

Union Calendar No. 200

107TH CONGRESS
1ST SESSION

H. R. 2768

[Report No. 107-288, Part I]

To amend title XVIII of the Social Security Act to provide regulatory relief and contracting flexibility under the Medicare Program.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2001

Mrs. JOHNSON of Connecticut (for herself, Mr. STARK, Mr. CAMP, Mr. CARDIN, Mr. CRANE, Ms. DUNN of Washington, Mr. ENGLISH, Mr. FOLEY, Mr. HAYWORTH, Mr. SAM JOHNSON of Texas, Mr. KLECZKA, Mr. LEWIS of Georgia, Mr. LEWIS of Kentucky, Mr. McCRERY, Mr. McDERMOTT, Mr. McNULTY, Mr. RAMSTAD, Mr. SHAW, Mrs. THURMAN, and Mr. WELLER) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

NOVEMBER 13, 2001

Reported from the Committee on Ways and Means with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

NOVEMBER 13, 2001

Referral to the Committee on Energy and Commerce extended for a period ending not later than November 16, 2001

NOVEMBER 16, 2001

Referral to the Committee on Energy and Commerce extended for a period ending not later than December 7, 2001

DECEMBER 7, 2001

Additional sponsors: Mr. PORTMAN, Mr. ABERCROMBIE, Mr. McHUGH, Mr. LAMPSON, Mr. CROWLEY, Mr. STENHOLM, and Mr. GEORGE MILLER of California

DECEMBER 7, 2001

Committee on Energy and Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on August 2, 2001]

A BILL

To amend title XVIII of the Social Security Act to provide regulatory relief and contracting flexibility under the Medicare Program.

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; AMENDMENTS TO SOCIAL SECU-**
4 **RITY ACT; TABLE OF CONTENTS.**

5 (a) *SHORT TITLE.*—*This Act may be cited as the*
6 *“Medicare Regulatory and Contracting Reform Act of*
7 *2001”.*

8 (b) *AMENDMENTS TO SOCIAL SECURITY ACT.*—*Except*
9 *as otherwise specifically provided, whenever in this Act an*
10 *amendment is expressed in terms of an amendment to or*
11 *repeal of a section or other provision, the reference shall*
12 *be considered to be made to that section or other provision*
13 *of the Social Security Act.*

14 (c) *TABLE OF CONTENTS.*—*The table of contents of this*
15 *Act is as follows:*

Sec. 1. Short title; amendments to Social Security Act; table of contents.

Sec. 2. Issuance of regulations.

Sec. 3. Compliance with changes in regulations and policies.

Sec. 4. Increased flexibility in medicare administration.

Sec. 5. Provider education and technical assistance.

Sec. 6. Small provider technical assistance demonstration program.

Sec. 7. Medicare Provider Ombudsman; Medicare Beneficiary Ombudsman.

Sec. 8. Provider appeals.

Sec. 9. Recovery of overpayments and prepayment review; enrollment of providers.

Sec. 10. Beneficiary outreach demonstration program.

Sec. 11. Policy development regarding evaluation and management (E & M) documentation guidelines.

Sec. 12. Improvement in oversight of technology and coverage.

Sec. 13. Miscellaneous provisions.

1 (d) *CONSTRUCTION.—Nothing in this Act shall be*
2 *construed—*

3 (1) *to compromise or affect existing legal author-*
4 *ity for addressing fraud or abuse, whether it be criminal*
5 *prosecution, civil enforcement, or administrative*
6 *remedies, including under sections 3729 through 3733*
7 *of title 31, United States Code (known as the False*
8 *Claims Act); or*

9 (2) *to prevent or impede the Department of*
10 *Health and Human Services in any way from its on-*
11 *going efforts to eliminate waste, fraud, and abuse in*
12 *the medicare program.*

13 *Furthermore, the consolidation of medicare administrative*
14 *contracting set forth in this Act does not constitute consoli-*
15 *dation of the Federal Hospital Insurance Trust Fund and*
16 *the Federal Supplementary Medical Insurance Trust Fund*
17 *or reflect any position on that issue.*

18 (e) *USE OF TERM SUPPLIER IN MEDICARE.—Section*
19 *1861 (42 U.S.C. 1395x) is amended by inserting after sub-*
20 *section (c) the following new subsection:*

1 *a report on the feasibility of requiring that regula-*
2 *tions described in section 1871(d) of the Social Secu-*
3 *rity Act only be promulgated on a single day every*
4 *calendar quarter.*

5 (3) *EFFECTIVE DATE.*—*The amendment made by*
6 *paragraph (1) shall apply to regulations promulgated*
7 *on or after the date that is 30 days after the date of*
8 *the enactment of this Act.*

9 (b) *REGULAR TIMELINE FOR PUBLICATION OF FINAL*
10 *RULES.*—

11 (1) *IN GENERAL.*—*Section 1871(a) (42 U.S.C.*
12 *1395hh(a)) is amended by adding at the end the fol-*
13 *lowing new paragraph:*

14 “(3)(A) *The Secretary, in consultation with the Direc-*
15 *tor of the Office of Management and Budget, shall establish*
16 *and publish a regular timeline for the publication of final*
17 *regulations based on the previous publication of a proposed*
18 *regulation or an interim final regulation.*

19 “(B) *Such timeline may vary among different regula-*
20 *tions based on differences in the complexity of the regula-*
21 *tion, the number and scope of comments received, and other*
22 *relevant factors. If the Secretary intends to vary such*
23 *timeline with respect to the publication of a final regula-*
24 *tion, the Secretary shall cause to have published in the Fed-*
25 *eral Register notice of the different timeline by not later*

1 *than the end of the comment period respecting such regula-*
2 *tion. Such notice shall include a brief explanation of the*
3 *justification for such variation.*

4 “(C) *In the case of interim final regulations, upon the*
5 *expiration of the regular timeline established under this*
6 *paragraph for the publication of a final regulation after*
7 *opportunity for public comment, the interim final regula-*
8 *tion shall not continue in effect unless the Secretary pub-*
9 *lishes a notice of continuation of the regulation that in-*
10 *cludes an explanation of why the regular timeline was not*
11 *complied with. If such a notice is published, the regular*
12 *timeline for publication of the final regulation shall be*
13 *treated as having begun again as of the date of publication*
14 *of the notice.*

15 “(D) *The Secretary shall annually submit to Congress*
16 *a report that describes the instances in which the Secretary*
17 *failed to publish a final regulation within the applicable*
18 *timeline under this paragraph and that provides an expla-*
19 *nation for such failures.”.*

20 (2) *EFFECTIVE DATE.—The amendment made by*
21 *paragraph (1) shall take effect on the date of the en-*
22 *actment of this Act. The Secretary of Health and*
23 *Human Services shall provide for an appropriate*
24 *transition to take into account the backlog of pre-*
25 *viously published interim final regulations.*

1 (c) *LIMITATIONS ON NEW MATTER IN FINAL REGULA-*
2 *TIONS.*—

3 (1) *IN GENERAL.*—Section 1871(a) (42 U.S.C.
4 1395hh(a)), as amended by subsection (b), is further
5 amended by adding at the end the following new
6 paragraph:

7 “(4) If the Secretary publishes notice of proposed rule-
8 making relating to a regulation (including an interim final
9 regulation), insofar as such final regulation includes a pro-
10 vision that is not a logical outgrowth of such notice of pro-
11 posed rulemaking, that provision shall be treated as a pro-
12 posed regulation and shall not take effect until there is the
13 further opportunity for public comment and a publication
14 of the provision again as a final regulation.”.

15 (2) *EFFECTIVE DATE.*—The amendment made by
16 paragraph (1) shall apply to final regulations pub-
17 lished on or after the date of the enactment of this
18 Act.

19 **SEC. 3. COMPLIANCE WITH CHANGES IN REGULATIONS AND**
20 **POLICIES.**

21 (a) *NO RETROACTIVE APPLICATION OF SUBSTANTIVE*
22 *CHANGES; TIMELINE FOR COMPLIANCE WITH SUBSTANTIVE*
23 *CHANGES AFTER NOTICE.*—Section 1871 (42 U.S.C.
24 1395hh), as amended by section 2(a), is amended by adding
25 at the end the following new subsection:

1 “(e)(1)(A) A substantive change in regulations, man-
2 ual instructions, interpretative rules, statements of policy,
3 or guidelines of general applicability under this title shall
4 not be applied (by extrapolation or otherwise) retroactively
5 to items and services furnished before the date the change
6 was issued, unless the Secretary determines that such retro-
7 active application would have a positive impact on bene-
8 ficiaries or providers of services and suppliers or would be
9 necessary to comply with statutory requirements.

10 “(B) A substantive change in regulations, manual in-
11 structions, interpretative rules, statements of policy, or
12 guidelines of general applicability under this title shall not
13 become effective until at least 30 days after the Secretary
14 issues the substantive change.

15 “(C) No action shall be taken against a provider of
16 services or supplier with respect to noncompliance with
17 such a substantive change for items and services furnished
18 before the effective date of such a change.”.

19 (b) *RELIANCE ON GUIDANCE*.—Section 1871(e), as
20 added by subsection (a), is further amended by adding at
21 the end the following new paragraph:

22 “(2)(A) If—

23 “(i) a provider of services or supplier follows the
24 written guidance (which may be transmitted elec-
25 tronically) provided by the Secretary or by a medi-

1 *care contractor (as defined in section 1889(g)) acting*
2 *within the scope of the contractor’s contract authority,*
3 *with respect to the furnishing of items or services and*
4 *submission of a claim for benefits for such items or*
5 *services with respect to such provider or supplier;*

6 *“(ii) the Secretary determines that the provider*
7 *of services or supplier has accurately presented the*
8 *circumstances relating to such items, services, and*
9 *claim to the contractor in writing; and*

10 *“(iii) the guidance was in error;*
11 *the provider of services or supplier shall not be subject to*
12 *any sanction (including any penalty or requirement for re-*
13 *payment of any amount) if the provider of services or sup-*
14 *plier reasonably relied on such guidance.*

15 *“(B) Subparagraph (A) shall not be construed as pre-*
16 *venting the recoupment or repayment (without any addi-*
17 *tional penalty) relating to an overpayment insofar as the*
18 *overpayment was solely the result of a clerical or technical*
19 *operational error.”.*

20 *(c) GAO STUDY ON ADVISORY OPINION AUTHORITY.—*

21 *(1) STUDY.—The Comptroller General of the*
22 *United States shall conduct a study to determine the*
23 *feasibility and appropriateness of establishing in the*
24 *Secretary of Health and Human Services and the*
25 *Secretary’s contractors authority to provide legally*

1 *binding advisory opinions on appropriate interpreta-*
 2 *tion and application of regulations to carry out the*
 3 *medicare program under title XVIII of the Social Se-*
 4 *curity Act. Such study shall examine the appropriate*
 5 *timeframe for issuing such advisory opinions, as well*
 6 *as the need for additional staff and funding to pro-*
 7 *vide such opinions.*

8 (2) *REPORT.—The Comptroller General shall*
 9 *submit to Congress a report on the study conducted*
 10 *under paragraph (1) by not later than January 1,*
 11 *2003.*

12 **SEC. 4. INCREASED FLEXIBILITY IN MEDICARE ADMINIS-**
 13 **TRATION.**

14 (a) *CONSOLIDATION AND FLEXIBILITY IN MEDICARE*
 15 *ADMINISTRATION.—*

16 (1) *IN GENERAL.—Title XVIII is amended by in-*
 17 *serting after section 1874 the following new section:*

18 “*CONTRACTS WITH MEDICARE ADMINISTRATIVE*
 19 *CONTRACTORS*

20 “*SEC. 1874A. (a) AUTHORITY.—*

21 “(1) *AUTHORITY TO ENTER INTO CONTRACTS.—*
 22 *The Secretary may enter into contracts with any en-*
 23 *tity to serve as a medicare administrative contractor*
 24 *with respect to the performance of any or all of the*
 25 *functions described in paragraph (3) or parts of those*

1 *functions (or, to the extent provided in a contract, to*
2 *secure performance thereof by other entities).*

3 “(2) *MEDICARE ADMINISTRATIVE CONTRACTOR*
4 *DEFINED.—For purposes of this title and title XI—*

5 “(A) *IN GENERAL.—The term ‘medicare ad-*
6 *ministrative contractor’ means an agency, orga-*
7 *nization, or other person with a contract under*
8 *this section.*

