply to any refund on the
5 death of the insured, or on a complete surren-
6 der or cancellation of the contract, which can-
7 not exceed the aggregate premiums paid under
8 the contract. Any refund on a complete surren-
9 der or cancellation of the contract shall be in-
10 cludible in gross income to the extent that any
11 deduction or exclusion was allowable with re-
12 spect to the premiums.

13 “(c) QUALIFIED LONG-TERM CARE SERVICES.—For
14 purposes of this section—

15 “(1) IN GENERAL.—The term ‘qualified long-
16 term care services’ means necessary diagnostic, pre-
17 ventive, therapeutic, curing, treating, mitigating, and
18 rehabilitative services, and maintenance or personal
19 care services, which—

20 “(A) are required by a chronically ill indi-
21 vidual, and

22 “(B) are provided pursuant to a plan of
23 care prescribed by a licensed health care practi-
24 tioner.

25 “(2) CHRONICALLY ILL INDIVIDUAL.—

1 “(A) IN GENERAL.—The term ‘chronically
2 ill individual’ means any individual who has
3 been certified by a licensed health care practi-
4 tioner as—

5 “(i) being unable to perform (without
6 substantial assistance from another indi-
7 vidual) at least 2 activities of daily living
8 for a period of at least 90 days due to a
9 loss of functional capacity,

10 “(ii) having a level of disability simi-
11 lar (as determined by the Secretary in con-
12 sultation with the Secretary of Health and
13 Human Services) to the level of disability
14 described in clause (i), or

15 “(iii) requiring substantial supervision
16 to protect such individual from threats to
17 health and safety due to severe cognitive
18 impairment.

19 Such term shall not include any individual oth-
20 erwise meeting the requirements of the preced-
21 ing sentence unless within the preceding 12-
22 month period a licensed health care practitioner
23 has certified that such individual meets such re-
24 quirements.

1 “(B) ACTIVITIES OF DAILY LIVING.—For
2 purposes of subparagraph (A), each of the fol-
3 lowing is an activity of daily living:

4 “(i) Eating.

5 “(ii) Toileting.

6 “(iii) Transferring.

7 “(iv) Bathing.

8 “(v) Dressing.

9 “(vi) Continence.

10 Nothing in this section shall be construed to re-
11 quire a contract to take into account all of the
12 preceding activities of daily living.

13 “(3) MAINTENANCE OR PERSONAL CARE SERV-
14 ICES.—The term ‘maintenance or personal care serv-
15 ices’ means any care the primary purpose of which
16 is the provision of needed assistance with any of the
17 disabilities as a result of which the individual is a
18 chronically ill individual (including the protection
19 from threats to health and safety due to severe cog-
20 nitive impairment).

21 “(4) LICENSED HEALTH CARE PRACTI-
22 TIONER.—The term ‘licensed health care practi-
23 tioner’ means any physician (as defined in section
24 1861(r)(1) of the Social Security Act (42 U.S.C.
25 1395x(r)(1)) and any registered professional nurse,

1 licensed social worker, or other individual who meets
2 such requirements as may be prescribed by the Sec-
3 retary.

4 “(d) AGGREGATE PAYMENTS IN EXCESS OF LIM-
5 ITS.—

6 “(1) IN GENERAL.—If the aggregate amount of
7 periodic payments under all qualified long-term care
8 insurance contracts with respect to an insured for
9 any period exceeds the dollar amount in effect for
10 such period under paragraph (3), such excess pay-
11 ments shall be treated as made for qualified long-
12 term care services only to the extent of the costs in-
13 curred by the payee (not otherwise compensated for
14 by insurance or otherwise) for qualified long-term
15 care services provided during such period for such
16 insured.

17 “(2) PERIODIC PAYMENTS.—For purposes of
18 paragraph (1), the term ‘periodic payment’ means
19 any payment (whether on a periodic basis or other-
20 wise) made without regard to the extent of the costs
21 incurred by the payee for qualified long-term care
22 services.

23 “(3) DOLLAR AMOUNT.—The dollar amount in
24 effect under this subsection shall be \$175 per day

1 (or the equivalent amount in the case of payments
2 on another periodic basis).

3 “(4) INFLATION ADJUSTMENT.—In the case of
4 a calendar year after 1997, the dollar amount con-
5 tained in paragraph (3) shall be increased at the
6 same time and in the same manner as amounts are
7 increased pursuant to section 213(d)(11).

8 “(e) TREATMENT OF COVERAGE PROVIDED AS PART
9 OF A LIFE INSURANCE CONTRACT.—Except as otherwise
10 provided in regulations prescribed by the Secretary, in the
11 case of any long-term care insurance coverage (whether
12 or not qualified) provided by a rider on or as a part of
13 a life insurance contract—

14 “(1) IN GENERAL.—This section shall apply as
15 if the portion of the contract providing such cov-
16 erage is a separate contract.

17 “(2) APPLICATION OF 7702.—Section
18 7702(c)(2) (relating to the guideline premium limi-
19 tation) shall be applied by increasing the guideline
20 premium limitation with respect to a life insurance
21 contract, as of any date—

22 “(A) by the sum of any charges (but not
23 premium payments) against the life insurance
24 contract’s cash surrender value (within the

1 meaning of section 7702(f)(2)(A)) for such cov-
2 erage made to that date under the contract, less

3 “(B) any such charges the imposition of
4 which reduces the premiums paid for the con-
5 tract (within the meaning of section
6 7702(f)(1)).

7 “(3) APPLICATION OF SECTION 213.—No deduc-
8 tion shall be allowed under section 213(a) for
9 charges against the life insurance contract’s cash
10 surrender value described in paragraph (2), unless
11 such charges are includible in income as a result of
12 the application of section 72(e)(10) and the rider is
13 a qualified long-term care insurance contract under
14 subsection (b).

15 “(4) PORTION DEFINED.—For purposes of this
16 subsection, the term ‘portion’ means only the terms
17 and benefits under a life insurance contract that are
18 in addition to the terms and benefits under the con-
19 tract without regard to the coverage under a quali-
20 fied long-term care insurance contract.”.

21 (b) RESERVE METHOD.—Clause (iii) of section
22 807(d)(3)(A) is amended by inserting “(other than a
23 qualified long-term care insurance contract, as defined in
24 section 7702B(b))” after “insurance contract”.

1 (c) LONG-TERM CARE INSURANCE NOT PERMITTED
2 UNDER CAFETERIA PLANS OR FLEXIBLE SPENDING AR-
3 RANGEMENTS.—

4 (1) CAFETERIA PLANS.—Section 125(f) is
5 amended by adding at the end the following new
6 sentence: “Such term shall not include any long-
7 term care insurance contract (as defined in section
8 4980C).”.

9 (2) FLEXIBLE SPENDING ARRANGEMENTS.—
10 The text of section 106 (relating to contributions by
11 employer to accident and health plans) is amended
12 to read as follows:

13 “(a) GENERAL RULE.—Except as otherwise provided
14 in this section, gross income of an employee does not in-
15 clude employer-provided coverage under an accident or
16 health plan.

17 “(b) INCLUSION OF LONG-TERM CARE BENEFITS
18 PROVIDED THROUGH FLEXIBLE SPENDING ARRANGE-
19 MENTS.—

20 “(1) IN GENERAL.—Effective on and after Jan-
21 uary 1, 1997, gross income of an employee shall in-
22 clude employer-provided coverage for qualified long-
23 term care services (as defined in section 7702B(e))
24 to the extent that such coverage is provided through
25 a flexible spending or similar arrangement.

1 “(2) FLEXIBLE SPENDING ARRANGEMENT.—
 2 For purposes of this subsection, a flexible spending
 3 arrangement is a benefit program which provides
 4 employees with coverage under which—

5 “(A) specified incurred expenses may be
 6 reimbursed (subject to reimbursement maxi-
 7 mums and other reasonable conditions), and

8 “(B) the maximum amount of reimburse-
 9 ment which is reasonably available to a partici-
 10 pant for such coverage is less than 500 percent
 11 of the value of such coverage.

12 In the case of an insured plan, the maximum
 13 amount reasonably available shall be determined on
 14 the basis of the underlying coverage.”.

15 (d) CONTINUATION COVERAGE EXCISE TAX NOT TO
 16 APPLY.—Subsection (f) of section 4980B is amended by
 17 adding at the end the following new paragraph:

18 “(9) CONTINUATION OF LONG-TERM CARE COV-
 19 ERAGE NOT REQUIRED.—A group health plan shall
 20 not be treated as failing to meet the requirements of
 21 this subsection solely by reason of failing to provide
 22 coverage under any qualified long-term care insur-
 23 ance contract (as defined in section 7702B(b)).”.

24 (e) AMOUNTS PAID TO SPOUSE OR RELATIVES
 25 TREATED AS NOT PAID FOR MEDICAL CARE.—Section

1 213(d) is amended by adding at the end the following new
2 paragraph:

3 “(10) CERTAIN PAYMENTS TO SPOUSE OR REL-
4 ATIVES TREATED AS NOT PAID FOR MEDICAL
5 CARE.—An amount paid for a qualified long-term
6 care service (as defined in section 7702B(c)) pro-
7 vided to an individual shall be treated as not paid
8 for medical care if such service is provided—

9 “(A) by the spouse of the individual or a
10 relative (directly or through a partnership, cor-
11 poration, or other entity) unless the spouse or
12 relative is a licensed professional with respect to
13 such services, or

14 “(B) by a corporation or partnership which
15 is related (within the meaning of section 267(b)
16 or 707(b)) to the individual.

17 For purposes of this paragraph, the term ‘relative’
18 means an individual bearing a relationship to the in-
19 dividual which is described in any of paragraphs (1)
20 through (8) of section 152(a). This paragraph shall
21 not apply for purposes of section 105(b) with respect
22 to reimbursements through insurance.”.

23 (f) CLERICAL AMENDMENT.—The table of sections
24 for chapter 79 is amended by inserting after the item re-
25 lating to section 7702A the following new item:

“Sec. 7702B. Treatment of qualified long-term care insurance.”.

1 (g) EFFECTIVE DATE.—

2 (1) IN GENERAL.—The amendments made by
3 this section shall apply to contracts issued after De-
4 cember 31, 1996.

5 (2) CONTINUATION OF EXISTING POLICIES.—In
6 the case of any contract issued before January 1,
7 1997, which met the long-term care insurance re-
8 quirements of the State in which the contract was
9 issued at the time the contract was issued—

10 (A) such contract shall be treated for pur-
11 poses of the Internal Revenue Code of 1986 as
12 a qualified long-term care insurance contract
13 (as defined in section 7702B(b) of such Code),
14 and

15 (B) services provided under, or reimbursed
16 by, such contract shall be treated for such pur-
17 poses as qualified long-term care services (as
18 defined in section 7702B(c) of such Code).

19 (3) EXCHANGES OF EXISTING POLICIES.—If,
20 after the date of enactment of this Act and before
21 January 1, 1998, a contract providing for long-term
22 care insurance coverage is exchanged solely for a
23 qualified long-term care insurance contract (as de-
24 fined in section 7702B(b) of such Code), no gain or
25 loss shall be recognized on the exchange. If, in addi-

1 tion to a qualified long-term care insurance contract,
2 money or other property is received in the exchange,
3 then any gain shall be recognized to the extent of
4 the sum of the money and the fair market value of
5 the other property received. For purposes of this
6 paragraph, the cancellation of a contract providing
7 for long-term care insurance coverage and reinvest-
8 ment of the cancellation proceeds in a qualified long-
9 term care insurance contract within 60 days there-
10 after shall be treated as an exchange.

11 (4) ISSUANCE OF CERTAIN RIDERS PER-
12 MITTED.—For purposes of applying sections 101(f),
13 7702, and 7702A of the Internal Revenue Code of
14 1986 to any contract—

15 (A) the issuance of a rider which is treated
16 as a qualified long-term care insurance contract
17 under section 7702B, and

18 (B) the addition of any provision required
19 to conform any other long-term care rider to be
20 so treated,

21 shall not be treated as a modification or material
22 change of such contract.

1 **SEC. 412. QUALIFIED LONG-TERM CARE SERVICES TREAT-**
2 **ED AS MEDICAL CARE.**

3 (a) GENERAL RULE.—Paragraph (1) of section
4 213(d) (defining medical care) is amended by striking
5 “or” at the end of subparagraph (B), by redesignating
6 subparagraph (C) as subparagraph (D), and by inserting
7 after subparagraph (B) the following new subparagraph:

8 “(C) for qualified long-term care services
9 (as defined in section 7702B(c)), or”.

10 (b) TECHNICAL AMENDMENTS.—

11 (1) Subparagraph (D) of section 213(d)(1) (as
12 redesignated by subsection (a)) is amended by strik-
13 ing “subparagraphs (A) and (B)” and inserting
14 “subparagraphs (A), (B), and (C)”.

15 (2)(A) Paragraph (1) of section 213(d) is
16 amended by adding at the end the following new
17 flush sentence:

18 “In the case of a qualified long-term care insurance
19 contract (as defined in section 7702B(b)), only eligi-
20 ble long-term care premiums (as defined in para-
21 graph (11)) shall be taken into account under sub-
22 paragraph (D).”.

23 (B) Subsection (d) of section 213 is amended
24 by adding at the end the following new paragraph:

25 “(11) ELIGIBLE LONG-TERM CARE PRE-
26 MIUMS.—

1 “(A) IN GENERAL.—For purposes of this
 2 section, the term ‘eligible long-term care pre-
 3 miums’ means the amount paid during a tax-
 4 able year for any qualified long-term care insur-
 5 ance contract (as defined in section 7702B(b))
 6 covering an individual, to the extent such
 7 amount does not exceed the limitation deter-
 8 mined under the following table:

“In the case of an individual with an attained age before the close of the taxable year of:	The limitation is:
40 or less	\$200
More than 40 but not more than 50	375
More than 50 but not more than 60	750
More than 60 but not more than 70	2,000
More than 70	2,500.

9 “(B) INDEXING.—

10 “(i) IN GENERAL.—In the case of any
 11 taxable year beginning in a calendar year
 12 after 1997, each dollar amount contained
 13 in subparagraph (A) shall be increased by
 14 the medical care cost adjustment of such
 15 amount for such calendar year. If any in-
 16 crease determined under the preceding sen-
 17 tence is not a multiple of \$10, such in-
 18 crease shall be rounded to the nearest mul-
 19 tiple of \$10.

20 “(ii) MEDICAL CARE COST ADJUST-
 21 MENT.—For purposes of clause (i), the

1 medical care cost adjustment for any cal-
2 endar year is the percentage (if any) by
3 which—

4 “(I) the medical care component
5 of the Consumer Price Index (as de-
6 fined in section 1(f)(5)) for August of
7 the preceding calendar year, exceeds

8 “(II) such component for August
9 of 1996.

10 The Secretary shall, in consultation with
11 the Secretary of Health and Human Serv-
12 ices, prescribe an adjustment which the
13 Secretary determines is more appropriate
14 for purposes of this paragraph than the
15 adjustment described in the preceding sen-
16 tence, and the adjustment so prescribed
17 shall apply in lieu of the adjustment de-
18 scribed in the preceding sentence.”.

19 (3) Paragraph (6) of section 213(d) is amend-
20 ed—

21 (A) by striking “subparagraphs (A) and
22 (B)” and inserting “subparagraphs (A), (B),
23 and (C)”, and

1 (B) by striking “paragraph (1)(C)” in sub-
2 paragraph (A) and inserting “paragraph
3 (1)(D)”.

4 (4) Paragraph (7) of section 213(d) is amended
5 by striking “subparagraphs (A) and (B)” and insert-
6 ing “subparagraphs (A), (B), and (C)”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years beginning after
9 December 31, 1996.

10 **SEC. 413. CERTAIN EXCHANGES OF LIFE INSURANCE CON-**
11 **TRACTS FOR QUALIFIED LONG-TERM CARE**
12 **INSURANCE CONTRACTS NOT TAXABLE.**

13 (a) IN GENERAL.—Subsection (a) of section 1035
14 (relating to certain exchanges of insurance contracts) is
15 amended by striking the period at the end of paragraph
16 (3) and inserting “; or”, and by adding at the end the
17 following new paragraph:

18 “(4) a contract of life insurance or an endow-
19 ment or annuity contract for a qualified long-term
20 care insurance contract (as defined in section
21 7702B(b)).”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to taxable years beginning after
24 December 31, 1997.

1 **SEC. 414. EXCEPTION FROM PENALTY TAX FOR AMOUNTS**
2 **WITHDRAWN FROM CERTAIN RETIREMENT**
3 **PLANS FOR QUALIFIED LONG-TERM CARE IN-**
4 **SURANCE.**

5 (a) IN GENERAL.—Paragraph (2) of section 72(t) is
6 amended by adding at the end the following new subpara-
7 graph:

8 “(D) PREMIUMS FOR QUALIFIED LONG-
9 TERM CARE INSURANCE CONTRACTS.—Distribu-
10 tions to an individual from an individual retire-
11 ment plan, or from amounts attributable to em-
12 ployer contributions made pursuant to elective
13 deferrals described in subparagraph (A) or (C)
14 of section 402(g)(3), to the extent such dis-
15 tributions do not exceed the premiums for a
16 qualified long-term care insurance contract (as
17 defined in section 7702B(b)) for such individual
18 or the spouse of such individual. In applying
19 subparagraph (B), such premiums shall be
20 treated as amounts not paid for medical care.”.

21 (b) DISTRIBUTIONS PERMITTED FROM CERTAIN
22 PLANS TO PAY LONG-TERM CARE PREMIUMS.—

23 (1) Section 401(k)(2)(B)(i) is amended by
24 striking “or” at the end of subclause (III), by strik-
25 ing “and” at the end of subclause (IV) and inserting

1 “or”, and by inserting after subclause (IV) the fol-
2 lowing new subclause:

3 “(V) the date distributions for
4 premiums for a long-term care insur-
5 ance contract (as defined in section
6 7702B(b)) for coverage of such indi-
7 vidual or the spouse of such individual
8 are made, and”.

9 (2) Section 403(b)(11) is amended by striking
10 “or” at the end of subparagraph (A), by striking the
11 period at the end of subparagraph (B) and inserting
12 “, or”, and by inserting after subparagraph (B) the
13 following new subparagraph:

14 “(C) for the payment of premiums for a
15 long-term care insurance contract (as defined in
16 section 7702B(b)) for coverage of the employee
17 or the spouse of the employee.”.

18 (3) Subparagraph (A) of section 457(d)(1) is
19 amended by striking “or” at the end of clause (ii),
20 by striking “and” at the end of clause (iii) and in-
21 serting “or”, and by inserting after clause (iii) the
22 following new clause:

23 “(iv) the date distributions for pre-
24 miums for a long-term care insurance con-
25 tract (as defined in section 7702B(b)) for

1 coverage of such individual or the spouse
2 of such individual are made, and”.

3 (c) CONFORMING AMENDMENT.—Section 72t(2)(B)
4 is amended by striking “subparagraph (A) or (C))” and
5 inserting “subparagraph (A), (C), or (D))”.

6 (d) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to payments and distributions after
8 December 31, 1996.

9 **SEC. 415. REPORTING REQUIREMENTS.**

10 (a) IN GENERAL.—Subpart B of part III of sub-
11 chapter A of chapter 61 is amended by adding at the end
12 the following new section:

13 **“SEC. 6050Q. CERTAIN LONG-TERM CARE BENEFITS.**

14 “(a) REQUIREMENT OF REPORTING.—Any person
15 who pays long-term care benefits shall make a return, ac-
16 cording to the forms or regulations prescribed by the Sec-
17 retary, setting forth—

18 “(1) the aggregate amount of such benefits
19 paid by such person to any individual during any
20 calendar year, and

21 “(2) the name, address, and TIN of such indi-
22 vidual.

23 “(b) STATEMENTS TO BE FURNISHED TO PERSONS
24 WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—

25 Every person required to make a return under subsection

1 (a) shall furnish to each individual whose name is required
2 to be set forth in such return a written statement show-
3 ing—

4 “(1) the name of the person making the pay-
5 ments, and

6 “(2) the aggregate amount of long-term care
7 benefits paid to the individual which are required to
8 be shown on such return.

9 The written statement required under the preceding sen-
10 tence shall be furnished to the individual on or before Jan-
11 uary 31 of the year following the calendar year for which
12 the return under subsection (a) was required to be made.

13 “(c) LONG-TERM CARE BENEFITS.—For purposes of
14 this section, the term ‘long-term care benefit’ means any
15 amount paid under a long-term care insurance policy
16 (within the meaning of section 4980C(e)).”.

17 (b) PENALTIES.—

18 (1) Subparagraph (B) of section 6724(d)(1) is
19 amended by redesignating clauses (ix) through (xiv)
20 as clauses (x) through (xv), respectively, and by in-
21 serting after clause (viii) the following new clause:

22 “(ix) section 6050Q (relating to cer-
23 tain long-term care benefits),”.

24 (2) Paragraph (2) of section 6724(d) is amend-
25 ed by redesignating subparagraphs (Q) through (T)

1 as subparagraphs (R) through (U), respectively, and
 2 by inserting after subparagraph (P) the following
 3 new subparagraph:

4 “(Q) section 6050Q(b) (relating to certain
 5 long-term care benefits),”.

6 (c) CLERICAL AMENDMENT.—The table of sections
 7 for subpart B of part III of subchapter A of chapter 61
 8 is amended by adding at the end the following new item:

“Sec. 6050Q. Certain long-term care benefits.”.

9 (d) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to benefits paid after December
 11 31, 1996.

12 **Subchapter B—Consumer Protection**
 13 **Provisions**

14 **SEC. 421. POLICY REQUIREMENTS.**

15 Section 7702B (as added by section 411) is amended
 16 by adding at the end the following new subsection:

17 “(f) CONSUMER PROTECTION PROVISIONS.—

18 “(1) IN GENERAL.—The requirements of this
 19 subsection are met with respect to any contract if
 20 any long-term care insurance policy issued under the
 21 contract meets—

22 “(A) the requirements of the model regula-
 23 tion and model Act described in paragraph (2),

24 “(B) the disclosure requirement of para-
 25 graph (3), and

1 “(C) the requirements relating to non-
2 forfeitability under paragraph (4).

3 “(2) REQUIREMENTS OF MODEL REGULATION
4 AND ACT.—

5 “(A) IN GENERAL.—The requirements of
6 this paragraph are met with respect to any pol-
7 icy if such policy meets—

8 “(i) MODEL REGULATION.—The fol-
9 lowing requirements of the model regula-
10 tion:

11 “(I) Section 7A (relating to guar-
12 anteed renewal or noncancellability),
13 and the requirements of section 6B of
14 the model Act relating to such section
15 7A.

16 “(II) Section 7B (relating to pro-
17 hibitions on limitations and exclu-
18 sions).

19 “(III) Section 7C (relating to ex-
20 tension of benefits).

21 “(IV) Section 7D (relating to
22 continuation or conversion of cov-
23 erage).

1 “(V) Section 7E (relating to dis-
2 continuance and replacement of poli-
3 cies).

4 “(VI) Section 8 (relating to unin-
5 tentional lapse).

6 “(VII) Section 9 (relating to dis-
7 closure), other than section 9F there-
8 of.

9 “(VIII) Section 10 (relating to
10 prohibitions against post-claims un-
11 derwriting).

12 “(IX) Section 11 (relating to
13 minimum standards).

14 “(X) Section 12 (relating to re-
15 quirement to offer inflation protec-
16 tion), except that any requirement for
17 a signature on a rejection of inflation
18 protection shall permit the signature
19 to be on an application or on a sepa-
20 rate form.

21 “(XI) Section 23 (relating to pro-
22 hibition against preexisting conditions
23 and probationary periods in replace-
24 ment policies or certificates).

1 “(ii) MODEL ACT.—The following re-
2 quirements of the model Act:

3 “(I) Section 6C (relating to pre-
4 existing conditions).

5 “(II) Section 6D (relating to
6 prior hospitalization).

7 “(B) DEFINITIONS.—For purposes of this
8 paragraph—

9 “(i) MODEL PROVISIONS.—The terms
10 ‘model regulation’ and ‘model Act’ mean
11 the long-term care insurance model regula-
12 tion, and the long-term care insurance
13 model Act, respectively, promulgated by
14 the National Association of Insurance
15 Commissioners (as adopted as of January
16 1993).

17 “(ii) COORDINATION.—Any provision
18 of the model regulation or model Act listed
19 under clause (i) or (ii) of subparagraph
20 (A) shall be treated as including any other
21 provision of such regulation or Act nec-
22 essary to implement the provision.

23 “(3) DISCLOSURE REQUIREMENT.—The re-
24 quirement of this paragraph is met with respect to

1 any policy if such policy meets the requirements of
2 section 4980C(d)(1).

3 “(4) NONFORFEITURE REQUIREMENTS.—

4 “(A) IN GENERAL.—The requirements of
5 this paragraph are met with respect to any level
6 premium long-term care insurance policy, if the
7 issuer of such policy offers to the policyholder,
8 including any group policyholder, a nonforfeit-
9 ure provision meeting the requirements of sub-
10 paragraph (B).

11 “(B) REQUIREMENTS OF PROVISION.—The
12 nonforfeiture provision required under subpara-
13 graph (A) shall meet the following require-
14 ments:

15 “(i) The nonforfeiture provision shall
16 be appropriately captioned.

17 “(ii) The nonforfeiture provision shall
18 provide for a benefit available in the event
19 of a default in the payment of any pre-
20 miums and the amount of the benefit may
21 be adjusted subsequent to being initially
22 granted only as necessary to reflect
23 changes in claims, persistency, and interest
24 as reflected in changes in rates for pre-
25 mium paying policies approved by the ap-

1 appropriate State regulatory authority for
2 the same policy form.

3 “(iii) The nonforfeiture provision shall
4 provide at least one of the following:

5 “(I) Reduced paid-up insurance.

6 “(II) Extended term insurance.

7 “(III) Shortened benefit period.

8 “(IV) Other similar offerings ap-
9 proved by the Secretary.

