

105TH CONGRESS
1ST SESSION

S. 264

To amend title XI of the Social Security Act to provide an incentive for the reporting of inaccurate Medicare claims for payment, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 5, 1997

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

A BILL

To amend title XI of the Social Security Act to provide an incentive for the reporting of inaccurate Medicare claims for payment, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare Whistle-
5 blower Act of 1997”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to—

8 (1) reduce and eliminate fraud and abuse under
9 the Medicare program;

1 (2) reduce negligent and fraudulent Medicare
2 billings by providers;

3 (3) provide Medicare beneficiaries with incen-
4 tives to report inappropriate billing practices; and

5 (4) provide savings to the Medicare trust funds
6 by increasing the recovery of Medicare overpay-
7 ments.

8 **SEC. 3. REQUEST FOR ITEMIZED BILL FOR MEDICARE**
9 **ITEMS AND SERVICES.**

10 (a) IN GENERAL.—Section 1128A of the Social Secu-
11 rity Act (42 U.S.C. 1320a–7a) is amended by adding at
12 the end the following new subsection:

13 “(n) WRITTEN REQUEST FOR ITEMIZED BILL.—

14 “(1) IN GENERAL.—A beneficiary may submit a
15 written request for an itemized bill for medical or
16 other items or services provided to such beneficiary
17 by any person (including an organization, agency, or
18 other entity) that receives payment under title XVIII
19 for providing such items or services to such bene-
20 ficiary.

21 “(2) 30-DAY PERIOD TO RECEIVE BILL.—

22 “(A) IN GENERAL.—Not later than 30
23 days after the date on which a request under
24 paragraph (1) has been received, a person de-
25 scribed in such paragraph shall furnish an

1 itemized bill describing each medical or other
2 item or service provided to the beneficiary re-
3 questing the itemized bill.

4 “(B) PENALTY.—Whoever knowingly fails
5 to furnish an itemized bill in accordance with
6 subparagraph (A) shall be subject to a civil fine
7 of not more than \$100 for each such failure.

8 “(3) REVIEW OF ITEMIZED BILL.—

9 “(A) IN GENERAL.—Not later than 90
10 days after the receipt of an itemized bill fur-
11 nished under paragraph (1), a beneficiary may
12 submit a written request for a review of the
13 itemized bill to the appropriate fiscal
14 intermediary or carrier with a contract under
15 section 1816 or 1842.

16 “(B) SPECIFIC ALLEGATIONS.—A request
17 for a review of the itemized bill shall identify—

18 “(i) specific medical or other items or
19 services that the beneficiary believes were
20 not provided as claimed, or

21 “(ii) any other billing irregularity (in-
22 cluding duplicate billing).

23 “(4) FINDINGS OF FISCAL INTERMEDIARY OR
24 CARRIER.—Each fiscal intermediary or carrier with
25 a contract under section 1816 or 1842 shall, with

1 respect to each claim submitted to the fiscal
2 intermediary or carrier under paragraph (3), make
3 one of the following determinations:

4 “(A) The itemized bill accurately reflects
5 medical or other items or services provided to
6 the beneficiary.

7 “(B) The itemized bill does not accurately
8 reflect medical or other items or services pro-
9 vided to the beneficiary or contains a billing ir-
10 regularity but the inaccuracy or irregularity is
11 inadvertent or is the result of a misinterpreta-
12 tion of law.

13 “(C) The itemized bill negligently describes
14 medical or other items or services not provided
15 to the beneficiary or contains a negligent billing
16 irregularity.

17 “(D) The itemized bill fraudulently de-
18 scribes medical or other items or services not
19 provided to the beneficiary or contains a fraud-
20 ulent billing irregularity.

21 “(5) REVIEW OF FINDINGS OF FISCAL
22 INTERMEDIARY OR CARRIER.—

23 “(A) IN GENERAL.—If a fiscal
24 intermediary or carrier makes a finding de-
25 scribed in subparagraph (B), (C), or (D) of

1 paragraph (4), the fiscal intermediary or carrier
2 shall submit to the Secretary a report contain-
3 ing such findings and the basis for such find-
4 ings.

5 “(B) DETERMINATION BY SECRETARY.—

6 The Secretary shall determine whether the find-
7 ings of the fiscal intermediary or carrier sub-
8 mitted under subparagraph (A) are correct.