9 “(B) *APPROPRIATE MEDICARE ADMINISTRA-*
10 *TIVE CONTRACTOR.—With respect to the perform-*
11 *ance of a particular function or activity in rela-*
12 *tion to an individual entitled to benefits under*
13 *part A or enrolled under part B, or both, a spe-*
14 *cific provider of services or supplier (or class of*
15 *such providers of services or suppliers), the ‘ap-*
16 *propriate’ medicare administrative contractor is*
17 *the medicare administrative contractor that has*
18 *a contract under this section with respect to the*
19 *performance of that function or activity in rela-*
20 *tion to that individual, provider of services or*
21 *supplier or class of provider of services or sup-*
22 *plier.*

23 “(3) *FUNCTIONS DESCRIBED.—The functions re-*
24 *ferred to in paragraph (1) are payment functions,*

1 *provider services functions, and beneficiary services*
2 *functions as follows:*

3 “(A) *DETERMINATION OF PAYMENT*
4 *AMOUNTS.—Determining (subject to the provi-*
5 *sions of section 1878 and to such review by the*
6 *Secretary as may be provided for by the con-*
7 *tracts) the amount of the payments required pur-*
8 *suant to this title to be made to providers of*
9 *services, suppliers and individuals.*

10 “(B) *MAKING PAYMENTS.—Making pay-*
11 *ments described in subparagraph (A) (including*
12 *receipt, disbursement, and accounting for funds*
13 *in making such payments).*

14 “(C) *BENEFICIARY EDUCATION AND ASSIST-*
15 *ANCE.—Providing education and outreach to in-*
16 *dividuals entitled to benefits under part A or en-*
17 *rolled under part B, or both, and providing as-*
18 *sistance to those individuals with specific issues,*
19 *concerns or problems.*

20 “(D) *PROVIDER CONSULTATIVE SERV-*
21 *ICES.—Providing consultative services to institu-*
22 *tions, agencies, and other persons to enable them*
23 *to establish and maintain fiscal records nec-*
24 *essary for purposes of this title and otherwise to*
25 *qualify as providers of services or suppliers.*

1 “(E) *COMMUNICATION WITH PROVIDERS.*—
2 *Communicating to providers of services and sup-*
3 *pliers any information or instructions furnished*
4 *to the medicare administrative contractor by the*
5 *Secretary and serving as a channel of commu-*
6 *nication from providers of services and suppliers*
7 *to the Secretary.*

8 “(F) *PROVIDER EDUCATION AND TECHNICAL*
9 *ASSISTANCE.*—*Performing the functions relating*
10 *to provider education, training, and technical*
11 *assistance.*

12 “(G) *ADDITIONAL FUNCTIONS.*—*Performing*
13 *such other functions as are necessary to carry*
14 *out the purposes of this title.*

15 “(4) *RELATIONSHIP TO MIP CONTRACTS.*—

16 “(A) *NONDUPLICATION OF DUTIES.*—*In en-*
17 *tering into contracts under this section, the Sec-*
18 *retary shall assure that functions of medicare*
19 *administrative contractors in carrying out ac-*
20 *tivities under parts A and B do not duplicate*
21 *activities carried out under the Medicare Integ-*
22 *riety Program under section 1893. The previous*
23 *sentence shall not apply with respect to the ac-*
24 *tivity described in section 1893(b)(5) (relating to*

1 *prior authorization of certain items of durable*
2 *medical equipment under section 1834(a)(15)).*

3 *“(B) CONSTRUCTION.—An entity shall not*
4 *be treated as a medicare administrative con-*
5 *tractor merely by reason of having entered into*
6 *a contract with the Secretary under section*
7 *1893.*

8 *“(b) CONTRACTING REQUIREMENTS.—*

9 *“(1) USE OF COMPETITIVE PROCEDURES.—*

10 *“(A) IN GENERAL.—Except as provided in*
11 *laws with general applicability to Federal acqui-*
12 *sition and procurement or in subparagraph (B),*
13 *the Secretary shall use competitive procedures*
14 *when entering into contracts with medicare ad-*
15 *ministrative contractors under this section, tak-*
16 *ing into account performance quality as well as*
17 *price and other factors.*

18 *“(B) RENEWAL OF CONTRACTS.—The Sec-*
19 *retary may renew a contract with a medicare*
20 *administrative contractor under this section*
21 *from term to term without regard to section 5 of*
22 *title 41, United States Code, or any other provi-*
23 *sion of law requiring competition, if the medi-*
24 *care administrative contractor has met or ex-*
25 *ceeded the performance requirements applicable*

1 *with respect to the contract and contractor, ex-*
2 *cept that the Secretary shall provide for the ap-*
3 *plication of competitive procedures under such a*
4 *contract not less frequently than once every five*
5 *years.*

6 “(C) *TRANSFER OF FUNCTIONS.*—*Functions*
7 *may be transferred among medicare administra-*
8 *tive contractors consistent with the provisions of*
9 *this paragraph. The Secretary shall ensure that*
10 *performance quality is considered in such trans-*
11 *fers.*

12 “(D) *INCENTIVES FOR QUALITY.*—*The Sec-*
13 *retary shall provide incentives for medicare ad-*
14 *ministrative contractors to provide quality serv-*
15 *ice and to promote efficiency.*

16 “(2) *COMPLIANCE WITH REQUIREMENTS.*—*No*
17 *contract under this section shall be entered into with*
18 *any medicare administrative contractor unless the*
19 *Secretary finds that such medicare administrative*
20 *contractor will perform its obligations under the con-*
21 *tract efficiently and effectively and will meet such re-*
22 *quirements as to financial responsibility, legal au-*
23 *thority, quality of services provided, and other mat-*
24 *ters as the Secretary finds pertinent.*

1 “(3) *DEVELOPMENT OF SPECIFIC PERFORMANCE*
2 *REQUIREMENTS.—In developing contract performance*
3 *requirements, the Secretary shall develop performance*
4 *requirements to carry out the specific requirements*
5 *applicable under this title to a function described in*
6 *subsection (a)(3). In developing such requirements,*
7 *the Secretary may consult with providers of services*
8 *and suppliers and organizations and agencies per-*
9 *forming functions necessary to carry out the purposes*
10 *of this section with respect to such performance re-*
11 *quirements.*

12 “(4) *INFORMATION REQUIREMENTS.—The Sec-*
13 *retary shall not enter into a contract with a medicare*
14 *administrative contractor under this section unless*
15 *the contractor agrees—*

16 “(A) *to furnish to the Secretary such timely*
17 *information and reports as the Secretary may*
18 *find necessary in performing his functions under*
19 *this title; and*

20 “(B) *to maintain such records and afford*
21 *such access thereto as the Secretary finds nec-*
22 *essary to assure the correctness and verification*
23 *of the information and reports under subpara-*
24 *graph (A) and otherwise to carry out the pur-*
25 *poses of this title.*

1 “(5) *SURETY BOND.*—*A contract with a medi-*
2 *care administrative contractor under this section may*
3 *require the medicare administrative contractor, and*
4 *any of its officers or employees certifying payments or*
5 *disbursing funds pursuant to the contract, or other-*
6 *wise participating in carrying out the contract, to*
7 *give surety bond to the United States in such amount*
8 *as the Secretary may deem appropriate.*

9 “(c) *TERMS AND CONDITIONS.*—

10 “(1) *IN GENERAL.*—*A contract with any medi-*
11 *care administrative contractor under this section may*
12 *contain such terms and conditions as the Secretary*
13 *finds necessary or appropriate and may provide for*
14 *advances of funds to the medicare administrative con-*
15 *tractor for the making of payments by it under sub-*
16 *section (a)(3)(B).*

17 “(2) *PROHIBITION ON MANDATES FOR CERTAIN*
18 *DATA COLLECTION.*—*The Secretary may not require,*
19 *as a condition of entering into a contract under this*
20 *section, that the medicare administrative contractor*
21 *match data obtained other than in its activities under*
22 *this title with data used in the administration of this*
23 *title for purposes of identifying situations in which*
24 *the provisions of section 1862(b) may apply.*

1 “(d) *LIMITATION ON LIABILITY OF MEDICARE ADMIN-*
2 *ISTRATIVE CONTRACTORS AND CERTAIN OFFICERS.*—

3 “(1) *CERTIFYING OFFICER.*—*No individual des-*
4 *ignated pursuant to a contract under this section as*
5 *a certifying officer shall, in the absence of gross neg-*
6 *ligence or intent to defraud the United States, be lia-*
7 *ble with respect to any payments certified by the in-*
8 *dividual under this section.*

9 “(2) *DISBURSING OFFICER.*—*No disbursing offi-*
10 *cer shall, in the absence of gross negligence or intent*
11 *to defraud the United States, be liable with respect to*
12 *any payment by such officer under this section if it*
13 *was based upon an authorization (which meets the*
14 *applicable requirements for such internal controls es-*
15 *tablished by the Comptroller General) of a certifying*
16 *officer designated as provided in paragraph (1) of*
17 *this subsection.*

18 “(3) *LIABILITY OF MEDICARE ADMINISTRATIVE*
19 *CONTRACTOR.*—*A medicare administrative contractor*
20 *shall be liable to the United States for a payment re-*
21 *ferred to in paragraph (1) or (2) if, in connection*
22 *with such payment, an individual referred to in ei-*
23 *ther such paragraph acted with gross negligence or*
24 *intent to defraud the United States.*

1 “(4) *INDEMNIFICATION BY SECRETARY.*—*The*
2 *Secretary shall make payment to a medicare admin-*
3 *istrative contractor under contract with the Secretary*
4 *pursuant to this section, or to any member or em-*
5 *ployee thereof, or to any person who furnishes legal*
6 *counsel or services to such medicare administrative*
7 *contractor, in an amount equal to the reasonable*
8 *amount of the expenses incurred, as determined by the*
9 *Secretary, in connection with the defense of any civil*
10 *suit, action, or proceeding brought against such medi-*
11 *care administrative contractor or person related to*
12 *the performance of any duty, function, or activity*
13 *under such contract, if due care was exercised by the*
14 *contractor or person in the performance of such duty,*
15 *function, or activity.”.*

16 (2) *CONSIDERATION OF INCORPORATION OF CUR-*
17 *RENT LAW STANDARDS.*—*In developing contract per-*
18 *formance requirements under section 1874A(b) of the*
19 *Social Security Act, as inserted by paragraph (1), the*
20 *Secretary of Health and Human Services shall con-*
21 *sider inclusion of the performance standards described*
22 *in sections 1816(f)(2) of such Act (relating to timely*
23 *processing of reconsiderations and applications for ex-*
24 *emptions) and section 1842(b)(2)(B) of such Act (re-*
25 *lating to timely review of determinations and fair*

1 *hearing requests), as such sections were in effect before*
2 *the date of the enactment of this Act.*

3 *(b) CONFORMING AMENDMENTS TO SECTION 1816 (RE-*
4 *LATING TO FISCAL INTERMEDIARIES).—Section 1816 (42*
5 *U.S.C. 1395h) is amended as follows:*

6 *(1) The heading is amended to read as follows:*

7 *“PROVISIONS RELATING TO THE ADMINISTRATION*
8 *OF PART A”.*

9 *(2) Subsection (a) is amended to read as follows:*

10 *“(a) The administration of this part shall be conducted*
11 *through contracts with medicare administrative contractors*
12 *under section 1874A.”.*

13 *(3) Subsection (b) is repealed.*

14 *(4) Subsection (c) is amended—*

15 *(A) by striking paragraph (1); and*

16 *(B) in each of paragraphs (2)(A) and*
17 *(3)(A), by striking “agreement under this sec-*
18 *tion” and inserting “contract under section*
19 *1874A that provides for making payments under*
20 *this part”.*

21 *(5) Subsections (d) through (i) are repealed.*

22 *(6) Subsections (j) and (k) are each amended—*

23 *(A) by striking “An agreement with an*
24 *agency or organization under this section” and*
25 *inserting “A contract with a medicare adminis-*

1 *trative contractor under section 1874A with re-*
 2 *spect to the administration of this part”; and*

3 *(B) by striking “such agency or organiza-*
 4 *tion” and inserting “such medicare administra-*
 5 *tive contractor” each place it appears.*

6 *(7) Subsection (l) is repealed.*

7 *(c) CONFORMING AMENDMENTS TO SECTION 1842 (RE-*
 8 *LATING TO CARRIERS).—Section 1842 (42 U.S.C. 1395u)*
 9 *is amended as follows:*

10 *(1) The heading is amended to read as follows:*

11 “*PROVISIONS RELATING TO THE ADMINISTRATION*
 12 *OF PART B*”.