10 “(5) LONG-TERM CARE INSURANCE POLICY DE-
11 FINED.—For purposes of this subsection, the term
12 ‘long-term care insurance policy’ has the meaning
13 given such term by section 4980C(e).”.

14 **SEC. 422. REQUIREMENTS FOR ISSUERS OF LONG-TERM**
15 **CARE INSURANCE POLICIES.**

16 (a) IN GENERAL.—Chapter 43 is amended by adding
17 at the end the following new section:

18 **“SEC. 4980C. REQUIREMENTS FOR ISSUERS OF LONG-TERM**
19 **CARE INSURANCE POLICIES.**

20 “(a) GENERAL RULE.—There is hereby imposed on
21 any person failing to meet the requirements of subsection
22 (c) or (d) a tax in the amount determined under sub-
23 section (b).

24 “(b) AMOUNT.—

1 “(1) IN GENERAL.—The amount of the tax im-
2 posed by subsection (a) shall be \$100 per policy for
3 each day any requirements of subsection (c) or (d)
4 are not met with respect to each long-term care in-
5 surance policy.

6 “(2) WAIVER.—In the case of a failure which is
7 due to reasonable cause and not to willful neglect,
8 the Secretary may waive part or all of the tax im-
9 posed by subsection (a) to the extent that payment
10 of the tax would be excessive relative to the failure
11 involved.

12 “(c) RESPONSIBILITIES.—The requirements of this
13 subsection are as follows:

14 “(1) REQUIREMENTS OF MODEL PROVISIONS.—

15 “(A) MODEL REGULATION.—The following
16 requirements of the model regulation must be
17 met:

18 “(i) Section 13 (relating to application
19 forms and replacement coverage).

20 “(ii) Section 14 (relating to reporting
21 requirements), except that the issuer shall
22 also report at least annually the number of
23 claims denied during the reporting period
24 for each class of business (expressed as a
25 percentage of claims denied), other than

1 claims denied for failure to meet the wait-
2 ing period or because of any applicable
3 preexisting condition.

4 “(iii) Section 20 (relating to filing re-
5 quirements for marketing).

6 “(iv) Section 21 (relating to standards
7 for marketing), including inaccurate com-
8 pletion of medical histories, other than sec-
9 tions 21C(1) and 21C(6) thereof, except
10 that—

11 “(I) in addition to such require-
12 ments, no person shall, in selling or
13 offering to sell a long-term care insur-
14 ance policy, misrepresent a material
15 fact; and

16 “(II) no such requirements shall
17 include a requirement to inquire or
18 identify whether a prospective appli-
19 cant or enrollee for long-term care in-
20 surance has accident and sickness in-
21 surance.

22 “(v) Section 22 (relating to appro-
23 priateness of recommended purchase).

24 “(vi) Section 24 (relating to standard
25 format outline of coverage).

1 “(vii) Section 25 (relating to require-
2 ment to deliver shopper’s guide).

3 “(B) MODEL ACT.—The following require-
4 ments of the model Act must be met:

5 “(i) Section 6F (relating to right to
6 return), except that such section shall also
7 apply to denials of applications and any re-
8 fund shall be made within 30 days of the
9 return or denial.

10 “(ii) Section 6G (relating to outline of
11 coverage).

12 “(iii) Section 6H (relating to require-
13 ments for certificates under group plans).

14 “(iv) Section 6I (relating to policy
15 summary).

16 “(v) Section 6J (relating to monthly
17 reports on accelerated death benefits).

18 “(vi) Section 7 (relating to incontest-
19 ability period).

20 “(C) DEFINITIONS.—For purposes of this
21 paragraph, the terms ‘model regulation’ and
22 ‘model Act’ have the meanings given such terms
23 by section 7702B(f)(2)(B).

24 “(2) DELIVERY OF POLICY.—If an application
25 for a long-term care insurance policy (or for a cer-

1 tificate under a group long-term care insurance pol-
2 icy) is approved, the issuer shall deliver to the appli-
3 cant (or policyholder or certificateholder) the policy
4 (or certificate) of insurance not later than 30 days
5 after the date of the approval.

6 “(3) INFORMATION ON DENIALS OF CLAIMS.—
7 If a claim under a long-term care insurance policy
8 is denied, the issuer shall, within 60 days of the date
9 of a written request by the policyholder or
10 certificateholder (or representative)—

11 “(A) provide a written explanation of the
12 reasons for the denial, and

13 “(B) make available all information di-
14 rectly relating to such denial.

15 “(d) DISCLOSURE.—The requirements of this sub-
16 section are met if the issuer of a long-term care insurance
17 policy discloses in such policy and in the outline of cov-
18 erage required under subsection (c)(1)(B)(ii) that the pol-
19 icy is intended to be a qualified long-term care insurance
20 contract under section 7702B(b).

21 “(e) LONG-TERM CARE INSURANCE POLICY DE-
22 FINED.—For purposes of this section, the term ‘long-term
23 care insurance policy’ means any product which is adver-
24 tised, marketed, or offered as long-term care insurance.”.

1 (b) CONFORMING AMENDMENT.—The table of sec-
2 tions for chapter 43 is amended by adding at the end the
3 following new item:

“Sec. 4980C. Requirements for issuers of long-term care insurance policies.”.

4 **SEC. 423. COORDINATION WITH STATE REQUIREMENTS.**

5 Nothing in this subchapter shall prevent a State from
6 establishing, implementing, or continuing in effect stand-
7 ards related to the protection of policyholders of long-term
8 care insurance policies (as defined in section 4980C(e) of
9 the Internal Revenue Code of 1986), if such standards are
10 not in conflict with or inconsistent with the standards es-
11 tablished under such Code.

12 **SEC. 424. EFFECTIVE DATES.**

13 (a) IN GENERAL.—The provisions of, and amend-
14 ments made by, this subchapter shall apply to contracts
15 issued after December 31, 1996. The provisions of section
16 411(g) of this Act (relating to transition rule) shall apply
17 to such contracts.

18 (b) ISSUERS.—The amendments made by section 422
19 shall apply to actions taken after December 31, 1996.

1 **CHAPTER 2—TREATMENT OF**
2 **ACCELERATED DEATH BENEFITS**

3 **SEC. 431. TREATMENT OF ACCELERATED DEATH BENEFITS**
4 **BY RECIPIENT.**

5 (a) IN GENERAL.—Section 101 (relating to certain
6 death benefits) is amended by adding at the end the fol-
7 lowing new subsection:

8 “(g) TREATMENT OF CERTAIN ACCELERATED
9 DEATH BENEFITS.—

10 “(1) IN GENERAL.—For purposes of this sec-
11 tion, the following amounts shall be treated as an
12 amount paid by reason of the death of an insured:

13 “(A) Any amount received under a life in-
14 surance contract on the life of an insured who
15 is a terminally ill individual.

16 “(B) Any amount received under a life in-
17 surance contract on the life of an insured who
18 is a chronically ill individual (as defined in sec-
19 tion 7702B(c)(2)) but only if such amount is
20 received under a rider or other provision of
21 such contract which is treated as a qualified
22 long-term care insurance contract under section
23 7702B.

24 “(2) TREATMENT OF VIATICAL SETTLE-
25 MENTS.—

1 “(A) IN GENERAL.—In the case of a life
2 insurance contract on the life of an insured de-
3 scribed in paragraph (1), if—

4 “(i) any portion of such contract is
5 sold to any viatical settlement provider, or

6 “(ii) any portion of the death benefit
7 is assigned to such a provider,
8 the amount paid for such sale or assignment
9 shall be treated as an amount paid under the
10 life insurance contract by reason of the death of
11 such insured.

12 “(B) VIATICAL SETTLEMENT PROVIDER.—
13 The term ‘viatical settlement provider’ means
14 any person regularly engaged in the trade or
15 business of purchasing, or taking assignments
16 of, life insurance contracts on the lives of
17 insureds described in paragraph (1) if—

18 “(i) such person is licensed for such
19 purposes in the State in which the insured
20 resides, or

21 “(ii) in the case of an insured who re-
22 sides in a State not requiring the licensing
23 of such persons for such purposes—

24 “(I) such person meets the re-
25 quirements of sections 8 and 9 of the

1 Viatical Settlements Model Act of the
2 National Association of Insurance
3 Commissioners, and

4 “(II) meets the requirements of
5 the Model Regulations of the National
6 Association of Insurance Commis-
7 sioners (relating to standards for eval-
8 uation of reasonable payments) in de-
9 termining amounts paid by such per-
10 son in connection with such purchases
11 or assignments.

12 “(3) DEFINITIONS.—For purposes of this sub-
13 section—

14 “(A) TERMINALLY ILL INDIVIDUAL.—The
15 term ‘terminally ill individual’ means an indi-
16 vidual who has been certified by a physician as
17 having an illness or physical condition which
18 can reasonably be expected to result in death in
19 24 months or less after the date of the certifi-
20 cation.

21 “(B) PHYSICIAN.—The term ‘physician’
22 has the meaning given to such term by section
23 1861(r)(1) of the Social Security Act (42
24 U.S.C. 1395x(r)(1)).

1 erence to a qualified accelerated death benefit rider
2 on such contract.

3 “(2) QUALIFIED ACCELERATED DEATH BENE-
4 FIT RIDERS.—For purposes of this subsection, the
5 term ‘qualified accelerated death benefit rider’
6 means any rider on a life insurance contract if the
7 only payments under the rider are payments meeting
8 the requirements of section 101(g).

9 “(3) EXCEPTION FOR LONG-TERM CARE RID-
10 ERS.—Paragraph (1) shall not apply to any rider
11 which is treated as a long-term care insurance con-
12 tract under section 7702B.”.

13 (b) EFFECTIVE DATE.—

14 (1) IN GENERAL.—The amendment made by
15 this section shall take effect on January 1, 1997.

16 (2) ISSUANCE OF RIDER NOT TREATED AS MA-
17 TERIAL CHANGE.—For purposes of applying sections
18 101(f), 7702, and 7702A of the Internal Revenue
19 Code of 1986 to any contract—

20 (A) the issuance of a qualified accelerated
21 death benefit rider (as defined in section 818(g)
22 of such Code (as added by this Act)), and

23 (B) the addition of any provision required
24 to conform an accelerated death benefit rider to
25 the requirements of such section 818(g),

1 shall not be treated as a modification or material
 2 change of such contract.

3 **Subtitle C—High-Risk Pools**

4 **SEC. 451. EXEMPTION FROM INCOME TAX FOR STATE-SPON-** 5 **SORED ORGANIZATIONS PROVIDING HEALTH** 6 **COVERAGE FOR HIGH-RISK INDIVIDUALS.**

7 (a) IN GENERAL.—Subsection (c) of section 501 (re-
 8 lating to list of exempt organizations) is amended by add-
 9 ing at the end the following new paragraph:

10 “(26) Any membership organization if—

11 “(A) such organization is established by a
 12 State exclusively to provide coverage for medical
 13 care (as defined in section 213(d)) on a not-for-
 14 profit basis to individuals described in subpara-
 15 graph (B) through—

16 “(i) insurance issued by the organiza-
 17 tion, or

18 “(ii) a health maintenance organiza-
 19 tion under an arrangement with the orga-
 20 nization,

21 “(B) the only individuals receiving such
 22 coverage through the organization are individ-
 23 uals—

24 “(i) who are residents of such State,
 25 and

1 “(ii) who, by reason of the existence
 2 or history of a medical condition, are un-
 3 able to acquire medical care coverage for
 4 such condition through insurance or from
 5 a health maintenance organization or are
 6 able to acquire such coverage only at a
 7 rate which is substantially in excess of the
 8 rate for such coverage through the mem-
 9 bership organization,

10 “(C) the composition of the membership in
 11 such organization is specified by such State,
 12 and

13 “(D) no part of the net earnings of the or-
 14 ganization inures to the benefit of any private
 15 shareholder or individual.”.

16 (b) EFFECTIVE DATE.—The amendment made by
 17 this section shall apply to taxable years beginning after
 18 December 31, 1996.

19 **Subtitle D—Penalty-Free IRA** 20 **Distributions**

21 **SEC. 461. DISTRIBUTIONS FROM CERTAIN PLANS MAY BE** 22 **USED WITHOUT PENALTY TO PAY FINAN-** 23 **CIALLY DEVASTATING MEDICAL EXPENSES.**

24 (a) IN GENERAL.—Section 72(t)(3)(A) is amended
 25 by striking “(B),”.

1 (b) PENALTY-FREE DISTRIBUTIONS FOR PAYMENT
2 OF HEALTH INSURANCE PREMIUMS OF CERTAIN UNEM-
3 PLOYED INDIVIDUALS.—Paragraph (2) of section 72(t),
4 as amended by section 414, is amended by adding at the
5 end the following new subparagraph:

6 “(E) DISTRIBUTIONS TO UNEMPLOYED IN-
7 DIVIDUALS FOR HEALTH INSURANCE PRE-
8 MIUMS.—Distributions from an individual re-
9 tirement plan to an individual after separation
10 from employment—

11 “(i) if such individual has received un-
12 employment compensation for 12 consecu-
13 tive weeks under any Federal or State un-
14 employment compensation law by reason of
15 such separation,

16 “(ii) if such distributions are made
17 during any taxable year during which such
18 unemployment compensation is paid or the
19 succeeding taxable year, and

20 “(iii) to the extent such distributions
21 do not exceed the amount paid during the
22 taxable year for insurance described in sec-
23 tion 213(d)(1)(D) with respect to the indi-
24 vidual and the individual’s spouse and de-
25 pendants (as defined in section 152).

1 To the extent provided in regulations, a self-em-
 2 ployed individual shall be treated as meeting
 3 the requirements of clause (i) if, under Federal
 4 or State law, the individual would have received
 5 unemployment compensation but for the fact
 6 the individual was self-employed.”.

7 (c) CONFORMING AMENDMENT.—Subparagraph (B)
 8 of section 72(t)(2), as amended by section 414, is amend-
 9 ed by striking “or (D)” and inserting “, (D), or (E)”.

10 (d) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply to taxable years beginning after
 12 December 31, 1996.

13 **Subtitle E—Revenue Offsets**

14 **CHAPTER 1—TREATMENT OF**

15 **INDIVIDUALS WHO EXPATRIATE**

16 **SEC. 471. REVISION OF TAX RULES ON EXPATRIATION.**

17 (a) IN GENERAL.—Subpart A of part II of sub-
 18 chapter N of chapter 1 is amended by inserting after sec-
 19 tion 877 the following new section:

20 **“SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.**

21 “(a) GENERAL RULES.—For purposes of this sub-
 22 title—

23 “(1) MARK TO MARKET.—Except as provided in
 24 subsection (f), all property of a covered expatriate to

1 which this section applies shall be treated as sold on
2 the expatriation date for its fair market value.

3 “(2) RECOGNITION OF GAIN OR LOSS.—In the
4 case of any sale under paragraph (1)—

5 “(A) notwithstanding any other provision
6 of this title, any gain arising from such sale
7 shall be taken into account for the taxable year
8 of the sale unless such gain is excluded from
9 gross income under part III of subchapter B,
10 and

11 “(B) any loss arising from such sale shall
12 be taken into account for the taxable year of
13 the sale to the extent otherwise provided by this
14 title, except that section 1091 shall not apply
15 (and section 1092 shall apply) to any such loss.

16 “(3) EXCLUSION FOR CERTAIN GAIN.—The
17 amount which would (but for this paragraph) be in-
18 cludible in the gross income of any individual by rea-
19 son of this section shall be reduced (but not below
20 zero) by \$600,000. For purposes of this paragraph,
21 allocable expatriation gain taken into account under
22 subsection (f)(2) shall be treated in the same man-
23 ner as an amount required to be includible in gross
24 income.

1 “(4) ELECTION TO CONTINUE TO BE TAXED AS
2 UNITED STATES CITIZEN.—

3 “(A) IN GENERAL.—If an expatriate elects
4 the application of this paragraph—

5 “(i) this section (other than this para-
6 graph) shall not apply to the expatriate,
7 but

8 “(ii) the expatriate shall be subject to
9 tax under this title, with respect to prop-
10 erty to which this section would apply but
11 for such election, in the same manner as if
12 the individual were a United States citizen.

13 “(B) LIMITATION ON AMOUNT OF ESTATE,
14 GIFT, AND GENERATION-SKIPPING TRANSFER
15 TAXES.—The aggregate amount of taxes im-
16 posed under subtitle B with respect to any
17 transfer of property by reason of an election
18 under subparagraph (A) shall not exceed the
19 amount of income tax which would be due if the
20 property were sold for its fair market value im-
21 mediately before the time of the transfer or
22 death (taking into account the rules of para-
23 graph (2)).

1 “(C) REQUIREMENTS.—Subparagraph (A)
2 shall not apply to an individual unless the indi-
3 vidual—

4 “(i) provides security for payment of
5 tax in such form and manner, and in such
6 amount, as the Secretary may require,

7 “(ii) consents to the waiver of any
8 right of the individual under any treaty of
9 the United States which would preclude as-
10 sessment or collection of any tax which
11 may be imposed by reason of this para-
12 graph, and

13 “(iii) complies with such other re-
14 quirements as the Secretary may prescribe.

15 “(D) ELECTION.—An election under sub-
16 paragraph (A) shall apply to all property to
17 which this section would apply but for the elec-
18 tion and, once made, shall be irrevocable. Such
19 election shall also apply to property the basis of
20 which is determined in whole or in part by ref-
21 erence to the property with respect to which the
22 election was made.

23 “(b) ELECTION TO DEFER TAX.—

1 “(1) IN GENERAL.—If the taxpayer elects the
2 application of this subsection with respect to any
3 property—

4 “(A) no amount shall be required to be in-
5 cluded in gross income under subsection (a)(1)
6 with respect to the gain from such property for
7 the taxable year of the sale, but

8 “(B) the taxpayer’s tax for the taxable
9 year in which such property is disposed of shall
10 be increased by the deferred tax amount with
11 respect to the property.

12 Except to the extent provided in regulations, sub-
13 paragraph (B) shall apply to a disposition whether
14 or not gain or loss is recognized in whole or in part
15 on the disposition.

16 “(2) DEFERRED TAX AMOUNT.—

17 “(A) IN GENERAL.—For purposes of para-
18 graph (1), the term ‘deferred tax amount’
19 means, with respect to any property, an amount
20 equal to the sum of—

21 “(i) the difference between the
22 amount of tax paid for the taxable year de-
23 scribed in paragraph (1)(A) and the
24 amount which would have been paid for
25 such taxable year if the election under

1 paragraph (1) had not applied to such
2 property, plus

3 “(ii) an amount of interest on the
4 amount described in clause (i) determined
5 for the period—

6 “(I) beginning on the 91st day
7 after the expatriation date, and

8 “(II) ending on the due date for
9 the taxable year described in para-
10 graph (1)(B),

11 by using the rates and method applicable
12 under section 6621 for underpayments of
13 tax for such period.

14 For purposes of clause (ii), the due date is the
15 date prescribed by law (determined without re-
16 gard to extension) for filing the return of the
17 tax imposed by this chapter for the taxable
18 year.

19 “(B) ALLOCATION OF LOSSES.—For pur-
20 poses of subparagraph (A), any losses described
21 in subsection (a)(2)(B) shall be allocated rat-
22 ably among the gains described in subsection
23 (a)(2)(A).

24 “(3) SECURITY.—

1 “(A) IN GENERAL.—No election may be
2 made under paragraph (1) with respect to any
3 property unless adequate security is provided
4 with respect to such property.

5 “(B) ADEQUATE SECURITY.—For purposes
6 of subparagraph (A), security with respect to
7 any property shall be treated as adequate secu-
8 rity if—

9 “(i) it is a bond in an amount equal
10 to the deferred tax amount under para-
11 graph (2)(A) for the property, or

12 “(ii) the taxpayer otherwise estab-
13 lishes to the satisfaction of the Secretary
14 that the security is adequate.

15 “(4) WAIVER OF CERTAIN RIGHTS.—No elec-
16 tion may be made under paragraph (1) unless the
17 taxpayer consents to the waiver of any right under
18 any treaty of the United States which would pre-
19 clude assessment or collection of any tax imposed by
20 reason of this section.

21 “(5) DISPOSITIONS.—For purposes of this sub-
22 section, a taxpayer making an election under this
23 subsection with respect to any property shall be
24 treated as having disposed of such property—

1 “(A) immediately before death if such
2 property is held at such time, and

3 “(B) at any time the security provided
4 with respect to the property fails to meet the
5 requirements of paragraph (3) and the taxpayer
6 does not correct such failure within the time
7 specified by the Secretary.

8 “(6) ELECTIONS.—An election under paragraph
9 (1) shall only apply to property described in the elec-
10 tion and, once made, is irrevocable. An election may
11 be under paragraph (1) with respect to an interest
12 in a trust with respect to which gain is required to
13 be recognized under subsection (f)(1).

14 “(c) COVERED EXPATRIATE.—For purposes of this
15 section—

16 “(1) IN GENERAL.—The term ‘covered expatri-
17 ate’ means an expatriate—

18 “(A) whose average annual net income tax
19 (as defined in section 38(c)(1)) for the period
20 of 5 taxable years ending before the expatria-
21 tion date is greater than \$100,000, or

22 “(B) whose net worth as of such date is
23 \$500,000 or more.

24 If the expatriation date is after 1996, such
25 \$100,000 and \$500,000 amounts shall be increased

1 by an amount equal to such dollar amount multi-
2 plied by the cost-of-living adjustment determined
3 under section 1(f)(3) for such calendar year by sub-
4 stituting ‘1995’ for ‘1992’ in subparagraph (B)
5 thereof. Any increase under the preceding sentence
6 shall be rounded to the nearest multiple of \$1,000.

7 “(2) EXCEPTIONS.—An individual shall not be
8 treated as a covered expatriate if—

9 “(A) the individual—

10 “(i) became at birth a citizen of the
11 United States and a citizen of another
12 country and, as of the expatriation date,
13 continues to be a citizen of, and is taxed
14 as a resident of, such other country, and

15 “(ii) has been a resident of the United
16 States (as defined in section
17 7701(b)(1)(A)(ii)) for not more than 8 tax-
18 able years during the 15-taxable year pe-
19 riod ending with the taxable year during
20 which the expatriation date occurs, or

21 “(B)(i) the individual’s relinquishment of
22 United States citizenship occurs before such in-
23 dividual attains age 18½, and

24 “(ii) the individual has been a resident of
25 the United States (as so defined) for not more

1 than 5 taxable years before the date of relin-
2 quishment.

3 “(d) PROPERTY TO WHICH SECTION APPLIES.—For
4 purposes of this section—

5 “(1) IN GENERAL.—Except as otherwise pro-
6 vided by the Secretary, this section shall apply to—

7 “(A) any interest in property held by a
8 covered expatriate on the expatriation date the
9 gain from which would be includible in the
10 gross income of the expatriate if such interest
11 had been sold for its fair market value on such
12 date in a transaction in which gain is recog-
13 nized in whole or in part, and

14 “(B) any other interest in a trust to which
15 subsection (f) applies.

16 “(2) EXCEPTIONS.—This section shall not
17 apply to the following property:

18 “(A) UNITED STATES REAL PROPERTY IN-
19 TERESTS.—Any United States real property in-
20 terest (as defined in section 897(c)(1)), other
21 than stock of a United States real property
22 holding corporation which does not, on the ex-
23 patriation date, meet the requirements of sec-
24 tion 897(c)(2).

1 “(B) INTEREST IN CERTAIN RETIREMENT
2 PLANS.—

3 “(i) IN GENERAL.—Any interest in a
4 qualified retirement plan (as defined in
5 section 4974(c)), other than any interest
6 attributable to contributions which are in
7 excess of any limitation or which violate
8 any condition for tax-favored treatment.

9 “(ii) FOREIGN PENSION PLANS.—

10 “(I) IN GENERAL.—Under regu-
11 lations prescribed by the Secretary,
12 interests in foreign pension plans or
13 similar retirement arrangements or
14 programs.

15 “(II) LIMITATION.—The value of
16 property which is treated as not sold
17 by reason of this subparagraph shall
18 not exceed \$500,000.

19 “(e) DEFINITIONS.—For purposes of this section—

20 “(1) EXPATRIATE.—The term ‘expatriate’
21 means—

22 “(A) any United States citizen who relin-
23 quishes his citizenship, or

24 “(B) any long-term resident of the United
25 States who—

1 “(i) ceases to be a lawful permanent
2 resident of the United States (within the
3 meaning of section 7701(b)(6)), or

4 “(ii) commences to be treated as a
5 resident of a foreign country under the
6 provisions of a tax treaty between the
7 United States and the foreign country and
8 who does not waive the benefits of such
9 treaty applicable to residents of the foreign
10 country.

11 “(2) EXPATRIATION DATE.—The term ‘expa-
12 triation date’ means—

13 “(A) the date an individual relinquishes
14 United States citizenship, or

15 “(B) in the case of a long-term resident of
16 the United States, the date of the event de-
17 scribed in clause (i) or (ii) of paragraph (1)(B).

18 “(3) RELINQUISHMENT OF CITIZENSHIP.—A
19 citizen shall be treated as relinquishing his United
20 States citizenship on the earliest of—

21 “(A) the date the individual renounces his
22 United States nationality before a diplomatic or
23 consular officer of the United States pursuant
24 to paragraph (5) of section 349(a) of the Immi-

1 gration and Nationality Act (8 U.S.C.
2 1481(a)(5)),

3 “(B) the date the individual furnishes to
4 the United States Department of State a signed
5 statement of voluntary relinquishment of Unit-
6 ed States nationality confirming the perform-
7 ance of an act of expatriation specified in para-
8 graph (1), (2), (3), or (4) of section 349(a) of
9 the Immigration and Nationality Act (8 U.S.C.
10 1481(a)(1)–(4)),

11 “(C) the date the United States Depart-
12 ment of State issues to the individual a certifi-
13 cate of loss of nationality, or

14 “(D) the date a court of the United States
15 cancels a naturalized citizen’s certificate of nat-
16 uralization.