9 “(6) RECOVERY OF AMOUNTS.—The Secretary
10 shall require fiscal intermediaries and carriers to
11 take all appropriate measures to recover amounts in-
12 appropriately paid under title XVIII with respect to
13 a bill for which the Secretary makes a determination
14 of correctness under paragraph (5)(B).

15 “(7) ANTIFRAUD INCENTIVE PAYMENTS.—

16 “(A) IN GENERAL.—If the Secretary
17 makes a determination of correctness under
18 paragraph (5)(B) with respect to a finding de-
19 scribed in subparagraph (C) or (D) of para-
20 graph (4), the Secretary shall make an anti-
21 fraud incentive payment (in an amount deter-
22 mined under subparagraph (B)) to the bene-
23 ficiary who submitted the request for the item-
24 ized bill under paragraph (1) that resulted in
25 such findings.

1 “(B) ANTIFRAUD INCENTIVE PAYMENT
2 DETERMINED.—

3 “(i) IN GENERAL.—The amount of
4 the antifraud incentive payment deter-
5 mined under this subparagraph is equal to
6 the lesser of—

7 “(I) 1 percent of the amount that
8 the bill negligently or fraudulently
9 charged for medical or other items or
10 services; or

11 “(II) \$10,000.

12 “(ii) LIMITATION OF AMOUNT.—The
13 amount determined under this subpara-
14 graph may not exceed—

15 “(I) in the case of a negligent
16 bill, the total amounts recovered with
17 respect to the bill in accordance with
18 paragraph (6); or

19 “(II) in the case of a fraudulent
20 bill, the sum of the amounts assessed
21 and collected with respect to the bill
22 under paragraph (8).

23 “(8) PENALTY.—If the Secretary makes a de-
24 termination of correctness with respect to a finding

1 described in paragraph (4)(D) (relating to fraudu-
 2 lent billing), the provider or other person responsible
 3 for providing the beneficiary with the itemized bill
 4 that is the subject of such findings, shall be subject,
 5 in addition to any other penalties that may be pre-
 6 scribed by law, to a civil money penalty equal to the
 7 lesser of—

8 “(A) 1 percent of the amount that the bill
 9 fraudulently charged for medical or other items
 10 or services; or

11 “(B) \$10,000.

12 “(9) PREVENTION OF ABUSE BY BENE-
 13 FICIARIES.—The Secretary shall—

14 “(A) address abuses of the incentive sys-
 15 tem established under this subsection; and

16 “(B) establish appropriate procedures to
 17 prevent such abuses.

18 “(10) REQUIREMENT THAT BENEFICIARY DIS-
 19 COVER NEGLIGENT OR FRAUDULENT BILL TO RE-
 20 CEIVE INCENTIVE PAYMENT.—No incentive payment
 21 shall be made under paragraph (7) to a beneficiary
 22 if the Secretary or the appropriate fiscal
 23 intermediary or carrier identified the bill that was
 24 the subject of the beneficiary’s request for review

1 under this subsection as being negligent or fraudu-
 2 lent prior to such request.”.

3 (b) PAYMENT OF ANTIFRAUD INCENTIVE TO MEDI-
 4 CARE BENEFICIARY.—Section 1128A(f) of the Social Se-
 5 curity Act (42 U.S.C. 1320a–7a(f)) is amended—

6 (1) in paragraph (4), by striking “(4)” and in-
 7 serting “(5)”; and

8 (2) by inserting after paragraph (3) the follow-
 9 ing:

10 “(4) Any penalty recovered under subsection
 11 (m)(8) shall be paid as an antifraud incentive pay-
 12 ment to the beneficiary who submitted the request
 13 for the itemized bill under subsection (m)(1) that re-
 14 sulted in the imposition of the penalty.”.

15 (c) CONFORMING AMENDMENTS.—

16 (1) PROCEDURAL REQUIREMENTS.—Sub-
 17 sections (c), (d), (g), and (h) of section 1128A of the
 18 Social Security Act (42 U.S.C. 1320a–7a) are each
 19 amended by striking “(a) or (b)” each place it ap-
 20 pears and inserting “(a), (b), or (n)”.

21 (2) INCENTIVE PROGRAMS.—Section 203(b)(1)
 22 of the Health Insurance Portability and Accountabil-
 23 ity Act of 1996 (Public Law 104–191, 110 Stat.
 24 1999) is amended by adding at the end the follow-
 25 ing: “The program shall not include any information

1 obtained through the process described in section
2 1128A(n) of such Act.”.

3 (d) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply with respect to medical or other
5 items or services provided on or after January 1, 1998.

○