13 *(2) Subsection (a) is amended to read as follows:*

14 “*(a) The administration of this part shall be conducted*
 15 *through contracts with medicare administrative contractors*
 16 *under section 1874A.*”.

17 *(3) Subsection (b) is amended—*

18 *(A) by striking paragraph (1);*

19 *(B) in paragraph (2)—*

20 *(i) by striking subparagraphs (A) and*
 21 *(B);*

22 *(ii) in subparagraph (C), by striking*
 23 “*carriers*” *and inserting “medicare admin-*
 24 *istrative contractors”; and*

25 *(iii) by striking subparagraphs (D)*
 26 *and (E);*

1 (C) in paragraph (3)—

2 (i) in the matter before subparagraph
3 (A), by striking “Each such contract shall
4 provide that the carrier” and inserting
5 “The Secretary”;

6 (ii) by striking “will” the first place it
7 appears in each of subparagraphs (A), (B),
8 (F), (G), (H), and (L) and inserting
9 “shall”;

10 (iii) in subparagraph (B), in the mat-
11 ter before clause (i), by striking “to the pol-
12 icyholders and subscribers of the carrier”
13 and inserting “to the policyholders and sub-
14 scribers of the medicare administrative con-
15 tractor”;

16 (iv) by striking subparagraphs (C),
17 (D), and (E);

18 (v) in subparagraph (H)—

19 (I) by striking “if it makes deter-
20 minations or payments with respect to
21 physicians’ services,”; and

22 (II) by striking “carrier” and in-
23 serting “medicare administrative con-
24 tractor”;

25 (vi) by striking subparagraph (I);

1 (vii) in subparagraph (L), by striking
2 the semicolon and inserting a period;

3 (viii) in the first sentence, after sub-
4 paragraph (L), by striking “and shall con-
5 tain” and all that follows through the pe-
6 riod; and

7 (ix) in the seventh sentence, by insert-
8 ing “medicare administrative contractor,”
9 after “carrier,”; and

10 (D) by striking paragraph (5);

11 (E) in paragraph (6)(D)(iv), by striking
12 “carrier” and inserting “medicare administra-
13 tive contractor”;

14 (F) in paragraph (7), by striking “the car-
15 rier” and inserting “the Secretary” each place it
16 appears.

17 (4) Subsection (c) is amended—

18 (A) by striking paragraph (1);

19 (B) in paragraph (2), by striking “contract
20 under this section which provides for the dis-
21 bursement of funds, as described in subsection
22 (a)(1)(B),” and inserting “contract under section
23 1874A that provides for making payments under
24 this part”;

1 (C) in paragraph (3)(A), by striking “sub-
2 section (a)(1)(B)” and inserting “section
3 1874A(a)(3)(B)”;

4 (D) in paragraph (4), by striking “carrier”
5 and inserting “medicare administrative con-
6 tractor”;

7 (E) in paragraph (5), by striking “contract
8 under this section which provides for the dis-
9 bursement of funds, as described in subsection
10 (a)(1)(B), shall require the carrier” and “carrier
11 responses” and inserting “contract under section
12 1874A that provides for making payments under
13 this part shall require the medicare administra-
14 tive contractor” and “contractor responses”, re-
15 spectively; and

16 (F) by striking paragraph (6).

17 (5) Subsections (d), (e), and (f) are repealed.

18 (6) Subsection (g) is amended by striking “car-
19 rier or carriers” and inserting “medicare administra-
20 tive contractor or contractors”.

21 (7) Subsection (h) is amended—

22 (A) in paragraph (2)—

23 (i) by striking “Each carrier having
24 an agreement with the Secretary under sub-

1 *section (a)” and inserting “The Secretary”;*

2 *and*

3 (i) *by striking “Each such carrier”*

4 *and inserting “The Secretary”;*

5 (B) *in paragraph (3)(A)—*

6 (i) *by striking “a carrier having an*

7 *agreement with the Secretary under sub-*

8 *section (a)” and inserting “medicare ad-*

9 *ministrative contractor having a contract*

10 *under section 1874A that provides for mak-*

11 *ing payments under this part”;* *and*

12 (ii) *by striking “such carrier” and in-*

13 *serting “such contractor”;*

14 (C) *in paragraph (3)(B)—*

15 (i) *by striking “a carrier” and insert-*

16 *ing “a medicare administrative contractor”*

17 *each place it appears; and*

18 (ii) *by striking “the carrier” and in-*

19 *serting “the contractor” each place it ap-*

20 *pears; and*

21 (D) *in paragraphs (5)(A) and (5)(B)(iii),*

22 *by striking “carriers” and inserting “medicare*

23 *administrative contractors” each place it ap-*

24 *pears.*

25 (8) *Subsection (l) is amended—*

1 (A) in paragraph (1)(A)(iii), by striking
2 “carrier” and inserting “medicare administra-
3 tive contractor”; and

4 (B) in paragraph (2), by striking “carrier”
5 and inserting “medicare administrative con-
6 tractor”.

7 (9) Subsection (p)(3)(A) is amended by striking
8 “carrier” and inserting “medicare administrative
9 contractor”.

10 (10) Subsection (q)(1)(A) is amended by striking
11 “carrier”.

12 (d) *EFFECTIVE DATE; TRANSITION RULE.*—

13 (1) *EFFECTIVE DATE.*—*Except as otherwise pro-*
14 *vided in this subsection, the amendments made by*
15 *this section shall take effect on October 1, 2003, and*
16 *the Secretary of Health and Human Services is au-*
17 *thorized to take such steps before such date as may be*
18 *necessary to implement such amendments on a timely*
19 *basis.*

20 (2) *GENERAL TRANSITION RULES.*—*The Sec-*
21 *retary shall take such steps as are necessary to pro-*
22 *vide for an appropriate transition from contracts*
23 *under section 1816 and section 1842 of the Social Se-*
24 *curity Act (42 U.S.C. 1395h, 1395u) to contracts*
25 *under section 1874A, as added by subsection (a)(1),*

1 *consistent with the requirements under such section to*
2 *competitively bid all contracts within 5 years after*
3 *the effective date in paragraph (1).*

4 (3) *AUTHORIZING CONTINUATION OF MIP FUNC-*
5 *TIONS UNDER CURRENT CONTRACTS AND AGREE-*
6 *MENTS AND UNDER ROLLOVER CONTRACTS.—The pro-*
7 *visions contained in the exception in section*
8 *1893(d)(2) of the Social Security Act (42 U.S.C.*
9 *1395ddd(d)(2)) shall continue to apply notwith-*
10 *standing the amendments made by this section, and*
11 *any reference in such provisions to an agreement or*
12 *contract shall be deemed to include a contract under*
13 *section 1874A of such Act, as inserted by subsection*
14 *(a)(1), that continues the activities referred to in such*
15 *provisions.*

16 (e) *REFERENCES.—On and after the effective date pro-*
17 *vided under subsection (d), any reference to a fiscal inter-*
18 *mediary or carrier under title XI or XVIII of the Social*
19 *Security Act (or any regulation, manual instruction, inter-*
20 *pretative rule, statement of policy, or guideline issued to*
21 *carry out such titles) shall be deemed a reference to an ap-*
22 *propriate medicare administrative contractor (as provided*
23 *under section 1874A of the Social Security Act).*

1 **SEC. 5. PROVIDER EDUCATION AND TECHNICAL ASSIST-**
2 **ANCE.**

3 (a) *COORDINATION OF EDUCATION FUNDING.*—

4 (1) *IN GENERAL.*—*The Social Security Act is*
5 *amended by inserting after section 1888 the following*
6 *new section:*

7 “*PROVIDER EDUCATION AND TECHNICAL ASSISTANCE*

8 “*SEC. 1889. (a) COORDINATION OF EDUCATION FUND-*
9 *ING.*—*The Secretary shall coordinate the educational activi-*
10 *ties provided through medicare contractors (as defined in*
11 *subsection (i), including under section 1893) in order to*
12 *maximize the effectiveness of Federal education efforts for*
13 *providers of services and suppliers.*”.

14 (2) *EFFECTIVE DATE.*—*The amendment made by*
15 *paragraph (1) shall take effect on the date of the en-*
16 *actment of this Act.*

17 (3) *REPORT.*—*Not later than October 1, 2002,*
18 *the Secretary of Health and Human Services shall*
19 *submit to Congress a report that includes a descrip-*
20 *tion and evaluation of the steps taken to coordinate*
21 *the funding of provider education under section*
22 *1889(a) of the Social Security Act, as added by para-*
23 *graph (1).*

24 (b) *INCENTIVES TO IMPROVE CONTRACTOR PERFORM-*
25 *ANCE.*—

1 (1) *IN GENERAL.*—Section 1874A, as added by
2 section 4(a)(1), is amended by adding at the end the
3 following new subsection:

4 “(e) *INCENTIVES TO IMPROVE CONTRACTOR PERFORM-*
5 *ANCE IN PROVIDER EDUCATION AND OUTREACH.*—

6 “(1) *METHODOLOGY TO MEASURE CONTRACTOR*
7 *ERROR RATES.*—In order to give medicare adminis-
8 trative contractors an incentive to implement effective
9 education and outreach programs for providers of
10 services and suppliers, the Secretary shall, in con-
11 sultation with representatives of providers and sup-
12 pliers, develop and implement by October 1, 2003, a
13 methodology to measure the specific claims payment
14 error rates of such contractors in the processing or re-
15 viewing of medicare claims.

16 “(2) *IDENTIFICATION OF BEST PRACTICES.*—The
17 Secretary shall identify the best practices developed
18 by individual medicare administrative contractors for
19 educating providers of services and suppliers and how
20 to encourage the use of such best practices nation-
21 wide.”.

22 “(2) *REPORT.*—Not later than October 1, 2003,
23 the Secretary of Health and Human Services shall
24 submit to Congress a report that describes how the
25 Secretary intends to use the methodology developed

1 *under section 1874A(e)(1) of the Social Security Act,*
2 *as added by paragraph (1), in assessing medicare*
3 *contractor performance in implementing effective edu-*
4 *cation and outreach programs, including whether to*
5 *use such methodology as the basis for performance bo-*
6 *nuses. The report shall include an analysis of the*
7 *sources of identified errors and potential changes in*
8 *systems of contractors and rules of the Secretary that*
9 *could reduce claims error rates.*

10 *(c) PROVISION OF ACCESS TO AND PROMPT RE-*
11 *SPONSES FROM MEDICARE ADMINISTRATIVE CONTRAC-*
12 *TORS.—*

13 *(1) IN GENERAL.—Section 1874A, as added by*
14 *section 4(a)(1) and as amended by subsection (b), is*
15 *further amended by adding at the end the following*
16 *new subsection:*

17 *“(f) RESPONSE TO INQUIRIES; TOLL-FREE LINES.—*

18 *“(1) CONTRACTOR RESPONSIBILITY.—Each*
19 *medicare administrative contractor shall, for those*
20 *providers of services and suppliers which submit*
21 *claims to the contractor for claims processing—*

22 *“(A) respond in a clear, concise, and accu-*
23 *rate manner to specific billing and cost reporting*
24 *questions of providers of services and suppliers;*

1 “(B) maintain a toll-free telephone number
2 at which providers of services and suppliers may
3 obtain information regarding billing, coding,
4 and other appropriate information under this
5 title;

6 “(C) maintain a system for identifying
7 (and disclosing, upon request) who provides the
8 information referred to in subparagraphs (A)
9 and (B); and

10 “(D) monitor the accuracy, consistency, and
11 timeliness of the information so provided.

12 “(2) *EVALUATION.*—In conducting evaluations of
13 individual medicare administrative contractors, the
14 Secretary shall take into account the results of the
15 monitoring conducted under paragraph (1)(D). The
16 Secretary shall, in consultation with organizations
17 representing providers of services and suppliers, estab-
18 lish standards relating to the accuracy, consistency,
19 and timeliness of the information so provided.”.

20 (2) *EFFECTIVE DATE.*—The amendment made by
21 paragraph (1) shall take effect October 1, 2003.

22 (d) *IMPROVED PROVIDER EDUCATION AND TRAIN-*
23 *ING.*—

1 (1) *IN GENERAL.*—Section 1889, as added by
2 subsection (a), is amended by adding at the end the
3 following new subsections:

4 “(b) *ENHANCED EDUCATION AND TRAINING.*—

5 “(1) *ADDITIONAL RESOURCES.*—For each of fis-
6 cal years 2003 and 2004, there are authorized to be
7 appropriated to the Secretary (in appropriate part
8 from the Federal Hospital Insurance Trust Fund and
9 the Federal Supplementary Medical Insurance Trust
10 Fund) \$10,000,000.