17 Subparagraph (A) or (B) shall not apply to any indi-
18 vidual unless the renunciation or voluntary relin-
19 quishment is subsequently approved by the issuance
20 to the individual of a certificate of loss of nationality
21 by the United States Department of State.

22 “(4) LONG-TERM RESIDENT.—

23 “(A) IN GENERAL.—The term ‘long-term
24 resident’ means any individual (other than a
25 citizen of the United States) who is a lawful

1 permanent resident of the United States in at
2 least 8 taxable years during the period of 15
3 taxable years ending with the taxable year dur-
4 ing which the expatriation date occurs. For pur-
5 poses of the preceding sentence, an individual
6 shall not be treated as a lawful permanent resi-
7 dent for any taxable year if such individual is
8 treated as a resident of a foreign country for
9 the taxable year under the provisions of a tax
10 treaty between the United States and the for-
11 eign country and does not waive the benefits of
12 such treaty applicable to residents of the for-
13 eign country.

14 “(B) SPECIAL RULE.—For purposes of
15 subparagraph (A), there shall not be taken into
16 account—

17 “(i) any taxable year during which
18 any prior sale is treated under subsection
19 (a)(1) as occurring, or

20 “(ii) any taxable year prior to the tax-
21 able year referred to in clause (i).

22 “(f) SPECIAL RULES APPLICABLE TO BENE-
23 FICIARIES’ INTERESTS IN TRUST.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), if an individual is determined under para-
3 graph (3) to hold an interest in a trust—

4 “(A) the individual shall not be treated as
5 having sold such interest,

6 “(B) such interest shall be treated as a
7 separate share in the trust, and

8 “(C)(i) such separate share shall be treat-
9 ed as a separate trust consisting of the assets
10 allocable to such share,

11 “(ii) the separate trust shall be treated as
12 having sold its assets immediately before the ex-
13 patriation date for their fair market value and
14 as having distributed all of its assets to the in-
15 dividual as of such time, and

16 “(iii) the individual shall be treated as hav-
17 ing recontributed the assets to the separate
18 trust.

19 Subsection (a)(2) shall apply to any income, gain, or
20 loss of the individual arising from a distribution de-
21 scribed in subparagraph (C)(ii).

22 “(2) SPECIAL RULES FOR INTERESTS IN QUALI-
23 FIED TRUSTS.—

1 “(A) IN GENERAL.—If the trust interest
2 described in paragraph (1) is an interest in a
3 qualified trust—

4 “(i) paragraph (1) and subsection (a)
5 shall not apply, and

6 “(ii) in addition to any other tax im-
7 posed by this title, there is hereby imposed
8 on each distribution with respect to such
9 interest a tax in the amount determined
10 under subparagraph (B).

11 “(B) AMOUNT OF TAX.—The amount of
12 tax under subparagraph (A)(ii) shall be equal to
13 the lesser of—

14 “(i) the highest rate of tax imposed by
15 section 1(e) for the taxable year in which
16 the expatriation date occurs, multiplied by
17 the amount of the distribution, or

18 “(ii) the balance in the deferred tax
19 account immediately before the distribution
20 determined without regard to any increases
21 under subparagraph (C)(ii) after the 30th
22 day preceding the distribution.

23 “(C) DEFERRED TAX ACCOUNT.—For pur-
24 poses of subparagraph (B)(ii)—

1 “(i) OPENING BALANCE.—The open-
2 ing balance in a deferred tax account with
3 respect to any trust interest is an amount
4 equal to the tax which would have been im-
5 posed on the allocable expatriation gain
6 with respect to the trust interest if such
7 gain had been included in gross income
8 under subsection (a).

9 “(ii) INCREASE FOR INTEREST.—The
10 balance in the deferred tax account shall
11 be increased by the amount of interest de-
12 termined (on the balance in the account at
13 the time the interest accrues), for periods
14 after the 90th day after the expatriation
15 date, by using the rates and method appli-
16 cable under section 6621 for underpay-
17 ments of tax for such periods.

18 “(iii) DECREASE FOR TAXES PRE-
19 VIOUSLY PAID.—The balance in the tax de-
20 ferred account shall be reduced—

21 “(I) by the amount of taxes im-
22 posed by subparagraph (A) on any
23 distribution to the person holding the
24 trust interest, and

1 “(II) in the case of a person
2 holding a nonvested interest, to the
3 extent provided in regulations, by the
4 amount of taxes imposed by subpara-
5 graph (A) on distributions from the
6 trust with respect to nonvested inter-
7 ests not held by such person.

8 “(D) ALLOCABLE EXPATRIATION GAIN.—
9 For purposes of this paragraph, the allocable
10 expatriation gain with respect to any bene-
11 ficiary’s interest in a trust is the amount of
12 gain which would be allocable to such bene-
13 ficiary’s vested and nonvested interests in the
14 trust if the beneficiary held directly all assets
15 allocable to such interests.

16 “(E) TAX DEDUCTED AND WITHHELD.—
17 “(i) IN GENERAL.—The tax imposed
18 by subparagraph (A)(ii) shall be deducted
19 and withheld by the trustees from the dis-
20 tribution to which it relates.

21 “(ii) EXCEPTION WHERE FAILURE TO
22 WAIVE TREATY RIGHTS.—If an amount
23 may not be deducted and withheld under
24 clause (i) by reason of the distributee fail-

1 ing to waive any treaty right with respect
2 to such distribution—

3 “(I) the tax imposed by subpara-
4 graph (A)(ii) shall be imposed on the
5 trust and each trustee shall be person-
6 ally liable for the amount of such tax,
7 and

8 “(II) any other beneficiary of the
9 trust shall be entitled to recover from
10 the distributee the amount of such tax
11 imposed on the other beneficiary.

12 “(F) DISPOSITION.—If a trust ceases to be
13 a qualified trust at any time, a covered expatri-
14 ate disposes of an interest in a qualified trust,
15 or a covered expatriate holding an interest in a
16 qualified trust dies, then, in lieu of the tax im-
17 posed by subparagraph (A)(ii), there is hereby
18 imposed a tax equal to the lesser of—

19 “(i) the tax determined under para-
20 graph (1) as if the expatriation date were
21 the date of such cessation, disposition, or
22 death, whichever is applicable, or

23 “(ii) the balance in the tax deferred
24 account immediately before such date.

1 Such tax shall be imposed on the trust and
2 each trustee shall be personally liable for the
3 amount of such tax and any other beneficiary
4 of the trust shall be entitled to recover from the
5 covered expatriate or the estate the amount of
6 such tax imposed on the other beneficiary.

7 “(G) DEFINITIONS AND SPECIAL RULE.—

8 For purposes of this paragraph—

9 “(i) QUALIFIED TRUST.—The term
10 ‘qualified trust’ means a trust—

11 “(I) which is organized under,
12 and governed by, the laws of the Unit-
13 ed States or a State, and

14 “(II) with respect to which the
15 trust instrument requires that at least
16 1 trustee of the trust be an individual
17 citizen of the United States or a do-
18 mestic corporation.

19 “(ii) VESTED INTEREST.—The term
20 ‘vested interest’ means any interest which,
21 as of the expatriation date, is vested in the
22 beneficiary.

23 “(iii) NONVESTED INTEREST.—The
24 term ‘nonvested interest’ means, with re-
25 spect to any beneficiary, any interest in a

1 trust which is not a vested interest. Such
2 interest shall be determined by assuming
3 the maximum exercise of discretion in
4 favor of the beneficiary and the occurrence
5 of all contingencies in favor of the bene-
6 ficiary.

7 “(iv) ADJUSTMENTS.—The Secretary
8 may provide for such adjustments to the
9 bases of assets in a trust or a deferred tax
10 account, and the timing of such adjust-
11 ments, in order to ensure that gain is
12 taxed only once.

13 “(3) DETERMINATION OF BENEFICIARIES’ IN-
14 TEREST IN TRUST.—

15 “(A) DETERMINATIONS UNDER PARA-
16 GRAPH (1).—For purposes of paragraph (1), a
17 beneficiary’s interest in a trust shall be based
18 upon all relevant facts and circumstances, in-
19 cluding the terms of the trust instrument and
20 any letter of wishes or similar document, histor-
21 ical patterns of trust distributions, and the ex-
22 istence of and functions performed by a trust
23 protector or any similar advisor.

24 “(B) OTHER DETERMINATIONS.—For pur-
25 poses of this section—

1 “(i) CONSTRUCTIVE OWNERSHIP.—If
2 a beneficiary of a trust is a corporation,
3 partnership, trust, or estate, the sharehold-
4 ers, partners, or beneficiaries shall be
5 deemed to be the trust beneficiaries for
6 purposes of this section.

7 “(ii) TAXPAYER RETURN POSITION.—
8 A taxpayer shall clearly indicate on its in-
9 come tax return—

10 “(I) the methodology used to de-
11 termine that taxpayer’s trust interest
12 under this section, and

13 “(II) if the taxpayer knows (or
14 has reason to know) that any other
15 beneficiary of such trust is using a
16 different methodology to determine
17 such beneficiary’s trust interest under
18 this section.

19 “(g) TERMINATION OF DEFERRALS, ETC.—On the
20 date any property held by an individual is treated as sold
21 under subsection (a), notwithstanding any other provision
22 of this title—

23 “(1) any period during which recognition of in-
24 come or gain is deferred shall terminate, and

1 “(2) any extension of time for payment of tax
2 shall cease to apply and the unpaid portion of such
3 tax shall be due and payable at the time and in the
4 manner prescribed by the Secretary.

5 “(h) IMPOSITION OF TENTATIVE TAX.—

6 “(1) IN GENERAL.—If an individual is required
7 to include any amount in gross income under sub-
8 section (a) for any taxable year, there is hereby im-
9 posed, immediately before the expatriation date, a
10 tax in an amount equal to the amount of tax which
11 would be imposed if the taxable year were a short
12 taxable year ending on the expatriation date.

13 “(2) DUE DATE.—The due date for any tax im-
14 posed by paragraph (1) shall be the 90th day after
15 the expatriation date.

16 “(3) TREATMENT OF TAX.—Any tax paid under
17 paragraph (1) shall be treated as a payment of the
18 tax imposed by this chapter for the taxable year to
19 which subsection (a) applies.

20 “(4) DEFERRAL OF TAX.—The provisions of
21 subsection (b) shall apply to the tax imposed by this
22 subsection to the extent attributable to gain includ-
23 ible in gross income by reason of this section.

1 “(i) COORDINATION WITH ESTATE AND GIFT
2 TAXES.—If subsection (a) applies to property held by an
3 individual for any taxable year and—

4 “(1) such property is includible in the gross es-
5 tate of such individual solely by reason of section
6 2107, or

7 “(2) section 2501 applies to a transfer of such
8 property by such individual solely by reason of sec-
9 tion 2501(a)(3),

10 then there shall be allowed as a credit against the addi-
11 tional tax imposed by section 2101 or 2501, whichever is
12 applicable, solely by reason of section 2107 or 2501(a)(3)
13 an amount equal to the increase in the tax imposed by
14 this chapter for such taxable year by reason of this sec-
15 tion.

16 “(j) REGULATIONS.—The Secretary shall prescribe
17 such regulations as may be necessary or appropriate to
18 carry out the purposes of this section, including regula-
19 tions—

20 “(1) to prevent double taxation by ensuring
21 that—

22 “(A) appropriate adjustments are made to
23 basis to reflect gain recognized by reason of
24 subsection (a) and the exclusion provided by
25 subsection (a)(3), and

1 “(B) any gain by reason of a deemed sale
 2 under subsection (a) of an interest in a corpora-
 3 tion, partnership, trust, or estate is reduced to
 4 reflect that portion of such gain which is attrib-
 5 utable to an interest in a trust which a share-
 6 holder, partner, or beneficiary is treated as
 7 holding directly under subsection (f)(3)(B)(i),
 8 and

9 “(2) which provide for the proper allocation of
 10 the exclusion under subsection (a)(3) to property to
 11 which this section applies.

12 “(k) CROSS REFERENCE.—

**“For income tax treatment of individuals who ter-
 minate United States citizenship, see section
 7701(a)(47).”.**

13 (b) INCLUSION IN INCOME OF GIFTS AND INHERIT-
 14 ANCES FROM COVERED EXPATRIATES.—Section 102 (re-
 15 lating to gifts, etc. not included in gross income) is amend-
 16 ed by adding at the end the following new subsection:

17 “(d) GIFTS AND INHERITANCES FROM COVERED EX-
 18 PATRIATES.—Subsection (a) shall not exclude from gross
 19 income the value of any property acquired by gift, bequest,
 20 devise, or inheritance from a covered expatriate after the
 21 expatriation date. For purposes of this subsection, any
 22 term used in this subsection which is also used in section
 23 877A shall have the same meaning as when used in section
 24 877A.”.

1 (c) DEFINITION OF TERMINATION OF UNITED
2 STATES CITIZENSHIP.—Section 7701(a) is amended by
3 adding at the end the following new paragraph:

4 “(47) TERMINATION OF UNITED STATES CITI-
5 ZENSHIP.—An individual shall not cease to be treat-
6 ed as a United States citizen before the date on
7 which the individual’s citizenship is treated as relin-
8 quished under section 877A(e)(3).”.

9 (d) CONFORMING AMENDMENTS.—

10 (1) Section 877 is amended by adding at the
11 end the following new subsection:

12 “(f) APPLICATION.—This section shall not apply to
13 any individual who relinquishes (within the meaning of
14 section 877A(e)(3)) United States citizenship on or after
15 February 6, 1995.”.

16 (2) Section 2107(c) is amended by adding at
17 the end the following new paragraph:

18 “(3) CROSS REFERENCE.—For credit against
19 the tax imposed by subsection (a) for expatriation
20 tax, see section 877A(i).”.

21 (3) Section 2501(a)(3) is amended by adding at
22 the end the following new flush sentence:

23 “For credit against the tax imposed under this sec-
24 tion by reason of this paragraph, see section
25 877A(i).”.

1 (4) Paragraph (10) of section 7701(b) is
2 amended by adding at the end the following new
3 sentence: “This paragraph shall not apply to any
4 long-term resident of the United States who is an
5 expatriate (as defined in section 877A(e)(1)).”.

6 (e) CLERICAL AMENDMENT.—The table of sections
7 for subpart A of part II of subchapter N of chapter 1
8 is amended by inserting after the item relating to section
9 877 the following new item:

 “Sec. 877A. Tax responsibilities of expatriation.”.

10 (f) EFFECTIVE DATE.—

11 (1) IN GENERAL.—Except as provided in this
12 subsection, the amendments made by this section
13 shall apply to expatriates (within the meaning of
14 section 877A(e) of the Internal Revenue Code of
15 1986, as added by this section) whose expatriation
16 date (as so defined) occurs on or after February 6,
17 1995.

18 (2) GIFTS AND BEQUESTS.—Section 102(d) of
19 the Internal Revenue Code of 1986 (as added by
20 subsection (b)) shall apply to amounts received from
21 expatriates (as so defined) whose expatriation date
22 (as so defined) occurs on and after February 6,
23 1995.

24 (3) SPECIAL RULES RELATING TO CERTAIN
25 ACTS OCCURRING BEFORE FEBRUARY 6, 1995.—In

1 the case of an individual who took an act of expa-
2 triation specified in paragraph (1), (2), (3), or (4)
3 of section 349(a) of the Immigration and Nationality
4 Act (8 U.S.C. 1481(a) (1)–(4)) before February 6,
5 1995, but whose expatriation date (as so defined)
6 occurs after February 6, 1995—

7 (A) the amendment made by subsection (c)
8 shall not apply,

9 (B) the amendment made by subsection
10 (d)(1) shall not apply for any period prior to
11 the expatriation date, and

12 (C) the other amendments made by this
13 section shall apply as of the expatriation date.

14 (4) DUE DATE FOR TENTATIVE TAX.—The due
15 date under section 877A(h)(2) of such Code shall in
16 no event occur before the 90th day after the date of
17 the enactment of this Act.

18 **SEC. 472. INFORMATION ON INDIVIDUALS EXPATRIATING.**

19 (a) IN GENERAL.—Subpart A of part III of sub-
20 chapter A of chapter 61 is amended by inserting after sec-
21 tion 6039E the following new section:

22 **“SEC. 6039F. INFORMATION ON INDIVIDUALS EXPATRIAT-**
23 **ING.**

24 **“(a) REQUIREMENT.—**

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of law, any expatriate (within the meaning
3 of section 877A(e)(1)) shall provide a statement
4 which includes the information described in sub-
5 section (b).

6 “(2) TIMING.—

7 “(A) CITIZENS.—In the case of an expatri-
8 ate described in section 877(e)(1)(A), such
9 statement shall be—

10 “(i) provided not later than the expa-
11 triation date (within the meaning of sec-
12 tion 877A(e)(2)), and

13 “(ii) provided to the person or court
14 referred to in section 877A(e)(3).

15 “(B) NONCITIZENS.—In the case of an ex-
16 patriate described in section 877A(e)(1)(B),
17 such statement shall be provided to the Sec-
18 retary with the return of tax imposed by chap-
19 ter 1 for the taxable year during which the
20 event described in such section occurs.

21 “(b) INFORMATION TO BE PROVIDED.—Information
22 required under subsection (a) shall include—

23 “(1) the taxpayer’s TIN,

24 “(2) the mailing address of such individual’s
25 principal foreign residence,

1 “(3) the foreign country in which such individ-
2 ual is residing,

3 “(4) the foreign country of which such individ-
4 ual is a citizen,

5 “(5) in the case of an individual having a net
6 worth of at least the dollar amount applicable under
7 section 877A(c)(1)(B), information detailing the as-
8 sets and liabilities of such individual, and

9 “(6) such other information as the Secretary
10 may prescribe.

11 “(c) PENALTY.—Any individual failing to provide a
12 statement required under subsection (a) shall be subject
13 to a penalty for each year during any portion of which
14 such failure continues in an amount equal to the greater
15 of—

16 “(1) 5 percent of the additional tax required to
17 be paid under section 877A for such year, or

18 “(2) \$1,000,
19 unless it is shown that such failure is due to reasonable
20 cause and not to willful neglect.

21 “(d) INFORMATION TO BE PROVIDED TO SEC-
22 RETARY.—Notwithstanding any other provision of law—

23 “(1) any Federal agency or court which collects
24 (or is required to collect) the statement under sub-
25 section (a) shall provide to the Secretary—

1 “(A) a copy of any such statement, and

2 “(B) the name (and any other identifying
3 information) of any individual refusing to com-
4 ply with the provisions of subsection (a),

5 “(2) the Secretary of State shall provide to the
6 Secretary a copy of each certificate as to the loss of
7 American nationality under section 358 of the Immi-
8 gration and Nationality Act which is approved by
9 the Secretary of State, and

10 “(3) the Federal agency primarily responsible
11 for administering the immigration laws shall provide
12 to the Secretary the name of each lawful permanent
13 resident of the United States (within the meaning of
14 section 7701(b)(6)) whose status as such has been
15 revoked or has been administratively or judicially de-
16 termined to have been abandoned.

17 Notwithstanding any other provision of law, not later than
18 30 days after the close of each calendar quarter, the Sec-
19 retary shall publish in the Federal Register the name of
20 each individual relinquishing United States citizenship
21 (within the meaning of section 877A(e)(3)) with respect
22 to whom the Secretary receives information under the pre-
23 ceding sentence during such quarter.

24 “(e) EXEMPTION.—The Secretary may by regulations
25 exempt any class of individuals from the requirements of

1 this section if the Secretary determines that applying this
2 section to such individuals is not necessary to carry out
3 the purposes of this section.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 for such subpart A is amended by inserting after the item
6 relating to section 6039E the following new item:

“Sec. 6039F. Information on individuals expatriating.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to individuals to whom section
9 877A of the Internal Revenue Code of 1986 applies and
10 whose expatriation date (as defined in section 877A(e)(2))
11 occurs on or after February 6, 1995, except that no state-
12 ment shall be required by such amendments before the
13 90th day after the date of the enactment of this Act.

14 **SEC. 473. REPORT ON TAX COMPLIANCE BY UNITED STATES**
15 **CITIZENS AND RESIDENTS LIVING ABROAD.**

16 Not later than 90 days after the date of the enact-
17 ment of this Act, the Secretary of the Treasury shall pre-
18 pare and submit to the Committee on Ways and Means
19 of the House of Representatives and the Committee on
20 Finance of the Senate a report—

21 (1) describing the compliance with subtitle A of
22 the Internal Revenue Code of 1986 by citizens and
23 lawful permanent residents of the United States
24 (within the meaning of section 7701(b)(6) of such
25 Code) residing outside the United States, and

1 (2) recommending measures to improve such
 2 compliance (including improved coordination be-
 3 tween executive branch agencies).

4 **CHAPTER 2—COMPANY-OWNED**
 5 **INSURANCE**

6 **SEC. 495. DENIAL OF DEDUCTION FOR INTEREST ON LOANS**
 7 **WITH RESPECT TO COMPANY-OWNED INSUR-**
 8 **ANCE.**

9 (a) IN GENERAL.—Paragraph (4) of section 264(a)
 10 is amended—

11 (1) by inserting “, or any endowment or annu-
 12 ity contracts owned by the taxpayer covering any in-
 13 dividual,” after “the life of any individual”, and

14 (2) by striking all that follows “carried on by
 15 the taxpayer” and inserting a period.

16 (b) EXCEPTION FOR CONTRACTS RELATING TO KEY
 17 PERSONS; PERMISSIBLE INTEREST RATES.—Section 264
 18 is amended—

19 (1) by striking “Any” in subsection (a)(4) and
 20 inserting “Except as provided in subsection (d),
 21 any”, and

22 (2) by adding at the end the following new sub-
 23 section:

24 “(d) SPECIAL RULES FOR APPLICATION OF SUB-
 25 SECTION (a)(4).—

1 “(1) EXCEPTION FOR KEY PERSONS.—Sub-
2 section (a)(4) shall not apply to any interest paid or
3 accrued on any indebtedness with respect to policies
4 or contracts covering an individual who is a key per-
5 son to the extent that the aggregate amount of such
6 indebtedness with respect to policies and contracts
7 covering such individual does not exceed \$50,000.

8 “(2) INTEREST RATE CAP ON KEY PERSONS
9 AND PRE-1986 CONTRACTS.—

10 “(A) IN GENERAL.—No deduction shall be
11 allowed by reason of paragraph (1) or the last
12 sentence of subsection (a) with respect to inter-
13 est paid or accrued for any month to the extent
14 the amount of such interest exceeds the amount
15 which would have been determined if the appli-
16 cable rate of interest were used for such month.

17 “(B) APPLICABLE RATE OF INTEREST.—
18 For purposes of subparagraph (A)—

19 “(i) IN GENERAL.—The applicable
20 rate of interest for any month is the rate
21 of interest described as Moody’s Corporate
22 Bond Yield Average-Monthly Average
23 Corporates as published by Moody’s Inves-
24 tors Service, Inc., or any successor thereto,
25 for such month.

1 “(ii) PRE-1986 CONTRACT.—In the
2 case of indebtedness on a contract to which
3 the last sentence of subsection (a) ap-
4 plies—

5 “(I) which is a contract providing
6 a fixed rate of interest, the applicable
7 rate of interest for any month shall be
8 the Moody’s rate described in clause
9 (i) for the month in which the con-
10 tract was purchased, or

11 “(II) which is a contract provid-
12 ing a variable rate of interest, the ap-
13 plicable rate of interest for any month
14 in an applicable period shall be such
15 Moody’s rate for the last month pre-
16 ceding such period.

17 For purposes of subclause (II), the tax-
18 payer shall elect an applicable period for
19 such contract on its return of tax imposed
20 by this chapter for its first taxable year
21 ending on or after October 13, 1995. Such
22 applicable period shall be for any number
23 of months (not greater than 12) specified
24 in the election and may not be changed by

1 the taxpayer without the consent of the
2 Secretary.

3 “(3) KEY PERSON.—For purposes of paragraph
4 (1), the term ‘key person’ means an officer or 20-
5 percent owner, except that the number of individuals
6 who may be treated as key persons with respect to
7 any taxpayer shall not exceed the greater of—

8 “(A) 5 individuals, or

9 “(B) the lesser of 5 percent of the total of-
10 ficers and employees of the taxpayer or 10 indi-
11 viduals.

12 “(4) 20-PERCENT OWNER.—For purposes of
13 this subsection, the term ‘20-percent owner’
14 means—

15 “(A) if the taxpayer is a corporation, any
16 person who owns directly 20 percent or more of
17 the outstanding stock of the corporation or
18 stock possessing 20 percent or more of the total
19 combined voting power of all stock of the cor-
20 poration, or

21 “(B) if the taxpayer is not a corporation,
22 any person who owns 20 percent or more of the
23 capital or profits interest in the employer.

24 “(5) AGGREGATION RULES.—

1 “(A) IN GENERAL.—For purposes of para-
2 graph (4)(A) and applying the \$50,000 limita-
3 tion in paragraph (1)—

4 “(i) all members of a controlled group
5 shall be treated as 1 taxpayer, and

6 “(ii) such limitation shall be allocated
7 among the members of such group in such
8 manner as the Secretary may prescribe.

9 “(B) CONTROLLED GROUP.—For purposes
10 of this paragraph, all persons treated as a sin-
11 gle employer under subsection (a) or (b) of sec-
12 tion 52 or subsection (m) or (o) of section 414
13 shall be treated as members of a controlled
14 group.”.

15 (c) EFFECTIVE DATES.—

16 (1) IN GENERAL.—The amendments made by
17 this section shall apply to interest paid or accrued
18 after December 31, 1995.

19 (2) TRANSITION RULE FOR EXISTING INDEBT-
20 EDNESS.—

21 (A) IN GENERAL.—In the case of—

22 (i) indebtedness incurred before Janu-
23 ary 1, 1996, or

1 (ii) indebtedness incurred before Jan-
2 uary 1, 1997 with respect to any contract
3 or policy entered into in 1994 or 1995,
4 the amendments made by this section shall not
5 apply to qualified interest paid or accrued on
6 such indebtedness after October 13, 1995, and
7 before January 1, 1999.

