

106TH CONGRESS
2D SESSION

S. 2999

To amend title XVIII of the Social Security Act to reform the regulatory processes used by the Health Care Financing Administration to administer the medicare program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 27, 2000

Mr. ABRAHAM (for himself, Mr. COCHRAN, and Mr. GRAMS) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to reform the regulatory processes used by the Health Care Financing Administration to administer the medicare program, and for other purposes.

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

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Health Care Provider Bill of Rights”.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—REFORM OF HCFA REGULATORY PROCESS

- Sec. 101. Prospective application of certain regulations.
- Sec. 102. Notice and hearing requirements for certain interim final regulations.
- Sec. 103. GAO Audit and report on compliance with certain statutory administrative procedure requirements.
- Sec. 104. Requirements for judicial and regulatory challenges of regulations.
- Sec. 105. Reform of national coverage determination process.

TITLE II—REFORM OF APPEALS PROCESS

- Sec. 201. Appeal of overpayment determinations.
- Sec. 202. Time lines for appeals.
- Sec. 203. Right to appeal on behalf of deceased beneficiaries.
- Sec. 204. Suspension of certain activities while appeals are pending.
- Sec. 205. National precedence of departmental appeals board determinations.
- Sec. 206. Requirements for affirmative appeal of HCFA actions.
- Sec. 207. GAO audit of random sample audits.

TITLE III—REFORM OF OVERPAYMENT PROCEDURE

- Sec. 301. Prohibition of retroactive overpayment determinations.
- Sec. 302. Prohibition of sampling audits to reduce future reimbursements.
- Sec. 303. Prohibition of recovering past overpayments by certain means.
- Sec. 304. Prohibition of recovering past overpayments if appeal pending.

TITLE IV—REFORM OF VOLUNTARY DISCLOSURE PROCEDURE

- Sec. 401. Promulgation of joint voluntary disclosure procedures.

TITLE V—CRIMINAL LAW ENFORCEMENT REFORMS

- Sec. 501. No law enforcement authority for employees of the Office of Inspector General of the Department of Health and Human Services.
- Sec. 502. Search warrants on health care facilities.

TITLE VI—PROVIDER COMPLIANCE EDUCATION

- Sec. 601. Education.
- Sec. 602. Advisory opinions.

1 SEC. 2. DEFINITIONS.

2 In this Act:

- 3 (1) CARRIER.—The term “carrier” means a
 4 carrier (as defined in section 1842(f) of the Social
 5 Security Act (42 U.S.C. 1395u(f))) with a contract
 6 under title XVIII of such Act to administer benefits
 7 under part B of such title.

1 (2) FISCAL INTERMEDIARY.—The term “fiscal
2 intermediary” means a fiscal intermediary (as de-
3 fined in section 1816(a) of the Social Security Act
4 (42 U.S.C. 1395h(a))) with an agreement under sec-
5 tion 1816 of such Act to administer benefits under
6 part A or part B of such title.

7 (3) HCFA.—The term “HCFA” means the
8 Health Care Financing Administration.

9 (4) HEALTH CARE PROVIDER.—The term
10 “health care provider” means any individual or enti-
11 ty participating in the medicare program, including
12 a Medicare+Choice organization under part C of
13 such program.

14 (5) MEDICARE PROGRAM.—The term “medicare
15 program” means the health benefits program under
16 title XVIII of the Social Security Act (42 U.S.C.
17 1395 et seq.).

18 (6) SECRETARY.—The term “Secretary” means
19 the Secretary of Health and Human Services.

1 **TITLE I—REFORM OF HCFA**
2 **REGULATORY PROCESS**

3 **SEC. 101. PROSPECTIVE APPLICATION OF CERTAIN REGU-**
4 **LATIONS.**

5 Section 1871(a) of the Social Security Act (42 U.S.C.
6 1395hh(a)) is amended by adding at the end the following
7 new paragraph:

8 “(3) Any regulation described under paragraph
9 (2) may not take effect earlier than the date on
10 which such regulation becomes a final regulation.
11 Any regulation described under such paragraph that
12 applies to an agency action, including any agency
13 determination, shall only apply as that regulation is
14 in effect at the time that agency action is taken.”.

15 **SEC. 102. NOTICE AND HEARING REQUIREMENTS FOR CER-**
16 **TAIN INTERIM FINAL REGULATIONS.**

17 Section 1871(a) of the Social Security Act (42 U.S.C.
18 1395hh(a)), as amended by section 101, is amended by
19 adding at the end the following new paragraph:

20 “(4) In prescribing any interim final regulation
21 described under paragraph (2)—

22 “(A) the Secretary shall provide notice and
23 a hearing in accordance with section 553(b) of
24 title 5, United States Code; and

1 “(B) subparagraph (B) of the sentence fol-
2 lowing section 553(b)(3) of such title shall not
3 apply.”.