11 “(2) *USE.*—The funds made available under
12 paragraph (1) shall be used to increase the conduct by
13 medicare contractors of education and training of
14 providers of services and suppliers regarding billing,
15 coding, and other appropriate items.

16 “(c) *TAILORING EDUCATION AND TRAINING ACTIVI-*
17 *TIES FOR SMALL PROVIDERS OR SUPPLIERS.*—

18 “(1) *IN GENERAL.*—Insofar as a medicare con-
19 tractor conducts education and training activities, it
20 shall tailor such activities to meet the special needs
21 of small providers of services or suppliers (as defined
22 in paragraph (2)).

23 “(2) *SMALL PROVIDER OF SERVICES OR SUP-*
24 *PLIER.*—In this subsection, the term ‘small provider
25 of services or supplier’ means—

1 “(A) a provider of services with fewer than
2 25 full-time-equivalent employees; or

3 “(B) a supplier with fewer than 10 full-
4 time-equivalent employees.”.

5 (2) *EFFECTIVE DATE.*—*The amendment made by*
6 *paragraph (1) shall take effect on October 1, 2002.*

7 (e) *REQUIREMENT TO MAINTAIN INTERNET SITES.*—

8 (1) *IN GENERAL.*—*Section 1889, as added by*
9 *subsection (a) and as amended by subsection (d), is*
10 *further amended by adding at the end the following*
11 *new subsection:*

12 “(d) *INTERNET SITES; FAQs.*—*The Secretary, and*
13 *each medicare contractor insofar as it provides services (in-*
14 *cluding claims processing) for providers of services or sup-*
15 *pliers, shall maintain an Internet site which—*

16 “(1) *provides answers in an easily accessible for-*
17 *mat to frequently asked questions, and*

18 “(2) *includes other published materials of the*
19 *contractor,*

20 *that relate to providers of services and suppliers under the*
21 *programs under this title (and title XI insofar as it relates*
22 *to such programs).”.*

23 (2) *EFFECTIVE DATE.*—*The amendment made by*
24 *paragraph (1) shall take effect on October 1, 2002.*

25 (f) *ADDITIONAL PROVIDER EDUCATION PROVISIONS.*—

1 (1) *IN GENERAL.*—Section 1889, as added by
2 subsection (a) and as amended by subsections (d) and
3 (e), is further amended by adding at the end the fol-
4 lowing new subsections:

5 “(e) *ENCOURAGEMENT OF PARTICIPATION IN EDU-*
6 *CATION PROGRAM ACTIVITIES.*—A medicare contractor
7 may not use a record of attendance at (or failure to attend)
8 educational activities or other information gathered during
9 an educational program conducted under this section or
10 otherwise by the Secretary to select or track providers of
11 services or suppliers for the purpose of conducting any type
12 of audit or prepayment review.

13 “(f) *CONSTRUCTION.*—Nothing in this section or sec-
14 tion 1893(g) shall be construed as providing for disclosure
15 by a medicare contractor—

16 “(1) of the screens used for identifying claims
17 that will be subject to medical review; or

18 “(2) of information that would compromise
19 pending law enforcement activities or reveal findings
20 of law enforcement-related audits.

21 “(g) *DEFINITIONS.*—For purposes of this section, the
22 term ‘medicare contractor’ includes the following:

23 “(1) A medicare administrative contractor with
24 a contract under section 1874A, including a fiscal

1 *intermediary with a contract under section 1816 and*
2 *a carrier with a contract under section 1842.*

3 *“(2) An eligible entity with a contract under sec-*
4 *tion 1893.*

5 *Such term does not include, with respect to activities of a*
6 *specific provider of services or supplier an entity that has*
7 *no authority under this title or title IX with respect to such*
8 *activities and such provider of services or supplier.”.*

9 *(2) EFFECTIVE DATE.—The amendment made by*
10 *paragraph (1) shall take effect on the date of the en-*
11 *actment of this Act.*

12 **SEC. 6. SMALL PROVIDER TECHNICAL ASSISTANCE DEM-**
13 **ONSTRATION PROGRAM.**

14 *(a) ESTABLISHMENT.—*

15 *(1) IN GENERAL.—The Secretary of Health and*
16 *Human Services shall establish a demonstration pro-*
17 *gram (in this section referred to as the “demonstra-*
18 *tion program”) under which technical assistance de-*
19 *scribed in paragraph (2) is made available, upon re-*
20 *quest and on a voluntary basis, to small providers of*
21 *services or suppliers in order to improve compliance*
22 *with the applicable requirements of the programs*
23 *under medicare program under title XVIII of the So-*
24 *cial Security Act (including provisions of title XI of*
25 *such Act insofar as they relate to such title and are*

1 *not administered by the Office of the Inspector Gen-*
2 *eral of the Department of Health and Human Serv-*
3 *ices).*

4 (2) *FORMS OF TECHNICAL ASSISTANCE.—The*
5 *technical assistance described in this paragraph is—*

6 (A) *evaluation and recommendations re-*
7 *garding billing and related systems; and*

8 (B) *information and assistance regarding*
9 *policies and procedures under the medicare pro-*
10 *gram, including coding and reimbursement.*

11 (3) *SMALL PROVIDERS OF SERVICES OR SUP-*
12 *PLIERS.—In this section, the term “small providers of*
13 *services or suppliers” means—*

14 (A) *a provider of services with fewer than*
15 *25 full-time-equivalent employees; or*

16 (B) *a supplier with fewer than 10 full-time-*
17 *equivalent employees.*

18 (b) *QUALIFICATION OF CONTRACTORS.—In conducting*
19 *the demonstration program, the Secretary of Health and*
20 *Human Services shall enter into contracts with qualified*
21 *organizations (such as peer review organizations or entities*
22 *described in section 1889(g)(2) of the Social Security Act,*
23 *as inserted by section 5(f)(1)) with appropriate expertise*
24 *with billing systems of the full range of providers of services*
25 *and suppliers to provide the technical assistance. In award-*

1 *ing such contracts, the Secretary shall consider any prior*
2 *investigations of the entity's work by the Inspector General*
3 *of Department of Health and Human Services or the Comp-*
4 *troller General of the United States.*

5 *(c) DESCRIPTION OF TECHNICAL ASSISTANCE.—The*
6 *technical assistance provided under the demonstration pro-*
7 *gram shall include a direct and in-person examination of*
8 *billing systems and internal controls of small providers of*
9 *services or suppliers to determine program compliance and*
10 *to suggest more efficient or effective means of achieving such*
11 *compliance.*

12 *(d) AVOIDANCE OF RECOVERY ACTIONS FOR PROB-*
13 *LEMS IDENTIFIED AS CORRECTED.—The Secretary of*
14 *Health and Human Services shall provide that, absent evi-*
15 *dence of fraud and notwithstanding any other provision of*
16 *law, any errors found in a compliance review for a small*
17 *provider of services or supplier that participates in the*
18 *demonstration program shall not be subject to recovery ac-*
19 *tion if the technical assistance personnel under the program*
20 *determine that—*

21 *(1) the problem that is the subject of the compli-*
22 *ance review has been corrected to their satisfaction*
23 *within 30 days of the date of the visit by such per-*
24 *sonnel to the small provider of services or supplier;*
25 *and*

1 (2) *such problem remains corrected for such pe-*
2 *riod as is appropriate.*

3 (e) *GAO EVALUATION.*—*Not later than 2 years after*
4 *the date of the date the demonstration program is first im-*
5 *plemented, the Comptroller General, in consultation with*
6 *the Inspector General of the Department of Health and*
7 *Human Services, shall conduct an evaluation of the dem-*
8 *onstration program. The evaluation shall include a deter-*
9 *mination of whether claims error rates are reduced for*
10 *small providers of services or suppliers who participated*
11 *in the program and the extent of improper payments made*
12 *as a result of the demonstration program. The Comptroller*
13 *General shall submit a report to the Secretary and the Con-*
14 *gress on such evaluation and shall include in such report*
15 *recommendations regarding the continuation or extension*
16 *of the demonstration program.*

17 (f) *FINANCIAL PARTICIPATION BY PROVIDERS.*—*The*
18 *provision of technical assistance to a small provider of serv-*
19 *ices or supplier under the demonstration program is condi-*
20 *tioned upon the small provider of services or supplier pay-*
21 *ing an amount estimated (and disclosed in advance of a*
22 *provider's or supplier's participation in the program) to*
23 *be equal to 25 percent of the cost of the technical assistance.*

24 (g) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*
25 *authorized to be appropriated to the Secretary of Health*

1 *and Human Services (in appropriate part from the Federal*
 2 *Hospital Insurance Trust Fund and the Federal Supple-*
 3 *mentary Medical Insurance Trust Fund) to carry out the*
 4 *demonstration program—*

5 (1) *for fiscal year 2003, \$1,000,000, and*

6 (2) *for fiscal year 2004, \$6,000,000.*

7 **SEC. 7. MEDICARE PROVIDER OMBUDSMAN; MEDICARE**
 8 **BENEFICIARY OMBUDSMAN.**

9 (a) *MEDICARE PROVIDER OMBUDSMAN.—Section 1868*
 10 *(42 U.S.C. 1395ee) is amended—*

11 (1) *by adding at the end of the heading the fol-*
 12 *lowing: “; MEDICARE PROVIDER OMBUDSMAN”;*

13 (2) *by inserting “PRACTICING PHYSICIANS ADVI-*
 14 *SORY COUNCIL.—(1)” after “(a)”;*

15 (3) *in paragraph (1), as so redesignated under*
 16 *paragraph (2), by striking “in this section” and in-*
 17 *serting “in this subsection”;*

18 (4) *by redesignating subsections (b) and (c) as*
 19 *paragraphs (2) and (3), respectively; and*

20 (5) *by adding at the end the following new sub-*
 21 *section:*

22 “(b) *MEDICARE PROVIDER OMBUDSMAN.—The Sec-*
 23 *retary shall appoint a Medicare Provider Ombudsman. The*
 24 *Ombudsman shall—*

1 “(1) provide assistance, on a confidential basis,
2 to providers of services and suppliers with respect to
3 complaints, grievances, and requests for information
4 concerning the programs under this title (including
5 provisions of title XI insofar as they relate to this
6 title and are not administered by the Office of the In-
7 spector General of the Department of Health and
8 Human Services) and in the resolution of unclear or
9 conflicting guidance given by the Secretary and medi-
10 care contractors to such providers of services and sup-
11 pliers regarding such programs and provisions and
12 requirements under this title and such provisions;
13 and

14 “(2) submit recommendations to the Secretary
15 for improvement in the administration of this title
16 and such provisions, including—

17 “(A) recommendations to respond to recur-
18 ring patterns of confusion in this title and such
19 provisions (including recommendations regard-
20 ing suspending imposition of sanctions where
21 there is widespread confusion in program ad-
22 ministration), and

23 “(B) recommendations to provide for an ap-
24 propriate and consistent response (including not
25 providing for audits) in cases of self-identified

1 *overpayments by providers of services and sup-*
2 *pliers.”.*

3 **(b) MEDICARE BENEFICIARY OMBUDSMAN.**—*Title*
4 *XVIII is amended by inserting after section 1806 the fol-*
5 *lowing new section:*

6 “*MEDICARE BENEFICIARY OMBUDSMAN*

7 “*SEC. 1807. (a) IN GENERAL.*—*The Secretary shall*
8 *appoint within the Department of Health and Human*
9 *Services a Medicare Beneficiary Ombudsman who shall*
10 *have expertise and experience in the fields of health care*
11 *and advocacy.*

12 “*(b) DUTIES.*—*The Medicare Beneficiary Ombudsman*
13 *shall—*

14 “*(1) receive complaints, grievances, and requests*
15 *for information submitted by a medicare beneficiary,*
16 *with respect to any aspect of the medicare program;*

17 “*(2) provide assistance with respect to com-*
18 *plaints, grievances, and requests referred to in para-*
19 *graph (1), including—*

20 “*(A) assistance in collecting relevant infor-*
21 *mation for such beneficiaries, to seek an appeal*
22 *of a decision or determination made by a fiscal*
23 *intermediary, carrier, Medicare+Choice organi-*
24 *zation, or the Secretary; and*

1 “(B) assistance to such beneficiaries with
2 any problems arising from disenrollment from a
3 Medicare+Choice plan under part C; and

4 “(3) submit annual reports to Congress and the
5 Secretary that describe the activities of the Office and
6 that include such recommendations for improvement
7 in the administration of this title as the Ombudsman
8 determines appropriate.”.