8 (B) QUALIFIED INTEREST.—For purposes
9 of subparagraph (A), the qualified interest with
10 respect to any indebtedness for any month is
11 the amount of interest which would be paid or
12 accrued for such month on such indebtedness
13 if—

14 (i) in the case of any interest paid or
15 accrued after December 31, 1995, indebt-
16 edness with respect to no more than
17 20,000 insured individuals were taken into
18 account, and

19 (ii) the lesser of the following rates of
20 interest were used for such month:

21 (I) The rate of interest specified
22 under the terms of the indebtedness
23 as in effect on October 13, 1995 (and
24 without regard to modification of such
25 terms after such date).

1 (II) The applicable percentage
2 rate of interest described as Moody's
3 Corporate Bond Yield Average-Month-
4 ly Average Corporates as published by
5 Moody's Investors Service, Inc., or
6 any successor thereto, for such month.

7 For purposes of clause (i), all persons treated
8 as a single employer under subsection (a) or (b)
9 of section 52 of the Internal Revenue Code of
10 1986 or subsection (m) or (o) of section 414 of
11 such Code shall be treated as one person.

12 (C) APPLICABLE PERCENTAGE.—For pur-
13 poses of subparagraph (B), the applicable per-
14 centage is as follows:

For calendar year:	The percentage is:
1995	100 percent
1996	90 percent
1997	80 percent
1998	70 percent.

15 (3) SPECIAL RULE FOR GRANDFATHERED CON-
16 TRACTS.—This section shall not apply to any con-
17 tract purchased on or before June 20, 1986, except
18 that section 264(d)(2) of the Internal Revenue Code
19 of 1986 shall apply to interest paid or accrued after
20 October 13, 1995.

21 (d) SPREAD OF INCOME INCLUSION ON SURRENDER,
22 ETC. OF CONTRACTS.—

1 (1) IN GENERAL.—If any amount is received
2 under any life insurance policy or endowment or an-
3 nuity contract described in paragraph (4) of section
4 264(a) of the Internal Revenue Code of 1986—

5 (A) on the complete surrender, redemption,
6 or maturity of such policy or contract during
7 calendar year 1996, 1997, or 1998, or

8 (B) in full discharge during any such cal-
9 endar year of the obligation under the policy or
10 contract which is in the nature of a refund of
11 the consideration paid for the policy or con-
12 tract,

13 then (in lieu of any other inclusion in gross income)
14 such amount shall be includible in gross income rat-
15 ably over the 4-taxable year period beginning with
16 the taxable year such amount would (but for this
17 paragraph) be includible. The preceding sentence
18 shall only apply to the extent the amount is includ-
19 ible in gross income for the taxable year in which
20 the event described in subparagraph (A) or (B) oc-
21 curs.

22 (2) SPECIAL RULES FOR APPLYING SECTION
23 264.—A contract shall not be treated as—

1 (A) failing to meet the requirement of sec-
2 tion 264(c)(1) of the Internal Revenue Code of
3 1986, or

4 (B) a single premium contract under sec-
5 tion 264(b)(1) of such Code,
6 solely by reason of an occurrence described in sub-
7 paragraph (A) or (B) of paragraph (1) of this sub-
8 section or solely by reason of no additional pre-
9 miums being received under the contract by reason
10 of a lapse occurring after October 13, 1995.

11 (3) SPECIAL RULE FOR DEFERRED ACQUI-
12 SITION COSTS.—In the case of the occurrence of any
13 event described in subparagraph (A) or (B) of para-
14 graph (1) of this subsection with respect to any pol-
15 icy or contract—

16 (A) section 848 of the Internal Revenue
17 Code of 1986 shall not apply to the
18 unamortized balance (if any) of the specified
19 policy acquisition expenses attributable to such
20 policy or contract immediately before the insur-
21 ance company's taxable year in which such
22 event occurs, and

23 (B) there shall be allowed as a deduction
24 to such company for such taxable year under

1 chapter 1 of such Code an amount equal to
2 such unamortized balance.

3 **TITLE V—HEALTH CARE FRAUD**
4 **AND ABUSE PREVENTION**

5 **SEC. 500. AMENDMENTS.**

6 Except as otherwise specifically provided, whenever in
7 this title an amendment is expressed in terms of an
8 amendment to or repeal of a section or other provision,
9 the reference shall be considered to be made to that sec-
10 tion or other provision of the Social Security Act.

11 **Subtitle A—Fraud and Abuse**
12 **Control Program**

13 **SEC. 501. FRAUD AND ABUSE CONTROL PROGRAM.**

14 (a) ESTABLISHMENT OF PROGRAM.—Title XI (42
15 U.S.C. 1301 et seq.) is amended by inserting after section
16 1128B the following new section:

17 “FRAUD AND ABUSE CONTROL PROGRAM

18 “SEC. 1128C. (a) ESTABLISHMENT OF PROGRAM.—

19 “(1) IN GENERAL.—Not later than January 1,
20 1997, the Secretary, acting through the Office of the
21 Inspector General of the Department of Health and
22 Human Services, and the Attorney General shall es-
23 tablish a program—

24 “(A) to coordinate Federal, State, and
25 local law enforcement programs to control fraud
26 and abuse with respect to health plans,

1 “(B) to conduct investigations, audits,
2 evaluations, and inspections relating to the de-
3 livery of and payment for health care in the
4 United States,

5 “(C) to facilitate the enforcement of the
6 provisions of sections 1128, 1128A, and 1128B
7 and other statutes applicable to health care
8 fraud and abuse,

9 “(D) to provide for the modification and
10 establishment of safe harbors and to issue in-
11 terpretative rulings and special fraud alerts
12 pursuant to section 1128D, and

13 “(E) to provide for the reporting and dis-
14 closure of certain final adverse actions against
15 health care providers, suppliers, or practitioners
16 pursuant to the data collection system estab-
17 lished under section 1128E.

18 “(2) COORDINATION WITH HEALTH PLANS.—In
19 carrying out the program established under para-
20 graph (1), the Secretary and the Attorney General
21 shall consult with, and arrange for the sharing of
22 data with representatives of health plans.

23 “(3) GUIDELINES.—

24 “(A) IN GENERAL.—The Secretary and the
25 Attorney General shall issue guidelines to carry

1 out the program under paragraph (1). The pro-
2 visions of sections 553, 556, and 557 of title 5,
3 United States Code, shall not apply in the issu-
4 ance of such guidelines.

5 “(B) INFORMATION GUIDELINES.—

6 “(i) IN GENERAL.—Such guidelines
7 shall include guidelines relating to the fur-
8 nishing of information by health plans,
9 providers, and others to enable the Sec-
10 retary and the Attorney General to carry
11 out the program (including coordination
12 with health plans under paragraph (2)).

13 “(ii) CONFIDENTIALITY.—Such guide-
14 lines shall include procedures to assure
15 that such information is provided and uti-
16 lized in a manner that appropriately pro-
17 tects the confidentiality of the information
18 and the privacy of individuals receiving
19 health care services and items.

20 “(iii) QUALIFIED IMMUNITY FOR PRO-
21 VIDING INFORMATION.—The provisions of
22 section 1157(a) (relating to limitation on
23 liability) shall apply to a person providing
24 information to the Secretary or the Attor-

1 ney General in conjunction with their per-
2 formance of duties under this section.

3 “(4) ENSURING ACCESS TO DOCUMENTATION.—

4 The Inspector General of the Department of Health
5 and Human Services is authorized to exercise such
6 authority described in paragraphs (3) through (9) of
7 section 6 of the Inspector General Act of 1978 (5
8 U.S.C. App.) as necessary with respect to the activi-
9 ties under the fraud and abuse control program es-
10 tablished under this subsection.

11 “(5) AUTHORITY OF INSPECTOR GENERAL.—

12 Nothing in this Act shall be construed to diminish
13 the authority of any Inspector General, including
14 such authority as provided in the Inspector General
15 Act of 1978 (5 U.S.C. App.).

16 “(b) ADDITIONAL USE OF FUNDS BY INSPECTOR
17 GENERAL.—

18 “(1) REIMBURSEMENTS FOR INVESTIGA-

19 TIONS.—The Inspector General of the Department
20 of Health and Human Services is authorized to re-
21 ceive and retain for current use reimbursement for
22 the costs of conducting investigations and audits and
23 for monitoring compliance plans when such costs are
24 ordered by a court, voluntarily agreed to by the
25 payor, or otherwise.

1 “(2) CREDITING.—Funds received by the In-
2 specter General under paragraph (1) as reimburse-
3 ment for costs of conducting investigations shall be
4 deposited to the credit of the appropriation from
5 which initially paid, or to appropriations for similar
6 purposes currently available at the time of deposit,
7 and shall remain available for obligation for 1 year
8 from the date of the deposit of such funds.

9 “(c) HEALTH PLAN DEFINED.—For purposes of this
10 section, the term ‘health plan’ means a plan or program
11 that provides health benefits, whether directly, through in-
12 surance, or otherwise, and includes—

13 “(1) a policy of health insurance;

14 “(2) a contract of a service benefit organiza-
15 tion; and

16 “(3) a membership agreement with a health
17 maintenance organization or other prepaid health
18 plan.”.

19 (b) ESTABLISHMENT OF HEALTH CARE FRAUD AND
20 ABUSE CONTROL ACCOUNT IN FEDERAL HOSPITAL IN-
21 SURANCE TRUST FUND.—Section 1817 (42 U.S.C. 1395i)
22 is amended by adding at the end the following new sub-
23 section:

24 “(k) HEALTH CARE FRAUD AND ABUSE CONTROL
25 ACCOUNT.—

1 “(1) ESTABLISHMENT.—There is hereby estab-
2 lished in the Trust Fund an expenditure account to
3 be known as the ‘Health Care Fraud and Abuse
4 Control Account’ (in this subsection referred to as
5 the ‘Account’).

6 “(2) APPROPRIATED AMOUNTS TO TRUST
7 FUND.—

8 “(A) IN GENERAL.—There are hereby ap-
9 propriated to the Trust Fund—

10 “(i) such gifts and bequests as may be
11 made as provided in subparagraph (B);

12 “(ii) such amounts as may be depos-
13 ited in the Trust Fund as provided in sec-
14 tions 541(b) and 542(c) of the Health In-
15 surance Reform Act of 1996, and title XI;
16 and

17 “(iii) such amounts as are transferred
18 to the Trust Fund under subparagraph
19 (C).

20 “(B) AUTHORIZATION TO ACCEPT GIFTS.—

21 The Trust Fund is authorized to accept on be-
22 half of the United States money gifts and be-
23 quests made unconditionally to the Trust Fund,
24 for the benefit of the Account or any activity fi-
25 nanced through the Account.

1 “(C) TRANSFER OF AMOUNTS.—The Man-
2 aging Trustee shall transfer to the Trust Fund,
3 under rules similar to the rules in section 9601
4 of the Internal Revenue Code of 1986, an
5 amount equal to the sum of the following:

6 “(i) Criminal fines recovered in cases
7 involving a Federal health care offense (as
8 defined in section 982(a)(6)(B) of title 18,
9 United States Code).

10 “(ii) Civil monetary penalties and as-
11 sessments imposed in health care cases, in-
12 cluding amounts recovered under titles XI,
13 XVIII, and XXI, and chapter 38 of title
14 31, United States Code (except as other-
15 wise provided by law).

16 “(iii) Amounts resulting from the for-
17 feiture of property by reason of a Federal
18 health care offense.

19 “(iv) Penalties and damages obtained
20 and otherwise creditable to miscellaneous
21 receipts of the general fund of the Treas-
22 ury obtained under sections 3729 through
23 3733 of title 31, United States Code
24 (known as the False Claims Act), in cases
25 involving claims related to the provision of

1 health care items and services (other than
2 funds awarded to a relator, for restitution
3 or otherwise authorized by law).

4 “(3) APPROPRIATED AMOUNTS TO ACCOUNT
5 FOR FRAUD AND ABUSE CONTROL PROGRAM, ETC.—

6 “(A) DEPARTMENTS OF HEALTH AND
7 HUMAN SERVICES AND JUSTICE.—

8 “(i) IN GENERAL.—There are hereby
9 appropriated to the Account from the
10 Trust Fund such sums as the Secretary
11 and the Attorney General certify are nec-
12 essary to carry out the purposes described
13 in subparagraph (C), to be available with-
14 out further appropriation, in an amount
15 not to exceed—

16 “(I) for fiscal year 1997,
17 \$104,000,000, and

18 “(II) for each of the fiscal years
19 1998 through 2003, the limit for the
20 preceding fiscal year, increased by 15
21 percent; and

22 “(III) for each fiscal year after
23 fiscal year 2003, the limit for fiscal
24 year 2003.

1 “(ii) MEDICARE AND MEDICAID AC-
2 TIVITIES.—For each fiscal year, of the
3 amount appropriated in clause (i), the fol-
4 lowing amounts shall be available only for
5 the purposes of the activities of the Office
6 of the Inspector General of the Depart-
7 ment of Health and Human Services with
8 respect to the medicare and medicaid pro-
9 grams—

10 “(I) for fiscal year 1997, not less
11 than \$60,000,000 and not more than
12 \$70,000,000;

13 “(II) for fiscal year 1998, not
14 less than \$80,000,000 and not more
15 than \$90,000,000;

16 “(III) for fiscal year 1999, not
17 less than \$90,000,000 and not more
18 than \$100,000,000;

19 “(IV) for fiscal year 2000, not
20 less than \$110,000,000 and not more
21 than \$120,000,000;

22 “(V) for fiscal year 2001, not
23 less than \$120,000,000 and not more
24 than \$130,000,000;

1 “(VI) for fiscal year 2002, not
2 less than \$140,000,000 and not more
3 than \$150,000,000; and

4 “(VII) for each fiscal year after
5 fiscal year 2002, not less than
6 \$150,000,000 and not more than
7 \$160,000,000.

8 “(B) FEDERAL BUREAU OF INVESTIGA-
9 TION.—There are hereby appropriated from the
10 general fund of the United States Treasury and
11 hereby appropriated to the Account for transfer
12 to the Federal Bureau of Investigation to carry
13 out the purposes described in subparagraph
14 (C)(i), to be available without further appro-
15 priation—

16 “(i) for fiscal year 1997, \$47,000,000;

17 “(ii) for fiscal year 1998,
18 \$56,000,000;

19 “(iii) for fiscal year 1999,
20 \$66,000,000;

21 “(iv) for fiscal year 2000,
22 \$76,000,000;

23 “(v) for fiscal year 2001,
24 \$88,000,000;

1 “(vi) for fiscal year 2002,
2 \$101,000,000; and

3 “(vii) for each fiscal year after fiscal
4 year 2002, \$114,000,000.

5 “(C) USE OF FUNDS.—The purposes de-
6 scribed in this subparagraph are to cover the
7 costs (including equipment, salaries and bene-
8 fits, and travel and training) of the administra-
9 tion and operation of the health care fraud and
10 abuse control program established under section
11 1128C(a), including the costs of—

12 “(i) prosecuting health care matters
13 (through criminal, civil, and administrative
14 proceedings);

15 “(ii) investigations;

16 “(iii) financial and performance audits
17 of health care programs and operations;

18 “(iv) inspections and other evalua-
19 tions; and

20 “(v) provider and consumer education
21 regarding compliance with the provisions of
22 title XI.

23 “(4) APPROPRIATED AMOUNTS TO ACCOUNT
24 FOR MEDICARE INTEGRITY PROGRAM.—

1 “(A) IN GENERAL.—There are hereby ap-
2 propriated to the Account from the Trust Fund
3 for each fiscal year such amounts as are nec-
4 essary to carry out the Medicare Integrity Pro-
5 gram under section 1893, subject to subpara-
6 graph (B) and to be available without further
7 appropriation.

8 “(B) AMOUNTS SPECIFIED.—The amount
9 appropriated under subparagraph (A) for a fis-
10 cal year is as follows:

11 “(i) For fiscal year 1997, such
12 amount shall be not less than
13 \$430,000,000 and not more than
14 \$440,000,000.

15 “(ii) For fiscal year 1998, such
16 amount shall be not less than
17 \$490,000,000 and not more than
18 \$500,000,000.

19 “(iii) For fiscal year 1999, such
20 amount shall be not less than
21 \$550,000,000 and not more than
22 \$560,000,000.

23 “(iv) For fiscal year 2000, such
24 amount shall be not less than

1 \$620,000,000 and not more than
2 \$630,000,000.

3 “(v) For fiscal year 2001, such
4 amount shall be not less than
5 \$670,000,000 and not more than
6 \$680,000,000.

7 “(vi) For fiscal year 2002, such
8 amount shall be not less than
9 \$690,000,000 and not more than
10 \$700,000,000.

11 “(vii) For each fiscal year after fiscal
12 year 2002, such amount shall be not less
13 than \$710,000,000 and not more than
14 \$720,000,000.

15 “(5) ANNUAL REPORT.—The Secretary and the
16 Attorney General shall submit jointly an annual re-
17 port to Congress on the amount of revenue which is
18 generated and disbursed, and the justification for
19 such disbursements, by the Account in each fiscal
20 year.”.

21 **SEC. 502. MEDICARE INTEGRITY PROGRAM.**

22 (a) ESTABLISHMENT OF MEDICARE INTEGRITY PRO-
23 GRAM.—Title XVIII is amended by adding at the end the
24 following new section:

1 “MEDICARE INTEGRITY PROGRAM

2 “SEC. 1893. (a) ESTABLISHMENT OF PROGRAM.—

3 There is hereby established the Medicare Integrity Pro-
4 gram (in this section referred to as the ‘Program’) under
5 which the Secretary shall promote the integrity of the
6 medicare program by entering into contracts in accord-
7 ance with this section with eligible private entities to carry
8 out the activities described in subsection (b).

9 “(b) ACTIVITIES DESCRIBED.—The activities de-
10 scribed in this subsection are as follows:

11 “(1) Review of activities of providers of services
12 or other individuals and entities furnishing items
13 and services for which payment may be made under
14 this title (including skilled nursing facilities and
15 home health agencies), including medical and utiliza-
16 tion review and fraud review (employing similar
17 standards, processes, and technologies used by pri-
18 vate health plans, including equipment and software
19 technologies which surpass the capability of the
20 equipment and technologies used in the review of
21 claims under this title as of the date of the enact-
22 ment of this section).

23 “(2) Audit of cost reports.

24 “(3) Determinations as to whether payment
25 should not be, or should not have been, made under

1 this title by reason of section 1862(b), and recovery
2 of payments that should not have been made.

3 “(4) Education of providers of services, bene-
4 ficiaries, and other persons with respect to payment
5 integrity and benefit quality assurance issues.

6 “(5) Developing (and periodically updating) a
7 list of items of durable medical equipment in accord-
8 ance with section 1834(a)(15) which are subject to
9 prior authorization under such section.

10 “(c) ELIGIBILITY OF ENTITIES.—An entity is eligible
11 to enter into a contract under the Program to carry out
12 any of the activities described in subsection (b) if—

13 “(1) the entity has demonstrated capability to
14 carry out such activities;

15 “(2) in carrying out such activities, the entity
16 agrees to cooperate with the Inspector General of
17 the Department of Health and Human Services, the
18 Attorney General of the United States, and other
19 law enforcement agencies, as appropriate, in the in-
20 vestigation and deterrence of fraud and abuse in re-
21 lation to this title and in other cases arising out of
22 such activities;

23 “(3) the entity complies with such conflict of in-
24 terest standards as are generally applicable to Fed-
25 eral acquisition and procurement;

1 “(4) the entity meets such other requirements
2 as the Secretary may impose; and

3 “(5) in the case of any contract entered into for
4 years prior to 2000, the entity has entered into an
5 agreement under section 1816 or a contract under
6 section 1842.

7 In the case of the activity described in subsection (b)(5),
8 an entity shall be deemed to be eligible to enter into a
9 contract under the Program to carry out the activity if
10 the entity is a carrier with a contract in effect under sec-
11 tion 1842.

12 “(d) PROCESS FOR ENTERING INTO CONTRACTS.—
13 The Secretary shall enter into contracts under the Pro-
14 gram in accordance with such procedures as the Secretary
15 shall by regulation establish, except that such procedures
16 shall include the following:

17 “(1) Procedures for identifying, evaluating, and
18 resolving organizational conflicts of interest that are
19 generally applicable to Federal acquisition and pro-
20 curement.

21 “(2) Competitive procedures must be used when
22 entering into new contracts under this section, or at
23 any other time considered appropriate by the Sec-
24 retary, except that the Secretary may contract with
25 entities that are carrying out the activities described

1 in this section pursuant to agreements under section
2 1816 or contracts under section 1842 in effect on
3 the date of the enactment of this section.

4 “(3) A contract under this section may be re-
5 newed without regard to any provision of law requir-
6 ing competition if the contractor has met or ex-
7 ceeded the performance requirements established in
8 the current contract.

9 “(e) LIMITATION ON CONTRACTOR LIABILITY.—The
10 Secretary shall by regulation provide for the limitation of
11 a contractor’s liability for actions taken to carry out a con-
12 tract under the Program, and such regulation shall, to the
13 extent the Secretary finds appropriate, employ the same
14 or comparable standards and other substantive and proce-
15 dural provisions as are contained in section 1157.”.

16 (b) ELIMINATION OF FI AND CARRIER RESPONSIBIL-
17 ITY FOR CARRYING OUT ACTIVITIES SUBJECT TO PRO-
18 GRAM.—

19 (1) RESPONSIBILITIES OF FISCAL
20 INTERMEDIARIES UNDER PART A.—Section 1816
21 (42 U.S.C. 1395h) is amended by adding at the end
22 the following new subsection:

23 “(1) No payment may be made for carrying out any
24 activity pursuant to an agreement under this section to
25 the extent that the activity is carried out pursuant to a

1 contract under the Medicare Integrity Program under sec-
2 tion 1893.”.

3 (2) RESPONSIBILITIES OF CARRIERS UNDER
4 PART B.—Section 1842(c) (42 U.S.C. 1395u(c)) is
5 amended by adding at the end the following new
6 paragraph:

7 “(6) No payment may be made for carrying out any
8 activity pursuant to a contract under this subsection to
9 the extent that the activity is carried out pursuant to a
10 contract under the Medicare Integrity Program under sec-
11 tion 1893. The previous sentence shall not apply with re-
12 spect to the activity described in section 1893(b)(5) (relat-
13 ing to prior authorization of certain items of durable medi-
14 cal equipment under section 1834(a)(15)).”.

15 **SEC. 503. BENEFICIARY INCENTIVE PROGRAMS.**

16 (a) CLARIFICATION OF REQUIREMENT TO PROVIDE
17 EXPLANATION OF MEDICARE BENEFITS.—The Secretary
18 of Health and Human Services (in this section referred
19 to as the “Secretary”) shall provide an explanation of ben-
20 efits under the medicare program under title XVIII of the
21 Social Security Act with respect to each item or service
22 for which payment may be made under the program which
23 is furnished to an individual, without regard to whether
24 or not a deductible or coinsurance may be imposed against
25 the individual with respect to the item or service.

1 (b) PROGRAM TO COLLECT INFORMATION ON FRAUD
2 AND ABUSE.—

3 (1) ESTABLISHMENT OF PROGRAM.—Not later
4 than 3 months after the date of the enactment of
5 this Act, the Secretary shall establish a program
6 under which the Secretary shall encourage individ-
7 uals to report to the Secretary information on indi-
8 viduals and entities who are engaging or who have
9 engaged in acts or omissions which constitute
10 grounds for the imposition of a sanction under sec-
11 tion 1128, section 1128A, or section 1128B of the
12 Social Security Act, or who have otherwise engaged
13 in fraud and abuse against the medicare program
14 for which there is a sanction provided under law.
15 The program shall discourage provision of, and not
16 consider, information which is frivolous or otherwise
17 not relevant or material to the imposition of such a
18 sanction.

19 (2) PAYMENT OF PORTION OF AMOUNTS COL-
20 LECTED.—If an individual reports information to
21 the Secretary under the program established under
22 paragraph (1) which serves as the basis for the col-
23 lection by the Secretary or the Attorney General of
24 any amount of at least \$100 (other than any
25 amount paid as a penalty under section 1128B of

1 the Social Security Act), the Secretary may pay a
2 portion of the amount collected to the individual
3 (under procedures similar to those applicable under
4 section 7623 of the Internal Revenue Code of 1986
5 to payments to individuals providing information on
6 violations of such Code).

7 (c) PROGRAM TO COLLECT INFORMATION ON PRO-
8 GRAM EFFICIENCY.—

9 (1) ESTABLISHMENT OF PROGRAM.—Not later
10 than 3 months after the date of the enactment of
11 this Act, the Secretary shall establish a program
12 under which the Secretary shall encourage individ-
13 uals to submit to the Secretary suggestions on meth-
14 ods to improve the efficiency of the medicare pro-
15 gram.

16 (2) PAYMENT OF PORTION OF PROGRAM SAV-
17 INGS.—If an individual submits a suggestion to the
18 Secretary under the program established under
19 paragraph (1) which is adopted by the Secretary and
20 which results in savings to the program, the Sec-
21 retary may make a payment to the individual of
22 such amount as the Secretary considers appropriate.

1 **SEC. 504. APPLICATION OF CERTAIN HEALTH ANTI-FRAUD**
2 **AND ABUSE SANCTIONS TO FRAUD AND**
3 **ABUSE AGAINST FEDERAL HEALTH CARE**
4 **PROGRAMS.**

5 (a) IN GENERAL.—Section 1128B (42 U.S.C.
6 1320a–7b) is amended as follows:

7 (1) In the heading, by striking “MEDICARE OR
8 STATE HEALTH CARE PROGRAMS” and inserting
9 “FEDERAL HEALTH CARE PROGRAMS”.

10 (2) In subsection (a)(1), by striking “a program
11 under title XVIII or a State health care program (as
12 defined in section 1128(h))” and inserting “a Fed-
13 eral health care program”.

14 (3) In subsection (a)(5), by striking “a program
15 under title XVIII or a State health care program”
16 and inserting “a Federal health care program”.