4 **SEC. 103. GAO AUDIT AND REPORT ON COMPLIANCE WITH**
5 **CERTAIN STATUTORY ADMINISTRATIVE PRO-**
6 **CEDURE REQUIREMENTS.**

7 (a) **AUDIT.**—The Comptroller General of the United
8 States shall conduct an audit of the compliance of the
9 Health Care Financing Administration and all regulations
10 promulgated by the Department of Health and Human
11 Resources under statutes administered by the Health Care
12 Financing Administration with—

13 (1) the provisions of such statutes;

14 (2) subchapter II of chapter 5 of title 5, United
15 States Code (including section 553 of such title);
16 and

17 (3) chapter 6 of title 5, United States Code.

18 (b) **REPORT.**—Not later than 18 months after the
19 date of enactment of this Act, the Comptroller General
20 shall submit to Congress a report on the audit conducted
21 under subsection (a), together with such recommendations
22 for legislative and administrative action as the Comp-
23 troller General determines appropriate.

1 **SEC. 104. REQUIREMENTS FOR JUDICIAL AND REGU-**
2 **LATORY CHALLENGES OF REGULATIONS.**

3 (a) RIGHT TO CHALLENGE CONSTITUTIONALITY AND
4 STATUTORY AUTHORITY OF HCFA REGULATIONS.—Sec-
5 tion 1872 of the Social Security Act (42 U.S.C. 1395ii)
6 is amended to read as follows:

7 “APPLICATION OF CERTAIN PROVISIONS OF TITLE II

8 “SEC. 1872. The provisions of sections 206 and
9 216(j), and of subsections (a), (d), (e), (h), (i), (j), (k),
10 and (l) of section 205, shall also apply with respect to this
11 title to the same extent as they are applicable with respect
12 to title II, except that—

13 “(1) in applying such provisions with respect to
14 this title, any reference therein to the Commissioner
15 of Social Security or the Social Security Administra-
16 tion shall be considered a reference to the Secretary
17 or the Department of Health and Human Services,
18 respectively; and

19 “(2) section 205(h) shall not apply with respect
20 to any action brought against the Secretary under
21 sections 1331 or 1346 of title 28, United States
22 Code, regardless of whether such action is unrelated
23 to a specific determination of the Secretary, that
24 challenges—

25 “(A) the constitutionality of the Sec-
26 retary’s regulations or policies;

1 “(B) the Secretary’s statutory authority to
2 promulgate such regulations or policies; or

3 “(C) a finding of good cause under sub-
4 paragraph (B) of the sentence following section
5 553(b)(3), United States Code.”.

6 (b) CONSTRUCTION OF HEARING RIGHTS RELATING
7 TO DETERMINATIONS BY THE SECRETARY REGARDING
8 AGREEMENTS WITH PROVIDERS OF SERVICES.—Section
9 1866(h) of the Social Security Act (42 U.S.C. 1395cc(h))
10 is amended by adding at the end the following new para-
11 graph:

12 “(3) For purposes of applying paragraph (1), an in-
13 stitution or agency dissatisfied with a determination by
14 the Secretary described in such paragraph shall be entitled
15 to a hearing thereon regardless of whether—

16 “(A) such determination has been made by the
17 Secretary or by a State pursuant to an agreement
18 entered into with the Secretary under section 1864;
19 and

20 “(B) the Secretary has imposed or may impose
21 a remedy, penalty, or other sanction on the institu-
22 tion or agency in connection with such determina-
23 tion.”.

1 **SEC. 105. REFORM OF NATIONAL COVERAGE DETERMINA-**
2 **TION PROCESS.**

3 (a) IN GENERAL.—Section 1871(a) of the Social Se-
4 curity Act (42 U.S.C. 1395hh(a)), as amended by section
5 102, is amended by adding at the end the following new
6 paragraph:

7 “(5) In the case of any national coverage deter-
8 mination, the Secretary shall provide for—

9 “(A) notice of the proposed national cov-
10 erage determination in the Federal Register;
11 and

12 “(B) a period of not less than 30 days for
13 public comment thereon, during which—

14 “(i) any provider of services to
15 present comments in oral or written form
16 to the Medicare Coverage Advisory Com-
17 mittee or any other official of the Health
18 Care Financing Administration responsible
19 for making the national coverage deter-
20 mination; and

21 “(ii) any other person may present
22 comments in written form to such Com-
23 mittee or official.”.

24 (b) EFFECTIVE DATE.—The amendment made by
25 subsection (a) shall apply to national coverage determina-
26 tions made on or after the date of enactment of this Act.

1 **TITLE II—REFORM OF APPEALS**
2 **PROCESS**

3 **SEC. 201. APPEAL OF OVERPAYMENT DETERMINATIONS.**

4 Notwithstanding sections 1870 and 1879 of the So-
5 cial Security Act (42 U.S.C. 1395gg and 1395pp) or any
6 other provision of law, the Secretary may not require a
7 health care provider to waive any right under the medicare
8 program to appeal an overpayment determination of the
9 Secretary if such provider agrees to accept a stated dollar
10 amount potential projected overpayment.