9 (c) *FUNDING.*—There are authorized to be appro-
10 priated to the Secretary of Health and Human Services (in
11 appropriate part from the Federal Hospital Insurance
12 Trust Fund and the Federal Supplementary Medical Insur-
13 ance Trust Fund) to carry out the provisions of subsection
14 (b) of section 1868 of the Social Security Act (relating to
15 the Medicare Provider Ombudsman), as added by subsection
16 (a)(5) and section 1807 of such Act (relating to the Medi-
17 care Beneficiary Ombudsman), as added by subsection (b),
18 such sums as are necessary for fiscal year 2002 and each
19 succeeding fiscal year.

20 (d) *USE OF CENTRAL, TOLL-FREE NUMBER (1-800-*
21 *MEDICARE).*—Section 1804(b) (42 U.S.C. 1395b-2(b)) is
22 amended by adding at the end the following: “The Secretary
23 shall provide, through the toll-free number 1-800-MEDI-
24 CARE, for a means by which individuals seeking informa-
25 tion about, or assistance with, such programs who phone

1 *such toll-free number are transferred (without charge) to*
2 *appropriate entities for the provision of such information*
3 *or assistance. Such toll-free number shall be the toll-free*
4 *number listed for general information and assistance in the*
5 *annual notice under subsection (a) instead of the listing*
6 *of numbers of individual contractors.”.*

7 **SEC. 8. PROVIDER APPEALS.**

8 *(a) MEDICARE ADMINISTRATIVE LAW JUDGES.—Sec-*
9 *tion 1869 (42 U.S.C. 1395ff), as amended by section 521(a)*
10 *of Medicare, Medicaid, and SCHIP Benefits Improvement*
11 *and Protection Act of 2000 (114 Stat. 2763A–534), as en-*
12 *acted into law by section 1(a)(6) of Public Law 106–554,*
13 *is amended by adding at the end the following new sub-*
14 *section:*

15 *“(g) MEDICARE ADMINISTRATIVE LAW JUDGES.—*

16 *“(1) TRANSITION PLAN.—Not later than October*
17 *1, 2003, the Commissioner of Social Security and the*
18 *Secretary shall develop and implement a plan under*
19 *which the functions of administrative law judges re-*
20 *sponsible for hearing cases under this title (and re-*
21 *lated provisions in title XI) shall be transferred from*
22 *the responsibility of the Commissioner and the Social*
23 *Security Administration to the Secretary and the De-*
24 *partment of Health and Human Services. The plan*
25 *shall include recommendations with respect to—*

1 “(A) the number of administrative law
2 judges and support staff required to hear and de-
3 cide such cases in a timely manner; and

4 “(B) funding levels required for fiscal year
5 2004 and subsequent fiscal years under this sub-
6 section to hear such cases in a timely manner.

7 Nothing in this subsection shall be construed as affect-
8 ing the independence of administrative law judges
9 from the Department of Health and Human Services
10 and from medicare contractors in carrying out their
11 responsibilities for hearing and deciding cases.

12 “(2) INCREASED FINANCIAL SUPPORT.—In addi-
13 tion to any amounts otherwise appropriated, there
14 are authorized to be appropriated (in appropriate
15 part from the Federal Hospital Insurance Trust Fund
16 and the Federal Supplementary Medical Insurance
17 Trust Fund) to the Secretary to increase the number
18 of administrative law judges described in paragraph
19 (1) and to improve education and training for such
20 judges and their staffs in carrying out functions
21 under this title, \$5,000,000 for fiscal year 2003 and
22 such sums as are necessary for fiscal year 2004 and
23 each subsequent fiscal year.

24 “(3) SUBMITTAL OF PLAN TO CONGRESS AND
25 GAO; REPORT OF GAO.—Not later than July 1, 2003,

1 *the Secretary shall submit to the Committee on Ways*
 2 *and Means of the House of Representatives, the Com-*
 3 *mittee on Finance of the Senate, and the Comptroller*
 4 *General of the United States the terms of the plan de-*
 5 *veloped under paragraph (1). No later than Sep-*
 6 *tember 1, 2003, the Comptroller General shall submit*
 7 *to such Committees a report containing an evaluation*
 8 *of the terms of such plan.”.*

9 *(b) PROCESS FOR EXPEDITED ACCESS TO JUDICIAL*
 10 *REVIEW.—*

11 *(1) IN GENERAL.—Section 1869(b) (42 U.S.C.*
 12 *1395ff(b)) as amended by Medicare, Medicaid, and*
 13 *SCHIP Benefits Improvement and Protection Act of*
 14 *2000 (114 Stat. 2763A–534), as enacted into law by*
 15 *section 1(a)(6) of Public Law 106–554, is amended—*

16 *(A) in paragraph (1)(A), by inserting “,*
 17 *subject to paragraph (2),” before “to judicial re-*
 18 *view of the Secretary’s final decision”; and*

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

21 *“(2) EXPEDITED ACCESS TO JUDICIAL RE-*
 22 *VIEW.—*

23 *“(A) IN GENERAL.—The Secretary shall es-*
 24 *tablish a process under which a provider of serv-*
 25 *ices or supplier that furnishes an item or service*

1 or a beneficiary who has filed an appeal under
2 paragraph (1) (other than an appeal filed under
3 paragraph (1)(F)) may obtain access to judicial
4 review when a review panel (described in sub-
5 paragraph (D)), on its own motion or at the re-
6 quest of the appellant, determines that it does
7 not have the authority to decide the question of
8 law or regulation relevant to the matters in con-
9 troversy and that there is no material issue of
10 fact in dispute. The appellant may make such
11 request only once with respect to a question of
12 law or regulation in a case of an appeal.

13 “(B) *PROMPT DETERMINATIONS.*—If, after
14 or coincident with appropriately filing a request
15 for an administrative hearing, the appellant re-
16 quests a determination by the appropriate review
17 panel that no review panel has the authority to
18 decide the question of law or regulations relevant
19 to the matters in controversy and that there is
20 no material issue of fact in dispute and if such
21 request is accompanied by the documents and
22 materials as the appropriate review panel shall
23 require for purposes of making such determina-
24 tion, such review panel shall make a determina-
25 tion on the request in writing within 60 days

1 *after the date such review panel receives the re-*
2 *quest and such accompanying documents and*
3 *materials. Such a determination by such review*
4 *panel shall be considered a final decision and*
5 *not subject to review by the Secretary.*

6 “(C) *ACCESS TO JUDICIAL REVIEW.*—

7 “(i) *IN GENERAL.*—*If the appropriate*
8 *review panel—*

9 “(I) *determines that there are no*
10 *material issues of fact in dispute and*
11 *that the only issue is one of law or reg-*
12 *ulation that no review panel has the*
13 *authority to decide; or*

14 “(II) *fails to make such deter-*
15 *mination within the period provided*
16 *under subparagraph (B);*

17 *then the appellant may bring a civil action*
18 *as described in this subparagraph.*

19 “(ii) *DEADLINE FOR FILING.*—*Such*
20 *action shall be filed, in the case described*
21 *in—*

22 “(I) *clause (i)(I), within 60 days*
23 *of date of the determination described*
24 *in such subparagraph; or*

1 “(II) clause (i)(II), within 60
2 days of the end of the period provided
3 under subparagraph (B) for the deter-
4 mination.

5 “(iii) *VENUE*.—Such action shall be
6 brought in the district court of the United
7 States for the judicial district in which the
8 appellant is located (or, in the case of an
9 action brought jointly by more than one ap-
10 plicant, the judicial district in which the
11 greatest number of applicants are located)
12 or in the district court for the District of
13 Columbia.

14 “(iv) *INTEREST ON AMOUNTS IN CON-*
15 *TROVERSY*.—Where a provider of services or
16 supplier seeks judicial review pursuant to
17 this paragraph, the amount in controversy
18 shall be subject to annual interest beginning
19 on the first day of the first month beginning
20 after the 60-day period as determined pur-
21 suant to clause (ii) and equal to the rate of
22 interest on obligations issued for purchase
23 by the Federal Hospital Insurance Trust
24 Fund for the month in which the civil ac-
25 tion authorized under this paragraph is

1 *commenced, to be awarded by the reviewing*
2 *court in favor of the prevailing party. No*
3 *interest awarded pursuant to the preceding*
4 *sentence shall be deemed income or cost for*
5 *the purposes of determining reimbursement*
6 *due providers of services or suppliers under*
7 *this Act.*

8 “(D) *REVIEW PANELS.*—*For purposes of*
9 *this subsection, a ‘review panel’ is an adminis-*
10 *trative law judge, the Departmental Appeals*
11 *Board, a qualified independent contractor (as*
12 *defined in subsection (c)(2)), or an entity des-*
13 *ignated by the Secretary for purposes of making*
14 *determinations under this paragraph.”.*

15 (2) *APPLICATION TO TERMINATION PRO-*
16 *CEEDINGS.*—*Section 1866(h) (42 U.S.C. 1395cc(h)) is*
17 *amended by adding at the end the following new*
18 *paragraph:*

19 “(3) *The provisions of section 1869(b)(2) shall apply*
20 *with respect to determinations described in paragraph (1)*
21 *in the same manner as they apply to a provider of services*
22 *that has filed an appeal under section 1869(b)(1).”.*

23 (3) *EFFECTIVE DATE.*—*The amendments made*
24 *by this subsection shall apply to appeals filed on or*
25 *after October 1, 2002.*

1 (c) *REQUIRING FULL AND EARLY PRESENTATION OF*
 2 *EVIDENCE.*—

3 (1) *IN GENERAL.*—Section 1869(b) (42 U.S.C.
 4 1395ff(b)), as amended by Medicare, Medicaid, and
 5 *SCHIP Benefits Improvement and Protection Act of*
 6 *2000 (114 Stat. 2763A–534), as enacted into law by*
 7 *section 1(a)(6) of Public Law 106–554, and as*
 8 *amended by subsection (b), is further amended by*
 9 *adding at the end the following new paragraph:*

10 “(3) *REQUIRING FULL AND EARLY PRESEN-*
 11 *TATION OF EVIDENCE BY PROVIDERS.*—A provider of
 12 *services or supplier may not introduce evidence in*
 13 *any appeal under this section that was not presented*
 14 *at the reconsideration conducted by the qualified*
 15 *independent contractor under subsection (c), unless*
 16 *there is good cause which precluded the introduction*
 17 *of such evidence at or before that reconsideration.”.*

18 (2) *EFFECTIVE DATE.*—The amendment made by
 19 *paragraph (1) shall take effect on October 1, 2002.*

20 **SEC. 9. RECOVERY OF OVERPAYMENTS AND PREPAYMENT**
 21 **REVIEW; ENROLLMENT OF PROVIDERS.**

22 (a) *RECOVERY OF OVERPAYMENTS AND PREPAYMENT*
 23 *REVIEW.*—Section 1893 (42 U.S.C. 1395ddd) is amended
 24 *by adding at the end the following new subsections:*

1 “(f) *RECOVERY OF OVERPAYMENTS AND PREPAYMENT*
2 *REVIEW.*—

3 “(1) *USE OF REPAYMENT PLANS.*—

4 “(A) *IN GENERAL.*—*If the repayment, with-*
5 *in 30 days by a provider of services or supplier,*
6 *of an overpayment under this title would con-*
7 *stitute a hardship (as defined in subparagraph*
8 *(B)), subject to subparagraph (C), the Secretary*
9 *shall enter into a plan (which meets terms and*
10 *conditions determined to be appropriate by the*
11 *Secretary) with the provider of services or sup-*
12 *plier for the offset or repayment of such overpay-*
13 *ment over a period of not longer than 3 years,*
14 *or in the case of extreme hardship (as deter-*
15 *mined by the Secretary) over a period of not*
16 *longer than 5 years. Interest shall accrue on the*
17 *balance through the period of repayment.*

18 “(B) *HARDSHIP.*—

19 “(i) *IN GENERAL.*—*For purposes of*
20 *subparagraph (A), the repayment of an*
21 *overpayment (or overpayments) within 30*
22 *days is deemed to constitute a hardship if—*

23 “(I) *in the case of a provider of*
24 *services that files cost reports, the ag-*
25 *gregate amount of the overpayments*