17 (4) In the second sentence of subsection (a)—

18 (A) by striking “a State plan approved
19 under title XIX” and inserting “a Federal
20 health care program”, and

21 (B) by striking “the State may at its op-
22 tion (notwithstanding any other provision of
23 that title or of such plan)” and inserting “the
24 administrator of such program may at its op-
25 tion (notwithstanding any other provision of
26 such program)”.

1 (5) In subsection (b), by striking “title XVIII
2 or a State health care program” each place it ap-
3 pears and inserting “a Federal health care pro-
4 gram”.

5 (6) In subsection (c), by inserting “(as defined
6 in section 1128(h))” after “a State health care pro-
7 gram”.

8 (7) By adding at the end the following new sub-
9 section:

10 “(f) For purposes of this section, the term ‘Federal
11 health care program’ means—

12 “(1) any plan or program that provides health
13 benefits, whether directly, through insurance, or oth-
14 erwise, which is funded directly, in whole or in part,
15 by the United States Government (other than the
16 health insurance program under chapter 89 of title
17 5, United States Code); or

18 “(2) any State health care program, as defined
19 in section 1128(h).”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall take effect on January 1, 1997.

1 **SEC. 505. GUIDANCE REGARDING APPLICATION OF HEALTH**
2 **CARE FRAUD AND ABUSE SANCTIONS.**

3 Title XI (42 U.S.C. 1301 et seq.), as amended by
4 section 501, is amended by inserting after section 1128C
5 the following new section:

6 “GUIDANCE REGARDING APPLICATION OF HEALTH CARE
7 FRAUD AND ABUSE SANCTIONS

8 “SEC. 1128D. (a) SOLICITATION AND PUBLICATION
9 OF MODIFICATIONS TO EXISTING SAFE HARBORS AND
10 NEW SAFE HARBORS.—

11 “(1) IN GENERAL.—

12 “(A) SOLICITATION OF PROPOSALS FOR
13 SAFE HARBORS.—Not later than January 1,
14 1997, and not less than annually thereafter, the
15 Secretary shall publish a notice in the Federal
16 Register soliciting proposals, which will be ac-
17 cepted during a 60-day period, for—

18 “(i) modifications to existing safe har-
19 bors issued pursuant to section 14(a) of
20 the Medicare and Medicaid Patient and
21 Program Protection Act of 1987 (42
22 U.S.C. 1320a–7b note);

23 “(ii) additional safe harbors specifying
24 payment practices that shall not be treated
25 as a criminal offense under section

1 1128B(b) and shall not serve as the basis
2 for an exclusion under section 1128(b)(7);

3 “(iii) interpretive rulings to be issued
4 pursuant to subsection (b); and

5 “(iv) special fraud alerts to be issued
6 pursuant to subsection (c).

7 “(B) PUBLICATION OF PROPOSED MODI-
8 FICATIONS AND PROPOSED ADDITIONAL SAFE
9 HARBORS.—After considering the proposals de-
10 scribed in clauses (i) and (ii) of subparagraph
11 (A), the Secretary, in consultation with the At-
12 torney General, shall publish in the Federal
13 Register proposed modifications to existing safe
14 harbors and proposed additional safe harbors, if
15 appropriate, with a 60-day comment period.
16 After considering any public comments received
17 during this period, the Secretary shall issue
18 final rules modifying the existing safe harbors
19 and establishing new safe harbors, as appro-
20 priate.

21 “(C) REPORT.—The Inspector General of
22 the Department of Health and Human Services
23 (in this section referred to as the ‘Inspector
24 General’) shall, in an annual report to Congress
25 or as part of the year-end semiannual report re-

1 required by section 5 of the Inspector General
2 Act of 1978 (5 U.S.C. App.), describe the pro-
3 posals received under clauses (i) and (ii) of sub-
4 paragraph (A) and explain which proposals
5 were included in the publication described in
6 subparagraph (B), which proposals were not in-
7 cluded in that publication, and the reasons for
8 the rejection of the proposals that were not in-
9 cluded.

10 “(2) CRITERIA FOR MODIFYING AND ESTAB-
11 LISHING SAFE HARBORS.—In modifying and estab-
12 lishing safe harbors under paragraph (1)(B), the
13 Secretary may consider the extent to which provid-
14 ing a safe harbor for the specified payment practice
15 may result in any of the following:

16 “(A) An increase or decrease in access to
17 health care services.

18 “(B) An increase or decrease in the quality
19 of health care services.

20 “(C) An increase or decrease in patient
21 freedom of choice among health care providers.

22 “(D) An increase or decrease in competi-
23 tion among health care providers.

24 “(E) An increase or decrease in the ability
25 of health care facilities to provide services in

1 medically underserved areas or to medically un-
2 derserved populations.

3 “(F) An increase or decrease in the cost to
4 Federal health care programs (as defined in
5 section 1128B(f)).

6 “(G) An increase or decrease in the poten-
7 tial overutilization of health care services.

8 “(H) The existence or nonexistence of any
9 potential financial benefit to a health care pro-
10 fessional or provider which may vary based on
11 their decisions of—

12 “(i) whether to order a health care
13 item or service; or

14 “(ii) whether to arrange for a referral
15 of health care items or services to a par-
16 ticular practitioner or provider.

17 “(I) Any other factors the Secretary deems
18 appropriate in the interest of preventing fraud
19 and abuse in Federal health care programs (as
20 so defined).

21 “(b) INTERPRETIVE RULINGS.—

22 “(1) IN GENERAL.—

23 “(A) REQUEST FOR INTERPRETIVE RUL-
24 ING.—Any person may present, at any time, a
25 request to the Inspector General for a state-

1 ment of the Inspector General’s current inter-
2 pretation of the meaning of a specific aspect of
3 the application of sections 1128A and 1128B
4 (in this section referred to as an ‘interpretive
5 ruling’).

6 “(B) ISSUANCE AND EFFECT OF INTER-
7 PRETIVE RULING.—

8 “(i) IN GENERAL.—If appropriate, the
9 Inspector General shall in consultation
10 with the Attorney General, issue an inter-
11 pretive ruling not later than 90 days after
12 receiving a request described in subpara-
13 graph (A). Interpretive rulings shall not
14 have the force of law and shall be treated
15 as an interpretive rule within the meaning
16 of section 553(b) of title 5, United States
17 Code. All interpretive rulings issued pursu-
18 ant to this clause shall be published in the
19 Federal Register or otherwise made avail-
20 able for public inspection.

21 “(ii) REASONS FOR DENIAL.—If the
22 Inspector General does not issue an inter-
23 pretive ruling in response to a request de-
24 scribed in subparagraph (A), the Inspector
25 General shall notify the requesting party of

1 such decision not later than 60 days after
2 receiving such a request and shall identify
3 the reasons for such decision.

4 “(2) CRITERIA FOR INTERPRETIVE RULINGS.—

5 “(A) IN GENERAL.—In determining wheth-
6 er to issue an interpretive ruling under para-
7 graph (1)(B), the Inspector General may con-
8 sider—

9 “(i) whether and to what extent the
10 request identifies an ambiguity within the
11 language of the statute, the existing safe
12 harbors, or previous interpretive rulings;
13 and

14 “(ii) whether the subject of the re-
15 quested interpretive ruling can be ade-
16 quately addressed by interpretation of the
17 language of the statute, the existing safe
18 harbor rules, or previous interpretive rul-
19 ings, or whether the request would require
20 a substantive ruling (as defined in section
21 552 of title 5, United States Code) not au-
22 thorized under this subsection.

23 “(B) NO RULINGS ON FACTUAL ISSUES.—

24 The Inspector General shall not give an inter-
25 pretive ruling on any factual issue, including

1 the intent of the parties or the fair market
2 value of particular leased space or equipment.

3 “(c) SPECIAL FRAUD ALERTS.—

4 “(1) IN GENERAL.—

5 “(A) REQUEST FOR SPECIAL FRAUD
6 ALERTS.—Any person may present, at any
7 time, a request to the Inspector General for a
8 notice which informs the public of practices
9 which the Inspector General considers to be
10 suspect or of particular concern under the med-
11 icare program or a State health care program,
12 as defined in section 1128(h) (in this subsection
13 referred to as a ‘special fraud alert’).

14 “(B) ISSUANCE AND PUBLICATION OF SPE-
15 CIAL FRAUD ALERTS.—Upon receipt of a re-
16 quest described in subparagraph (A), the In-
17 spector General shall investigate the subject
18 matter of the request to determine whether a
19 special fraud alert should be issued. If appro-
20 priate, the Inspector General shall issue a spe-
21 cial fraud alert in response to the request. All
22 special fraud alerts issued pursuant to this sub-
23 paragraph shall be published in the Federal
24 Register.

1 “(2) CRITERIA FOR SPECIAL FRAUD ALERTS.—
 2 In determining whether to issue a special fraud alert
 3 upon a request described in paragraph (1), the In-
 4 specter General may consider—

5 “(A) whether and to what extent the prac-
 6 tices that would be identified in the special
 7 fraud alert may result in any of the con-
 8 sequences described in subsection (a)(2); and

9 “(B) the volume and frequency of the con-
 10 duct that would be identified in the special
 11 fraud alert.”.

12 **Subtitle B—Revisions to Current**
 13 **Sanctions for Fraud and Abuse**

14 **SEC. 511. MANDATORY EXCLUSION FROM PARTICIPATION**
 15 **IN MEDICARE AND STATE HEALTH CARE PRO-**
 16 **GRAMS.**

17 (a) INDIVIDUAL CONVICTED OF FELONY RELATING
 18 TO HEALTH CARE FRAUD.—

19 (1) IN GENERAL.—Section 1128(a) (42 U.S.C.
 20 1320a-7(a)) is amended by adding at the end the
 21 following new paragraph:

22 “(3) FELONY CONVICTION RELATING TO
 23 HEALTH CARE FRAUD.—Any individual or entity
 24 that has been convicted after the date of the enact-
 25 ment of the Health Insurance Reform Act of 1996,

1 under Federal or State law, in connection with the
2 delivery of a health care item or service or with re-
3 spect to any act or omission in a health care pro-
4 gram (other than those specifically described in
5 paragraph (1)) operated by or financed in whole or
6 in part by any Federal, State, or local government
7 agency, of a criminal offense consisting of a felony
8 relating to fraud, theft, embezzlement, breach of fi-
9 duciary responsibility, or other financial mis-
10 conduct.”.

11 (2) CONFORMING AMENDMENT.—Paragraph (1)
12 of section 1128(b) (42 U.S.C. 1320a–7(b)) is
13 amended to read as follows:

14 “(1) CONVICTION RELATING TO FRAUD.—Any
15 individual or entity that has been convicted after the
16 date of the enactment of the Health Insurance Re-
17 form Act of 1996, under Federal or State law—

18 “(A) of a criminal offense consisting of a
19 misdemeanor relating to fraud, theft, embezzle-
20 ment, breach of fiduciary responsibility, or
21 other financial misconduct—

22 “(i) in connection with the delivery of
23 a health care item or service, or

24 “(ii) with respect to any act or omis-
25 sion in a health care program (other than

1 those specifically described in subsection
2 (a)(1)) operated by or financed in whole or
3 in part by any Federal, State, or local gov-
4 ernment agency; or

5 “(B) of a criminal offense relating to
6 fraud, theft, embezzlement, breach of fiduciary
7 responsibility, or other financial misconduct
8 with respect to any act or omission in a pro-
9 gram (other than a health care program) oper-
10 ated by or financed in whole or in part by any
11 Federal, State, or local government agency.”.

12 (b) INDIVIDUAL CONVICTED OF FELONY RELATING
13 TO CONTROLLED SUBSTANCE.—

14 (1) IN GENERAL.—Section 1128(a) (42 U.S.C.
15 1320a-7(a)), as amended by subsection (a), is
16 amended by adding at the end the following new
17 paragraph:

18 “(4) FELONY CONVICTION RELATING TO CON-
19 TROLLED SUBSTANCE.—Any individual or entity
20 that has been convicted after the date of the enact-
21 ment of the Health Insurance Reform Act of 1996,
22 under Federal or State law, of a criminal offense
23 consisting of a felony relating to the unlawful manu-
24 facture, distribution, prescription, or dispensing of a
25 controlled substance.”.

1 (2) CONFORMING AMENDMENT.—Section
2 1128(b)(3) (42 U.S.C. 1320a–7(b)(3)) is amended—

3 (A) in the heading, by striking “CONVIC-
4 TION” and inserting “MISDEMEANOR CONVIC-
5 TION”; and

6 (B) by striking “criminal offense” and in-
7 serting “criminal offense consisting of a mis-
8 demeanor”.

9 **SEC. 512. ESTABLISHMENT OF MINIMUM PERIOD OF EX-**
10 **CLUSION FOR CERTAIN INDIVIDUALS AND**
11 **ENTITIES SUBJECT TO PERMISSIVE EXCLU-**
12 **SION FROM MEDICARE AND STATE HEALTH**
13 **CARE PROGRAMS.**

14 Section 1128(c)(3) (42 U.S.C. 1320a–7(c)(3)) is
15 amended by adding at the end the following new subpara-
16 graphs:

17 “(D) In the case of an exclusion of an individual or
18 entity under paragraph (1), (2), or (3) of subsection (b),
19 the period of the exclusion shall be 3 years, unless the
20 Secretary determines in accordance with published regula-
21 tions that a shorter period is appropriate because of miti-
22 gating circumstances or that a longer period is appro-
23 priate because of aggravating circumstances.

24 “(E) In the case of an exclusion of an individual or
25 entity under subsection (b)(4) or (b)(5), the period of the

1 exclusion shall not be less than the period during which
 2 the individual's or entity's license to provide health care
 3 is revoked, suspended, or surrendered, or the individual
 4 or the entity is excluded or suspended from a Federal or
 5 State health care program.

6 “(F) In the case of an exclusion of an individual or
 7 entity under subsection (b)(6)(B), the period of the exclu-
 8 sion shall be not less than 1 year.”.

9 **SEC. 513. PERMISSIVE EXCLUSION OF INDIVIDUALS WITH**
 10 **OWNERSHIP OR CONTROL INTEREST IN**
 11 **SANCTIONED ENTITIES.**

12 Section 1128(b) (42 U.S.C. 1320a-7(b)) is amended
 13 by adding at the end the following new paragraph:

14 “(15) INDIVIDUALS CONTROLLING A SANC-
 15 TIONED ENTITY.—(A) Any individual—

16 “(i) who has a direct or indirect ownership
 17 or control interest in a sanctioned entity and
 18 who knows or should know (as defined in sec-
 19 tion 1128A(i)(6)) of the action constituting the
 20 basis for the conviction or exclusion described
 21 in subparagraph (B); or

22 “(ii) who is an officer or managing em-
 23 ployee (as defined in section 1126(b)) of such
 24 an entity.

1 “(B) For purposes of subparagraph (A), the
2 term ‘sanctioned entity’ means an entity—

3 “(i) that has been convicted of any offense
4 described in subsection (a) or in paragraph (1),
5 (2), or (3) of this subsection; or

6 “(ii) that has been excluded from partici-
7 pation under a program under title XVIII or
8 under a State health care program.”.

9 **SEC. 514. SANCTIONS AGAINST PRACTITIONERS AND PER-**
10 **SONS FOR FAILURE TO COMPLY WITH STATU-**
11 **TORY OBLIGATIONS.**

12 (a) MINIMUM PERIOD OF EXCLUSION FOR PRACTI-
13 TIONERS AND PERSONS FAILING TO MEET STATUTORY
14 OBLIGATIONS.—

15 (1) IN GENERAL.—The second sentence of sec-
16 tion 1156(b)(1) (42 U.S.C. 1320e-5(b)(1)) is
17 amended by striking “may prescribe)” and inserting
18 “may prescribe, except that such period may not be
19 less than 1 year)”.

20 (2) CONFORMING AMENDMENT.—Section
21 1156(b)(2) (42 U.S.C. 1320e-5(b)(2)) is amended
22 by striking “shall remain” and inserting “shall (sub-
23 ject to the minimum period specified in the second
24 sentence of paragraph (1)) remain”.

1 (b) REPEAL OF “UNWILLING OR UNABLE” CONDI-
2 TION FOR IMPOSITION OF SANCTION.—Section 1156(b)(1)
3 (42 U.S.C. 1320c-5(b)(1)) is amended—

4 (1) in the second sentence, by striking “and de-
5 termines” and all that follows through “such obliga-
6 tions,”; and

7 (2) by striking the third sentence.

8 **SEC. 515. INTERMEDIATE SANCTIONS FOR MEDICARE**
9 **HEALTH MAINTENANCE ORGANIZATIONS.**

10 (a) APPLICATION OF INTERMEDIATE SANCTIONS FOR
11 ANY PROGRAM VIOLATIONS.—

12 (1) IN GENERAL.—Section 1876(i)(1) (42
13 U.S.C. 1395mm(i)(1)) is amended by striking “the
14 Secretary may terminate” and all that follows and
15 inserting “in accordance with procedures established
16 under paragraph (9), the Secretary may at any time
17 terminate any such contract or may impose the in-
18 termediate sanctions described in paragraph (6)(B)
19 or (6)(C) (whichever is applicable) on the eligible or-
20 ganization if the Secretary determines that the orga-
21 nization—

22 “(A) has failed substantially to carry out
23 the contract;

1 “(B) is carrying out the contract in a man-
2 ner substantially inconsistent with the efficient
3 and effective administration of this section; or

4 “(C) no longer substantially meets the ap-
5 plicable conditions of subsections (b), (c), (e),
6 and (f).”.

7 (2) OTHER INTERMEDIATE SANCTIONS FOR
8 MISCELLANEOUS PROGRAM VIOLATIONS.—Section
9 1876(i)(6) (42 U.S.C. 1395mm(i)(6)) is amended by
10 adding at the end the following new subparagraph:

11 “(C) In the case of an eligible organization for which
12 the Secretary makes a determination under paragraph (1)
13 the basis of which is not described in subparagraph (A),
14 the Secretary may apply the following intermediate sanc-
15 tions:

16 “(i) Civil money penalties of not more than
17 \$25,000 for each determination under paragraph (1)
18 if the deficiency that is the basis of the determina-
19 tion has directly adversely affected (or has the sub-
20 stantial likelihood of adversely affecting) an individ-
21 ual covered under the organization’s contract.

22 “(ii) Civil money penalties of not more than
23 \$10,000 for each week beginning after the initiation
24 of procedures by the Secretary under paragraph (9)

1 during which the deficiency that is the basis of a de-
2 termination under paragraph (1) exists.

3 “(iii) Suspension of enrollment of individuals
4 under this section after the date the Secretary noti-
5 fies the organization of a determination under para-
6 graph (1) and until the Secretary is satisfied that
7 the deficiency that is the basis for the determination
8 has been corrected and is not likely to recur.”.

9 (3) PROCEDURES FOR IMPOSING SANCTIONS.—

10 Section 1876(i) (42 U.S.C. 1395mm(i)) is amended
11 by adding at the end the following new paragraph:

12 “(9) The Secretary may terminate a contract with an
13 eligible organization under this section or may impose the
14 intermediate sanctions described in paragraph (6) on the
15 organization in accordance with formal investigation and
16 compliance procedures established by the Secretary under
17 which—

18 “(A) the Secretary first provides the organiza-
19 tion with the reasonable opportunity to develop and
20 implement a corrective action plan to correct the de-
21 ficiencies that were the basis of the Secretary’s de-
22 termination under paragraph (1) and the organiza-
23 tion fails to develop or implement such a plan;

24 “(B) in deciding whether to impose sanctions,
25 the Secretary considers aggravating factors such as

1 whether an organization has a history of deficiencies
2 or has not taken action to correct deficiencies the
3 Secretary has brought to the organization's atten-
4 tion;

5 “(C) there are no unreasonable or unnecessary
6 delays between the finding of a deficiency and the
7 imposition of sanctions; and

8 “(D) the Secretary provides the organization
9 with reasonable notice and opportunity for hearing
10 (including the right to appeal an initial decision) be-
11 fore imposing any sanction or terminating the con-
12 tract.”.

13 (4) CONFORMING AMENDMENTS.—Section
14 1876(i)(6)(B) (42 U.S.C. 1395mm(i)(6)(B)) is
15 amended by striking the second sentence.

16 (b) AGREEMENTS WITH PEER REVIEW ORGANIZA-
17 TIONS.—Section 1876(i)(7)(A) (42 U.S.C.
18 1395mm(i)(7)(A)) is amended by striking “an agreement”
19 and inserting “a written agreement”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply with respect to contract years be-
22 ginning on or after January 1, 1997.

1 **SEC. 516. ADDITIONAL EXCEPTIONS TO ANTI-KICKBACK**
2 **PENALTIES FOR RISK-SHARING ARRANGE-**
3 **MENTS.**

4 (a) IN GENERAL.—Section 1128B(b)(3) (42 U.S.C.
5 1320a–7b(b)(3)) is amended—

6 (1) by striking “and” at the end of subpara-
7 graph (D);

8 (2) by striking the period at the end of sub-
9 paragraph (E) and inserting “; and”; and

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

12 “(F) any remuneration between an organization
13 and an individual or entity providing items or serv-
14 ices pursuant to a written agreement between the or-
15 ganization and the individual or entity if the organi-
16 zation is an eligible organization under section 1876,
17 or if the written agreement places the individual or
18 entity at substantial financial risk for the cost or
19 utilization of the items or services, or a combination
20 thereof, which the individual or entity is obligated to
21 provide, whether through a withhold or capitation,
22 or other similar risk arrangements which places the
23 individual or entity at substantial financial risk.”.

24 (b) REGULATIONS.—Section 1128B(b) (42 U.S.C.
25 1320a–7b(b)) is amended by adding at the end the follow-
26 ing new paragraph:

1 “(4) The Secretary, in consultation with the Attorney
 2 General, not later than 1 year after the date of enactment
 3 of Health Insurance Reform Act of 1996, and not less
 4 than every 2 years thereafter, shall promulgate regulations
 5 to define substantial financial risk as necessary to protect
 6 against program or patient abuse.”.

7 **SEC. 517. EFFECTIVE DATE.**

8 Except as otherwise provided, the amendments made
 9 by this subtitle shall take effect January 1, 1997.

10 **Subtitle C—Data Collection and**
 11 **Miscellaneous Provisions**

12 **SEC. 521. ESTABLISHMENT OF THE HEALTH CARE FRAUD**
 13 **AND ABUSE DATA COLLECTION PROGRAM.**

14 (a) IN GENERAL.—Title XI (42 U.S.C. 1301 et seq.),
 15 as amended by sections 501 and 505, is amended by in-
 16 serting after section 1128D the following new section:

17 “HEALTH CARE FRAUD AND ABUSE DATA COLLECTION
 18 PROGRAM

19 “SEC. 1128E. (a) GENERAL PURPOSE.—Not later
 20 than January 1, 1997, the Secretary shall establish a na-
 21 tional health care fraud and abuse data collection program
 22 for the reporting of final adverse actions (not including
 23 settlements in which no findings of liability have been
 24 made) against health care providers, suppliers, or practi-
 25 tioners as required by subsection (b), with access as set
 26 forth in subsection (c).

1 “(b) REPORTING OF INFORMATION.—

2 “(1) IN GENERAL.—Each Government agency
3 and health plan shall report any final adverse action
4 (not including settlements in which no findings of li-
5 ability have been made) taken against a health care
6 provider, supplier, or practitioner.

7 “(2) INFORMATION TO BE REPORTED.—The in-
8 formation to be reported under paragraph (1) in-
9 cludes:

10 “(A) The name and TIN (as defined in
11 section 7701(a)(41) of the Internal Revenue
12 Code of 1986) of any health care provider, sup-
13 plier, or practitioner who is the subject of a
14 final adverse action.

15 “(B) The name (if known) of any health
16 care entity with which a health care provider,
17 supplier, or practitioner is affiliated or associ-
18 ated.

19 “(C) The nature of the final adverse action
20 and whether such action is on appeal.

21 “(D) A description of the acts or omissions
22 and injuries upon which the final adverse action
23 was based, and such other information as the
24 Secretary determines by regulation is required

1 for appropriate interpretation of information re-
2 ported under this section.

3 “(3) CONFIDENTIALITY.—In determining what
4 information is required, the Secretary shall include
5 procedures to assure that the privacy of individuals
6 receiving health care services is appropriately pro-
7 tected.

8 “(4) TIMING AND FORM OF REPORTING.—The
9 information required to be reported under this sub-
10 section shall be reported regularly (but not less often
11 than monthly) and in such form and manner as the
12 Secretary prescribes. Such information shall first be
13 required to be reported on a date specified by the
14 Secretary.

15 “(5) TO WHOM REPORTED.—The information
16 required to be reported under this subsection shall
17 be reported to the Secretary.

18 “(c) DISCLOSURE AND CORRECTION OF INFORMA-
19 TION.—

20 “(1) DISCLOSURE.—With respect to the infor-
21 mation about final adverse actions (not including
22 settlements in which no findings of liability have
23 been made) reported to the Secretary under this sec-
24 tion respecting a health care provider, supplier, or

1 practitioner, the Secretary shall, by regulation, pro-
2 vide for—

3 “(A) disclosure of the information, upon
4 request, to the health care provider, supplier, or
5 licensed practitioner, and

6 “(B) procedures in the case of disputed ac-
7 curacy of the information.

8 “(2) CORRECTIONS.—Each Government agency
9 and health plan shall report corrections of informa-
10 tion already reported about any final adverse action
11 taken against a health care provider, supplier, or
12 practitioner, in such form and manner that the Sec-
13 retary prescribes by regulation.

14 “(d) ACCESS TO REPORTED INFORMATION.—

15 “(1) AVAILABILITY.—The information in this
16 database shall be available to Federal and State gov-
17 ernment agencies and health plans pursuant to pro-
18 cedures that the Secretary shall provide by regula-
19 tion.

20 “(2) FEES FOR DISCLOSURE.—The Secretary
21 may establish or approve reasonable fees for the dis-
22 closure of information in this database (other than
23 with respect to requests by Federal agencies). The
24 amount of such a fee shall be sufficient to recover
25 the full costs of operating the database. Such fees

1 shall be available to the Secretary or, in the Sec-
2 retary's discretion to the agency designated under
3 this section to cover such costs.