11 **SEC. 202. TIME LINES FOR APPEALS.**

12 Section 1869 of the Social Security Act (42 U.S.C.
13 1395ff) is amended—

14 (1) in subsection (a), by inserting “consistent
15 with subsections (c) and (d)” before the period; and

16 (2) by adding at the end the following new sub-
17 sections:

18 “(c) DEADLINES FOR RECONSIDERATIONS AND AP-
19 PEALS UNDER PART A.—Reconsideration and appeals
20 under subsections (a) and (b) with respect to matters
21 under part A shall be conducted consistent with the fol-
22 lowing deadlines:

23 “(1) DEADLINES FOR ADMINISTRATIVE AC-
24 TION.—

1 “(A) RECONSIDERED DETERMINATION.—
2 The Secretary shall conduct and conclude a re-
3 consideration of an initial determination, and
4 mail the notice of reconsidered determination,
5 by not later than the end of the 60-day period
6 beginning on the date a request for reconsider-
7 ation has been timely filed.

8 “(B) HEARING BY ADMINISTRATIVE LAW
9 JUDGE.—

10 “(i) IN GENERAL.—Except as pro-
11 vided in clause (ii), an administrative law
12 judge shall conduct and conclude a hearing
13 and render a decision on such hearing by
14 not later than the end of the 90-day period
15 beginning on the date a request for hear-
16 ing has been timely filed.

17 “(ii) WAIVER OF DEADLINE BY PARTY
18 SEEKING HEARING.—The 90-day period
19 under clause (i) shall not apply in the case
20 of a motion or stipulation by the party re-
21 questing the hearing to waive such period.

22 “(C) DEPARTMENTAL APPEALS BOARD RE-
23 VIEW.—The Departmental Appeals Board of
24 the Department of Health and Human Services
25 shall conduct and conclude a review of the deci-

1 sion on a hearing described in subparagraph
2 (B) and make a decision or remand the case to
3 the administrative law judge for reconsideration
4 by not later than the end of the 90-day period
5 beginning on the date a request for review has
6 been timely filed.

7 “(2) CONSEQUENCES OF FAILURE TO MEET
8 DEADLINES.—

9 “(A) IN GENERAL.—

10 “(i) FAILURE TO NOTIFY.—In the
11 case of a failure by the Secretary to mail
12 the notice of reconsidered determination by
13 the end of the period described in para-
14 graph (1)(A), the party requesting the re-
15 consideration may request a hearing before
16 an administrative law judge, notwith-
17 standing any requirements for a reconsid-
18 ered determination for purposes of the par-
19 ty’s right to such hearing.

20 “(ii) FAILURE OF ALJ TO DECIDE.—

21 In the case of a failure by an administra-
22 tive law judge to render a decision by the
23 end of the period described in paragraph
24 (1)(B), the party requesting the hearing
25 may request a review by the Departmental

1 Appeals Board of the Department of
2 Health and Human Services, notwith-
3 standing any requirements for a hearing
4 for purposes of the party's right to such a
5 review.

6 “(B) DAB HEARING PROCEDURE.—In the
7 case of a request described in subparagraph
8 (A)(ii), the Departmental Appeals Board shall
9 review the case de novo.

10 “(d) DEADLINES FOR REVIEWS AND APPEALS
11 UNDER PART B.—Reviews and appeals under subsections
12 (a) and (b) with respect to matters under part B shall
13 be conducted consistent with the following deadlines:

14 “(1) DEADLINES.—

15 “(A) REVIEW OF INITIAL DETERMINA-
16 TION.—A carrier shall conduct and conclude a
17 review of an initial determination, and mail the
18 notice of review determination, by not later
19 than the end of the 60-day period beginning on
20 the date a request for review has been timely
21 filed.

22 “(B) CARRIER HEARING.—

23 “(i) DEADLINE FOR DECISION.—A
24 carrier shall conduct and conclude a hear-
25 ing, and mail the notice of the decision, by

1 not later than the end of the 60-day period
2 beginning on the date a request for a car-
3 rier hearing has been timely filed.

4 “(ii) OPTION TO PROCEED TO HEAR-
5 ING BY ADMINISTRATIVE LAW JUDGE.—No
6 carrier hearing shall be held, and no re-
7 quirement for a carrier hearing shall apply,
8 with respect to rights to a hearing before
9 an administrative law judge, if the party to
10 the carrier review elects a hearing before
11 an administrative law judge in lieu of a
12 carrier hearing.

13 “(C) HEARING BY ADMINISTRATIVE LAW
14 JUDGE.—

15 “(i) IN GENERAL.—Except as pro-
16 vided in clause (ii), an administrative law
17 judge shall conduct and conclude a hearing
18 and render a decision on such hearing by
19 not later than the end of the 90-day period
20 beginning on the date a request for hear-
21 ing has been timely filed.

22 “(ii) WAIVER OF DEADLINE BY PARTY
23 SEEKING HEARING.—The 90-day period
24 under clause (i) shall not apply in the case

1 of a motion or stipulation by the party re-
2 questing the hearing to waive such period.

3 “(D) DEPARTMENTAL APPEALS BOARD RE-
4 VIEW.—The Departmental Appeals Board of
5 the Department of Health and Human Services
6 shall conduct and conclude a review of the deci-
7 sion on a hearing described in subparagraph
8 (C) and make a decision or remand the case to
9 the administrative law judge for reconsideration
10 by not later than the end of the 90-day period
11 beginning on the date a request for review has
12 been timely filed.