1 *exceeds 10 percent of the amount paid*
2 *under this title to the provider of serv-*
3 *ices for the cost reporting period cov-*
4 *ered by the most recently submitted*
5 *cost report; or*

6 *“(II) in the case of another pro-*
7 *vider of services or supplier, the aggre-*
8 *gate amount of the overpayments ex-*
9 *ceeds 10 percent of the amount paid*
10 *under this title to the provider of serv-*
11 *ices or supplier for the previous cal-*
12 *endar year.*

13 *“(ii) RULE OF APPLICATION.—The*
14 *Secretary shall establish rules for the appli-*
15 *cation of this subparagraph in the case of a*
16 *provider of services or supplier that was not*
17 *paid under this title during the previous*
18 *year or was paid under this title only dur-*
19 *ing a portion of that year.*

20 *“(iii) TREATMENT OF PREVIOUS OVER-*
21 *PAYMENTS.—If a provider of services or*
22 *supplier has entered into a repayment plan*
23 *under subparagraph (A) with respect to a*
24 *specific overpayment amount, such payment*
25 *amount under the repayment plan shall not*

1 *be taken into account under clause (i) with*
2 *respect to subsequent overpayment amounts.*

3 “(C) *EXCEPTIONS.—Subparagraph (A)*
4 *shall not apply if the Secretary has reason to*
5 *suspect that the provider of services or supplier*
6 *may file for bankruptcy or otherwise cease to do*
7 *business or if there is an indication of fraud or*
8 *abuse committed against the program.*

9 “(D) *IMMEDIATE COLLECTION IF VIOLATION*
10 *OF REPAYMENT PLAN.—If a provider of services*
11 *or supplier fails to make a payment in accord-*
12 *ance with a repayment plan under this para-*
13 *graph, the Secretary may immediately seek to*
14 *offset or otherwise recover the total balance out-*
15 *standing (including applicable interest) under*
16 *the repayment plan.*

17 “(2) *LIMITATION ON RECOUPMENT UNTIL DETER-*
18 *MINATION BY QUALIFIED INDEPENDENT CON-*
19 *TRACTOR.—*

20 “(A) *IN GENERAL.—In the case of a pro-*
21 *vider of services or supplier that is determined to*
22 *have received an overpayment under this title*
23 *and that seeks a reconsideration by a qualified*
24 *independent contractor on such determination*
25 *under section 1869(b)(1), the Secretary may not*

1 *take any action (or authorize any other person,*
2 *including any medicare contractor, as defined in*
3 *paragraph (9)) to recoup the overpayment until*
4 *the date the decision on the reconsideration has*
5 *been rendered.*

6 “(B) *COLLECTION WITH INTEREST.—Inso-*
7 *far as the determination on such appeal is*
8 *against the provider of services or supplier, in-*
9 *terest on the overpayment shall accrue on and*
10 *after the date of the original notice of overpay-*
11 *ment. Insofar as such determination against the*
12 *provider of services or supplier is later reversed,*
13 *the Secretary shall provide for repayment of the*
14 *amount recouped plus interest at the same rate*
15 *as would apply under the previous sentence for*
16 *the period in which the amount was recouped.*

17 “(3) *STANDARDIZATION OF RANDOM PREPAY-*
18 *MENT REVIEW.—*

19 “(A) *IN GENERAL.—A medicare contractor*
20 *may conduct random prepayment review only to*
21 *develop a contractor-wide or program-wide*
22 *claims payment error rates or under such addi-*
23 *tional circumstances as may be provided under*
24 *regulations, developed in consultation with pro-*
25 *viders of services and suppliers.*

1 “(B) *CONSTRUCTION.*—*Nothing in subpara-*
2 *graph (A) shall be construed as preventing the*
3 *denial of payments for claims actually reviewed*
4 *under a random prepayment review.*

5 “(4) *LIMITATION ON USE OF EXTRAPOLATION.*—
6 *A medicare contractor may not use extrapolation to*
7 *determine overpayment amounts to be recovered by*
8 *recoupment, offset, or otherwise unless—*

9 “(A) *there is a sustained or high level of*
10 *payment error (as defined by the Secretary by*
11 *regulation); or*

12 “(B) *documented educational intervention*
13 *has failed to correct the payment error (as deter-*
14 *mined by the Secretary).*

15 “(5) *PROVISION OF SUPPORTING DOCUMENTA-*
16 *TION.*—*In the case of a provider of services or sup-*
17 *plier with respect to which amounts were previously*
18 *overpaid, a medicare contractor may request the peri-*
19 *odic production of records or supporting documenta-*
20 *tion for a limited sample of submitted claims to en-*
21 *sure that the previous practice is not continuing.*

22 “(6) *CONSENT SETTLEMENT REFORMS.*—

23 “(A) *IN GENERAL.*—*The Secretary may use*
24 *a consent settlement (as defined in subparagraph*
25 *(D)) to settle a projected overpayment.*

1 “(B) *OPPORTUNITY TO SUBMIT ADDITIONAL*
2 *INFORMATION BEFORE CONSENT SETTLEMENT*
3 *OFFER.*—*Before offering a provider of services or*
4 *supplier a consent settlement, the Secretary*
5 *shall—*

6 “(i) *communicate to the provider of*
7 *services or supplier in a non-threatening*
8 *manner that, based on a review of the med-*
9 *ical records requested by the Secretary, a*
10 *preliminary analysis indicates that there*
11 *would be an overpayment; and*

12 “(ii) *provide for a 45-day period dur-*
13 *ing which the provider of services or sup-*
14 *plier may furnish additional information*
15 *concerning the medical records for the*
16 *claims that had been reviewed.*

17 “(C) *CONSENT SETTLEMENT OFFER.*—*The*
18 *Secretary shall review any additional informa-*
19 *tion furnished by the provider of services or sup-*
20 *plier under subparagraph (B)(ii). Taking into*
21 *consideration such information, the Secretary*
22 *shall determine if there still appears to be an*
23 *overpayment. If so, the Secretary—*

24 “(i) *shall provide notice of such deter-*
25 *mination to the provider of services or sup-*

1 plier, including an explanation of the rea-
2 son for such determination; and

3 “(ii) in order to resolve the overpay-
4 ment, may offer the provider of services or
5 supplier—

6 “(I) the opportunity for a statis-
7 tically valid random sample; or

8 “(II) a consent settlement.

9 *The opportunity provided under clause (ii)(I)*
10 *does not waive any appeal rights with respect to*
11 *the alleged overpayment involved.*

12 “(D) CONSENT SETTLEMENT DEFINED.—

13 *For purposes of this paragraph, the term ‘con-*
14 *sent settlement’ means an agreement between the*
15 *Secretary and a provider of services or supplier*
16 *whereby both parties agree to settle a projected*
17 *overpayment based on less than a statistically*
18 *valid sample of claims and the provider of serv-*
19 *ices or supplier agrees not to appeal the claims*
20 *involved.*

21 “(7) LIMITATIONS ON NON-RANDOM PREPAYMENT

22 REVIEW.—

23 “(A) LIMITATION ON INITIATION OF
24 NON-RANDOM PREPAYMENT REVIEW.—*A*
25 *medicare contractor may not initiate non-*

1 *random prepayment review of a provider of*
2 *services or supplier based on the initial*
3 *identification by that provider of services or*
4 *supplier of an improper billing practice un-*
5 *less there is a sustained or high level of pay-*
6 *ment error (as defined in paragraph*
7 *(4)(A)).*

8 “(B) *TERMINATION OF NON-RANDOM*
9 *PREPAYMENT REVIEW.—The Secretary shall*
10 *issue regulations relating to the termi-*
11 *nation, including termination dates, of non-*
12 *random prepayment review. Such regula-*
13 *tions may vary such a termination date*
14 *based upon the differences in the cir-*
15 *cumstances triggering prepayment review.*

16 “(8) *PAYMENT AUDITS.—*

17 “(A) *WRITTEN NOTICE FOR POST-PAYMENT*
18 *AUDITS.—Subject to subparagraph (C), if a*
19 *medicare contractor decides to conduct a post-*
20 *payment audit of a provider of services or sup-*
21 *plier under this title, the contractor shall provide*
22 *the provider of services or supplier with written*
23 *notice of the intent to conduct such an audit.*

24 “(B) *EXPLANATION OF FINDINGS FOR ALL*
25 *AUDITS.—Subject to subparagraph (C), if a*

1 *medicare contractor audits a provider of services*
2 *or supplier under this title, the contractor shall*
3 *provide for an exit conference with the provider*
4 *or supplier during which the contractor shall—*

5 “(i) *give the provider of services or*
6 *supplier a full review and explanation of*
7 *the findings of the audit in a manner that*
8 *is understandable to the provider of services*
9 *or supplier and permits the development of*
10 *an appropriate corrective action plan;*

11 “(ii) *inform the provider of services or*
12 *supplier of the appeal rights under this*
13 *title;*

14 “(iii) *give the provider of services or*
15 *supplier an opportunity to provide addi-*
16 *tional information to the contractor; and*

17 “(iv) *take into account information*
18 *provided, on a timely basis, by the provider*
19 *of services or supplier under clause (iii).*

20 “(C) *EXCEPTION.—Subparagraphs (A) and*
21 *(B) shall not apply if the provision of notice or*
22 *findings would compromise pending law enforce-*
23 *ment activities or reveal findings of law enforce-*
24 *ment-related audits.*

1 “(9) *DEFINITIONS.*—*For purposes of this sub-*
2 *section:*

3 “(A) *MEDICARE CONTRACTOR.*—*The term*
4 *‘medicare contractor’ has the meaning given such*
5 *term in section 1889(g).*

6 “(B) *RANDOM PREPAYMENT REVIEW.*—*The*
7 *term ‘random prepayment review’ means a de-*
8 *mand for the production of records or docu-*
9 *mentation absent cause with respect to a claim.*

10 “(g) *NOTICE OF OVER-UTILIZATION OF CODES.*—*The*
11 *Secretary shall establish a process under which the Sec-*
12 *retary provides for notice to classes of providers of services*
13 *and suppliers served by the contractor in cases in which*
14 *the contractor has identified that particular billing codes*
15 *may be overutilized by that class of providers of services*
16 *or suppliers under the programs under this title (or provi-*
17 *sions of title XI insofar as they relate to such programs).”.*

18 (b) *PROVIDER ENROLLMENT PROCESS; RIGHT OF AP-*
19 *PEAL.*—

20 (1) *IN GENERAL.*—*Section 1866 (42 U.S.C.*
21 *1395cc) is amended—*

22 (A) *by adding at the end of the heading the*
23 *following: “; ENROLLMENT PROCESSES”; and*

24 (B) *by adding at the end the following new*
25 *subsection:*

1 “(j) *ENROLLMENT PROCESS FOR PROVIDERS OF SERV-*
2 *ICES AND SUPPLIERS.*—

3 “(1) *IN GENERAL.*—*The Secretary shall establish*
4 *by regulation a process for the enrollment of providers*
5 *of services and suppliers under this title.*

6 “(2) *APPEAL PROCESS.*—*Such process shall*
7 *provide—*

8 “(A) *a method by which providers of serv-*
9 *ices and suppliers whose application to enroll*
10 *(or, if applicable, to renew enrollment) are de-*
11 *nied are provided a mechanism to appeal such*
12 *denial; and*

13 “(B) *prompt deadlines for actions on appli-*
14 *cations for enrollment (and, if applicable, re-*
15 *newal of enrollment) and for consideration of ap-*
16 *peals.*”.