4 “(e) PROTECTION FROM LIABILITY FOR REPORT-
5 ING.—No person or entity, including the agency des-
6 ignated by the Secretary in subsection (b)(5) shall be held
7 liable in any civil action with respect to any report made
8 as required by this section, without knowledge of the fal-
9 sity of the information contained in the report.

10 “(f) COORDINATION WITH NATIONAL PRACTITIONER
11 DATA BANK.—The Secretary shall implement this section
12 in such a manner as to avoid duplication with the report-
13 ing requirements established for the National Practitioner
14 Data Bank under the Health Care Quality Improvement
15 Act of 1986 (42 U.S.C. 11101 et seq.).

16 “(g) DEFINITIONS AND SPECIAL RULES.—For pur-
17 poses of this section:

18 “(1) FINAL ADVERSE ACTION.—

19 “(A) IN GENERAL.—The term ‘final ad-
20 verse action’ includes:

21 “(i) Civil judgments against a health
22 care provider, supplier, or practitioner in
23 Federal or State court related to the deliv-
24 ery of a health care item or service.

1 “(ii) Federal or State criminal convic-
2 tions related to the delivery of a health
3 care item or service.

4 “(iii) Actions by Federal or State
5 agencies responsible for the licensing and
6 certification of health care providers, sup-
7 pliers, and licensed health care practition-
8 ers, including—

9 “(I) formal or official actions,
10 such as revocation or suspension of a
11 license (and the length of any such
12 suspension), reprimand, censure or
13 probation,

14 “(II) any other loss of license or
15 the right to apply for, or renew, a li-
16 cense of the provider, supplier, or
17 practitioner, whether by operation of
18 law, voluntary surrender, non-renew-
19 ability, or otherwise, or

20 “(III) any other negative action
21 or finding by such Federal or State
22 agency that is publicly available infor-
23 mation.

1 “(iv) Exclusion from participation in
2 Federal or State health care programs due
3 to program violations.

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

7 “(B) EXCEPTION.—The term does not in-
8 clude any action with respect to a malpractice
9 claim.

10 “(2) PRACTITIONER.—The terms ‘licensed
11 health care practitioner’, ‘licensed practitioner’, and
12 ‘practitioner’ mean, with respect to a State, an indi-
13 vidual who is licensed or otherwise authorized by the
14 State to provide health care services (or any individ-
15 ual who, without authority holds himself or herself
16 out to be so licensed or authorized).

17 “(3) GOVERNMENT AGENCY.—The term ‘Gov-
18 ernment agency’ shall include:

19 “(A) The Department of Justice.

20 “(B) The Department of Health and
21 Human Services.

22 “(C) Any other Federal agency that either
23 administers or provides payment for the deliv-
24 ery of health care services, including, but not

1 limited to the Department of Defense and the
2 Veterans' Administration.

3 “(D) State law enforcement agencies.

4 “(E) State medicaid fraud control units.

5 “(F) Federal or State agencies responsible
6 for the licensing and certification of health care
7 providers and licensed health care practitioners.

8 “(4) HEALTH PLAN.—The term ‘health plan’
9 has the meaning given such term by section
10 1128C(c).

11 “(5) DETERMINATION OF CONVICTION.—For
12 purposes of paragraph (1), the existence of a convic-
13 tion shall be determined under paragraph (4) of sec-
14 tion 1128(i).”.

15 (b) IMPROVED PREVENTION IN ISSUANCE OF MEDI-
16 CARE PROVIDER NUMBERS.—Section 1842(r) (42 U.S.C.
17 1395u(r)) is amended by adding at the end the following
18 new sentence: “Under such system, the Secretary may im-
19 pose appropriate fees on such physicians to cover the costs
20 of investigation and recertification activities with respect
21 to the issuance of the identifiers.”.

1 **Subtitle D—Civil Monetary**
2 **Penalties**

3 **SEC. 531. SOCIAL SECURITY ACT CIVIL MONETARY PEN-**
4 **ALTIES.**

5 (a) GENERAL CIVIL MONETARY PENALTIES.—Sec-
6 tion 1128A (42 U.S.C. 1320a–7a) is amended as follows:

7 (1) In the third sentence of subsection (a), by
8 striking “programs under title XVIII” and inserting
9 “Federal health care programs (as defined in section
10 1128B(f)(1))”.

11 (2) In subsection (f)—

12 (A) by redesignating paragraph (3) as
13 paragraph (4); and

14 (B) by inserting after paragraph (2) the
15 following new paragraph:

16 “(3) With respect to amounts recovered arising
17 out of a claim under a Federal health care program
18 (as defined in section 1128B(f)), the portion of such
19 amounts as is determined to have been paid by the
20 program shall be repaid to the program, and the
21 portion of such amounts attributable to the amounts
22 recovered under this section by reason of the amend-
23 ments made by the Health Insurance Reform Act of
24 1996 (as estimated by the Secretary) shall be depos-

1 ited into the Federal Hospital Insurance Trust Fund
2 pursuant to section 1817(k)(2)(C).”.

3 (3) In subsection (i)—

4 (A) in paragraph (2), by striking “title V,
5 XVIII, XIX, or XX of this Act” and inserting
6 “a Federal health care program (as defined in
7 section 1128B(f))”,

8 (B) in paragraph (4), by striking “a health
9 insurance or medical services program under
10 title XVIII or XIX of this Act” and inserting
11 “a Federal health care program (as so de-
12 fined)”, and

13 (C) in paragraph (5), by striking “title V,
14 XVIII, XIX, or XX” and inserting “a Federal
15 health care program (as so defined)”.

16 (4) By adding at the end the following new sub-
17 section:

18 “(m)(1) For purposes of this section, with respect to
19 a Federal health care program not contained in this Act,
20 references to the Secretary in this section shall be deemed
21 to be references to the Secretary or Administrator of the
22 department or agency with jurisdiction over such program
23 and references to the Inspector General of the Department
24 of Health and Human Services in this section shall be

1 deemed to be references to the Inspector General of the
2 applicable department or agency.

3 “(2)(A) The Secretary and Administrator of the de-
4 partments and agencies referred to in paragraph (1) may
5 include in any action pursuant to this section, claims with-
6 in the jurisdiction of other Federal departments or agen-
7 cies as long as the following conditions are satisfied:

8 “(i) The case involves primarily claims submit-
9 ted to the Federal health care programs of the de-
10 partment or agency initiating the action.

11 “(ii) The Secretary or Administrator of the de-
12 partment or agency initiating the action gives notice
13 and an opportunity to participate in the investiga-
14 tion to the Inspector General of the department or
15 agency with primary jurisdiction over the Federal
16 health care programs to which the claims were sub-
17 mitted.

18 “(B) If the conditions specified in subparagraph (A)
19 are fulfilled, the Inspector General of the department or
20 agency initiating the action is authorized to exercise all
21 powers granted under the Inspector General Act of 1978
22 with respect to the claims submitted to the other depart-
23 ments or agencies to the same manner and extent as pro-
24 vided in that Act with respect to claims submitted to such
25 departments or agencies.”.

1 (b) EXCLUDED INDIVIDUAL RETAINING OWNERSHIP
2 OR CONTROL INTEREST IN PARTICIPATING ENTITY.—

3 Section 1128A(a) (42 U.S.C. 1320a–7a(a)) is amended—

4 (1) by striking “or” at the end of paragraph
5 (1)(D);

6 (2) by striking “, or” at the end of paragraph
7 (2) and inserting a semicolon;

8 (3) by striking the semicolon at the end of
9 paragraph (3) and inserting “; or”; and

10 (4) by inserting after paragraph (3) the follow-
11 ing new paragraph:

12 “(4) in the case of a person who is not an orga-
13 nization, agency, or other entity, is excluded from
14 participating in a program under title XVIII or a
15 State health care program in accordance with this
16 subsection or under section 1128 and who, at the
17 time of a violation of this subsection—

18 “(i) retains a direct or indirect ownership
19 or control interest in an entity that is partici-
20 pating in a program under title XVIII or a
21 State health care program, and who knows or
22 should know of the action constituting the basis
23 for the exclusion; or

1 “(ii) is an officer or managing employee
2 (as defined in section 1126(b)) of such an en-
3 tity;”.

4 (c) MODIFICATIONS OF AMOUNTS OF PENALTIES
5 AND ASSESSMENTS.—Section 1128A(a) (42 U.S.C.
6 1320a–7a(a)), as amended by subsection (b), is amended
7 in the matter following paragraph (4)—

8 (1) by striking “\$2,000” and inserting
9 “\$10,000”;

10 (2) by inserting “; in cases under paragraph
11 (4), \$10,000 for each day the prohibited relationship
12 occurs” after “false or misleading information was
13 given”; and

14 (3) by striking “twice the amount” and insert-
15 ing “3 times the amount”.

16 (d) CLAIM FOR ITEM OR SERVICE BASED ON INCOR-
17 RECT CODING OR MEDICALLY UNNECESSARY SERV-
18 ICES.—Section 1128A(a)(1) (42 U.S.C. 1320a–7a(a)(1)),
19 as amended by subsection (b), is amended—

20 (1) in subparagraph (A) by striking “claimed,”
21 and inserting “claimed, including any person who
22 engages in a pattern or practice of presenting or
23 causing to be presented a claim for an item or serv-
24 ice that is based on a code that the person knows
25 or should know will result in a greater payment to

1 the person than the code the person knows or should
2 know is applicable to the item or service actually
3 provided,”;

4 (2) in subparagraph (C), by striking “or” at
5 the end;

6 (3) in subparagraph (D), by striking the semi-
7 colon and inserting “, or”; and

8 (4) by inserting after subparagraph (D) the fol-
9 lowing new subparagraph:

10 “(E) is for a medical or other item or serv-
11 ice that a person knows or should know is not
12 medically necessary; or”.

13 (e) SANCTIONS AGAINST PRACTITIONERS AND PER-
14 SONS FOR FAILURE TO COMPLY WITH STATUTORY OBLI-
15 GATIONS.—Section 1156(b)(3) (42 U.S.C. 1320c-5(b)(3))
16 is amended by striking “the actual or estimated cost” and
17 inserting “up to \$10,000 for each instance”.

18 (f) PROCEDURAL PROVISIONS.—Section 1876(i)(6)
19 (42 U.S.C. 1395mm(i)(6)), as amended by section
20 515(a)(2), is amended by adding at the end the following
21 new subparagraph:

22 “(D) The provisions of section 1128A (other than
23 subsections (a) and (b)) shall apply to a civil money pen-
24 alty under subparagraph (B)(i) or (C)(i) in the same man-

1 ner as such provisions apply to a civil money penalty or
2 proceeding under section 1128A(a).”.

3 (g) PROHIBITION AGAINST OFFERING INDUCEMENTS
4 TO INDIVIDUALS ENROLLED UNDER PROGRAMS OR
5 PLANS.—

6 (1) OFFER OF REMUNERATION.—Section
7 1128A(a) (42 U.S.C. 1320a–7a(a)), as amended by
8 subsection (b), is amended—

9 (A) by striking “or” at the end of para-
10 graph (1)(D);

11 (B) by striking the semicolon at the end of
12 paragraph (4) and inserting “; or”; and

13 (C) by inserting after paragraph (4) the
14 following new paragraph:

15 “(5) offers to or transfers remuneration to any
16 individual eligible for benefits under title XVIII of
17 this Act, or under a State health care program (as
18 defined in section 1128(h)) that such person knows
19 or should know is likely to influence such individual
20 to order or receive from a particular provider, practi-
21 tioner, or supplier any item or service for which pay-
22 ment may be made, in whole or in part, under title
23 XVIII, or a State health care program (as so de-
24 fined);”.

1 (2) REMUNERATION DEFINED.—Section
2 1128A(i) (42 U.S.C. 1320a–7a(i)) is amended by
3 adding the following new paragraph:

4 “(6) The term ‘remuneration’ includes the waiv-
5 er of coinsurance and deductible amounts (or any
6 part thereof), and transfers of items or services for
7 free or for other than fair market value. The term
8 ‘remuneration’ does not include—

9 “(A) the waiver of coinsurance and deduct-
10 ible amounts by a person, if—

11 “(i) the waiver is not offered as part
12 of any advertisement or solicitation;

13 “(ii) the person does not routinely
14 waive coinsurance or deductible amounts;
15 and

16 “(iii) the person—

17 “(I) waives the coinsurance and
18 deductible amounts after determining
19 in good faith that the individual is in
20 financial need;

21 “(II) fails to collect coinsurance
22 or deductible amounts after making
23 reasonable collection efforts; or

24 “(III) provides for any permis-
25 sible waiver as specified in section

1 1128B(b)(3) or in regulations issued
2 by the Secretary;

3 “(B) differentials in coinsurance and de-
4 ductible amounts as part of a benefit plan de-
5 sign as long as the differentials have been dis-
6 closed in writing to all beneficiaries, third party
7 payers, and providers, to whom claims are pre-
8 sented and as long as the differentials meet the
9 standards as defined in regulations promulgated
10 by the Secretary not later than 180 days after
11 the date of the enactment of the Health Insur-
12 ance Reform Act of 1996; or

13 “(C) incentives given to individuals to pro-
14 mote the delivery of preventive care as deter-
15 mined by the Secretary in regulations so pro-
16 mulgated.”.

17 (h) EFFECTIVE DATE.—The amendments made by
18 this section shall take effect January 1, 1997.

19 **Subtitle E—Amendments to**
20 **Criminal Law**

21 **SEC. 541. HEALTH CARE FRAUD.**

22 (a) IN GENERAL.—

23 (1) FINES AND IMPRISONMENT FOR HEALTH
24 CARE FRAUD VIOLATIONS.—Chapter 63 of title 18,

1 United States Code, is amended by adding at the
2 end the following new section:

3 **“§ 1347. Health care fraud**

4 “Whoever knowingly and willfully executes, or at-
5 tempts to execute, a scheme or artifice—

6 “(1) to defraud any health care program, in
7 connection with the delivery of or payment for health
8 care benefits, items, or services; or

9 “(2) to obtain, by means of false or fraudulent
10 pretenses, representations, or promises, any of the
11 money or property owned by, or under the custody
12 or control of, any health care program in connection
13 with the delivery of or payment for health care bene-
14 fits, items, or services;

15 shall be fined under this title or imprisoned not more than
16 10 years, or both. If the violation results in serious bodily
17 injury (as defined in section 1365(g)(3) of this title), such
18 person may be imprisoned for any term of years.”.

19 (2) CLERICAL AMENDMENT.—The table of sec-
20 tions at the beginning of chapter 63 of title 18,
21 United States Code, is amended by adding at the
22 end the following:

“1347. Health care fraud.”.

23 (b) CRIMINAL FINES DEPOSITED IN FEDERAL HOS-
24 PITAL INSURANCE TRUST FUND.—The Secretary of the
25 Treasury shall deposit into the Federal Hospital Insurance

1 Trust Fund pursuant to section 1817(k)(2)(C) of the So-
2 cial Security Act, as added by section 501(b), an amount
3 equal to the criminal fines imposed under section 1347
4 of title 18, United States Code (relating to health care
5 fraud).

6 **SEC. 542. FORFEITURES FOR FEDERAL HEALTH CARE OF-**
7 **FENSES.**

8 (a) IN GENERAL.—Section 982(a) of title 18, United
9 States Code, is amended by adding after paragraph (5)
10 the following new paragraph:

11 “(6)(A) The court, in imposing sentence on a person
12 convicted of a Federal health care offense, shall order the
13 person to forfeit property, real or personal, that con-
14 stitutes or is derived, directly or indirectly, from gross pro-
15 ceeds traceable to the commission of the offense.

16 “(B) For purposes of this paragraph, the term ‘Fed-
17 eral health care offense’ means a violation of, or a criminal
18 conspiracy to violate—

19 (i) section 1347 of this title;

20 (ii) section 1128B of the Social Security Act;

21 and

22 (iii) sections 287, 371, 664, 666, 669, 1001,
23 1027, 1341, 1343, 1920, or 1954 of this title if the
24 violation or conspiracy relates to health care fraud.”.

1 (b) CONFORMING AMENDMENT.—Section
2 982(b)(1)(A) of title 18, United States Code, is amended
3 by inserting “or (a)(6)” after “(a)(1)”.

4 (c) PROPERTY FORFEITED DEPOSITED IN FEDERAL
5 HOSPITAL INSURANCE TRUST FUND.—

6 (1) IN GENERAL.—After the payment of the
7 costs of asset forfeiture has been made, and notwith-
8 standing any other provision of law, the Secretary of
9 the Treasury shall deposit into the Federal Hospital
10 Insurance Trust Fund pursuant to section
11 1817(k)(2)(C) of the Social Security Act, as added
12 by section 501(b), an amount equal to the net
13 amount realized from the forfeiture of property by
14 reason of a Federal health care offense pursuant to
15 section 982(a)(6) of title 18, United States Code.

16 (2) COSTS OF ASSET FORFEITURE.—For pur-
17 poses of paragraph (1), the term “payment of the
18 costs of asset forfeiture” means—

19 (A) the payment, at the discretion of the
20 Attorney General, of any expenses necessary to
21 seize, detain, inventory, safeguard, maintain,
22 advertise, sell, or dispose of property under sei-
23 zure, detention, or forfeited, or of any other
24 necessary expenses incident to the seizure, de-

1 tention, forfeiture, or disposal of such property,
2 including payment for—

3 (i) contract services,

4 (ii) the employment of outside con-
5 tractors to operate and manage properties
6 or provide other specialized services nec-
7 essary to dispose of such properties in an
8 effort to maximize the return from such
9 properties; and

10 (iii) reimbursement of any Federal,
11 State, or local agency for any expenditures
12 made to perform the functions described in
13 this subparagraph;

14 (B) at the discretion of the Attorney Gen-
15 eral, the payment of awards for information or
16 assistance leading to a civil or criminal forfeit-
17 ure involving any Federal agency participating
18 in the Health Care Fraud and Abuse Control
19 Account;

20 (C) the compromise and payment of valid
21 liens and mortgages against property that has
22 been forfeited, subject to the discretion of the
23 Attorney General to determine the validity of
24 any such lien or mortgage and the amount of
25 payment to be made, and the employment of at-

1 torneys and other personnel skilled in State real
2 estate law as necessary;

3 (D) payment authorized in connection with
4 remission or mitigation procedures relating to
5 property forfeited; and

6 (E) the payment of State and local prop-
7 erty taxes on forfeited real property that ac-
8 crued between the date of the violation giving
9 rise to the forfeiture and the date of the forfeit-
10 ure order.

11 **SEC. 543. INJUNCTIVE RELIEF RELATING TO FEDERAL**
12 **HEALTH CARE OFFENSES.**

13 (a) IN GENERAL.—Section 1345(a)(1) of title 18,
14 United States Code, is amended—

15 (1) by striking “or” at the end of subparagraph
16 (A);

17 (2) by inserting “or” at the end of subpara-
18 graph (B); and

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

21 “(C) committing or about to commit a
22 Federal health care offense (as defined in sec-
23 tion 982(a)(6)(B) of this title);”.

24 (b) FREEZING OF ASSETS.—Section 1345(a)(2) of
25 title 18, United States Code, is amended by inserting “or

1 a Federal health care offense (as defined in section
2 982(a)(6)(B))” after “title”.

3 **SEC. 544. FALSE STATEMENTS.**

4 (a) IN GENERAL.—Chapter 47 of title 18, United
5 States Code, is amended by adding at the end the follow-
6 ing new section:

7 **“§ 1033. False statements relating to health care mat-
8 ters**

9 “Whoever, in any matter involving a health care pro-
10 gram, knowingly and willfully—

11 “(1) falsifies, conceals, or covers up by any
12 trick, scheme, or device a material fact, or

13 “(2) makes any materially false, fictitious, or
14 fraudulent statement or representation, or makes or
15 uses any materially false writing or document know-
16 ing the same to contain any materially false, ficti-
17 tious, or fraudulent statement or entry,

18 shall be fined under this title or imprisoned not more than
19 5 years, or both.”.

20 (b) CLERICAL AMENDMENT.—The table of sections
21 at the beginning of chapter 47 of title 18, United States
22 Code, is amended by adding at the end the following:

“1033. False statements relating to health care matters.”.

1 **SEC. 545. OBSTRUCTION OF CRIMINAL INVESTIGATIONS OF**
2 **FEDERAL HEALTH CARE OFFENSES.**

3 (a) IN GENERAL.—Chapter 73 of title 18, United
4 States Code, is amended by adding at the end the follow-
5 ing new section:

6 **“§1518. Obstruction of criminal investigations of**
7 **Federal health care offenses**

8 “(a) Whoever willfully prevents, obstructs, misleads,
9 delays or attempts to prevent, obstruct, mislead, or delay
10 the communication of information or records relating to
11 a Federal health care offense to a criminal investigator
12 shall be fined under this title or imprisoned not more than
13 5 years, or both.

14 “(b) As used in this section the term ‘Federal health
15 care offense’ has the same meaning given such term in
16 section 982(a)(6)(B) of this title.

17 “(c) As used in this section the term ‘criminal inves-
18 tigator’ means any individual duly authorized by a depart-
19 ment, agency, or armed force of the United States to con-
20 duct or engage in investigations for prosecutions for viola-
21 tions of health care offenses.”.

22 (b) CLERICAL AMENDMENT.—The table of sections
23 at the beginning of chapter 73 of title 18, United States
24 Code, is amended by adding at the end the following:

“1518. Obstruction of Criminal Investigations of Federal Health Care Of-
fenses.”.

1 **SEC. 546. THEFT OR EMBEZZLEMENT.**

2 (a) IN GENERAL.—Chapter 31 of title 18, United
3 States Code, is amended by adding at the end the follow-
4 ing new section:

5 **“§ 669. Theft or embezzlement in connection with**
6 **health care**

7 “Whoever willfully embezzles, steals, or otherwise
8 willfully and unlawfully converts to the use of any person
9 other than the rightful owner, or intentionally misapplies
10 any of the moneys, funds, securities, premiums, credits,
11 property, or other assets of a health care program, shall
12 be fined under this title or imprisoned not more than 10
13 years, or both.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
15 at the beginning of chapter 31 of title 18, United States
16 Code, is amended by adding at the end the following:

“669. Theft or Embezzlement in Connection with Health Care.”.

17 **SEC. 547. LAUNDERING OF MONETARY INSTRUMENTS.**

18 Section 1956(c)(7) of title 18, United States Code,
19 is amended by adding at the end the following new sub-
20 paragraph:

21 “(F) Any act or activity constituting an of-
22 fense involving a Federal health care offense as
23 that term is defined in section 982(a)(6)(B) of
24 this title.”.

1 **SEC. 548. AUTHORIZED INVESTIGATIVE DEMAND PROCE-**
2 **DURES.**

3 (a) IN GENERAL.—Chapter 233 of title 18, United
4 States Code, is amended by adding after section 3485 the
5 following new section:

6 **“§ 3486. Authorized investigative demand procedures**

7 “(a)(1)(A) In any investigation relating to functions
8 set forth in paragraph (2), the Attorney General or des-
9 ignee may issue in writing and cause to be served a sub-
10 poena compelling production of any records (including any
11 books, papers, documents, electronic media, or other ob-
12 jects or tangible things), which may be relevant to an au-
13 thorized law enforcement inquiry, that a person or legal
14 entity may possess or have care, custody, or control.

15 “(B) A custodian of records may be required to give
16 testimony concerning the production and authentication of
17 such records.

18 “(C) The production of records may be required from
19 any place in any State or in any territory or other place
20 subject to the jurisdiction of the United States at any des-
21 ignated place; except that such production shall not be re-
22 quired more than 500 miles distant from the place where
23 the subpoena is served.

24 “(D) Witnesses summoned under this section shall be
25 paid the same fees and mileage that are paid witnesses
26 in the courts of the United States.

1 “(E) A subpoena requiring the production of records
2 shall describe the objects required to be produced and pre-
3 scribe a return date within a reasonable period of time
4 within which the objects can be assembled and made avail-
5 able.

6 “(2) Investigative demands utilizing an administra-
7 tive subpoena are authorized for any investigation with re-
8 spect to any act or activity constituting or involving health
9 care fraud, including a scheme or artifice—

10 “(A) to defraud any health care program, in
11 connection with the delivery of or payment for health
12 care benefits, items, or services; or

13 “(B) to obtain, by means of false or fraudulent
14 pretenses, representations, or promises, any of the
15 money or property owned by, or under the custody
16 or control of, any health care program in connection
17 with the delivery of or payment for health care bene-
18 fits, items, or services.

19 “(b)(1) A subpoena issued under this section may be
20 served by any person designated in the subpoena to serve
21 it.

22 “(2) Service upon a natural person may be made by
23 personal delivery of the subpoena to such person.

24 “(3) Service may be made upon a domestic or foreign
25 association which is subject to suit under a common name,

1 by delivering the subpoena to an officer, to a managing
2 or general agent, or to any other agent authorized by ap-
3 pointment or by law to receive service of process.

4 “(4) The affidavit of the person serving the subpoena
5 entered on a true copy thereof by the person serving it
6 shall be proof of service.

7 “(c)(1) In the case of contumacy by or refusal to obey
8 a subpoena issued to any person, the Attorney General
9 may invoke the aid of any court of the United States with-
10 in the jurisdiction of which the investigation is carried on
11 or of which the subpoenaed person is an inhabitant, or
12 in which such person carries on business or may be found,
13 to compel compliance with the subpoena.

14 “(2) The court may issue an order requiring the sub-
15 poenaed person to appear before the Attorney General to
16 produce records, if so ordered, or to give testimony re-
17 quired under subsection (a)(1)(B).

18 “(3) Any failure to obey the order of the court may
19 be punished by the court as a contempt thereof.

20 “(4) All process in any such case may be served in
21 any judicial district in which such person may be found.

22 “(d) Notwithstanding any Federal, State, or local
23 law, any person, including officers, agents, and employees,
24 receiving a subpoena under this section, who complies in
25 good faith with the subpoena and thus produces the mate-

1 rials sought, shall not be liable in any court of any State
2 or the United States to any customer or other person for
3 such production or for nondisclosure of that production
4 to the customer.

5 “(e)(1) Health information about an individual that
6 is disclosed under this section may not be used in, or dis-
7 closed to any person for use in, any administrative, civil,
8 or criminal action or investigation directed against the in-
9 dividual who is the subject of the information unless the
10 action or investigation arises out of and is directly related
11 to receipt of health care or payment for health care or
12 action involving a fraudulent claim related to health; or
13 if authorized by an appropriate order of a court of com-
14 petent jurisdiction, granted after application showing good
15 cause therefor.

16 “(2) In assessing good cause, the court shall weigh
17 the public interest and the need for disclosure against the
18 injury to the patient, to the physician-patient relationship,
19 and to the treatment services.

20 “(3) Upon the granting of such order, the court, in
21 determining the extent to which any disclosure of all or
22 any part of any record is necessary, shall impose appro-
23 priate safeguards against unauthorized disclosure.”.

24 (b) CLERICAL AMENDMENT.—The table of sections
25 for chapter 223 of title 18, United States Code, is amend-

1 ed by inserting after the item relating to section 3405 the
2 following new item:

“3486. Authorized investigative demand procedures.”.

3 (c) CONFORMING AMENDMENT.—Section
4 1510(b)(3)(B) of title 18, United States Code, is amended
5 by inserting “or a Department of Justice subpoena (issued
6 under section 3486),” after “subpoena”.

7 **TITLE VI—INTERNAL REVENUE**
8 **CODE AND OTHER PROVISIONS**

9 **SEC. 600. REFERENCES.**

10 Except as otherwise expressly provided, whenever in
11 this title an amendment or repeal is expressed in terms
12 of an amendment to, or repeal of, a section or other provi-
13 sion, the reference shall be considered to be made to a
14 section or other provision of the Internal Revenue Code
15 of 1986.

16 **Subtitle A—Foreign Trust Tax**
17 **Compliance**

18 **SEC. 601. IMPROVED INFORMATION REPORTING ON FOR-**
19 **EIGN TRUSTS.**

20 (a) IN GENERAL.—Section 6048 (relating to returns
21 as to certain foreign trusts) is amended to read as follows:

22 **“SEC. 6048. INFORMATION WITH RESPECT TO CERTAIN**
23 **FOREIGN TRUSTS.**

24 “(a) NOTICE OF CERTAIN EVENTS.—

1 “(1) GENERAL RULE.—On or before the 90th
2 day (or such later day as the Secretary may pre-
3 scribe) after any reportable event, the responsible
4 party shall provide written notice of such event to
5 the Secretary in accordance with paragraph (2).

6 “(2) CONTENTS OF NOTICE.—The notice re-
7 quired by paragraph (1) shall contain such informa-
8 tion as the Secretary may prescribe, including—

9 “(A) the amount of money or other prop-
10 erty (if any) transferred to the trust in connec-
11 tion with the reportable event, and

12 “(B) the identity of the trust and of each
13 trustee and beneficiary (or class of bene-
14 ficiaries) of the trust.

15 “(3) REPORTABLE EVENT.—For purposes of
16 this subsection—

17 “(A) IN GENERAL.—The term ‘reportable
18 event’ means—

19 “(i) the creation of any foreign trust
20 by a United States person,

21 “(ii) the transfer of any money or
22 property (directly or indirectly) to a for-
23 eign trust by a United States person, in-
24 cluding a transfer by reason of death, and

1 “(iii) the death of a citizen or resident
2 of the United States if—

3 “(I) the decedent was treated as
4 the owner of any portion of a foreign
5 trust under the rules of subpart E of
6 part I of subchapter J of chapter 1,
7 or

8 “(II) any portion of a foreign
9 trust was included in the gross estate
10 of the decedent.

11 “(B) EXCEPTIONS.—

12 “(i) FAIR MARKET VALUE SALES.—
13 Subparagraph (A)(ii) shall not apply to
14 any transfer of property to a trust in ex-
15 change for consideration of at least the fair
16 market value of the transferred property.
17 For purposes of the preceding sentence,
18 consideration other than cash shall be
19 taken into account at its fair market value
20 and the rules of section 679(a)(3) shall
21 apply.

22 “(ii) DEFERRED COMPENSATION AND
23 CHARITABLE TRUSTS.—Subparagraph (A)
24 shall not apply with respect to a trust
25 which is—

1 “(I) described in section 402(b),
2 404(a)(4), or 404A, or

3 “(II) determined by the Sec-
4 retary to be described in section
5 501(c)(3).

6 “(4) RESPONSIBLE PARTY.—For purposes of
7 this subsection, the term ‘responsible party’
8 means—

9 “(A) the grantor in the case of the cre-
10 ation of an inter vivos trust,

11 “(B) the transferor in the case of a report-
12 able event described in paragraph (3)(A)(ii)
13 other than a transfer by reason of death, and

14 “(C) the executor of the decedent’s estate
15 in any other case.

16 “(b) UNITED STATES GRANTOR OF FOREIGN
17 TRUST.—

18 “(1) IN GENERAL.—If, at any time during any
19 taxable year of a United States person, such person
20 is treated as the owner of any portion of a foreign
21 trust under the rules of subpart E of part I of sub-
22 chapter J of chapter 1, such person shall be respon-
23 sible to ensure that—

24 “(A) such trust makes a return for such
25 year which sets forth a full and complete ac-

1 counting of all trust activities and operations
2 for the year, the name of the United States
3 agent for such trust, and such other informa-
4 tion as the Secretary may prescribe, and

5 “(B) such trust furnishes such information
6 as the Secretary may prescribe to each United
7 States person (i) who is treated as the owner of
8 any portion of such trust or (ii) who receives
9 (directly or indirectly) any distribution from the
10 trust.

11 “(2) TRUSTS NOT HAVING UNITED STATES
12 AGENT.—

13 “(A) IN GENERAL.—If the rules of this
14 paragraph apply to any foreign trust, the deter-
15 mination of amounts required to be taken into
16 account with respect to such trust by a United
17 States person under the rules of subpart E of
18 part I of subchapter J of chapter 1 shall be de-
19 termined by the Secretary.

20 “(B) UNITED STATES AGENT REQUIRED.—
21 The rules of this paragraph shall apply to any
22 foreign trust to which paragraph (1) applies un-
23 less such trust agrees (in such manner, subject
24 to such conditions, and at such time as the Sec-
25 retary shall prescribe) to authorize a United

1 States person to act as such trust’s limited
2 agent solely for purposes of applying sections
3 7602, 7603, and 7604 with respect to—

4 “(i) any request by the Secretary to
5 examine records or produce testimony re-
6 lated to the proper treatment of amounts
7 required to be taken into account under
8 the rules referred to in subparagraph (A),
9 or

10 “(ii) any summons by the Secretary
11 for such records or testimony.

12 The appearance of persons or production of
13 records by reason of a United States person
14 being such an agent shall not subject such per-
15 sons or records to legal process for any purpose
16 other than determining the correct treatment
17 under this title of the amounts required to be
18 taken into account under the rules referred to
19 in subparagraph (A). A foreign trust which ap-
20 points an agent described in this subparagraph
21 shall not be considered to have an office or a
22 permanent establishment in the United States,
23 or to be engaged in a trade or business in the
24 United States, solely because of the activities of
25 such agent pursuant to this subsection.

1 “(C) OTHER RULES TO APPLY.—Rules
2 similar to the rules of paragraphs (2) and (4)
3 of section 6038A(e) shall apply for purposes of
4 this paragraph.

5 “(c) REPORTING BY UNITED STATES BENEFICIARIES
6 OF FOREIGN TRUSTS.—

7 “(1) IN GENERAL.—If any United States per-
8 son receives (directly or indirectly) during any tax-
9 able year of such person any distribution from a for-
10 eign trust, such person shall make a return with re-
11 spect to such trust for such year which includes—

12 “(A) the name of such trust,

13 “(B) the aggregate amount of the distribu-
14 tions so received from such trust during such
15 taxable year, and

16 “(C) such other information as the Sec-
17 retary may prescribe.

18 “(2) INCLUSION IN INCOME IF RECORDS NOT
19 PROVIDED.—

20 “(A) IN GENERAL.—If adequate records
21 are not provided to the Secretary to determine
22 the proper treatment of any distribution from a
23 foreign trust, such distribution shall be treated
24 as an accumulation distribution includible in
25 the gross income of the distributee under chap-

1 ter 1. To the extent provided in regulations, the
2 preceding sentence shall not apply if the foreign
3 trust elects to be subject to rules similar to the
4 rules of subsection (b)(2)(B).

5 “(B) APPLICATION OF ACCUMULATION
6 DISTRIBUTION RULES.—For purposes of apply-
7 ing section 668 in a case to which subpara-
8 graph (A) applies, the applicable number of
9 years for purposes of section 668(a) shall be $\frac{1}{2}$
10 of the number of years the trust has been in ex-
11 istence.

12 “(d) SPECIAL RULES.—

13 “(1) DETERMINATION OF WHETHER UNITED
14 STATES PERSON RECEIVES DISTRIBUTION.—For
15 purposes of this section, in determining whether a
16 United States person receives a distribution from a
17 foreign trust, the fact that a portion of such trust
18 is treated as owned by another person under the
19 rules of subpart E of part I of subchapter J of chap-
20 ter 1 shall be disregarded.

21 “(2) DOMESTIC TRUSTS WITH FOREIGN ACTIVI-
22 TIES.—To the extent provided in regulations, a trust
23 which is a United States person shall be treated as
24 a foreign trust for purposes of this section and sec-
25 tion 6677 if such trust has substantial activities, or

1 holds substantial property, outside the United
2 States.

3 “(3) TIME AND MANNER OF FILING INFORMA-
4 TION.—Any notice or return required under this sec-
5 tion shall be made at such time and in such manner
6 as the Secretary shall prescribe.

7 “(4) MODIFICATION OF RETURN REQUIRE-
8 MENTS.—The Secretary is authorized to suspend or
9 modify any requirement of this section if the Sec-
10 retary determines that the United States has no sig-
11 nificant tax interest in obtaining the required infor-
12 mation.”.

13 (b) INCREASED PENALTIES.—Section 6677 (relating
14 to failure to file information returns with respect to cer-
15 tain foreign trusts) is amended to read as follows:

16 **“SEC. 6677. FAILURE TO FILE INFORMATION WITH RESPECT**
17 **TO CERTAIN FOREIGN TRUSTS.**

18 “(a) CIVIL PENALTY.—In addition to any criminal
19 penalty provided by law, if any notice or return required
20 to be filed by section 6048—

21 “(1) is not filed on or before the time provided
22 in such section, or

23 “(2) does not include all the information re-
24 quired pursuant to such section or includes incorrect
25 information,

1 the person required to file such notice or return shall pay
2 a penalty equal to 35 percent of the gross reportable
3 amount. If any failure described in the preceding sentence
4 continues for more than 90 days after the day on which
5 the Secretary mails notice of such failure to the person
6 required to pay such penalty, such person shall pay a pen-
7 alty (in addition to the amount determined under the pre-
8 ceding sentence) of \$10,000 for each 30-day period (or
9 fraction thereof) during which such failure continues after
10 the expiration of such 90-day period. In no event shall the
11 penalty under this subsection with respect to any failure
12 exceed the gross reportable amount.

13 “(b) SPECIAL RULES FOR RETURNS UNDER SEC-
14 TION 6048(b).—In the case of a return required under
15 section 6048(b)—

16 “(1) the United States person referred to in
17 such section shall be liable for the penalty imposed
18 by subsection (a), and

19 “(2) subsection (a) shall be applied by sub-
20 stituting ‘5 percent’ for ‘35 percent’.

21 “(c) GROSS REPORTABLE AMOUNT.—For purposes
22 of subsection (a), the term ‘gross reportable amount’
23 means—

1 “(1) the gross value of the property involved in
2 the event (determined as of the date of the event)
3 in the case of a failure relating to section 6048(a),

4 “(2) the gross value of the portion of the trust’s
5 assets at the close of the year treated as owned by
6 the United States person in the case of a failure re-
7 lating to section 6048(b)(1), and

8 “(3) the gross amount of the distributions in
9 the case of a failure relating to section 6048(c).

10 “(d) REASONABLE CAUSE EXCEPTION.—No penalty
11 shall be imposed by this section on any failure which is
12 shown to be due to reasonable cause and not due to willful
13 neglect. The fact that a foreign jurisdiction would impose
14 a civil or criminal penalty on the taxpayer (or any other
15 person) for disclosing the required information is not rea-
16 sonable cause.

17 “(e) DEFICIENCY PROCEDURES NOT TO APPLY.—
18 Subchapter B of chapter 63 (relating to deficiency proce-
19 dures for income, estate, gift, and certain excise taxes)
20 shall not apply in respect of the assessment or collection
21 of any penalty imposed by subsection (a).”.

22 (c) CONFORMING AMENDMENTS.—

23 (1) Paragraph (2) of section 6724(d) is amend-
24 ed by striking “or” at the end of subparagraph (S),
25 by striking the period at the end of subparagraph

1 (T) and inserting “, or”, and by inserting after sub-
2 paragraph (T) the following new subparagraph:

3 “(U) section 6048(b)(1)(B) (relating to
4 foreign trust reporting requirements).”.

5 (2) The table of sections for subpart B of part
6 III of subchapter A of chapter 61 is amended by
7 striking the item relating to section 6048 and insert-
8 ing the following new item:

“Sec. 6048. Information with respect to certain foreign trusts.”.

9 (3) The table of sections for part I of sub-
10 chapter B of chapter 68 is amended by striking the
11 item relating to section 6677 and inserting the fol-
12 lowing new item:

“Sec. 6677. Failure to file information with respect to certain foreign trusts.”.

13 (d) EFFECTIVE DATES.—

14 (1) REPORTABLE EVENTS.—To the extent re-
15 lated to subsection (a) of section 6048 of the Inter-
16 nal Revenue Code of 1986, as amended by this sec-
17 tion, the amendments made by this section shall
18 apply to reportable events (as defined in such section
19 6048) occurring after the date of the enactment of
20 this Act.

21 (2) GRANTOR TRUST REPORTING.—To the ex-
22 tent related to subsection (b) of such section 6048,
23 the amendments made by this section shall apply to

1 taxable years of United States persons beginning
2 after the date of the enactment of this Act.

3 (3) REPORTING BY UNITED STATES BENE-
4 FICIARIES.—To the extent related to subsection (c)
5 of such section 6048, the amendments made by this
6 section shall apply to distributions received after the
7 date of the enactment of this Act.

8 **SEC. 602. MODIFICATIONS OF RULES RELATING TO FOR-**
9 **EIGN TRUSTS HAVING ONE OR MORE UNITED**
10 **STATES BENEFICIARIES.**

11 (a) TREATMENT OF TRUST OBLIGATIONS, ETC.—

12 (1) Paragraph (2) of section 679(a) is amended
13 by striking subparagraph (B) and inserting the fol-
14 lowing:

15 “(B) TRANSFERS AT FAIR MARKET
16 VALUE.—To any transfer of property to a trust
17 in exchange for consideration of at least the fair
18 market value of the transferred property. For
19 purposes of the preceding sentence, consider-
20 ation other than cash shall be taken into ac-
21 count at its fair market value.”.

22 (2) Subsection (a) of section 679 (relating to
23 foreign trusts having one or more United States
24 beneficiaries) is amended by adding at the end the
25 following new paragraph:

1 “(3) CERTAIN OBLIGATIONS NOT TAKEN INTO
2 ACCOUNT UNDER FAIR MARKET VALUE EXCEP-
3 TION.—

4 “(A) IN GENERAL.—In determining wheth-
5 er paragraph (2)(B) applies to any transfer by
6 a person described in clause (ii) or (iii) of sub-
7 paragraph (C), there shall not be taken into ac-
8 count—

9 “(i) except as provided in regulations,
10 any obligation of a person described in
11 subparagraph (C), and

12 “(ii) to the extent provided in regula-
13 tions, any obligation which is guaranteed
14 by a person described in subparagraph (C).

15 “(B) TREATMENT OF PRINCIPAL PAY-
16 MENTS ON OBLIGATION.—Principal payments
17 by the trust on any obligation referred to in
18 subparagraph (A) shall be taken into account
19 on and after the date of the payment in deter-
20 mining the portion of the trust attributable to
21 the property transferred.

22 “(C) PERSONS DESCRIBED.—The persons
23 described in this subparagraph are—

24 “(i) the trust,

1 “(ii) any grantor or beneficiary of the
2 trust, and

3 “(iii) any person who is related (with-
4 in the meaning of section 643(i)(2)(B)) to
5 any grantor or beneficiary of the trust.”.

6 (b) EXEMPTION OF TRANSFERS TO CHARITABLE
7 TRUSTS.—Subsection (a) of section 679 is amended by
8 striking “section 404(a)(4) or 404A” and inserting “sec-
9 tion 6048(a)(3)(B)(ii)”.

10 (c) OTHER MODIFICATIONS.—Subsection (a) of sec-
11 tion 679 is amended by adding at the end the following
12 new paragraphs:

13 “(4) SPECIAL RULES APPLICABLE TO FOREIGN
14 GRANTOR WHO LATER BECOMES A UNITED STATES
15 PERSON.—

16 “(A) IN GENERAL.—If a nonresident alien
17 individual has a residency starting date within
18 5 years after directly or indirectly transferring
19 property to a foreign trust, this section and sec-
20 tion 6048 shall be applied as if such individual
21 transferred to such trust on the residency start-
22 ing date an amount equal to the portion of such
23 trust attributable to the property transferred by
24 such individual to such trust in such transfer.

1 “(B) TREATMENT OF UNDISTRIBUTED IN-
2 COME.—For purposes of this section, undistrib-
3 uted net income for periods before such individ-
4 ual’s residency starting date shall be taken into
5 account in determining the portion of the trust
6 which is attributable to property transferred by
7 such individual to such trust but shall not oth-
8 erwise be taken into account.

9 “(C) RESIDENCY STARTING DATE.—For
10 purposes of this paragraph, an individual’s resi-
11 dency starting date is the residency starting
12 date determined under section 7701(b)(2)(A).

13 “(5) OUTBOUND TRUST MIGRATIONS.—If—

14 “(A) an individual who is a citizen or resi-
15 dent of the United States transferred property
16 to a trust which was not a foreign trust, and

17 “(B) such trust becomes a foreign trust
18 while such individual is alive,

19 then this section and section 6048 shall be applied
20 as if such individual transferred to such trust on the
21 date such trust becomes a foreign trust an amount
22 equal to the portion of such trust attributable to the
23 property previously transferred by such individual to
24 such trust. A rule similar to the rule of paragraph
25 (4)(B) shall apply for purposes of this paragraph.”.

1 (d) MODIFICATIONS RELATING TO WHETHER TRUST
2 HAS UNITED STATES BENEFICIARIES.—Subsection (c) of
3 section 679 is amended by adding at the end the following
4 new paragraph:

5 “(3) CERTAIN UNITED STATES BENEFICIARIES
6 DISREGARDED.—A beneficiary shall not be treated
7 as a United States person in applying this section
8 with respect to any transfer of property to foreign
9 trust if such beneficiary first became a United
10 States person more than 5 years after the date of
11 such transfer.”.

12 (e) TECHNICAL AMENDMENT.—Subparagraph (A) of
13 section 679(c)(2) is amended to read as follows:

14 “(A) in the case of a foreign corporation,
15 such corporation is a controlled foreign corpora-
16 tion (as defined in section 957(a)),”.

17 (f) REGULATIONS.—Section 679 is amended by add-
18 ing at the end the following new subsection:

19 “(d) REGULATIONS.—The Secretary shall prescribe
20 such regulations as may be necessary or appropriate to
21 carry out the purposes of this section.”.

22 (g) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to transfers of property after Feb-
24 ruary 6, 1995.

1 **SEC. 603. FOREIGN PERSONS NOT TO BE TREATED AS OWN-**
2 **ERS UNDER GRANTOR TRUST RULES.**

3 (a) GENERAL RULE.—

4 (1) Subsection (f) of section 672 (relating to
5 special rule where grantor is foreign person) is
6 amended to read as follows:

7 “(f) SUBPART NOT TO RESULT IN FOREIGN OWNER-
8 SHIP.—

9 “(1) IN GENERAL.—Notwithstanding any other
10 provision of this subpart, this subpart shall apply
11 only to the extent such application results in an
12 amount being currently taken into account (directly
13 or through 1 or more entities) under this chapter in
14 computing the income of a citizen or resident of the
15 United States or a domestic corporation.

16 “(2) EXCEPTIONS.—

17 “(A) CERTAIN REVOCABLE AND IRREV-
18 OCABLE TRUSTS.—Paragraph (1) shall not
19 apply to any trust if—

20 “(i) the power to revest absolutely in
21 the grantor title to the trust property is
22 exercisable solely by the grantor without
23 the approval or consent of any other per-
24 son or with the consent of a related or sub-
25 ordinate party who is subservient to the
26 grantor, or

1 “(ii) the only amounts distributable
2 from such trust (whether income or cor-
3 pus) during the lifetime of the grantor are
4 amounts distributable to the grantor or the
5 spouse of the grantor.

6 “(B) COMPENSATORY TRUSTS.—Except as
7 provided in regulations, paragraph (1) shall not
8 apply to any portion of a trust distributions
9 from which are taxable as compensation for
10 services rendered.

11 “(3) SPECIAL RULES.—Except as otherwise
12 provided in regulations prescribed by the Sec-
13 retary—

14 “(A) a controlled foreign corporation (as
15 defined in section 957) shall be treated as a do-
16 mestic corporation for purposes of paragraph
17 (1), and

18 “(B) paragraph (1) shall not apply for
19 purposes of applying section 1296.

20 “(4) RECHARACTERIZATION OF PURPORTED
21 GIFTS.—In the case of any transfer directly or indi-
22 rectly from a partnership or foreign corporation
23 which the transferee treats as a gift or bequest, the
24 Secretary may recharacterize such transfer in such
25 circumstances as the Secretary determines to be ap-

1 appropriate to prevent the avoidance of the purposes of
2 this subsection.

3 “(5) SPECIAL RULE WHERE GRANTOR IS FOR-
4 EIGN PERSON.—If—

5 “(A) but for this subsection, a foreign per-
6 son would be treated as the owner of any por-
7 tion of a trust, and

8 “(B) such trust has a beneficiary who is a
9 United States person,

10 such beneficiary shall be treated as the grantor of
11 such portion to the extent such beneficiary has made
12 transfers of property by gift (directly or indirectly)
13 to such foreign person. For purposes of the preced-
14 ing sentence, any gift shall not be taken into account
15 to the extent such gift would be excluded from tax-
16 able gifts under section 2503(b).

17 “(6) REGULATIONS.—The Secretary shall pre-
18 scribe such regulations as may be necessary or ap-
19 propriate to carry out the purposes of this sub-
20 section, including regulations providing that para-
21 graph (1) shall not apply in appropriate cases.”.

22 (2) The last sentence of subsection (c) of sec-
23 tion 672 of such Code is amended by inserting “sub-
24 section (f) and” before “sections 674”.

1 (b) CREDIT FOR CERTAIN TAXES.—Paragraph (2) of
2 section 665(d) is amended by adding at the end the follow-
3 ing new sentence: “Under rules or regulations prescribed
4 by the Secretary, in the case of any foreign trust of which
5 the settlor or another person would be treated as owner
6 of any portion of the trust under subpart E but for section
7 672(f), the term ‘taxes imposed on the trust’ includes the
8 allocable amount of any income, war profits, and excess
9 profits taxes imposed by any foreign country or possession
10 of the United States on the settlor or such other person
11 in respect of trust gross income.”.

12 (c) DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS
13 THROUGH NOMINEES.—

14 (1) Section 643 is amended by adding at the
15 end the following new subsection:

16 “(h) DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS
17 THROUGH NOMINEES.—For purposes of this part, any
18 amount paid to a United States person which is derived
19 directly or indirectly from a foreign trust of which the
20 payor is not the grantor shall be deemed in the year of
21 payment to have been directly paid by the foreign trust
22 to such United States person.”.

23 (2) Section 665 is amended by striking sub-
24 section (c).

25 (d) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as provided by para-
2 graph (2), the amendments made by this section
3 shall take effect on the date of the enactment of this
4 Act.

5 (2) EXCEPTION FOR CERTAIN TRUSTS.—The
6 amendments made by this section shall not apply to
7 any trust—

8 (A) which is treated as owned by the
9 grantor or another person under section 676 or
10 677 (other than subsection (a)(3) thereof) of
11 the Internal Revenue Code of 1986, and

12 (B) which is in existence on September 19,
13 1995.

14 The preceding sentence shall not apply to the por-
15 tion of any such trust attributable to any transfer to
16 such trust after September 19, 1995.

17 (e) TRANSITIONAL RULE.—If—

18 (1) by reason of the amendments made by this
19 section, any person other than a United States per-
20 son ceases to be treated as the owner of a portion
21 of a domestic trust, and

22 (2) before January 1, 1997, such trust becomes
23 a foreign trust, or the assets of such trust are trans-
24 ferred to a foreign trust,

1 no tax shall be imposed by section 1491 of the Internal
2 Revenue Code of 1986 by reason of such trust becoming
3 a foreign trust or the assets of such trust being trans-
4 ferred to a foreign trust.

5 **SEC. 604. INFORMATION REPORTING REGARDING FOREIGN**
6 **GIFTS.**

7 (a) IN GENERAL.—Subpart A of part III of sub-
8 chapter A of chapter 61 is amended by inserting after sec-
9 tion 6039E the following new section:

10 **“SEC. 6039F. NOTICE OF GIFTS RECEIVED FROM FOREIGN**
11 **PERSONS.**

12 “(a) IN GENERAL.—If the value of the aggregate for-
13 eign gifts received by a United States person (other than
14 an organization described in section 501(c) and exempt
15 from tax under section 501(a)) during any taxable year
16 exceeds \$10,000, such United States person shall furnish
17 (at such time and in such manner as the Secretary shall
18 prescribe) such information as the Secretary may pre-
19 scribe regarding each foreign gift received during such
20 year.