13 “(2) CONSEQUENCES OF FAILURE TO MEET
14 DEADLINES.—

15 “(A) IN GENERAL.—

16 “(i) FAILURE TO NOTIFY.—In the
17 case of a failure by a carrier to mail notice
18 within the time period described in para-
19 graph (A) or (B) of paragraph (1), the
20 party requesting the review or carrier hear-
21 ing (as the case may be) may request a
22 hearing before an administrative law judge,
23 notwithstanding any requirements for a
24 carrier review or a carrier hearing for pur-

1 poses of the party's right to a hearing be-
2 fore such judge.

3 “(ii) FAILURE OF ALJ TO DECIDE.—

4 In the case of a failure by an administra-
5 tive law judge to render a decision by the
6 end of the period described in paragraph
7 (1)(C), the party requesting the hearing
8 may request a review by the Departmental
9 Appeals Board, notwithstanding any re-
10 quirements for a hearing for purposes of
11 the party's right to such a review.

12 “(B) DAB HEARING PROCEDURE.—In the
13 case of a request described in subparagraph
14 (A)(ii), the Departmental Appeals Board shall
15 review the case de novo.”.

16 **SEC. 203. RIGHT TO APPEAL ON BEHALF OF DECEASED**
17 **BENEFICIARIES.**

18 Notwithstanding section 1870 of the Social Security
19 Act (42 U.S.C. 1395gg) or any other provision of law, the
20 Secretary shall permit any health care provider to appeal
21 any determination of the Secretary under the medicare
22 program on behalf of a deceased beneficiary where no sub-
23 stitute party is available.

1 **SEC. 204. SUSPENSION OF CERTAIN ACTIVITIES WHILE AP-**
2 **PEALS ARE PENDING.**

3 (a) IN GENERAL.—Section 1866 of the Social Secu-
4 rity Act (42 U.S.C. 1395cc) is amended by adding at the
5 end the following new subsection:

6 “(j) For purposes of subsections (b) and (c), the
7 Secretary—

8 “(1) may not impose any sanction, terminate an
9 agreement, or refuse to renew such an agreement
10 with a provider of services under this title during the
11 period in which any appeal of such provider regard-
12 ing a deficiency that is the basis of such sanction,
13 termination, or nonrenewal is pending;

14 “(2) may not publicly disseminate any informa-
15 tion regarding any deficiency of a provider of serv-
16 ices that is the subject of an appeal before such ap-
17 peal is finally adjudicated; and

18 “(3) shall permit any provider of services to ap-
19 peal a surveyor deficiency of such provider that does
20 not result in a recommendation of termination.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall apply to agreements entered into or
23 renewed on or after the date of the enactment of this Act.

1 **SEC. 205. NATIONAL PRECEDENCE OF DEPARTMENTAL AP-**
 2 **PEALS BOARD DETERMINATIONS.**

3 Notwithstanding any other provision of law, any de-
 4 termination of the Departmental Appeals Board of the
 5 Department of Health and Human Services under the
 6 medicare program shall have national precedential value
 7 with respect to any determination of an administrative law
 8 judge under such program.

9 **SEC. 206. REQUIREMENTS FOR AFFIRMATIVE APPEAL OF**
 10 **HCFA ACTIONS.**

11 (a) IN GENERAL.—Subchapter III of chapter 37 of
 12 title 31, United States Code, is amended by adding at the
 13 end the following new section:

14 **“§ 3734. Rules for certain actions based on health**
 15 **care claims**

16 “(a) IN GENERAL.—In the case of any action that
 17 is brought under this subchapter based on a claim sub-
 18 mitted with respect to a federally funded health care pro-
 19 gram, the preceding provisions of this subchapter shall
 20 apply only to the extent that such provisions are consistent
 21 with the provisions of this section.

22 “(b) ACTIONS IF AMOUNT OF DAMAGES ARE MATE-
 23 RIAL AMOUNT.—Notwithstanding the preceding sections
 24 of this subchapter, no action may be brought under this
 25 subchapter based on a claim that is submitted under a
 26 federally funded health care program unless the amount

1 of damages alleged to have been sustained by the United
2 States Government with respect to such claim is a mate-
3 rial amount.

4 “(c) ACTIONS FOR CLAIMS SUBMITTED IN RELIANCE
5 ON OFFICIAL GUIDANCE.—Notwithstanding the preceding
6 sections of this subchapter, no action may be brought
7 under this subchapter based on a claim submitted—

8 “(1) in reliance on (and correctly using) erro-
9 neous information supplied by a Federal agency (or
10 an agent thereof) about matters of fact at issue; or

11 “(2) in reliance on (and correctly applying)
12 written statements of Federal policy which affects
13 such claim provided by a Federal agency (or an
14 agent thereof).

15 “(d) STANDARD OF PROOF.—In any action brought
16 under this subchapter with respect to a claim submitted
17 to a federally funded health care program, section 3731(c)
18 shall be applied by substituting ‘clear and convincing evi-
19 dence’ for ‘a preponderance of the evidence’.

20 “(e) RULE OF CONSTRUCTION.—Nothing in this sec-
21 tion shall be construed as limiting the authority of the
22 Government of the United States to recoup or otherwise
23 recover damages with respect to a claim submitted to a
24 federally funded health care program under provisions of
25 law other than this subchapter.