17 “(2) *EFFECTIVE DATE.*—*The Secretary of Health*
18 *and Human Services shall provide for the establish-*
19 *ment of the enrollment and appeal process under the*
20 *amendment made by paragraph (1) within 6 months*
21 *after the date of the enactment of this Act.*

22 “(c) *PROCESS FOR CORRECTION OF MINOR ERRORS*
23 *AND OMISSIONS ON CLAIMS WITHOUT PURSUING APPEALS*
24 *PROCESS.*—*The Secretary of Health and Human Services*
25 *shall develop, in consultation with appropriate medicare*

1 *contractors (as defined in section 1889(g) of the Social Se-*
2 *curity Act, as inserted by section 5(f)(1)) and representa-*
3 *tives of providers of services and suppliers, a process where-*
4 *by, in the case of minor errors or omissions that are detected*
5 *in the submission of claims under the programs under title*
6 *XVIII of such Act, a provider of services or supplier is given*
7 *an opportunity to correct such an error or omission without*
8 *the need to initiate an appeal. Such process shall include*
9 *the ability to resubmit corrected claims.*

10 **SEC. 10. BENEFICIARY OUTREACH DEMONSTRATION PRO-**
11 **GRAM.**

12 (a) *IN GENERAL.*—*The Secretary of Health and*
13 *Human Services shall establish a demonstration program*
14 *(in this section referred to as the “demonstration program”)*
15 *under which medicare specialists employed by the Depart-*
16 *ment of Health and Human Services provide advice and*
17 *assistance to medicare beneficiaries regarding the medicare*
18 *program at the location of existing local offices of the Social*
19 *Security Administration.*

20 (b) *LOCATIONS.*—

21 (1) *IN GENERAL.*—*The demonstration program*
22 *shall be conducted in at least 6 offices or areas. Sub-*
23 *ject to paragraph (2), in selecting such offices and*
24 *areas, the Secretary shall provide preference for offices*
25 *with a high volume of visits by medicare beneficiaries.*

1 (2) *ASSISTANCE FOR RURAL BENEFICIARIES.*—

2 *The Secretary shall provide for the selection of at*
3 *least 2 rural areas to participate in the demonstra-*
4 *tion program. In conducting the demonstration pro-*
5 *gram in such rural areas, the Secretary shall provide*
6 *for medicare specialists to travel among local offices*
7 *in a rural area on a scheduled basis.*

8 (c) *DURATION.*—*The demonstration program shall be*
9 *conducted over a 3-year period.*

10 (d) *EVALUATION AND REPORT.*—

11 (1) *EVALUATION.*—*The Secretary shall provide*
12 *for an evaluation of the demonstration program. Such*
13 *evaluation shall include an analysis of—*

14 (A) *utilization of, and beneficiary satisfac-*
15 *tion with, the assistance provided under the pro-*
16 *gram; and*

17 (B) *the cost-effectiveness of providing bene-*
18 *ficiary assistance through out-stationing medi-*
19 *care specialists at local social security offices.*

20 (2) *REPORT.*—*The Secretary shall submit to*
21 *Congress a report on such evaluation and shall in-*
22 *clude in such report recommendations regarding the*
23 *feasibility of permanently out-stationing medicare*
24 *specialists at local offices of the Social Security Ad-*
25 *ministration.*

1 **SEC. 11. POLICY DEVELOPMENT REGARDING EVALUATION**
2 **AND MANAGEMENT (E & M) DOCUMENTATION**
3 **GUIDELINES.**

4 (a) *IN GENERAL.*—*The Secretary of Health and*
5 *Human Services may not implement any new documenta-*
6 *tion guidelines for evaluation and management physician*
7 *services under the title XVIII of the Social Security Act*
8 *on or after the date of the enactment of this Act unless the*
9 *Secretary—*

10 (1) *has developed the guidelines in collaboration*
11 *with practicing physicians and provided for an as-*
12 *essment of the proposed guidelines by the physician*
13 *community;*

14 (2) *has established a plan that contains specific*
15 *goals, including a schedule, for improving the use of*
16 *such guidelines;*

17 (3) *has conducted appropriate and representative*
18 *pilot projects under subsection (b) to test modifica-*
19 *tions to the evaluation and management documenta-*
20 *tion guidelines;*

21 (4) *finds that the objectives described in sub-*
22 *section (c) will be met in the implementation of such*
23 *guidelines; and*

24 (5) *has conducted appropriate outreach to physi-*
25 *cians for education and training with respect to the*
26 *guidelines.*

1 *The Secretary shall make changes to the manner in which*
2 *existing evaluation and management documentation guide-*
3 *lines are implemented to reduce paperwork burdens on phy-*
4 *sicians.*

5 *(b) PILOT PROJECTS TO TEST EVALUATION AND MAN-*
6 *AGEMENT DOCUMENTATION GUIDELINES.—*

7 *(1) LENGTH AND CONSULTATION.—Each pilot*
8 *project under this subsection shall—*

9 *(A) be of sufficient length to allow for pre-*
10 *paratory physician and medicare contractor*
11 *education, analysis, and use and assessment of*
12 *potential evaluation and management guidelines;*
13 *and*

14 *(B) be conducted, in development and*
15 *throughout the planning and operational stages*
16 *of the project, in consultation with practicing*
17 *physicians.*

18 *(2) RANGE OF PILOT PROJECTS.—Of the pilot*
19 *projects conducted under this subsection—*

20 *(A) at least one shall focus on a peer review*
21 *method by physicians (not employed by a medi-*
22 *care contractor) which evaluates medical record*
23 *information for claims submitted by physicians*
24 *identified as statistical outliers relative to defini-*
25 *tions published in the Current Procedures Ter-*

1 *minology (CPT) code book of the American Med-*
2 *ical Association;*

3 *(B) one shall focus on an alternative meth-*
4 *od to detailed guidelines based on physician doc-*
5 *umentation of face to face encounter time with a*
6 *patient;*

7 *(C) at least one shall be conducted for serv-*
8 *ices furnished in a rural area and at least one*
9 *for services furnished outside such an area; and*

10 *(D) at least one shall be conducted in a set-*
11 *ting where physicians bill under physicians serv-*
12 *ices in teaching settings and at one shall be con-*
13 *ducted in a setting other than a teaching setting.*

14 *(3) BANNING OF TARGETING OF PILOT PROJECT*
15 *PARTICIPANTS.—Data collected under this subsection*
16 *shall not be used as the basis for overpayment de-*
17 *mands or post-payment audits.*

18 *(4) STUDY OF IMPACT.—Each pilot project shall*
19 *examine the effect of the modified evaluation and*
20 *management documentation guidelines on—*

21 *(A) different types of physician practices,*
22 *including those with fewer than 10 full-time-*
23 *equivalent employees (including physicians); and*

1 (B) *the costs of physician compliance, in-*
2 *cluding education, implementation, auditing,*
3 *and monitoring.*

4 (c) *OBJECTIVES FOR EVALUATION AND MANAGEMENT*
5 *GUIDELINES.—The objectives for modified evaluation and*
6 *management documentation guidelines developed by the*
7 *Secretary shall be to—*

8 (1) *enhance clinically relevant documentation*
9 *needed to code accurately and assess coding levels ac-*
10 *curately;*

11 (2) *decrease the level of non-clinically pertinent*
12 *and burdensome documentation time and content in*
13 *the physician's medical record;*

14 (3) *increase accuracy by reviewers; and*

15 (4) *educate both physicians and reviewers.*

16 (d) *STUDY OF SIMPLER, ALTERNATIVE SYSTEMS OF*
17 *DOCUMENTATION FOR PHYSICIAN CLAIMS.—*

18 (1) *STUDY.—The Secretary of Health and*
19 *Human Services shall carry out a study of the mat-*
20 *ters described in paragraph (2).*

21 (2) *MATTERS DESCRIBED.—The matters referred*
22 *to in paragraph (1) are—*

23 (A) *the development of a simpler, alter-*
24 *native system of requirements for documentation*
25 *accompanying claims for evaluation and man-*

1 *agement physician services for which payment is*
2 *made under title XVIII of the Social Security*
3 *Act; and*

4 *(B) consideration of systems other than cur-*
5 *rent coding and documentation requirements for*
6 *payment for such physician services.*

7 *(3) CONSULTATION WITH PRACTICING PHYSI-*
8 *CIANs.—In designing and carrying out the study*
9 *under paragraph (1), the Secretary shall consult with*
10 *practicing physicians, including physicians who are*
11 *part of group practices.*

12 *(4) APPLICATION OF HIPAA UNIFORM CODING RE-*
13 *QUIREMENTS.—In developing an alternative system*
14 *under paragraph (2), the Secretary shall consider re-*
15 *quirements of administrative simplification under*
16 *part C of title XI of the Social Security Act.*

17 *(5) REPORT TO CONGRESS.—(A) The Secretary*
18 *shall submit to Congress a report on the results of the*
19 *study conducted under paragraph (1).*

20 *(B) The Medicare Payment Advisory Commis-*
21 *sion shall conduct an analysis of the results of the*
22 *study included in the report under subparagraph (A)*
23 *and shall submit a report on such analysis to Con-*
24 *gress.*

1 (e) *STUDY ON APPROPRIATE CODING OF CERTAIN EX-*
2 *TENDED OFFICE VISITS.*—*The Secretary shall conduct a*
3 *study of the appropriateness of coding in cases of extended*
4 *office visits in which there is no diagnosis made. The Sec-*
5 *retary shall submit a report to Congress on such study and*
6 *shall include recommendations on how to code appro-*
7 *priately for such visits in a manner that takes into account*
8 *the amount of time the physician spent with the patient.*

9 (f) *DEFINITIONS.*—*In this section—*

10 (1) *the term “rural area” has the meaning given*
11 *that term in section 1886(d)(2)(D) of the Social Secu-*
12 *rity Act, 42 U.S.C. 1395ww(d)(2)(D); and*

13 (2) *the term “teaching settings” are those set-*
14 *tings described in section 415.150 of title 42, Code of*
15 *Federal Regulations.*

16 **SEC. 12. IMPROVEMENT IN OVERSIGHT OF TECHNOLOGY**
17 **AND COVERAGE.**

18 (a) *IMPROVED COORDINATION BETWEEN FDA AND*
19 *CMS ON COVERAGE OF BREAKTHROUGH MEDICAL DE-*
20 *VICES.*—

21 (1) *IN GENERAL.*—*Upon request by an applicant*
22 *and to the extent feasible (as determined by the Sec-*
23 *retary of Health and Human Services), the Secretary*
24 *shall, in the case of a class III medical device that is*
25 *subject to premarket approval under section 515 of*

1 *the Federal Food, Drug, and Cosmetic Act, coordinate*
2 *reviews of coverage decisions under title XVIII of the*
3 *Social Security Act with the review for application*
4 *for premarket approval conducted by the Food and*
5 *Drug Administration under such section. Such co-*
6 *ordination shall include the sharing of appropriate*
7 *information.*

8 (2) *PUBLICATION OF PLAN.*—*Not later than 6*
9 *months after the date of the enactment of this Act, the*
10 *Secretary shall submit to appropriate Committees of*
11 *Congress a report that contains the plan for improv-*
12 *ing such coordination and for shortening the time lag*
13 *between the premarket approval by the Food and*
14 *Drug Administration and coding and coverage deci-*
15 *sions by the Centers for Medicare & Medicaid Serv-*
16 *ices.*

17 (3) *CONSTRUCTION.*—*Nothing in this subsection*
18 *shall be construed as changing the criteria for cov-*
19 *erage of a medical device under title XVIII of the So-*
20 *cial Security Act nor premarket approval by the Food*
21 *and Drug Administration.*

22 (b) *COUNCIL FOR TECHNOLOGY AND INNOVATION.*—

23 (1) *ESTABLISHMENT.*—*The Secretary of Health*
24 *and Human Services shall establish a Council for*
25 *Technology and Innovation within the Centers for*

1 *Medicare & Medicaid Services (in this section referred*
2 *to as “CMS”).*

3 (2) *COMPOSITION.—The Council shall be com-*
4 *posed of senior CMS staff and clinicians and shall be*
5 *chaired by the Executive Coordinator for Technology*
6 *and Innovation (appointed or designated under para-*
7 *graph (4)).*

8 (3) *DUTIES.—The Council shall coordinate the*
9 *activities of coverage, coding, and payment processes*
10 *under title XVIII of the Social Security Act with re-*
11 *spect to new technologies and procedures, including*
12 *new drug therapies, and shall coordinate the exchange*
13 *of information on new technologies between CMS and*
14 *other entities that make similar decisions.*

15 (4) *EXECUTIVE COORDINATOR FOR TECHNOLOGY*
16 *AND INNOVATION.—The Secretary shall appoint (or*
17 *designate) a noncareer appointee (as defined in sec-*
18 *tion 3132(a)(7) of title 5, United States Code) who*
19 *shall serve as the Executive Coordinator for Tech-*
20 *nology and Innovation. Such executive coordinator*
21 *shall report to the Administrator of CMS, shall chair*
22 *the Council, shall oversee the execution of its duties,*
23 *and shall serve as a single point of contact for outside*
24 *groups and entities regarding the coverage, coding,*