21 “(b) FOREIGN GIFT.—For purposes of this section,
22 the term ‘foreign gift’ means any amount received from
23 a person other than a United States person which the re-
24 cipient treats as a gift or bequest. Such term shall not

1 include any qualified transfer (within the meaning of sec-
2 tion 2503(e)(2)).

3 “(c) PENALTY FOR FAILURE TO FILE INFORMA-
4 TION.—

5 “(1) IN GENERAL.—If a United States person
6 fails to furnish the information required by sub-
7 section (a) with respect to any foreign gift within
8 the time prescribed therefor (including extensions)—

9 “(A) the tax consequences of the receipt of
10 such gift shall be determined by the Secretary
11 in the Secretary’s sole discretion from the Sec-
12 retary’s own knowledge or from such informa-
13 tion as the Secretary may obtain through testi-
14 mony or otherwise, and

15 “(B) such United States person shall pay
16 (upon notice and demand by the Secretary and
17 in the same manner as tax) an amount equal to
18 5 percent of the amount of such foreign gift for
19 each month for which the failure continues (not
20 to exceed 25 percent of such amount in the ag-
21 gregate).

22 “(2) REASONABLE CAUSE EXCEPTION.—Para-
23 graph (1) shall not apply to any failure to report a
24 foreign gift if the United States person shows that

1 the failure is due to reasonable cause and not due
2 to willful neglect.

3 “(d) COST-OF-LIVING ADJUSTMENT.—In the case of
4 any taxable year beginning after December 31, 1996, the
5 \$10,000 amount under subsection (a) shall be increased
6 by an amount equal to the product of such amount and
7 the cost-of-living adjustment for such taxable year under
8 section 1(f)(3), except that subparagraph (B) thereof shall
9 be applied by substituting ‘1995’ for ‘1992’.

10 “(e) REGULATIONS.—The Secretary shall prescribe
11 such regulations as may be necessary or appropriate to
12 carry out the purposes of this section.”.

13 (b) CLERICAL AMENDMENT.—The table of sections
14 for such subpart is amended by inserting after the item
15 relating to section 6039E the following new item:

“Sec. 6039F. Notice of large gifts received from foreign persons.”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to amounts received after the date
18 of the enactment of this Act in taxable years ending after
19 such date.

20 **SEC. 605. MODIFICATION OF RULES RELATING TO FOREIGN**
21 **TRUSTS WHICH ARE NOT GRANTOR TRUSTS.**

22 (a) MODIFICATION OF INTEREST CHARGE ON ACCU-
23 MULATION DISTRIBUTIONS.—Subsection (a) of section
24 668 (relating to interest charge on accumulation distribu-
25 tions from foreign trusts) is amended to read as follows:

1 “(a) GENERAL RULE.—For purposes of the tax de-
2 terminated under section 667(a)—

3 “(1) INTEREST DETERMINED USING UNDER-
4 PAYMENT RATES.—The interest charge determined
5 under this section with respect to any distribution is
6 the amount of interest which would be determined
7 on the partial tax computed under section 667(b) for
8 the period described in paragraph (2) using the
9 rates and the method under section 6621 applicable
10 to underpayments of tax.

11 “(2) PERIOD.—For purposes of paragraph (1),
12 the period described in this paragraph is the period
13 which begins on the date which is the applicable
14 number of years before the date of the distribution
15 and which ends on the date of the distribution.

16 “(3) APPLICABLE NUMBER OF YEARS.—For
17 purposes of paragraph (2)—

18 “(A) IN GENERAL.—The applicable num-
19 ber of years with respect to a distribution is the
20 number determined by dividing—

21 “(i) the sum of the products described
22 in subparagraph (B) with respect to each
23 undistributed income year, by

24 “(ii) the aggregate undistributed net
25 income.

1 The quotient determined under the preceding
2 sentence shall be rounded under procedures
3 prescribed by the Secretary.

4 “(B) PRODUCT DESCRIBED.—For pur-
5 poses of subparagraph (A), the product de-
6 scribed in this subparagraph with respect to
7 any undistributed income year is the product
8 of—

9 “(i) the undistributed net income for
10 such year, and

11 “(ii) the sum of the number of taxable
12 years between such year and the taxable
13 year of the distribution (counting in each
14 case the undistributed income year but not
15 counting the taxable year of the distribu-
16 tion).

17 “(4) UNDISTRIBUTED INCOME YEAR.—For pur-
18 poses of this subsection, the term ‘undistributed in-
19 come year’ means any prior taxable year of the trust
20 for which there is undistributed net income, other
21 than a taxable year during all of which the bene-
22 ficiary receiving the distribution was not a citizen or
23 resident of the United States.

24 “(5) DETERMINATION OF UNDISTRIBUTED NET
25 INCOME.—Notwithstanding section 666, for pur-

1 poses of this subsection, an accumulation distribu-
2 tion from the trust shall be treated as reducing pro-
3 portionately the undistributed net income for undis-
4 tributed income years.

5 “(6) PERIODS BEFORE 1996.—Interest for the
6 portion of the period described in paragraph (2)
7 which occurs before January 1, 1996, shall be deter-
8 mined—

9 “(A) by using an interest rate of 6 percent,
10 and

11 “(B) without compounding until January
12 1, 1996.”.

13 (b) ABUSIVE TRANSACTIONS.—Section 643(a) is
14 amended by inserting after paragraph (6) the following
15 new paragraph:

16 “(7) ABUSIVE TRANSACTIONS.—The Secretary
17 shall prescribe such regulations as may be necessary
18 or appropriate to carry out the purposes of this part,
19 including regulations to prevent avoidance of such
20 purposes.”.

21 (c) TREATMENT OF LOANS FROM TRUSTS.—

22 (1) IN GENERAL.—Section 643 (relating to
23 definitions applicable to subparts A, B, C, and D)
24 is amended by adding at the end the following new
25 subsection:

1 “(i) LOANS FROM FOREIGN TRUSTS.—For purposes
2 of subparts B, C, and D—

3 “(1) GENERAL RULE.—Except as provided in
4 regulations, if a foreign trust makes a loan of cash
5 or marketable securities directly or indirectly to—

6 “(A) any grantor or beneficiary of such
7 trust who is a United States person, or

8 “(B) any United States person not de-
9 scribed in subparagraph (A) who is related to
10 such grantor or beneficiary,

11 the amount of such loan shall be treated as a dis-
12 tribution by such trust to such grantor or bene-
13 ficiary (as the case may be).

14 “(2) DEFINITIONS AND SPECIAL RULES.—For
15 purposes of this subsection—

16 “(A) CASH.—The term ‘cash’ includes for-
17 eign currencies and cash equivalents.

18 “(B) RELATED PERSON.—

19 “(i) IN GENERAL.—A person is relat-
20 ed to another person if the relationship be-
21 tween such persons would result in a dis-
22 allowance of losses under section 267 or
23 707(b). In applying section 267 for pur-
24 poses of the preceding sentence, section
25 267(c)(4) shall be applied as if the family

1 of an individual includes the spouses of the
2 members of the family.

3 “(ii) ALLOCATION.—If any person de-
4 scribed in paragraph (1)(B) is related to
5 more than one person, the grantor or bene-
6 ficiary to whom the treatment under this
7 subsection applies shall be determined
8 under regulations prescribed by the Sec-
9 retary.

10 “(C) EXCLUSION OF TAX-EXEMPTS.—The
11 term ‘United States person’ does not include
12 any entity exempt from tax under this chapter.

13 “(D) TRUST NOT TREATED AS SIMPLE
14 TRUST.—Any trust which is treated under this
15 subsection as making a distribution shall be
16 treated as not described in section 651.

17 “(3) SUBSEQUENT TRANSACTIONS REGARDING
18 LOAN PRINCIPAL.—If any loan is taken into account
19 under paragraph (1), any subsequent transaction be-
20 tween the trust and the original borrower regarding
21 the principal of the loan (by way of complete or par-
22 tial repayment, satisfaction, cancellation, discharge,
23 or otherwise) shall be disregarded for purposes of
24 this title.”.

1 (2) TECHNICAL AMENDMENT.—Paragraph (8)
2 of section 7872(f) is amended by inserting “,
3 643(i),” before “or 1274” each place it appears.

4 (d) EFFECTIVE DATES.—

5 (1) INTEREST CHARGE.—The amendment made
6 by subsection (a) shall apply to distributions after
7 the date of the enactment of this Act.

8 (2) ABUSIVE TRANSACTIONS.—The amendment
9 made by subsection (b) shall take effect on the date
10 of the enactment of this Act.

11 (3) LOANS FROM TRUSTS.—The amendment
12 made by subsection (c) shall apply to loans of cash
13 or marketable securities after September 19, 1995.

14 **SEC. 606. RESIDENCE OF ESTATES AND TRUSTS, ETC.**

15 (a) TREATMENT AS UNITED STATES PERSON.—

16 (1) IN GENERAL.—Paragraph (30) of section
17 7701(a) is amended by striking subparagraph (D)
18 and by inserting after subparagraph (C) the follow-
19 ing:

20 “(D) any estate or trust if—

21 “(i) a court within the United States
22 is able to exercise primary supervision over
23 the administration of the estate or trust,
24 and

1 “(ii) in the case of a trust, one or
2 more United States fiduciaries have the
3 authority to control all substantial deci-
4 sions of the trust.”.

5 (2) CONFORMING AMENDMENT.—Paragraph
6 (31) of section 7701(a) is amended to read as fol-
7 lows:

8 “(31) FOREIGN ESTATE OR TRUST.—The term
9 ‘foreign estate’ or ‘foreign trust’ means any estate or
10 trust other than an estate or trust described in sec-
11 tion 7701(a)(30)(D).”.

12 (3) EFFECTIVE DATE.—The amendments made
13 by this subsection shall apply—

14 (A) to taxable years beginning after De-
15 cember 31, 1996, or

16 (B) at the election of the trustee of a
17 trust, to taxable years ending after the date of
18 the enactment of this Act.

19 Such an election, once made, shall be irrevocable.

20 (b) DOMESTIC TRUSTS WHICH BECOME FOREIGN
21 TRUSTS.—

22 (1) IN GENERAL.—Section 1491 (relating to
23 imposition of tax on transfers to avoid income tax)
24 is amended by adding at the end the following new
25 flush sentence:

1 “If a trust which is not a foreign trust becomes a foreign
2 trust, such trust shall be treated for purposes of this sec-
3 tion as having transferred, immediately before becoming
4 a foreign trust, all of its assets to a foreign trust.”.

5 (2) PENALTY.—Section 1494 is amended by
6 adding at the end the following new subsection:

7 “(c) PENALTY.—In the case of any failure to file a
8 return required by the Secretary with respect to any trans-
9 fer described in section 1491 with respect to a trust, the
10 person required to file such return shall be liable for the
11 penalties provided in section 6677 in the same manner as
12 if such failure were a failure to file a return under section
13 6048(a).”.

14 (3) EFFECTIVE DATE.—The amendments made
15 by this subsection shall take effect on the date of the
16 enactment of this Act.

17 **Subtitle B—Repeal of Bad Debt Re-**
18 **serve Method for Thrift Savings**
19 **Associations**

20 **SEC. 611. REPEAL OF BAD DEBT RESERVE METHOD FOR**
21 **THRIFT SAVINGS ASSOCIATIONS.**

22 (a) IN GENERAL.—Section 593 (relating to reserves
23 for losses on loans) is hereby repealed.

24 (b) CONFORMING AMENDMENTS.—

1 (1) Subsection (d) of section 50 is amended by
2 adding at the end the following new sentence:

3 “Paragraphs (1)(A), (2)(A), and (4) of section 46(e) re-
4 ferred to in paragraph (1) of this subsection shall not
5 apply to any taxable year beginning after December 31,
6 1995.”.

7 (2) Subsection (e) of section 52 is amended by
8 striking paragraph (1) and by redesignating para-
9 graphs (2) and (3) as paragraphs (1) and (2), re-
10 spectively.

11 (3) Subsection (a) of section 57 is amended by
12 striking paragraph (4).

13 (4) Section 246 is amended by striking sub-
14 section (f).

15 (5) Clause (i) of section 291(e)(1)(B) is amend-
16 ed by striking “or to which section 593 applies”.

17 (6) Subparagraph (A) of section 585(a)(2) is
18 amended by striking “other than an organization to
19 which section 593 applies”.

20 (7) Sections 595 and 596 are hereby repealed.

21 (8) Subsection (a) of section 860E is amend-
22 ed—

23 (A) by striking “Except as provided in
24 paragraph (2), the” in paragraph (1) and in-
25 serting “The”,

1 (B) by striking paragraphs (2) and (4) and
2 redesignating paragraphs (3) and (5) as para-
3 graphs (2) and (3), respectively, and

4 (C) by striking in paragraph (2) (as so re-
5 designated) all that follows “subsection” and
6 inserting a period.

7 (9) Paragraph (3) of section 992(d) is amended
8 by striking “or 593”.

9 (10) Section 1038 is amended by striking sub-
10 section (f).

11 (11) Clause (ii) of section 1042(c)(4)(B) is
12 amended by striking “or 593”.

13 (12) Subsection (c) of section 1277 is amended
14 by striking “or to which section 593 applies”.

15 (13) Subparagraph (B) of section 1361(b)(2) is
16 amended by striking “or to which section 593 ap-
17 plies”.

18 (14) The table of sections for part II of sub-
19 chapter H of chapter 1 is amended by striking the
20 items relating to sections 593, 595, and 596.

21 (c) EFFECTIVE DATE.—

22 (1) IN GENERAL.—Except as provided in para-
23 graph (2), the amendments made by this section
24 shall apply to taxable years beginning after Decem-
25 ber 31, 1995.

1 (2) REPEAL OF SECTION 595.—The repeal of
2 section 595 under subsection (b)(7) shall apply to
3 property acquired in taxable years beginning after
4 December 31, 1995.

5 (d) 6-YEAR SPREAD OF ADJUSTMENTS.—

6 (1) IN GENERAL.—In the case of any taxpayer
7 who is required by reason of the amendments made
8 by this section to change its method of computing
9 reserves for bad debts—

10 (A) such change shall be treated as a
11 change in a method of accounting,

12 (B) such change shall be treated as initi-
13 ated by the taxpayer and as having been made
14 with the consent of the Secretary, and

15 (C) the net amount of the adjustments re-
16 quired to be taken into account by the taxpayer
17 under section 481(a)—

18 (i) shall be determined by taking into
19 account only applicable excess reserves,
20 and

21 (ii) as so determined, shall be taken
22 into account ratably over the 6-taxable
23 year period beginning with the first taxable
24 year beginning after December 31, 1995.

25 (2) APPLICABLE EXCESS RESERVES.—

1 (A) IN GENERAL.—For purposes of para-
2 graph (1), the term ‘applicable excess reserves’
3 means the excess (if any) of—

4 (i) the balance of the reserves de-
5 scribed in section 593(c)(1) of such Code
6 (as in effect on the day before the date of
7 the enactment of this Act) as of the close
8 of the taxpayer’s last taxable year begin-
9 ning before January 1, 1996, over

10 (ii) the lesser of—

11 (I) the balance of such reserves
12 as of the close of the taxpayer’s last
13 taxable year beginning before January
14 1, 1988, or

15 (II) the balance of the reserves
16 described in subclause (I), reduce by
17 an amount determined in the same
18 manner as under section
19 585(b)(2)(B)(ii) on the basis of the
20 taxable years described in clause (i)
21 and this clause.

22 (B) SPECIAL RULE FOR THRIFTS WHICH
23 BECOME SMALL BANKS.—In the case of a bank
24 (as defined in section 581 of such Code) which
25 is not a large bank (as defined in section

1 585(c)(2) of such Code) for its first taxable
2 year beginning after December 31, 1995—

3 (i) the balance taken into account
4 under subparagraph (A)(ii) shall not be
5 less than the amount which would be the
6 balance of such reserve as of the close of
7 its last taxable year beginning before Jan-
8 uary 1, 1996, if the additions to such re-
9 serve for all taxable years had been deter-
10 mined under section 585(b)(2)(A), and

11 (ii) the opening balance of the reserve
12 for bad debts as of the beginning of such
13 first taxable year shall be the balance
14 taken into account under subparagraph
15 (A)(ii) (determined after the application of
16 clause (i) of this subparagraph).

17 The preceding sentence shall not apply for pur-
18 poses of paragraphs (5), (6), and (7).

19 (3) RECAPTURE OF PRE-1988 RESERVES WHERE
20 TAXPAYER CEASES TO BE BANK.—If during any tax-
21 able year beginning after December 31, 1995, a tax-
22 payer to which paragraph (1) applied is not a bank
23 (as defined in section 581), paragraph (1) shall
24 apply to the reserves described in subparagraph
25 (A)(ii) except that such reserves shall be taken into

1 account ratably over the 6-taxable year period begin-
2 ning with such taxable year.

3 (4) SUSPENSION OF RECAPTURE IF RESIDEN-
4 TIAL LOAN REQUIREMENT MET.—

5 (A) IN GENERAL.—In the case of a bank
6 which meets the residential loan requirement of
7 subparagraph (B) for a taxable year beginning
8 after December 31, 1995, and before January
9 1, 1998—

10 (i) no adjustment shall be taken into
11 account under paragraph (1) for such tax-
12 able year, and

13 (ii) such taxable year shall be dis-
14 regarded in determining—

15 (I) whether any other taxable
16 year is a taxable year for which an
17 adjustment is required to be taken
18 into account under paragraph (1), and

19 (II) the amount of such adjust-
20 ment.

21 (B) RESIDENTIAL LOAN REQUIREMENT.—

22 A taxpayer meets the residential loan require-
23 ment of this subparagraph for any taxable year
24 if the principal amount of the residential loans

1 made by the taxpayer during such year is not
2 less than the base amount for such year.

3 (C) RESIDENTIAL LOAN.—For purposes of
4 this paragraph, the term “residential loan”
5 means any loan described in clause (v) of sec-
6 tion 7701(a)(19)(C) of such Code but only if
7 such loan is incurred in acquiring, constructing,
8 or improving the property described in such
9 clause.

10 (D) BASE AMOUNT.—For purposes of sub-
11 paragraph (B), the base amount is the average
12 of the principal amounts of the residential loans
13 made by the taxpayer during the 6 most recent
14 taxable years beginning before January 1,
15 1996. At the election of the taxpayer who made
16 such loans during each of such 6 taxable years,
17 the preceding sentence shall be applied without
18 regard to the taxable year in which such prin-
19 cipal amount was the highest and the taxable
20 year in such principal amount was the lowest.
21 Such an election may be made only for the first
22 taxable year beginning after December 31,
23 1995, and, if made for such taxable year, shall
24 apply to the succeeding taxable year unless re-

1 voked with the consent of the Secretary of the
2 Treasury or the Secretary's delegate.

3 (E) CONTROLLED GROUPS.—In the case of
4 a taxpayer which is a member of any controlled
5 group of corporations described in section
6 1563(a)(1) of such Code, subparagraph (B)
7 shall be applied with respect to such group.

8 (5) CONTINUED APPLICATION OF FRESH START
9 UNDER SECTION 585 TRANSITIONAL RULES.—In the
10 case of a taxpayer to which paragraph (1) applied
11 and which was not a large bank (as defined in sec-
12 tion 585(c)(2) of such Code) for its first taxable
13 year beginning after December 31, 1995:

14 (A) IN GENERAL.—For purposes of deter-
15 mining the net amount of adjustments referred
16 to in section 585(c)(3)(A)(iii) of such Code,
17 there shall be taken into account only the ex-
18 cess of the reserve for bad debts as of the close
19 of the last taxable year before the disqualifica-
20 tion year over the balance taken into account by
21 such taxpayer under paragraph (2)(A)(ii) of
22 this subsection.

23 (B) TREATMENT UNDER ELECTIVE CUT-
24 OFF METHOD.—For purposes of applying sec-
25 tion 585(c)(4) of such Code—

1 (i) the balance of the reserve taken
2 into account under subparagraph (B)
3 thereof shall be reduced by the balance
4 taken into account by such taxpayer under
5 paragraph (2)(A)(ii) of this subsection,
6 and

7 (ii) no amount shall be includible in
8 gross income by reason of such reduction.

9 (6) CONTINUED APPLICATION OF SECTION
10 593(e).—Notwithstanding the amendments made by
11 this section, in the case of a taxpayer to which para-
12 graph (1) of this subsection applies, section 593(e)
13 of such Code (as in effect on the day before the date
14 of the enactment of this Act) shall continue to apply
15 to such taxpayer as if such taxpayer were a domestic
16 building and loan association but the amount of the
17 reserves taken into account under subparagraphs
18 (B) and (C) of section 593(e)(1) (as so in effect)
19 shall be the balance taken into account by such tax-
20 payer under paragraph (2)(A)(ii) of this subsection.

21 (7) CERTAIN ITEMS INCLUDED AS SECTION
22 381(e) ITEMS.—The balance of the applicable excess
23 reserves, and the balance taken into account by a
24 taxpayer under paragraph (2)(A)(ii) of this sub-

1 section, shall be treated as items described in section
2 381(c) of such Code.

3 (8) CONVERSIONS TO CREDIT UNIONS.—In the
4 case of a taxpayer to which paragraph (1) applied
5 which becomes a credit union described in section
6 501(c)(14)(A)—

7 (A) any amount required to be included in
8 the gross income of the credit union by reason
9 of this subsection shall be treated as derived
10 from an unrelated trade or business (as defined
11 in section 513), and

12 (B) for purposes of paragraph (3), the
13 credit union shall not be treated as if it were
14 a bank.

15 (9) REGULATIONS.—The Secretary of the
16 Treasury or the Secretary's delegate shall prescribe
17 such regulations as may be necessary to carry out
18 this subsection, including regulations providing for
19 the application of paragraphs (4) and (6) in the case
20 of acquisitions, mergers, spin-offs, and other reorga-
21 nizations.

1 **Subtitle C—Other Provisions**

2 **SEC. 621. EXTENSION OF MEDICARE SECONDARY PAYOR**
3 **PROVISIONS.**

4 Section 1862(b) of the Social Security Act (42 U.S.C.
5 1395y(b)) is amended—

6 (1) in paragraph (1)—

7 (A) in subparagraph (B), by striking
8 clause (iii) and redesignating clause (iv) as
9 clause (iii); and

10 (B) in the matter following clause (ii) of
11 subparagraph (C), by striking “, and before Oc-
12 tober 1, 1998”; and

13 (2) in paragraph (5)(C), by striking clause (iii).

14 **SEC. 622. ANNUAL ADJUSTMENT FACTORS FOR OPERATING**
15 **COSTS ONLY; RESTRAINT ON RENT IN-**
16 **CREASES.**

17 (a) ANNUAL ADJUSTMENT FACTORS FOR OPERATING
18 COSTS ONLY.—Section 8(c)(2)(A) of the United States
19 Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)) is
20 amended—

21 (1) by striking “(2)(A)” and inserting
22 “(2)(A)(i)”;

23 (2) by striking the second sentence and all that
24 follows through the end of the subparagraph; and

1 (3) by adding at the end the following new
2 clause:

3 “(ii) Each assistance contract under this section shall
4 provide that—

5 “(I) if the maximum monthly rent for a unit in
6 a new construction or substantial rehabilitation
7 project to be adjusted using an annual adjustment
8 factor exceeds 100 percent of the fair market rent
9 for an existing dwelling unit in the market area, the
10 Secretary shall adjust the rent using an operating
11 costs factor that increases the rent to reflect in-
12 creases in operating costs in the market area; and

13 “(II) if the owner of a unit in a project de-
14 scribed in subclause (I) demonstrates that the ad-
15 justed rent determined under subclause (I) would
16 not exceed the rent for an unassisted unit of similar
17 quality, type, and age in the same market area, as
18 determined by the Secretary, the Secretary shall use
19 the otherwise applicable annual adjustment factor.”.

20 (b) RESTRAINT ON SECTION 8 RENT INCREASES.—
21 Section 8(c)(2)(A) of the United States Housing Act of
22 1937 (42 U.S.C. 1437f(c)(2)(A)), as amended by sub-
23 section (a) of this section, is amended by adding at the
24 end the following new clause:

1 “(iii)(I) Subject to subclause (II), with respect to any
2 unit assisted under this section that is occupied by the
3 same family at the time of the most recent annual rental
4 adjustment, if the assistance contract provides for the ad-
5 justment of the maximum monthly rent by applying an
6 annual adjustment factor, and if the rent for the unit is
7 otherwise eligible for an adjustment based on the full
8 amount of the annual adjustment factor, 0.01 shall be
9 subtracted from the amount of the annual adjustment fac-
10 tor, except that the annual adjustment factor shall not be
11 reduced to less than 1.0.

12 “(II) With respect to any unit described in subclause
13 (I) that is assisted under the certificate program, the ad-
14 justed rent shall not exceed the rent for a comparable un-
15 assisted unit of similar quality, type, and age in the mar-
16 ket area in which the unit is located.”.

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall be construed to have become effective
19 on October 1, 1995.

20 **SEC. 623. FORECLOSURE AVOIDANCE AND BORROWER AS-**
21 **SISTANCE.**

22 (a) EFFECTIVENESS AND APPLICABILITY.—Section
23 407 of The Balanced Budget Downpayment Act, I (Public
24 Law 104–99) is amended—

25 (1) in subsection (c)—

1 (A) by striking “Except as provided in
2 subsection (e), the” and inserting “The”; and

3 (B) by striking “only with respect to mort-
4 gages insured under the National Housing Act
5 that are originated before October 1, 1995”
6 and inserting “to all mortgages insured under
7 the National Housing Act”; and

8 (2) by striking subsection (e).

9 (b) TECHNICAL AMENDMENT.—Section 230(d) of the
10 National Housing Act (12 U.S.C. 1715u(d)) is amended
11 by striking “the Departments” and all that follows
12 through “1996” and inserting “The Balanced Budget
13 Downpayment Act, I”.