1 “(f) DEFINITIONS; RELATED RULES.—For purposes
2 of this section—

3 “(1) the term ‘claim’ means a claim (as defined
4 in section 3729(c)) made with respect to a federally
5 funded health care program;

6 “(2) the term ‘damages’ means the amount of
7 any overpayment made by the United States Govern-
8 ment with respect to a claim;

9 “(3) the term ‘federally funded health care pro-
10 gram’ means a program that provides health bene-
11 fits, whether directly, through the purchase of insur-
12 ance, or otherwise, that is established under—

13 “(A) title XVIII, XIX, or XXI of the So-
14 cial Security Act, or

15 “(B) title 10, of this Code; and

16 “(4)(A) the amount of damages alleged to have
17 been sustained by the United States Government
18 with respect to a claim submitted by (or on behalf
19 of) a person shall be treated as a ‘material amount’
20 only if such amount exceeds a proportion (specified
21 in regulations promulgated by the Secretary in con-
22 sultation with the Secretary of Defense) of the total
23 of the amounts for which claims were submitted by
24 (or on behalf of) such person—

1 “(i) to the same federally funded health
2 care program, and

3 “(ii) for the same calendar year,
4 as the claim upon which an action under this sub-
5 chapter is based;

6 “(B) the regulations specifying the proportion
7 referred to in paragraph (4) shall be based on the
8 definition of the term ‘material’ used by the Amer-
9 ican Institute of Certified Public Accountants as of
10 the date of the enactment of this section; and

11 “(C) in determining whether an amount of
12 damages is a ‘material amount’ under subparagraph
13 (A), with respect to a person—

14 “(i) the amount of damages for more than
15 1 claim may be aggregated only if the acts or
16 omissions resulting in such damages were part
17 of a pattern of related acts or omissions by
18 such person, and

19 “(ii) if damages for more than 1 claim are
20 aggregated in accordance with clause (i), the
21 proportion referred to in such subparagraph
22 shall be determined by comparing the amount
23 of such aggregate damages to the total of the
24 amounts for which claims were submitted by (or
25 on behalf of) such person to the same federally

1 funded health care program for each of the cal-
 2 endar years for which any claim upon which
 3 such aggregate damages were based was sub-
 4 mitted.”.

5 (b) CONFORMING AMENDMENT.—The table of sec-
 6 tions for chapter 37 of title 31, United States Code, is
 7 amended by adding after the item relating to section 3733
 8 the following new item:

“3734. Rules for certain actions based on health care claims.”.

9 (c) EFFECTIVE DATE.—The amendment made by
 10 subsection (a) shall apply to actions brought under sub-
 11 chapter III of chapter 37 of title 31, United States Code,
 12 with respect to claims submitted before, on, and after the
 13 date of the enactment of this Act.

14 **SEC. 207. GAO AUDIT OF RANDOM SAMPLE AUDITS.**

15 (a) AUDIT.—The Comptroller General of the United
 16 States shall conduct an audit to determine—

17 (1) the statistical validity of random sample au-
 18 dits conducted under the medicare program before
 19 the date of the enactment of this Act;

20 (2) the necessity of such audits for purposes of
 21 administering sections 1815(a), 1842(a), and
 22 1861(v)(1)(A)(ii) of the Social Security Act (42
 23 U.S.C. 1395g(a), 1395u(a), and 1395x(v)(1)(A)(ii));
 24 and

1 (3) the effects of the application of such audits
 2 to health care providers under sections 1842(b),
 3 1866(a)(1)(B)(ii), 1870, and 1893 of such Act (42
 4 U.S.C. 1395u(a), 1395cc(a)(1)(B)(ii), 1395gg, and
 5 1395ddd).

6 (b) REPORT.—Not later than 18 months after the
 7 date of the enactment of this Act, the Comptroller General
 8 shall submit to Congress a report on the audit conducted
 9 under subsection (a), together with such recommendations
 10 for legislative and administrative action as the Comp-
 11 troller General determines appropriate.

12 **TITLE III—REFORM OF** 13 **OVERPAYMENT PROCEDURE**

14 **SEC. 301. PROHIBITION OF RETROACTIVE OVERPAYMENT** 15 **DETERMINATIONS.**

16 (a) IN GENERAL.—Section 1870 of the Social Secu-
 17 rity Act (42 U.S.C. 1395gg) is amended by adding at the
 18 end the following new subsection:

19 “(h)(1)(A) For purposes of applying the 3-year limi-
 20 tation under subsections (b) and (c), sections
 21 1842(b)(3)(B)(ii) and 1866(a)(1)(B)(ii), the Secretary
 22 may only revise a determination that more than the cor-
 23 rect amount has been paid under this title to a provider
 24 of services or other person for any item or service fur-

1 nished to an individual in accordance with subparagraph
2 (B).

3 “(B) The Secretary may revise a determination that
4 more than the correct amount has been paid under this
5 title to a provider of services or other person for any item
6 or service furnished to an individual—

7 “(i) within 12 months from the date of the no-
8 tice of the determination to the party to such deter-
9 mination; or

10 “(ii) after the 12-month period described in
11 clause (i), but within 3 years after the date of the
12 notice of the initial determination to the individual,
13 upon establishment of good cause for reopening such
14 determination.

15 “(2) Notwithstanding the 3-year limitation under
16 subsections (b) and (c), and sections 1842(b)(3)(B)(ii)
17 and 1866(a)(1)(B)(ii), the Secretary may revise a deter-
18 mination that more than the correct amount has been paid
19 under this title to a provider of services or other person
20 for any item or service furnished to an individual at any
21 time if such determination—

22 “(A) is unfavorable to a provider of services or
23 other person to which the overpayment was made,
24 but only for the purpose of correcting clerical error

1 or error on the face of the evidence on which such
 2 determination was based; or

3 “(B) was procured by fraud or similar fault of
 4 the beneficiary or some other individual other than
 5 the provider of services or other person to which
 6 such overpayment was made.

7 “(3) For purposes of making any revision under
 8 paragraph (1) or (2), the Secretary shall apply regulations
 9 in effect at the time the overpayment was made.”

10 (b) EFFECTIVE DATE.—The amendment made by
 11 subsection (a) shall apply to overpayment determinations
 12 made on or after the date of the enactment of this Act.

13 **SEC. 302. PROHIBITION OF SAMPLING AUDITS TO REDUCE**
 14 **FUTURE REIMBURSEMENTS.**

15 Notwithstanding sections 1815(a), 1842(b), and
 16 1861(v)(1)(A)(ii) of the Social Security Act (42 U.S.C.
 17 1395g(a), 1395u(a), and 1395x(v)(1)(A)(ii)), or any other
 18 provision of law, for purposes of sections
 19 1842(b)(3)(B)(ii), 1866(a)(1)(B)(ii), 1870, and 1893 of
 20 such Act (42 U.S.C. 1395u(b)(3)(B)(ii),
 21 1395cc(a)(1)(B)(ii), 1395gg, 1395ddd), the Secretary
 22 may not determine the amount of any overpayment or un-
 23 derpayment based on a sampling audit (including any de-
 24 termination based on the rate of denied claims of such
 25 provider), unless the Secretary finds clear and convincing

1 evidence of fraud or similar fault on the part of such pro-
2 vider.

3 **SEC. 303. PROHIBITION OF RECOVERING PAST OVERPAY-**
4 **MENTS BY CERTAIN MEANS.**

5 Notwithstanding sections 1815(a), 1842(b), and
6 1861(v)(1)(A)(ii) of the Social Security Act (42 U.S.C.
7 1395g(a), 1395u(a), and 1395x(v)(1)(A)(ii)), or any other
8 provision of law, for purposes of applying sections
9 1842(b)(3)(B)(ii), 1866(a)(1)(B)(ii), 1870, and 1893 of
10 such Act (42 U.S.C. 1395u(b)(3)(B)(ii),
11 1395cc(a)(1)(B)(ii), 1395gg, and 1395ddd), the Secretary
12 may not adjust any payments to a health care provider
13 on account of a previously made overpayment unless the
14 Secretary finds clear and convincing evidence of fraud or
15 similar fault on the part of such provider.

16 **SEC. 304. PROHIBITION OF RECOVERING PAST OVERPAY-**
17 **MENTS IF APPEAL PENDING.**

18 Notwithstanding any provision of law, for purposes
19 of applying sections 1842(b)(3)(B)(ii), 1866(a)(1)(B)(ii),
20 1870, and 1893 of the Social Security Act (42 U.S.C.
21 1395u(b)(3)(B)(ii), 1395cc(a)(1)(B)(ii), 1395gg,
22 1395ddd), the Secretary may not take any action (or au-
23 thorize any other person, including any fiscal inter-
24 mediary, carrier, and entity with a contract under section
25 1893 of such Act (42 U.S.C. 1395ddd)) to recoup an over-

1 payment during the period in which a health care provider
2 may appeal a determination that such an overpayment has
3 been made or the amount of the overpayment.

4 **TITLE IV—REFORM OF VOL-**
5 **UNTARY DISCLOSURE PROCE-**
6 **DURE**

7 **SEC. 401. PROMULGATION OF JOINT VOLUNTARY DISCLO-**
8 **SURE PROCEDURES.**

9 (a) VOLUNTARY DISCLOSURE.—No criminal prosecu-
10 tion under title XI of the Social Security Act (42 U.S.C.
11 1301 et seq.) and no civil action under such title, the
12 medicare program, or section 3729, 3730, or 3731 of title
13 31, United States Code, may be instituted against a health
14 care provider with respect to a matter that such provider
15 has voluntarily disclosed in accordance with the regula-
16 tions promulgated under subsection (b).

17 (b) REGULATIONS.—

18 (1) PROMULGATION.—The Secretary and the
19 Attorney General, acting jointly, shall establish, by
20 regulation, voluntary disclosure procedures that
21 apply with respect to any potential violations of Fed-
22 eral criminal, civil, or administrative laws by a
23 health care provider under the Medicare program.

24 (2) HEALTH CARE PROVIDER IMMUNITY.—The
25 regulations promulgated under paragraph (1) shall

1 provide that, unless the Secretary establishes by
2 independently obtained clear and convincing evidence
3 that such potential violation is the result of criminal
4 fraud or similar fault on the part of a health care
5 provider, such provider shall be immune from any
6 action described in paragraph (3) if such provider
7 reports such potential violation in accordance with
8 the regulations promulgated under paragraph (1)
9 before a record or information request is issued by
10 a fiscal intermediary, carrier, entity with a contract
11 under section 1893 of the Social Security Act, Fed-
12 eral law enforcement agency, or other appropriate
13 official with regards to an investigation for such po-
14 tential violation; and

15 (3) ACTION DESCRIBED.—An action described
16 in this section is any—

17 (A) criminal prosecution or civil action
18 under title XI of the Social Security Act (42
19 U.S.C. 1301 et seq.);

20 (B) civil action under the medicare pro-
21 gram; or

22 (C) civil action for false claims under sec-
23 tions 3729, 3730, or 3731 of title 31, United
24 States Code.

1 **TITLE V—CRIMINAL LAW**
 2 **ENFORCEMENT REFORMS**

3 **SEC. 501. NO LAW ENFORCEMENT AUTHORITY FOR EM-**
 4 **PLOYEES OF THE OFFICE OF INSPECTOR**
 5 **GENERAL OF THE DEPARTMENT OF HEALTH**
 6 **AND HUMAN SERVICES.**

7 (a) IN GENERAL.—Chapter 203 of title 18, United
 8 States Code, is amended by adding at the end the fol-
 9 lowing new section:

10 **“§ 3064. No law enforcement authority for employees**
 11 **of the Office of Inspector General of the**
 12 **Department of Health and Human Serv-**
 13 **ices**

14 “Notwithstanding any other provision of law, no em-
 15 ployee of the Office of Inspector General of the Depart-
 16 ment of Health and Human Services may—

17 “(1) be deputized or carry out any law enforce-
 18 ment activity, including the execution of a search
 19 warrant or the making of an arrest without a war-
 20 rant; or

21 “(2) carry a firearm in carrying out any official
 22 duty of that employee.”.

23 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 24 The analysis for chapter 203 of title 18, United States

1 Code, is amended by adding at the end the following new
2 item:

“3064. No law enforcement authority for employees of the Office of Inspector
General of the Department of Health and Human Services.”.

3 **SEC. 502. SEARCH WARRANTS ON HEALTH CARE FACILI-**
4 **TIES.**

5 (a) IN GENERAL.—Chapter 205 of title 18, United
6 States Code, is amended by adding at the end the fol-
7 lowing new section:

8 **“§ 3119. Search warrants on health care facilities**

9 “(a) DEFINITION.—In this section—

10 “(1) the term ‘health care facility’ means any
11 facility at which direct patient care is routinely con-
12 ducted or at which confidential medical records are
13 maintained; and

14 “(2) the term ‘officer’ means any person au-
15 thorized to serve a search warrant under section
16 3105.

17 “(b) APPLICATION FOR WARRANT.—

18 “(1) IN GENERAL.—Notwithstanding any other
19 provision of law, an application for a search warrant
20 on a health care facility may not be made without
21 the express approval of the Assistant Attorney Gen-
22 eral for the Criminal Division of the Department of
23 Justice that includes the information required under
24 paragraph (2), after consultation by the Assistant

1 Attorney General with the chief of the fraud section
2 of such Division in accordance with that paragraph.

3 “(2) CONSULTATION.—The consultation re-
4 quired by paragraph (1) shall include a discussion
5 of, and any subsequent approval by the Assistant
6 Attorney General under that paragraph to apply for
7 the search warrant and shall require the inclusion in
8 the application of, specific information regarding the
9 proposed search, including—

10 “(A) the intended target or targets;

11 “(B) the potential violation or violations of
12 law being investigated;

13 “(C) a brief factual summary;

14 “(D) a description of the premises to be
15 searched;

16 “(E) any records, information, and objects
17 to be searched;

18 “(F) the reasons why less intrusive means
19 are unavailable or unreasonable;

20 “(G) the procedures to be followed in con-
21 ducting the search to protect patient safety and
22 ensure uninterrupted delivery of health care
23 services; and

24 “(H) procedures to be followed in con-
25 ducting the search to protect the confidentiality

1 of patient records and to provide the health
2 care facility the opportunity to copy documents
3 that are confiscated.

4 “(3) CONTENTS OF APPLICATION.—Notwith-
5 standing any other provision of law, an application
6 for a search warrant on a health care facility shall
7 contain a draft search warrant.

8 “(c) EXECUTION OF WARRANT.—Notwithstanding
9 any other provision of law, an officer executing a search
10 warrant on a health care facility—

11 “(1) shall take the least intrusive approach,
12 consistent with vigorous and effective law enforce-
13 ment, after giving consideration to obtaining infor-
14 mation from other sources or through subpoenas
15 (with the prior approval of the Assistant United
16 States Attorney for the appropriate district);

17 “(2) if the search is conducted in a patient care
18 area, shall abide by instructions of the health care
19 facility specific to patient safety, including using
20 special equipment and protective clothing, and com-
21 plying with specific procedures;

22 “(3) shall make every effort to avoid entering a
23 critical care or patient care room, or a patient room;
24 and

1 “(4) shall not disrupt any employee providing
2 direct patient care or remove any employee from a
3 patient care area, except to protect the safety of the
4 employee, a patient, or the officer.”.

5 (b) TECHNICAL AND CONFORMING AMENDMENT.—
6 The analysis for chapter 205 of title 18, United States
7 Code, is amended by adding at the end the following new
8 item:

 “3119. Search warrants on health care facilities.”.

9 **TITLE VI—PROVIDER**
10 **COMPLIANCE EDUCATION**

11 **SEC. 601. EDUCATION.**

12 (a) USE OF FUNDS.—

13 (1) CARRIERS.—Each carrier shall devote at
14 least 3 percent of the funds provided to it under the
15 medicare program each year (beginning with 2001)
16 toward education of health care providers to ensure
17 that information about the operation of the medicare
18 program is properly disseminated to provider, sup-
19 plier, and physician.

20 (2) FISCAL INTERMEDIARIES.—Each fiscal
21 intermediary shall devote at least 3 percent of the
22 funds provided it under the medicare program (be-
23 ginning with 2001) toward education of health care
24 providers to ensure that information about the oper-

1 ation of the medicare program is properly dissemi-
2 nated.

3 (3) MEDICARE INTEGRITY PROGRAM.—The Sec-
4 retary shall ensure that 10 percent of the funds ex-
5 pended under the medicare integrity program each
6 year (beginning with 2001) are used for education of
7 health care providers to ensure that information
8 about the operation of the medicare program is
9 properly disseminated.

10 (4) PURPOSE.—The purpose of funding under
11 this subsection is to ensure that health care pro-
12 viders learn of new coverage, billing, documentation,
13 and coding changes to medicare laws and regulations
14 in a timely manner.

15 (5) CONSTRUCTION.—Education attendance
16 lists or inquiries may not be used as evidence of pos-
17 sible wrongdoings by health care providers under the
18 medicare program and may not lead to fraud inves-
19 tigations under that program.

20 (b) RIGHT TO INFORMATION.—Health care providers
21 have the right to timely and accurate information about
22 coverage, billing, documentation, and coding changes and
23 modifications to local carrier guidelines under the medi-
24 care program. Fiscal intermediaries and carriers will offer
25 each health care provider the right to receive this informa-

1 tion by electronic or certified mail (in addition to check
2 stuffers, monthly carrier bulletins, the annual “Dear Doc-
3 tor” letter, individual letters, seminars, and other means).

4 (c) ADDITIONAL EDUCATIONAL OUTREACH.—

5 (1) IN GENERAL.—The Secretary shall initiate
6 additional educational outreach for health care pro-
7 viders for coverage, billing, documentation, and cod-
8 ing issues that have the most frequent billing errors.
9 Such outreach shall include issue-specific e-mails,
10 faxes, mailings, and telephone calls.

11 (2) IN-PERSON VISITS.—If, within 9 months
12 after the date that the additional outreach is initi-
13 ated under paragraph (1), a carrier finds that no
14 evidence exists that health care provider billing er-
15 rors under the medicare program have lessened, then
16 the carrier shall complete an in-person visit to rel-
17 evant health care providers, within three months.

18 (d) RIGHT TO TELEPHONE CONVERSATION.—A
19 health care provider may request a telephone conversation
20 or in-person visit with a carrier, without being suspected
21 of fraud, regarding questions about coverage, documenta-
22 tion, coding or billing practices under the medicare pro-
23 gram.

1 **SEC. 602. ADVISORY OPINIONS.**

2 (a) STRAIGHT ANSWERS.—Fiscal intermediaries and
3 carriers shall do their utmost to provide health care pro-
4 viders with one, straight and correct answer regarding bill-
5 ing and cost reporting questions under the medicare pro-
6 gram, and will, when requested, give their true first and
7 last names to providers.

8 (b) WRITTEN REQUESTS.—

9 (1) IN GENERAL.—The Secretary shall establish
10 a process under which a health care provider may
11 request, in writing from a fiscal intermediary or car-
12 rier, assistance in addressing questionable coverage,
13 billing, documentation, coding and cost reporting
14 procedures under the medicare program and then
15 the fiscal intermediary or carrier shall respond in
16 writing within 30 business days with the correct bill-
17 ing or procedural answer.

18 (2) USE OF WRITTEN STATEMENT.—

19 (A) IN GENERAL.—Subject to subpara-
20 graph (B), a written statement under para-
21 graph (1) may be used as proof against a fu-
22 ture audit or overpayment under the medicare
23 program.

24 (B) LIMIT ON APPLICATION.—Subpara-
25 graph (A) shall not apply retroactively and shall
26 not apply to cases of fraudulent billing.

1 **SEC. 603. EXTENSION OF EXISTING ADVISORY OPINION**
2 **PROVISIONS OF LAW.**

3 Section 11280(b)(6) of the Social Security Act (42
4 U.S.C. 1320(b)(6)) shall be amended by striking, “and be-
5 fore the date which is 4 years after August 21, 1996”.

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