1 *and payment processes under title XVIII of the Social*
2 *Security Act.*

3 (c) *GAO STUDY ON IMPROVEMENTS IN EXTERNAL*
4 *DATA COLLECTION FOR USE IN THE MEDICARE INPATIENT*
5 *PAYMENT SYSTEM.—*

6 (1) *STUDY.—The Comptroller General of the*
7 *United States shall conduct a study that analyzes*
8 *which external data can be collected in a shorter time*
9 *frame by the Centers For Medicare & Medicaid Serv-*
10 *ices for use in computing payments for inpatient hos-*
11 *pital services. The study may include an evaluation*
12 *of the feasibility and appropriateness of using of*
13 *quarterly samples or special surveys or any other*
14 *methods. The study shall include an analysis of*
15 *whether other executive agencies, such as the Bureau*
16 *of Labor Statistics in the Department of Commerce,*
17 *are best suited to collect this information.*

18 (2) *REPORT.—By not later than October 1,*
19 *2002, the Comptroller General shall submit a report*
20 *to Congress on the study under paragraph (1).*

21 (d) *APPLICATION OF OSHA BLOODBORNE PATHOGENS*
22 *STANDARD TO CERTAIN HOSPITALS.—*

23 (1) *IN GENERAL.—Section 1866 (42 U.S.C.*
24 *1395cc) is amended—*

25 (A) *in subsection (a)(1)—*

1 (i) in subparagraph (R), by striking
2 “and” at the end;

3 (ii) in subparagraph (S), by striking
4 the period at the end and inserting “, and”;
5 and

6 (iii) by inserting after subparagraph
7 (S) the following new subparagraph:

8 “(T) in the case of hospitals that are not other-
9 wise subject to the Occupational Safety and Health
10 Act of 1970, to comply with the Bloodborne Pathogens
11 standard under section 1910.1030 of title 29 of the
12 Code of Federal Regulations (or as subsequently reded-
13 ignated).”; and

14 (B) by adding at the end of subsection (b)
15 the following new paragraph:

16 “(4)(A) A hospital that fails to comply with the re-
17 quirement of subsection (a)(1)(T) (relating to the
18 Bloodborne Pathogens standard) is subject to a civil money
19 penalty in an amount described in subparagraph (B), but
20 is not subject to termination of an agreement under this
21 section.

22 “(B) The amount referred to in subparagraph (A) is
23 an amount that is similar to the amount of civil penalties
24 that may be imposed under section 17 of the Occupational
25 Safety and Health Act of 1970 for a violation of the

1 *Bloodborne Pathogens standard referred to in subsection*
2 *(a)(1)(T) by a hospital that is subject to the provisions of*
3 *such Act.*

4 “(C) *A civil money penalty under this paragraph shall*
5 *be imposed and collected in the same manner as civil money*
6 *penalties under subsection (a) of section 1128A are imposed*
7 *and collected under that section.*”.

8 (2) *EFFECTIVE DATE.*—*The amendments made*
9 *by this paragraph (1) shall apply to hospitals as of*
10 *July 1, 2002.*

11 (e) *IOM STUDY ON LOCAL COVERAGE DETERMINA-*
12 *TIONS.*—

13 (1) *STUDY.*—*The Secretary shall enter into an*
14 *arrangement with the Institute of Medicine of the Na-*
15 *tional Academy of Sciences under which the Institute*
16 *shall conduct a study on the capabilities and infor-*
17 *mation available for local coverage determinations*
18 *(including the application of local medical review*
19 *policies) under the medicare program under title*
20 *XVIII of the Social Security Act. Such study shall*
21 *examine—*

22 (A) *the consistency of the definitions used*
23 *in such determinations;*

1 (B) the extent to which such determinations
2 are based on evidence, including medical and
3 scientific evidence;

4 (C) the advantages and disadvantages of
5 local coverage decisionmaking, including the
6 flexibility it offers for ensuring timely patient
7 access to new medical technology for which data
8 are still be collected;

9 (D) whether local coverage determinations
10 are made, in the absence of adequate data, in
11 order to collect such data in a manner that re-
12 sults in coverage of experimental items or serv-
13 ices; and

14 (E) the advantages and disadvantages of
15 maintaining local medicare contractor advisory
16 committees that can advise on local coverage de-
17 cisions based on an open, collaborative public
18 process.

19 (2) *REPORT.*—Such arrangement shall provide
20 that the Institute shall submit to the Secretary a re-
21 port on such study by not later than 3 years after the
22 date of the enactment of this Act. The Secretary shall
23 promptly transmit a copy of such report to Congress.

1 (f) *METHODS FOR DETERMINING PAYMENT BASIS FOR*
2 *NEW LAB TESTS.—Section 1833(h) (42 U.S.C. 1395l(h))*
3 *is amended by adding at the end the following:*

4 “(8)(A) *The Secretary shall establish by regulation*
5 *procedures for determining the basis for, and amount of,*
6 *payment under this subsection for any clinical diagnostic*
7 *laboratory test with respect to which a new or substantially*
8 *revised HCPCS code is assigned on or after January 1,*
9 *2003 (in this paragraph referred to as ‘new tests’).*

10 “(B) *Determinations under subparagraph (A) shall be*
11 *made only after the Secretary—*

12 “(i) *makes available to the public (through an*
13 *Internet site and other appropriate mechanisms) a*
14 *list that includes any such test for which establish-*
15 *ment of a payment amount under this subsection is*
16 *being considered for a year;*

17 “(ii) *on the same day such list is made avail-*
18 *able, causes to have published in the Federal Register*
19 *notice of a meeting to receive comments and rec-*
20 *ommendations (and data on which recommendations*
21 *are based) from the public on the appropriate basis*
22 *under this subsection for establishing payment*
23 *amounts for the tests on such list;*

24 “(iii) *not less than 30 days after publication of*
25 *such notice convenes a meeting, that includes rep-*

1 *representatives of officials of the Centers for Medicare &*
2 *Medicaid Services involved in determining payment*
3 *amounts, to receive such comments and recommenda-*
4 *tions (and data on which the recommendations are*
5 *based);*

6 *“(iv) taking into account the comments and rec-*
7 *ommendations (and accompanying data) received at*
8 *such meeting, develops and makes available to the*
9 *public (through an Internet site and other appro-*
10 *prate mechanisms) a list of proposed determinations*
11 *with respect to the appropriate basis for establishing*
12 *a payment amount under this subsection for each*
13 *such code, together with an explanation of the reasons*
14 *for each such determination, the data on which the*
15 *determinations are based, and a request for public*
16 *written comments on the proposed determination; and*

17 *“(v) taking into account the comments received*
18 *during the public comment period, develops and*
19 *makes available to the public (through an Internet*
20 *site and other appropriate mechanisms) a list of final*
21 *determinations of the payment amounts for such tests*
22 *under this subsection, together with the rationale for*
23 *each such determination, the data on which the deter-*
24 *minations are based, and responses to comments and*
25 *suggestions received from the public.*

1 “(C) Under the procedures established pursuant to sub-
2 paragraph (A), the Secretary shall—

3 “(i) set forth the criteria for making determina-
4 tions under subparagraph (A); and

5 “(ii) make available to the public the data (other
6 than proprietary data) considered in making such de-
7 terminations.

8 “(D) The Secretary may convene such further public
9 meetings to receive public comments on payment amounts
10 for new tests under this subsection as the Secretary deems
11 appropriate.

12 “(E) For purposes of this paragraph:

13 “(i) The term ‘HCPCS’ refers to the Health Care
14 Procedure Coding System.

15 “(ii) A code shall be considered to be ‘substan-
16 tially revised’ if there is a substantive change to the
17 definition of the test or procedure to which the code
18 applies (such as a new analyte or a new methodology
19 for measuring an existing analyte-specific test).”.

20 **SEC. 13. MISCELLANEOUS PROVISIONS.**

21 (a) *TREATMENT OF HOSPITALS FOR CERTAIN SERV-*
22 *ICES UNDER MEDICARE SECONDARY PAYOR (MSP) PROVI-*
23 *SIONS.—*

24 (1) *IN GENERAL.—The Secretary of Health and*
25 *Human Services shall not require a hospital (includ-*

1 *ing a critical access hospital) to ask questions (or ob-*
2 *tain information) relating to the application of sec-*
3 *tion 1862(b) of the Social Security Act (relating to*
4 *medicare secondary payor provisions) in the case of*
5 *reference laboratory services described in paragraph*
6 *(2), if the Secretary does not impose such requirement*
7 *in the case of such services furnished by an inde-*
8 *pendent laboratory.*

9 (2) *REFERENCE LABORATORY SERVICES DE-*
10 *SCRIBED.—Reference laboratory services described in*
11 *this paragraph are clinical laboratory diagnostic tests*
12 *(or the interpretation of such tests, or both) furnished*
13 *without a face-to-face encounter between the bene-*
14 *ficiary and the hospital involved and in which the*
15 *hospital submits a claim only for such test or inter-*
16 *pretation.*

17 (b) *CLARIFICATION OF PRUDENT LAYPERSON TEST*
18 *FOR EMERGENCY SERVICES UNDER THE MEDICARE FEE-*
19 *FOR-SERVICE PROGRAM.—*

20 (1) *IN GENERAL.—Section 1862 (42 U.S.C.*
21 *1395y) is amended by inserting after subsection (c)*
22 *the following new subsection:*

23 *“(d) In the case of hospital services and physicians’*
24 *services that—*

1 “(1) are furnished, to an individual who is not
2 enrolled in a Medicare+Choice plan under part C, by
3 a hospital or a critical access hospital; and

4 “(2) are needed to evaluate or stabilize an emer-
5 gency medical condition (as defined in section
6 1852(d)(3)(B), relating to application of a prudent
7 layperson rule) and that are provided to meet the re-
8 quirements of section 1867,
9 such services shall be deemed to be reasonable and necessary
10 for the diagnosis or treatment of illness or injury for pur-
11 poses of subsection (a)(1)(A).”.

12 (2) *EFFECTIVE DATE.*—The amendment made by
13 paragraph (1) shall apply to items and services fur-
14 nished on or after January 1, 2002.

15 (c) *PROMPT SUBMISSION OF OVERDUE REPORTS ON*
16 *PAYMENT AND UTILIZATION OF OUTPATIENT THERAPY*
17 *SERVICES.*—The Secretary of Health and Human Services
18 shall submit to Congress as expeditiously as practicable the
19 reports required under section 4541(d)(2) of the Balanced
20 Budget Act of 1997 (relating to alternatives to a single an-
21 nual dollar cap on outpatient therapy) and under section
22 221(d) of the Medicare, Medicaid, and SCHIP Balanced
23 Budget Refinement Act of 1999 (relating to utilization pat-
24 terns for outpatient therapy).

1 (d) *AUTHORIZING USE OF ARRANGEMENTS WITH*
2 *OTHER HOSPICE PROGRAMS TO PROVIDE CORE HOSPICE*
3 *SERVICES IN CERTAIN CIRCUMSTANCES.*—

4 (1) *IN GENERAL.*—Section 1861(dd)(5) (42
5 *U.S.C. 1395x(dd)(5)) is amended by adding at the*
6 *end the following new subparagraph:*

7 “(D) *In extraordinary, exigent, or other non-routine*
8 *circumstances, such as unanticipated periods of high pa-*
9 *tient loads, staffing shortages due to illness or other events,*
10 *or temporary travel of a patient outside a hospice pro-*
11 *gram’s service area, a hospice program may enter into ar-*
12 *rangements with another hospice program for the provision*
13 *by that other program of services described in paragraph*
14 *(2)(A)(ii)(I). The provisions of paragraph (2)(A)(ii)(II)*
15 *shall apply with respect to the services provided under such*
16 *arrangements.”.*

17 (2) *CONFORMING PAYMENT PROVISION.*—Section
18 *1814(i) (42 U.S.C. 1395f(i)) is amended by adding at*
19 *the end the following new paragraph:*

20 “(4) *In the case of hospice care provided by a hospice*
21 *program under arrangements under section 1861(dd)(5)(D)*
22 *made by another hospice program, the hospice program that*
23 *made the arrangements shall bill and be paid for the hospice*
24 *care.”.*

1 (3) *EFFECTIVE DATE.*—*The amendments made*
2 *by this subsection shall apply to hospice care provided*
3 *on or after the date of the enactment of this Act.*

Union Calendar No. 200

107TH CONGRESS
1ST SESSION

H. R. 2768

[Report No. 107-288, Part I]

A BILL

To amend title XVIII of the Social Security Act to provide regulatory relief and contracting flexibility under the Medicare Program.

DECEMBER 7, 2001

Committee on Energy and Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed